

## **VIEW FROM THE HAGUE**

### **MILOŠEVIĆ STILL DEFENDS HIMSELF, BUT HIS COUNSEL IS "IN RESERVE"**

The last couple of weeks, judges of the Tribunal's Appeals Chamber in The Hague, found themselves faced yet again with one of the great challenges presented by the case against Slobodan Milošević. Again they found themselves in the position of having to balance two fundamental principles of criminal proceedings - the right of the accused to defend himself in a manner of his choosing and his right to an expeditious and fair trial.

Before it reached the Appeals Chamber, the Tribunal's Trial Chamber found itself faced with this task. The Trial Chamber decided to assign Milošević counsel, explaining that Milošević's health significantly deteriorated from the beginning of the trial, in such a way as to bring into question its continuation. The Trial Chamber concluded that there was a real danger that the trial could go on for an unreasonably long time, or, even worse, that it would not be finished at all if the accused continued to represent himself without the assistance of counsel. Therefore, the Trial Chamber decided to assign Milošević counsel in order to ensure that his defence is heard in full. (See this column from 15 September 2004).

The accused objected to the Trial Chamber's decision and, acting according to the wishes and in the interests of his client, his assigned counsel submitted an appeal of this decision. The Appeals Chamber's job, in this and other situations, is to review whether the Trial Chamber acted properly, fairly and within its discretion. The Appeals Chamber rendered its decision on Monday.

In its decision, the Appeals Chamber affirmed the Trial Chamber's decision to assign Milošević counsel, concluding that it was a proper one and fully within its discretion and, therefore, did not violate his rights. In coming to this decision, the Tribunals' judges carefully reviewed international human rights conventions and national practice. The Appeals Chamber noted that Milošević's health condition caused numerous delays in the proceedings, and that the Trial Chamber was right to conclude that the trial may go on for an unreasonably long time.

However, the Appeals Chamber disagreed with the Trial Chamber's order on the working arrangements between Slobodan Milošević and his assigned counsel. The Trial Chamber had given Milošević's counsel the lead role in preparing his defence (counsel would call and examine witnesses, make all submissions on fact and law and obtain Milošević's instructions and take account of his views, while Milošević would be permitted to ask additional questions after counsel's examination in chief). In contrast, the Appeals Chamber decided to give Milošević the lead role in this process: he will call witnesses and examine them before counsel, he will submit requests to the Trial Chamber and give closing arguments at the end of the defence case. However, this will last only as long as Milošević's health permits. If Milošević's health again deteriorates, his counsel will be there to permit the trial to continue, even if Milošević is unable to participate. The Appeals Chamber left it to the Trial Chamber to decide when Milošević's assigned counsel will take on a greater role in conducting the defence.

In deciding on these and other questions, one of the principal tasks of the Tribunal's Trial and Appeals Chambers is to protect the basic rights of the accused. In this situation, even if the right of Slobodan Milošević to defend himself is not absolute, his right to present a defence to the very serious charges against him, which include crimes against humanity, violating the laws and customs of war and genocide, is. Whether presented by Milošević or, when he is unfit, his assigned counsel, the Trial Chamber can not render a verdict until it has heard the defence's evidence. Until then, as Judge Robinson has said, "the Trial Chamber's main duty is to ensure a

fair and expeditious trial." It is now up to Milošević to grasp this opportunity to work with his assigned counsel to present his defence to the prosecution's charges.

**Outreach Programme**

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