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The unfinished trial of Slobodan Milošević: Justice lost, history told

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A lot of money is in circulation and great privileges are granted to those who should accept all that is against this country – loss of independence, separation of Montenegro, Kosovo and Vojvodina, humiliation and annihilation of the Serb people, handing the national heroes to the new Gestapo headquartered in The Hague. ...The task is being carried out in a perfidious manner, from the inside, seeking to pit as many people as possible against each other.

Slobodan Milošević, Closing Statement at the 5th SPS Congress, 25 November 2000

Chapter IX: The Unmaking of the Leader

Milošević's former associates testified that he became obsessively concerned about his status and power over time, showing intolerance toward fellow party members and perceiving their public success as rivalry. Borisav Jović wrote about the methodical way Milošević dealt with potential competitors or those who expressed opposing views, marginalising or eliminating them before they gained too much political influence. According to Jović, Milošević had no scruples about carrying out political purges of his associates when he felt threatened by them.¹³⁵⁶ Indeed, open political clashes had become a hallmark of Milošević's political style by 1995, and he used state-controlled media to publicly denounce individuals while simultaneously applying pressure through political institutions to isolate or simply dismiss them. Jović himself was dismissed 1996, immediately upon the publication of his first book in the mid-1990s, initially from the position of SPS Vice-President before Milošević also asked him to resign as a member of the Serbian Parliament. Jović did as he was asked; he knew from experience that Milošević would get his way.¹³⁵⁷

Zoran Lilić gave a similar account of the changing atmosphere in the SPS, underlining Milošević's intolerance of opposition within his own party. SPS members who opposed policies advanced by Milošević, his wife, and his inner circle very quickly ceased to be party members, either of their own free will or because they were forcibly expelled.¹³⁵⁸ Immediately after the signing of the Dayton Peace Agreement, there had been a showdown among his closest associates, some of whom were critical of the power-sharing arrangement Milošević had with his

¹³⁵⁶ Jović, *Book on Milošević*, 19.

¹³⁵⁷ Borisav Jović, Witness Statement, para. 6.

¹³⁵⁸ Testimony of Zoran Lilić (17 June 2003), 22557.

wife. Milošević believed he could afford the standoff given his newly acquired patronage by the West.¹³⁵⁹

Milošević also failed to address the challenges of Serbian society that could have helped him win back the popular support he had once enjoyed. Serbian citizens, weary of the domestic problems that accumulated over years of negligence and corruption – and augmented by the regional and international isolation of the FRY – expected changes that would improve their daily lives. But Milošević's regime was not ready, capable, or willing to tackle these problems.¹³⁶⁰

Milošević survived mass protests against his regime by Serbian political opposition in 1991, 1992 and 1993. But any anti-war discourse failed to seriously challenge his power or his bellicose politics. In fact, Milošević responded to anti-war opposition by insisting that Serbia was not at war, arguing that his policies had actually been successful in preventing an escalation of neighbouring conflicts into Serbian territory. And while his open support to Serbs outside of Serbia was condemned by some people inside Serbia, it was expected by many others and by a number of opposition parties – which criticised Milošević whenever he exerted public pressure against RSK or RS leaders. Some party leaders such as Vojislav Šešelj, were actually more militant and extreme than Milošević. Thus, most of the persistently democratic, non-nationalist, and anti-war opposition to Milošević came from civil society and not from within political parties.

It was after Dayton that Serbian voters seem to have finally grown weary of the poverty that resulted from UN sanctions and the wars in Croatia and BiH, as well as the criminalisation of Serbian society that had occurred during Milošević's rule. Local elections held in the autumn of 1996 were a test of domestic support for Milošević, and a coalition of opposition parties – the Democratic Movement of Serbia (*Demokratski pokret Srbije*, or DEPOS) – won in several major cities including Belgrade. When Milošević and his political allies tried to alter the election results, they provoked the largest and most persistent street protests Serbia had ever seen. The protests lasted for three months – into 1997 – and eventually Milošević had to accept the election

¹³⁵⁹ Jović, *Book on Milošević*, 163-167.

¹³⁶⁰ Jović, *Book on Milošević*, 169-170.

results, bending under combined domestic and international pressure.¹³⁶¹ He remained in power, though, and after Serbia's presidential elections in December 1997, was appointed by the Federal Assembly as President of the FRY; with Milan Milutinović stepping into Milošević's old role as President of Serbia.

The Path to Self-Destruction

Like many other politicians with extensive and autocratic powers, Milošević fell into the trap of self-isolation, relying on a shrinking circle of people over the course of his tenure. Eventually, he operated in an environment that resembled a royal court, with individuals competing to ingratiate themselves to Milošević as if to a monarch. He grew accustomed to the flattery, even seduced by it, accepting uncritical and untruthful representations of political reality that fawning loyalists offered him.¹³⁶²

In 1998, he turned to Kosovo again, apparently believing that Serbia could resolve the simmering conflict there by trying to remake the demography of the province and then govern it from Belgrade. This was not only a grave political miscalculation but it also exposed the irrational and unrealistic side of his political strategy. How could such a goal be achieved? And did he really think he could get away with another war on another non-Serb population? His choice to use force against civilians in Kosovo reflected the criminality he had displayed during the conflicts in Croatia and BiH, reversing any mercy he had been offered after Dayton.¹³⁶³ What had seemed in 1990 to be a political triumph for Serbia and for Milošević personally led nine years later to the capitulation of Serbian Kosovo policy and to the political downfall of Milošević, marking out his path to political self-destruction.

¹³⁶¹ The Prosecution did not deal in detail with this period of Milošević's political tenure. The majority of evidence on this time was introduced through Jović's *Book on Milošević* (see 167-169, especially). For more on events in 1996 and 1997 in B/C/S, also see: *LEX, PIŠTALJKE I LAŽI: Hronologija građanskog i studentskog protesta 17.11. 96-04.02.97* (Belgrade, Helsinki Committee for Human Rights, 1997).

¹³⁶² *Ibid.*, 158.

¹³⁶³ The Prosecution charged that Milošević's policy in Kosovo at the time was meant to modify the ethnic composition of the province through displacement, deportation, forced removal, killings, and other crimes against Kosovo Albanian civilians.

Following defeat in Kosovo at the hands of NATO and the KLA, Milošević faced opposition at home and isolation abroad, and he clung precariously to power. The last stage of Milošević's rule was characterised by rash decision-making as well as a paranoia that left him trusting of only a few people beyond his wife and members of Serbian State Security (the DB). In 2000, still in office and still convinced of his superior political authority among Serbs, he called for elections to be held one year early. It remains unclear why he decided to take such a gamble. In July 2000, the FRY Assembly adopted amendments to the Constitution according to which the President of the FRY would no longer be appointed, but would be elected by Serb citizens in a direct vote; thus, if he had not called for early elections, he would have held on to power at least until the end of 2001.¹³⁶⁴

Nevertheless, early elections were held, and Milošević – ill-advised, over-confident, and disconnected from reality – lost. With tanks under the command of trusted General Božidar Delić waiting on the outskirts of Belgrade to start moving toward the city centre, Milošević chose not to engage the armed forces to defend his regime.¹³⁶⁵ Instead, he simply walked away, accepting his electoral defeat and surrendering his power against the advice of his wife, who urged him to make use of the military.¹³⁶⁶ In the aftermath of the loss, he did not offer his resignation as President of the SPS, which Jović noted would have been “totally natural,” but called for a party congress.¹³⁶⁷ He was re-elected as SPS President, but the party no longer held any significant power and Milošević did not even seek a seat in the Assembly. This may have provided him with a level of impunity and postponed his arrest; but Milošević seemed almost reconciled to what was to come.

A Common Criminal

The Milošević regime had commissioned crimes against non-Serbs in Croatia, BiH, and Kosovo using official military and police infrastructures as well as seemingly ad hoc paramilitary groups

¹³⁶⁴ Jović, *Knjiga o Miloševiću*, 182-185

¹³⁶⁵ Delić was allegedly stopped by General Nebojša Pavković, Chief of Staff of the VJ and his superior; though Delić later denied that he had been awaiting an order to move. For his comments, see: Stojković, “Zemlju nema ko da brani.”

¹³⁶⁶ See (in English): Maroje Mihovilović, “The perfect criminal couple,” *Nacional*, no. 539, 13 March 2006, <http://www.nacional.hr/en/clanak/23828/the-perfect-criminal-couple> (accessed 31 October 2014).

¹³⁶⁷ Jović, *Knjiga o Miloševiću*, 182.

that operated with impunity. The “fly-wheel” effect of this impunity apparently ran smoothly as long as the regime was willing to protect those who engaged in such crimes. And individuals from armed formations that operated during the wars – many of whom appeared with Milošević in the Kula Camp Video – continued to commit crimes on behalf of Milošević in peacetime, against his political opponents. A number of politically-motivated murders carried out in Serbia during his leadership exposed him as a common criminal; and predictably, any impunity enjoyed by Milošević and his supporters while he was in power did not endure regime change in 2000.

By 2003, the criminality of the former regime was laid bare in several court cases that demonstrated the importance of facing the past not only to ensure an accurate historical record but also to support domestic stability and security. It was after the assassination of Prime Minister Zoran Đinđić in March of that year that the full extent of political violence and intimidation tactics used by Milošević loyalists was uncovered. The investigation into Đinđić’s murder led to several notorious JSO members, who revealed information during questioning that helped resolve several other political assassinations that had occurred in the course of Milošević’s reign – including that of Ivan Stambolić. In the Stambolić Judgement, delivered in 2005, the judges concluded that Milošević had indeed ordered the killing of his political rival and one-time mentor in order to retain power.¹³⁶⁸

From leading the project of Serb nationalism to ordering the killing of his political opponents, Milošević seemed to believe he would never be held accountable for his actions. And so, years after his ouster from power, skeletons from the Milošević era keep haunting Serbia, exposing how his criminality developed over time, as did his attempts to conceal it. In January 2014, for instance, based on information given to the police by Milorad “Legija” Ulemek, two former State Security (DB) officials were brought into custody as suspects in the 1999 murder of journalist Slavko Ćuruvija.¹³⁶⁹ Ulemek offered his account of Ćuruvija’s murder – true or false – while he was already in prison for the roles he played in the murders of Đinđić and Stambolić and in the attempted murder of opposition politician Vuk Drašković. Ulemek named Radomir Marković,

¹³⁶⁸ The Judgement in the trial for the Stambolić assassination is available in Cyrillic at: https://reportingproject.net/PeopleOfInterest/documents/Milorad_Ulemek,%20Lukovi%C4%87%20_Charges_790.pdf.

¹³⁶⁹ “Radisavljević: Legija je otkrio ubice Ćuruvije; Vučić: Niko neće biti izuzet,” *Blic*, 14 January 2014.

former Head of the Serbian DB, as a third suspect in Čuruvija's assassination. Marković was already serving a 40-year sentence for his part in the 1999 conspiracy to murder Drašković.

Milošević's Courtroom Performance

Milošević was arrested on 31 March 2001 by Serbian police, and on 28 June, he was transferred to The Hague. It was St. Vitus' Day, when Serbs commemorate the lost Battle of Kosovo Polje; and also the day, only twelve years earlier, on which he had given his historical sabre-rattling speech at Gazimetan and had announced new battles ahead for Serbs that could not be won "without the resolve, bravery, and sacrifice of the people."¹³⁷⁰ On 12 February 2002, Milošević sat in a courtroom in The Hague, representing himself against heinous charges, including genocide. The trial proceedings revealed Milošević as a man who refused to see the consequences of his political actions, defending in court the very same views that had led him to engage in multiple conflicts. Still, he was ready to put up a good fight against the international community and its Tribunal. Daily broadcasts of the trial made him a symbol of resistance not only in Serbia but among newly-won supporters worldwide, who cheered him for what they saw as his struggle against the new world order and globalism.¹³⁷¹

Appraisals of Milošević's courtroom performance have ranged from "bad" to "brilliant," with authors from Serbia tending to see it in a particularly positive light.¹³⁷² Borisav Jović praised Milošević for a brilliant defence strategy and felt that he had successfully defended both Serbia and the Serbian people.¹³⁷³ This favourable assessment is shared by Serbian scholar Slobodan Antić, who argues that Milošević had to defend himself not before the ICTY but in the court

¹³⁷⁰ "Speech, Gazimestan," 28 June 1989, Exhibit D251.1e

¹³⁷¹ Jared Isreal, "A Conversation with Ambassador Borislav Milošević, Slobodan's Brother," *The Emperor's New Clothes*, 2 June 2002, [www.http://emperors-clothes.com/news/borislav](http://emperors-clothes.com/news/borislav) (accessed 4 April 2015).

¹³⁷² Between 2009 and early 2015, two books published in the Serbian language have dealt with the trial record, Milošević's courtroom performance, and events in the aftermath of his death. See: Antić, *Slobodan Milošević and Jović, Od Gazimestana do Haga*. In Jović, see especially the chapter titled: "Odbrana pred Haškim tribunalom" ["Defence before the Hague Tribunal"]; "Tragičan ishod i reagiranje javnosti" ["A Tragic Outcome and the Reaction of the Public"]; and "Svedočenje pred haškim tribunalom" ["Testimony before the Hague Tribunal"] (these titles have been translated from Serbian by the author).

¹³⁷³ Jović, *Od Gazimestana do Haga*, 200.

of history.¹³⁷⁴ According to Antonić, Milošević skilfully examined Defence witnesses and uncovered the deceit of Prosecution witnesses.¹³⁷⁵ He dedicates an entire chapter in his recent book, *Slobodan Milošević: It Isn't Over Yet*, to evaluating the testimonies of Prosecution witnesses as untruthful.¹³⁷⁶ For Antonić, Milošević exposed the trial as a farce.¹³⁷⁷

The attitude Milošević took on in the courtroom undoubtedly contributed to positive assessments by his sympathisers. He was not intimidated by the seriousness of the charges against him or worldwide interest in the trial. In fact, he manifested a sense of superiority and displayed a haughtiness that he expressed as contempt for the court, the Prosecution, and the international community. In one of his first courtroom appearances, he taunted:

...if the Court will ignore these falsehoods presented by the Prosecutor, and if you are really a part of that machinery, then please read out those judgements that you have been instructed to read and don't bother me and make me listen for hours on end to the reading of texts written at the intellectual level of a seven-year-old child – or rather, let me correct myself – a retarded seven-year-old.¹³⁷⁸

His most extreme language was not directed against Croats, Bosnian Muslims, or Kosovo Albanians but against the international community, accusing Europe of a “lack of honour and cannibalism” for what he perceived as media attacks on his children and attempts by NATO to kill him and his family. He reminded the court that “according to international law, and according to US law, the murder of a foreign head of state is a crime.”¹³⁷⁹

Milošević's loyalty to Mira Marković remained unwavering. He could find no fault in her, and he became doting and emotional in court when he talked about her and their family. In fact, he paid tribute to her in his February 2002 Opening Statement, praising her achievements before the judges and the world and deriding the media focus on his family in general, saying:

My wife, who is a university professor and was a university professor at a time when I didn't delve in politics at all, whose books have been published and

¹³⁷⁴ Ibid., 448

¹³⁷⁵ Ibid., 454.

¹³⁷⁶ Ibid., 476-478.

¹³⁷⁷ Ibid., 448.

¹³⁷⁸ Trial Transcript, Status Conference (30 October 2001), 147.

¹³⁷⁹ Trial Transcript, Defence Opening Statement (18 February 2002), 469-471.

translated in Russia, China, the United States, England, France, Germany, Greece, Italy and so on and so forth...[and] translated into over 30 languages throughout the world...are testimony of the superhuman efforts, public efforts of an intellectual against war, against national conflicts, against violence and primitivism.... And she is the subject of the most savage media campaign, with the most grievous lies and fabrications being bandied about; forgeries and slander. My daughter, who never dealt with politics, was forced to stop working, and she lives – continues to live – in an isolated fashion because she cannot take the violence against her and all the rest of us. And against my son, the media are exerting a horrific campaign.... And he is also always considered a good comrade, a person with a high sensitivity for solidarity. He helped everyone, did everything he could. He has this avalanche of media hatred come down on his head, and he has left the country and, with him, his newly established family, his young wife and small son.¹³⁸⁰

The affection and loyalty Milošević expressed for his immediate family showed his capacity to be a loving, proud, and protective husband and father, but starkly contrasted with the aloof and arrogant demeanour he exhibited in court toward the judges, lawyers, the international community, and even victims. And, in courtroom grandstanding, Milošević liked to emphasise that it was not he alone on trial, but the entire Serb nation – framing Serbs as victims and further dismissing the impacts of his wartime policies.

Indeed, Milošević never demonstrated in the courtroom that he understood the extent of suffering he had inflicted on ordinary people through the violence of war. He seemed detached from the realities depicted by the evidence and by witness testimonies, and showed no sign that he cared that strategies he employed had left Croatia, BiH, and Kosovo in shambles. Most of the time, he remained controlled in court, as if wearing a mask. Once in a while, though, he would let an especially cold and emotionless side of his personality appear when cross-examining victim witnesses. The way he occasionally challenged the truthfulness of victims' accounts revealed his lack of empathy for their suffering. As time passed, he toned down this aggressive approach,

¹³⁸⁰ Ibid.

possibly because his treatment of victims had not gone unnoticed.¹³⁸¹ In fact, Prosecutor Nice recalled later that:

...when a woman testified whose children were killed before her eyes, it was astonishing that Milošević showed no feelings whatsoever for her. Sometimes I asked, on behalf of witnesses and through judges that we compel Milošević to show more respect for such witnesses. I tried to achieve that not to make Milošević look nice, but because of the witnesses. However, after all, I can say that Milošević had a heart of stone.¹³⁸²

Throughout the trial, Milošević played the role of a wronged politician who had to defend his political legacy against slander, distancing himself from his influence over the military. Unlike many other political leaders in the region, Milošević was never spotted wearing a military uniform and never seemed at ease among soldiers. His preference was for a dark suit, white shirt, and tie; the uniform of a political bureaucrat. Images of Milošević at the Dayton negotiations in 1995 showed a politician at ease in the company of his foreign colleagues.¹³⁸³ He obviously enjoyed and appreciated being treated as their equal.

Timothy McFadden, head of the UN Detention Unit, observed Milošević daily once he was transferred to The Hague. He described Milošević as disdainful of lower-level witnesses as well as court and Prosecution officials and said he most relished the opportunity to deal with high-level witnesses.¹³⁸⁴ In a courtroom exchange with former RSK President Milan Babić – who Milošević had always viewed as a political subordinate – Milošević could not hide his pleasure in mocking Babić. Babić had testified for the Prosecution that politicians had used code words to refer to arms, including the terms “planks,” “wooden bars,” “flour,” “sugar,” and “batteries.” During his cross-examination, Milošević revisited this claim, asking Babić what terms were used

¹³⁸¹ For example, Milošević chose not to cross-examine some witnesses, such as Shyhrete Berisha, a young mother who lost her children in a mass execution in Suva Reka. The cross-examination was instead conducted by an amicus curiae on behalf of the Defence. See: Testimony of Shyrhete Berisha (10 July 2002), 7906.

¹³⁸² See the interview with Geoffrey Nice in *Jutarnji List*, 8 December 2007.

¹³⁸³ For a look at the atmosphere during the Dayton negotiations in November 1995, see: *Death of Yugoslavia*, “Pax Americana,” BBC.

¹³⁸⁴ See: “ICTY: AN INSIDE LOOK INTO MILOSEVIC’S HEALTH AND SUPPORT NETWORK.” Although McFadden denied disclosing any information to the US by which they produced this classified cable, the ICTY investigated McFadden for a possible contempt of court and found that he had breached ICTY rules by leaking information about Milošević to US officials. However, they found no grounds to charge him with contempt of court because they did not believe his intention was “willful interference with court proceedings.” For more, see: “No charges against Hague leak warden,” B92, 19 July 2011, http://www.b92.net/eng/news/crimes.php?yyyy=2011&mm=07&dd=19&nav_id=75520 (accessed 4 April 2015).

for actual blankets, flour, oil, sugar, medicines, and all the other things that were sent as aid. “If ‘flour’ was used as a term for ammunition,” Milošević asked, “what term was used to denote flour proper?” Babić answered: “Well, flour was called flour.”¹³⁸⁵ Milošević clearly felt a sense of triumph; he felt he had scored a point. But while Milošević did take a certain predictable satisfaction from outmanoeuvring witnesses over whom he once held political authority, facing the international diplomats and politicians who testified against him should have represented the ultimate humiliation. General Wesley Clark, Lord David Owen, Lord Paddy Ashdown, and many others with whom he had met frequently when he was President no longer saw him as a political partner. They represented the world of powerful men, and he, a defeated politician who had gambled his power away.

Nonetheless, or perhaps because of this, Milošević “took on the task of a lawyer with enthusiasm.” According to Prosecutor Nice:

He liked to cross-examine the witnesses. He was noticeably ruthless with the witnesses of a lower – I cannot use the word ‘class’ because it is not applicable in the case of the Serbian society – but of a lower social and material standing. In some cases I had to intervene. He showed considerable respect towards individuals of authority, even when their testimonies did him great harm. Was he a worthy opponent? He was an appalling defence attorney. He made wrong decisions....Also, he should have used the weapon we all knew he possessed – his charm. He should have been charming, not aggressive. He might have been surprised with the effect that could have left on the judges.¹³⁸⁶

In court, Milošević was apt to invent and evade to get out of uncomfortable and unfavourable situations; and when he was caught, he would simply continue as if nothing had happened or as though he had not tried to obscure the truth. This denial or distortion of reality – which may have been effective when he was an omnipotent leader – did not work to Milošević’s advantage in the courtroom, where every accusation he made had to be supported and every word he spoke could be challenged by counter evidence.

¹³⁸⁵ Testimony of Milan Babić (22 November 2002), 13292-13293; and (3 December 2002), 13758-13759.

¹³⁸⁶ Ivana Miloradović, “There Was Pressure on Our Work,” *NIN*, 15 May 2008.

When his cross-examination strategy was shown to be flawed on several occasions, Milošević curiously pressed ahead without acknowledging his error, as if he did not grasp the legal consequences of such mistakes. One such instance came in early 2003 during Milošević's cross-examination of Prosecution witness General Aleksandar Vasiljević, the former Head of JNA Counterintelligence, whom he questioned about the involvement of Momir "Gavra" Gavrilović, a Serbian DB official, in the war in Croatia.¹³⁸⁷ Understanding very well that introducing this tricky topic might hurt him by exposing Serbia's direct involvement in the war in Croatia, he asked Vasiljević how he knew Gavrilović's war history. Vasiljević explained that, when working for JNA Counterintelligence, he had received information that Milošević had given his permission for a group of officers to go to the province of Slavonia and Baranja and among them was Gavrilović.¹³⁸⁸ Vasiljević went on to say that Gavrilović had been assassinated in Belgrade in August 2001 and that the assassins had never been identified. Milošević said he didn't know about the assassination, leading Vasiljević to exclaim with disbelief that the whole country knew of the infamous killing, and that every newspaper had written about it.¹³⁸⁹

What made it more absurd for Milošević to deny knowing Gavrilović's name and circumstances was the fact that, only four months earlier, on 17 October 2002, Gavrilović's assassination had been a subject of his cross-examination of Prosecution witness Jovan Dulović, a wartime reporter for the Serbian independent weekly *Vreme*. Dulović had met Gavrilović in 1991 in Vukovar and Erdut, where Gavrilović worked with the paramilitary unit known as the Tigers, led by the notorious criminal Arkan. Dulović had learned through reliable sources that Gavrilović was one of the members of the Serbian DB who worked as an instructor for local Territorial Defence and paramilitary forces.¹³⁹⁰ In his testimony, Dulović spoke of rumours circulating around Serbia that Gavrilović had been assassinated after visiting FRY President Vojislav Koštunica and providing him with information about ties between State Security and the Mafia.¹³⁹¹

¹³⁸⁷ Testimony of Major General Aleksandar Vasiljević (14 February 2003), 16093-16094.

¹³⁸⁸ Ibid.

¹³⁸⁹ Ibid.

¹³⁹⁰ Testimony of Jovan Dulović (17 October 2002), 11765.

¹³⁹¹ Ibid., 11763-11765. Also see: US Department of State Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices – 2001: Yugoslavia, Federal Republic of," 4 March 2002, <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8369.htm> (accessed 30 October 2014).

Another notable example of Milošević's handling of difficult evidence concerned his approach to the Kula Camp Video. In the 1997 video, Red Berets leader Franko Simatović was recorded addressing Milošević, the guest of honour, and saying explicitly that his unit had been formed on 4 May 1991 at the time of the break-up of the former Yugoslavia. Milošević was also seen and heard on the video remarking that he had read the reports of a senior Red Berets officer. The video was dramatic, irrefutable evidence of Milošević's knowledge of the establishment of a paramilitary unit engaged in unlawful activities from 1991. But, for the purposes of a criminal trial, his reaction to the video in court was almost more telling. He continued to insist that the unit was established only after the war, in 1996. The absurdity of this challenge revealed more about his guilt than an experienced courtroom lawyer representing him would ever have allowed.

These courtroom episodes were reflective of Milošević's character and political conduct. Witnesses painted a picture of a politician who was pleasant and well informed at meetings, yet manipulative and dishonest when it suited him. He was capable of denying the obvious and twisting facts to fit his agenda. In his testimony, former head of the Kosovo Verification Mission William Walker recalled an example of Milošević's capacity to ignore plain truths. Walker had received a letter from the FRY Foreign Ministry with instructions about what the KVM could and could not do, and where. As Walker put it, this was "totally out of line with the agreement," and so he mentioned the letter to Milošević, who denied knowing of it and, even after Walker showed him a copy, said, "I haven't seen the letter. It doesn't exist."¹³⁹²

Milošević's cross-examination of Walker put his inexperience in the courtroom on display. At one point, he showed Walker photographs of some of the victims who died during the Račak massacre in January 1999. Milošević contended that the photographs, which the Prosecution had already tendered as evidence, had been staged. He asked Walker to identify evidence of blood in the pictures he was shown, and Walker pointed to very visible blood stains. Milošević then asked Walker again and repeatedly whether the photographs he had shown him – which were not taken by Walker – had been "rigged," finally prompting an intervention by Judge May, who told Milošević, "If you make allegations of that sort, you must support them with evidence."¹³⁹³

¹³⁹² Testimony of William Walker (11 June 2002), T 6786-6787.

¹³⁹³ Testimony of William Walker (12 June 2002), T 6862-6864.

Later, during his cross-examination of US General Wesley Clark, Milošević seemed to come dangerously close at times to introducing potentially inculpatory lines of questioning. Clark had testified about his experience in negotiations with Milošević, which took place not long after the fall of Srebrenica, and had recalled challenging Milošević's authority to control the Bosnian Serbs in upcoming peace talks, asking him: "Mr. President, you say you have so much influence over the Bosnian Serbs, but how is it then, if you have such influence, that you allowed General Mladić to kill all those people in Srebrenica?" According to Clark, Milošević told him: "I warned Mladić not to do it, but he didn't listen to me."¹³⁹⁴ Challenging this important evidence – which indicated Milošević's prior knowledge of what took place in Srebrenica – Milošević denied that he and Clark had ever discussed Srebrenica at all. Milošević also denied that he had ever been in the position to give orders to General Mladić. This was not something General Clark had suggested, but Milošević knew very well that evidence of this authority could hurt him. Judge May interrupted, telling Milošević that, if he wanted, he could give evidence on this issue in due course, but that he had to limit his cross-examination to only matters the witness could address. Still, as if he could not help himself, Milošević directed a response to General Clark, saying, "General Mladić did not order any execution of people in Srebrenica. I believe that this was done by a group of mercenaries."¹³⁹⁵

Amateur mistakes such as these allowed the judges to make determinations about Milošević's character and motives that would not have been possible if he were represented by professional counsel. And his lack of legal experience not only manifested in what were sometimes bewildering and bizarre courtroom exchanges, but also in inefficiencies that hindered the pace of the trial, which was due to be concluded by the end of April 2006. This was a dire prospect for Milošević, who had introduced little evidence on the BiH indictment, meaning that the genocide charges against him would have been judged based on evidence presented by the Prosecution. That evidence had been examined by the judges for the Half-Time Judgement, and they had concluded that genocide charges were indeed warranted for several places, in north and east Bosnia, in 1992 and 1995.¹³⁹⁶

¹³⁹⁴ Testimony of Wesley Clark (15 December 2003), T 30372-30373.

¹³⁹⁵ Ibid., T 30490

¹³⁹⁶ See supra note 82.

The Prisoner

In the last month of the trial, Milošević was a man struggling with his health and with an enormous workload. He had spent the previous five years of his life in his small prison cell in Scheveningen, in The Hague, which had also served as his office. Not surprisingly, his daily life – structured by a rigid daily prison routine – had been scrupulously recorded by detention authorities. On court days, he rose around 7.00 and called his wife around 7.30. By 8.00, he would leave for court, where he would remain from 9.00 to approximately 14.00. Back in the detention unit, he would have a meal and one hour of exercise before spending most afternoons in meetings with legal advisors, preparing for his next court appearance. In the evenings, Milošević liked to read thrillers by bestselling authors such as John Grisham.¹³⁹⁷

When he was not in court, Milošević slept longer, took more time for exercise, and sometimes even visited an art class before starting his work. He listened to Frank Sinatra, or watched DVDs he received from visitors who would have needed to smuggle them in. Although Milošević had use of a computer, he was not allowed to access the Internet or use e-mail, and so he could communicate with the outside world only over the phone. All of his phone calls and visits, except those with recognised legal advisors, were monitored.¹³⁹⁸

Milošević's health was a great concern of UN Detention Unit managers. He had arrived with diagnoses of hypertension and a heart condition, which were manageable, but only with medication. Presenting his own case had forced Milošević to work hard to meet procedural deadlines and prepare his courtroom performance, and his blood pressure rose so dangerously as a result that the court reduced the trial schedule to a three-day week. Curiously, he was still allowed to smoke despite his condition; something the Prosecution addressed in its filings.¹³⁹⁹

Concerns about periodic depression that had also been occasionally voiced by former close associates of Milošević, who had noticed that he would disappear from Belgrade for days at a time, persisted while he was in detention. But Detention Unit head Timothy McFadden felt that

¹³⁹⁷ See: "ICTY: AN INSIDE LOOK INTO MILOŠEVIĆ'S HEALTH AND SUPPORT NETWORK."

¹³⁹⁸ Ibid.

¹³⁹⁹ Ibid.

Milošević had only a “limited inclination toward depression.”¹⁴⁰⁰ And, although Milošević refused to see a psychiatrist individually, he did attend group sessions with other prisoners, in which signs of depression or any other significant clinical problem were not observed in him. Instead, Milošević’s moodiness and unhappiness were ascribed to the limited contact he had with his wife and family.¹⁴⁰¹

Even with considerable distance between them, the relationship between Milošević and his wife remained very close. McFadden – who had access to reports of all of Milošević’s telephone conversations, including his daily talks with his wife – commented on their “extraordinary relationship” and wondered how Milošević was able to manipulate a whole nation but could not manage his wife. She was very much engaged in overseeing his legal and political contacts and when she pressed Milošević to do something he did not want to do, Milošević rarely pushed back; though he was apt to ignore her instruction. When he failed to follow her advice, she would scold him and remind him that many bad outcomes could have been avoided if he had listened to her in the past. McFadden described her as “very volatile.” Yet, for Milošević, his wife remained his most trusted and appreciated source of “information, comfort, motivation, and strategy” and he relied on her guidance until the end.¹⁴⁰²

When the situation for Milošević’s family became difficult in 2003 after the assassination of Zoran Đinđić, worries about their well-being put additional strain on his health. Facing legal battles in Serbia, Mira Marković moved to Russia in order to avoid a trial, and this self-imposed exile made it impossible for her to travel. And so, her visits to The Hague stopped. Her presence in Milošević’s life was perceived as so important that when his health subsequently deteriorated, McFadden suggested to his superiors that one antidote may be to bring Marković from Russia with some sort of deal for her immunity from arrest. But this would never have been possible, given the criminal investigation against her in Serbia.

Marković had helped Milošević maintain his links with the SPS, and support of the party was especially important for Milošević at this time. When the family’s financial situation worsened in the spring of 2003 and he could not pay his Belgrade household staff or afford airline tickets for

¹⁴⁰⁰ Ibid.

¹⁴⁰¹ Ibid.

¹⁴⁰² Ibid.

his rotating legal associates, the SPS mobilised to generate funds. And with his wife in exile, Milošević took over communications with the various national and international groups that were providing him with legal and other assistance.

The daily surveillance of Milošević's behaviour revealed, and sometimes confirmed, sides of his personality that are important to understanding his previous political conduct. Complaining at one point that his legal associates from Serbia made him feel he was “surrounded by fools,” he candidly reflected that the problem was of his own making, for he had surrounded himself with fools throughout his career for fear of being challenged by those more competent and intelligent.¹⁴⁰³ Indeed, his ten-year political tenure was marked by regular fallings out with anyone who expressed criticism of Milošević, his family members, or his political tactics or strategies, leaving room only for those who would not contradict him. His inability to accept and consider criticism was a sign of his irrationality, for he refused to do so even when this could lead – and eventually did lead – to his loss of power.¹⁴⁰⁴

Contrary to the disdain Milošević was said to have felt for low level legal staff and which he displayed in the courtroom toward the *amici curiae*, McFadden reported that Milošević was actually “fond” of the *amici*, and it was true that his legal associates did coordinate with them to discuss defence strategy and the questioning of witnesses.¹⁴⁰⁵ By hiding the fact that he was making use of the services of a substantial legal team, Milošević maintained the appearance of a disproportionate judicial proceeding in which he was just one man against the rest of the world. His rejection of imposed Defence counsel can in fact be analysed through this lens; for not only would this have denied Milošević very important air time on national and international television, but it would also have undermined the David and Goliath dynamic that had brought him sympathy from a number of powerful international lawyers, writers, activists, and politicians. A committee, known as Freedom for Slobodan Milošević, was formed and hosted brunches attended by national and international supporters. The committee was active in analysing evidence and promoting the Defence narrative. And, beyond the committee, Milošević developed an interesting following of prominent intellectuals including Noam Chomsky, Peter

¹⁴⁰³ Ibid. It is not clear whether Milošević said this directly to McFadden or if McFadden repeated what someone else told him.

¹⁴⁰⁴ Ibid.

¹⁴⁰⁵ Ibid.

Handke, and Diana Johnstone, all of whom were on his list of potential Defence witnesses.

McFadden's reports from the Detention Unit reveal Milošević's amicable character, which had been commented on by people like Stambolić and Jović – who had known him in his early days in politics – but also by international mediators who had worked with Milošević over a decade of various peace negotiations. In detention, Milošević was described as cooperative, and his easy-going nature made him popular among the other detainees, who liked and respected him and even concerned themselves with his health and diet.¹⁴⁰⁶ But the Prosecution had maintained throughout the trial that the charming façade Milošević wore hid his more sinister nature, and presented evidence of the discrepancies between his words and deeds. A US Embassy employee, reporting on the work Milošević did while in detention, underlined this, noting his masterful ability to work “behind the scenes, through third parties, and leave few fingerprints.”¹⁴⁰⁷ This behaviour was consistent with his conduct during the conflicts, when his tactical manoeuvring sometimes obscured and undermined strategic objectives.

Despite his capacity for manipulation and duplicity, former associates of Milošević described him as only a mediocre tactician and a poor strategist. In fact, his lack of strategic thinking was criticised by his allies and used by his opponents. Borisav Jović observed that Milošević's strategic failures were due sometimes to bad strategy and sometimes to his misjudgement of a situation; but he was usually able, by resorting to pragmatism or scheming, to find his way out of hopeless situations. Over time, Jović felt this had given Milošević a false confidence that he was invulnerable to any difficulty or any seeming dead end.¹⁴⁰⁸

This belief Milošević had in himself, which at times surpassed the bounds of reality, led him to feel that he was winning in the courtroom, and this fired him up so that he was combative and willing to work despite his unstable health. His sense that he was out ahead in the trial may partly explain his choice of Defence witnesses. Or maybe, by the time his Defence case started in September 2004, he was simply putting on a show, aware that it really did not matter anymore what he did in court. With his wife in Russia, his health deteriorating, and the financial strains of his defence mounting, he may have given up hope of any favourable outcome. His persistent

¹⁴⁰⁶ See: “ICTY: AN INSIDE LOOK INTO MILOŠEVIĆ'S HEALTH AND SUPPORT NETWORK.”

¹⁴⁰⁷ Ibid.

¹⁴⁰⁸ Jović, *Book on Milošević*, 21.

requests to receive medical treatment in Russia seemed his only means to fulfil his desire to be reunited with his wife again.

In the months before his death, evidence against Milošević was mounting, sometimes through the testimonies of his own witnesses. It was set to mount further when Momir Bulatović took the stand. The Prosecution considered Bulatović to be an ideal witness to cross-examine; he had firsthand knowledge of many important events discussed at the trial and had also been a regular participant at many of the important meetings that were featured in evidence. In fact, the Prosecution had approached Bulatović in 2003 and asked him to appear as a witness for the Prosecution, but Bulatović had refused, explaining that it would be more logical for him to appear for the Defence. Still, until the very end, the Prosecution could not be sure that Milošević would risk calling Bulatović and give the Prosecution the opportunity to cross-examine him on key evidence for all three of the indictments Milošević was charged in. It would have been a major exercise, and one which would have provided much of the structure for the Prosecution's closing arguments, as Bulatović's testimony was expected to have covered all ten years of Milošević's political tenure.

Milošević spent the entire week preceding his death with Bulatović, preparing for testimony – an exercise known by lawyers as 'proofing.'¹⁴⁰⁹ On the Friday evening of 10 March 2006, Bulatović left the prison after working the whole day with Milošević.¹⁴¹⁰ The next morning, Milošević was found dead in his cell and the prison record noted that the last person who had seen him alive was his faithful comrade Momir Bulatović. In his 2007 book *Unspoken Defence*, Bulatović referenced a report made available by Professor Miloš Stojiljković from the University Hospital in Odense, Denmark, which noted that traces of Rifampicin¹⁴¹¹ – a medicine that was not officially prescribed to him – had been found in Milošević's blood stream in January 2006. The question remains of who provided Milošević with the drug and whether he knew he was consuming it. Stojiljković's report indicated that Rifampicin could have interacted with other medications that were prescribed to Milošević to control his hypertension, and could have been

¹⁴⁰⁹ Bulatović published the full text of the proofing in *Neizgovorena odbrana*.

¹⁴¹⁰ *Ibid.*, Chapters XVII and XVIII.

¹⁴¹¹ Rifampicin is a bactericidal antibiotic commonly included in the drug cocktail used to treat tuberculosis and meningitis.

the reason those medications were ineffective.¹⁴¹²

Upon Milošević's death, some fellow detainees signed a joint letter, in memoriam. Among the signatories were Croatian General Ante Gotovina, and Bosnian Croat Commanders Mladen "Tuta" Naletilić and Ivica Rajić. Reacting to criticism that he had signed, General Gotovina replied through his lawyer that he offered condolences to the Milošević family based on his Catholic and humanist principles of forgiveness. Three other Croatian detainees, Dario Kordić, Vinko Martinović, and Miroslav Bralo – who were in a different part of the detention unit and had no contact with Milošević – did not sign. Kordić stated through his lawyer that he had not done so out of respect for the victims.¹⁴¹³ Milošević's funeral was held in the courtyard of his family house in Požarevac. It was a private ceremony without the military or state honours usually reserved for a former head of state. In place of the national anthem, his friends and loyal supporters said their goodbyes with the Russian song "Moscow Nights." Notably absent were his wife, son, and daughter.¹⁴¹⁴ Mira and Marko – indicted in 2003 and still fugitives – faced criminal charges if they returned to Serbia. In the Požarevac main square, an additional 20,000 people from across Serbia and beyond paid their last respects to a political leader they still saw as a hero.¹⁴¹⁵

¹⁴¹² See: Bulatović, *Neizgovorena odbrana* (Niš: Zograf, 2008), 314-315.

¹⁴¹³ See (in B/C/S): "Na osmrtnici za Miloševića potpisan i Ante Gotovina" and "Gotovina: Izrazio sam sućut Miloševićima jer sam katolik," *Jutarnji list*, 14 March 2006.

¹⁴¹⁴ "Kako su sahranjeni Tito, Tuđman i Milošević," *Danas*, 3 October 2014.

¹⁴¹⁵ Ibid.