

## **ANALYSIS: Milosevic Prosecution Claims Court Unfair**

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The prosecution is to appeal against a trial chamber decision to conclude its case within a year.

Is the prosecution going to have a fair hearing in the Milosevic trial? The question has been raised by the tolerance judges showed towards the defendant's aggressive defence style and the strict restrictions they imposed on the presentation of the prosecutor's case. (See [Tribunal Update No. 255](#))

Now, after two and a half months, the prosecution has publicly accused the trial chamber of "unfairly curtailing" its right to a fair trial. It was prompted by the trial chamber's insistence on April 10, 2001 that it conclude its case within a year (See [Tribunal Update No. 261](#)).

Declaring that such a drastic time limit would "emasculate" its case, the prosecution last week submitted an application for leave to file an appeal, which contains unusually strong criticism of the trial chamber decision.

The prosecution has been caught between a rock and a hard place from the start. On the one hand, it has had to ward off the accused, whose aggressive denial of all counts of the indictment and the testimonies of eyewitnesses and experts has forced it to present more evidence than it originally planned.

At the same time, the prosecution has had to confront impatient and worried judges. Fearful that the trial will last forever and become "unmanageable" both for them and the accused, they keep demanding that the prosecution "simplifies" its case, which means "downsizing" its evidence and shortening the time for its presentation.

The prosecution's appeal is based on two fundamental arguments. The first is that setting a strict time limit for the presentation of evidence in such a complex case as this, involving three indictments and a total of 66 counts, imposes "irremediable prejudice" on the prosecution.

The latter has calculated that a 12-month deadline means they have about 193 court days to go. Judging by events thus far, the defendant will consume half of these with extensive cross-examinations while the three amici curiae (friends of the court) will use another 5 per cent for examination. So the prosecution has "less than 100 'exclusive' court days left to present a case effectively and thoroughly".

The appeal application warns that if the prosecution is forced to present its case in an "unreasonable" time frame, "the only possible consequence is that the quality" of its case will suffer, which, in turn, will have a bearing on the trial chamber's final decision.

The prosecution says a fundamental reason for opposing a strict time limit on completion of its evidence is that the issues in the case are still not clearly identified. It says, for instance, it cannot foresee the defendant's reaction to crime-based evidence on the Bosnian and Croatian components of the prosecution case.

In its favour, the prosecution can refer back to the appeals chamber decision last year in the Stanislav Galic case, which urged the trial chamber to consider "whether the issues really in dispute have been clearly identified so that proper assessment of the time needed for the prosecution case can be made".

The second argument for an appeal is what the application defines as "infringement of the prosecution's statutory rights" under the tribunal statute.

The prosecution says the tribunal rules do not empower the trial chambers to deny it the right to present its case in the manner it deems fit.

Three appeal judges, Claude Jorda, David Hunt and Fausto Pocar, will assess the application. In January, they ruled in favour of a prosecution appeal against a trial chamber decision to try Milosevic twice, first for Kosovo, and then jointly for Croatia and Bosnia-Herzegovina (See [Tribunal Update 249](#)). The judges ordered a joint trial for Milosevic on all three indictments.

It remains to be seen whether the prosecution will succeed once more in the battle for a fair trial.

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