

# Defence witnesses at Milosevic trial refuse to testify

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Defence witnesses have refused to testify at the trial of Slobodan Milosevic, halting the trial for at least another four weeks. The witnesses, who include international bourgeois political figures, are protesting at the removal of the right of the former President of Yugoslavia to conduct his own defence.

Milosevic has conducted his own defence since February 2002, when his trial started at The International Criminal Tribunal for the former Yugoslavia (ICTY) on charges of war crimes and genocide in Croatia, Bosnia and Kosovo in the 1990s.

On September 3 tribunal judges stopped Milosevic's right to represent himself two days after he had started his defence case. They claimed the right to conduct one's own defence is not an absolute right and they were withdrawing it because of his bad health and its affect on his ability to question witnesses. They appointed two court observers (*amici curiae*, friends of the court) Steven Kay and Gillian Higgins as defence counsel and said Milosevic could ask witnesses additional questions at the court's discretion.

One witness, Nikolai Ryzhkov, a former member of the Soviet Union's Council of Ministers and one of the chief architects of Mikhail Gorbachev's perestroika policy, accused the ICTY of "crudely breaking rules of its own statute that allowed the accused to defend his or herself" and that the decision to break "established codes of conduct is worthy of serious complaints".

Another witness, former US State department official George Kenney who believes Milosevic is "innocent of the charges in the indictment"; called the hearings "inherently unfair, amounting to little more than a political show trial."

He told Milosevic, "Your defence, the defence for which I consulted with you in The Hague, does not now exist. Consequently, I cannot in good conscience act as a 'defence witness' under the Tribunal's current rules."

Kenney resigned from the Yugoslav section of the State Department in August 1992, calling for US intervention in Yugoslavia. He later changed his views criticising the "myth of a Serb perpetrated Holocaust". He is the author of *Wars for Succession of Yugoslavia 1991-1995*.

The Canadian ambassador to Yugoslavia from 1990 to 1992, James Bissett also refused to attend the court saying, "I have from the outset had serious misgivings about the tribunal ... [it] is a political court rather than a judicial body operating in the interests of truth and justice."

Bissett added that the proceedings had now assumed "all the

characteristics of a Stalinist show trial."

Elsewhere Bissett has written, "As Canadian Ambassador to Yugoslavia from 1990 to 1992, I was a witness to the tragic breakup of that country. There were a number of reasons why Yugoslavia was torn apart, but one of the primary causes of the tragedy were the failure of western diplomacy. This is not to say that the Yugoslavs themselves were blameless—not at all—but, nevertheless, western intervention exacerbated the problem and precipitated much of the ensuing bloodshed." (<http://www.deltax.net/bissett/western.htm>)

The prosecution and the media welcomed the decision of the judges to stop Milosevic carrying out his own defence. Leading prosecutor Geoffrey Nice said it would stop Milosevic using "the ICTY as a political tool" and the *New York Times* rejoiced that the "outspoken and obstinate former Serbian leader had been virtually removed from the driver's seat."

Milosevic has said he refuses to accept the decision to be demoted to "Mr Kay's assistant". And Kay and Higgins have appealed their own appointment as defence counsel. The result of both appeals is expected in the next week or so.

Since the decision was made three witnesses have appeared, but Kay has been unable to call any more. On September 15 he told the court that 20 of the 23 people he had been able to contact refused to testify, saying "they disagreed with assigning of counsel and the way their testimony would be presented." Kay said he was in an impossible situation that was the "worst of all possible worlds".

He described how he had been involved in the first trial at the ICTY of a camp guard, but that this was of a "very different dimension".

"This is the first case of a president of a substantial and influential country" being tried and it is outside "normal domestic practice", Kay added. "The scale of the tasks and the resources needed cannot be underestimated" (The Milosevic trial involves two indictments joined into one with a total of 66 charges covering three wars and a period of ten years).

Kay told the court that Milosevic had refused to talk to him and give any direction about the 1,631 witnesses he had listed and the hundred of statements they had given. He had no time to read the vast amount of documents, many of which had not been translated, and almost no staff compared to the prosecution which had "an enormous machinery" and the use of well-paid retired police inspectors to carry out investigations.

Kay said he could “foresee great difficulty in attempting to go in cold and deal with uncooperative witnesses, attempting to find exhibits and deal with issues without support and backup from those representing his interests.”

He asked again that the trial be suspended awaiting the outcome of his appeal. He repeated his call for Milosevic to take primary responsibility for questioning and for counsel to take over if Milosevic fell ill again. He said the court was acting paternalistically by claiming it was protecting Milosevic and that he should have the free choice to carry on the trial regardless. In any case Milosevic had started his defence case in good health and continued for two days, giving “an intensive, strong and robust performance,” and for that reason it would be appropriate to carry out a new medical examination.

Prosecutor Nice rejected all Kay’s proposals saying, “a rational and reasonable court is facing an irrational and unreasonable Accused.”

Milosevic had defied the court and encouraged witnesses to defy it too—if not directly then indirectly by his defiant behaviour. The court had to “maintain its dignity in face of this defiance”.

Milosevic blamed the court for his ill health. The Prosecution case had ended abruptly and he had been forced to compile his witness list within a very short period, even though doctors had said he should only work three days a week. In addition on July 19 the Court indicated it now wanted to complete the case by October 2005, giving Milosevic only 150 days to present his evidence.

The judges rejected Kay’s requests. Offering some administrative help, they gave him four weeks to contact Milosevic’s aides and sift through the witnesses in order to call the first witness on October 12. They said they had already adjourned the trial twelve times, losing 66 days because of Milosevic’s ill health and the same pattern was likely if he continued to represent himself. They suggested Kay ask them to order Milosevic’s aides to hand over witness information and to issue some subpoenas against those who refused to testify in order to prove there was a problem.

The judges issued a further explanation of their latest decision on September 22, saying that the right to a defence is a fundamental right but “the manner of representation” is open. They claimed self-representation can be halted if there is “a risk of unfairness to the accused” when they are “seriously ill or regularly prevented for protracted periods from acting in [their] own defence.”

In an unintentionally ironic twist the judges’ quote from Serbian law that counsel is mandatory where crimes carry a risk of a prison sentence of 10 years or more. They also based their decision on US law, saying though the right of self-representation derives from the Constitution recent judgments say it is not absolute (US v Faretta, 1975, Martinez v Court of Appeal of California, 2000). They concluded that they are looking after Milosevic’s best interests and if he failed to cooperate, then “the Accused must bear responsibility for that and cannot plead injustice.”

The judges again insisted that Milosevic’s illness was the reason for withdrawing his right to self-representation. But there is a more substantial one: The prosecution has argued from the start of the trial in 2001 for the court to appoint counsel, as have many NGOs around the court. Judith Armatta of the Washington-based

Coalition for International Justice has continually argued that in Milosevic’s “much bedevilled trial” “gagging an accused” was permitted where the proceedings are “hijacked for the political purposes of the accused ... where the defendant will not abide by the rules.” She warned some time ago that “filtering out his political agenda” would be much harder in his defence case.

At one point Judge Patrick Robinson himself let slip that “the prestige, reputation and integrity of the court were at stake” and if the trial continued in the same manner the ICTY could be brought into disrepute.

Judge O-Gon Kwon interjected more than once to *remind* the courtroom that the main reason was Milosevic’s health.

The problem for the ICTY, the prosecution and pro-imperialist NGOs is that Milosevic has effectively challenged the idea that the Serbian leadership was solely responsible for a campaign of genocide and ethnic cleansing. Instead he has argued with some success that the Western powers deliberately destabilised Yugoslavia and encouraged its break up along ethnic and communal lines and that they should be charged with war crimes.

Without diminishing Milosevic’s own responsibility for what happened in the former Yugoslavia, one can acknowledge the success and validity of essential aspects of his defence case. It has enabled Milosevic to portray himself as the stalwart opponent of the West and a champion of the Serbian people and of Yugoslavia’s integrity and sovereignty, despite his great responsibility for the tragic events in the Balkans. The pro-capitalist policies that he and other former Stalinist bureaucrats and nationalists such as Franjo Tudjman in Croatia implemented under the dictates of the Western powers and financial institutions gave rise to explosive social tensions and the beginnings of an oppositional movement in the working class. It was to divert this movement that they increasingly played the nationalist card in order to divide the working class against each other.

But it was the Western powers that seized most vigorously on the political weapon of nationalism, having decided that a fractured Yugoslavia would be more easily assimilated into their own sphere of influence. It was this policy that led them to conflict with Milosevic, whose control of Serbia made him the man most anxious to preserve the status quo of a federal state against the aspiring bourgeois cliques in Yugoslavia’s constituent republics.



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