

Milosevic Fights for Right to Represent Himself

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Tribunal appeals chamber hears arguments for and against allowing former Yugoslav president to present his own defence.

Slobodan Milosevic made a last-ditch attempt to regain the right to defend himself against war crimes charges at a hearing in the tribunal's appeals chamber this week.

Meanwhile, the tribunal announced on October 22 that its highest-profile trial would be adjourned until November 9 due to a lack of witnesses. Many people who had agreed to testify on behalf of the former Yugoslav president have since refused to travel to The Hague in protest at the court's decision to appoint a lawyer against the defendant's will.

In a heated debate in front of an appeal chamber panel of five senior judges, headed by tribunal president Theodor Meron on October 21, Milosevic and his court-assigned counsel asked for the restoration of the defendant's right to self-representation, invoking the fairness of trial as their crucial argument.

But the prosecutors asked the court not to bow under the pressure of the "irrational" defendant and advised the judges against allowing Milosevic to set the rules under which his trial would be conducted.

"The only solution, the only one I see as just, fair, logical and reasonable is to give me back my right to represent myself, to call witnesses, to examine them and to lead evidence in my defence case," Milosevic told the panel, which has the ultimate authority to rule over the manner in which his defence would be conducted.

Opening the hearings, Milosevic's court-assigned counsel Steven Kay told the court that he was effectively unable to properly defend his uncooperative client. At moments, it seemed as if Kay stopped just one step short of proposing to withdraw from the case - a move that could have potentially disastrous consequences for the already troubled trial.

Kay also criticised the trial chamber judges for choosing to assign a lawyer to the Milosevic case, as he said this prevented it from being conducted properly.

The judges - whose decision was made in September - say the move was necessitated by Milosevic's worsening health, which had slowed down the trial and, in their view, had rendered him unable to defend himself.

The judges also expressed fear that should the trial continue in this way, it may in fact never be concluded.

The role of the assigned counsel was offered to the then-amicus Steven Kay, who accepted it despite his strong criticism of the judge's move. The defendant reacted by refusing to meet with his new lawyer or discuss the case with him in any way. As a result, Kay has been running the defence phase of the trial with only Milosevic's opening speeches and a list of proposed witnesses as a guide.

In the meantime, hundreds of these proposed witnesses have now refused to testify, in protest at the

chamber's decision, significantly slowing down the trial. "We have driven ourselves into the sand," Kay told the appeal judges on October 21, and warned them that the responsibility placed on his shoulders has put him in an "ethically difficult position".

Kay explained that at the time when he took upon himself to defend Milosevic, their once "cordial" relations had turned into antagonism so deep as to make his work impossible. "I feel there is such a conflict that we are ineffective in this trial," he said. "We are unable to say we are serving the interests of justice."

Addressing the judges, Kay listed all the hurdles he and his legal team have faced since taking over the case. These, he said, made it impossible for him to put up a proper defence, thus endangering the general fairness of the trial.

Ending an impassioned presentation, Kay warned that if the right to represent himself was not restored to Milosevic, the trial could end up being viewed as unfair by future generations, "They will say 'It was not his defence. It came from a defence counsel. We haven't heard it from him'."

Milosevic is standing trial on three separate indictments, each covering the alleged crimes committed in Croatia, Bosnia and Kosovo during the wars in former Yugoslavia in the Nineties. He is facing more than 60 counts of war crimes, crimes against humanity and genocide. It has taken the prosecution two years to present the evidence in all three cases.

Ever since his arrest he has been maintaining that his trial is a political one, aimed at covering up a western conspiracy to destroy former Yugoslavia. His opening speech presented in August indicated that this would also be the main line of his defence.

Throughout the hearing, the prosecution remained firm in its view that a professional lawyer should be in charge of conducting the defence.

Prosecutors also called on appeal judges to not only uphold the trial chamber's decision, but also to ground it on a wider basis than just Milosevic's health problems, and include allegations of obstructionist behaviour and health-related manipulation - arguments which the trial chamber has not used.

The prosecutors based their claims on doctors' reports which claim that Milosevic is not adhering to his prescribed therapy, which has been interpreted by prosecutors as "manipulation" of his health problems in order to stall the trial when it suits him.

They also maintained that it was up to the accused whether he would get fair trial or not - and stressed he always could choose to cooperate with his counsel and "air his case".

"It is entirely up to him," lead prosecutor Geoffrey Nice said. "If the accused does not wish to call any more evidence, he doesn't have to. [In such case there would be] no more public appearances. The case ends.

"We are effectively being threatened by this accused. To start making particular allowances for [his] extraordinary reactions ...is to continue what may have been an unperceived process of handing some of the authority from the bench to [him]."

Milosevic - visibly angered, but noticeably more respectful towards the court than usual - rebutted these

claims. "The issue is not who is running this court," he said. "The issue is: who is running my defence: me or Mr Nice?"

The appeals chamber has said it would consider issuing orders to both sides to supply it with additional written submissions arguing their positions, but did not say when it planned to deliver its judgment.

During the regular Milosevic trial hearings that continued this week, the judges heard the testimony of a Greek parliamentarian and journalist relating to the events described in the Kosovo indictment.

Liana Kanelli, 50, was visiting Serbia during the NATO bombardment in April 1999 in her capacity as a journalist. She told the court that she had been in the town of Aleksinac at the time when a stray NATO bomb hit a residential area. Kanelli insisted she saw no military targets in the area where the bomb struck.

At the time, even the official Yugoslav press agency, Tanjug, reported that the target of the NATO attacks was local military barracks. NATO acknowledged that one of its bombs had missed its target and caused civilian casualties. Human Rights Watch reported at the time that 12 civilians were killed in this incident.

Kay explained that the witness could bolster Milosevic's line of defence presented in his opening statement in August, when the former Serb leader claimed that Yugoslavia acted in self-defence against the NATO bombardment.

But Kanelli's testimony had little to do with the events that were unfolding several hundred kilometres to the south, in Kosovo, which she said she never visited.

The witness, who is a Greek parliamentarian allied with the Communist Party and a vice-president of the International Committee for Defence of Slobodan Milosevic, did not hide her criticism of the Hague tribunal, calling it a "political court" and "an instrument of genocide and satanisation".

Kanelli was the only witness to testify this week, since Kay said he had to withdraw the second witness scheduled on instructions "transmitted through the liaison officer", whom the trial chamber has designated last summer to ease the communication between Milosevic's legal advisors and the court.

It was the first time that Kay has spoken of any contact, however indirect, between him and the accused.

The trial was adjourned on the morning of October 19, one and a half a days before it was scheduled to.

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