

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-48-ES

Date: 25 August 2021

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Abubacarr Tambaou

Order of: 25 August 2021

PROSECUTOR

v.

RADOSLAV BRĐANIN

CONFIDENTIAL

**ORDER FOR THE TRANSFER OF RADOSLAV BRĐANIN TO THE
UNITED NATIONS DETENTION UNIT ON A TEMPORARY BASIS**

The Office of the Prosecutor:

Mr. Serge Brammertz

Counsel for Mr. Radoslav Brđanin:

Mr. Novak Lukić

Kingdom of Denmark

I, CARMEL AGIUS, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively);

NOTING that, on 6 July 1999, Mr. Radoslav Brđanin (“Brđanin”) was arrested in Bosnia and Herzegovina by the Multinational Stabilisation Force and was transferred to the United Nations Detention Unit (“UNDU”) in The Hague, Kingdom of the Netherlands (“Netherlands”);¹

NOTING that, on 3 April 2007, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”): (i) affirmed Brđanin’s convictions for persecution (incorporating torture), deportation, and other inhumane acts (forcible transfer) as crimes against humanity, wilful killing and torture as grave breaches of the Geneva Conventions, as well as wanton destruction of cities, towns or villages or devastation not justified by military necessity, and destruction or wilful damage done to institutions dedicated to religion, as violations of the laws or customs of war; (ii) reversed Brđanin’s convictions for three of these crimes with respect to specific locations only; and (iii) reduced Brđanin’s sentence from 32 to 30 years of imprisonment;²

NOTING that, on 4 March 2008, Brđanin was transferred to the Kingdom of Denmark (“Denmark”) to serve his sentence;³

NOTING the confidential memoranda conveyed to me by the Registrar of the Mechanism (“Registrar”) on 16 April and 19 August 2021, in which the Registrar, *inter alia*: (i) refers to previous communications from Denmark informing the Mechanism of its decision to release Brđanin, following his eligibility for early release under Danish law, and requesting that Brđanin be transferred from Denmark within a certain time frame; (ii) indicates that no other enforcement State for Brđanin has yet been identified; and (iii) therefore recommends, in view of there being no practical alternative, that Brđanin be returned to the UNDU;⁴

RECALLING that, pursuant to Article 25(2) of the Statute of the Mechanism (“Statute”), the Mechanism shall have the power to supervise, *inter alia*, the enforcement of sentences pronounced by the ICTY as well as the implementation of sentence enforcement agreements entered into by the United Nations with Member States;

¹ Decision on the Application of Radoslav Brđanin for Early Release, 28 February 2020 (public redacted) (“Decision of 28 February 2020”), para. 2.

² *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Judgement, 3 April 2007, paras. 3, 503-504, p. 162.

³ Decision of 28 February 2020, para. 5. *See also* Agreement between the United Nations and the Kingdom of Denmark on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia, dated 4 June 2002 (“Enforcement Agreement”). The Enforcement Agreement applies *mutatis mutandis* to the Mechanism. *See* Security Council Resolution 1966 (2010), 22 December 2010, para. 4.

RECALLING that Article 3(1) of the Enforcement Agreement provides that “[i]n enforcing the sentence pronounced by the [ICTY], the competent national authorities of the requested State shall be bound by the duration of the sentence”;

RECALLING that Article 10 of the Enforcement Agreement states, *inter alia*, that “[i]f, at any time after the decision has been taken to enforce the sentence, for any legal or practical reasons, further enforcement has become impossible, the requested State shall promptly inform the Registrar”, who “shall make the appropriate arrangements for the transfer of the convicted person”;

NOTING with regret that Denmark has made it clear that it “do[es] not find it possible to continue enforcing the sentence for a longer period and without a final deadline”,⁵ and that consequently Brđanin must be transferred from Denmark to another enforcement State, or alternatively to the Mechanism, before a certain day in September 2021;⁶

CONSIDERING that Denmark has informed the Registrar of its view that further enforcement of Brđanin’s sentence in Denmark is no longer possible, in line with Article 10 of the Enforcement Agreement;

CONSIDERING, therefore, that the Registrar is to make the appropriate arrangements for the transfer of Brđanin in accordance with Article 10 of the Enforcement Agreement;

CONSIDERING FURTHER the Registrar’s recommendation that Brđanin be returned to the UNDU;

PURSUANT TO Article 25(2) of the Statute and Rules 23(A), 127(C), and 128 of the Rules of Procedure and Evidence of the Mechanism;

⁴ Internal Memorandum from the Registrar to the President, dated 16 April 2021 (confidential), paras. 1, 3-4; Internal Memorandum from the Registrar to the President, dated 19 August 2021 (confidential), paras. 1-2, 8.

⁵ Communication from the Embassy of Denmark to the Netherlands (“Danish Embassy”) to the Mechanism, dated 8 June 2021, *conveying, inter alios*, to the President and the Registrar, a letter from the Director-General of the Danish Prison and Probation Service to the President, dated 2 June 2021 (“Danish Letter of 2 June 2021”), p. 1. *See also* Internal Memorandum from the Registrar to the President, dated 13 January 2021 (confidential), *conveying a note verbale* from the Danish Embassy to the Mechanism, dated 6 January 2021, *transmitting* a letter from the Danish Prison and Probation Service to the Mechanism, dated 8 December 2020, pp. 1-2; *Note verbale* from the Mechanism to the Danish Embassy, dated 29 January 2021 (confidential), pp. 1-4; Communication from the Danish Embassy to the Mechanism, dated 25 March 2021, *conveying* a letter from the Director-General of the Danish Prison and Probation Service to the President, dated 24 March 2021, p. 1; *Note verbale* from the Mechanism to the Danish Embassy, dated 21 April 2021, *conveying* a letter from the President to the Minister of Justice of Denmark, dated 21 April 2021 (confidential), pp. 1-3; *Note verbale* from the Mechanism to the Danish Embassy, dated 15 June 2021, *conveying* a letter from the President to the Director-General of the Danish Prison and Probation Service, dated 15 June 2021 (confidential) (“President Letter of 15 June 2021”), p. 1.

⁶ Danish Letter of 2 June 2021, p. 1. *See also* President Letter of 15 June 2021, pp. 1-2.

HEREBY INSTRUCT the Registrar to take all necessary measures and make the appropriate arrangements for Brđanin to be returned to the UNDU on a temporary basis;

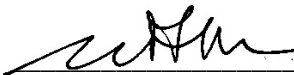
ORDER that, following his transfer to the UNDU, Brđanin shall remain in the custody of the Mechanism pending the finalisation of arrangements for his transfer to the State where the remainder of his sentence will be served;

INSTRUCT the Registrar to transmit a copy of the present Order to the Government of the Netherlands, including the Ambassador for International Organisations; and

INSTRUCT the Registrar to lift the confidential status of the present Order once Brđanin's transfer to the UNDU has been completed.

Done in English and French, the English version being authoritative.

Done this 25th day of August 2021,
At The Hague,
The Netherlands.


Judge Carmel Agius
President

[Seal of the Mechanism]



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