

**PROSECUTOR V. RADOSLAV BRĐANIN**  
Case No. IT-99-36-T  
International Criminal Tribunal for the Former Yugoslavia  
Trial Chamber II  
Judgment  
September 1, 2004

**Judges:** Presiding Judge Carmel Agius  
Judge Ivana Janu  
Judge Chikako Taya

**Prosecution:** Joanna Korner  
Anna Richterova  
Ann Sutherland  
Julian Nicholls

**Defense:** John Ackerman  
David Cunningham

**Gender Keyword(s):** Coercion; Consent; Forced Nudity; Genitalia; Ill-Treatment; Inhumane Treatment; Rape; Rape, Torture; Sexual Assault/Attack/Abuse; Sexual Threats

**Procedural History:** On March 14, 1999, the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) indicted Radoslav Brđanin, together with Momir Talić, under both individual and superior responsibility, on a single count of persecution on political, racial, or religious grounds as a crime against humanity (¶¶ 1155, 1162). The ICTY issued arrest warrants for both defendants on the same day (¶ 1155). On July 6, 1999, Brđanin was arrested in Banja Luka and was transferred to the United Nations Detention Unit in The Hague the same day (¶ 1156). On July 12, 1999, Brđanin pled not guilty to the single charge of persecution; he also pled not guilty to all additional charges brought in subsequent amended indictments (*id.*). On December 15, 1999, the Prosecutor filed the first amended indictment, charging Brđanin, Talić, and Stojan Župljanin with individual and superior responsibility for 12 counts including genocide (¶ 1163). The indictment was amended several more times at the request of the Prosecution and in response to objections from the defense regarding the specificity of the allegations and the pleading style of the indictment (¶¶ 1162-68). On September 20, 2012, the case against Talić was severed from Brđanin's case due to Talić's health and the fact that Talić was on provisional release (¶ 1183). On October 7, 2002, the Trial Chamber removed charges against Talić from the indictment and moved to streamline the document, leading to the issuance of the fifth amended indictment the same day (¶ 1168). The fifth amended indictment included 12 charges against Brđanin under both individual and superior criminal responsibility: (1) genocide; (2) complicity in genocide; (3) persecution as a crime against humanity; (4) extermination as a crime against humanity; (5) willful killing as a grave breach of the Geneva Conventions of 1949; (6) torture as a crime against humanity; (7) torture as a grave breach; (8) deportation as a crime against humanity; (9) inhumane acts (forcible transfer) as a crime against humanity; (10) unlawful and wanton extensive destruction and appropriation of property not justified by military necessity as a grave breach; (11) wanton destruction of cities, towns, or

villages or devastation not justified by military necessity as a violation of the laws or customs of war; and (12) destruction or willful damage done to institutions dedicated to religion as a violation of the laws and customs of war (¶¶ 12-19). Allegations of rape and sexual assault supported the charges of genocide, persecution as a crime against humanity, and torture as both a crime against humanity and grave breach (¶¶ 14(b), 15(b), 17).

The crimes alleged occurred between April 1, 1992, and December 31, 1992, in Banja Luka, Bihać-Ripač, Bosanska Dubica, Bosanska Gradiška, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Čelinac, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Prnjavor, Sanski Most, Šipovo and Teslić (¶¶ 2, 19). As a senior member of the Autonomous Region of Krajina (ARK) Crisis Staff responsible for implementing a plan to remove all non-Serbs from the region, Brđanin was charged in this capacity for individual criminal responsibility, including through his participation in a joint criminal enterprise (JCE), for the commission of the crimes alleged as well as being charged under superior responsibility (¶¶ 3-13). Brđanin had *de facto* authority over the Bosnian Serb police force and significant influence over the Serb army, and paramilitary units (¶¶ 211-29). Brđanin was thus accused of “acting individually or in concert with others in the Bosnian Serb leadership” to plan, instigate, order, commit, or otherwise aid and abet in the planning, preparation, or execution of the alleged acts in several municipalities as well as failing to prevent or punish Bosnian Serb forces under his control for taking such acts, despite the fact that he knew or had reason to know these acts had been committed or were going to be committed (¶¶ 11-13). On August 22, 2003, the defense filed a motion for judgement of acquittal pursuant to Rule 98*bis* of the ICTY’s Rules of Procedure and Evidence (¶ 1204). On November 28, 2003, the Trial Chamber ruled on the motion, acquitting Brđanin of count 1 – genocide committed through joint criminal enterprise – and striking out factual allegations regarding the municipalities of Bihać-Ripac, Bosanska Dubica, and Bosanska Gradišk (*id.*). The Prosecution appealed this finding and the genocide charge was reinstated on March 19, 2004 (¶¶ 1205-06). On September 1, 2004, the Trial Chamber issued its judgment, which is digested here with a focus on the charges related to sexual and gender-based violence.

**Disposition:** The Chamber finds Brđanin guilty of individual criminal responsibility but not superior responsibility for the following crimes: (1) persecution (encompassing the crimes of torture as a crime against humanity, deportation as a crime against humanity, and inhumane acts as a crime against humanity; (2) willful killing as a war crime; (3) torture as a grave breach; (4) wanton destruction of cities, towns, or villages, or devastation not justified by military necessity as a war crime; and (5) destruction or willful damage done to institutions dedicated to religion as a war crime (¶ 1152). The Trial Chamber incorporated the charges of torture, deportation, and inhumane acts (forcible transfer) into the charge of persecution as a crime against humanity, finding these charges were “impermissibly cumulative” (¶ 1085). For these offenses, he receives a single sentence of 32 years of imprisonment, with credit for time served since July 6, 1999 (¶¶ 1153-54). Brđanin is acquitted of the following charges: (1) genocide; (2) complicity in genocide; (3) extermination; and (4) unlawful and wanton extensive destruction and appropriation not justified by military necessity (¶1152).

### **Key Gender-Based Holdings:**

COERCION:

- As discussed below under “Rape,” the Trial Chamber defines rape as specific acts committed without the consent of the victim (¶ 1008). In assessing the issue of consent, the Trial Chamber recalls that the ICTY Appeals Chamber has previously held that “force or threat of force provides clear evidence of non-consent, but is not an element *per se* of rape,” holding that such “a narrow focus on force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force” (¶ 1009).
- The Trial Chamber also heard evidence in support of allegations of sexual assault, discussed under “Sexual Assault/Attack/Abuse” below. In defining sexual assault, the Trial Chamber notes that this offense “embraces all serious abuses of a sexual nature inflicted upon the integrity of a person by means of coercion, threat of force or intimidation in a way that is humiliating and degrading to the victim's dignity” (¶ 1012).

#### CONSENT:

- As discussed below under “Rape,” the Trial Chamber defines rape as sexual penetration, however slight, “where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim” (¶ 1008). As discussed under “Coercion” above, the Trial Chamber recalls that the ICTY Appeals Chamber has previously held that “force or threat of force provides clear evidence of non-consent, but is not an element *per se* of rape,” holding that such “a narrow focus on force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force” (¶ 1009).

#### FORCED NUDITY:

- The Trial Chamber is satisfied beyond a reasonable doubt that during the attack on Briševo by the Bosnian Serb military on July 24-25, 1992, “Pero Dimač, and elderly Bosnian Croat, was forced to take off his clothes, was hit with a bible, and was eventually shot in the head” by the soldiers (¶¶ 399, 412). This finding was made with respect to the Chamber’s assessment of evidence of killings in several municipalities in support of the charge of extermination as a crime against humanity, a charge of which Brđanin was acquitted (¶¶ 397-465, 478-79).

#### GENITALIA:

- In its assessment of the evidence offered in support of the charges of torture as both a crime against humanity and a grave breach, the Trial Chamber notes the treatment of Midho Družić by guards at Kozila camp on July 6, 1992 (¶ 498). According to the Chamber’s findings, Družić “was taken to the camp administration office [where] Mišo Zorić and a few other guards present called him by pejorative names, including ‘Balija’ and ‘Mujahedin.’ . . . [t]hen they kicked him in the genitals and beat him all over his body for about an hour” (*id.*).

#### ILL-TREATMENT:

- The indictment charged Brđanin with persecution as a crime against humanity, alleging that this offense encompassed several acts including “torture, physical violence, rapes and sexual assaults, constant humiliation and degradation of Bosnian Muslims and Bosnian Croats” (¶ 1002). In assessing Brđanin’s culpability for these acts, the Trial Chamber finds that the ill-treatment perpetrated against Bosnian Muslims and Bosnian Croats was discriminatory in nature and amounted to torture (¶ 1003). In its discussion of the allegations of ill-treatment amounting to persecution, the Trial Chamber finds that “[a]s part of the ill-treatment by camp guards, Bosnian Muslims and Bosnian Croats were also forced to beat and perform sexual acts on each other” (¶ 1018). The Chamber finds that Bosnian Muslims and Croats were told that their “mothers and sisters would be raped in front of them” and members of those ethnic groups “were forced to watch other members of their group being killed, raped, and beaten” (*id.*). For further discussion of the charge of persecution supported by acts of rape and sexual assault, see the discussion of persecution below under “Rape.”

#### INHUMANE TREATMENT:

- In describing the charges against Brđanin of torture as both a crime against humanity and a war crime, the Trial Chamber notes that Brđanin, along with other Bosnian Serb leaders, engaged in a “campaign of terror designed to drive the Bosnian Muslim and Bosnian Croat population” from certain municipalities (¶ 17). The Chamber finds that “[t]he execution of this campaign is alleged to include the intentional infliction of severe pain or suffering on Bosnian Muslim or Bosnian Croat non-combatants by inhumane treatment including sexual assaults, rape, brutal beatings and other forms of severe maltreatment in camps, police stations, military barracks and private homes or other locations, as well as during transfers of persons and deportations” (*id.*). These allegations are discussed in more detail below under “Rape, Torture.”

#### RAPE:

- Allegations of rape supported several charges against Brđanin, including genocide, complicity in genocide, persecution as a crime against humanity, and torture as both a war crime and a crime against humanity (¶¶ 14(b), 15(b), 17). The Trial Chamber finds that the ICTY’s jurisprudence defines rape as follows:

[T]he *actus reus* of the crime of rape in international law is constituted by: the sexual penetration, however slight:

(a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or

(b) the mouth of the victim by the penis of the perpetrator;

where such sexual penetration occurs without the consent of the victim.

Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim (¶ 1008).

The Trial Chamber also notes that the Appeals Chamber has held that “force or threat of force provides clear evidence of non-consent, but is not an element per se of rape, since ‘a narrow focus on force or threat of force could permit perpetrators to evade liability for

sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force” (¶ 1009). Allegations of rape supported the following charges:

- *Genocide/complicity in genocide*: Brđanin was charged with genocide and complicity in genocide by participating or aiding in “a campaign designed to destroy Bosnian Muslims and Bosnian Croats,” which included causing serious bodily or mental harm to non-combatant victims while they were detained at camps and other detention facilities, and “during interrogations at police stations and military barracks when detainees were continuously subjected to or forced to witness inhumane acts including murder, rape, sexual assault, torture and beatings” (¶ 14). In defining what acts can cause serious bodily or mental harm as the *actus reus* of genocide, the Trial Chamber finds that “[c]ausing serious bodily or mental harm ... is understood to mean, *inter alia*, acts of torture, inhumane or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or serious injury to members of the targeted national, ethnical, racial or religious group. The harm inflicted need not be permanent and irremediable, but needs to be serious. The harm must be inflicted intentionally” (¶ 690). The Trial Chamber notes that the indictment alleged that “serious bodily or mental harm was inflicted on Bosnian Muslims and Bosnian Croats ‘during their confinement in camps, other detention facilities, and during their interrogations at police stations and military barracks’” (¶ 741). The Trial Chamber finds that acts of rape and sexual assault occurred in many of the camps and detention facilities but that some allegations in the indictment were not proven. For example, the Trial Chamber finds that “[n]o evidence has been presented before the Trial Chamber that, as alleged in the Indictment, in Manjača [camp], detainees were subjected to acts of sexual degradation” (¶ 715). Additionally, the Trial Chamber finds that “[n]o evidence has been presented before the Trial Chamber that, as alleged in the Indictment, in Mali Logor, detainees were forced to perform sexual acts upon each other” (¶ 761). The Trial Chamber did find that other acts of rape and sexual assault occurred. At the Kotor Varoš police station, “[o]utside interrogation, Bosnian Muslim and Bosnian Croat male and female detainees were forced by a Bosnian Serb policeman to perform sexual acts with each other, in front of a crowd of cheering men in police and Bosnian Serb military uniforms, some of whom were wearing red berets. Two other male detainees, at least one of whom was a Bosnian Muslim, were forced to perform *fellatio* on each other by the ‘Specialist’ whilst being subjected to ethnic slurs” (¶ 824). At the Kotor Varoš police station, at least two female detainees were raped (¶ 835). Women were also raped at Omarska, Keraterm, and Trnopolje camps (¶¶ 847, 852, 856). However, the Trial Chamber finds that the number of Bosnian Muslims and Bosnian Croats victimized through killings, serious bodily or mental harm, and conditions intended to bring about their destruction were insufficient to

infer genocidal intent (¶ 974). Brđanin was acquitted of genocide and complicity to commit genocide (¶ 1152).

- *Persecution*: The Trial Chamber assesses first whether the general requirements for crimes against humanity are met, finding “beyond a reasonable doubt that there was a widespread or systematic attack against the Bosnian Muslim and Bosnian Croat civilian population in the Bosnian Krajina region during the period relevant to the Indictment” through crimes including rape (¶ 159). The indictment specifically charged Brđanin with planning, preparing, and executing persecution as a crime against humanity in part by “torture, physical violence, rapes and sexual assaults, constant humiliation and degradation of Bosnian Muslims and Bosnian Croats” (¶ 15). The Chamber ultimately “is satisfied that the persecutorial campaign against Bosnian Muslims and Bosnian Croats included killings, torture, physical violence, rapes and sexual assaults, constant humiliation and degradation . . . and the denial of fundamental rights. These acts were discriminatory in fact and were committed by the perpetrators with the requisite discriminatory intent on racial, religious and political grounds” (¶ 1050). With regard to the rape as persecution allegations, the Chamber first holds that rape is an act of sufficient gravity to constitute persecution since it is also a separate offense under the crimes against humanity article of the ICTY Statute (¶ 1008). The Trial Chamber finds that the evidence established that “a number of Bosnian Muslim women were raped in Prijedor and in Teslić municipalities” (¶ 1010). The Trial Chamber also finds that Bosnian Croat and Bosnian Muslim women were raped in the municipalities of Banja Luka, Bosanska Krupa , Donji Vakuf, and in Kotor Varoš, by Bosnian Serb soldiers or policemen (*id.*). The Chamber concludes that “there can be no doubt that these rapes were discriminatory in fact” (*id.*). The Trial Chamber cites as evidence of this discriminatory intent the fact that the direct perpetrators used pejorative language including a statement by one perpetrator that he “wanted a Bosnian Muslim woman to ‘give birth to a little Serb’” (¶ 1011). The Trial Chamber therefore finds “beyond reasonable doubt that, in the circumstances surrounding the commission of these rapes, these acts were carried out with the intent to discriminate against the Bosnian Muslim and Bosnian Croat women on racial, religious or political grounds” (*id.*). The Trial Chamber finds that Brđanin aided and abetted in these crimes because his decision to selectively enforce disarmament commands against only non-Serbs created a power imbalance that made the commission of the crimes possible, because he was aware that the Serbs would attack the non-Serbs in the area, and because by disarming the non-Serbs with this knowledge, he “rendered practical assistance and a substantial contribution to the Bosnian Serb forces carrying out these attacks” (¶¶ 1056-57). Furthermore, the Trial Chamber finds that “the only reasonable conclusion that may be drawn” is that Brđanin was aware of the nature of the camps and other detention facilities and that “inmates were subjected to physical violence, rape, sexual assaults, and constant

humiliation” (¶ 1058). While the Trial Chamber acknowledged that Brđanin did not “actively assist in the commission of any of the crimes,” in his capacity as the President of the ARK Crisis Staff, “the Trial Chamber is satisfied that his inactivity with respect to the camps and detention facilities, together with his public attitude to them, constituted encouragement and moral support to the running of these camps” and this encouragement “had a substantial effect on the commission of torture in the camps and detention facilities throughout the ARK” (*id.*). The Chamber is also satisfied that Brđanin “possessed the intent to discriminate against the Bosnian Muslim and Bosnian Croat victims” (¶ 1060). As a result of these findings, the Chamber finds that Brđanin “aided and abetted persecution with respect to physical violence, rapes, sexual assaults as well as constant humiliation and degradation” (¶ 1061).

- *Torture*: See discussion under “Rape, Torture” below.

#### RAPE, TORTURE:

- The prosecutor charged Brđanin with torture as both a crime against humanity and a war crime committed through a campaign of terror which included “the intentional infliction of severe pain or suffering on Bosnian Muslim or Bosnian Croat non-combatants by inhumane treatment including sexual assaults, rape, brutal beatings and other forms of severe maltreatment in camps, police stations, military barracks and private homes or other locations, as well as during transfers of person and deportations” (¶ 17). As noted above, the Trial Chamber finds that the general requirements of crimes against humanity are met (¶ 159).
- The ICTY’s definition of torture has three constitutive elements: (i) “the infliction, by act or omission, of severe pain or suffering, whether physical or mental;” (ii) “the act or omission must be intentional;” and (iii) “the act or omission must have occurred in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person” (¶ 481). This definition applies to torture whether charged as a crime against humanity or a war crime (¶ 482). An act does not have to be consented to or at the acquiescence of a state actor nor in the presence of a government official, despite this requirement under international human rights law, which is oriented toward state, not individual, responsibility (¶¶ 488-89). The Chamber distinguishes torture from other forms of mistreatment by stating that “the objective severity of the harm inflicted must be considered, including the nature, purpose and consistency of the acts committed” (¶ 484). As an example, the Chamber states that acts such as rape “appear by definition to meet the severity threshold” because “[l]ike torture, rape is a violation of personal dignity and is used for such purposes as intimidation, degradation, humiliation and discrimination, punishment, control or destruction of a person” (¶ 485). The Chamber goes on to state that “severe pain or suffering, as required by the definition of the crime of torture, can be said to be established once rape has been proved, since the act of rape necessarily implies such pain or suffering” (*id.*). The Trial Chamber assessed evidence of several forms of torture including physical abuse in the context of interrogations for the purpose of seeking information, ill-treatment in the context of separating men from women and transporting Bosnian Muslims and Croats in tightly packed trains with the intent to

discriminate, and shooting at detainees to intimidate them (¶¶ 491-95, 499-500). After discussing the evidence, including the evidence of rapes and sexual assaults described below, the Chamber is satisfied that the treatment “constituted severe pain and suffering amounting to torture, inflicted intentionally on the victims, who were all non-combatants” (¶ 524). The Trial Chamber cites evidence of rapes amounting to torture in the following locations:

- **Prijedor:** As part of the evidence for the Chamber’s discussion of torture, the Chamber assesses the following evidence of rape and sexual assaults in Prijedor (¶ 512):
  - *Keraterm Camp:* The Chamber notes the rape of a female inmate at Keraterm camp in either June or July 1992 by numerous guards “on a table in a dark room until she lost consciousness” (¶ 512). She woke up in a pool of blood the next morning (*id.*). The Chamber states that “[o]ther women at the camp were also raped” (*id.*).
  - *Trnopolje Camp:* The Chamber describes an incident from August 1992 in which the commander of Trnopolje camp, Slobodan Kuruzović, “personally arranged for a Bosnian Muslim woman to be detained in the same house” as his office (¶ 513). After entering her room with a pistol and knife on the first night she was there, Kuruzović undressed and told her “he wanted to see ‘how Muslim women fuck’” (*id.*). In response, she told him he had better kill her and screamed, to which he said, “You are screaming in vain. There’s nobody here who can help you” (*id.*). He raped her as she continued to scream, threatening her by saying, “You better keep quiet. Did you see all these soldiers standing outside? They will all take their turns on you” (*id.*). He told her he would see her the next day and continued to rape her every night for a month, stabbing her shoulder and leg on two occasions with a knife when she resisted (*id.*). Additionally, between May and October 1992, both camp personnel and outsiders raped women and girls at the Trnopolje camp (¶ 514). Victims included 16 or 17-year-old girls who were raped on the way to Kozarac on a truck and a 13-year-old Bosnian Muslim girl (*id.*). One victim was told by the camp staff that nothing could be done about the rapes because it was wartime (*id.*).
  - *Omarska Camp:* The Chamber discusses several incidences of rape and sexual assault at the Omarska camp, where “[f]emale detainees were often called out by camp guards and the camp commander [and when] they returned, those women looked absent-minded and kept silent” (¶ 515). The Chamber notes an incident in June of 1992 in which camp guards at Omarska “tried to force Mehmedalija Sarajilić, an elderly Bosnian Muslim, to rape a younger female detainee (¶ 516). He begged them to not make him do it because she could be his daughter and he was an older man (*id.*). The guards ultimately killed the old man (*id.*). The Chamber by majority “finds that the threat of rape constituted a sexual assault *vis-à-vis* the female detainee” (*id.*). Additionally, the Chamber notes that on an unknown date after May 1992, “an armed man entered the Omarska camp restaurant” where he proceeded to

uncover a female detainee's breast and run a knife along it for several minutes (¶ 517). Other detainees feared he might cut her breast off while other guards "laughed and obviously enjoyed watching this incident" (*id.*).

After discussing the evidence, the Trial Chamber concludes that not only were rapes and sexual assaults common "throughout the camps in the Prijedor area," in all instances, "the male perpetrators aimed at discriminating against the women because they were Muslim" (¶ 518).

- **Teslić:** The Chamber finds that from July to October 1992, many "Bosnian Muslim women were raped by members of the Bosnian Serb police and the VRS in Teslić municipality," an act which was intrinsically discriminatory (¶ 523).
- The Trial Chamber finds that the treatment of Bosnian Muslims and Bosnian Croats – including the acts of rape and sexual assault described above – "constituted severe pain and suffering amounting to torture, inflicted intentionally on the victims, who were all noncombatants" (¶ 524). While the Trial Chamber finds that the evidence does not establish that Brđanin ordered or instigated the acts of torture, nor were his utterances specific enough and connected by a strong enough nexus to amount to instructions to the physical perpetrators, he nonetheless aided and abetted in the crime of torture (¶¶ 525-29). As Brđanin was both the President and a key figure of the ARK Crisis Staff, the Chamber attributes decisions of the ARK Crisis Staff to him, noting that he must be held accountable for those decisions (¶ 319). The Chamber finds that the disarmament of Bosnian Muslims and Croats led to "an imbalance of arms and weapons favouring the Bosnian Serbs in the Bosnian Krajina, a situation amplified by the fact that the evidence establishes beyond reasonable doubt that the Bosnian Serb population was arming itself at the same time on a massive scale" (¶ 529). The Chamber finds that these "decisions on disarmament constituted practical assistance to the attacks of the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods" (¶ 530). During and after the attacks, Bosnian Serbs committed many underlying acts of torture (*id.*). The Trial Chamber thus finds that with regard to the allegations of acts of torture committed in the context of these attacks on towns, villages, and neighborhoods, Brđanin is guilty of aiding and abetting because when the ARK Crisis Staff decisions on disarmament were issued, Brđanin was aware that the Bosnian Serb forces were to attack non Serb towns, villages, and neighborhoods and that the ARK Crisis Staff decisions to disarm these areas "rendered practical assistance and a substantial contribution to the Bosnian Serb forces carrying out these attacks" (¶¶ 530-32). The Trial Chamber also finds that Brđanin was aware that Bosnian Serb forces would commit crimes during these armed attacks, including torturing non-Serbs (¶ 533). Furthermore, the Trial Chamber finds that Brđanin was aware of the nature of camps and detention facilities and "that inmates were tortured therein" (¶ 537). The Chamber cites the fact that international organizations had investigated the camps as had international media and that the conditions had been discussed at ARK Crisis Staff meetings (¶¶ 536). Brđanin also visited Omarska camp himself (*id.*). The Trial Chamber thus concludes that Brđanin "aided and abetted members of the Bosnian Serb forces in the commission of . . . crimes amounting to torture in camps and detention facilities," including the torture of Bosnian Muslim women in women in the Keraterm, Trnopolje, and Omarska camps (¶ 538).

#### SEXUAL ASSAULT/ATTACK/ABUSE:

- In its assessment of the evidence supporting the charge of persecution, as discussed above under the section, “Rape,” the Chamber also discusses acts of sexual assault amounting to persecution. The Chamber states that “[a]ny sexual assault falling short of rape may be punishable as persecution under international criminal law, provided that it reaches the same level of gravity as the other crimes against humanity enumerated in... the [ICTY] Statute” (¶ 1012). The Chamber states that sexual assault “embraces all serious abuses of a sexual nature inflicted upon the integrity of a person by means of coercion, threat of force or intimidation in a way that is humiliating and degrading to the victim’s dignity” (*id.*). The Chamber finds that many incidents of sexual assault occurred, including “the case of a Bosnian Croat woman who was forced to undress herself in front of cheering Bosnian Serb policemen and soldiers” (¶ 1013). In another incident, a perpetrator ran a knife along the breast of a Bosnian Muslim woman, an act that the Trial Chamber cites in support of convicting Brđanin of torture as well as persecution (¶¶ 517, 1013). The Chamber also finds that the fact that detainees were frequently forced to have sex with each other constitutes sexual assault as a form of persecution and notes that in each instance, “armed Bosnian Serb soldiers or policemen were the perpetrators” (*id.*). The Trial Chamber finds that these acts rise to the level of crimes against humanity and “is satisfied that the circumstances surrounding the commission of sexual assaults leave no doubt at all that there was discrimination in fact and discriminatory intent on the part of the direct perpetrators, based on racial, religious or political grounds” (*id.*). As discussed under “Sexual Threats” below, the Trial Chamber also finds that trying to force a male detainee to rape a female detainee constitutes a sexual assault on the female detainee and this evidence supported the Chamber’s conviction of Brđanin for torture (¶¶ 516, 538).

#### SEXUAL THREATS:

- In its assessment of the charges of torture against Brđanin, the Trial Chamber finds that in June of 1992, Omarska camp guards tried to force an elderly man named Mehmedalija Sarajlic to rape a female detainee (¶ 516). He begged them, saying “Don’t make me do it. She could be my daughter. I am a man in advanced age” (*id.*). The Trial Chamber notes that the guards laughed and said “Well, try to use the finger.” (*id.*). Then a “scream and the sound of beatings” were heard, followed by silence: the guards had killed the man (*id.*). Based on this evidence, the “Trial Chamber, by majority, finds that the threat of rape constituted a sexual assault *vis-à-vis* the female detainee” (*id.*). This evidence supported Brđanin’s conviction for aiding and abetting torture as both a war crime and a crime against humanity (¶¶ 516, 538).

#### Other Issues:

#### SENTENCING

- In determining the sentence, the Chamber considers as aggravating circumstances the traumatic effects to and the vulnerability of the victims, who were “systematically disarmed only to be attacked, killed, beaten, tortured, raped, mistreated and forcibly displaced” (¶¶ 1105-06). The victims included the elderly, women, children, and disabled persons (*id.*).