

**UNITED  
NATIONS**

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

Case No.: IT-95-5/18-T

Date: 24 March 2016

Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge O-Gon Kwon, Presiding Judge  
Judge Howard Morrison  
Judge Melville Baird  
Judge Flavia Lattanzi, Reserve Judge

**Registrar:** Mr. John Hocking

**Judgement of:** 24 March 2016

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**PUBLIC REDACTED VERSION OF JUDGEMENT ISSUED ON  
24 MARCH 2016**

**VOLUME I OF IV**

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**Office of the Prosecutor**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**The Accused**

Mr. Radovan Karadžić

Municipalities; and (iv) “terrorising and abuse of Bosnian Muslims of Srebrenica in Potočari and the beating of men and boys of Srebrenica prior to their execution”.<sup>1632</sup>

504. The Appeals Chamber has held that the right to be free from “cruel, inhuman or degrading treatment or punishment” is recognised under customary international law and enshrined in international human rights instruments.<sup>1633</sup> Cruel and/or inhumane treatment is defined as an act or omission which causes serious mental or physical suffering or injury, or which constitutes a serious attack on human dignity.<sup>1634</sup> The act or omission must be committed with the intent to cause serious mental or physical suffering or injury or a serious attack on human dignity, or with the knowledge that serious mental or physical suffering or injury or the serious attack on human dignity was a probable consequence of the act or omission.<sup>1635</sup> The Chamber will now examine, in turn, the various forms of cruel or inhumane treatment listed by the Prosecution as underlying acts of persecution under Count 3 of the Indictment.

#### (1) Torture

505. Torture is expressly prohibited in Article 5(f) of the Statute and may constitute persecution if the general requirements of persecution are met.<sup>1636</sup> The Appeals Chamber has held that the definition of torture, as set out in the Convention Against Torture may be considered to reflect customary international law.<sup>1637</sup> Torture constitutes one of the most serious attacks upon a person’s mental or physical integrity.<sup>1638</sup> The seriousness of torture lies in the infliction of severe mental or

<sup>1632</sup> Indictment, paras. 60(b)–(e).

<sup>1633</sup> *Kordić and Čerkez* Appeal Judgement, para. 106; *Blaškić* Appeal Judgement, para. 143.

<sup>1634</sup> *Čelebići* Appeal Judgement, paras. 424, 426. The Chamber notes that it is settled jurisprudence that the material elements of cruel treatment under Article 3 and “inhuman” treatment under Article 2 are the same and that the sole distinct element between cruel and inhuman treatment stems from the protected person requirement under Article 2. *Čelebići* Appeal Judgement, para. 426; *Blagojević and Jokić* Trial Judgement, para. 586, fn. 1938. Furthermore, it is settled that these offences and other *inhumane* acts under Article 5(i) of the Statute are also the same. *See, e.g., Simić et al.* Trial Judgement, para. 74. While in this present case cruel and/or inhumane treatment is charged as an underlying act of the offence of persecution, the Tribunal’s jurisprudence has established that the definition of this underlying act is same as cruel treatment and inhuman treatment. *See, e.g., Gotovina et al.* Trial Judgement, Vol. II, para. 1791; *Tolimir* Trial Judgement, para. 853; *Popović et al.* Trial Judgement, para. 975.

<sup>1635</sup> *Popović et al.* Trial Judgement, para. 974; *Strugar* Trial Judgement, para. 261; *Limaj et al.* Trial Judgement, para. 231.

<sup>1636</sup> *See* paras. 497–500.

<sup>1637</sup> *Brđanin* Appeal Judgement, para. 246; *Kunarac et al.* Appeal Judgement, para. 146; *Furundžija* Appeal Judgement, para. 111. *See also* Article 1(1) of the Convention Against Torture which defines torture as:

“[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

<sup>1638</sup> *Krnjelac* Trial Judgement, para. 180.

the Bosnian Serb attack.<sup>19182</sup> Second, the Chamber recalls that, as mentioned above, the boarding process, which was coercive, was carried out under the direct supervision of the Bosnian Serb Forces.<sup>19183</sup> Members of the Bosnian Serb Forces physically forced some of the individuals gathered in Potočari to board the buses.<sup>19184</sup> Additionally, on 13 July, Radislav Janković ordered a member of the Bratunac Brigade MP to return to Srebrenica to see if any Bosnian Muslims were still there.<sup>19185</sup> Furthermore, the Chamber recalls that members of the Bosnian Serb Forces threatened to shoot an elderly patient who wished to remain in the Srebrenica hospital if the UNMOs did not remove her and take her with them.<sup>19186</sup>

5640. On the basis of all of this evidence, the Chamber considers that there is no doubt that the Bosnian Serb Forces intended to forcibly remove from the Srebrenica enclave the Bosnian Muslim women, children, and some elderly men who had gathered in Potočari by 11 July.

### (C) Conclusion

5641. With respect to the transfer described in paragraphs 5623 to 5634 above, the Chamber finds that those who were displaced left their places of residence and belongings without any guarantee concerning the possibility to return in the future and that this caused the victims serious mental suffering or injury. Additionally, some of those displaced from Srebrenica had been previously displaced from their homes in other municipalities;<sup>19187</sup> their displacement from Srebrenica compounded their suffering. These acts were committed with the intent to inflict serious mental suffering, or with knowledge that these acts were likely to cause such suffering. These acts are of similar seriousness to deportation which is listed under Article 5(d) of the Statute. The Chamber therefore finds that these acts are sufficiently serious to amount to “other inhumane acts” pursuant to Article 5(i) of the Statute.

5642. The Chamber found that there was a widespread and systematic attack against the Bosnian Muslim and Bosnian Croat civilian populations of BiH. The Chamber finds that acts referred to in paragraphs 5623 to 5634 of this section were part of this widespread and systematic attack and that the perpetrators of these acts knew of the attack and that their crimes were part of it. In reaching that conclusion, the Chamber considered the locations, time period, and the identity and status of the victims, which correspond with the scope of the widespread and systematic attack, as well as

<sup>19182</sup> See paras. 5625, 5629–5630.

<sup>19183</sup> See paras. 5626–5627.

<sup>19184</sup> See para. 5627.

<sup>19185</sup> Mile Janjić, P1194 (Transcript from *Prosecutor v. Blagojević & Jokić*), T. 9799–9800.

<sup>19186</sup> See fn. 17367; P4140 (Witness statement of Joseph Kingori dated 8 January 2002), para. 186.

<sup>19187</sup> See para. 2465.