

VIEW FROM THE HAGUE
OUT OF 102 INDICTEES, ONLY MILOŠEVIĆ AND ŠEŠELJ
ARE DEFENDED BY THEMSELVES

On 5 July 2004, Slobodan Milošević will begin presenting his defence before the Tribunal. Although, perhaps the best known of all the Tribunal cases, the proceedings against Mr. Milošević are not representative of the conduct of proceedings against most of the other 58 accused currently in proceedings before the Tribunal. The reasons for this lie primarily in Mr. Milošević's decision to conduct his own defence instead of appointing defence counsel.

In accordance with all relevant human rights instruments, the Statute of the Tribunal guarantees the rights of the defence, including the right to counsel regardless of means. Thus, the accused can make his/her choice in appointing defence counsel if they fulfil the requirements laid out in the Statute and the Rules of Procedure and Evidence. Those requirements are as follows: if the counsel is admitted to the practice of law in a State or is a University professor of law, speaks one of the two working languages of the Tribunal (English or French), and is a member of the Association of Defence Counsel practising before the ICTY. When it's in the interest of justice to do so, the Registrar may admit a counsel who does not speak either of the two working languages of the Tribunal but who speaks the native language of the accused.

At the Tribunal, the criminal procedure follows a dynamic typical of common law systems. That means that the Prosecution and the Defence both prepare separate cases. The burden of proof is on the Prosecution, while the the accused has a right to answer the charges brought against him/her. This is not a duty of the accused or his defence counsel - the accused is not obliged to prove or do anything. Therefore, appointing a defence counsel as such is also a right, not an obligation of the accused. The accused also has a right to represent him/herself in the proceedings.

So far, of the 102 accused who have appeared before the Tribunal, two have chosen to represent themselves - Mr. Milošević and Mr. Šešelj. In both of these cases, the Judges appointed counsel to assist the Chamber in dealing with the case - in the *Milošević* case, they appointed the *amici curiae* and in the *Šešelj* case, stand-by counsel. In all other cases before the Tribunal, the accused are represented by defence counsel and, as a consequence, they do not speak in court except in exceptional circumstances. The defence counsel speak and make submissions on their behalf.

At the Tribunal, a trial begins by the presentation of Prosecution evidence. This is followed by the presentation of the defence case. In both cases, the Judges have the power to curtail the lists of witnesses and evidence to be presented.

In the Milošević case, the Prosecution concluded the presentation of its evidence on 25 February 2004. Next Monday, Mr. Milošević will begin presenting his case with an opening statement which the Chamber limited to four hours. In accordance with the Judges' decision, the accused will have 150 days to present his evidence. This decision was based on the calculation of the amount of time the prosecution had for its witnesses taking into consideration the time that was consumed by Mr. Milošević's cross-examination of witnesses (the Prosecution will not be allowed such lengthy cross-examination). The accused has indicated that he intends to call 1,631 witnesses. The Chamber did not make a ruling on the list of witnesses at this stage, but still retains the right to refuse to hear witnesses if their testimonies would be irrelevant or overly repetitious of evidence already given. It is up to Mr. Milošević to determine how to best use his 150 days in court and up to the Judges to make sure he does it in accordance with the Statute and the Rules.

To observers, this case can appear unusual in many respects: on the one hand, the accused has repeatedly said that he does not recognise the Tribunal, and on the other - he is very actively exercising his rights under the Tribunal's Statute. In addition, Mr. Milošević has refused to appoint defence counsel, often tries to use the courtroom as his political pulpit and spares no effort in attempting to create the appearance that the very serious charges brought against him actually apply to the entire Serbian people. Finally, the media have dubbed this the 'trial of the century'.

And yet, the simple fact remains - Slobodan Milošević is a defendant in a criminal trial before an international court of law and, as such, he is guaranteed a number of very important rights. One of the most important of these is his right to present his defence. Like any other defendant in a criminal trial, Mr. Milošević must do so in accordance with the rules and regulations of the court.

Outreach Programme

outreach@icty.org