

# KRT TRIAL MONITOR

Case 002 ■ Issue No. 4 ■ Fitness to Stand Trial II ■ 19-20 October 2011



Case of Ieng Thirith, Nuon Chea, Khieu Samphan and Ieng Sary

Asian International Justice Initiative (AIJI), a project of East-West Center and UC Berkeley War Crimes Studies Center

*You see, they accuse me of being mad.  
So no one can do anything to the mad person.  
- Ieng Thirith*

## I. OVERVIEW

On 23 August 2011, the Trial Chamber of the ECCC appointed four psychiatrists<sup>1</sup> to assess the state of Accused Ieng Thirith's mental health.<sup>2</sup> The four Experts agreed on their collective findings and submitted a report on 10 October 2011 to the Chamber.<sup>3</sup> Two of the four, Dr. Hout Lina and Dr. Seena Fazel,<sup>4</sup> subsequently testified before the Chamber during a two-day fitness hearing conducted on 19 and 20 October 2011.<sup>5</sup> This report provides a summary of these proceedings.

The purpose of the hearing was to allow the Chamber and the parties to scrutinize and challenge the Experts' findings, as well as to determine any issues arising from the joint report in conjunction with an earlier expert report commissioned by the Trial Chamber from Professor John Campbell, an expert geriatrician from New Zealand. The Chamber relied primarily on standards articulated at the ICTY in *Prosecutor vs. Strugar* to determine Ieng Thirith's fitness to stand trial.<sup>6</sup> In *Strugar*, the ICTY concluded that, in order to effectively exercise his or her rights, an accused must be able to "meaningfully plead, testify, instruct counsel, understand the nature of the charges, the course of proceedings, the details of evidence, and the consequences of the proceeding."<sup>7</sup> The Trial Chamber of the ECCC sought consultative medical assessments from the Experts to assist the Judges in determining whether or not the Accused could "exercise effectively his rights in the proceedings against him."<sup>8</sup> Moreover, the Judges questioned the two Psychiatrists on their experience in forensic psychiatry, the methodology they used, and their opinions on Ieng Thirith's condition using the *Strugar* criteria as basis for their conclusions.

## II. SUMMARY OF EXPERT WITNESS TESTIMONY

The four Experts appointed by the Trial Chamber met with Ieng Thirith on three occasions: once on 12 September 2011 and twice the following day. During these examinations, they interviewed Ieng Thirith and conducted some tests to determine her condition. Prior to meeting the Accused, the Experts reviewed all available documents pertinent to Ieng Thirith's health condition, including the prior report of Professor Campbell, three available CT scans, a January 2006 medical report from Bumrungrad International Hospital in Bangkok, and

reports from Calmette Hospital in Phnom Penh (November 2007 and February 2008, respectively). The Experts also consulted with a radiologist, the other doctors who previously treated the Accused (Professor Ka and Dr. Brinded), and with the Chief of the Detention Facility.

The Experts considered leng Thirith's fitness to stand trial based on her physical and psychological health. Physically, the Experts noted that she suffers from high blood pressure, has pains in her knees and joints, and experiences occasional digestive problems. These conditions are not surprising, considering leng Thirith's age, and in any case, she receives adequate treatment for each of these ailments. According to the Experts, moreover, leng Thirith has not suffered a stroke or any other form of brain damage. In view of these findings, the Experts concluded that leng Thirith is physically fit.

To assess leng Thirith's mental health, the Experts conducted a number of tests. They first evaluated her mental state by examining her general abilities, including her speech ability; the second involved specific cognitive tests to examine her ability to judge, decide and reason; and the third category covered questions relating to memory. The Experts stressed that with cognitive impairment, an individual's mental competence will fluctuate unpredictably as a person may perform better on some days and worse on others.

The Experts likewise conducted tests to evaluate leng Thirith's orientation regarding place and time. According to the results, leng Thirith could only remember that she was living in Phnom Penh. She reportedly thought she was on the first floor of a hospital in the city and did not realize that she was held in a detention facility. Overall, leng Thirith scored only 2 out of 10 points on this orientation test. Another examination relating to memory required leng Thirith to repeat words and identify objects presented to her. Initially, she was able to repeat the words but was later unable to recall what the three objects were. Further, the Accused was asked to spell the English word "world." On the first day of the examination, she named only one of the five letters but on the second day, she spelled the entire word correctly. The Experts also conducted a paper-folding test consisting of three steps, all of which leng Thirith performed successfully. When examined by Professor Campbell in August, the Accused had only been able to follow the first two steps of the test. She also showed improvement when asked to write a sentence in English. In October, she wrote the entire sentence in English. During her previous examination with Professor Campbell, she could not do so.

The Experts also tested leng Thirith's long-term memory during her interview. She reportedly could not recall certain facts, such as the number of children she has, or her exact age. She knew the date of her birth, but not her age. She thought that her husband, leng Sary, was her brother, and often did not know whether a friend or relative she was questioned about was dead or alive. Notwithstanding these indications of a confused mental state, leng Thirith demonstrated an ability to recall spoken English and French during the interview. She also read an English newspaper, which she reportedly does on a regular basis. Significantly, leng Thirith even mentioned certain specific topics she was reading about in the newspaper, indicating comprehension.

According to the scale the Experts followed, scores between 21 and 26 points indicate mild mental impairment; scores between 10 and 20 points indicate moderate mental impairment; and scores below 10 indicate severe mental impairment. All told, the Experts stated that leng Thirith scored 15 out of 30 points on the first day and 18 out of 30 points on the second day, placing her on the upper-middle end of "moderate mental impairment."

In addition to directly testing leng Thirith, the Experts also met with the Chief of the Detention Facility who interacts with her every day, and scrutinized the quality of medical care she receives. According to the Chief, leng Thirith has difficulties with her daily activities, such as finding her clothes in the detention cell. Once, she was reportedly lying naked on her bed, which is considered peculiar behavior for a Cambodian woman. She is likewise said to have

occasionally misplaced things in her cell and accused the staff of stealing them. With regard to medical care, the Experts shared the view of Professor Campbell that the present measures for her care and treatment were appropriate.

In diagnosing leng Thirith's specific mental conditions, the Experts used the International Statistical Classifications of Diseases, last revised in 2010 (**ICD-10**). This is used worldwide and provides criteria for the diagnosis of diseases. The ICD-10 guideline lists the following criteria for dementia, all of which are present in leng Thirith's case: (i) a decline in memory; (ii) a decline in other cognitive abilities such as organizing or planning; (iii) a different awareness of the environment; (iv) a decline in emotional control, for example with regards to social behavior or to mood or apathy; and (v) the symptoms of memory decline present for at least six months. Based on the foregoing, the Experts concluded that leng Thirith is likely suffering from Alzheimer's Disease but they could not provide a definitive diagnosis, because one can only be certain after examining brain tissue during an autopsy. The previous findings of other experts on leng Thirith's cognitive condition were all consistent with the opinion the Experts delivered in court.

During the course of the proceedings, the Chamber inquired whether leng Thirith could simply be pretending to be mentally incapacitated. According to all the Experts, including Professor Campbell, it is highly unlikely that leng Thirith is misleading or deceiving them. The Experts explained that they crafted the questions in their examinations differently, so that feigned responses would have been obvious to the psychiatrists. They also noted that the Accused had scored better on the second day of the examination, which is inconsistent with a person feigning mental impairment.

### **III. LEGAL ISSUES**

#### **A. The Applicability of the *Strugar* Criteria to the Present Case**

To comply with basic fair trial standards, it is of utmost importance that leng Thirith is able to participate meaningfully in the proceedings and present an adequate defense. The Chamber requested the Experts to help it determine leng Thirith's fitness to stand trial by applying the *Strugar* criteria to the facts in their own assessment report, and evaluate whether, in their professional opinion, leng Thirith has the capacity to participate meaningfully in the proceedings against her. Using the *Strugar* criteria as basis, the Experts considered the ability of the Accused to (i) plead, (ii) understand the nature of the charges against her, (iii) understand the course of the proceedings, (iv) understand the details of the evidence, (v) instruct counsel, (vi) understand the consequences of the proceedings, and (vii) testify.<sup>9</sup> An accused person will be considered fit to stand trial when he or she possesses these capacities, viewed from a general perspective and in a reasonable and commonsensical manner.<sup>10</sup>

The Experts reported that they believe the Accused is capable of pleading her case before the Court. However, they noted that, during their interview, leng Thirith tried to defend herself with rather unconvincing arguments. For example, in response to the charges against her, she stated that, "Cambodian women do not do harm" and that she was "too young"<sup>11</sup> at the time the crimes occurred, when she was actually in her early forties in 1975 to 1979. Such statements, however, may simply indicate that the Accused suffers from lack of ability to reason, rather than from diminished capacity to plead her own defense.

Significantly, leng Thirith defined "murder" as "a man killing another human being"<sup>12</sup> and stated that she has not killed anyone. While she refused to discuss some of the charges against her, she made comments relating to torture and genocide. Consequently, the Experts concluded that the Accused has a general understanding of the terms and charges against her.

The Experts were less confident with leng Thirith's capacity to understand the consequences of the proceedings against her. She reportedly can appreciate the role of a judge, but did not understand what adversarial proceedings entail, even after it was explained to her. According to the Experts, since she has considerable difficulty understanding the legal process she is involved in, she will have problems in commenting on what will be said during trial. Her ability to follow the proceedings will be compromised.

As regards the ability to instruct counsel, the Experts concluded that leng Thirith was able to cooperate with her lawyers, but was of no substantial assistance due to her impaired long-term memory, which prevents her from recalling events that occurred between 1975 and 1979. The Experts responded in the affirmative to the Co-Prosecutors' inquiry whether it is possible to refresh leng Thirith's memory by, for instance, showing her pictures from the past.

With respect to the final *Strugar* criterion, the Experts noted that gaps in leng Thirith's memory may undermine her ability to comprehend the details of the evidence and to testify if she so chooses. During her assessment, leng Thirith appeared to have understood the questions posed to her but her answers were, at times, non-responsive and as Dr. Fazel indicated, "may not credible." The Experts opined that the capacity to testify requires more than just understanding the question asked, as one has to apply one's mind in order to answer a question rationally. This is something with which the Accused has considerable difficulties.

The Experts also questioned leng Thirith about whether she could understand the consequences of her possible conviction, but she refused to answer. However, at another point of the interview, she remarked, "[t]hey accuse me of being mad. They cannot do anything to the mad person."

#### **a. Observations by the Experts**

Dr. Hout Lina and Dr. Seena Fazel both testified that leng Thirith suffers from dementia, most likely Alzheimer's Disease. The latter likewise pointed out on several occasions that the Chamber's decision on leng Thirith's fitness to stand trial should be a "finely-balanced one," as it would depend largely on its appreciation of the Experts' findings that the Accused has difficulties in understanding, and that her cognitive ability fluctuates. They advised the Chamber that her condition will likely affect the smooth flow of proceedings. In addition, the Experts explained that they did not expect any significant improvement in leng Thirith's condition (notwithstanding implementing changes in her intake of medicine) since she is not suffering from a treatable type of dementia. Using the Reisberg Scale, which plots out seven stages of deterioration, the Experts classified leng Thirith's condition as Stage 5.<sup>13</sup> In the event that the Court finds her fit, the Experts recommended the further conduct of assessments every three months to monitor her mental state. In addition, cognitive stimulation – a rather difficult task in a detention center – is important, as it might slow down the process of dementia.

The Experts' findings are consistent with Professor Campbell's conclusions, although Dr. Fazel reiterated that the degree of certainty of any forensic assessments depend on the various methodologies and guidelines used.

#### **b. Arguments of the Parties**

The Defense urged the Court to consider leng Thirith unfit to stand trial, on the grounds that she does not meet the threshold criteria set out in the *Strugar* case. They argued that the function of counsel is to assist, not to replace or substitute for the participation of the Accused in defending herself. Since leng Thirith's memory is impaired, they argued, she cannot assist her lawyer in mounting an adequate defense to the charges against her. Ms.

Diana Ellis, Ieng Thirith's International Defense Counsel, emphasized that, "Madame Ieng Thirith is unfit to stand trial and the proceedings against her should be discontinued." In their final statement, the Ieng Thirith Defense asked, "how can she reflect if she cannot remember?" Further, they inquired, "how can she defend herself if she has absolutely no clue where she was in April 1975?"

The Co-Prosecutors countered that because the Accused does not lack all the capacities enumerated in *Strugar*, she is legally fit to stand trial. They asserted that at this stage, there is no certainty as to the extent of Ieng Thirith's cognitive impairment. As Ieng Thirith possesses five out of the seven capacities set out in *Strugar* (she can plead, understand the charges against her, understand the evidence, testify, and comprehend the results of the proceedings), she should be deemed fit to stand trial. The Co-Prosecutors conceded that, if any one of the *Strugar* criteria were found to be completely lacking, the fair trial rights of the Accused would be violated. However, they maintained that this is not the case with Ieng Thirith because while she experiences difficulties, these capacities are not completely absent. The OCP noted that her memory may improve if she is treated with the right medication, and provided with facts or pictures from the past in order to stimulate recall. Moreover, noting the potential impact this decision could have on the overall legacy of the Court, OCP also asked the Chamber to exhaust all possible treatment measures recommended by the Experts, in an attempt to improve Ieng Thirith's health before the Chamber rules on this matter.

International Deputy Co-Prosecutor Mr. Tarik Abdulhak further argued that the ECCC's Internal Rules do not allow discontinuance, citing the *Djukic* and *Talic* cases<sup>26</sup> before the ICTY as precedents. He cautioned that since the Trial Chamber cannot determine Ieng Thirith's fitness to stand trial, it must consider her application carefully in light of the impact of its ruling on the Civil Parties and the rest of Cambodia. The OCP likewise asked the Chamber to take into account the fact that Ieng Thirith might potentially be of substantial assistance to the proceedings, since her testimony may provide an important link to the other Defendants.

In general, the arguments of the Civil Party Co-Lawyers reflected those made by the OCP. Ms. Simmoneau-Fort emphasized that although Ieng Thirith denied responsibility for and the consequences of the crimes charged against her, refused to speak about some of the charges, and declined to discuss about the consequences of against her, she spoke freely of the consequences of her inability to face trial on account of her being a "mad woman." This, the International CPLCL argued, showed that Ieng Thirith was capable of understanding the proceedings against her. Her statements amounted to expressions of will, and showed an opportunistic approach. Accordingly, the Civil Parties maintained that Ieng Thirith is fit to stand trial.

## **B. Burden of Proof**

In addition to the substantive arguments of the Parties, there was some disagreement over where the burden of proof lay in this matter. Ieng Thirith's Defense Counsel, Mr. Phat Pouy Seang, asked the Chamber to shift the burden of proof to the Prosecution, arguing that they must show that the Accused is fit to stand trial, not the other way around. Phat Pouy Seang cited two cases that he claimed supported this burden of proof: (i) the ICTY Appeals Chamber's Judgment in the *Strugar* case,<sup>14</sup> which the Defense argued placed the burden of proof on the Prosecution; and (ii) the case of *Prosecutor vs. Nahak*.<sup>15</sup> In *Nahak*, he argued, the court evaluated the evidence of the accused person's mental capacity without imposing the "onus of proof" on the defendant.<sup>16</sup> A review of this jurisprudence, however, indicates that Phat Pouy Seang arguments are misguided. In *Strugar*, the ICTY Appeals Chamber ruling upheld and reiterated the Trial Chamber's finding that "an accused claiming to be unfit to stand trial bears the burden of so proving by a preponderance of the evidence."<sup>17</sup> The Appeals Chamber further emphasized that this approach is consistent with what is followed

in common law jurisdictions, where the burden of proof lies with the party alleging unfitness to stand trial. This onus is considered satisfied if the alleging party substantiates its claim with a preponderance of evidence.<sup>18</sup>

### **C. Severance of Charges Against leng Thirith**

Under Internal Rule 89*ter*, the Chamber may sever proceedings in the interest of justice. Since leng Thirith's condition "may entail ongoing delays to the proceedings due, for example, to the need for additional or ongoing medical testing or day-to-day fluctuations in her condition,"<sup>19</sup> the Chamber is considering the merits of severing her case from the proceedings against the three other Accused. Before deciding this matter, the Chamber asked the Parties to make submissions on the following question: "Given the impact of these factors on the rights of the other Accused to an expeditious trial and the likely overall lengthening of proceedings in Case 002, do the parties consider it to be in the interests of justice that the Accused leng Thirith be severed from these proceedings pursuant to Internal Rule 89*ter* (as an alternative to termination of the proceedings against her in the event of a finding of unfitness to stand trial)?"<sup>20</sup>

The Defense Teams of leng Sary, Nuon Chea and leng Thirith all expressed support for the severance of leng Thirith's case over joint proceedings in the interest of an expeditious trial. However, both leng Thirith's and leng Sary's International Co-Lawyers made it very clear that they believed the proceedings against leng Thirith must not only be severed but terminated altogether, in light of her cognitive incapacity. "If leng Thirith were to remain in trial, it would be an injustice, as she is with psychiatric certainty unable to participate sufficiently", said leng Sary Defense Co-Lawyer Mr. Michael Karnavas. He further warned the Chamber, stating that, "(y)our decision will not reflect objective truth but your subjective intentions." Nuon Chea's International Co-Lawyer, Mr. Michiel Pestman, opted for a "two-speed trial," where persons who are not entirely fit, such as leng Thirith, would be tried at a slower pace with shorter sittings. He went so far as to argue that his own client, Nuon Chea, should also be severed from the main case.

The Co-Prosecutors, on other hand, argued against severance. They submitted that consideration of potential delays, and the impact of such delays to Accused, are merely speculative and therefore do not substantiate a decision to sever one defendant's case from the rest. As such, it is premature and inappropriate to sever the leng Thirith's case at this point.

The Civil Party Lead Co-Lawyers, on the other hand, were not entirely unified in their submissions to the Court. The National CPLCL disagreed with the Co-Prosecutors on this issue, and supported the severance of the case. However, the International CPLCL warned that severance might backfire and unwittingly prolong the trial.

### **D. Decision to be Issued**

After examining the Experts and hearing the Parties, the Trial Chamber announced that it will issue its decision in due course. Various outcomes are conceivable, depending on Chamber's answer to the main questions discussed in the hearing: to what extent is leng Thirith cognitively impaired? Can measures be taken to alleviate any cognitive impairment from which leng Thirith might suffer? What is the threshold for fitness to stand trial? Who bears the burden of proof regarding the fitness or unfitness to stand trial of leng Thirith? Must leng Thirith fully demonstrate all the capacities described in the *Strugar* case? What if leng Thirith's unfitness is only temporary? Would a severance of the case against leng Thirith be in the interest of justice, and what would be its consequences?

#### IV. TRIAL MANAGEMENT

##### A. Conduct of Hearing

The Trial Chamber once again displayed strict and effective time-management by scheduling two hearings in series, and clearly indicating from the start the limits in time and topic that the parties must respect. The Ieng Sary and Nuon Chea Defense Teams were allowed to be present in court to observe the proceedings but were allowed to speak only on the issue of severance, which pertained to the rights of their clients. The hearing was entirely held in open session. At one point, President Nil Nonn asked Ieng Thirith's National Co-Lawyer, Mr. Phat Pouv Seang to speak slower so that the translator could follow. Aside from that, however, translation was generally efficient and proceeded without significant interruption to the flow of the proceedings.

##### B. Attendance

Ieng Thirith and Ieng Sary were present on the first day of the fitness hearing. On the second day, Ieng Thirith waived her right to be present and did not appear at court on account of health reasons. Ieng Sary was present for approximately one hour before he was allowed to observe the proceedings from the holding cell. The other two defendants, Nuon Chea and Khieu Samphan chose not to observe the hearing at all.

On both hearing days, the seats reserved inside the courtroom for the Civil Parties were fully occupied. Aside from the Civil Parties in the courtroom, more than 100 Civil Parties observed the hearing from the public gallery. They left during lunch recess and were replaced by over 100 students. Approximately 50 monks attended the hearing as well. Reserve Judge Claudia Fenz was absent in the afternoon of 20 October 2011.

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Wednesday 19/10/11	13.30	–	–	14.45-15.15	16.12	2 hours and 12 minutes
Thursday 20/10/11	09.05	10.45- 11.10	12.15-13.38	14.45-15.15	16.30	5 hours and 7 minutes
<b>Average number of hours in session:</b> 3 hours and 40 minutes						
<b>Total number of hours this week:</b> 7 hours and 19 minutes						

**Unless specified otherwise,**

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* (Case No. 002/19-09-2007-ECCC) before the Extraordinary Chambers in the Courts of Cambodia;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- **Case 001** refers to *Case of Kaing Guek Eav alias "Duch,"* Case No. 001/18-07-2007-ECCC; and
- photos are courtesy of the ECCC.

**Glossary of Terms**

CIA	Central Intelligence Agency
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or "KRT")
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IR	Internal Rules of the ECCC Rev. 8 (2011)
KR	Khmer Rouge
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witnesses and Experts Support Unit



\* This report was authored by Mary Kristerie A. Baleva, Samuel Gilg, Princess Principe, Noyel Ry, Kimsan Soy, Penelope Van Tuyl and Flavia Widmer as part of AIJI's KRT Trial Monitoring and Community Outreach Program. AIJI is a collaborative project between the East-West Center, in Honolulu, and the University of California, Berkeley War Crimes Studies Center. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia.

<sup>1</sup> The four experts appointed by the Trial Chamber are: Dr. Huot Lina, Psychiatrist; Dr. Koet Chhunly, Psychiatrist; Dr. Seena Fazel, Forensic Psychiatrist, and Dr. Calvin Fones Soon Leng, Consultant Psychiatrist.

<sup>2</sup> Trial Chamber. "Order Appointing Experts" (23 August 2011). E111.

<sup>3</sup> Trial Chamber. "Expertise Report Prepared in Response to the Trial Chamber's Order Document Number E111, dated 23 August 2011" (10 October 2011). E111/8.

<sup>4</sup> Dr. Seena Fazel is a senior lecturer in forensic psychiatry. He studied medicine at the University of Edinburgh and trained in forensic psychiatry in Oxford, United Kingdom. He has been practicing forensic psychiatry since 2002 as an academic and a clinician. Dr. Huot Lina is a psychiatrist and associate professor. Currently, he is working at Khmer-Soviet Friendship Hospital in Phnom Penh, Cambodia, as Deputy Head of Psychiatry Department. He graduated from Oslo University, Norway in 1998 and subsequently obtained a Master's Degree from Monash University, Australia in 2001.

<sup>5</sup> Trial Chamber. "Scheduling Order for Hearings of 19 and 20 October 2011" (10 October 2011). E129 [hereinafter, **SCHEDULING ORDER OCTOBER**].

<sup>6</sup> *Prosecutor v Pavle Strugar*. IT-01-42-T. ICTY Trial Chamber. "Decision re the Defense Motion to Terminate Proceedings" (26 May 2004) [hereinafter, **STRUGAR TRIAL CHAMBER DECISION**].

<sup>7</sup> *Ibid.* par. 36. 11.

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<sup>8</sup> *Ibid.* par. 35. 10 *et seq.*

<sup>9</sup> STRUGAR TRIAL CHAMBER DECISION. par. 36. 11; *Prosecutor v Pavle Strugar*. IT-01-42-A. ICTY Appeals Chamber. "Judgment" (17 July 2008) [hereinafter, **STRUGAR APPEALS CHAMBER JUDGMENT**]. par. 55. 24 *et seq.*

<sup>10</sup> STRUGAR TRIAL CHAMBER DECISION. par. 37. 11 *et seq.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> The stages of deterioration under the deterioration stages of the Reisberg Scale are the following: Stage 1-no cognitive decline; Stage 2-very mild cognitive decline; Stage 3-mild cognitive decline; Stage 4-moderate cognitive decline; Stage 5-moderately severe cognitive decline; Stage 6-severe cognitive decline; Stage 7-very severe cognitive decline. For further information, see <<http://www.dementiacarecentral.com/node/540>>.

<sup>26</sup> *Prosecutor v. Djordje Djukic*. IT-96-20-T. ICTY Trial Chamber. "Decision Rejecting the Application to Withdraw the Indictment and Order for Provisional Release" (26 April 1996); *Prosecutor v. Radoslav Brdanin and Momir Talic*. IT-99-36-T. ICTY Trial Chamber II. "Decision on the Motion for Provisional Release of the Accused Momir Talic" (20 September 2002).

<sup>14</sup> STRUGAR TRIAL CHAMBER DECISION.

<sup>15</sup> See for example, *Deputy General Prosecutor for Serious Crimes v Josep Nahak*. 01A/2004. The Special Panel for Serious Crimes in East Timor Dili District Court. "Findings and Order on Defendant Nahak's Competence to Stand Trial" (01 March 2005).

<sup>16</sup> *Ibid.* par. 67. 27.

<sup>17</sup> STRUGAR APPEALS CHAMBER JUDGMENT. par. 56. 25.

<sup>18</sup> *Ibid.*

<sup>19</sup> SCHEDULING ORDER OCTOBER. 4 *et seq.*

<sup>20</sup> *Ibid.*