

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

"KRAJINA" (IT-99-36)

RADOSLAV BRĐANIN



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Convicted of persecutions; torture; deportation; inhumane acts (forcible transfer), wanton destruction of cities, towns or villages or devastation not justified by military necessity; destruction or wilful damage done to institutions dedicated to religion, wilful killing; torture



Leading political figure in the Autonomous Region of Krajina (ARK) and held key positions at the municipal, regional and republic levels, including that of First Vice-president of the ARK Assembly, President of the ARK Crisis Staff, and later Acting Deputy Prime Minister for Production, Minister for Construction, Traffic and Utilities and acting Vice-President of the Government of the Republika Srpska

- Sentenced to **30 years'** imprisonment

Crimes convicted of (examples):

Persecutions; torture; deportation; inhumane acts (forcible transfer) (crimes against humanity)

- Radoslav Brđanin aided and abetted the torture committed by Bosnian Serb forces in the context of the armed attacks of the Bosnian Serb forces on non-Serb towns, villages and areas after 9 May 1992 until the end of December 1992. This torture included 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 police stations, military barracks and private homes or other locations, as well as during transfers of persons and deportations.
- In the Petar Kočić school on the outskirts of Bosanska Krupa at least 50 Bosnian Muslims were detained at the school. In a small room, detainees were given electroshocks. Wires from a car battery were attached through clamps to the fingers and toes of detainees, and the electricity was turned on and off for periods of five minutes. Bosnian Serb policemen administered this treatment on a number of Bosnian Muslim detainees during interrogations in order "to make them sing". At least one of the detainees still suffers from the consequences of this treatment today.

Wanton destruction of cities, towns or villages or devastation not justified by military necessity; destruction or wilful damage done to institutions dedicated to religion (violations of the laws or customs of war)

- Radoslav Brđanin aided and abetted, in his role as President of the of ARK Crisis Staff, Bosnian Serb forces as they shelled towns and villages predominantly inhabited by Bosnian Muslims and Bosnian Croats, causing extensive damage to houses and business premises. After the shelling, the Bosnian Serb forces entered the towns and villages, looting and setting on fire apartments, houses and business premises belonging to Bosnian Muslims and Bosnian Croats. The purpose of such attacks was to create terror, destroy these properties, cities, towns and villages and prompt non-Serbs to abandon their houses, villages or towns and leave permanently. For example attacks on private houses and business premises belonging to Bosnian Muslims and Bosnian Croats in the city of Banja

Luka took place in mid 1992. Explosions were frequent and occurred mostly at night. Houses were attacked with hand grenades, rocket launchers and rifle launched grenades.

Wilful killing; torture (grave breaches of the 1949 Geneva Conventions)

- Radoslav Brđanin aided and abetted members of the Bosnian Serb forces in the commission of the crimes, such as: the killing of at least 3 Bosnian Muslim civilians in Hambarine on 23 May 1992; the killing of about 140 Bosnian Muslim and Bosnian Croat civilians in Kozarac and the surrounding areas around 24 May 1992; the killing of at least 8 Bosnian Muslims in Mehmed Sahurić's house in Kamičani between 24 and 26 May 1992; the killing of 8 Bosnian Muslim men in the village of Jaskići on 14 June 1992; the killing of at least 300 Bosnian Muslim and Bosnian Croat men in the village of Biščani on 20 July 1992.

Born	9 February 1948 in Popovac, municipality of Čelinac, Bosnia and Herzegovina
Indictment	Initial indictment, 14 March 1999; amended indictment 16 December 1999; further amended indictment 9 March 2001; third amended indictment 16 July 2001; corrected fourth amended indictment 10 December 2001; fifth amended indictment 7 October 2002; sixth amended indictment, 9 December 2003
Arrested	6 July 1999, by SFOR
Transferred to ICTY	6 July 1999
Initial appearance	12 July 1999, pleaded not guilty to all the charges; 11 January 2000, pleaded not guilty to all the charges
Trial Chamber Judgement	1 September 2004, sentenced to 32 years' imprisonment
Appeals Chamber Judgement	3 April 2007, sentence reduced to 30 years' imprisonment
Serving sentence	4 March 2008, transferred to Denmark to serve the remainder of his sentence; credit was given for time spent in detention since 6 July 1999

STATISTICS

Trial days	284
Witnesses called by Prosecution	202 120 viva voce and 82 written statements (Rule 92bis)
Witnesses called by Defence	19
Witnesses called by Chambers	1
Prosecution Exhibits	2736
Defence Exhibits	350

TRIAL	
Commenced	23 January 2002
Closing arguments	19-22 April 2004
Trial Chamber II	Judge Carmel A. Agius (presiding), Judge Ivana Janu, Judge Chikako Taya
Counsel for the Prosecution	Joanna Korner, Anna Richterova, Ann Sutherland, Julian Nicholls
Counsel for the Defence	John Ackerman, David Cunningham
Judgement	1 September 2004

APPEALS	
Appeals Chamber	Theodor Meron (Presiding), Judge Mohamed Shahabuddeen Judge Mehmet Güney , Judge Christine Van Den Wyngaert, Judge Andréia Vaz
Counsel for the Prosecution	Peter Kremer, Helen Brady
Counsel for the Defence	John Ackerman
Judgement	3 April 2007

RELATED CASES	
<i>by geographical area</i>	
TALIĆ (IT-99-36/1) "KRAJINA"	
ŽUPLJANIN (IT-99-36-I) "KRAJINA"	

INDICTMENT AND CHARGES

The initial indictment against both Radoslav Brđanin and Momir Talić charged both accused with individual and superior responsibility in respect of the alleged persecution of Bosnian Muslims and Bosnian Croats in the Autonomous Region of Krajina (ARK) between April and December 1992. An amended indictment, confirmed on 16 December 1999 expanded the number of counts. Both accused challenged the form of the indictment resulting in three further amended indictments being filed. Due to the ill health of the accused Momir Talić a fifth amended indictment, severing him and streamlining the indictment against Radoslav Brđanin, was confirmed on 7 October 2002.

The sixth amended indictment was filed on 9 December 2003 following the Trial Chamber Decision on the Motion for Acquittal of 28 November 2003 in which some of the charges were conceded by the prosecution to have not been proven beyond reasonable doubt. This was the operative indictment in the case and alleges that, as a prominent member of the Serbian Democratic Party of Bosnia and Herzegovina (SDS) closely linked, through the political positions he occupied, with the Presidency of the Serbian Republic of Bosnia and Herzegovina Radoslav Brđanin played a leading role in the take-over of power in the Banja Luka region by the SDS. He was appointed President of the Autonomous Region of Krajina (ARK) Crisis Staff from 5 May 1992.

According to the indictment, the creation of the Serbian state entailed a campaign designed to permanently remove by force, or fear, the non-Serb population from areas, designated as part of the state. It was alleged that in the positions Radoslav Brđanin occupied, first in the Bosanska Krajina Municipalities Assembly and then as President of the ARK Crisis Staff, he played a leading role in this campaign. The indictment further states that Radoslav Brđanin facilitated the ethnic cleansing by securing all instruments of state power into the hands of the governing bodies and those persons committed to an ethnically pure Serb state.

Radoslav Brđanin was charged crimes committed in 13 municipalities in the Bosnian Krajina between 1 April 1992 and 31 December 1992. The area relevant to the Indictment includes the municipalities of Banja Luka, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Čelinac, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Prnjavor, Sanski Most, Šipovo and Teslić.

In relation to the alleged crimes, committed by members of the municipal Crisis Staffs or by members of the armed forces under the control of the leadership of the Bosnian Serbs, and for whom logistical support was provided through the medium of the Crisis Staffs, Radoslav Brđanin, allegedly knew or had reason to know that such crimes were committed and failed to take the necessary and reasonable measures to prevent such acts or punish the perpetrators thereof.

Radoslav Brđanin was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute) and superior criminal responsibility (Article 7(3) of the Statute) with:

- **Genocide; complicity in genocide** (genocide, Article 4)
- **Persecutions; extermination; torture; deportation; inhumane acts (forcible transfer)**, (crimes against humanity Article 5)
- **Wanton destruction of cities, towns or villages or devastation not justified by military necessity; destruction or wilful damage done to institutions dedicated to religion**, (violations of the laws or customs of war, Article 3)
- **Wilful killing; torture; unlawful and wanton extensive destruction and appropriation of property not justified by military necessity**, (grave breaches of the 1949 Geneva Conventions Article 2)

TRIAL

The Brđanin and Talić trial commenced on 23 January 2002 with the Prosecution case. The Brđanin Defence case started on 21 October 2003. The closing arguments were delivered from 19 until 22 April 2004. The Trial Chamber sat 284 trial days.

Momir Talić was provisionally released on medical grounds on 20 September 2002 and the case was separated on the same date. He died on 28 May 2003 in Belgrade and proceedings against him were terminated on 12 June 2003.

TRIAL CHAMBER JUDGEMENT

On 9 January 1992, the newly created Assembly of the Serbian People in Bosnia and Herzegovina (SerBiH Assembly) proclaimed the Serbian Republic of Bosnia and Herzegovina (SerBiH). It was composed of so-called Serbian autonomous regions and districts, which included the Autonomous Region of Krajina ("ARK"). During the 16th session of the SerBiH Assembly that took place on 12 May 1992, at a time when the armed conflict had already begun, Radovan Karadžić articulated the six strategic goals of the Serbian People of Bosnia and Herzegovina. The first and most fateful of these goals was the "separation from the other two national communities - separation of states". In essence, these strategic goals constituted a plan to seize and control territory, establish a Bosnian Serb state, defend defined borders and separate the ethnic groups within BiH by forcibly and permanently removing most of the non-Serb population from the territory of the proclaimed Bosnian Serb state. Ratko Mladić, the Commander of the newly established Army of the Serbian Republic of Bosnia and Herzegovina ("VRS") accepted that the VRS would be instrumental in implementing these political strategic goals and indeed transferred them into operational imperatives for the VRS.

In early 1991, the SDS embarked on a programme of regionalisation, the ultimate object of which was the implementation of the Strategic Plan. On 7 April 1991, the SDS Regional Board decided to create the Community of Municipalities of Bosnian Krajina (ZOBK). On 16 September 1991, the ZOBK Assembly transformed itself into the Autonomous Region of Krajina (ARK). The accused became its first Vice-President. While it was difficult to precisely define which municipalities belonged to the ARK at any given time, the Trial Chamber was satisfied that all thirteen municipalities addressed in the Indictment were members of the ARK during the period relevant to the instant case.

On 5 May 1992, the ARK Executive Council issued a decision on the formation of the ARK Crisis Staff, appointing the accused as its President. The Trial Chamber was satisfied that, as with municipal Crisis Staffs in their respective areas of jurisdiction, the ARK Crisis Staff was established primarily to ensure the co-operation between the political authorities, the army and the police at the regional level, with a view to co-ordinating the implementation of the strategic plan by the different authorities. The ARK Crisis Staff was the highest civilian authority in the ARK and exercised *de facto* authority over the municipalities and the police and had great influence over the army and Serb paramilitary groups. The Trial Chamber was satisfied beyond reasonable doubt that Radoslav Brđanin not only formally represented the ARK Crisis Staff as its President, but was in fact at the very heart of the ARK Crisis Staff as its key figure. He was the driving force behind the major decisions issued by the ARK Crisis Staff, which was the reason why the Trial Chamber came to the conclusion that the decisions of the ARK Crisis Staff can be attributed to Radoslav Brđanin.

The Trial Chamber found that all the killing incidents alleged in the indictment were proved beyond reasonable doubt except for: the incident in Lisina on or about 1 June 1992, the incident in Vrbanjci on 25 June 1992, the incident on the way from Kukavice and surrounding areas in Kotor Varoš on or about 25 June 1992 and the incident in Dujo Banović's house in Kenjari on or about 27 June 1992. In sum, the Trial Chamber was satisfied beyond reasonable doubt that at least 1669 Bosnian Muslims or Bosnian Croats were killed by Bosnian Serb forces in these events, all of whom were non-combatants. The Trial Chamber was further satisfied that these killings fulfil the element of massiveness for the crime of extermination.

The definition of torture adopted by the Trial Chamber reflects that contained in the Convention against Torture and reads, "the intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental, 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, amongst others." Having considered the objective and the subjective severity of the mistreatment, the Trial Chamber found that the treatment inflicted on the victims, and examined at length in the Judgement, constituted severe pain and suffering for a designated purpose of intimidating, discriminating or obtaining information, thus amounting to torture. The Trial Chamber noted in the Judgement that some acts, such as rape, by definition meet the severity threshold.

By a majority vote, the Trial Chamber was satisfied that the *actus reus* of deportation consists of the forcible displacement of individuals across a State border from the area in which they are lawfully present without grounds permitted under international law, whereas such displacement within the boundaries of a

State constitutes the *actus reus* of forcible transfer, punishable as other inhumane acts as a crime against humanity. The Trial Chamber was confronted with a great deal of evidence regarding the deportation or forcible transfer of a large proportion of the Bosnian Muslim and Bosnian Croat population from the ARK to other areas both within and outside BiH. In view of the specificity with which the charges were pleaded, the Trial Chamber was precluded from making any finding of guilt with respect to incidents where the transfer destination was to locations other than Travnik (under the control of the legitimate government of BiH) or Karlovac (Croatia). Having examined all the evidence, the Trial Chamber was satisfied beyond reasonable doubt that a large number of deportations to Karlovac and forcible transfers to Travnik, originating in the ARK, took place during the period relevant to the indictment.

The Trial Chamber was satisfied that all the incidents of extensive destruction and appropriation of Bosnian Muslim and Bosnian Croat property by the Bosnian Serb forces alleged in the indictment were proved beyond reasonable doubt except for incidents in Ramići, Humići, Vrhpolje, Trnova, Sasina, Komušina, Rajševa, Kamenica and Šipovo. However, for Article 2(d) of the Statute to apply, the Trial Chamber needed to be satisfied beyond reasonable doubt that either the property destroyed and appropriated was located in occupied territory or the property was subject to general protection under the Geneva Conventions. The Trial Chamber found that in the present case the evidence adduced was insufficient to prove either of these two alternatives and therefore found that no violation of Article 2(d) occurred. In contrast, the protection of Article 3(b) of the Statute, however, extended to all property in the territory involved in a war, including that located in enemy territory. The Trial Chamber therefore found that the destruction of property in the relevant municipalities of the ARK were in violation of Article 3(b) of the Statute. The Trial Chamber was also satisfied that institutions dedicated to religion were destroyed and devastated in the relevant municipalities of the indictment in violation of Article 3(d) of the Statute.

Regarding the crime of genocide, the Trial Chamber concluded that the protected groups, within the meaning of Article 4 of the Statute, must be defined, in the present case, as the Bosnian Muslims and Bosnian Croats. The Trial Chamber was satisfied that the targeted parts of the groups were the Bosnian Muslims and Bosnian Croats of the ARK, and that these amounted to "substantial parts" of the protected groups. In this case, the Prosecution pleaded three different types of acts as genocide. As stated earlier, the Trial Chamber found that Bosnian Muslim and Bosnian Croat non-combatants were killed by Bosnian Serb forces. The Trial Chamber was also satisfied beyond reasonable doubt that serious bodily and mental harm was intentionally inflicted upon Bosnian Muslims and Bosnian Croats detained in camps and other detention facilities. Further, the Trial Chamber was satisfied that the conditions in these camps and other detention facilities were deliberately inflicted upon the Bosnian Muslim and Bosnian Croat detainees and amounted, in some cases, to conditions calculated to bring about physical destruction. As a result, it remained to be determined whether these offences were committed with the specific intent for genocide, conscious that where direct evidence of intent was absent, the specific intent may still be inferred from the factual circumstances and particularly conscious also that where an inference needs to be drawn, it had to be *the only reasonable inference available on the evidence*. In this case, the Trial Chamber was not satisfied that the only reasonable inference that may be drawn from the evidence was that the offences were committed with the specific intent to destroy the Bosnian Muslim and Bosnian Croat groups of the ARK. One reason for this was that the number of Bosnian Muslim and Bosnian Croat men, women and children forcibly displaced from the ARK in this case was extremely high, particularly when compared to the number of Bosnian Muslims and Bosnian Croats subjected to the acts enumerated in Article 4(2)(a), (b) and (c) of the Statute. This fact did not support the conclusion that the intent to destroy the groups in part, as opposed to the intent to forcibly displace them, was the only reasonable inference that may be drawn from the evidence. On the basis of the evidence presented in this case, the Trial Chamber did not found beyond reasonable doubt that genocide was committed in the relevant ARK municipalities, from April to December 1992.

The Trial Chamber found that the campaign of persecution against Bosnian Muslims and Bosnian Croats included killings, torture, physical violence, rapes and sexual assaults, constant humiliation and degradation, destruction and appropriation of non-Serb property and institutions dedicated to religion, deportation and forcible transfer, and the denial of fundamental rights, namely the denial of the fundamental rights to employment, freedom of movement, right to proper medical care and proper judicial process. The Trial Chamber was further satisfied that the acts were discriminatory in fact and were committed by the perpetrators with the requisite discriminatory intent on racial, religious and political grounds.

The Trial Chamber was satisfied beyond reasonable doubt that, both prior to and during the period covered in the indictment, Radoslav Brđanin was a leading political figure in the ARK and that he held key positions at the municipal, regional and republic levels, including that of first Vice-president of the ARK Assembly, President of the ARK Crisis Staff, and later Acting Deputy Prime Minister for Production, Minister for Construction, Traffic and Utilities and acting Vice-President of the Government of the Republika Srpska.

Amongst the political figures in the Bosnian Krajina, it was Radoslav Brđanin who was identified by the Bosnian Serb leadership as best representing the interests of the SerBiH. He was chosen to play a leading role in co-ordinating the implementation of the strategic plan in the ARK. For this purpose, the top leadership of the SerBiH granted Radoslav Brđanin a high degree of authority and autonomy in areas of fundamental political importance, which was indicative of the trust Radoslav Brđanin enjoyed at the highest political level. In a telephone conversation on 31 October 1991, Radovan Karadžić assured Radoslav Brđanin that he had all the power in the Bosnian Krajina and indicated that he should take more decisions without consulting the party leadership. Moreover, in a conversation between Radovan Karadžić and a certain Miroslav on 7 January 1992, Radoslav Brđanin was identified as a mature and politically strong personality, who would be able to take power.

After the ARK Crisis Staff was wound up, Radoslav Brđanin not only maintained his political power in the Bosnian Krajina but also extended his power at the republic level. He continued to meet with high ranking military and political officials to discuss issues concerning the implementation of the strategic plan.

The Trial Chamber found that Radoslav Brđanin made one of his most substantial contributions to the implementation of the strategic plan by way of a propaganda campaign against Bosnian Muslims and Bosnian Croats which he conducted at the different stages of his political career. His positions of authority gave him access to the media which he used to make public statements creating fear and hatred between Bosnian Serbs on the one hand and Bosnian Muslims and Bosnian Croats on the other. Not only did the Radoslav Brđanin call for the dismissal of non-Serbs from their jobs but he also publicly advocated that the non-Serb population should leave the Bosnian Krajina. Moreover, Radoslav Brđanin spoke openly against mixed marriages and publicly suggested a campaign of retaliatory ethnicity-base murder.

The Trial Chamber was satisfied beyond reasonable doubt that, although the Radoslav Brđanin's public statements may have been motivated in part by his drive towards self-advancement, they were intentional and had a disastrous impact on people of all ethnicities. They incited Bosnian Serbs to commit crimes and contributed to creating a climate where people were prepared to tolerate the commission of crimes as well as to commit crimes, and where well-meaning Bosnian Serbs felt dissuaded from extending any kind of assistance to non-Serbs. The non-Serb population of the Bosnian Krajina understood the Radoslav Brđanin's public statements as direct threats to leave the areas under Bosnian Serb occupation, and many of them did so in fear for their lives. A number of witnesses gave evidence that the Radoslav Brđanin's public statements constituted the main reason why they left the area.

The Trial Chamber found that Radoslav Brđanin espoused the strategic plan. Moreover, it was satisfied that many of the relevant physical perpetrators of the crimes in question equally did so and acted towards its implementation. However, the Trial Chamber was of the view that the mere espousal of the strategic plan by Radoslav Brđanin on the one hand and many of the relevant physical perpetrators on the other hand was not equivalent to an arrangement between them to commit a concrete crime. Indeed, Radoslav Brđanin and the relevant physical perpetrators could espouse the strategic plan and form a criminal intent to commit crimes with the aim of implementing the strategic plan *independently from each other* and without having an understanding or entering into any agreement between them to commit a crime. The Trial Chamber further examined whether an understanding or agreement to that effect between Radoslav Brđanin and the relevant physical perpetrators could be inferred from the fact that they acted in unison to implement the strategic plan. Given the physical and structural remoteness between Radoslav Brđanin and the relevant physical perpetrators and the fact that the relevant physical perpetrators in most of the cases have not even been personally identified, the Trial Chamber was not satisfied that the only reasonable conclusion that may be drawn from Radoslav Brđanin's and the relevant physical perpetrators' concerted action aimed towards the implementation of the strategic plan was that Radoslav Brđanin entered into an agreement with the relevant physical perpetrators to commit a crime. Indeed, the Trial Chamber was satisfied that the evidence allowed for other reasonable inferences to be drawn.

The Trial Chamber was of the view that joint criminal enterprise was not an appropriate mode of liability to describe the individual criminal responsibility of Radoslav Brđanin, given the extraordinarily broad nature of this case, where the Prosecution sought to include within a joint criminal enterprise a person as remote from the commission of the crimes charged in the indictment as Radoslav Brđanin. The Trial Chamber therefore dismissed joint criminal enterprise as a mode of liability in this case.

Planning was also dismissed as a mode of liability under Article 7(1) of the Statute as the Trial Chamber found that, taking into consideration the individual responsibility of Radoslav Brđanin that had been established and which will soon be dealt with here, there was insufficient evidence to conclude that Radoslav Brđanin was involved in the immediate preparation of the concrete crimes.

Regarding criminal responsibility under Article 7(3), the Trial Chamber found that although the ARK Crisis Staff had *de facto* authority over the municipal authorities and the police and influence over the army and paramilitary organisations, Radoslav Brđanin, as President of the ARK Crisis Staff or in any of his other positions between April and December 1992, did not have effective control over members of the municipal authorities, the police, the army or paramilitary organisations which would entail his material ability to prevent or punish the commission of crimes by these individuals. Thus, the Trial Chamber dismissed superior criminal responsibility under Article 7(3) of the Statute as a possible mode of liability.

The remaining modes of liability under Article 7(1) of the Statute were examined successively for each of the crimes charged in the indictment and the Trial Chamber reached the following conclusions:

- Regarding wilful killing, the Trial Chamber was satisfied that the ARK Crisis Staff decisions on disarmament between 9 and 18 May 1992 constituted practical assistance to the attacks of the Bosnian Serb forces on non-Serb towns, villages and areas, and that these decisions are attributable to the Accused. The Trial Chamber was further satisfied that Radoslav Brđanin was aware that during these armed attacks the Bosnian Serb forces would commit a number of crimes including the crime of wilful killing of a number of non-Serbs and that the members of the Bosnian Serb forces carrying out the killings in question had the required intent to kill. Through the ARK Crisis Staff decisions on disarmament, Radoslav Brđanin had a substantial effect on the commission of these killings. Therefore, the Trial Chamber was satisfied that the accused aided and abetted in the killing committed by the Bosnian Serb forces in the context of the armed attacks of the Bosnian Serb forces on non-Serb towns, villages and areas after 9 May 1992. The Trial Chamber was not satisfied that it has been sufficiently proved that the same ARK Crisis Staff decisions, or any of the acts of Radoslav Brđanin, render him criminally responsible for other killings mentioned in the indictment.

- The Trial Chamber was not satisfied that the evidence established beyond reasonable doubt that Radoslav Brđanin was aware that by issuing ARK Crisis Staff decisions on disarmament he would be assisting in the killings on a massive scale such as to amount to the crime of extermination. Nor had it been established beyond reasonable doubt that Radoslav Brđanin knew that the members of the Bosnian Serb forces intended to commit killings on a massive scale such as to amount to the crime of extermination.

- Applying the same reasoning for the acts of torture charged in the indictment as for the acts of wilful killing, the Trial Chamber found that Radoslav Brđanin aided and abetted the torture committed by Bosnian Serb forces in the context of the armed attacks of the Bosnian Serb forces on non-Serb towns, villages and areas after 9 May 1992, the date when the ARK Crisis Staff issued its first decision on disarmament. In addition, the Trial Chamber was satisfied Radoslav Brđanin aided and abetted the commission of the underlying acts of torture in camps and other detention facilities throughout the ARK by Bosnian Serb forces. It was established beyond reasonable doubt that, with the exception of the Jasenica and the Petar Kočić Elementary Schools, all the camps and detention facilities mentioned in the evidence came into being once the ARK Crisis Staff had been established.

- With regard to the crimes of deportation and forcible transfer, the Trial Chamber was satisfied that the ARK Crisis Staff decisions of 28 and 29 May 1992, advocating the resettlement of the non-Serb population, prompted the municipal authorities and the police who implemented them to commit the crimes of deportation and forcible transfer. The Trial Chamber was also of the view that the only reasonable conclusion that may be drawn when the terms of these decisions were considered in the light of the Radoslav Brđanin's unambiguous statements, made repeatedly from early April 1992 onwards, calling upon the non-Serb population to leave the Bosnian Krajina and stating that only a small percentage of non-Serbs

would be allowed to stay, was that the decisions could only have been meant as a direct incitement to deport or forcibly transfer non-Serbs from the territory of the ARK. The Trial Chamber was satisfied that, with the exception of the failed attempt at displacing the Bosnian Muslim population of Gornji Agići, Donji Agići and Crna Rijeka in Bosanski Novi on 24 May 1992, the deportations to Karlovac and forcible transfers to Travnik originating in the ARK, all took place after the adoption of the ARK Crisis Staff decisions previously mentioned. Furthermore, Radoslav Brđanin's espousal of the strategic plan, of which the crimes of deportation and forcible transfer formed an integral part, and the implementation of which he coordinated in his position as President of the ARK Crisis Staff demonstrated that he intended to induce the commission of the crimes of deportation and forcible transfer. On this basis, the Trial Chamber found that the accused instigated these forcible transfers and deportations. In addition, the Trial Chamber was satisfied that Radoslav Brđanin aided and abetted the execution of these crimes through his inflammatory and discriminatory public statements, the decisions on disarmament previously mentioned and finally through the ARK Crisis Staff decision of 12 June 1992 setting up the Agency for the Movement of People and Exchange in Banja Luka.

- The Trial Chamber reiterated the reasoning used for the crime of wilful killing for the crime of destruction, namely that the ARK Crisis Staff decisions on disarmament constituted practical assistance to the attacks of the Bosnian Serb forces on non-Serb towns, villages and areas and that Radoslav Brđanin was aware that crimes including the crime of wanton destruction of cities, towns and villages or devastation not justified by military necessity would be committed. The Trial Chamber was thus satisfied that Radoslav Brđanin aided and abetted in the wanton destruction of cities, towns and villages or devastation not justified by military necessity committed by the Bosnian Serb forces on non-Serb towns, villages and areas in Bosanski Novi, Bosanski Petrovac, Čelinac, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Sanski Most, Šipovo and Teslić after 9 May 1992. With the same reasoning and having examined the evidence carefully, the Trial Chamber was satisfied that Radoslav Brđanin aided and abetted the destruction or wilful damage done to institutions dedicated to religion committed by the Bosnian Serb forces in the context of the armed attacks of the Bosnian Serb forces on non-Serb towns, villages and areas in Bosanski Novi, Bosanski Petrovac, Čelinac, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Prnjavor, Sanski Most, Šipovo and Teslić after 9 May 1992.

- Regarding the crime of persecution, the Trial Chamber had previously established the responsibility of Radoslav Brđanin for aiding and abetting certain crimes of wilful killing, torture, destruction and devastation of cities, towns, villages and institutions dedicated to religion as well as deportation and forcible transfer. Radoslav Brđanin had also been found responsible for instigating certain incidents of deportation and forcible transfer. The Trial Chamber was further satisfied that Radoslav Brđanin aided and abetted persecution with respect to physical violence, rapes, sexual assaults, constant humiliation and degradation, as well as appropriation of property. Furthermore, the Trial Chamber was satisfied that Radoslav Brđanin ordered the denial of the fundamental right to employment through a decision of the ARK Crisis Staff of 22 June 1992, providing for the dismissal of virtually all non-Serbs in the ARK, an act which amounted to persecution. Moreover, Radoslav Brđanin aided and abetted persecution with respect to denying the right to freedom of movement and the right to proper judicial process. However, the Trial Chamber found that the evidence before it was insufficient to establish the responsibility of Radoslav Brđanin for the denial of the right to proper medical care. In relation to all these underlying acts, the Trial Chamber was satisfied that not only the physical perpetrators but also Radoslav Brđanin possessed the intent to discriminate against the Bosnian Muslim and Bosnian Croat victims.

When deciding on sentencing The Trial Chamber assessed the factors relevant to an appraisal of the gravity of the crimes of which Radoslav Brđanin had been found guilty.

The Prosecution in this case, considering the gravity of the crimes charged in the indictment, the aggravating factors submitted and the alleged absence of any significant mitigating factor, claimed that the criminal responsibility of Radoslav Brđanin could only be adequately punished with a sentence of life imprisonment.

The Defence put forward a preliminary objection to the absence from the proceedings of a separate and *ad hoc* sentencing hearing after conviction and submitted that because of this he could not make adequate submissions on sentencing. The Trial Chamber did not agree with this submission and the reasons are given in the judgement. The Defence did, however, make several submissions for the purpose of sentencing which are dealt with comprehensively in the Judgement and are summarised below.

The Trial Chamber found that the following were relevant aggravating circumstances to which appropriate weight was attached when determining the sentence: the position of leadership of Radoslav Brđanin, the status and vulnerability of the victims and the impact of the crimes on the victims, the willingness of Radoslav Brđanin's participation, the duration of the criminal conduct to a lesser extent and the educational background of Radoslav Brđanin.

However, the Trial Chamber found that the following were relevant mitigating circumstances to which the appropriate weight was attached when determining the sentence: contributing to the decision to provide shelter to Bosnian Muslims from Čelinac, treating all citizens equally, voicing concern about paramilitaries, participating in the decision to arrest members of the Miće group, the family status and age of Radoslav Brđanin, his speeches against profiteering from the armed conflict, his respectful conduct during the course of the proceedings and with witnesses testifying against him, and finally his remorse in individualised instances.

Finally, in accordance with the Statute and the Rules, the Trial Chamber took into consideration the general sentencing practice of the courts of the former Yugoslavia but acknowledged that it was not bound by this practice. The Trial Chamber noted that under the SFRY Criminal Code, the range of penalties existing in 1992 was a fine, confiscation of property, imprisonment, and capital punishment. The maximum term of imprisonment was 15 years, except for offences punishable with the death penalty, committed under "particularly aggravating circumstances," or causing "especially grave consequences," in which cases the maximum term of imprisonment was 20 years.

The Trial Chamber pursuant to Rule 87(C) decided to impose a single sentence in this case, as it reflects better the criminal conduct of Radoslav Brđanin which shows a constant pattern of criminal behaviour occurring within a closed temporal context.

On 1 September 2004, the Trial Chamber rendered its judgement: Radoslav Brđanin, on the basis of individual criminal responsibility (Article 7(1) of the Statute) was found guilty of:

- Persecutions; torture; deportation; inhumane acts (forcible transfer), (crimes against humanity, Article 5)
- Wanton destruction of cities, towns or villages or devastation not justified by military necessity; destruction or wilful damage done to institutions dedicated to religion, (violations of the laws or customs of war, Article 3)
- Wilful killing; torture (grave breaches of the 1949 Geneva Conventions, Article 2)

He was acquitted of all the other counts.

Sentence: 32 years' imprisonment

He was entitled to credit for 5 years, 1 month and 26 days, as of the date of the judgement, calculated from the date of his deprivation of liberty, the 6 July 1999, together with such additional time as he may serve pending the determination of any appeal.

APPEALS CHAMBER JUDGEMENT

Radoslav Brđanin filed his notice of appeal on 1 October 2004. The Prosecution filed its notice on 30 September 2004.

On 28 January 2005, the Prosecution filed its appeal brief. On 25 July 2005, Radoslav Brđanin filed his appeal brief.

An appeals hearing took place on 7 and 8 December 2006.

The first matter in the Radoslav Brđanin's appeal related to his conviction for torture in the camps and detention facilities. Radoslav Brđanin claimed that the Trial Chamber erred in finding that he aided and abetted these tortures. The Appeals Chamber agreed that there was insufficient evidence for a reasonable trier of fact to find that Radoslav Brđanin's conduct had a substantial effect on the commission of torture. The Trial Chamber inferred that Radoslav Brđanin's failure to intervene to prevent torture in

the camps and detention facilities, together with his public attitude, had the effect of encouraging personnel in camps and detention facilities to commit torture. The Trial Chamber reached this conclusion, however, without any evidence that such personnel were even aware of Radoslav Brđanin's public attitude towards the camps and facilities. The Appeals Chamber accordingly reversed Radoslav Brđanin's convictions for torture in camps and detention facilities. In particular, the Appeals Chamber overturned Radoslav Brđanin's conviction for aiding and abetting members of the Bosnian Serb forces in the commission of the following crimes: the torture of a number of Bosnian Muslim civilians in the Kozila camp in early July 1992; the torture of a number of Bosnian Muslim women in the Keraterm camp in July 1992; the torture of a number of Bosnian Muslim women in the Trnopolje camp between May and October 1992; the torture of a number of Bosnian Muslim women in the Omarska camp in June 1992; the torture of a number of Bosnian Muslim men in the SUP building in Teslić; and the torture of a number of Bosnian Muslim and Bosnian Croat civilians in the community building in Pribinić in June 1992.

The Appeals Chamber also reversed the conviction entered by the Trial Chamber for wanton destruction of cities, towns or villages, or devastation not justified by military necessity to the extent that this conviction related to the municipality of Bosanska Krupa. For the other municipalities, however, the Appeals Chamber concluded that the Trial Chamber did not err in finding Radoslav Brđanin responsible beyond reasonable doubt for aiding and abetting the crimes of (1) wanton destruction of cities, towns, and villages or devastation not justified by military necessity; and (2) destruction or wilful damage done to religious institutions.

Regarding the appeal by the Prosecution, the Appeals Chamber granted grounds 1 and 2 of their appeal.

As to Ground 1, the Appeals Chamber found that a member of a JCE could be held responsible for crimes committed by non-members of the enterprise, provided that the crime could be imputed to one member of the joint criminal enterprise and that this member, when using the non-member principal perpetrator, acted in accordance with the common plan.

As to Ground 2, the Appeals Chamber found that the Trial Chamber erred in holding that the Prosecution must prove that the accused had a specific agreement with the principal perpetrator to commit a particular crime. Such a showing of a specific agreement was unnecessary in view of the common plan necessarily shared by all JCE members. Nonetheless, the Prosecution must of course prove other elements, including the fact that the accused shared the common criminal purpose and that the crime in question forms part of that common criminal purpose. Also with regard to Ground 2, the Appeals Chamber found that the Trial Chamber erred in finding that the doctrine of JCE applies only to relatively small-scale cases. Prior cases provide clear authority for JCEs on scales much larger than one municipality.

Therefore, the Appeals Chamber found that, in view of this, new convictions can be entered against Radoslav Brđanin in the specific and peculiar circumstances of this case only if the principal perpetrators were found to be JCE members. The Appeals Chamber concluded that the Trial Chamber did not find that all the principal perpetrators were JCE members. Nor did the Trial Chamber specify *which* principal perpetrators were JCE members. Accordingly, in light of the understanding *inter partes*, the Appeals Chamber entered no new convictions under the JCE doctrine.

Judge Shahabuddeen took a different view from the majority in regard to certain aspects of the Prosecution's appeal on JCE, and he filed a partially dissenting opinion to that effect. Judge Meron also filed a brief separate opinion outlining his own views with relation to a particular aspect of the Prosecution's appeal. Judge Van Den Wyngaert appended a declaration on this issue.

Finally, since the Appeals Chamber reversed certain convictions, it reduced the sentence given to Radoslav Brđanin. However, in light of the relative gravity of the crimes for which Radoslav Brđanin's convictions had been overturned and that of the crimes for which Brđanin's convictions had been upheld, as well as the relevant aggravating and mitigating circumstances, this reduction was quite limited.

On 3 April 2007, the Appeals Chamber rendered its judgement and reduced the Trial Chamber's sentence to 30 years' imprisonment.

On 4 March 2008, Radoslav Brđanin was transferred to Denmark to serve his sentence. Credit was given for time spent in detention since 6 July 1999.