

VIEW FROM THE HAGUE

WITNESSES BOYCOTT TRIBUNAL AND AVOID RESPONSIBILITY

Yet again, the trial of Slobodan Milošević before the ICTY has been adjourned. However, unlike the many previous fourteen times when the trial was adjourned because of the health of the accused, this time it has to do with the preparation of his defence and the various complications associated with it.

Namely - the newly appointed defence counsel have informed the Trial Chamber that 20 of the 23 witnesses they have thus far been able to contact have refused to testify because of the Chamber's decision not to allow the accused to represent himself. According to the media, Milošević's legal advisers have said that another 265 potential witnesses have taken the same position.

In what seems to have become a habit when it comes to the Milošević trial, comments on this situation came from all corners. Unfortunately, most of them talked about 'defiant' or 'rebellious' witnesses, Milošević's alleged 'victory' over the Tribunal, of the Chamber's repeated 'loss of control of the courtroom' and so on. Few, however, seem to analyse what is really at stake here.

Slobodan Milošević is on trial before an international court of law. The Prosecutor's office brought three indictments against him that lists 66 counts of war crimes, crimes against humanity and genocide, related to some of the worst atrocities Europe has seen since the end of World War II. These indictments were confirmed by judges of the Tribunal who analysed the supporting material and determined that there were reasonable grounds to believe that the accused committed the crimes he is charged with. As with any criminal trial anywhere in the world, the burden of establishing the guilt of the accused is on the Prosecution, and, in about 300 days of trial, the Prosecution presented almost 300 witnesses and hundreds of exhibits in support of its case.

Unlike the Prosecution, the accused does not have to prove anything. However, he is entitled to present a positive defence to any of the charges against him. The purpose of presenting a defence case is to give the accused the opportunity to disprove or bring into question the allegations and evidence presented by the Prosecution. The accused can do this by bringing his own witnesses and presenting his own evidence in court. In doing so, the accused has a right to choose to have the assistance of a lawyer or he can represent himself. However, this right is not absolute and the Trial Chamber has decided to assign defence counsel to assist Mr. Milošević in the preparation of his case. As discussed in last week's column, this decision was made due to the ill-health of the accused and it came after months of deliberation on the matter, and was based on medical evidence and legal submissions from all parties. In assigning defence counsel, the Judges instructed them to discuss the defence with the accused and seek instruction from him, and, most importantly, to act at all times in the interests of the accused. The Judges also allowed the accused to request the Chamber to be able to question the witnesses himself after defence counsel had done and left him the possibility to submit a reasonable request to appoint his own counsel.

In developing its criminal procedure, the Tribunal has drawn on all the international human rights instruments. These human rights instruments dictate a full respect of the rights of the accused and thus the conduct of a fair trial. There is no such thing as a trial that is 'too fair' to the accused as some commentators have suggested.

However, Mr. Milošević decided not to avail himself of any of the opportunities afforded him by the Judges for participation in the presentation of his defence. In defiance of the Judges' decision, he is refusing to cooperate with his newly appointed defence counsel and to question the witnesses. Now, it appears that many of the witnesses Mr. Milošević intended to ask to testify on his behalf are also misguidedly 'defying the court'. Instead of coming to court to offer their unique experience and insight into relevant issues in order to provide the Judges with a view different to that presented by the Prosecution, these potential witnesses are not only avoiding their duty but also missing a unique opportunity and offering irrelevant and ill-informed opinions in the media instead. Clearly, this will not assist the defence of Mr. Milošević in any way. Quite the contrary, as both Judge Robinson and Judge Bonomy have said in no uncertain terms, the judicial process will continue and it will continue inside their courtroom and not in the media.

Outreach Programme

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