

**UNITED  
NATIONS**

International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-99-36-T  
Date: 1 September 2004  
Original: English

**IN THE TRIAL CHAMBER II**

**Before:** Judge Carmel Agius, Presiding  
Judge Ivana Janu  
Judge Chikako Taya

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 1 September 2004

**PROSECUTOR**

v.

**RADOSLAV BRĐANIN**

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**JUDGEMENT**

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**The Office of the Prosecutor:**

Ms. Joanna Korner  
Ms. Anna Richterova  
Ms. Ann Sutherland  
Mr. Julian Nicholls

**Counsel for the Accused:**

Mr. John Ackerman  
Mr. David Cunningham

municipalities of Banja Luka,<sup>2538</sup> Bosanska Krupa<sup>2539</sup>, Donji Vakuf,<sup>2540</sup> and in Kotor Varoš<sup>2541</sup>. In each incident, armed Bosnian Serb soldiers or policemen were the perpetrators. There can be no doubt that these rapes were discriminatory in fact.

1011. With regard to the requisite *mens rea*, the Trial Chamber notes that the direct perpetrators made abundant use of pejorative language.<sup>2542</sup> One of them made no secret that he wanted a Bosnian Muslim woman to “give birth to a little Serb”.<sup>2543</sup> The Trial Chamber is satisfied 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.

(iii) Sexual assaults

1012. Any 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 Article 5 of the Statute.<sup>2544</sup> This offence 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.<sup>2545</sup>

1013. The Trial 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.<sup>2546</sup> In another incident, a knife was run along the breast of a Bosnian Muslim woman.<sup>2547</sup> Frequently, it was demanded that detainees perform sex with each other.<sup>2548</sup> In each incident, armed Bosnian Serb soldiers or policemen were the perpetrators. The Trial Chamber is satisfied that, evaluated in their context, these acts are serious enough to rise to the level of crimes against humanity. Moreover, the Trial Chamber is satisfied that the circumstances surrounding the commission of sexual assaults leave no doubt at all that there was discrimination in

<sup>2538</sup> BT-94, T. 18103.

<sup>2539</sup> BT-56, T. 17485-17488 (private session).

<sup>2540</sup> BT-89, ex. P1691, 92bis statement, 02062071-02062075 (under seal).

<sup>2541</sup> Elvedin Pašić, T. 19437-19438 (private session); BT-75, ex. P2045, 92bis statement, 00371789 (under seal); BT-76, ex. P2044, 92bis statement, 001028819-20 (under seal).

<sup>2542</sup> Slobodan Kuruzović, the camp commander of Trnopolje, told a woman he was about to rape that he wanted to see “how Muslim women fuck”, BT-33, T. 12663-12664 (closed session); BT-33, ex. P1544, T. 3965-3968 (closed session).

<sup>2543</sup> BT-89, ex. P1691, 92bis statement, 02062071 (under seal).

<sup>2544</sup> *Furundžija* Trial Judgement, para. 186.

<sup>2545</sup> *Stakić* Trial Judgement, para. 757.

<sup>2546</sup> BT-71, ex. P2115, 92bis statement, 01045841 (under seal); BT-76, ex. P2044, 92bis statement, 01028819 (under seal)

<sup>2547</sup> BT-1, ex. P1619, T. 4769, 4777-4779, 4781-4783 (under seal)

<sup>2548</sup> BT-42, ex. P564, T. 1901 (under seal); BT-76, ex. P2044, 92bis statement, 01028819-01028820 (under seal); BT-71, ex. P2115, 01045842 (under seal).

fact and discriminatory intent on the part of the direct perpetrators, based on racial, religious or political grounds.

(iv) Constant humiliation and degradation

1014. Humiliating and degrading treatment is prohibited under common Article 3 of the Geneva Conventions, although such acts are not explicitly listed under Article 5 or elsewhere in the Statute. In order to rise to the level of crimes against humanity, they must meet the test of gravity which satisfies the criteria for persecution.<sup>2549</sup>

1015. There are no specific incidents expressly charged as constant humiliation and degradation of Bosnian Muslims and Bosnian Croats in the Indictment. The Trial Chamber has already established the horrific conditions in which Bosnian Muslims and Bosnian Croats were forced to live in camps and other detention facilities, which were themselves humiliating and degrading.<sup>2550</sup> As part of the attack on human dignity, Bosnian Muslims and Bosnian Croats were constantly called by pejorative names while being forced to sing 'Četnik' songs, show the three-fingered Serbian greeting and show devotion for Serbian national symbols. Such treatment was humiliating and degrading to all non-Serbs.<sup>2551</sup> Beatings inside and outside camps were ubiquitous and merciless.<sup>2552</sup>

1016. There are many more examples of incidents in which the human dignity of Bosnian Muslims and Bosnian Croats was treated with outright contempt. The conditions in which people were transported to and from camps bear a resemblance to the transportation of livestock.<sup>2553</sup> In the camps and other places of detention, it was commonplace that detainees had no choice but to relieve themselves in the room in which they were detained.<sup>2554</sup>

1017. During interrogations, detainees were made to adopt uncomfortable postures<sup>2555</sup> while being held at gunpoint.<sup>2556</sup> Once, a Bosnian Muslim was forced to drink whisky.<sup>2557</sup> A Bosnian Croat was

<sup>2549</sup> See *Kvočka* Trial Judgement, para. 190, in which this test was applied to harassment, humiliation, and psychological abuse.

<sup>2550</sup> See IX.E.2.b.(iii), "Deliberately Inflicting upon the Group Conditions Calculated to Bring about Physical Destruction"; see also paras 100-1007 *supra*.

<sup>2551</sup> See paras 999-1014 *supra*; see also Adil Draganović, T. 5070 (having to kiss Serb soil); Nermin Karagić, ex. P559, T. 5220 (water only given after the singing of Serb songs); BT-69, T. 17738 (Muslims called 'Četniks' after their beards had grown long) (closed session).

<sup>2552</sup> See paras 1002-1007 *supra*.

<sup>2553</sup> See paras 451-453, 493-494 *supra*.

<sup>2554</sup> BT-37, ex. P555, T. 2505-2506 (under seal); Muharem Murselović, ex. P1542, T. 2770; BT-69, T. 17711-17712 (closed session); BT-83, T. 14074-14075.

<sup>2555</sup> Elvedin Našić, T. 12694 (hands behind neck and head bent down); BT-34, ex. P558, T. 1098 (kneel down) (under seal).

<sup>2556</sup> BT-1, ex. P1619, T. 4745 (under seal).

<sup>2557</sup> Enis Šabanović, T. 6527.