

# FITNESS HEARINGS IN WAR CRIMES CASES: FROM NUREMBERG TO THE HAGUE

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**Abstract:** This Article examines the *Strugar* decision and its role in establishing the standards for a defendant's fitness to stand trial before an international tribunal. While fitness to stand trial was an issue in three cases at Nuremberg, those cases failed to establish any standards for the international criminal justice community. In contrast, the *Strugar* standards have been followed in other Trial Chambers at the International Criminal Tribunal for the Former Yugoslavia, and at The Special Panels for Serious Crimes at the United Nations Tribunal at East Timor. Therefore, the author argues that *Strugar* may be viewed as the seminal decision on the issue of fitness to stand trial before an international tribunal.

## INTRODUCTION

In April of 2004, the United Nations International Criminal Tribunal for the Former Yugoslavia (ICTY) held the first competency<sup>1</sup> hearing in an international war crimes tribunal since Nuremberg. The hearing occurred during the trial of Major-General Pavle Strugar (of the former Yugoslavian People's Army, commonly referred to as the JNA), who was charged with serious violations of international humanitarian law (war crimes) relating to the shelling of the Old Town of Dubrovnik in Croatia.<sup>2</sup> The Trial Court's<sup>3</sup> decision provides precedent for future war crimes cases and tribunals.

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<sup>†</sup> Exhibits referred to in this article may be obtained from either the Registrar's Office or the Office of the Prosecutor in the ICTY at The Hague.

<sup>1</sup> The term "competency" and the phrase "fitness to stand trial" will be used interchangeably.

<sup>2</sup> Prosecutor v. Strugar, Case No. IT-01-42-T, Judgement, ¶¶ 1-4 (Jan. 31, 2005).

<sup>3</sup> The phrases "Trial Court" and "Trial Chamber" will be used interchangeably.