

## **ANALYSIS: Milosevic's 'Interminable' Trial**

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The courtroom performances of the former Yugoslav president suggest his trial will go on for much longer than initially anticipated

That Slobodan Milosevic's trial is bound to be long and nauseating is the only thing that can be concluded with any certainty after two weeks of "the trial of the century".

As far as length goes, the prosecution initially thought the joint "mega-trial" on all three indictments for Kosovo, Croatia and Bosnia might last about two years - based on case volume and the large number (more than 300) witnesses the prosecution intends to call.

But it's turned out that, as the Serbs put it, "the bill was compiled without the innkeeper", the innkeeper in this case being the accused.

After repeatedly pointing out in the six-month-long pre-trial stage that he had no intention of defending himself against "the false accusations of the false court", Milosevic's three-day opening address at the tribunal clearly shows that his tactics have changed.

The signs are that he intends to put up an aggressive defence. As a result, the trial will be even longer than initially anticipated: with Milosevic not only providing his own witnesses and exhibits but taking every opportunity to cross-examine prosecution witnesses at length.

He is also playing deftly on the judges' problems with this case, the first to come before the tribunal in which the accused lacks a professional defence. This complex was visible in the first two weeks of the proceedings. Not only did the judges let Milosevic talk for a day longer than the prosecution had spent on its opening address, but they also let him cross-examine the prosecution's witnesses two or three times longer than the witnesses' direct examination lasted.

This is not the normal style of Hague judges, least of all of Richard May, the judge presiding over the trial, who gained a no-nonsense reputation for setting strict time and subject limits on the questioning of witnesses. For the moment, those restrictions only seem to apply to the prosecution. Tribunal reporters were joking last week that the question was no longer whether Milosevic would have a fair trial; it was whether the prosecution would have one?

That the trial will not only be long but nauseating could be seen from the aggressive way Milosevic questioned the first prosecution witnesses, and especially the victims of the crimes he is accused of. It was hardly cross-examination. Cross-interrogation would be more appropriate.

The judges in previous trials in The Hague never tolerated this kind of aggression towards witnesses, who happen to be victims. Instead, they intervened when the defence threatened to inflict more suffering on them. The judges have tolerated Milosevic's aggressive style, perhaps, because of the problems they have with the accused not having a professional defence team.

The prosecutors have no such hang-ups but they have not intervened to protect their witnesses from Milosevic's harassment either. Their tactics seem to be to let the former Yugoslav president say as much as he can, thereby disclosing what he knew of the events heard in the courtroom and his control over those events.

Many of those observing the trial may have been impressed with Milosevic's performance, but his aggressive tactics and presentation of half truths and lies as facts won't have furthered his cause.

The first prosecution witness, Mahmut Bakalli, a former high-ranking communist official in Yugoslavia and now a member of the Kosovo parliament, was summoned to say only two things about his meetings with Milosevic in April and May 1998.

The first was that Milosevic never intended to negotiate seriously with the Kosovar representatives he invited to Belgrade over a political solution to the Kosovo problem, and especially about independence, which his Albanian interlocutors insisted on. The talks in spring 1998 were just a smoke screen, concealing military and police preparations for a final settling of accounts with Albanian "terrorism".

Bakalli said this was obvious from the composition of the delegation Milosevic sent to Pristina for the negotiations, which contained two of his most hard line associates, Nikola Sainovic, also accused of the crimes in Kosovo, and Ratko Markovic, author of Milosevic's constitutions and laws abolishing Kosovo's autonomy. The third member, Tomislav Nikolic, was deputy to Vojislav Seselj, the notorious leader of the ultra-nationalist Serbian Radical Party.

Milosevic countered by claiming his delegation went to Pristina up to 11 times, while the Albanian negotiators only showed up for the "negotiations" on the first occasion. But Bakalli pointed out that his only information on the visits of Milosevic's "negotiators" came from Serbian television, which "proved" the Albanians were "boycotting the negotiations".

A more important point that the prosecutor wanted to achieve with Bakalli's testimony was his description of what Milosevic told him during the April meeting about the police operation in Drenica, in which Adem Jashari and some 30 members of his family were killed in early March 1998.

When Bakalli asked "why he was killing women and children", he said that Milosevic replied, "We gave them two hours to leave." Asked whether he got the impression Milosevic was informed about what had happened there, he replied, "Yes, absolutely".

In the "cross-interrogation " the next day, Milosevic tried to put words into the witness's mouth. "You said yesterday that the police gave them two hours to leave," he suggested. Before Bakalli managed to answer, judge May intervened, "No, no. His testimony was that you, Mr Milosevic, told him that." With a grimace of surprise, Milosevic murmured, "I said?"

The rest of Milosevic's cross-examination was fairly irrelevant. It was irrelevant whether Bakalli knew the "sociological definition of apartheid"; what he said as a communist official in 1981 about the student demonstrations in Kosovo; whether he was a "political advisor to the KLA" (Kosovo Liberation Army) on the eve of the negotiations at Ramboulet; or whether he had betrayed his "communist convictions".

The accused clearly made this last point on the suggestion of his wife, Mirjana Markovic, leader of Serbia's neo-communists and whose ideological views can easily be discerned in some of Milosevic's words.

Milosevic's "cross-interrogation" of the two prosecution witnesses who testified last week, Agim Zeqiri, and Fehmi Elshani, were particularly irrelevant. It was irrelevant whether there was a KLA brigade near Zeqiri's village, and whether the villagers were "helping" the brigade with food and clothes as the witness stated, or offered it hospitality, as Milosevic claimed. It was also irrelevant whether Elshani's son was a KLA member and whether the witness was dismissed or retired in 1991.

If in his cross-interrogation Milosevic was trying to prove that the KLA existed, then he's wasting his time. The Kosovo indictment presumes that there was an armed conflict between Albanian and Serbian forces in the province.

The fact that the KLA took part in the armed conflict and committed crimes of its own does not mitigate Milosevic's responsibility for what he is accused of, just as it did not mitigate the responsibility of other accused before the tribunal who tried to defend themselves by pointing to crimes committed by the other side.

The prosecution wants to use testimonies of peasants from the villages of Celine and Nogavac, near Orahovac, to outline a "pattern" with which the forces under Milosevic's command implemented a "systematic and widespread" attack on the Albanian civilian population. The prosecution claims that pattern was implemented in at least 24 locations in Kosovo. Witnesses from each of them will testify in the coming months.

Zeqiri and Elshani described what it looked like in Celine and Nogavac. A day after NATO air strikes began on 25 March 1999, they said, the Serbian army and police surrounded and shelled their villages, before troops went in and burned houses and killed civilians who had not escaped. The civilians fled to the mountains but were surrounded after two or three days and taken to the border and expelled under escort, or concentrated elsewhere, awaiting deportation.

Milosevic disputed this, trying to persuade the witnesses that they were running away from NATO bombs and that the army and the police were there to "protect" them from the KLA, who were "beating and killing" them to force them to abandon their homes and go to Albania. Unusually, it was clear even Milosevic was not persuaded by what he was saying.

For Zeqiri, it was all too much. He lost his wife and five children (the youngest aged 18 months) and 10 other relatives after March 25, 1999, and while being forced over the border into Albania was beaten so severely that he is now an invalid needing dialysis treatment. Milosevic's "cross-interrogation" upset him so much that on the second day he refused to answer any more of his questions.

Elshani, however, was not intimidated. When Milosevic claimed the army did not "attack civilians", he retorted, "Where did the victims come from then? Who committed that massacre? You know the answers." He gave a similar response when Milosevic suggested that after surrounding some 20,000 people in a mountain refuge, the police only "fired in the air, [and] did not touch the civilians". Elshani, who said he saw the police burn three elderly women and bury one of them, retorted with his back turned to Milosevic, "You burnt three elderly women! That is unheard of! It is unheard of, what you did".

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