

Judges Weigh Risks of Forcing Lawyer on Milosevic

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Imposing a counsel on the ailing defendant might speed up the case, but could still backfire horribly.

As Slobodan Milosevic's trial threatened to slide out of control owing to the defendant's worsening health, judges in The Hague have publicly raised the option of forcing the former Yugoslav president to accept legal counsel.

After rescheduling the trial for July 14, subject to the state of Milosevic's health, the judges said they may impose a lawyer on the defendant whether he likes it or not.

The July 6 ruling was the clearest acknowledgment that after two years of trial the court fears the case may never reach a conclusion.

Stephen Kay, a "friend of the court" employed by the tribunal to make sure that the rights of the defendant are respected, had asked the previous day whether Milosevic's declining condition allowed him to stand trial at all.

"Since January, the court has witnessed a more pronounced decline in Milosevic's health," said Kay. "The court may be at this stage compelled to consider his fitness to stand trial at all," he added, though he did not submit an official request for the issue to be tackled.

In response, the judges ruled that there was "no evidence that the accused is not fit to stand trial at all", adding that that it might be time to force him to accept counsel.

"The health of the accused is such that he may not be fit to continue to represent himself," they said. "His continuing to represent himself could adversely affect the fair and expeditious conduct of the trial".

It was the strongest signal yet that the judges may withdraw Milosevic's right to present his case in person, which he has insisted on since the start.

On July 5, an angry Milosevic listened as one judge read out a medical report issued a few days earlier, which stressed his blood pressure was too high and had damaged his heart, and ordered at least a week's rest.

Milosevic told the court his worsening health was a "direct consequence" of the judges' refusal to give him more time to prepare his defence.

He attacked the judges for their decision not to allow him more than the three months allotted to him, saying health problems had prevented him from working for 45 days of that time.

While they have not granted him the extra days, the judges decided on July 6 that the court should sit for just one week in July, and would then take a summer break extended to six weeks. That way, they said, Milosevic should have enough time to catch up for the days lost.

Even in the earlier prosecution phase, Milosevic's poor health dogged the trial's progress. The medical report read out in the court on Monday July 5 suggested not only that he was ill but that his illness would reoccur whenever he faced pressure.

The judges admitted this meant they would have to "navigate" between the stress that the proceedings have exerted on Milosevic's blood pressure, and the contradictory need to expedite a trial that has already slowed to three days a week.

The court's dilemma is that while the defendant's tendency to turn the proceedings into a political rally has endangered the trial's efficiency, curbing his right to represent himself may undermine faith in its fairness both within Serbia and outside it.

Information filtered down through Milosevic's team of legal advisors suggests they are planning a politically highly-charged defence, possibly skirting around the concrete charges set out in the indictment.

The spectre of this happening, coupled with Milosevic's recurring illness, has raised fears of a protracted trial - something the court is obviously eager to avoid.

But the option of imposing a lawyer on Milosevic to expedite the case may prove difficult, as he might well refuse to communicate with the lawyer or even take part in the trial at all.

"This would be a real practical difficulty," said Marieke Wierda, a legal expert at the New-York based International Centre for Transitional Justice.

Wierda, a former assistant to tribunal judge Richard May, who earlier presided over the Milosevic case and died last week, added that if the defendant refused to work with the lawyer, he or she would lack any purpose.

"The counsel needs to be instructed in order to efficiently represent the accused. Otherwise, what's the difference between such a lawyer and the existing 'friends of the court'?" she asked.

The procedure for imposing a lawyer is anticipated in the tribunal's basic legal documents, and there are precedents.

The indicted leader of the nationalist Serbian Radical Party, Vojislav Seselj, has been assigned a counsel against his will. And Vidoje Blagojevic, a Bosnian Serb accused over the 1995 Srebrenica massacre, is represented by a counsel he does not recognise - in his case, the two fell out already when the trial was under way.

But both Blagojevic and Seselj cases are less high-profile than that of Milosevic, whose refusal to cooperate would have much greater public impact.

This week Milosevic repeated his refusal to engage a lawyer or cooperate with one assigned by the court. "I would never accept a lawyer imposed upon me," he told the judges.

Though tribunal insiders insist that public perceptions must not play a deciding role in the conduct of the case, the judges' carefully-worded statement on July 6 shows they know they may be walking into a legal and political minefield.

They have already asked the tribunal registrar to identify potential lawyers who might be assigned to the case, while insisting the counsel's role - should one ever be assigned - "would [only] be to assist the accused in the preparation and presentation of his case". Taking over the entire conduct of the defence would be considered only in "exceptional circumstances".

"It is obvious from their decision that they do not want to go for a head-on collision with Milosevic. The tribunal still wants Milosevic to participate in his case," said Judith Armatta, from the Coalition for International Justice, a long-term observer of this case.

"But they are still laying the necessary legal base for the decision to bring on a counsel. Otherwise, the court faces the risk of being caught in a quagmire."

Although the idea that Milosevic could be proclaimed unfit to stand trial is not yet on the table, the possibility should not be discarded altogether, Wierda said.

"Some crucial aspects of this case are out of the hands of both the accused and the judges," she added. "Should the medical experts come with a report that Milosevic, for instance, is in a serious risk of a heart attack, the court would face a very bleak choice."

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