

Comment: Milosevic's Last War of Attrition

Author: [Mirko Klarin](#)

The defendant may be calculating that his only hope of "victory" is to prevent the completion of his trial.

After the fourth disruption of the trial due to the defendant's health problems, the judges and prosecutors in the case of Slobodan Milosevic are facing a stark choice: to limit the right of the accused to self-representation or drastically reduce the prosecution's case.

Their position could almost be described as a classic hostage situation, in which the accused is holding a gun against his head, saying, "Drop the case or I'll drop dead!"

So far, Milosevic's health problems have caused eight weeks of delays in the nine months of his trial.

When the accused failed to appear for his hearing on November 1, due to "exhaustion", the judges for the first time publicly expressed their concern about the course of the trial. They also invited the prosecution, friends of the court and Milosevic to submit in writing their opinions regarding the question of how to complete the case. For the prosecutors, the choice is obvious: the right to self-representation has its limits, and these have been transgressed in this case. Therefore, they argue the trial chamber should give serious and urgent consideration to insisting the accused acquire a defence counsel, to avoid further disruption and delay.

The tribunal statute, the prosecution claims, allows the chamber to impose a defence counsel on the defendant in the interests of justice.

This is the case in the majority of European countries and notably in the Federal Republic of Yugoslavia, where defence counsels are mandatory in trials in which an accused faces a possible sentence of over ten years or a more severe penalty.

The alternative course, a further reduction of the prosecution case, is simply unacceptable, states a written submission from the chief prosecutor Carla Del Ponte, delivered to the trial chamber and made public last Friday.

"Neither the international community nor the prosecution could accept the curtailment of this case in a situation where the accused, by declining to avail himself of the benefit of counsel, has exacerbated his health problems," she said in her submission.

The prosecution warned that allowing the accused to dictate the tempo and scope of his trial - on account of problems that are largely self-inflicted - would create a very dangerous precedent. It also hinted that Milosevic may be manipulating his health problems, and called on the trial chamber to order an immediate and comprehensive medical examination of the accused by independent outside specialists.

The man in charge of health and well-being of all detainees, including, of course, Milosevic, the UN detention unit warden, Timothy McFadden, told IWPR last week that "almost all, if not all, detainees were healthier now than the day they came in".

He said there were numerous reasons for this, "They are not drinking alcohol, they are going to bed early

and getting up early, taking plenty of exercise, have well balanced diet - it's a recipe for good health."

McFadden described Milosevic as "very, very diligent and hard working" inmate who spends a lot of time preparing for his trial. "It would be exhausting for anybody, let alone somebody who is 61 years of age, so it is understandable that he becomes exhausted from time to time," he said.

If the fact that he is unrepresented in the courtroom the main cause of his health problems, then, logically speaking, he is more likely to overcome them by seeking help from lawyers than doctors. However, this is the last thing that he could be expected to agree to.

Milosevic believes that nobody is more competent to explain what he thinks is relevant for his case than Milosevic himself. "You cannot compare what I know and what the lawyers know," he said last week.

Since he is so confident that he is doing a very good job of his own defence, it is very probable that he will interpret the prosecution proposal as confirmation of his success. It also seems clear that Milosevic will think the same of the majority of other measures that, according to the prosecution, could be deployed in order to speed up the trial.

For example, getting the court to reconsider its decision to allow the defendant to cross-examine witnesses that have given written statements; making greater use of facts that have been adjudicated in other proceedings before the tribunal, especially in cases dealing with crimes in Bosnia; and permitting so-called "summarising" witnesses - investigators who sum up the evidence of crime-base witnesses, although this has already been rejected by trial chamber.

The judges are thus once again facing the dilemma they thought they had resolved at the first status conference on August 30, 2001, when they ruled that the accused had the right to defend himself. They agreed to this to ensure that he would appear in the courtroom.

In its submission, the prosecution did not miss a chance to note that this decision "was made before the effect of self-representation on the accused was apparent".

However, Milosevic's tactics in the courtroom come as no surprise to those who know him.

He is conducting his defence in the same manner as he conducted his policies over the last decade: as a war of attrition. He used exactly the same arguments and style to exhaust his partners in negotiations, which led to the war and the break up of former Yugoslavia; and to cause international peacemakers to despair. He was certain he could outlast them. However, he did not.

This time, it seems, the problem is not Milosevic's belief that he can keep going longer than The Hague judges and prosecutors. On the contrary, he may feel that not making it to the end of the trial will give him a final, and the only possible, victory in his last war of attrition.

Mirko Klarin is an IWPR senior editor in The Hague and the editor-in-chief of the SENSE news agency.

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