

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-48-ES

Date: 28 February 2020

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Olufemi Elias

Decision of: 28 February 2020

PROSECUTOR

v.

RADOSLAV BRĐANIN

PUBLIC REDACTED VERSION

**DECISION ON THE APPLICATION OF RADOSLAV BRĐANIN
FOR EARLY RELEASE**

The Office of the Prosecutor

Mr. Serge Brammertz
Mr. Mathias Marcussen

Counsel for Mr. Radoslav Brđanin

Mr. Novak Lukić

The Kingdom of Denmark

1. I, Carmel Agius, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of “Radoslav Brđanin’s Submission in Accordance with Article 6 of the Practice Direction on the Procedure for Determination of Applications for Pardon, Commutation of Sentence and Early Release” filed confidentially by Mr. Radoslav Brđanin (“Brđanin”) before my predecessor, Judge Theodor Meron, on 15 January 2019 (“Application”).¹

I. BACKGROUND

2. On 6 July 1999, Brđanin was arrested in Bosnia and Herzegovina by the Multinational Stabilisation Force and transferred to the United Nations Detention Unit in The Hague.² At his initial appearance before the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on 12 July 1999, Brđanin pleaded not guilty to the charge against him in the initial indictment, and subsequently pleaded not guilty to all additional counts contained in amended indictments.³

3. On 1 September 2004, Trial Chamber II of the ICTY (“Trial Chamber”) convicted Brđanin of persecutions (incorporating torture), deportation, and inhumane acts (forcible transfer) as crimes against humanity; wilful killing and torture as grave breaches of the Geneva Conventions; and 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.⁴ The Trial Chamber sentenced Brđanin to 32 years of imprisonment.⁵

4. On 3 April 2007, the Appeals Chamber of the ICTY (“Appeals Chamber”) reversed Brđanin’s convictions, with respect to specific locations only, for persecutions as a crime against humanity, torture as a grave breach of the Geneva Conventions, and wanton destruction of cities, towns or villages or devastation not justified by military necessity as a violation of the laws or

¹ Brđanin filed a public redacted version of the Application on 19 August 2019, following my Decision ordering him to do so. *See* Decision on Prosecution Request for Public Redacted Version of Early Release Application, 13 August 2019, p. 2. *See also* Notice of Filing of Public Redacted Version of Radoslav Brđanin’s Submission in Accordance with Article 6 of the Practice Direction on the Procedure for Determination of Applications for Pardon, Commutation of Sentence and Early Release, 19 August 2019 (“Brđanin Notice of Filing Public Redacted Version”).

² *See Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Judgement, 1 September 2004 (“Trial Judgement”), Annex B, para. 1156.

³ Trial Judgement, Annex B, para. 1156.

⁴ Trial Judgement, para. 1152. *See* Trial Judgement, paras. 16-17, 19.

⁵ Trial Judgement, para. 1153.

customs of war.⁶ The Appeals Chamber imposed a new sentence on Brđanin of 30 years of imprisonment.⁷

5. On 4 March 2008, Brđanin was transferred to the Kingdom of Denmark (“Denmark”) to serve the remainder of his sentence.⁸

II. APPLICATION

6. On 15 January 2019, Brđanin submitted the Application before my predecessor. In it, Brđanin requested that he be released early upon having served two-thirds of his sentence.⁹ He stated that, if released early, he plans to return to Banja Luka, Bosnia and Herzegovina.¹⁰

7. On 17 January 2019, my predecessor requested the Registrar of the Mechanism (“Registrar”) to undertake the steps prescribed in paragraphs 3, 4, and 5 of the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism (“Practice Direction”).¹¹

8. In a letter dated 24 January 2019, the Registrar contacted the Embassy of Denmark to the Netherlands in order to request: (i) information from the Danish authorities regarding Brđanin’s eligibility for early release under Danish law; (ii) a report from the relevant Danish authorities as to the behaviour of Brđanin during his period of incarceration and the general conditions under which he was imprisoned; and (iii) any psychiatric or psychological evaluations prepared on the mental condition of Brđanin during the period of incarceration.¹²

9. On 25 April 2019, the Registry of the Mechanism (“Registry”) transmitted to me a letter from the Danish Department of the Prison and Probation Services, dated 10 April 2019. In the

⁶ *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Judgement, 3 April 2007 (“Appeal Judgement”), p. 162. See Appeal Judgement, paras. 503-504.

⁷ Appeal Judgement, p. 162.

⁸ See ICTY Press Release, Radoslav Brđjanin transferred to Denmark to serve sentence, 4 March 2008, available at: <http://www.icty.org/en/press/radoslav-brdjanin-transferred-denmark-serve-sentence>. I observe that although the title of this press release refers to “Brđjanin”, the remainder of the text correctly refers to “Brđanin”.

⁹ Application, para. 16.

¹⁰ Application, para. 12.

¹¹ MICT/3/Rev.2, 20 February 2019. See Internal Memorandum from the then-President to the Registrar, dated 17 January 2019 (confidential), para. 2.

¹² See Internal Memorandum from the Chief, Registry, Hague branch, to the President, dated 25 April 2019 (confidential) (“Registry Memorandum of 25 April 2019”), para. 2.

letter, the Danish authorities seek the views of the Mechanism with respect to the information that under Danish law, Brđanin will be eligible for release on parole on 6 July 2019 provided that he does not commit a criminal offence for five years after his release.¹³ The Danish authorities stated that Brđanin’s incarceration “has in every way been unproblematic and he has submitted to conditions of imprisonment” and that “Denmark has no reason to consider release as inadvisable”.¹⁴ They further noted their intention to grant release on parole to Brđanin, a precondition of which would be that he leaves Denmark at the time of his release, and invited the Mechanism’s views as to whether release on parole would be appropriate.¹⁵ The Danish authorities also noted that no psychiatric or psychological evaluation had been prepared since Brđanin’s arrival in Denmark.¹⁶

10. On 28 June 2019, I requested the Registrar to obtain further information in relation to Brđanin’s Application in line with paragraph 4(d) of the Practice Direction, namely: (i) the specific address in Banja Luka at which Brđanin would reside should he be granted early release; (ii) a psychological evaluation of Brđanin with his consent; (iii) any comments from the Office of the Prosecutor of the Mechanism (“Prosecution”) in relation to Brđanin’s Application; (iv) comprehensive information from the Witness Support and Protection Unit of the Mechanism (“WISP”) concerning the victims of the crimes for which Brđanin was convicted and who testified in his case, as well as whether any are currently residing in the vicinity of Banja Luka; (v) whether any victims’ associations or other groups exist in relation to the crimes for which Brđanin was convicted; and (vi) any media reports concerning Brđanin that have been published in Bosnia and Herzegovina in the past two years.¹⁷

11. On 13 August 2019, I issued the “Decision on Prosecution Request for Public Redacted Version of Early Release Application”, in which I ordered Brđanin to file a public redacted version of his Application and ordered the Prosecution to do likewise with respect to its request for this

¹³ See Registry Memorandum of 25 April 2019, *transmitting* a letter from the Danish Department of the Prisons and Probation Service, dated 10 April 2019 (“Letter of 10 April 2019”).

¹⁴ Letter of 10 April 2019.

¹⁵ Letter of 10 April 2019.

¹⁶ Letter of 10 April 2019.

¹⁷ Internal Memorandum from the President to the Registrar, dated 28 June 2019 (confidential), paras. 2-8.

relief.¹⁸ Brđanin and the Prosecution filed public redacted versions of these documents on 19 and 21 August 2019, respectively.¹⁹

12. On 21 August 2019, the Registry communicated to me information regarding relevant victims' associations or other groups, among which was "The Association of Camp Detainees" ("Victims' Association").²⁰ The Registry's communication also included two articles concerning Brđanin published in the previous two years in Bosnia and Herzegovina, both of which "primarily focus on [another individual] in relation to the facts established in the *Brđanin* case".²¹

13. In a *Note Verbale* dated 29 August 2019, the Embassy of Denmark to the Netherlands transmitted to my Office a psychiatric evaluation of Brđanin.²²

14. On 4 September 2019, the Registry transmitted to me the comments of the Prosecutor of the Mechanism ("Prosecutor") with regard to Brđanin's Application, as well as a report from the Prosecution as to any cooperation provided by Brđanin, dated 23 August and 6 May 2019, respectively.²³

15. On 26 September 2019, I issued a confidential and *ex parte* invitation to Bosnia and Herzegovina in relation to the Application.²⁴ In particular, I expressed that it was appropriate to seek any relevant views that the national authorities of Bosnia and Herzegovina, as well as the Mayor of Banja Luka, may wish to offer with regard to Brđanin's Application and his indication

¹⁸ Decision on Prosecution Request for Public Redacted Version of Early Release Application, p. 2.

¹⁹ Brđanin Notice of Filing Public Redacted Version; Prosecution Notice of Filing of Public Redacted Version of Prosecution Request for Public Redacted Version of Brđanin's Submission, 21 August 2019.

²⁰ Internal Memorandum from the Chief, Registry, Hague branch, to the President, dated 21 August 2019 (confidential) ("Registry Memorandum of 21 August 2019"), Annex, pp. 1-3 (referring, *inter alia*, to "Savez logoraša BiH, Sarajevo" and stating that "*The Association of Camp Detainees* represents former detainees in the camps in BiH, as well as other victims of torture during the conflict").

²¹ Registry Memorandum of 21 August 2019, Annex, pp. 3-7.

²² *Note Verbale* from the Embassy of Denmark to the Netherlands to the Office of the President, dated 29 August 2019, transmitting an opinion from a Consultant Psychiatrist for the Danish Department of the Prisons and Probation Service, dated 26 August 2019 ("Psychiatric Report"). The Mechanism subsequently translated the Psychiatric Report from Danish into English and B/C/S. Page references below are to the English translation. I note that although the English translation refers to the "Danish Prison and Probation Services", I will apply the title used by the Danish Department of the Prisons and Probation Service in its Letter of 10 April 2019.

²³ Internal Memorandum from the Deputy Chief, Registry, Hague branch, to the President, dated 4 September 2019 ("Registry Memorandum of 4 September 2019") (confidential), transmitting an Internal Memorandum from the Prosecutor to the Registrar, dated 23 August 2019 (confidential) ("Prosecutor Memorandum of 23 August 2019"), and an Internal Memorandum from the Senior Legal Officer, Officer-in-Charge, Office of the Prosecutor, Hague branch, to the Chief, Registry, Hague branch, dated 6 May 2019 (confidential) ("Prosecution Memorandum of 6 May 2019").

²⁴ Invitation to Bosnia and Herzegovina Related to the Application for Early Release of Radoslav Brđanin, 26 September 2019 (confidential and *ex parte*) ("Invitation to Bosnia and Herzegovina").

that, if released early, he will reside in Banja Luka.²⁵ I therefore invited Bosnia and Herzegovina to provide any such views, to relay my request to the Mayor of Banja Luka as well, and to communicate any views within an appropriate timeframe, but no later than 18 October 2019.²⁶

16. On 27 September 2019, I requested the Registrar to contact the Victims' Association to draw its attention to the public redacted version of Brđanin's Application and invite it to provide any relevant views, no later than 18 October 2019, concerning the Application and Brđanin's intention to reside in Banja Luka.²⁷

17. On 16 October 2019, the Registrar provided me with a strictly confidential memorandum from the Head of WISP conveying information in relation to 122 witnesses in the *Brđanin* case.²⁸ The Registrar observed that this information was provided on a strictly confidential basis and should not be made available to Brđanin or the Prosecution.²⁹

18. On 25 October 2019, the Registrar informed me that although the Registry had communicated the invitations to the national authorities of Bosnia and Herzegovina, as well as to the Victims' Association, no response to either invitation had been received by that date.³⁰

19. On 14 November 2019, I informed the Registrar that I was in complete agreement that the WISP material should not be made available to Brđanin or the Prosecution, in light of the sensitivity of the information as well as the necessity of ensuring that WISP can continue to operate with the highest level of impartiality.³¹ I further informed the Registrar that I also had not received any views from Bosnia and Herzegovina or the Victims' Association.³² With reference to paragraph 5 of the Practice Direction, I requested that the Registry provide to Brđanin, in the original language

²⁵ Invitation to Bosnia and Herzegovina, p. 2.

²⁶ Invitation to Bosnia and Herzegovina, p. 3.

²⁷ Internal Memorandum from the President to the Registrar, dated 27 September 2019 (confidential) ("Memorandum of 27 September 2019"), para. 3.

²⁸ Internal Memorandum from the Registrar to the President, dated 16 October 2019 (confidential) ("Registrar Memorandum of 16 October 2019"), transmitting Internal Memorandum from the Head of WISP to the Registrar, dated 16 October 2019 (strictly confidential).

²⁹ Registrar Memorandum of 16 October 2019, para. 3.

³⁰ Internal Memorandum from the Registrar to the President, 25 October 2019 (confidential) ("Registrar Memorandum of 25 October 2019"), paras. 2-4 (elaborating that the Registry communicated by *Note Verbale* to the Embassy of Bosnia and Herzegovina to the Netherlands dated 30 September 2019, and that the Registry had contacted the Victims' Association by a confidential letter dated 1 October 2019).

³¹ Internal Memorandum from the President to the Registrar, dated 14 November 2019 (confidential) ("Memorandum of 14 November 2019"), para. 2. See Practice Direction on the Provision of Support and Protection Services to Victims and Witnesses, MICT/40, 26 November 2019, Art. 6(2).

³² Memorandum of 14 November 2019, para. 3.

as well as in B/C/S: (i) the Registry Memorandum of 21 August 2019; (ii) the Psychiatric Report, as well as its English translation; (iii) the Registry Memorandum of 4 September 2019, along with the enclosed Prosecutor Memorandum of 23 August 2019 and Prosecution Memorandum of 6 May 2019; (iv) my Memorandum of 27 September 2019; and (v) the memorandum to the Registry containing this request.³³ Finally, I asked the Registry to specifically inform Brđanin that this material is to remain confidential, and that he would have 10 days to examine the information and make any submissions that he wishes, in line with paragraphs 6 and 9 of the Practice Direction.³⁴

20. On 2 December 2019, I requested that the Registry also provide to Brđanin, in the original language as well as in B/C/S: (i) the Letter of 10 April 2019; and (ii) the memorandum to the Registry containing this request.³⁵ I likewise requested that the Registry specifically inform Brđanin that this material is to remain confidential.³⁶ By a letter dated 4 December 2019, the Registry transmitted the identified documentation to Brđanin and his Counsel.³⁷

21. On 23 December 2019, in response to the information transmitted to Brđanin at my request, the Registry received handwritten comments from Brđanin, which were translated into English and provided to me on 9 January 2020.³⁸

22. In a *Note Verbale* dated 14 January 2020, the Embassy of Bosnia and Herzegovina to the Netherlands transmitted the views of the authorities in Republika Srpska and the Mayor of Banja Luka with respect to Brđanin's Application.³⁹ I received these documents on 20 January 2020.⁴⁰

³³ Memorandum of 14 November 2019, paras. 4-5. I requested that the names of all staff members be redacted from the various memoranda before being provided to Brđanin.

³⁴ Memorandum of 14 November 2019, para. 6.

³⁵ Internal Memorandum from the President to the Registrar, dated 2 December 2019 (confidential) ("Memorandum of 2 December 2019"), paras. 2-3. I also requested that the names of all staff members be redacted from this memorandum before being provided to Brđanin.

³⁶ Memorandum of 2 December 2019, para. 3.

³⁷ Internal Memorandum from the Registrar to the President, dated 20 December 2019 (confidential), para. 2.

³⁸ Internal Memorandum from the Registrar to the President, dated 9 January 2020 (confidential), para. 1, *transmitting* Brđanin's "Comments on Documents to be Considered for my Possible Early Release", dated 23 December 2019 ("Brđanin's Comments").

³⁹ *Note Verbale* from the Embassy of Bosnia and Herzegovina to the Netherlands (confidential), dated 14 January 2020 ("Note Verbale dated 14 January 2020"), *transmitting* communications from the Ministry of Foreign Affairs of Bosnia and Herzegovina, the authorities of Republika Srpska, and the Mayor of Banja Luka.

⁴⁰ The *Note Verbale* dated 14 January 2020 was placed confidentially and *ex parte* on the judicial record on Friday, 17 January 2020, and was distributed by the Registry on Monday, 20 January 2020. On 23 January 2020, the Mechanism informed the Embassy of Bosnia and Herzegovina to the Netherlands that the Decision adjudicating the Application might include a description of the positions expressed by the national authorities, unless there would be any

23. Subsequently, I consulted with Judge Meron in his capacity as a Judge of the sentencing Chamber,⁴¹ as foreseen under Rule 150 of the Rules of Procedure and Evidence of the Mechanism (“Rules”). Since no other Judge, besides me,⁴² who imposed the sentence continues to be a Judge of the Mechanism, I availed myself of the right to consult with another Judge of the Mechanism, Judge William H. Sekule.

III. APPLICABLE LAW

24. Article 26 of the Statute of the Mechanism (“Statute”) states: “There shall only be pardon or commutation of sentence if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law.” While Article 26 of the Statute, like the Statutes of the International Criminal Tribunal for Rwanda (“ICTR”) and the ICTY before, does not specifically mention requests for early release of convicted persons, the Rules reflect the President’s power to deal with such requests and the longstanding practice of the ICTR, the ICTY, and the Mechanism in this regard.

25. Rule 151 of the Rules sets out the general standards for granting pardon, commutation of sentence, or early release. It provides that in making his or her determination, the President shall take into account, *inter alia*, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner’s demonstration of rehabilitation, and any substantial cooperation of the prisoner with the Prosecutor. Paragraph 10 of the Practice Direction stipulates that the President shall determine whether early release is to be granted having regard to the criteria specified in Rule 151 of the Rules, the interests of justice, the general principles of law, and any other information that he or she considers relevant.

26. Paragraph 3 of the Practice Direction specifies that a convicted person may directly petition the President for pardon, commutation of sentence, or early release, after which the Mechanism shall request the enforcing State to inform it whether the convicted person is eligible for pardon, commutation of sentence, or early release under the domestic law of the enforcing State. Paragraph 4 of the Practice Direction sets out the duties of the Registrar to collect information after

objections and, if so, the Mechanism requested to be informed no later than 14 February 2020. *See Note Verbale* from the Office of the President to the Embassy of Bosnia and Herzegovina to the Netherlands (confidential), dated 23 January 2020. I observe that no such objection has been received.

⁴¹ *See generally* Appeal Judgement.

⁴² *See generally* Trial Judgement.

receiving this notification of eligibility from the enforcing State. Paragraph 6 of the Practice Direction states that the convicted person shall be given 10 days to examine the information, and thereafter the President shall hear him or her.

27. According to Article 25(2) of the Statute, the Mechanism supervises the enforcement of sentences pronounced by the ICTR, the ICTY, or the Mechanism, including the implementation of sentence enforcement agreements entered into by the United Nations with Member States. The Enforcement Agreement with Denmark,⁴³ which applies *mutatis mutandis* to the Mechanism,⁴⁴ provides in Article 8(1) that if the convicted person is eligible for pardon, commutation of sentence, or early release pursuant to Danish law, then Denmark shall notify the Registrar accordingly. Pursuant to Article 8(2) of the Enforcement Agreement, the Mechanism will give its views as to whether pardon, commutation of sentence, or early release is appropriate, which will be taken into consideration by Denmark prior to taking any decision in the matter. Articles 8(3) and 9(2) of the Enforcement Agreement clarify that, following receipt of the response from Denmark, the Mechanism may request Denmark to transfer the convicted person to another enforcement State or the Mechanism.

IV. ANALYSIS

A. Eligibility

28. As previously stated, eligibility for early release upon having served two-thirds of the sentence is essentially a pre-condition.⁴⁵ To reflect this existing practice of the Mechanism, I intend to first examine Brđanin's eligibility to be considered for early release.⁴⁶

1. Eligibility before the Mechanism

29. All convicted persons whose enforcement is supervised by the Mechanism are eligible to be considered for early release upon the completion of two-thirds of their sentences.⁴⁷ Given the need

⁴³ 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").

⁴⁴ See Security Council Resolution 1966 (2010), 22 December 2010, para. 4.

⁴⁵ *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, 10 September 2019 (public redacted) ("*Krstić* Decision of 10 September 2019"), para. 18. See *Prosecutor v. Miroslav Bralo*, Case No. MICT-14-78-ES, Decision on the Early Release of Miroslav Bralo, 31 December 2019 (public redacted) ("*Bralo* Decision"), para. 21; *Prosecutor v. Yussuf Munyakazi*, Case No. MICT-12-18-ES.2, Decision on the Application of Yussuf Munyakazi for Early Release, 29 November 2019 ("*Munyakazi* Decision"), p. 3.

for equal treatment, this uniform eligibility threshold applies irrespective of whether the person was convicted by the ICTR, the ICTY, or the Mechanism.⁴⁸ Similarly, the two-thirds threshold applies irrespective of where a convicted person serves his or her sentence and whether an early release matter is brought before the President through a direct petition by the convicted person or a notification from the relevant enforcement State.⁴⁹

30. According to information provided by the Registry, Brđanin was arrested on 6 July 1999 and served two-thirds of his sentence of 30 years of imprisonment on 1 July 2019.⁵⁰ I note, however, that Brđanin submits that he served two-thirds of his sentence as of 6 July 2019.⁵¹ Denmark also considers that Brđanin served two-thirds of his sentence on 6 July 2019.⁵² Based on my own calculations, Brđanin served two-thirds of his sentence as of 6 July 2019, and he is thus eligible to be considered for early release.

2. Eligibility under Danish Law

31. In the Letter of 10 April 2019, the Danish authorities inform the Mechanism that, under Danish law, Brđanin is eligible for release on parole as of 6 July 2019.⁵³ This eligibility, however, would be subject to the condition that Brđanin “does not commit a criminal offence for a period of five years from the time of release”.⁵⁴ Similarly they mention that a precondition for the release would be that Brđanin “leaves Denmark at the time of release”.⁵⁵

32. According to the Danish authorities, their domestic law allows for release on parole at the completion of two-thirds of the sentence.⁵⁶ However, the Danish authorities clarify that this “presupposes that the release is not inadvisable due to the convicted person’s situation”, meaning

⁴⁶ See *Bralo* Decision, para. 21; *Munyakazi* Decision, p. 3; *Krstić* Decision of 10 September 2019, para. 18.

⁴⁷ *Bralo* Decision, para. 22; *Krstić* Decision of 10 September 2019, para. 16; *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on the Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted) (“*Bisengimana* Decision”), para. 20.

⁴⁸ *Bralo* Decision, para. 22; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Early Release of Stanislav Galić, 26 June 2019 (public redacted) (“*Galić* Decision of 26 June 2019”), para. 15. See *Bisengimana* Decision, paras. 17, 20.

⁴⁹ *Bralo* Decision, para. 22; *Krstić* Decision of 10 September 2019, para. 18 and references cited therein.

⁵⁰ Internal Memorandum from the Registrar to the President, dated 6 February 2019 (confidential), p. 23.

⁵¹ Application, para. 8.

⁵² See Letter of 10 April 2019, p. 1.

⁵³ Letter of 10 April 2019, p. 2.

⁵⁴ Letter of 10 April 2019, p. 2.

⁵⁵ Letter of 10 April 2019, p. 2.

⁵⁶ Letter of 10 April 2019, p. 1, referring to the Danish Criminal Code, Section 38(1).

that “there must be no major risk of recidivism into crime of a non-trifling nature that is unlikely to be limited by supervision and special conditions”.⁵⁷

33. In this respect, I recall that even if Brđanin were to be considered eligible for release on parole under the domestic law of Denmark, the early release of persons convicted by the ICTY falls exclusively within the discretion of the President, pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules.⁵⁸

B. General Standards for Granting

34. A convicted person having served two-thirds of his or her sentence shall be merely eligible to be considered for early release and not entitled to such release, which may only be granted by the President as a matter of discretion, after considering the totality of the circumstances in each case, as required by Rule 151 of the Rules.⁵⁹ I recall that Rule 151 of the Rules provides a non-exhaustive list of factors to be considered by the President, which I will address in turn below.

1. Gravity of Crimes

35. At the outset, I note that Brđanin acknowledges that the crimes for which he was convicted “are of high gravity”.⁶⁰

36. Indeed, when assessing the gravity of the crimes for which Brđanin was convicted, the Trial Chamber described persecutions as a crime against humanity as being “inherently a very serious crime”.⁶¹ The Trial Chamber also considered the other crimes to be serious in nature.⁶² In imposing its sentence, the Trial Chamber referred to Brđanin’s “constant pattern of criminal behaviour occurring within a closed temporal context” as well as Brđanin’s “pivotal role” in the crimes for which he was convicted.⁶³

⁵⁷ Letter of 10 April 2019, p. 1, referring to the Danish Criminal Code, Section 38(5).

⁵⁸ See, e.g., *Bralo* Decision, para. 26; *Krstić* Decision of 10 September 2019, para. 24; *Galić* Decision of 26 June 2019, para. 23; *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Decision of the President on the Early Release of Sreten Lukić, 17 September 2018 (public redacted) (“*Lukić* Decision of 17 September 2018”), para. 14; *Prosecutor v. Dragoljub Kunarac*, Case No. MICT-15-88-ES.1, Decision of the President on the Early Release of Dragoljub Kunarac, 2 February 2017 (public redacted) (“*Kunarac* Decision”), para. 16.

⁵⁹ *Bralo* Decision, para. 27; *Krstić* Decision of 10 September 2019, paras. 17-18 and references cited therein.

⁶⁰ Application, para. 5. See also Brđanin’s Comments, p. 3 (“the crimes for which I was convicted are very serious”).

⁶¹ Trial Judgement, para. 1095.

⁶² Trial Judgement, para. 1095.

⁶³ Trial Judgement, paras. 1150-1151.

37. In describing Brđanin's role in the crimes, the Trial Chamber discussed Brđanin's propaganda campaign against Bosnian Muslims and Bosnian Croats, consisting of systematic "inflammatory statements on the radio, television and print".⁶⁴ He "created fear and hatred" and "incit[ed] the ethnic groups against each other"⁶⁵ through the use of derogatory language, advocacy for the dismissal of non-Serbs from their jobs, disparagement of mixed marriages, publicly suggesting a campaign of retaliatory ethnicity-based murder, and calling for non-Serbs to leave the area.⁶⁶ This propaganda campaign included his suggestions "that children of mixed marriages could be thrown into the Vrbas River and those who swam out would be Serbian children"⁶⁷ and "that two Muslims would be killed in Banja Luka for every Serb killed in Sarajevo".⁶⁸ His public statements "had a disastrous impact on people of all ethnicities", "incited the Bosnian Serb population to commit crimes against Bosnian Muslims and Bosnian Croats", dissuaded "well meaning Bosnian Serbs [...] from extending any kind of assistance to non-Serbs", and prompted non-Serbs to leave.⁶⁹

38. With respect to wilful killings as grave breaches of the Geneva Conventions, the Trial Chamber found that Brđanin aided and abetted the killing of at least 668 persons, namely:

[T]he 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 Šahurić'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; the killing of at least 16 civilians in the village of Čarakovo on 23 July 1992; the killing of at least 68 persons, 14 of them being women in the village of Briševo between 24 and 27 May 1992; the killing of at least 28 men from the village of Begići on the way to or at the Vrhpolje bridge on 31 May 1992; the killing of 15 members of the Merdanović family in the hamlet of Kukavice on 31 May 1992; the killing of 14 unarmed Bosnian Muslim civilians in the village of Budim on 1 August 1992; the killing of at least 3 civilians from Pudín Han on 28 May 1992; the killing of at least 40 Bosnian Muslim men and women in Prhovo village or on the road from Prhovo to Peći on 1 June 1992; the killing of at least 2 Bosnian Croats and/or Bosnian Muslims in front of the hospital in Kotor Varoš on 25 June 1992; the killing of at least 3 Bosnian Muslim[s] in the village of Dabovci in mid-August of 1992; the killing of at least 8 Bosnian Muslim civilians in the village of Hanifići in mid-August of 1992; and the killing of at least 12 Bosnian Muslim civilians in the village of Blagaj Japra on 9 June 1992.⁷⁰

⁶⁴ Trial Judgement, para. 323.

⁶⁵ Trial Judgement, para. 325.

⁶⁶ Trial Judgement, paras. 325-329.

⁶⁷ Trial Judgement, para. 328.

⁶⁸ Trial Judgement, para. 329.

⁶⁹ Trial Judgement, paras. 330-331. These findings were not disturbed on appeal. *See* Appeal Judgement, paras. 181-183, 315-319.

⁷⁰ Trial Judgement, para. 476. *See also* Trial Judgement, paras. 403-404. These findings were affirmed by the Appeals Chamber. *See* Appeal Judgement, paras. 7, 229, 240.

39. With regard to deportation and inhumane acts (forcible transfer) as crimes against humanity, the Trial Chamber found Brđanin responsible for instigating, as well as aiding and abetting, these crimes.⁷¹ In so finding, the Trial Chamber referred to deportation and forcible transfer as constituting “an integral part” of the plan to create a separate Bosnian Serb state from which most non-Serbs would be permanently removed.⁷² Brđanin espoused this plan “in the awareness that it could only be implemented through force and fear, and the implementation of which he coordinated”.⁷³ The Trial Chamber found that the departures of Bosnian Muslims and Bosnian Croats had been carried out under duress,⁷⁴ and that convoys were organised to transport them in large groups, often thousands at a time.⁷⁵

40. With respect to torture as a crime against humanity and as a grave breach of the Geneva Conventions, the Appeals Chamber reversed certain aspects of Brđanin’s convictions, but expressly upheld his conviction for aiding and abetting “multiple episodes of torture in six different locations in June and July 1992”.⁷⁶ These episodes encompassed:

[T]he torture of Bosnian Muslim civilians during and after the takeover of Bosanski Petrovac town in early-June 1992; the torture of a number of Bosnian Muslim civilian[s] during and after the armed attack on Kotor Varoš throughout June 1992; the torture of at least 35 Bosnian Muslims in the hamlet of Čermenica near the village of Bišćani on 20 July 1992; the torture of a number of Bosnian Muslim civilians in the village of Čarakovo on 23 July 1992; the torture of a number of Bosnian Muslim men in the area around the village of Bišćani; and the torture of a Bosnian Muslim woman in Teslić in July 1992.⁷⁷

⁷¹ Trial Judgement, paras. 576-577, 583.

⁷² Trial Judgement, paras. 575, 582. *See* Trial Judgement, para. 65.

⁷³ Trial Judgement, para. 582. *See* Trial Judgement, para. 575.

⁷⁴ Trial Judgement, para. 569.

⁷⁵ Trial Judgement, paras. 560 (a convoy of approximately 2,000 Muslim men, women, children, and elderly at the beginning of August 1992; a convoy of approximately 2,500 Bosnian Muslim men, women, children, and elderly on 2 and 3 September 1992), 561 (a convoy of approximately 1,000 people, the majority of whom included Bosnian Muslim women and children), 562 (approximately 500 Bosnian Muslims were transported on 11 September 1992; “an over-crowded convoy” transported 1,000 Bosnian Muslims and Bosnian Croats in September 1992), 563 (approximately 2,500 Bosnian Muslims and Bosnian Croats, most of whom were women, children, and elderly, were transported on 1 October 1992), 564 (Bosnian Muslim men, women, and children were expelled in June or July 1992, after which the women and children were separated from the men), 565 (more than a dozen buses in the convoy), 568 (a convoy of 5,000 Bosnian Muslim men, women, and children at the end of May 1992; a convoy “of no less than 11,000 people” on approximately 23 July 1992), 570 (a “mass departure of Bosnian Muslims” amounting to more than 900 men, women, and children around 13 September 1992; approximately 2,500 Bosnian Muslim men, women, and children were also transported on 24 September 1992). *See* Trial Judgement, para. 576. The findings summarised in this paragraph were also not disturbed on appeal. *See* Appeal Judgement, paras. 304, 320.

⁷⁶ Appeal Judgement, para. 503.

⁷⁷ Appeal Judgement, para. 503, fn. 1049. *See also* Trial Judgement, paras. 496 (at Bosanski Petrovac town, “there were many instances of severe beatings of Bosnian Muslim civilians” and in one case, “a Bosnian Muslim called Sead Husagić was beaten up and wounded so severely that he succumbed to his injuries a few days later”), 501 (in front of the Kotor Varoš hospital, soldiers “let loose a German shepherd on Enez Terzić” who was injured but survived, one

41. With regard to the destruction or wilful damage done to institutions dedicated to religion as a violation of the laws or customs of war, the Trial Chamber held that Brđanin aided and abetted this crime in 11 municipalities: Bosanski Novi, Bosanski Petrovac, Čelinac, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Prnjavor, Sanski Most, Šipovo, and Teslić.⁷⁸ The Trial Chamber found that this extended to the damage or destruction of at least 46 mosques and 5 Roman Catholic churches,⁷⁹ employing methods such as mining, destruction by explosives, a hand-held rocket launcher, shelling, arson, and the use of heavy machinery.⁸⁰ These findings were not disturbed on appeal.⁸¹

42. The Appeals Chamber also affirmed Brđanin's conviction for aiding and abetting the wanton destruction of cities, towns or villages or devastation not justified by military necessity as a violation of the laws or customs of war. Although the Appeals Chamber set aside his conviction insofar as it concerned one municipality in Bosnia and Herzegovina, the Appeals Chamber stressed that this was only one of the 11 municipalities for which he was convicted, and affirmed Brđanin's conviction for the crimes committed in the remaining 10 municipalities.⁸²

43. Turning finally to persecutions as a crime against humanity, the Trial Chamber found that Brđanin aided and abetted persecutions with respect to wilful killing, torture, destruction of property and religious buildings, deportation and forcible transfer, physical violence, rapes, sexual assault, "constant humiliation and degradation", denial of the right to freedom of movement, and denial of the right to proper judicial process.⁸³ The Trial Chamber additionally found that Brđanin

soldier "beat a number of detainees with a log until they fell to the ground unconscious", and another soldier "also participated in the beatings and ordered detainees to beat each other"), 504 (in Čermenica, 35 to 40 Bosnian Muslims were lined up next to the local cemetery, when a soldier "shot dead Muhamed Hadžić, one of the residents of Čermenica, in front of the others"), 505 (Hasib Simbegović, a Bosnian Muslim, was killed "when he was about to board a bus in the village of Čarakovo" and his killing "was witnessed by everyone who was sitting in the bus"), 508, 511 (after the cleansing of the Brdo area, of which Biščani formed a part, Bosnian Muslim non-combatants were coerced "to collect the bodies of other members of the ethnic group, particularly those of their neighbours and friends, and bury them, [which] in the circumstances in which this took place, could not but cause severe pain and suffering"), 523 (referring to the rape of Bosnian Muslim women in Teslić municipality), 535. *Cf.* Trial Judgement, paras. 407, 409.

⁷⁸ Trial Judgement, para. 678.

⁷⁹ *See* Trial Judgement, paras. 645-646 (in Bosanski Novi, ten mosques), 647 (in Bosanski Petrovac, three mosques), 648 (in Čelinac, two mosques and a Roman Catholic chapel), 649 (in Donji Vakuf, eight mosques), 650 (in Ključ, two mosques), 651 (in Kotor Varoš, the mosques in two villages and a Roman Catholic church), 652-653 (in Prijedor, six mosques and two Roman Catholic churches), 654 (in Prnjavor, three mosques), 655 (in Sanski Most, five mosques), 656 (in Šipovo, three mosques), 657 (in Teslić, the mosques in two villages and a Roman Catholic church), 658.

⁸⁰ *See* Appeal Judgement, para. 341 and references cited therein.

⁸¹ *See* Appeal Judgement, paras. 321, 351.

⁸² Appeal Judgement, para. 504. *See also* Trial Judgement, para. 670.

⁸³ Trial Judgement, paras. 1054, 1061, 1071, 1075. *See* Appeal Judgement, para. 290.

instigated persecutions with respect to deportation and forcible transfer, and ordered persecutions with respect to the denial of the right to employment.⁸⁴

44. The high gravity of Brđanin's crimes is not in doubt, and the severity is reflected throughout the judgements in his case.

2. Treatment of Similarly-Situated Prisoners

45. Persons sentenced by the ICTY, like Brđanin, are considered "similarly-situated" to all other prisoners under the Mechanism's supervision.⁸⁵ All convicted persons supervised by the Mechanism are considered eligible to apply for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them and where they serve their sentence.⁸⁶ In this regard, I observe that Brđanin has served two-thirds of his sentence as of 6 July 2019 and is thus eligible to be considered for early release.⁸⁷

46. I also note that Brđanin refers to the early release of another person convicted by the ICTY despite that person's crimes being characterised as "amongst the most severe crimes known to humankind", and even though they are described as having been committed through a joint criminal enterprise, in a broader crime base, and at a higher level of political authority.⁸⁸ I consider such comparisons to other cases to be distinctly unhelpful. In this regard, I am of the view that each case presents unique circumstances that must be considered on their own merits by the President when determining whether pardon, commutation of sentence, or early release is to be granted.

3. Demonstration of Rehabilitation

47. Before turning to an individualised assessment of Brđanin's demonstration of rehabilitation, I recall that I have recently set forth some of the considerations that will guide my assessment of a

⁸⁴ Trial Judgement, paras. 1054, 1067. These findings were also affirmed by the Appeals Chamber. *See* Appeal Judgement, paras. 7, 290-291, 297, 303.

⁸⁵ *See, e.g., Bralo* Decision, para. 22; *Krstić* Decision of 10 September 2019, para. 28; *Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Further Redacted Public Redacted Version of the Decision of the President on the Early Release of Valentin Ćorić and Related Motions, 16 January 2019 ("*Ćorić* Decision of 15 January 2019") (providing a further redacted public redacted version of the decision rendered confidentially on 15 January 2019), para. 37.

⁸⁶ *See, e.g., Prosecutor v. Dominique Ntawukulilyayo*, Case No. MICT-13-34-ES, Decision on the Application of Dominique Ntawukulilyayo for Early Release, 8 January 2020, p. 5; *Bralo* Decision, para. 22; *Krstić* Decision of 10 September 2019, paras. 16, 18, 28.

⁸⁷ *See supra*, para. 30.

convicted person's demonstration of rehabilitation under Rule 151 of the Rules.⁸⁹ In the interests of transparency, I recall these considerations here as well.

48. In my view, it is not appropriate to look at the rehabilitation of perpetrators of genocide, crimes against humanity, or war crimes through exactly the same paradigm as rehabilitation of perpetrators of domestic or ordinary crimes.⁹⁰ For instance, while good behaviour in prison may generally be a positive indicator of rehabilitation in a national context, given the particular nature and scope of the crimes within the jurisdiction of the ICTR, the ICTY, and the Mechanism, I do not consider that such behaviour can on its own demonstrate rehabilitation of a person convicted for some of the most heinous international crimes.⁹¹

49. There are, however, a number of positive indicators of rehabilitation of persons convicted by the ICTR, the ICTY, or the Mechanism which have been recognised as such in the past or are of persuasive relevance.⁹² Such indicators include: (i) the acceptance of responsibility for the crimes a person was convicted for or for actions which enabled the commission of the crimes;⁹³ (ii) signs of critical reflection of the convicted person upon his or her crimes;⁹⁴ (iii) public or private expressions of genuine remorse or regret;⁹⁵ (iv) actions taken to foster reconciliation or seek

⁸⁸ Application, para. 7, referring to *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-ES, Decision of the President on Early Release of Momčilo Krajišnik, 2 July 2013, para. 16. See also Brđanin's Comments, p. 3 (referring to the early release of Mr. Momčilo Krajišnik as well).

⁸⁹ See *Bralo* Decision, paras. 37-41.

⁹⁰ *Bralo* Decision, para. 38, referring to *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001, para. 806.

⁹¹ *Bralo* Decision, para. 38; *Krstić* Decision of 10 September 2019, para. 30; *Galić* Decision of 26 June 2019, para. 38.

⁹² See *Bralo* Decision, para. 39 and references cited therein. See also *Kunarac* Decision, para. 53.

⁹³ See, e.g., *Krstić* Decision of 10 September 2019, para. 32; *Prosecutor v. Berislav Pušić*, Case No. MICT-17-112-ES.1, Public Redacted Version of the 20 April 2018 Decision of the President on the Early Release of Berislav Pušić, 24 April 2018 ("*Pušić* Decision"), para. 66; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Public Redacted Version of the 26 July 2017 Decision of the President on the Early Release of Radivoje Miletić, 27 July 2017 ("*Miletić* Decision of 26 July 2017"), para. 29; *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Public Redacted Version of 30 May 2017 Decision of the President on the Early Release of Sreten Lukić, 11 August 2017 ("*Lukić* Decision of 30 May 2017"), paras. 38, 42; *Kunarac* Decision, paras. 53-54; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-ES, Decision of President on Early Release of Milomir Stakić, 18 July 2011 ("*Stakić* Decision"), paras. 30-31, 34; *Prosecutor v. Mlado Radić*, Case No. IT-98-30/1-ES, Decision of the President on Commutation of Sentence, 22 June 2007 ("*Radić* Decision of 22 June 2007"), para. 15. Cf. *Prosecutor v. Aloys Simba*, Case No. MICT-14-62-ES.1, Public Redacted Version of the President's 7 January 2019 Decision on the Early Release of Aloys Simba, 7 January 2019 ("*Simba* Decision"), paras. 42, 44.

⁹⁴ See, e.g., *Krstić* Decision of 10 September 2019, paras. 32-33; *Prosecutor v. Goran Jelisić*, Case No. MICT-14-63-ES, Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release of Goran Jelisić, 22 May 2017 (confidential), para. 37.

⁹⁵ See, e.g., *Krstić* Decision of 10 September 2019, para. 32; *Lukić* Decision of 30 May 2017, para. 38; *Prosecutor v. Goran Jelisić*, Case No. MICT-14-63-ES, Public Redacted Version of 22 May 2017 Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release of Goran Jelisić, 11 August 2017 ("*Jelisić* Decision"), paras. 41-42; *Prosecutor v. Drago Nikolić*, Case No. MICT-15-85-ES.4, Public Redacted Version

forgiveness;⁹⁶ (v) evidence that a convicted person has a positive attitude towards persons of other backgrounds, bearing in mind the discriminatory motive of some of the crimes;⁹⁷ (vi) participation in rehabilitation programmes in prison;⁹⁸ (vii) a person's mental health status;⁹⁹ and (viii) a positive assessment of a convicted person's prospects to successfully reintegrate into society.¹⁰⁰ This is a non-exhaustive list and I do not expect that each convicted person fulfils all of these indicators in order to demonstrate rehabilitation.¹⁰¹ It falls however upon the convicted person to convince me that he or she can be considered rehabilitated and that I should exercise my discretion responsibly to release him or her before the full sentence is served.¹⁰²

50. Moreover, rehabilitation entails that a convicted person may be trusted to successfully and peacefully reintegrate into a given society.¹⁰³ Consequently, I consider that rehabilitation involves indicators of readiness and preparedness to reintegrate into society.¹⁰⁴ For a convicted person who is eligible to be considered for early release, I will therefore generally consider the convicted person's post-release plans, including the envisaged place of residence.¹⁰⁵ If the convicted person intends to return to the region where his or her crimes were committed, extra scrutiny will be called for, keeping in mind that the ICTR, the ICTY, and the Mechanism were established under

of the 20 July 2015 Decision of the President on the Application for Early Release or Other Relief of Drago Nikolić, 13 October 2015, paras. 24, 44; *Prosecutor v. Momir Nikolić*, Case No. MICT-14-65-ES, Public Redacted Version of the 14 March 2014 Decision on Early Release of Momir Nikolić, 12 October 2015, para. 23. Cf. *Simba* Decision, paras. 42, 44.

⁹⁶ See, e.g., *Jelisić* Decision, para. 41.

⁹⁷ See, e.g., *Galić* Decision of 26 June 2019, para. 37; *Čorić* Decision of 15 January 2019, para. 51; *Prosecutor v. Todorović*, Case No. IT-95-9/1-ES, Decision of the President on the Application for Pardon or Commutation of Sentence of Stevan Todorović, 22 June 2005, para. 9.

⁹⁸ See, e.g., *Krstić* Decision of 10 September 2019, paras. 31, 33; *Lukić* Decision of 17 September 2018, para. 26.

⁹⁹ See, e.g., *Čorić* Decision of 15 January 2019, para. 52; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision of the President on the Early Release of Radivoje Miletić, 23 October 2018 (confidential), para. 34; *Lukić* Decision of 30 May 2017, para. 39; *Kunarac* Decision, para. 53.

¹⁰⁰ See, e.g., *Galić* Decision of 26 June 2019, paras. 36, 38; *Simba* Decision, paras. 42, 45; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5, Decision of the President on the Early Release of Radivoje Miletić, 23 October 2018 (public redacted) ("*Miletić* Decision of 23 October 2018"), para. 36; *Lukić* Decision of 17 September 2018, para. 28; *Pušić* Decision, para. 39; *Miletić* Decision of 26 July 2017, para. 30; *Lukić* Decision of 30 May 2017, para. 41; *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision of the President on the Early Release of Stanislav Galić, 18 January 2017 (public redacted) ("*Galić* Decision of 18 January 2017"), para. 29; *Prosecutor v. Radislav Krstić*, Case No. MICT-13-46-ES.1, Decision of the President on the Early Release of Radislav Krstić, 13 December 2016 (public redacted) ("*Krstić* Decision of 13 December 2016"), para. 24.

¹⁰¹ See *Bralo* Decision, para. 39.

¹⁰² See *Bralo* Decision, para. 39.

¹⁰³ *Bralo* Decision, para. 40; *Krstić* Decision of 10 September 2019, para. 30.

¹⁰⁴ See *Bralo* Decision, para. 40, referring to *Galić* Decision of 26 June 2019, paras. 36, 38; *Simba* Decision, paras. 42, 45; *Miletić* Decision of 23 October 2018, para. 36; *Lukić* Decision of 17 September 2018, para. 28; *Pušić* Decision, para. 39; *Miletić* Decision of 26 July 2017, para. 30; *Lukić* Decision of 30 May 2017, para. 41; *Galić* Decision of 18 January 2017, para. 29; *Krstić* Decision of 13 December 2016, para. 24.

¹⁰⁵ *Bralo* Decision, para. 40.

Chapter VII of the United Nations Charter to contribute to the restoration and maintenance of peace and security.¹⁰⁶ Bearing this in mind, I generally do not consider it appropriate to enable convicted persons to return to the affected regions before they have served their full sentence without having demonstrated a certain degree of rehabilitation.¹⁰⁷

51. Rehabilitation is a process rather than a definite result, and it is just one factor that I will consider alongside other factors when deciding on early release of a convicted person who is eligible to be considered for such relief.¹⁰⁸ Conversely, there may be instances where, despite a lack of sufficient evidence of rehabilitation, I may consider pardon, commutation of sentence, or early release to be appropriate in light of the prevalence of other factors.¹⁰⁹

(a) General Comments on the Available Information

52. Turning to the extent to which Brđanin has demonstrated rehabilitation, I note that the most probative materials before me include Brđanin's Application, a letter from the Danish Department of the Prison and Probation Service concerning his behaviour in prison, the views and material received from the Prosecutor and the Prosecution, the Psychiatric Report, Brđanin's handwritten comments in relation to the aforementioned material, and the views received from the authorities in Republika Srpska and the Mayor of Banja Luka. In addition, I have examined Brđanin's evidence in the ICTY proceedings of *Prosecutor v. Radovan Karadžić* ("Karadžić"),¹¹⁰ as it was referenced by both Brđanin and the Prosecutor in the context of the Application.¹¹¹

53. With regard to the Psychiatric Report, I observe that it reflects the opinion of a Consultant Psychiatrist for the Danish Department of the Prisons and Probation Service. In formulating this opinion, the Consultant Psychiatrist relied on several sources, including the personal records kept by the Danish Department of the Prisons and Probation Service since March 2008, the action plan of the [REDACTED] Prison, the 26 November 2018 opinion of the [REDACTED] District Office of the Danish Department of the Prisons and Probation Service concerning release on parole, and

¹⁰⁶ *Bralo* Decision, para. 40, referring to Security Council Resolution 1966 (2010), 22 December 2010; Security Council Resolution 955 (1994), 8 November 1994; Security Council Resolution 808 (1993), 22 February 1993.

¹⁰⁷ *Bralo* Decision, para. 40.

¹⁰⁸ *Bralo* Decision, para. 41.

¹⁰⁹ *Bralo* Decision, para. 41. See *supra*, paras. 24-25 (quoting Article 26 of the Statute and Rule 151 of the Rules).

¹¹⁰ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, D04034 (Witness statement of Radoslav Brđanin dated 8 November 2013) ("Brđanin's statement of 8 November 2013"); *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Transcript of 18 November 2013. I note that the B/C/S original version of the statement indicates that it was signed on 8 November 2013.

conversations held by the Consultant Psychiatrist with Brđanin on two days in August 2019, the latter with the assistance of a B/C/S interpreter.¹¹²

(b) Acceptance of Responsibility, Signs of Critical Reflection, and Genuine Expressions of Remorse

54. A holistic consideration of the material before me reveals that Brđanin continues to this day to deflect responsibility onto others, and that any signs of critical reflection and expressions of remorse cannot be credited as sincere. This may be seen in his Application, the material incorporated into his Application, his prior statements to the media, the Psychiatric Report, as well as his most recent comments. Taken individually, the discrepancies evidenced in these documents are cause for concern. Taken together, it is evident that Brđanin has yet to demonstrate these positive indicators of rehabilitation.

55. Turning first to the Application, I observe that although Brđanin submits that he has taken strides towards rehabilitation, his Application does not contain a single word on his acceptance of responsibility for the crimes he was convicted of. It is also bereft of any signs of critical reflection, or any expressions of remorse. Instead, he submits that during the proceedings he was “respectful” of the ICTY and sensitive witnesses, and that the Trial Chamber already acknowledged that his expressions of remorse “towards some of the witnesses” were sincere.¹¹³ Be that as it may,¹¹⁴ it is striking that 15 years later, his Application lacks expressions of responsibility, reflection, or remorse.

56. Brđanin’s Application instead refers to a witness statement he made in the *Karadžić* case in 2013, which he says reflects his remorse and “ample progress” towards resocialisation.¹¹⁵ Although

¹¹¹ See Application, para. 15; Prosecutor Memorandum of 23 August 2019, para. 9.

¹¹² See Psychiatric Report, p. 1. The other sources for the opinion are identified as the Appeal Judgement, an extract from the record of judgements of the City Court of Copenhagen of 28 November 2007 that reflects Brđanin’s sentence by the Appeals Chamber, and copies of correspondence between the Danish authorities and the Mechanism. See Psychiatric Report, pp. 1-2.

¹¹³ Application, para. 15.

¹¹⁴ See Trial Judgement, paras. 1137, 1139.

¹¹⁵ Application, para. 15, *quoting* Brđanin’s statement of 8 November 2013, para. 35 (“By giving this statement I do not wish to dispute or diminish or justify the existence of any crimes which happened in the terrible civil war in which my people participated. I fully sympathize with all those who lost someone in the war. This feeling is no less even from this time distance. A few people enriched themselves enormously, whereas everybody else are the losers - members of all three peoples. I will never be able to understand nor justify people who committed crimes, especially against civilians, women, children and the elderly. Members of my people who did that must know that they inflicted the greatest shame on their own people.”).

that statement asserts that Brđanin does “not wish to dispute or diminish” any of the crimes in which “my people” participated, he nevertheless spends the remaining pages of his statement disputing a number of facts adjudicated in his case or otherwise minimising the role of the ARK Crisis Staff,¹¹⁶ of which Brđanin was President.¹¹⁷ Moreover, he fails to take responsibility for those crimes by attributing them to his “people” collectively, and therefore I do not see how I could conclude that this shows the remorse and progress claimed by Brđanin.

57. Brđanin’s propensity to deflect his own criminal responsibility is evident not only in this prepared statement for the *Karadžić* case, but also in his subsequent in-court testimony. When asked to confirm the crimes for which he was convicted, Brđanin acknowledged the judgement against him but stated that in light of subsequent legal developments, “I really do not know why it is that I’ve been convicted”.¹¹⁸ Brđanin also appeared to dispute the conclusions in his Trial Judgement on several occasions.¹¹⁹ It is evident that almost a decade after the Trial Judgement, Brđanin still did not accept either his guilty verdict or the underlying findings of fact in his case.

58. These statements from 2013 are in line with other statements made by Brđanin that were published in the media in 2009, 2010, and 2012. In 2009, he stated that the ICTY’s cases reflected that Serbs were judged by different criteria from other persons, and that his case reflected the most drastic example of a double standard being applied.¹²⁰ He later confirmed this view and alleged that at least 30 individuals gave false statements against him.¹²¹ In 2010, he reportedly said that he “cannot complain about anything, except for being a victim of a judicial murder in The Hague and of the political intrigues of his insincere former colleagues in Banja Luka”, and that he does not think he is imprisoned because he did something wrong, but “because the judges in The Hague could not distinguish false testimonies and they decided in advance that the Serbs were to

¹¹⁶ See Brđanin’s statement of 8 November 2013, paras. 37-50, 52-54. See also *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts, 9 October 2009, Annex (the Trial Judgement is the source for adjudicated facts 524, 532-542, 544, 548, and 553-555).

¹¹⁷ See, e.g., Trial Judgement, para. 296.

¹¹⁸ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Transcript of 18 November 2013, T. 43642 (“Q. And you were convicted of persecutions, including deportation and forcible transfer; wilful killings; torture; wanton destruction of cities, towns, and villages; and destruction of religious institutions. Correct? A. You perhaps know my judgement better than I do. It is true that I was convicted; however, in view of the newly created standards, especially over the past two years, I really do not know why it is that I’ve been convicted.”). See also Prosecutor Memorandum of 23 August 2019, para. 9.

¹¹⁹ See, e.g., *Prosecutor v. Radovan Karadžić*, Case No. IT-95/5/18-T, Transcript of 18 November 2013, T. 43642, 43664-43667.

¹²⁰ Prosecutor Memorandum of 23 August 2019, Annex B (media report from 25 March 2009), pp. 1-2.

¹²¹ Prosecutor Memorandum of 23 August 2019, Annex A (media report from 11 April 2009), pp. 1-3.

blame”.¹²² He elaborated that while it is painful to hear about the suffering of all persons, “I do not repent, because that would imply that I did something wrong” and “I have no victims”.¹²³ In 2012, Brđanin was still blaming everyone but himself for his trial and conviction.¹²⁴

59. With regard to these media statements between 2009 and 2012, Brđanin now seeks to justify some parts of them but claims to accept that he should not have commented on ICTY judgements in other cases.¹²⁵ According to him, he has since turned down a number of interview requests, and decided to no longer comment on the ICTY’s work.¹²⁶ This claim finds some support in the fact that the Registry did not identify any articles published in the past two years in Bosnia and Herzegovina that focus on Brđanin,¹²⁷ and on the Prosecutor’s reference to media articles published only in 2009, 2010, and 2012.¹²⁸

60. Regardless of Brđanin’s apparent restraint since 2012, it is revealing that Brđanin’s Application identifies only one instance since his trial proceedings where he is said to have expressed remorse, which dates back to 2013 and can be found in part of his witness statement in the *Karadžić* case. That portion of his statement, however, comprises a single paragraph and is substantially tempered by its placement in a document that continues Brđanin’s pattern of trying to dispute and ultimately shift his responsibility for the grave crimes of which he was convicted.

61. Turning to more contemporaneous information, I have taken particular note that the Psychiatric Report also concludes that Brđanin “probably plays down his own role in events during the war”.¹²⁹ Although this report observes that he “does not seek to trivialise the nature of the events, which he condemns in very clear terms”,¹³⁰ it also elaborates that Brđanin “is to some extent self-reproachful in regard to the acts of which he has been convicted but, at the same time, feels a need to excuse himself with reference to the particular circumstances of the civil war”.¹³¹

62. This dual aspect may again be seen in Brđanin’s handwritten comments that he submitted recently in support of his Application, which confirms my concerns that Brđanin continues to

¹²² Prosecutor Memorandum of 23 August 2019, Annex C (media report from 7 September 2010), p. 2.

¹²³ Prosecutor Memorandum of 23 August 2019, Annex C (media report from 7 September 2010), p. 3.

¹²⁴ See Prosecutor Memorandum of 23 August 2019, Annex D (media report from 10 December 2012), pp. 1-3.

¹²⁵ Brđanin’s Comments, p. 3.

¹²⁶ Brđanin’s Comments, p. 3.

¹²⁷ See *supra*, para. 12, referring to Registry Memorandum of 21 August 2019, Annex, pp. 3-7.

¹²⁸ See Prosecutor Memorandum of 23 August 2019, paras. 7-8, Annexes A-E.

¹²⁹ Psychiatric Report, p. 3.

¹³⁰ Psychiatric Report, p. 3.

deflect responsibility to this day. Turning first to the positive aspects, when purporting to acknowledge his responsibility and show the extent of his critical reflection and remorse, Brđanin states that:

I have sincerely shown regret and empathy for all the victims and their suffering and I will keep doing so in the future. [...] I accept my responsibility and do not deny it, and I definitely do not justify a single one of the crimes. My attitude towards crimes committed by my people against other peoples has always been one of humility, with a large dose of shame and sincere regret.¹³²

He further expresses “[m]y wish is that true forgiveness and reconciliation take place in BH”.¹³³ I welcome these statements, and am hopeful that they are indicative of an increasing willingness by Brđanin to genuinely reflect upon his role in the crimes he was convicted of, and perhaps even to take steps to foster the reconciliation that he expresses a desire to see in Bosnia and Herzegovina. However, I note at the same time that Brđanin is again seeking to distance himself from the crimes when he refers to the “crimes committed by my people” rather than the crimes for which he is responsible. Furthermore he says that he has “sincerely shown regret and empathy” and that he will continue to do so, without supporting such an assertion.

63. The remainder of his handwritten comments, however, show that Brđanin is still fixated on finding someone or something to blame for the misfortune that has befallen him through his criminal activity.¹³⁴ He intimates that his 30-year sentence would have been lower, if only the Trial Chamber had been able to take into account the shorter sentences imposed in subsequent cases.¹³⁵ He compares himself favourably to persons who had a “much higher level of authority than I”, effectively downplaying his own role.¹³⁶ He discusses the crimes and sentence of another person, before incongruously claiming that he “stopped thinking about who was sentenced to what sentence or for which crimes a long time ago”.¹³⁷ He attempts to justify some of his negative media statements as being required under the circumstances, done to protect his family from “envy and contempt”.¹³⁸ He explains that he made other media statements because of his “very strong” emotions at the time, and “[w]e all know that emotions often precede objective and rational

¹³¹ Psychiatric Report, p. 4.

¹³² Brđanin’s Comments, p. 4.

¹³³ Brđanin’s Comments, p. 5.

¹³⁴ See Brđanin’s Comments, pp. 2-3.

¹³⁵ Brđanin’s Comments, p. 3.

¹³⁶ Brđanin’s Comments, p. 3.

¹³⁷ Brđanin’s Comments, p. 3.

¹³⁸ Brđanin’s Comments, p. 3.

thinking”.¹³⁹ He refers to the Prosecutor’s observations on the merits of his Application as being like “a new indictment” against him.¹⁴⁰ He even challenges the account given by a person in another case, as reported in the media, saying this reflects that person’s “hatred towards me” and effectively calling that person a liar and potentially a threat to his family.¹⁴¹ These comments are striking, and prompt the conclusion that his other statements of remorse in the same document cannot be taken at face value.

64. In light of these concerns, and after considering them both individually and cumulatively, I can only conclude that Brđanin has not demonstrated that he has reflected critically on his crimes up to this point in time, nor has he accepted responsibility for them or his actions that enabled them.

(c) Behaviour in Prison

65. Brđanin states that throughout his time in prison, he “never experienced any problems nor was subjected to any disciplinary proceedings”.¹⁴² This account is corroborated by the Danish Department of the Prisons and Probation Service, which affirms in the Letter of 10 April 2019 that Brđanin’s incarceration “has in every way been unproblematic and he has submitted to conditions of imprisonment”.¹⁴³

66. The Psychiatric Report summarises other material from the Danish authorities, which also paints a positive picture of Brđanin’s behaviour in prison. The opinion from the [REDACTED] District Office of the Danish Department of the Prisons and Probation Service, from 26 November 2018, is said to reflect that Brđanin’s “time in prison has been problem-free”, “he is very calm and has good relations with the staff in the block”, and “[t]here are apparently no matters pending consideration or disciplinary proceedings”.¹⁴⁴ The [REDACTED] Prison’s action plan is also said to describe Brđanin as “demonstrating good behaviour during his time in prison”.¹⁴⁵

67. The personal records kept by the Danish Department of the Prisons and Probation Service since March 2008, as described by the Psychiatric Report, provide further detail. They are also said to show that Brđanin’s time in prison “has been unproblematic”, but reflect that “[t]here is mention

¹³⁹ Brđanin’s Comments, p. 3.

¹⁴⁰ Brđanin’s Comments, p. 2.

¹⁴¹ Brđanin’s Comments, p. 4. *See* Registry Memorandum of 21 August 2019, Annex, p. 4.

¹⁴² Application, para. 10.

¹⁴³ Letter of 10 April 2019, p. 2.

¹⁴⁴ Psychiatric Report, p. 2.

of occasional disciplinary proceedings, ending in a fine, concerning possession of a cigarette-rolling machine and smoking tobacco”.¹⁴⁶ I observe that Brđanin disputes this characterisation as wrongly suggesting there was more than one incident and that it constituted a disciplinary proceeding.¹⁴⁷ In any event, the Consultant Psychiatrist reports that there are no incidents relevant to the assessment of Brđanin’s mental state and ability to reintegrate into society.¹⁴⁸

68. In light of the information before me, I do not question the description of the Danish authorities that Brđanin has submitted to the conditions of his imprisonment and has demonstrated good behaviour in prison since 2008.

(d) Mental State, Personality, and Risk of Reoffending

69. In the Psychiatric Report, the Consultant Psychiatrist for the Danish Department of the Prisons and Probation Services offers an encouraging assessment of Brđanin’s mental state, personality traits, and the existence of risks that he might pose if released early.

70. Turning first to Brđanin’s mental state, the Consultant Psychiatrist assesses that Brđanin “[REDACTED]”.¹⁴⁹ This, too, appears to be reflected in the [REDACTED] Prison’s action plan, which is described by the Consultant Psychologist as indicating that Brđanin has “[REDACTED]”.¹⁵⁰

71. With respect to personality and a risk assessment, the Consultant Psychiatrist examined the entirety of the information at her disposal, before concluding that “[REDACTED] and, accordingly, this examination sees no evidence that the prisoner poses a danger in the future or a risk of re-offending in respect of the crimes of which he has been convicted”.¹⁵¹

¹⁴⁵ Psychiatric Report, p. 2.

¹⁴⁶ Psychiatric Report, p. 3. The dates of these infractions are not included in the information provided by the Danish authorities.

¹⁴⁷ Brđanin’s Comments, p. 2 (“I had only one conversation with the Chief of Section after smoking was prohibited; the conversation was recorded, although no disciplinary proceeding was held.”). Brđanin indicates this may reflect a minor error either by the Consultant Psychiatrist or in translation. He also invites a request for the original documents from the [REDACTED] Prison. *See* Brđanin’s Comments, p. 2. In light of the overall positive account provided of Brđanin’s behaviour in prison, I do not consider it necessary to seek further clarification on this issue.

¹⁴⁸ Psychiatric Report, p. 3.

¹⁴⁹ Psychiatric Report, p. 4.

¹⁵⁰ Psychiatric Report, p. 3.

¹⁵¹ Psychiatric Report, p. 4.

72. I observe that in assessing the risks were Brđanin to be released early, the Consultant Psychiatrist was not in a position to benefit from information concerning the society into which Brđanin proposes to reintegrate. Nor was the Consultant Psychiatrist able to benefit from a consideration of Brđanin's Application and subsequent handwritten comments, or his earlier statements to the media and his evidence in the *Karadžić* case.¹⁵² That is not to imply any omission on the part of the Consultant Psychiatrist, but I note that this necessarily limits the extent to which the Psychiatric Report can be relied upon in forecasting the risk of Brđanin reoffending should he be released early so that he may return to Banja Luka. Notwithstanding these limitations, I consider that overall the Psychiatric Report reflects well upon Brđanin in light of the conclusions contained therein.

(e) Prospects of Successful Reintegration into Society

73. Brđanin states that if released early, he would return to Banja Luka, Bosnia and Herzegovina.¹⁵³ He submits that his monthly pension would provide the necessary financial means of support, and that he would be further supported by his immediate family, namely his wife and children.¹⁵⁴ He further states that he would be able to contribute "within his original field of expertise".¹⁵⁵ These plans are also reflected in the Psychiatric Report, which elaborates upon the composition and employment status of his immediate family¹⁵⁶ and adds that Brđanin described having "absolutely no plans to become politically active again, though he has entertained thoughts of being able to use his training as an engineer again".¹⁵⁷

74. Brđanin also describes his efforts to maintain "a close and loving relationship with all members of the family", including through daily telephone contact and visits as often as feasible.¹⁵⁸ This too is corroborated by the materials described in the Psychiatric Report, which reflects that Brđanin has maintained regular contact with his family, including through visits from his immediate family approximately every three months during his incarceration in Denmark.¹⁵⁹

¹⁵² See *supra*, para. 53.

¹⁵³ Application, para. 12.

¹⁵⁴ Application, para. 12.

¹⁵⁵ Application, para. 12.

¹⁵⁶ See Psychiatric Report, pp. 2-3. See also Brđanin's Comments, p. 2.

¹⁵⁷ Psychiatric Report, p. 3.

¹⁵⁸ Application, p. 11.

¹⁵⁹ Psychiatric Report, pp. 2-3. See also Brđanin's Comments, p. 2.

75. Finally, Brđanin states that his having served 20 years will contribute to reconciliation in the community in which he lived prior to imprisonment.¹⁶⁰ In this regard, he submits that he is serving his sentence in “a multi-ethnic prison” and that he maintains cordial relationships with his fellow inmates of various ethnicities.¹⁶¹ He also encloses the written statements of three Muslims from Čelinac, Bosnia and Herzegovina, in order to “indicate the broader opinion of [the] Muslim population” in the community he lived in before the conflict.¹⁶²

76. With regard to those three written statements, which are notarised, I observe that each is from someone who has known Brđanin since “before the war”:¹⁶³ one is from Brđanin’s former driver,¹⁶⁴ another is from a childhood acquaintance who later became a colleague,¹⁶⁵ and the third is from an individual who joined a company after Brđanin had finished his employment there.¹⁶⁶ All three statements attest, in identical language, that “[i]t is my opinion, and I believe the opinion of people in my environment, that the return of Radoslav Brđanin to Čelinac and its surroundings would not provoke any negative reactions of the members of my national minority who remained in Čelinac during the war, as well as of the returnees who temporarily lived outside of Bosnia and Herzegovina”.¹⁶⁷ Each statement also refers in identical terms to the relationship that exists between Brđanin’s family members and others in the community.¹⁶⁸ Moreover, each statement concludes with identical affirmations that “I believe that due to the time passed from the war and from the trial, the return of Radoslav Brđanin cannot have any bad influence on the atmosphere in this area”.¹⁶⁹ This identical language calls into question the extent to which the attestations accurately reflect the views of each individual.

77. In my view, these statements merit little or no weight. I also consider that Brđanin’s successful incarceration in a multi-ethnic prison environment is deserving of little or no weight in my overall assessment of his rehabilitation.

¹⁶⁰ Application, para. 13.

¹⁶¹ Application, para. 10. *See also* Brđanin’s Comments, p. 5.

¹⁶² Application, para. 14. *See* Application, Annexes I-III.

¹⁶³ Application, Annex II. *See also* Application, Annexes I (“I knew Radoslav Brđanin as a boy”), III (“I have known Mr. Radoslav Brđanin since the beginning of the sixties”).

¹⁶⁴ Application, Annex I.

¹⁶⁵ *See* Application, Annex III.

¹⁶⁶ Application, Annex II.

¹⁶⁷ Application, Annexes I-III.

¹⁶⁸ Application, Annexes I-III.

¹⁶⁹ Application, Annexes I-III. I note that a minor variation among the statements exists in the English translation, but that the signed B/C/S versions of the statements all utilise the same phrase.

78. Concerning other sources relevant to this determination, I observe that authorities from Bosnia and Herzegovina, namely Republika Srpska and the Mayor of Banja Luka, have responded positively to Brđanin's stated intention to reside in Banja Luka if granted early release.¹⁷⁰ This would support the notion that Brđanin would be able to reintegrate into society in Banja Luka, as does his ongoing efforts to maintain a close relationship with his family. However, such information pertains to only a part of my overall assessment, and in light of the circumstances of this case it is insufficient to convince me that Brđanin would reintegrate successfully into the society to which he wishes to return.

(f) Overall Assessment

79. There are some promising aspects that, taken in isolation, might warrant the conclusion that Brđanin has demonstrated some signs of rehabilitation. This includes the Consultant Psychiatrist's statement that she "sees no evidence" that Brđanin poses a danger or that there is a risk of his re-offending "in respect of the crimes of which he has been convicted".¹⁷¹ Brđanin's good behaviour in prison also merits recognition, as does the extent to which he has maintained strong family relationships. It is also notable that he could be expected to receive support in Banja Luka after any release.

80. This must be seen, however, in light of the other considerations discussed above which call into question whether Brđanin could be trusted to reintegrate successfully into society at this stage. His lack of critical reflection on the crimes he committed, coupled with the extent to which Brđanin still seeks to distance himself or otherwise justify these crimes, is striking. Certain aspects of his handwritten comments at the end of this process represent a step in the right direction, but taken alongside the rest of the material before me, they also strengthen the conclusion that Brđanin's rehabilitation remains a work in progress. The deflection of responsibility also raises concerns as to whether any early release of Brđanin might limit his reintegration into society as well as negatively impact the restoration and maintenance of peace and security in Banja Luka and its surrounding areas.

81. For these reasons, I conclude that Brđanin has not sufficiently demonstrated that he has been rehabilitated.

¹⁷⁰ *Note Verbale* dated 14 January 2020, Registry Pagination ("RP") 74-75.

¹⁷¹ Psychiatric Report, p. 4.

4. Substantial Cooperation with the Prosecutor

82. The Prosecution confirms that Brđanin did not cooperate with it or with the ICTY Prosecution in the course of his trial or appeal, or at any point since then.¹⁷² I observe that Brđanin states that he was never approached by the Prosecution or the ICTY Prosecution seeking any form of cooperation,¹⁷³ which the Prosecution does not dispute.¹⁷⁴ Accordingly, this merits no weight in my consideration of Brđanin's Application.

C. Other Considerations

1. Views of the Prosecutor

83. I have previously explained that I will use my discretion to receive and consider general comments from the Prosecution with regard to early release applications.¹⁷⁵ In doing so, I will exercise caution to avoid any unreasonable imbalance to the detriment of the convicted person, and will carefully assess on a case-by-case basis which submissions are of actual relevance in a given case, mindful of the rights of the convicted person.¹⁷⁶

84. In the present case, the Prosecutor submits that Brđanin has not demonstrated that early release is warranted due to the high gravity of his crimes¹⁷⁷ and the insufficient evidence of his rehabilitation.¹⁷⁸ With respect to rehabilitation, the Prosecutor refers to Brđanin's public statements following his final conviction that denies his responsibility, attempts to cast himself as a victim of a fraudulent trial, and fails to express remorse for his crimes or their severe impact on victims.¹⁷⁹ The

¹⁷² Prosecution Memorandum of 6 May 2019, para. 2.

¹⁷³ Application, para. 9. *See also* Brđanin's Comments, p. 2.

¹⁷⁴ *See* Prosecution Memorandum of 6 May 2019, para. 2.

¹⁷⁵ *Bralo* Decision, para. 69. *See Bralo* Decision, paras. 67-68. *See also Prosecutor v. Valentin Ćorić*, Case No. MICT-17-112-ES.4, Decision on Motions Related to Valentin Ćorić's Request for Variation of Early Release Conditions, 21 February 2020, para. 18.

¹⁷⁶ *Bralo* Decision, para. 69.

¹⁷⁷ Prosecutor Memorandum of 23 August 2019, paras. 2, 4-5, 18.

¹⁷⁸ Prosecutor Memorandum of 23 August 2019, paras. 2, 6-10, 18. The Prosecutor also submits that I should reject Brđanin's suggestion that he should be granted early release based on the treatment of similarly-situated prisoners, because early release is not an entitlement and due to the totality of the circumstances in Brđanin's case. Prosecutor Memorandum of 23 August 2019, para. 13.

¹⁷⁹ Prosecutor Memorandum of 23 August 2019, paras. 6-10, Annexes A-E. I address these statements above. *See supra*, paras. 58-59.

Prosecutor further requests that Brđanin's claims of rehabilitation should be considered with input from victims and communities affected by his crimes.¹⁸⁰

85. While not in support of early release the Prosecutor proposes that, if granted, it be subject to certain conditions. The Prosecutor requests that I consider imposing appropriate conditions, along with a requirement that Republika Srpska, Bosnia and Herzegovina designate an authority to monitor and enforce Brđanin's compliance with all conditions.¹⁸¹ I have taken note of this proposal.

2. Views of Bosnia and Herzegovina

86. Preliminarily, I note that the views communicated by Bosnia and Herzegovina were received some months after the date specified in the invitation.¹⁸² Although this delay prevented Brđanin from receiving and being able to offer any comments upon these views in a timely manner,¹⁸³ I do not consider that this precludes my consideration of these views in rendering this decision. To the contrary, the views communicated by Bosnia and Herzegovina are clearly relevant to this matter, and I therefore consider that they should be taken into account even at this late stage.¹⁸⁴

87. The authorities of Republika Srpska support the Application as well as Brđanin's stated intention to reside in Banja Luka.¹⁸⁵ Moreover, they indicate that there are no legal hurdles that would prevent Brđanin from staying in its territory.¹⁸⁶ The Mayor of Banja Luka also takes a positive view of the Application as well as Brđanin's intention to live in Banja Luka.¹⁸⁷

88. I am appreciative of the willingness of relevant authorities in Bosnia and Herzegovina to express their views with regard to Brđanin's Application and, in particular, his stated desire to

¹⁸⁰ Prosecutor Memorandum of 23 August 2019, paras. 2, 11. *See* Prosecutor Memorandum of 23 August 2019, para. 18. The Prosecutor also submits that I should consider the possible impact of Brđanin's release on the security of victims and witnesses, including the possible negative impact on reconciliation efforts in light of the "volatile climate of denialism" where Brđanin seeks to live. Prosecutor Memorandum of 23 August 2019, para. 12.

¹⁸¹ Prosecutor Memorandum of 23 August 2019, paras. 2, 14, 17-18. The Prosecutor specifies 21 conditions that he submits would be appropriate if early release is granted. *See* Prosecutor Memorandum of 23 August 2019, paras. 15-17.

¹⁸² *See* Invitation to Bosnia and Herzegovina, p. 3 (indicating that any views should be communicated within an appropriate timeframe, but no later than 18 October 2019); *Note Verbale* dated 14 January 2020.

¹⁸³ *See supra*, paras. 20-21 (the Registry transmitted identified documentation to Brđanin and his Counsel by a letter dated 4 December 2019, and received Brđanin's comments on 23 December 2019).

¹⁸⁴ *See* Practice Direction, para. 10 (in determining whether pardon, commutation of sentence, or early release is to be granted, the President is to take into account, *inter alia*, all information that he or she considers relevant).

¹⁸⁵ *Note Verbale* dated 14 January 2020, RP 75.

¹⁸⁶ *Note Verbale* dated 14 January 2020, RP 75.

¹⁸⁷ *Note Verbale* dated 14 January 2020, RP 74.

reside in Banja Luka if released early. These views make clear the authorities' support for the Application and post-release plans, and further provide that there would not be any legal obstacles in Bosnia and Herzegovina to Brđanin's return to Banja Luka. I have taken this information into account, both with respect to the prospects of Brđanin successfully reintegrating into society,¹⁸⁸ as well as more generally in considering the merits of the Application.

3. Impact on Witnesses and Victims

89. A total of 222 witnesses gave evidence in the proceedings involving Brđanin, including 140 witnesses who testified *viva voce*.¹⁸⁹ WISP conveyed information concerning 122 witnesses, composed of those witnesses who were identified as either "victim witnesses" or "insider witnesses".¹⁹⁰ For the victim witnesses, WISP assessed that 58 "should be considered vulnerable" in light of reported psycho-social issues.¹⁹¹ With regard to the insider witnesses, WISP reported that Brđanin's release may increase the level of actual risk to these witnesses and that, in addition, they would also likely experience a heightened perception of risk.¹⁹²

90. As for the source of any risk to witnesses, WISP noted that it was not in a position to assess whether Brđanin himself would pose a risk and that a more comprehensive assessment of the overall situation would require that each witness be contacted individually.¹⁹³ I am cognisant that contacting witnesses too frequently has the potential to negatively impact upon witnesses, particularly if they are trying to move on in their lives and especially if some years have passed since they have heard from the Mechanism or its predecessor Tribunals. In light of the material already provided by WISP, I do not consider it necessary for the Mechanism to disturb former witnesses in order to solicit further information from them with respect to the Application.

91. In considering the anticipated impact on the victims of Brđanin's crimes were he to be released early, I have noted that the Victims' Association did not respond to the invitation to

¹⁸⁸ See *supra*, paras. 78-79.

¹⁸⁹ See, e.g., Trial Judgement, para. 1180.

¹⁹⁰ See Registrar Memorandum of 16 October 2019, Annex, paras. 5, 8, 10.

¹⁹¹ See Registrar Memorandum of 16 October 2019, Annex, para. 9.

¹⁹² See Registrar Memorandum of 16 October 2019, Annex, para. 10.

¹⁹³ See Registrar Memorandum of 16 October 2019, Annex, para. 11.

provide any views with regard to the Application and Brđanin's intention to reside in Banja Luka.¹⁹⁴

4. Health of the Convicted Person

92. Previous decisions on early release have determined that other considerations, such as the state of the convicted person's health, may be taken into account in the context of an application for early release, especially when the seriousness of the condition makes it inappropriate for the convicted person to remain in prison any longer.¹⁹⁵

93. Brđanin does not raise any particular health issues, nor are any such issues identified in the material received from the Danish authorities. In this regard, I note that there is no indication that Brđanin's health may be an impediment to continued detention or would require him to be released early on this basis. Consequently there is no sufficiently compelling humanitarian ground which would warrant granting early release notwithstanding the overall negative assessment above.

5. Consultation

94. In coming to my decision on whether to grant early release to Brđanin, I have availed myself of the ability to consult with two other Judges of the Mechanism.¹⁹⁶ Judge Meron has indicated that he respectfully disagrees with denying the Application. Although Judge Meron agrees that the high gravity of crimes is a relevant consideration, he takes note of the positive aspects of the Psychiatric Report and is of the view that this constitutes the best evidence of Brđanin's rehabilitation. Judge Meron also queries whether a convicted person is legally required to admit or accept responsibility for his crimes in order to demonstrate rehabilitation or as a precondition for release, and if not whether my analysis impermissibly treats this as a legal requirement. Judge Sekule, on the other hand, agrees with my analysis of the material relevant to the Application. Judge Sekule further shares my view that the Application should be denied.

95. I am grateful for my Colleagues' views on these matters, and have taken them into account in my ultimate assessment of the Application. With regard to Judge Meron's query, I note that the

¹⁹⁴ See *supra*, paras. 16, 18-19.

¹⁹⁵ See, e.g., *Bralo* Decision, para. 77; *Prosecutor v. Ferdinand Nahimana*, Case No. MICT-13-37-ES.1, Public Redacted Version of the 22 September 2016 Decision of the President on the Early Release of Ferdinand Nahimana, 5 December 2016, para. 31; *Prosecutor v. Gérard Ntakirutimana*, Case No. MICT-12-17-ES, Public Redacted Version of the 26 March 2014 Decision of the President on the Early Release of Gérard Ntakirutimana, 24 April 2014, para. 21.

acceptance of responsibility for the crimes for which a person was convicted is but one of several positive indicators that can demonstrate rehabilitation, as indeed Judge Meron himself and others before him have noted in the past.¹⁹⁷ Further, this is only one of the numerous indicators that I have assessed above, and it is evident that acceptance of responsibility does not constitute a legal requirement to demonstrate rehabilitation, let alone serve as a precondition for early release.

V. CONCLUSION

96. After a thorough review of all the information provided in relation to the Application and having carefully assessed the factors set out in Rule 151 of the Rules, as well as all other relevant information, I do not consider it appropriate to exercise my discretion to grant early release to Brđanin at this stage. In particular, the high gravity of his crimes militates against releasing him early. Further, and for the reasons specified above, Brđanin has failed to demonstrate that he has been sufficiently rehabilitated.

VI. DISPOSITION

97. For the foregoing reasons and pursuant to Article 26 of the Statute, Rules 150 and 151 of the Rules, and paragraph 10 of the Practice Direction, I hereby **DENY** Brđanin's Application for early release.

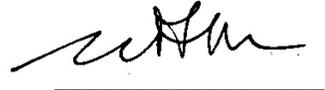
98. The Registrar is hereby **DIRECTED** to provide the authorities of Bosnia and Herzegovina with the public redacted version of this decision as soon as practicable.

¹⁹⁶ See *supra*, para. 23.

¹⁹⁷ See *supra*, para. 49, fn. 93, referring, *inter alia*, to *Kunarac* Decision, para. 53 (President Meron: "I note that factors such as, for example, the prisoner's behaviour whilst in detention, his or her willingness to assume responsibility for the crimes of which he or she was convicted [...] are taken into account in determining whether a prisoner has shown sufficient signs of rehabilitation."); *Stakić* Decision, paras. 31, 34 (ICTY President Patrick Robinson: "In the *Radić* Decision of 23 April 2010, while I stated that the failure of the accused to take responsibility for his crimes is not necessarily determinative as to his rehabilitation, I took such behaviour, amongst other evidence, into account as a factor to be considered in my overall determination as to rehabilitation. [...] I note with concern Mr. Stakić's refusal to take responsibility for the crimes for which he was convicted."); *Radić* Decision of 22 June 2007, para. 15 (ICTY President Fausto Pocar: "I do not consider that Radić demonstrates clear signs of rehabilitation. While his behaviour in detention has generally been good, this is outweighed by his denial of having committed rape and sexual assault, which the French Penalty Enforcement Judge also found to be of concern.").

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

Done this 28th day of February 2020,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Mechanism]



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			No. of Pages/ Nombre de pages : 33
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<input checked="" type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>	

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>)
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<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>
Original/ Original en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> Other/Autre (specify/préciser) : <input type="checkbox"/> B/C/S
Translation/ Traduction en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> Other/Autre (specify/préciser) : <input type="checkbox"/> B/C/S
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :

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