

Milosevic Back to Old Self

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Feisty defendant refuses to consent to appointment of new judge.

In one of his vintage court performances, the former Yugoslav president Slobodan Milosevic this week continued with his defiant stance against the Hague tribunal by refusing to accept a new judge in his case.

The court needed Milosevic's consent to name a replacement for Judge Richard May who has fallen ill and had to submit his resignation.

In a separate development, prosecution officials told IWPR that they would continue to press the court to deliberate on genocide charges against Milosevic in spite of the amici curiae (friends of the court) request that the charges be dismissed.

The prosecution filed a submission this week stating its position, but the brief was confidential, reportedly because it referred to evidence that has been granted protective measures.

In a court session convened exclusively for the purposes of asking Milosevic's consent for a substitute judge, the defendant twice refused to answer whether he agreed to such a replacement.

Instead, he repeated that he had no intention of taking any stands "in the administrative matters" of a tribunal he considered "illegal" and burst into another denunciation of the court, calling it "a means of waging a war against his country".

Tribunal president Theodore Meron, who presided over the special hearing, responded by saying that since he did not give his "clear and unequivocal" acceptance of a substitute judge, he would consider Milosevic's answer a refusal.

This refusal could, in theory, lead to a re-trial - a logistical nightmare, considering that the prosecution part of the trial lasted for over two years and involved hundreds of witnesses.

However, the rules of the tribunal give the remaining two judges the right to continue the case with a substitute judge even without defendant's consent, should they determine that doing so would serve the interests of justice. Milosevic could appeal to this decision, but the trial would nevertheless continue, pending the ruling of the appeals chamber.

The remaining two trial judges are Patrick Robinson of Jamaica - who has taken over May's role as presiding judge - and O-gon Kwon of South Korea. The third judge to join them on the panel will have to be appointed by the Secretary-General of the United Nations.

Meron explained to Milosevic that a substitute judge would only be allowed to take his place on the bench after he has certified that he is familiar with the case. It was not clear whether that could delay the beginning of the defence part of the trial, planned for June 8 - transcripts of court sessions held so far comprise over 30,000 pages of text, and there's also a veritable deluge of tens of thousands of pages of other evidence that a new judge would have to familiarise himself with before this date.

Tribunal spokesman Jim Landale said that the court was nevertheless planning to continue with Milosevic trial "as planned".

Court observers have voiced concerns about Robinson's role as the presiding judge, pointing out that he has often appeared extremely sympathetic to Milosevic. However, in recent months, Robinson seems to have become increasingly strict towards the accused.

In addition to refusing to give his consent for a new judge, Milosevic used his court appearance - the first in more than a month - to complain about the conditions in which he's preparing his defence. He also demanded that that he be released from custody while he's preparing his defence, so that he could interview his witnesses in an "unrestricted" manner.

"There is no danger of me disappearing," Milosevic said. "I have no plans of disappearing, only of proving that this is a false indictment."

The more rational demands included a request to be given more time to prepare his defence, since he considered the 90 days he was granted by the court "far too little in comparison to the years that the prosecution had as its disposal". He said that the tribunal's doctors have warned him he could only work for three days a week and thus the 90 days he was granted for preparation of defence should be prolonged to 30 weeks.

He scorned the trial chamber for giving him only 150 court days to conduct his defence - half of what the prosecution had - and asked for the amount of time to be doubled.

Milosevic used the opportunity to scoff at the prosecution for presenting a large amount of its evidence and witnesses in closed sessions. "Unlike the prosecution, I intend to make all my witnesses public," he said.

During the prosecution part of his trial, the judges have indeed allowed for a large number of witnesses to submit their testimonies in written form and not appear in court - intended as a measure to protect their safety in the still volatile region. A number of documents submitted to the court were also marked as confidential, a demand made by the various countries that submitted them.

Milosevic has used this repeatedly to accuse the tribunal of trying him in secrecy.

But the prosecutor's office itself seems to be as unhappy as the defendant is about the protective measures that surround his case - and ironically, it appears that the government of post-Milosevic Serbia is one of the main sources of these demands for secrecy.

According to court insiders, the new Serbian government has asked for many of the documents they handed over to the tribunal to be kept confidential "for reasons of national security". They say that many of these documents are actually corroborating the involvement of the Serbian government in the Bosnian war.

This could be very damaging for the Belgrade government in another court case that is soon to start at the International Court of Justice, just a few blocks away from the tribunal. The Bosnian government has sued Belgrade for genocide, but the latter continues to claim that the Milosevic regime had nothing to do with the war across the border.

In October 2003, speaking to the Security Council, the chief Prosecutor Carla del Ponte accused the Serbian authorities of “a willingness ... to retain crucial material that could prove the implication of the ... the former regime in the crimes committed in Bosnia and Herzegovina.”

Some court insiders seem to think that agreeing to such confidentiality is undermining the power of the tribunal to convey to the people of former Yugoslavia the truth about the wars that ravaged their country. “Sometimes I feel that we haven’t brought people of Yugoslavia one step closer to the truth,” a tribunal source told IWPR.

But other insiders point out that the tribunal hasn’t much choice in the matter. “It’s very simple: we either agree on keeping these document confidential, or we don’t get them,” one said.

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