

2021

Offender Rehabilitation in International Criminal Justice: Towards Implementation of Tailored Rehabilitation Programs

Marina Maier

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Available at: <https://scholarlycommons.law.case.edu/jil/vol53/iss1/11>

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OFFENDER REHABILITATION IN INTERNATIONAL CRIMINAL JUSTICE: TOWARDS IMPLEMENTATION OF TAILORED REHABILITATION PROGRAMS

*Marina Maier**

ABSTRACT

The *ad hoc* international criminal tribunals, namely the International Criminal Tribunal for the Former Yugoslavia (“ICTY”), the International Criminal Tribunal for Rwanda (“ICTR”) and later the International Residual Mechanism for Criminal Tribunals (“IRMCT,” “Mechanism”) faced an unexpected challenge regarding granting early releases based on the vague and unspecified criteria provided in the respective Statutes and Rules of Procedure and Evidence (“RPE”). Superficial and inconsistent evaluation of rehabilitation, one of the factors that is assessed during this procedure, led to discrepancies in the jurisprudence and stressed the weaknesses of the sentence enforcement system regarding the rehabilitation of the perpetrators.

The vast majority of the ICTY convicts have already been released from prison, many of them returned to their home countries. Those who served their sentences in the prisons of enforcement states (38 individuals), participated in different rehabilitation programs depending on the type of prison, domestic laws, and rehabilitation concepts. It is important to note that 30% of the offenders (21 individuals) served their full or partial sentence at the United Nations Detention Unit (“UNDU”) under the presumption of innocence and were not subject to any penal rehabilitation programs.

Taking the released ICTY convicts as the most indicative group of international perpetrators for the purposes of this research, the paper seeks to empirically establish that only several are considered rehabilitated, and, therefore, the whole ambitious aim of the International Criminal Justice System (“ICJS”) as a project might not be fulfilled for several reasons. Many of the former prisoners express no acknowledgement of their guilt after returning to their home countries; to the contrary, they explicitly express their views on the committed crimes and the ICTY in general, mainly denying the crimes and stating that the ICTY is an unlawfully established court. Since their influence

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on the political and social life in the former Yugoslavia can be significant because of their prominent positions in the society in the past and wide media coverage of their homecomings, the question whether justice was indeed done, namely whether *international* criminal justice was effective, stands out sharply. Using the data collected from different sources, such as prisoners' statements, rehabilitation reports, early release decisions, interviews, articles, books, documentaries, etc., the author tries to justify the argument, that the absence of the specified, tailored rehabilitation programs, which would be aimed at different types of perpetrators of international crimes, is a serious omission within the ICJS, which led to the ineffectiveness of the latter with regard to post-incarceration issues. Profound and solid rehabilitation can serve as a precondition or at least as a first building brick for the reconciliation in the society and, therefore, its importance cannot be diminished.

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I. INTRODUCTION

The proceedings at the ICTY, which were meant to establish historical facts about the past, bring justice to those who are responsible for the crimes, and pursue an overarching and ambitious goal of bringing reconciliation to the region of former Yugoslavia¹ unexpectedly led to “the transformation of the convicted war criminals into heroes in their home countries.”² The lack of attention to the suitability and effectiveness of the rehabilitation programs offered by the prisons in the enforcement states for the perpetrators of international crimes as well as the absence of any such programs at the UNDU, and the unfortunate omission to include the detailed guidelines for the rehabilitation assessment during the early release procedure, led to the systematic early releases of the insufficiently rehabilitated war criminals to their communities.³ Given the lack of their remorse and public apology and the generally warm welcome of “the heroes” back home,⁴ it can be argued that such disrespect towards the ICTY Judgements⁵ resulted in the scarcity of the positive effects of the international criminal justice in the affected region in general.

One can question how the rehabilitation of international perpetrators could contribute to the reconciliation process. What is

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1. S.C. Res. 808 (Feb. 22, 1993); S.C. Res. (May 25, 1993), amended by S.C. Res. 1877 (July 7, 2009) [hereinafter ICTY Statute].
 2. Katarina Ristić, *The Media Negotiations of War Criminals and Their Memoirs: The Emergence of the “ICTY Celebrity”*, 28 INT’L CRIM. JUST. REV. 391, 391 (2018).
 3. Barbora Hola et al., *Does Remorse Count? ICTY Convicts’ Reflections on Their Crimes in Early Release Decisions*, 28 INT’L CRIM. JUST. REV. 349, 365–66 (2018).
 4. See generally Jovana Mihajlović Trbovc, *Homecomings from “The Hague”*: Media Coverage of ICTY Defendants after Trial and Punishment, 28 INT’L CRIM. JUST. REV. 406 (2018). It should be noted that only a marginal group received huge homecoming events, *id.*
 5. Olivera Simić, *Bringing Justice Home: Bosnians, War Criminals and the Interaction Between the Cosmopolitan and the Local*, GERMAN LAW JOURNAL 12, at 1407 (2011).

expected of those offenders in addition to standing lengthy trial proceedings that were extensively covered by mass media and further serving their sentences in prisons? They carry a label of “war criminal” even after their release, which sounds even harsher in Bosnian/Croatian/Serbian language (“BCS”) — “ratni zločinac,” where the root of the word “zločinac” is “zlo,” which means “evil.”⁶ While there are other terms to describe a criminal in its conventional sense in BCS — “kriminalac” or “počinitelj,” the Yugoslavian war criminals are labelled *exclusively* with the word “zločinac.”⁷ Ideally, they would return from prisons as changed people who sincerely regret what they have done and apologize before their victims. The victims in turn would be ready to accept the apology and move forward together towards reconciliation and re-build the peace in the post-conflict region. However, we need to leave these fantastic aspirations and admit the bitter reality — perpetrators do not always feel sorry for what they have done and nobody can force them to do so. To the contrary, they are often proud of themselves and their deeds and portray themselves solely as “saint protectors of their homeland,” who suffer unjust conviction by a “biased western court.”⁸ Furthermore, the society where they return does not consist exclusively of their victims; in reality, it consists also of their supporters and admirers who, living in the community heavily affected by inter-ethnic war and tensions, often seek “heroes” to justify their own views on the conflict and righteousness of the actions of their particular ethnic group.⁹ Barbora Hola, Joris van Wijk, Francesca Constantini and Armi Korhonen even go further in assuming that the reintegration of an international perpetrator into the society “might be much better, if he does *not* acknowledge having committed any crimes, nor shows any remorse” [emphasis added];¹⁰ there is arguably a certain need of the perpetrators to maintain the course on convincing themselves that they are innocent and do not regret anything. In this unique situation, it seems that the perpetrators

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6. See Robert Fisk, *Yugoslav War Criminals Have Little to Fear*, INDEPENDENT, (Feb. 14, 1993) <https://www.independent.co.uk/news/world/yugoslav-war-criminals-have-little-fear-robert-fisk-reports-sarejevo-killers-who-will-never-be-brought-trial-1472844.html> [https://perma.cc/6XEY-F4J2]. See generally “*Evildoer*,” *English to Bosnian Meaning*, BOSNIAN-ENGLISH DICTIONARY, <https://bosnian.english-dictionary.help/?q=evildoer>, [https://perma.cc/WFW7-BPLJ].
 7. See generally Fisk, *supra* note 6.
 8. See, e.g., Simić, *supra* note 5, at 1394.
 9. See Nenad Pejić, *A Land Where War Criminals Are Heroes*, RADIO FREE EUROPE RADIO LIBERTY, (Oct. 31, 2009 8:26AM) https://www.rferl.org/a/A_Land_Where_War_Criminals_Are_Heroes/1865935.html [https://perma.cc/B8BM-PCHP].
 10. Hola, *supra* note 3, at 350.

re-socialize without being rehabilitated; however, does rehabilitation always imply remorse? The notion of remorse is sensitive; the sincerity of its expression is often questionable; and the views on its value for rehabilitation are different. The present research aims at analyzing the complex and under-researched concept of rehabilitation in International Criminal Law (“ICL”), empirically establishing the insufficient results of rehabilitation of the international perpetrators, primarily focusing on their reflection on the committed crimes.

Generally, criminologists distinguish four stages which the convicted individual passes after the verdict: (i) designation; (ii) incarceration; (iii) early release; and (iv) post-release.¹¹ The last stage is the least examined in ICJS.¹² Building upon the available information, this research aims to establish the linkages between three of these stages by examining them through the lens of rehabilitation; namely, rehabilitation in prison, rehabilitation assessment in early release decisions, and signs of rehabilitation at the post-release stage. Although the designation of an enforcement state is an important part of the procedure in the decentralized enforcement system, and acknowledging its usually long duration, it can be only concluded that, unfortunately, there were no rehabilitation programs offered at the UNDU during this stage.

For the purposes of rehabilitation assessment, the released Yugoslavian offenders can be divided into two groups: according to the author’s research 42 individuals who were transferred to the prisons of the enforcement states, and 26 individuals who served their sentences exclusively at the UNDU. Setting aside the deceased individuals, the analysis of guilty plea statements, evaluation of rehabilitation in the early release decisions as well as the lives post-incarceration of the 38 war criminals who served their sentences in different European prisons (“Research Group”) constitutes an essential part of this research.¹³ The group of the perpetrators who served their sentences solely at the UNDU are excluded from the empirical part of the analysis since the purpose of this research is to show the unsuitability of the offered *penal* or *criminal* rehabilitation programs in the enforcement states for the

11. Barbora Hola, *Seeing Justice Through: Long-Term Issues in International Justice*, INT’L BAR ASS’N (Oct. 21, 2019), (Panel One Conference Recording, at 8:17-8:39) <https://www.ibanet.org/Conferences/Seeing-Justice-Through-long-term-issues-in-international-justice.aspx> [<https://perma.cc/V7Z6-XH2P>].

12. *See generally id.*

13. *See generally* Jonathan H. Choi, *Early Release in International Criminal Law*, 123 YALE L. J. 1789, 1808, 1817 (2014).

perpetrators of international crimes.¹⁴ The comparison between prisons' results and the UNDU's results would only make sense if the UNDU offered any rehabilitation model for the detainees; due to the disproportionality of the time served in prison to the time spent at the UNDU, any comparison based on the particular enforcement states would not be suitable for the UNDU group.

It is noted that the information about the post-incarceration phase of the released offenders was collected by the author from different open sources, such as news articles, interviews, books authored by perpetrators, Facebook and LinkedIn personal pages, etc. All the quotations are provided in the author's translation from BSC. Given the general scarcity of information, biased and unreliable local media, the effort is on assessing the information impartially, without distortions and unjustified conclusions. Some information can hardly serve as an indication of any sign of rehabilitation; the perpetrators are often very cautious in expressing their views on the committed crimes. There is certainly a need for more profound interview-based research, where the released perpetrators would have the opportunity to elaborate on their attitude towards committed crimes and the suitability of the rehabilitation programs offered to them; such research would significantly contribute to the existing academic writings.

What is the outcome, apart from the fact that the Research Group showed limited signs of rehabilitation and remorse? The need to act is indisputable, and although Hola and van Wijk, among others, consider abandoning the idea of rehabilitation of international perpetrators completely,¹⁵ the present research provides for statistical data supporting the following: current insufficient results of rehabilitation, claims that the ICJS should be effective at all its stages, rehabilitation should be taken seriously, more attention should be on the rehabilitation in the decentralized enforcement system, and integration of tailored rehabilitation programs ("TRPs") should be considered a challenging but possible operational solution.

A. Short statistical overview

For the purposes of this research, since it includes a statistical assessment of different aspects, a short overview of the ICTY activities in numbers will be provided. Based on the author's research, the ICTY sentenced 90 individuals, 59 of those have already served their

14. It is worth mentioning that during the preparation of the empirical part, the author examined the lives of those 21 released perpetrators post-incarceration and identified the general unsatisfactory picture of their rehabilitation as well.

15. Barбора Hola & Joris van Wijk, *Rehabilitating International Prisoners*, in RESEARCH HANDBOOK ON THE INTERNATIONAL PENAL SYSTEM 275 (Róisín Mulgrew & Denis Abels eds., 2016) [hereinafter Hola & van Wijk, in RESEARCH HANDBOOK].

sentences¹⁶ and either returned to their home countries or relocated to a third country. The majority, in fact, returned to their previous homes; however, since the former Yugoslavia disintegrated into various independent successor states, to a large extent “reflecting ethnic lines of the former fighting groups,”¹⁷ Bosnian Croats usually relocate to Croatia, whereas Bosnian Serbs to Republika Srpska (“RS”) in Bosnia and Herzegovina (“BiH”) or Serbia.¹⁸ Twenty individuals are still serving their sentences in prisons.¹⁹ Additionally, as of the date of this writing, August 2020, two perpetrators, namely, Radovan Karadžić and Milivoj Petković, are awaiting the transfer to one of the enforcement states,²⁰ and, therefore, are excluded from this research. Interestingly, 26 out of 88 perpetrators, which constitutes roughly 30%,²¹ served their full or two-thirds of the sentence at the UNDU and have never been transferred to regular prisons.²² Although the perpetrators who are still in custody are excluded from this research, they may as well have some influence on the post-conflict societies by publishing books and giving interviews while serving their sentences. One of the examples might be the infamous Milan Lukić, who flatly denies his crimes in his book, portraying himself as a heroic figure.²³ Nevertheless, since less is known about the rehabilitation programs to which they are subject, and since such impact on the communities is usually minimal,²⁴ these individuals fall out of the scope of this research.

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16. *Key Figures of the Cases*, UNITED NATIONS INT’L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA <https://www.icty.org/en/cases/key-figures-cases> [<https://perma.cc/5BCZ-ECVT>]. The released perpetrators, therefore, constitute 66% of all the sentenced individuals, *id.*
 17. Barbora Hola & Joris van Wijk, *Life After Conviction at International Criminal Tribunals*, 12 J. OF INT’L CRIM. JUST., 109, 130 (2014).
 18. This is based on the authors independent research. *See generally* John R. Lampe, *Bosnian War*, BRITANNICA <https://www.britannica.com/event/Bosnian-War> [<https://perma.cc/R658-TGVH>].
 19. *See Key figures of the Cases*, *supra* note 16.
 20. *Id.* Milivoj Petković was transferred to Belgium after the date of this writing.
 21. The calculation is made including the deceased perpetrators; the amount would constitute 27%, when calculated without deceased individuals. *See generally id.*
 22. *Id.*
 23. Vladimir Petrović, *The ICTY Library: War Criminals As Authors, Their Works As Sources*, 28 INT’L CRIM. J. R. 332, 340 (2018).
 24. It can be argued, that, for example, Vojislav Šešelj, who wrote 68 books and provided leadership of his political party during his time spent at the UNDU is evidence to the contrary. *See* JUDITH ARMATTA, TWILIGHT OF

Nine individuals passed away while serving their sentences or shortly thereafter: Ljubiša Beara, Miroslav Deronjić, Mile Mrkšić and Milan Babić — in prison (although the latter took his life at the UNDU), Zdravko Tolimir — at the UNDU while awaiting of his transfer.²⁵ Milan Gvero died at home after his early release was granted,²⁶ Drago Nikolić and Rasim Delić passed away during their provisional releases back home.²⁷ Milan Babić and Slobodan Praljak committed suicide after they were sentenced.²⁸ Without any speculation on such a sensitive and tragic issue, it might be assumed that the reasoning for this step was different: Mr. Babić took his life because he recognized his crimes and expressed sincere remorse,²⁹ whereas Mr. Praljak protested against his sentencing and claimed that he “was not a war criminal.”³⁰

IMPUNITY: THE WAR CRIMES TRIAL OF SLOBODAN MILOSEVIC 408, 416 (2010).

25. See *Key Figures of the Cases*, *supra* note 16; THE HAGUE JUDGE KEVIN H. PARKER, REPORT TO THE PRESIDENT: DEATH OF MILAN BABIC (2006); Marlise Simons, *Zdravko Tolimir, General Tied to Srebrenica Massacre, Dies* at 67, N.Y. TIMES (Feb. 9, 2016) <https://www.nytimes.com/2016/02/10/world/europe/zdravko-tolimir-general-tied-to-srebrenica-massacre-dies-at-67.html> [<https://perma.cc/3VYK-URQ4>].
26. Prosecutor v. Gvero, Case no.: IT-05-88-ES, Decision of President on Early Release of Milan Gvero, ¶ 5 (Int'l Crim. Trib. For the Former Yugoslavia July 28, 2010); *Bosnian Serb Commander Milan Gverno Dies*, BALKAN TRANSITIONAL JUST. (Feb. 18, 2013, 2:32 PM) <https://balkaninsight.com/2013/02/18/bosnian-serb-commander-gvero-dies/> [<https://perma.cc/66TR-BGH7>]. See also Erna Mackic, *Srebrenica Convict Ljubiša Beara Dies in Germany*, BALKAN TRANSITIONAL JUST. (Feb. 10, 2017, 6:21 PM) <https://balkaninsight.com/2017/02/10/srebrenica-genocide-convict-dies-in-germany-02-10-2017/> [<https://perma.cc/4GX5-2L6F>]; Ljubiša Beara also died after his early release was granted.
27. Erna Mackic, *Deaths Spotlight Hague Tribunal's Ageing Defendants*, BALKAN TRANSITIONAL JUST. (Feb. 10, 2016, 11:45 AM) <https://balkaninsight.com/2016/02/10/deaths-spotlight-hague-tribunal-s-ageing-defendants-02-10-2016/> [<https://perma.cc/3GCS-6XUK>].
31. *Slobodan Praljak Suicide: Dutch Police Find Lethal Chemical in Vial*, BBC NEWS (Nov. 30, 2017) <https://www.bbc.com/news/world-europe-42177772> [<https://perma.cc/U5CJ-99BP>].
29. Prosecutor v. Babić, Case No. IT-03-72-S, Sentencing Judgement, ¶ 65 (Int'l Crim. Trib. For the Former Yugoslavia June 29, 2004); See also Alex Whiting, *Harvard Law School Last Lecture Series*, YOUTUBE (Apr. 8, 2018) <https://www.youtube.com/watch?v=ftg2wMMbbr8> [<https://perma.cc/ZZH8-9YG4>].
30. *Statement on Passing of Slobodan Praljak*, UNITED NATION INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA (Nov. 29, 2017),

Twenty individuals pleaded guilty; some of them expressed remorse and some acknowledged the military command mistakes or general sorrow to the victims of the conflict of all sides.³¹ Several guilty pleas, however, turned out to be false from the beginning and served only as a means of effective sentence commutation — Biljana Plavšić can be illustrative in this case. Since this research aims at analyzing different aspects of rehabilitation, the acquitted individuals³² are excluded from the analysis for obvious reasons, without diminishing the fact that their impact on the reconciliation process in some cases might be more significant than those who returned after serving their sentence.³³

II. REHABILITATION IN INTERNATIONAL CRIMINAL LAW

A. *The penological concept of rehabilitation*

Anna Oehmichen states that the gradual inclusion of general prevention along with such “classical purposes as retaliation and atonement” into the goals of punishment developed during the 19th century together with “the idea of encouraging the detainee to act in accordance with the law by offering him a perspective of a life in freedom.”³⁴ However other theorists claim that the history of penal rehabilitation goes back even to the 18th century.³⁵ Setting aside the historical development of this concept, which has overcome different transformations through the years, it is essential to define the contemporary penological concept of rehabilitation as “the process of

<https://www.icty.org/en/press/statement-on-passing-of-slobodan-praljak> [https://perma.cc/JD2D-SS4F]; See also *Slobodan Praljak Suicide “Could Not Have Been Prevented,”* BBC (Dec. 31, 2017), <https://www.bbc.com/news/world-europe-42529871> [https://perma.cc/NEV7-4DCW].

31. *Statements of Guilt*, UNITED NATION INT’L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/features/statements-guilt> [https://perma.cc/J9RH-BT5M].
32. See Joris van Wijk & Barbora Hola, *Acquittals in International Criminal Justice: Pyrrhic Victories*, 30 LEIDEN J. INT’L L. 241, 243 (2017).
33. For example, Ramush Haradinaj and Fatmir Limaj from Kosovo, Ante Gotovina from Croatia, Naser Orić from BiH can be listed among the most prominent and influential acquitted individuals in their countries.
34. Anna Oehmichen, *Article 110. Review by the Court Concerning Reduction of sentence*, in COMMENTARY ON THE LAW OF THE INTERNATIONAL CRIMINAL COURT 708 (Mark Klamberg ed., 2017).
35. Hola & van Wijk, in RESEARCH HANDBOOK, *supra* note 15, at 275 (referencing GWEN ROBINSON & IAIN CROW, OFFENDER REHABILITATION: THEORY, RESEARCH AND PRACTICE 1 (2013)). See also John Howard and *Prison Reform*, UK PARLIAMENT, <https://www.parliament.uk/about/living-heritage/transformingsociety/laworder/policeprisons/overview/prisonreform/> [https://perma.cc/TD4R-L4UG].

seeking to improve the criminal's character and outlook so that he or she could function within the society without committing crimes,"³⁶ the process that "implies change."³⁷ The Latin root of this word — *habilis* — has a meaning of, *inter alia*, "fitting," "suitable," "appropriate," and "adapted;"³⁸ it can be concluded that the aim of penal rehabilitation would be the adaptation of criminals back into social life.

The concept can be examined from the consequentialist or humanitarian view.³⁹ On the first view, rehabilitation has a very practical goal — by turning former criminals into "useful contributing members of society," it also protects others from potential crimes and contributes to economic prosperity.⁴⁰ On the humanitarian view, there exists a right to rehabilitation, precisely as there exists — for example — the right to education; such "humanitarian rehabilitation" approach is recognized by many European countries.⁴¹ Since aspects, such as the economic contribution to the society as well as prevention of future crimes, play a minor role in the ICJS and given that the international perpetrators are "unlikely to re-offend,"⁴² it can be concluded that, in this case, rehabilitation should function primarily on humanitarian grounds. However, if the international perpetrator takes his right to rehabilitate flatly as a right and does not put any effort into rehabilitation during his incarceration, it may result in his release without any signs of rehabilitation or remorse. The inter-relation between the last two should be addressed more precisely — can sincere remorse amount to successful rehabilitation if the released offender does not have any other obstacles to re-enter the society, given his education,

36. *Rehabilitation*, BLACK'S LAW DICTIONARY (11th ed. 2019).

37. Hola & van Wijk, in RESEARCH HANDBOOK, *supra* note 15, at 275; See also Jessica M. Kelder et al., *Rehabilitation and Early Release of Perpetrators of International Crimes: A Case Study of the ICTY and ICTR*, 14 INT'L CRIM. L. REV. 1177, 1184 (2014).

38. See *Habilis*, PERSEUS, <http://www.perseus.tufts.edu/hopper/text?doc=Perseus:text:1999.04.0060:entry=habilis&highlight=habilis> [<https://perma.cc/VA2T-SJR8>].

39. J. H. Choi, *Early Release In International Criminal Law*, 123 YALE L. J. 1784, 1817 (2014) (quoting GWEN ROBINSON & IAIN CROW, OFFENDER REHABILITATION: THEORY, RESEARCH AND PRACTICE 1 (2009)).

40. *Id.* at 1817 (quoting GWEN ROBINSON & IAIN CROW, OFFENDER REHABILITATION: THEORY, RESEARCH AND PRACTICE 10 (2009)).

41. *Id.* at 1818; see also Peter Raynor & Gwen Robinson, *Why Help Offenders? Arguments for Rehabilitation as a Penal Strategy*, 1 EUROPEAN J. OF PROB. 3, 10 (2009).

42. William Schabas argues that it is a logical outcome since international crimes usually "take place within a context of civil strife and armed conflict." WILLIAM A. SCHABAS, THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY TO THE ROME STATUTE 1413 (Oxford Univ. Press 2d ed. 2016).

family, prospect to work, etc.? For example, Mr. Borovčanin shares positive views on the Danish penal system, which is aimed at helping prisoners take steps towards resocialization through *inter alia* labor rehabilitation programs;⁴³ he now works as a deputy director of Technical Overhaul Bratunac, a solid company back in BiH and is fully integrated into social life.⁴⁴ He expresses general sorrow for the victims of all sides, stating that “whatsoever that what happened during the war was wrong”,⁴⁵ and “I understood, that [my sentence] was *nothing* with regard to victims, to those young men, whom I led into the battle . . . and who died in their best years. . . . I accepted it out of piety to my killed [fighters] and those killed on the enemy’s side.”⁴⁶ However, he is reluctant to provide his views on the events in Srebrenica, merely referring to the book “Planned Chaos” authored by Ibran Mustafić, stating, “read the book . . . , where [the author] poses 18 questions. Those who answer these 18 questions will uncover the mystery of Srebrenica.”⁴⁷

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43. Mr. Borovčanin described labor rehabilitation activities in Danish prison in one of the interviews. See Jutarnji Program TV Happy, *Ljubiša Borovčanin – Milošević, Srebrenica i Hag - Dobro jutro Srbijo*, YOUTUBE (July 4, 2018), https://www.youtube.com/watch?v=_m1bc7KTECI [<https://perma.cc/SAA3-MEFD>] (translation on file with Case Western Reserve University Journal of International Law).
 44. See e.g., TRB Celebrated the Annual Patron Saint’s Day Saint Demetrius and New “DESPOT” Presented, TRB (Nov. 9, 2020) <https://trb.ba/en/trb-celebrated-the-annual-patron-saints-day-saint-demetrius-and-new-despot-presented/> [<https://perma.cc/H6AE-64EJ>].
 45. Prosecutor v. Borovčanin, Case No. MICT-15-85-ES.6, Public Redacted Version of the 14 July 2016 Decision of the President on the Early Release of Ljubomir Borovčanin, ¶ 22 (Mechanism for Int’l Criminal Tribs. Aug. 2, 2016).
 46. See e.g., Ljubomir Borovčanin, *Ljudovanje – Gost: General Ljubiša Borovčanin – Hag iznutra-- od ljudi do zidova –odnosi u zatvoru*, YOUTUBE (July 31, 2019) at: <https://www.youtube.com/watch?v=mdpatYS4xUE> [<https://perma.cc/9DLC-ALKG>] (translation on file with Case Western Reserve University Journal of International Law).
 47. See interview, *Ljubiša Borovčanin - Milošević, Srebrenica i Hag - Dobro jutro Srbijo*, TV HAPPY, 4 July 2018, at: https://www.youtube.com/watch?v=_m1bc7KTECI [<https://perma.cc/4TLU-MM49>] (translation on file with Case Western Reserve University Journal of International Law). For the overview of the book, see G. Carter, *Sensational confession of Ibran Mustafić, Bosnian Muslim War Veteran and Politician: We Were Killing Our Own People in Srebrenica*, (July 16, 2017), <https://mightynose.wordpress.com/2017/07/16/sensational-confession-of-ibran-mustafic-bosnian-muslim-war-veteran-and-politician-we-were-killing-our-own-people-in-srebrenica/> [<https://perma.cc/QM6H-UJ7T>].

Notably, in domestic penal systems, remorse *per se* does not replace rehabilitation; it is only one of the indications of the latter, which could serve as a basis for building up further rehabilitative activities, such as labor rehabilitation or education.⁴⁸ In the ICJS, remorse is a crucial and fundamental element, which indicates a change of thinking in the former perpetrator, thereby contributing to the reconciliation process, given the publicity of such expression.⁴⁹ However, the fair question should be posed whether the goal of individual rehabilitation is to support the process of reconciliation or not. Building upon the theory of *Sozialstaat*,⁵⁰ which demands that the community “help prisoners with . . . social development to encourage their flourishing within the society,”⁵¹ it can be stated, that the released perpetrator, as member of the community, should contribute to the social stability by providing his input to the development and prosperity of his society by, *inter alia*, contributing to the reconciliation process.

B. Rehabilitation as a sentencing goal in the ICTY decisions

Although rehabilitation can be seen as a traditional theory of criminal punishment, along with deterrence and retribution,⁵² the ICTY consistently underlined the last two as the primary purposes of sentencing,⁵³ making rehabilitation a secondary goal.⁵⁴ Katie Smith came to a statistical conclusion that rehabilitation was mentioned in 47 of 91 ICTY decisions, which constitutes almost 52%.⁵⁵ The Judges, however, did not engage in an extensive discussion about the concept of rehabilitation, devoting only a couple of lines to explaining the

48. See Katie Smith, *Rehabilitation as a Sentencing Goal in International Criminal Justice* 8–9, CTR. FOR INT’L CRIM. JUST. (Jan. 27, 2014), http://www.whenjusticeisdone.org/articles/memos/Rehabilitation_KathieSmith.pdf [<https://perma.cc/885C-RW3B>].

49. See generally Hola et al., *supra* note 3, at 349, 353.

50. See generally Choi, *supra* note 39, at 1818.

51. *Id.* (quoting Amanda Ploch, *Why Dignity Matters: Dignity and the Right (or Not) to Rehabilitation from International and National Perspectives*, 44 N.Y.U. J. INT’L L. & POL. 887, 913 (2012)).

52. *Rehabilitation*, BLACK’S LAW DICTIONARY (11th ed. 2019).

53. Hola & van Wijk, *in* RESEARCH HANDBOOK, *supra* note 15, at 278–79.

54. See, e.g., Prosecutor v. Deronjić, Case No. IT-02-61-A, Judgement on Sentencing Appeal, ¶ 136 (Int’l Crim. Trib. for the Former Yugoslavia July 20, 2005); Prosecutor v. Tadić, Case No. IT-94-1-A, Judgement in Sentencing Appeals, ¶ 48 (Int’l Crim. Trib. for the Former Yugoslavia (Jan. 26, 2000); Prosecutor v. Lukić, Case No. IT-98-32-1-T, Judgement, ¶ 1049 (Int’l Crim. Trib. for the Former Yugoslavia July 20, 2009); Choi, *supra* note 39 at 1809.

55. Smith, *supra* note 48, at 5.

meaning of rehabilitation in several cases where the accused pleaded guilty.⁵⁶

In *Blagojević and Jokić*, the Judges held that:

this process of reflection — and hearing the victims testify — can inspire tolerance and understanding of “the other,” thereby reducing the risk of recidivism. Reconciliation and peace would thereby be promoted. However, the Trial Chamber notes that the rehabilitative purpose of sentencing will not be given undue prominence in determining the sentence.⁵⁷

Promoting the reintegration into society⁵⁸ and allowing the individual to live normal and useful lives post-incarceration⁵⁹ were also mentioned under the umbrella of rehabilitation at the sentencing stage.⁶⁰ It can be concluded that, generally, the Judges considered the rehabilitation of war criminals “to be no different from the rehabilitation of conventional offenders,”⁶¹ and such an inattentive approach to rehabilitation as a sentencing goal led to discrepancies in rehabilitation assessment as a factor for early release, which will be discussed further.

*The UNDU – ‘last oasis’ of Yugoslavia*⁶²

Nije bitno šta je bilo tamo
neg je važno kako nam je amo.
Među nama dobra sloga vlada
svak bi rek'o to je k'o nekada.

Kažu da smo mi ratni zločinci
a mi ovdje kao mali klinici.
Tu je igra, tu je družba fina
nema pojma da nas loših ima.

56. *Id.*; see also Hola & van Wijk, in RESEARCH HANDBOOK, *supra* note 15, at 279.

57. Prosecutor v. Blagojević, Case No. IT-02-62-T, Judgement, ¶ 824 (Int'l Crim. Trib. for the Former Yugoslavia Jan. 17, 2015).

58. See Prosecutor v. Obrenović, Case No. IT-02-60-2S, Sentencing Judgement, ¶ 53 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 10, 2003).

59. Prosecutor v. Delalić, Case No. IT-96-21-T, Judgement, ¶ 1233 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).

60. See Hola & van Wijk, in RESEARCH HANDBOOK, *supra* note 15, at 279–80.

61. *Id.* at 280.

62. Petrović, *supra* note 23, at 340.

*Kad bi znali oni naši tamo
kako složno mi živimo vamo
svi bi oni legli potrbuške
i za mir bi uništili puške.*⁶³

Simo Žarić, Scheveningen, 1998

Generally, the ICTY's practice of treating pre-trial detention "as the norm . . . falls heavily out of line with international human rights standards."⁶⁴ The significant length of the international criminal proceedings led to the situation where, on one hand, the acquitted individuals spent many years in detention, and on the other hand, the sentences of many convicted perpetrators were served during pre-trial, trial and appellate proceedings.⁶⁵ The UNDU is subject to the international minimum standards of detention;⁶⁶ the procedures are regulated by the IRMCT Rules of Detention,⁶⁷ which draw upon the

63. The poem written by the ICTY convict Mr. Žarić (served his sentence at the UNDU), short translation: *It is not important what happened there, it is important how are we now, we have good relations between us here, everybody would say, good as never before; everybody calls us war criminals, but here we are as little kids, here is play and nice friendship . . . If only our people there knew how harmoniously we live here they would all lay on their stomachs and for peace they would destroy the rifles.*

64. Andrew Trotter, *Pre-Conviction Detention in the International Criminal Tribunals*, 11 J. INT'L CRIM. JUST. 351, 354–55 (2013).

65. Martin Petrov & Dejana Radisavljević, *Post-Conviction Issues: Enforcement of Sentences and Other Residual Responsibilities*, in DEFENSE PERSPECTIVES ON INTERNATIONAL CRIMINAL JUSTICE 347, 356 (Colleen Rohan & Gentian Zyberi eds. 2017).

66. *Id.* at 349; See also *Standard Minimum Rules for the Treatment of Prisoners*, UNITED NATIONS (Aug. 30, 1995), <https://www.refworld.org/docid/3ae6b36e8.html> [<https://perma.cc/UQ66-9VU4>]; G.A. Res. 43/173 (Dec. 9, 1988); G.A. Res. 45/111 (Dec. 14, 1990).

67. U.N. Int'l Residual Mechanism for Crim. Tribunals, U.N. Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism (Nov. 5, 2018) [hereinafter IRMCT Rules of Detention], <https://www.irmct.org/sites/default/files/documents/181105-irmct-rules-of-detention.pdf> [<https://perma.cc/GU4C-TX8B>].

respective Rules of the ICTY⁶⁸ and ICTR.⁶⁹ Being a remand center in its nature, the facility is unsuitable for prolonged imprisonment.⁷⁰ It provides for many possibilities, such as doing sports and art,⁷¹ watching television, receiving press from the former Yugoslavian countries, and ordering food;⁷² the visitation regime is flexible, allowing not only family members, but also friends, ambassadors, and priests to see detainees at almost any time of day.⁷³ Apart from the possibility to meet the psychologist⁷⁴ and the possibility to work,⁷⁵ which can to some extent be considered an analogue to the penal labor rehabilitation program, there is no special treatment regarding the rehabilitation while detained at the UNDU.⁷⁶ This is understandable, since the majority of the time

68. U.N. Int'l Crim. Tribunal for the Former Yugoslavia, Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, U.N. Doc. IT/38/Rev.10 (Nov. 15, 2016) [hereinafter ICTY Rules of Detention], <https://www.icty.org/x/file/Legal%20Library/Detention/161115-it38-rev10-rules-of-detention.pdf> [<https://perma.cc/7FTK-ZYPG>].
69. U.N. Int'l Crim. Tribunal of Rwanda, Rules Covering the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal (June 5, 1998) [hereinafter ICTR Rules of Detention], https://unictr.irmct.org/sites/unictr.org/files/legal-library/detention-rules_en_fr.pdf [<https://perma.cc/QQD3-93HY>].
70. Petrov & Radisavljević, *supra* note 65, at 349.
71. Interestingly, Ljube Bošković and Johan Tarčulovski even opened an exhibition of their art works in Skoplje, which were created during detention at the UNDU. See Mile Radenković, *Haške maštarije optuženika u Seveningenu*, POLITIKA (Jan. 30, 2008), <http://www.politika.rs/sr/clanak/31250/Haske-mastarije-optuzenika-u-Seveningenu> [<https://perma.cc/J7EG-8ZTN>].
72. Jurica Radović, *Kako žive zatvorenici Haškog pritvora?*, YOUTUBE (Feb. 7, 2011), <https://www.youtube.com/watch?v=4cndzdnLZ7g>. [<https://perma.cc/7H49-SUS7>] (translation on file with Case Western Reserve University Journal of International Law).
73. *Id.*; see also Petrov & Radisavljević, *supra* note 65, at 356.
74. Esad Landžo, for example, expressed sincere gratitude for this possibility and stressed the importance of beginning the therapy as soon as possible. See Lars Feldballe Petersen, *The Unforgiven: A War Criminal's Remorse*, YOUTUBE (Oct. 20, 2018), https://www.youtube.com/watch?v=EcsUn4x_BYs [<https://perma.cc/3KCN-6RUB>] (translation on file with Case Western Reserve University Journal of International Law).
75. IRMCT Rules of Detention, *supra* note 67, at Rules 80–81; ICTY Rules of Detention, *supra* note 68, at Rules 69–70.
76. See Petrov & Radisavljević, *supra* note 65, at 359. See generally DENIS ABELS, PRISONERS OF THE INTERNATIONAL COMMUNITY: THE LEGAL POSITION OF PERSONS DETAINED AT INTERNATIONAL CRIMINAL TRIBUNALS 255 (2012).

spent in this unit includes court proceedings, where the presumption of innocence is in force.⁷⁷

Finding a prison that is ready to accept the convicted perpetrator, negotiating the designation and settling the bureaucratic procedures turned out to be a challenging part of the post-conviction phase, which generally took a lot of time.⁷⁸ Based on the available information, the time spent while waiting for the transfer constitutes on average 10.2 months when calculated based on the released, serving, and deceased in prisons perpetrators.⁷⁹ The shortest time constitutes about one month in the cases of Milan Babić (UK)⁸⁰ and Anto Furundžija (Finland),⁸¹ and the longest — 39 months in the case of Mile Mrkšić,⁸² who is the only offender to serve his sentence in Portugal, placing the latter in the leading position among the countries with the longest time of transfer. It is worth mentioning that some of the ICTR convicts spent up to eleven years before being moved to a national prison.⁸³

The lengthy waiting times for transfer raises a fair and logical question: whether the convicted perpetrators should stay in the same detention facility unseparated from those who were still on trial. Since the cell doors at the UNDU are open for a large part of the day,⁸⁴ the detainees can socialize, exchange information, and are generally subject to more liberal detention conditions as they should be subject to after the final verdict. The transition from a detainee to a prisoner is also

77. See IRMCT Rules of Detention, *supra* note 67, at Rule 9; ICTY Rules of Detention, *supra* note 68, at pmb1.

78. Hola, *Seeing Justice Through*, *supra* note 11. In some cases, the law of the enforcement state also includes a lengthy exequatur procedure. See Petrov & Radisavljević, *supra* note 65, at 352.

79. The calculation is done based on the information on transfer time available for 58 of the perpetrators (instead of 62), since the precise dates of transfer of Jadranko Prlić, Bruno Stojić, Mićo Stanišić and Stojan Župljanin could not be found. For the Research Group, the average time spent while waiting for the transfer amounts to 8.2 months.

80. See *Case Information Sheet – Milan Babić*, ICTY, https://www.icty.org/x/cases/babic/cis/en/cis_babic_en.pdf [<https://perma.cc/S6PF-MTJ4>].

81. See *Case Information Sheet – Anto Furundžija*, ICTY, https://www.icty.org/x/cases/furundzija/cis/en/cis_furundzija.pdf [<https://perma.cc/L255-W6SX>].

82. See *Case Information Sheet – Mile Mrkšić*, ICTY https://www.icty.org/x/cases/mrksic/cis/en/cis_mrksic_al_en.pdf [<https://perma.cc/DL9R-6HCD>].

83. Róisín Mulgrew, *The Costs of Suspicion: A Critical Analysis of the Compensation Scheme Established by Article 85(3) of the Rome Statute*, in RESEARCH HANDBOOK ON THE INTERNATIONAL PENAL SYSTEM 7 (2016).

84. Petrov & Radisavljević, *supra* note 65, at 356.

challenging from the convicted person's perspective.⁸⁵ It can be concluded from the above-said that "differentiated regimes should be used for different categories of detained persons."⁸⁶ The ICTY President Fausto Pocar tried to approach this issue by ordering the separation of convicted and non-convicted individuals at the UNDU, stating that it would be "consistent with principles of human rights,"⁸⁷ however, "the budgetary and infrastructural constraints" prevented this order from being implemented.⁸⁸ The lack of detailed planning of sentence enforcement procedure in the very beginning of the functioning of the ICTY as well as insufficient attention to this problem during later stages led to many convicted war criminals having never seen a prison in its ordinary sense, never had an opportunity to participate in rehabilitation programs, and generally benefited from better detention conditions at the UNDU in comparison to the other convicts, who were transferred to the prisons.

C. Lyrical digression

Many of the Yugoslavian accused mention the time they spent at the UNDU with a particular emotion, stressing the generally friendly atmosphere and unexpected readiness of the detainees to help each other.⁸⁹ The anecdotes which arose in this facility extended beyond its

85. *See id.*

86. Mulgrew, *supra* note 83, at 106.

87. The President of the International Tribunal, Case No. IT-06-89-Misc.1 Order to the Registrar to Separate Convicted and Non-Convicted Detainees Held in the Detention Unit, (Int'l Crim. Trib. for the Former Yugoslavia (June 15, 2006).

88. Mulgrew, *supra* note 83, at 106.

89. *See e.g.*, Ljubomir Borovčanin, *supra* note 46. *See generally* M. Vidaković, *Pritvorska jedinica Haškog tribunala: Sledite nas, biće dobro svima!*, Vreme No. 525, (Jan, 25, 2001), https://www.vreme.com/arhiva_html/525/06.html [<https://perma.cc/RE2A-RBEV>]. Simo Žarić described friendly atmosphere at the UNDU, stating that "[detainees] live in harmony, help each other and respect each other", *see Jugoslavija žive još samo u Hagu*, PCNEN (June 15, 2006) <https://www.pcnen.com/portal/2006/06/15/jugoslavija-zivi-jos-samo-u-hagu/> [<https://perma.cc/4BH8-YVQB>]. Ljubomir Borovčanin, for example, mentioned good relationships among detainees and friendly football matches: the prisoners joked about Slobodan Praljak, who was preparing to hit a goal for quite some time and looked unsure, telling him: "You hit the bridge from 3 kilometres, how can you not hit a goal from 20 meters?" (alluding to the crime of destruction of the old bridge in Mostar, BiH, of which Mr Praljak was accused), *see* Case Information Sheet — Prlić *et al.* https://www.icty.org/x/cases/prlic/cis/en/cis_prlic_al_en.pdf [<https://perma.cc/XUH6-WCHE>]; *see* Ljubomir Borovčanin, *Ljudovanje*

walls and reached former Yugoslavian communities.⁹⁰ There were no conflicts based on the ethnic, national, or religious affiliation of the detainees.⁹¹ To the contrary, some close unanticipated friendships were born, for example, between Čelebići camp guard Esad Landžo and “Serbian Adolf” Goran Jelisić.⁹² Various books were written inside of the UNDU by the detained individuals, and while examining them, Vladimir Petrović concluded that the lack of remorse for the committed crimes is a distinct feature of this “curious body of literature.”⁹³ Such neglect might serve as an indication of a bigger problem,⁹⁴ namely the absence of attentiveness of the ICTY to the enforcement of sentences in general and rehabilitation programs at the UNDU in particular.

D. Decentralized enforcement and rehabilitation

The ICTY convicts serve or served their sentences in 14 different European prisons,⁹⁵ whereas there exist 17 enforcement agreements and four *ad hoc* agreements with Germany.⁹⁶ Contrary to the ICTR convicts, who serve their sentences quite centralized in three countries (Benin, Mali, and Senegal) and what is more important in the special separate international wings, the Yugoslavian war criminals were integrated into the regular domestic prison population in the European countries, which led to different treatment of them by the prison regime.⁹⁷ Such a system of enforcement can be described as decentralized.⁹⁸ In some countries, the prisoners end up in high-security

- *Gost: General Ljubiša Borovčanin - Hag iznutra - od ljudi do zidova - odnosi u zatvoru*, RTRS (July 31, 2019)

<https://www.youtube.com/watch?v=mdpatYS4xUE>

[<https://perma.cc/J3W8-JWEP>]. Nikola Šainović mentioned that the detainees avoided talking about the conflict in order to maintain good relationships; see his interview with Nikola Šainović, *Goli Život*, TV HAPPY, (May 26, 2017) <https://www.youtube.com/watch?v=UpJj-OgGBBA> [<https://perma.cc/N9PZ-SFVX>].

90. See Petrović, *supra* note 23, at 341, 343.

91. Radović, *supra* note 72.

92. Petrović, *supra* note 23, at 340.

93. *Id.* at 342.

94. *Id.* at 344.

95. The perpetrators from the Research Group served their sentences in 11 countries: Austria (6), Finland (5), Spain (5), Norway (5), Italy (4), Denmark (3), France (3), Sweden (2), Germany (2), UK (2), Belgium (1).

96. *Member State Cooperation*, INT’L RESIDUAL MECHANISMS FOR CRIM. TRIBUNALS, <https://www.icty.org/en/documents/member-states-cooperation> [<https://perma.cc/UU84-DZEH>].

97. Hola, *Seeing Justice Through*, *supra* note 11.

98. See Mulgrew, *supra* note 83, at 33.

prisons (for example, Estonia),⁹⁹ while in the others, it is possible to serve a sentence in open-type prisons (for example, Finland)¹⁰⁰ if the enforcement state does not consider them to be a threat to security.¹⁰¹

Two general problems while serving sentences far away from their home countries were, as indicated by many of the former Yugoslavian perpetrators in their interviews, the linguistic problems — which prevent them from integrating into the prison life and participating in rehabilitation programs — and the impossibility to meet their family members, often due to the distance, financial constraints, and visa requirements.¹⁰² However, it should be mentioned that Mr. Šainović, who served less than one year in the Swedish prison, managed to learn the Swedish language;¹⁰³ in contrast, Mr. Lukić, who is serving his life sentence in Estonia since February 2014, experienced difficulties integrating into prison rehabilitation programs, which are offered only in Estonian, a language he does not understand.¹⁰⁴ In addition to linguistic issues and complications in maintaining family ties, international prisoners are likely to be excluded from domestic penal

99. See Jüri Saar, *Criminal Justice System and Process of Democratization in Estonia* 35 (1999) (Final Report for NATO Democratic Institutions Research Fellowship).

100. See Anssi Keinänen et al., J., *Prison Leave in Finland: Legal and Empirical Fundamentals of an Established Practice*, 26 EUR. J. CRIM. POLICY RES. 177, 182 (2020).

101. Hola, *Seeing Justice Through*, *supra* note 11.

102. See Petrov & Radisavljević, *supra* note 65, at 356–59.

103. S. Jokić, *Nikola Šainović za Kurir: Ja sam čovek iz senke, neću još da idem u političku penziju!*, Interview of Nikola Šainović to *Kurir* newspaper, 8 October 2015, at: <https://www.kurir.rs/vesti/politika/1967145/nikola-sainovic-za-kurir-ja-sam-covek-iz-senke-necu-jos-da-idem-u-politicku-penziju> (translation on file with Case Western Reserve University Journal of International Law).

104. Prosecutor v. Lukić, Case No. MICT-13-52-ES.1, Public Redacted Version of the 22 May 2015 Decision of the President on Motion for Reconsideration and Review of Sentence of Milan Lukić, ¶¶ 7, 22 (Jan. 28, 2016). Mr. Lukić's motion for reconsideration and transfer to another prison was denied, *id.*; Denis Džidić, *Milan Lukić Demands Jail Transfer from Estonia*, BALKAN TRANSITIONAL JUST. (Mar. 12, 2015), <https://balkaninsight.com/2015/03/12/milan-lukic-demands-jail-transfer-from-estonia/#gsc.tab=0> [<https://perma.cc/2L58-K2J7>]. It is worth mentioning that there exists a general dissatisfaction with the conditions in the Tartu prison in Estonia, where Milan Martić, Milan Lukić and Dragomir Milošević serve their sentences. See S.J.M., *Estoniski Zatvor: Srpskim Generalima i Goste Drže Pod Ključem*, NOVOSTI RS (Jan. 5 2019), <https://www.novosti.rs/vesti/naslovna/dosije/aktuelno.292.html:769822-Estoniski-zatvor-Srpskim-gener-alima-i-goste-drze-pod-kljucem> [<https://perma.cc/23TK-SRH3>].

rehabilitation programs, which aim to reintegrate them into society because of their potential deportation back to their home countries.¹⁰⁵ Since they are not likely to “form a part of the enforcement state’s society upon release,” the domestic measures do not adequately serve their interests.¹⁰⁶ On the other hand, international perpetrators constitute only a marginal group of the prison’s population and overburdening the enforcement state with organizing exclusive rehabilitative possibilities for this group of criminals¹⁰⁷ would be unfair.¹⁰⁸ In reality, in some cases the offenders who committed sexual crimes were put in the prison without focused rehabilitation programs for this case — para-military rapist, Radomir Kovač, was subject only to labor rehabilitation in Norway,¹⁰⁹ whereas high-level politician, Momčilo Krajišnik, was placed in the Welsh prison for sex offenders.¹¹⁰

Generally, the Scandinavian countries dedicate lots of resources and efforts to rehabilitation and reintegration of prisoners; while France and Italy, in contrast, have less focus on rehabilitation and remain primarily retributive penal systems.¹¹¹ While conducting their research on rehabilitation of international perpetrators in the enforcement states, Hola and van Wijk interviewed representatives of French, Norwegian, Danish, and Finish prisons, who confirmed the absence of the special rehabilitation programs for international war criminals in the respective states.¹¹² Adding to this empirical research, it is worth mentioning that

105. Mulgrew, *supra* note 83, at 97.

106. Petrov & Radisavljević, *supra* note 65, at 360.

107. The largest group constitutes seven perpetrators (e.g., Germany, Austria, Finland); *see generally Enforcement Map*, INT’L RESIDUAL MECHANISM FOR CRIM. TRIBUNALS, <https://www.irmct.org/en/about/functions/enforcement-of-sentences> [<https://perma.cc/RSJ5-U5E9>].

108. *See* Petrov & Radisavljević, *supra* note 65, at 360.

109. Although Mr. Kovač expressed sincere regret, he does not accept full responsibility for the committed crimes; he was subject to labor rehabilitation and passed a carpentry exam in prison. *See* Prosecutor v. Kovač, Case No. IT-96-23&23/1-ES, Public and Redacted Version of the 27 March 2013 Decision of President on Early Release of Radomir Kovač, ¶¶ 2, 3, 15, 22–28 (Int’l Crim. Trib. for the Former Yugoslavia July 3, 2013). There was no further information found on his life post-incarceration apart from the fact that the victims expressed dissatisfaction with his early release. *See* J. Hadžiahmetović, *Ratni zločinac Radomir Kovač na slobodi, od 20 odslužio 14 godina*, KLIX (July 3, 2013), <https://www.klix.ba/vijesti/bih/ratni-zlocinac-radomir-kovac-na-slobodi-od-20-odsluzio-14-godina/130703002> [<https://perma.cc/LN86-JXWH>].

110. Mulgrew, *supra* note 83, at 98.

111. Hola & van Wijk, *in* RESEARCH HANDBOOK, *supra* note 15, at 281.

112. *Id.* at 280–3.

there are also no special programs for international perpetrators in Austria.¹¹³

Although mentioned in the sentencing Judgements as a punishment goal, the concept of rehabilitation in ICL remains undefined and the suitable and effective programs for international perpetrators in the enforcement states are missing. Furthermore, while primarily taking care of the prisoners' well-being at the UNDU, the ICTY omitted to include any rehabilitation activities at least for those who pleaded guilty.¹¹⁴ Such a lack of appropriate attention to rehabilitation sows the seed not only for the future inconsistencies in evaluation of rehabilitation as a factor for granting an early release but also to the absence of signs of successful rehabilitation of the majority of the ICTY released convicts.

III. REHABILITATION ASSESSMENT IN THE ICTY AND IRMCT EARLY RELEASE DECISIONS

Early release practices turned out to be a complex and controversial subject in ICL in general, and "one of the biggest issues facing the prosecution," in particular.¹¹⁵ A broader question can be posed whether the early release of the perpetrators of the most horrendous crimes indeed corresponds to the goals of international criminal justice.¹¹⁶ Being highly criticized by academics, politicians, and victims, the practice of almost automatically granting an early release after having served two-thirds of the sentence has firmly established itself throughout the years,¹¹⁷ remaining, however, inconsistent as far as rehabilitation assessment in the decision is concerned.

113. E-mails from the Austrian Federal Ministry of Justice and Graz-Karlau prison to Marina Maier (Mar. 2020) (on file with author).

114. *See Expert: Rehabilitation of Those Convicted by International Criminal Tribunals is Woefully Inadequate*, JUSTICE HUB (Feb. 6, 2018), <https://justicehub.org/article/expert-rehabilitation-of-those-convicted-by-international-criminal-tribunals-is-woefully-inadequate/> [<https://perma.cc/6U67-U328>].

115. *See* Andrew Merrylees, *Two-Thirds and You Are Out? The Practice of Early Release At The ICTY And ICC, in Light Of The Goals Of International Criminal Justice*, AMSTERDAM L. F. 70 (2016) (referring to a discussion with ICTY Appeals Prosecutor Lana Soljan).

116. *See* Choi, *supra* note 39, at 1808; *see generally* Mirjan Damaška, *What Is The Point Of International Criminal Justice?*, 83 CHI-KENT L. REV. 329 (2008) (discussing how to reform the international tribunal system through changes such as empowering national courts).

117. Choi, *supra* note 39, at 1788, 1790.

A. Short statistical analysis of early release practices

The vast majority of the ICTY released perpetrators (over 96%)¹¹⁸ were released early, more precisely, after serving two-thirds or even less of their sentence.¹¹⁹ The total time served might be disproportionate to the gravity of the committed crimes;¹²⁰ however, the sentencing practice of the ICTY, as well as criticism on why the “two-thirds practice” has developed and is, therefore, applicable to all the perpetrators, falls out of the scope of this research. All the ICTY and IRMCT decisions (on former ICTY cases) on early release were analyzed for the purposes of this research.¹²¹ It is impossible to create a complete picture of early release practice because of the 20 perpetrators still serving their sentences. Notably, almost half of them have already applied for an early release (sometimes, even multiple times)¹²² or sentence remission.¹²³ Their applications include annexes, such as rehabilitation

118. Hola, *Seeing Justice Through*, *supra* note 11.

119. *See e.g.*, Prosecutor v. Kvočka et al., No. IT-98-30/1-A, Order of the President for the Early Release of Milojević, Case (Int’l Crim. Trib. for the Former Yugoslavia July 30, 2002); Prosecutor v. Sikirica et al., Case No. IT-95-8-S, Order of the President for the Early Release of Dragan Kolundžija (Int’l Crim. Trib. for the Former Yugoslavia Dec. 5, 2001); Prosecutor v. Obrenović, Case No. IT-02-60/ES, Decision of the President on Early Release (Int’l Crim. Trib. for the Former Yugoslavia Sept. 21, 2011); Prosecutor v. Šantić, Case No. IT-95-16-ES, Decision of the President on the Application for Pardon or Commutation of Sentence (Int’l Crim. Trib. for the Former Yugoslavia Feb. 16, 2009); Prosecutor v. Ljubiša Beara, Case No. MICT-15-85-ES.3, Public Redacted Version of 7 February 2017 Decision of the President on the Early Release of Ljubiša Beara, (June 16, 2017).

120. *See generally* Mark B. Harmon & Fergal Gaynor, *Ordinary Sentences for Extraordinary Crimes*, 5 J. OF INT’L CRIM. JUST. 683 (2007).

121. ICTY rendered 58 decisions (39 requests granted and 19 rejected), IRMCT has received 39 applications (25 granted). Prosecutor v. Ćorić, Case No. MICT-17-112-ES.4, Association of Defense Counsel Practising before the International Courts and Tribunals (‘ADC-ICT’), Motion for Leave to Appear as Amicus Curiae, Annex A (Int’l Crim. Trib. for the Former Yugoslavia Apr. 24, 2019).

122. Those are: Radivoje Miletić, Radoslav Brđanin, Vlastimir Đorđević, Radislav Krstić, Dragoljub Kunarac, Goran Jelisić, Sreten Lukić, Miroslav Bralo, Stanislav Galić.

123. For example, the infamous Goran “Adolf” Jelisić was granted sentence remission for good behavior already three times (in 2013, 2015 and 2017). *See* Prosecutor v. Jelisić, Case No. IT-95-10-ES, Decision of the President on Sentence Remission, ¶¶ 34, 36 (Int’l Crim. Trib. for the Former Yugoslavia May, 28 2013); Prosecutor v. Jelisić, Case No. MICT-14-63-ES, Confidential Decision of the President on the Sentence Remission of Goran Jelisić, (Int’l Crim. Trib. for the Former Yugoslavia June 1, 2015); Prosecutor v. Jelisić, Case No. MICT-I4-63-ES, Public Redacted Version

reports,¹²⁴ and decisions where the early release was not granted. Some of the sentenced convicts will be illegible for early release very soon, and *pro bono* defense counsels have already been allocated,¹²⁵ which may serve as an indication of the preparation for an early release application.

B. Legal framework for granting early release

The procedure for granting early release is governed by Article 28 of the ICTY Statute, which states that the President shall decide the matter based on the interests of justice and the general principles of law,¹²⁶ and in consultation with the members of the Bureau and any permanent Judges of the sentencing Chamber who remain Judges of the Tribunal.¹²⁷ The following factors shall be taken into consideration: (i) the gravity of the crimes committed, (ii) the treatment of similarly situated prisoners, (iii) demonstration of rehabilitation, and (iv) cooperation with the Prosecutor, as well as any other relevant information.¹²⁸ Most decisions include the assessment of each of the factors listed above; however, as Choi argues, “these factors have acquired unexpected contours through time and use.”¹²⁹ The jurisprudence showed that these criteria are “very much open to interpretation” and indicated the lack of expertise in assessing the

of 22 May 2017 Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release, ¶¶ 47, 53 (Int’l Crim. Trib. for the Former Yugoslavia Aug. 11, 2017).

124. *See e.g.*, Prosecutor v. Lukić, Case No. MICT-14-67-ES.4, Notion of Completion of Rehabilitation Course (Int’l Crim. Trib. for the Former Yugoslavia Aug. 19, 2019).
125. *See e.g.*, Prosecutor v. Pavković, Case No. MICT-14-67 & MICT-14-67-ES.2, Registrar’s Notion on Recognition of Pro Bono Counsel (Int’l Crim. Trib. for the Former Yugoslavia June 14, 2019).
126. Statute of the International Criminal Tribunal for the Former Yugoslavia art. 28, May 25, 1993, U.N. Doc. S/RES/827.
127. Rules and Procedures of the ICTY rule 124, Feb. 11, 2004, IT/32/Rev.50; Rules and Procedures of the IRMCT rule 150, June 8, 2012, MICT/1/Rev.6; ICTY Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the International Tribunal art. 8, Sep. 16, 2010, MICT/3/Rev.3 [hereinafter ICTY Practice Direction]. IRMCT Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the ICTR, ICTY or IRMCT, art. 7, July 5, 2012, IT/32/Rev.50 [hereinafter IRMCT Practice Direction].
128. Rules and Procedures of the ICTY, *supra* note 127, at rule 125; Rules and Procedures of the IRMCT, *supra* note 127, at rule 151.
129. Choi, *supra* note 39, at 1795.

factors, especially the rehabilitation.¹³⁰ Relevant documents such as prison reports and observations regarding the convict's behavior in custody, general conditions of imprisonment, and psychological and psychiatric reports are examined during the procedure.¹³¹ There are, however, no strict rules concerning the contents of such reports,¹³² which led to differences in rehabilitation assessment, which is primarily based on the information received from respective prisons. Interestingly, the IRMCT Practice Direction contained a similar clause up to May 15, 2020,¹³³ when it was replaced by a more elaborated one, which includes, *inter alia*:

(b) Any psychiatric or psychological evaluations prepared on the mental condition of the convicted person, including in relation to any risks posed by release, as well as any remarks of the convicted person regarding the crimes for which he or she was convicted and the victims of these crimes;

...

(d) Information on where the convicted person intends to live if released early.¹³⁴

As far as information on where the perpetrator intends to live is concerned, it can be assumed that, first, it is needed for the purposes of imposing conditional release, and second, for the assessment of the possible impacts of the release of this perpetrator on the local communities.¹³⁵ The inclusion of the remarks on the attitude of the prisoner to his crimes underlines the importance of the expression of remorse, acknowledgement, regret, or the lack thereof for the purposes of rehabilitation assessment, thereby stressing its crucial role as one of the indications of rehabilitation.

130. Hola, *Seeing Justice Through*, *supra* note 11.

131. ICTY Practice Direction, *supra* note 127, at art. 3(b).

132. See IBA INT'L CRIM. CT. INT'L CRIM. L. PROGRAMME, REPORT ON SEEING JUSTICE THROUGH: LONG TERM ISSUES IN INTERNATIONAL JUSTICE: AN EXPERT'S ROUNDTABLE DISCUSSION 13 (2020).

133. IRMCT Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence and Early Release of Persons Convicted by the ICTR, ICTY or IRMCT rule 4(b), Feb. 20, 2019, MICT/3/Rev.2.

134. IRMCT Practice Direction, *supra* note 127, at art. 10.

135. In Bralo, the President mentioned the possible negative impact of early release on the affected society in light of restoration of peace; Prosecutor v. Bralo, Case No. MICT-14-78-ES, Public Redacted Version of the Decision on Early Release of Miroslav Bralo, ¶ 40 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 31, 2019).

C. The lack of uniformity of rehabilitation assessment

Rehabilitation is defined neither in the ICTY or IRMCT Statutes nor in the respective RPE or Practice directions.¹³⁶ The absence of guidelines of how to evaluate the prisoner's rehabilitation gives the President wide discretion in interpreting the concept.¹³⁷ Nevertheless, most decisions are short when it comes to the part of rehabilitation.¹³⁸ It can be concluded that most perpetrators were considered sufficiently rehabilitated and, therefore, were granted early release. Such success might be caused by two different reasons: the lack of serious inquiry into the documents submitted to the President¹³⁹ and the uniqueness of the type of perpetrators concerned.¹⁴⁰ As the first argument is concerned, it can be observed from the decisions that the President heavily relies on the prison reports when assessing the rehabilitation, although the Tribunal possesses the powers to supervise the enforcement of the sentences and could have conducted its own investigation into the detainee's life in prison.¹⁴¹ Furthermore, the President usually trusts all the information provided for by the perpetrators in their applications without further scrutiny.¹⁴² The author slightly disagrees to the second explanation, namely, to the assumption that the international perpetrators are fundamentally different from perpetrators of ordinary crimes and this fact *per se* contributes to their rehabilitation.¹⁴³ What unifies all the Yugoslavian perpetrators, convicted by the ICTY, is the situation of armed conflict, in which they committed their crimes. However, the group is not homogenous in itself; it is impossible to look at the group, as a whole, through the prism of rehabilitation assessment. Such relevant factors, as the perpetrator's age, education, status, position in the army or society cannot be disregarded as well as whether they committed their

136. *See generally* Barбора Hola, Jessica Kelder & Joris van Wijk, *Effectiveness of International Criminal Tribunals: Empirical Assessment of Rehabilitation as Sentencing Goal*, in THE LEGITIMACY OF INTERNATIONAL CRIMINAL TRIBUNALS 351, 360 (Nobuo Hayashi & Cecilia M. Bailliet eds., 2017).

137. *Id.*

138. Gert Vermeulen & Eveline De Wree, OFFENDER REINTEGRATION AND REHABILITATION AS A COMPONENT OF INTERNATIONAL CRIMINAL JUSTICE? 67 (2014).

139. Hola, Kelder, & van Wijk, *supra* note 136, at 353.

140. Jessica Kelder et al., *Rehabilitation and Early Release of Perpetrators of International Crimes: A Case Study of the ICTY and ICTR*, 14 INT'L CRIM. L. REV. 1177, 1196 (2014).

141. Hola, Kelder, & van Wijk, *supra* note 136, at 359–361.

142. *Id.* at 369.

143. *See* Kelder et al., *supra* note 140, at 1196.

crimes “with their own hands” or were high-level organizers of the crimes. Although the perpetrators of international crimes usually are not characterized by “criminal identity” and are considered to be “normal, non-deviant individuals” who committed their crimes in the extraordinary environment of armed conflict and severe violence, the assumption that they are likely to be able to function within the society the same way as they did before serving the sentences in prisons¹⁴⁴ should be made carefully, considering many varieties of ICTY convicts.

1. Indications of rehabilitation in the early release decisions

In discussing the factor of rehabilitation in the decisions, the President relies on different coincidental sub-factors, which are not equally important and not assessed systematically, but can be, however, divided into four categories: (i) behavior in prison, (ii) personal characteristics, (iii) future perspectives and (iv) reflection on the committed crimes.¹⁴⁵ The conduct in prison is considered in the absolute majority of decisions; politeness towards the prison’s staff and other detainees, calm and respectful behavior, absence of the disciplinary sanctions, compliance with prison’s rules, participation in language courses, educational programs and training, working in the prison’s library or kitchen, doing sports, conducting supervised visits of the church — or receiving regular visits from the priest — are sub-factors mentioned in the decisions, which, according to the prisons’ reports, constitute a “model prisoner.”¹⁴⁶ Under personal characteristics, mainly mental health and personality traits are evaluated.¹⁴⁷ Perpetrator’s future perspectives are usually assessed through the prism of the personal connection to his family; his future career plans and plans to return to his home country or to relocate to another country are also often mentioned in the decisions.¹⁴⁸ Such sub-factors as the expression of remorse, acknowledgement, acceptance of responsibility or the lack thereof are considered when discussing the perpetrator’s reflection on his crimes. It can be argued that since the expression of remorse is usually considered in mitigation during sentencing,¹⁴⁹ without diminishing its weight and significance, other sub-factors should be assessed more precisely to provide for a comprehensive picture of the

144. *Id.* at 1197.

145. Hola, Kelder, & van Wijk, *supra* note 136, at 361.

146. *See* Hola & van Wijk, *in* RESEARCH HANDBOOK, *supra* note 15, at 284–285, 287.

147. *Id.* at 286.

148. *Id.* at 285.

149. Barbora Hola, Alette Smeulders, & Catrien Bijleveld, *International Sentencing Facts and Figures: The Sentencing Practice at the ICTY and ICTR*, 9 J. OF INT. CRIM. JUST. 411, 433 (2011).

convict's rehabilitation. Unfortunately, some decisions are silent on this matter because of the lack of information in the prison's reports¹⁵⁰ — the perpetrators simply have never been asked about their attitude towards the committed crimes. As mentioned earlier, the IRMCT Practice Directions include this sub-factor only since May 15, 2020.¹⁵¹

When assessing the rehabilitation part of the early release decisions of the ICTY and the Mechanism, the perpetrators can be divided into four big groups: (i) those, who expressed remorse or acknowledgement already during the trial while serving a sentence; (ii) those who never pleaded guilty but guilt, remorse, or acknowledgement can be drawn from the prison reports and applications for early release, (iii) those whose decisions are silent on the matter of reflection on the committed crimes and are considered to be sufficiently rehabilitated, and (iv) those who did not acknowledge their guilt and expressed no remorse, and maybe showed only *some* signs of rehabilitation.¹⁵² It is important to stress that this division is based on the criteria of granting an early release and does not aim to provide for a comprehensive typological division of the perpetrators.¹⁵³ The last group requires more attention because of the particular weight that the President puts on rehabilitation assessment. At least five cases were identified so far where the denial of responsibility blocked early release after serving two-thirds of the sentence.¹⁵⁴

2. Rehabilitation finally taken seriously?

In discussing the third application for early release of Haradin Bala, the President considered the fact that previously, the former was denied sentence remission because of very limited demonstration of rehabilitation and the high gravity of the committed crimes¹⁵⁵ and the

150. Hola, Kelder, & van Wijk, *supra* note 136, at 362, table 14.2.

151. Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, ¶ 10, May 15, 2020, MICT/3/Rev.3.

152. *See* Hola et al., *supra* note 3, at 354–55.

153. For a profound analysis of the role of remorse, acknowledgement, etc. and more nuanced division of the ICTY convicts into nine different categories, see Hola et al., *supra* note 3.

154. *Id.* at 359 (identifying three cases). Additional two precedents are the cases of Miroslav Bralo and Radoslav Brdanin. *See* Prosecutor v. Bralo, Case No. MICT-14-78-ES, Public Redacted Version of the Decision on Early Release of Miroslav Bralo, ¶ 40 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 31, 2019); Prosecutor v. Brdanin, Case No. MICT-13-48-ES, Public Redacted Version of the Decision on the Application of Radoslav Brdanin for Early Release, (Feb. 28, 2020).

155. Prosecutor v. Bala, Case No. IT-03-66-ES, Decision on Application of Haradin Bala for Sentence Remission, ¶ 28 (Oct. 15, 2010).

information provided for by the French prison describing Mr. Bala's little progress in terms of acknowledging the gravity of his crimes.¹⁵⁶ Although the aspect of the rehabilitation factor, which covers a detainee's attitude towards the deeds for which he was convicted, was considered to weigh against the application,¹⁵⁷ the President concluded that the whole rehabilitation factor should be of neutral value¹⁵⁸ and Mr. Bala was granted early release, albeit not with immediate effect; his early release was postponed until December 31, 2012, provided he continues to exhibit good conduct as a detainee while serving his remaining sentence in France.¹⁵⁹ It was the first attempt to stress the importance of rehabilitation as well as to put some conditions to be fulfilled on an early release. However, one can question how the serving of additional several months in custody with prior knowledge that the only condition is to behave appropriately for a certain limited period can contribute to the rehabilitation of the perpetrator.

At first, Mlado Radić was denied sentence reduction in 2007, *inter alia*, on the grounds that he had not demonstrated clear signs of rehabilitation.¹⁶⁰ Although he proceeded to deny his crimes, in the discussion of rehabilitation in 2010, President Patrick Robinson stated that the acceptance of responsibility and remorse is *not* a "necessarily determinative factor in relation whether he has demonstrated rehabilitation" and assessed the latter as a neutral factor.¹⁶¹ Mr. Radić was later granted a postponed early release¹⁶² similar to the case of Mr. Bala after he demonstrated a willingness to apologize for his crimes.¹⁶³

Dragoljub Kunarac continues to deny all the crimes he was convicted of, and this may be seen as one of the decisive factors in a

156. Prosecutor v. Bala, Case No. IT-03-66-ES, Public Redacted Version of the 28 June 2012 Decision of the President on Early Release, ¶ 9 (Jan. 9, 2013).

157. *Id.* ¶ 25.

158. *Id.* ¶ 31.

159. *Id.* ¶ 39.

160. Prosecutor v. Radić, Case No. IT-98-30/1-ES, Decision of the President on Commutation of Sentence, ¶ 15 (June 22, 2007).

161. Prosecutor v. Radić, Case No. IT-98-30/1-ES, Decision of President on Application for Pardon or Commutation of Sentence of Mlado Radić, ¶ 21 (Apr. 23, 2010). It is worth mentioning that to that moment he had not yet served two-thirds of his sentence and was denied primarily on this ground. *Id.* ¶¶ 12–14, 24).

162. Prosecutor v. Radić, Case No. IT-98-30/1-ES, Decision of President on Application for Pardon or Commutation of Sentence of Mlado Radić, ¶¶ 25, 30 (Jan. 9, 2012). *See also* Hola et al., *supra* note 3, at 361.

163. *See generally* Hola et al., *supra* note 3, at 361.

negative assessment of his rehabilitation,¹⁶⁴ although he also demonstrates demanding behavior in prison.¹⁶⁵ To the first time, a change of rehabilitation strategy was suggested in the decision without, however, any concrete proposal.¹⁶⁶ It is unclear what steps both the convicted individual and the prison's authorities must take. Meanwhile, Mr. Kunarac submitted the next application for early release within six-months after the first decision, which is — unfortunately — publicly redacted and does not provide much information on rehabilitation.¹⁶⁷ However, as of the date of this writing, the Prosecutor in this matter indicated that the request does not include information about any changes Mr. Kunarac must make in his denial of the committed crimes.¹⁶⁸

President Carmel Agius devoted a significant part of the decision in the case of Miroslav Bralo to the rehabilitation issue in general and to the signs of rehabilitation of Mr. Bralo. In particular, President Agius assessed behavior, risk of re-offending, and prospects of successful reintegration into society separately.¹⁶⁹ What is particularly important, President Agius finally stressed is that “there is . . . no settled definition of the exact contours of the concept of rehabilitation in the context of genocide, crimes against humanity, or war crimes,”¹⁷⁰ and it is “not appropriate to look at the rehabilitation of perpetrators of genocide, crimes against humanity, or war crimes through the exact same paradigm as rehabilitation of perpetrators of domestic or ordinary crimes.”¹⁷¹ Interestingly, President Agius observed that when 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 ICTY was established under Chapter VII of the UN Charter to

164. *Id.* at 359.

165. Prosecutor v. Kunarac, Case No. MICT-15-88-ES.1, Decision of the President on the Early Release of Dragoljub Kunarac, ¶ 54 (Feb. 2, 2017).

166. *Id.* ¶ 69.

167. Prosecutor v. Kunarac, Case No. MICT-15-88-ES.1, Public Redacted Version of Dragoljub Kunarac's Pending Request for Early Release, (Dec. 20, 2018).

168. Prosecutor v. Kunarac, Case No. MICT-15-88-ES.1, Prosecution Submissions Regarding Request for Dragoljub Kunarac's Early Release, ¶ 12 (Feb. 13, 2019). Mr. Kunarac was again denied early release in January 2021.

169. Prosecutor v. Bralo, Case No. MICT-14-78-ES, Public Redacted Version of the Decision on Early Release of Miroslav Bralo, ¶¶ 37–39, 50–61 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 31, 2019)

170. *Id.* ¶ 37.

171. *Id.* ¶ 38.

contribute to the restoration and maintenance of peace and security.¹⁷² He further stressed that he personally considers it inappropriate “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, including that their release will not endanger peace and security in the envisaged place of residence.”¹⁷³ Notably, in *Bralo*, the ICTY Appeals Chamber recalled that national reconciliation and the restoration and maintenance of peace are important goals of sentencing.¹⁷⁴ It is worth stressing that during his speech at the ICTY Legacy Conference in Sarajevo in 2017, President Agius stated that the ICTY did not have the mandate to offer reconciliation and consequently has not dealt with it at all; he did stress that all the citizens in the countries of the region have the responsibility for reconciliation,¹⁷⁵ which seems to be somewhat contradictory to the reasoning provided in the above-mentioned decision. Such factors included and considered to be proof of a lack of any signs of rehabilitation were Mr. Bralo’s denial of the crimes, absence of remorse, non-participation in any of the proposed rehabilitation programs, readiness to defend himself if necessary, in the future, as well as the cynical and cruel statement “I won — he lost,” when commenting on his crime of murder of his neighbor.¹⁷⁶ The behavior has significantly worsened in the last two years. Mr. Bralo refused to work and was repeatedly found “demonstratively naked in his room during the roll-call inspections.”¹⁷⁷ Noting, that the Tribunal introduced a practice of conditional early release,¹⁷⁸ President Agius also strongly encouraged Mr. Bralo to engage in rehabilitation programs available to him, such as anti-violence training or psychotherapy, and also invited the Swedish authorities to support such efforts where possible.¹⁷⁹ He also proposed to file a re-

172. *Id.* ¶ 40.

173. *Id.*

174. *Id.*; Prosecutor v. Bralo, Case No. IT-95-17-A, Judgment on Sentencing Appeal, ¶ 82 (Apr. 2, 2007).

175. Denic Džidić & Denis Dzidic, *Hague Tribunal President: ‘We Offered Truth, Not Reconciliation’*, BALKAN TRANSITIONAL JUST. (June 21, 2017, 4:36 PM), <https://balkaninsight.com/2017/06/21/hague-tribunal-president-we-offered-truth-not-reconciliation-06-21-2017/> [<https://perma.cc/EFC8-4Q9E>].

176. Prosecutor v. Bralo, Case No. MICT-14-78-ES, Public Redacted Version of the Decision on Early Release of Miroslav Bralo, ¶¶ 44, 46–47 (Int’l Crim. Trib. for the Former Yugoslavia Dec. 31, 2019).

177. *Id.* ¶ 51.

178. Prosecutor v. 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, ¶ 73 (Jan. 16, 2019).

179. Prosecutor v. Bralo, Case No. MICT-14-78-ES, ¶ 83.

submission not earlier than two-years after issuing the decision,¹⁸⁰ which is, however, only a proposal and Mr. Bralo is still able to file his next application as soon as *he* decides to do so.

In February 2020, President Agius rejected the early-release application in the *Brđanin* case, where President Agius again stressed the inappropriateness of considering good behavior as a confirmation of achieved rehabilitation¹⁸¹ and pointed out that “rehabilitation is a process rather than a definite result.”¹⁸² Since Mr. Brđanin’s application contained no information on his attitude towards the crimes, President Agius devoted a substantial sub-part of the rehabilitation assessment to the other indications of the reflection on the crimes, taken from psychological reports and prisoner’s statements, concluding that Mr. 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.”¹⁸³ When discussing the factor of rehabilitation in general, noting good behavior and no danger for society or the prospect to re-offend, President Agius ruled that the deflection of responsibility and lack of remorse prevent[ed him] from considering Mr. Brđanin sufficiently rehabilitated.¹⁸⁴ A very precise approach to rehabilitation assessment was demonstrated in this decision by evaluating rehabilitation based on further sub-factors, such as, *inter alia*, the prospect of successful reintegration into the society, mental state, reflection on the crimes, and risk of re-offending.¹⁸⁵ President Agius’s decision in the *Brđanin* case created an elaborated mechanism for the assessment of rehabilitation,¹⁸⁶ which has practical meaning and sets the frame for the further decisions. However, by doing so, President Agius also demonstrated wide discretionary powers in extensively interpreting the concept, which has now obtained more precise contours, granting the expression of remorse a decisive role.¹⁸⁷

180. *Id.* ¶ 84.

181. Prosecutor v. Brđanin, Case No. MICT-13-48-ES, Public Redacted Version of the Decision on the Application of Radoslav Brđanin for Early Release, ¶ 48 (Feb. 28, 2020).

182. *Id.* ¶ 51.

183. *Id.* ¶ 64.

184. *Id.* ¶¶ 79–81.

185. *Id.* ¶¶ 69, 71, 80.

186. *Id.* ¶ 79

187. *Id.* ¶ 49.

3. Presidential discretion

The President is not bound by the opinions of his colleagues regarding the appropriateness of an early release.¹⁸⁸ However, the general practice has established that the President “will grant early release where, *inter alia*, taking into account the President’s own views and those of the consulted Judges . . . a majority are in favor of granting early release, and, conversely, that the President will deny early release where, *inter alia*, taking into account the President’s own views and those of the Judges consulted . . . a majority are opposed, absent compelling circumstances requiring otherwise.”¹⁸⁹ If none of the Judges of the sentencing Chamber are still a Judge of the Mechanism, no consultations with other Judges of the Mechanism are required under Rule 150 of the RPE of the IRMCT.¹⁹⁰ However, this rule may raise a broader issue of integrity and impartiality of the judicial servant. The IRMCT President Theodor Meron, for example, was highly criticized for granting early release for several ICTR convicts,¹⁹¹ and especially for Ferdinand Nahimana on, *inter alia*, the grounds that the former did not conduct consultations with the other Judges.¹⁹² Considering that

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188. Prosecutor v. Vuković, Case No. IT-96-23/1-ES, Decision of the President on Commutation of Sentence, ¶¶ 12–13 (Mar. 12, 2008); Petrov & Radisavljević, *supra* note 65, at 362.
189. Prosecutor v. Miletić, Case No. MICT-15-85-ES.5, Decision of the President on the Early Release, ¶ 44 (Int’l Residual Mechanism for Crim. Trib. Oct. 23, 2018).
190. Prosecutor v. Jelisić, Case No. MICT-I4-63-ES, Public Redacted Version of 22 May 2017 Decision of the President on Recognition of Commutation of Sentence, Remission of Sentence, and Early Release, ¶ 18 (Int’l Crim. Trib. for the Former Yugoslavia Aug. 11, 2017); Prosecutor v. Brđanin, Case No. MICT-13-48-ES, Public Redacted Version of the Decision on the Application of Radoslav Brđanin for Early Release, ¶ 23 (Feb. 28, 2020). Interestingly, in Brđanin, President Agius allowed himself to consult Judge William H. Sekule, who was not a sentencing Judge. *See generally id.*
191. James Karuhanga, *Rwanda Protests Early Release of Genocide Convict Simba*, PERMANENT MISSION OF RWANDA TO THE UN (Jan. 17, 2019), <https://rwandaun.org/site/rwanda-protests-early-release-of-genocide-convict-simba/> [<https://perma.cc/Y45G-PXRF>].
192. Prosecutor v. Nahimana, Case No. MICT-13-37-ES.1, Public Redacted Version of the 22 September 2016 Decision of the President on the Early Release, ¶ 8 (Int’l Residual Mechanism for Crim. Trib. Dec. 5, 2016); *see also* Gregory Gordon, *Measuring Integrity in Post-Conviction Proceedings*, CTR. FOR INT’L L. RSCH. & POL’Y (Dec. 2, 2018), <https://www.cilrap.org/cilrap-film/181202-Gordon/> [<https://perma.cc/XV7X-CS72>].

the President designates a state of enforcement,¹⁹³ decides on its change when needed,¹⁹⁴ and exercises his discretion in accepting or declining, for example, victims' observations on early release,¹⁹⁵ the life of the convicted person post-sentence is purely in the hands of one single Judge.

Interestingly, different Presidents elaborated on rehabilitation in early release decisions to different extents. President Antonio Cassese (1993-1997) did not have an opportunity to release perpetrators due to the early- era of the Tribunal, whereas President Gabrielle Kirk McDonald (1997-1999) issued one order on early release in the case of Dražen Erdemović, where she stressed that Mr. Erdemović “demonstrates that he is remorseful,” and that “he will enjoy relatively positive prospects if released” without going into the detailed evaluation of his rehabilitation.¹⁹⁶ The decisions issued by President Claude Jorda (1999-2003) can be characterized as very short and lacking any detailed information on rehabilitation.¹⁹⁷ President Fausto Pocar (2005-2008) was reluctant to provide his understanding of

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193. IT/137/Rev.1, ICTY Practice Direction on the Procedure for the International Tribunal's Designation of the State in which a Convicted Person is to Serve his/her Sentence of Imprisonment, ¶ 5 (Sept. 1, 2009); MICT/2 Rev.1, IRMCT Practice Direction on the Procedure for Designation of the State in which a Convicted is to Serve his or her Sentence of Imprisonment, ¶ 5 (Apr. 24, 2014).
194. Prosecutor v. Krstić, Case No. MICT-13-46-ES.1/IT-98-33-ES, Order designating the State in which Radislav Krstić is to serve the remainder of his Sentence (Int'l Residual Mech. for Crim. Trib. July 19, 2013). Mr. Krstić was transferred back to the UNDU after the attacks against him took place at the UK prison, Poland was further designated as a state to serve the remainder of his sentence, *id. Srebrenica War Criminal Transferred to Polish Prison*, RADIO POLAND (Mar. 21, 2014), <http://archiwum.thenews.pl/1/10/Artykul/165901>, [Srebrenica-war-criminal-transferred-to-Polish-prison \[https://perma.cc/AV9G-K3XW\]](https://perma.cc/AV9G-K3XW).
195. Prosecutor v. 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, ¶¶ 23–25 (Jan. 16, 2019). President Meron did not consider the letters from the victims (Judge Agius in consultation strongly opposed this decision). *Id.* Prosecutor v. Brđanin, Case No. MICT-13-48-ES, Public Redacted Version of the Decision on the Application of Radoslav Brđanin for Early Release, ¶¶ 10, 12, 16, 18, 89–91 (Feb. 28, 2020). To the contrary, President Agius proactively invited victims to express their views and assessed impact on victims in Brđanin, *id.* Prosecutor v. Bralo, Case No. IT-95-17-A, Judgment on Sentencing Appeal, ¶ 80 (Apr. 2, 2007).
196. Prosecutor v. Erdemović, Case No. IT-96-22-ES, Decision Regarding Mr. Erdemović's Early Release From Prison (Nov. 6, 1999).
197. *See, e.g.*, Prosecutor v. Došen, Case No. IT-95-8-S, Order of the President on the Early Release of Damir Došen 3–4 (Int'l Crim. Trib. For the Former Yugoslavia Feb. 28, 2003).

rehabilitation, and while keeping the respective part of the decision short considered Zoran Vuković sufficiently rehabilitated even though he “had difficulties while serving his sentence.”¹⁹⁸ President Patrick Robinson (2008-2011) while generally issuing short early release decisions and merely relying on the good conduct of the prisoner, expressed his concern on the rehabilitation of Blagoje Simić, stating that:

he seems to attempt to attenuate his individual criminal responsibility through his statements that his crimes were committed against the backdrop of a “civil war” and that he was only trying to protect his country. But I also take note of the fact that Mr Simić has expressed remorse for the suffering that he has caused, has actively engaged in humanitarian work during his incarceration, and intends to return to the practice of medicine in order to contribute to his community.¹⁹⁹

President Theodor Meron (2003-2005, 2011-2015, IRMCT President 2012-2019) issued most early release decisions relying on good conduct, maintenance of family ties, and acknowledgement of guilt.²⁰⁰ He generously granted early release to Haradin Bala, notwithstanding previous denials by President Robinson and no recorded progress in rehabilitation,²⁰¹ and to Mlađo Radjić,²⁰² despite little progress in rehabilitation. Only very straightforward denial of the committed crimes *and* “demanding behavior in detention” prevented President Meron from granting early release to Dragoljub Kunarac.²⁰³ The ICTR case is worth mentioning in this regard: in *Simba*, President Meron stressed that he “does not consider that remorse should be treated as a

198. Prosecutor v. Vuković, Case No. IT-96-23/1-ES, Decision of the President on Commutation of Sentence, ¶ 9 (Mar. 12, 2008).

199. Prosecutor v. Simić, Case No. IT-95-9-ES, Decision of President on Early Release of Blagoje Simić, ¶ 29 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 15, 2011).

200. See, e.g., Prosecutor v. Kvočka, Case No. IT-98-30/1-A, Decision on Application for Pardon or Commutation of Sentence, ¶¶ 7, 8 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 30, 2005).

201. Prosecutor v. Bala, Case No. IT-03-66-ES, Public Redacted Version of the 28 June 2012 Decision of the President on Early Release, ¶¶ 6, 20, 25, 39 (Jan. 9, 2013).

202. Prosecutor v. Radjić, Case No. IT-98-30/1-ES, Public Redacted Version of 13 February 2012 Decision of the President on Early Release of Mlađo Radjić, ¶¶ 26, 30 (Int'l Crim. Trib. for the Former Yugoslavia 9 Jan. 2013).

203. Prosecutor v. Kunarac, Case No. MICT-15-88-ES.1, Decision of the President on the Early Release of Dragoljub Kunarac, ¶¶ 24–28, 37, 54–55, 68 (Feb. 2, 2017).

determining factor in this case or in determining early release applications more generally,” and released Mr. Simba early although the latter “did not accept the responsibility for his crimes.”²⁰⁴ Being consulted in *Brđanin*, Judge Meron also queried “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 [President Agius’s] analysis impermissibly treats this as a legal requirement.”²⁰⁵

President Carmel Agius (2015-2017, IRMCT President since 2019) stands out with his lengthy decisions and in-depth discussion of rehabilitation²⁰⁶ — the previously analyzed decisions, where the early release was denied on the grounds of insufficient rehabilitation (*Bralo*, *Brđanin*) serve as examples of his vision of this concept. The decisions to give an early release of to Radivoje Miletić and Radislav Krstić are worth mentioning regarding rehabilitation: their applications were denied on the grounds of high gravity of the committed crimes, strong objection of the consulted Judges in the first case,²⁰⁷ and the convict has not yet served two-thirds of his sentence in the second case.²⁰⁸ In *Miletić*, Judge Agius, who was consulted according to the procedure, relied on the absence of the slightest signs of rehabilitation²⁰⁹ and stressed that early release would “show complete disregard to the ongoing process of reconciliation.”²¹⁰ In *Krstić*, President Agius who was to decide the matter stated that although Mr. Krstić has begun to reflect on his crimes, his statements in this regard “remain abstract,” which precludes President Agius from a precise assessment of his rehabilitation.²¹¹ He also stressed that “in the context of . . . particularly

204. Prosecutor v. Simba, No. MICT-14-62-ES.1, Public Redacted Version of the President’s 7 January 2019 Decision on the Early Release of Aloys Simba, ¶ 44 (Int’l Residual Mech. for Crim. Trib. Jan. 7, 2019).

205. Prosecutor v. Brđanin, Case No. MICT-13-48-ES, Public Redacted Version of the Decision on the Application of Radoslav Brđanin for Early Release, ¶ 94 (Feb. 28, 2020).

206. See, e.g., Prosecutor v. Kunarac, Case No. MICT-15-88-ES.1, Decision on Dragoljub Kunarac’s Application for Early Release, ¶¶ 41–45 (Int’l Residual Mech. for Crim. Trib. 31 Dec. 2020).

207. Prosecutor v. Miletić, Case No. MICT-15-85-ES.5, Decision of the President on the Early Release, ¶ 45 (Int’l Residual Mechanism for Crim. Trib. Oct. 23, 2018).

208. Prosecutor v. Krstić, Case No. MICT-13-46-ES.1, Decision on the Early Release of Radislav Krstić, ¶ 39 (Int’l Residual Mech. for Crim. Trib. Sept. 10, 2019).

209. Prosecutor v. Miletić, Case No. MICT-15-85-ES.5, ¶ 41.

210. *Id.* ¶ 42.

211. Prosecutor v. Krstić, Case No. MICT-13-46-ES.1, ¶¶ 33–34.

grave crimes, good behavior in prison cannot, on its own, demonstrate rehabilitation.”²¹²

Such a dramatic change to the existing practice in the recent years, although being reasonable in its nature and is obviously motivated by the many unsatisfactory cases when the war criminals returned to their countries without expressing any remorse, is disadvantageous at least for the 20 perpetrators who are still in custody and raises the question of equal treatment of the ICTY convicts. On the one hand, the victims welcome such a strict approach, stating that “with the arrival of Judge Agius, requests [for release] have been examined more thoroughly, and all requests filed so far have been rejected;”²¹³ on the other hand, “the fact that convicts are obliged to admit the commission of crimes as a precondition for their early release is completely unacceptable, particularly if they pleaded not guilty to crimes they were charged with during their trials.”²¹⁴ The general question arises in this regard, namely, whether one can coerce a person to express remorse.²¹⁵ It can be traced back from the recent jurisprudence on early release, that the previous superficial evaluation of acknowledgement of guilt²¹⁶ remained in the past and the President is determined to release only repentant perpetrators, however, setting aside their potential influence on the affected societies, the ICTY convicts should not be denied their right to feel innocent.²¹⁷ The President should balance these two aspects very cautiously, minimizing the danger of substitution of the notion “rehabilitation” by the notion “remorse.” It seems that the general frustration of the victims with regards to the Tribunal’s early release practice, which they often express when a war criminal returns home to the wide media coverage of those homecomings together with the academic works, criticize the inconsistencies of the rehabilitation assessment and point out that the Tribunal has never conducted a serious assessment of how rehabilitation might play a role in this positive development of the IRMCT’s practice on this matter by swaying from the course of presumably granting early releases after

212. *Id.* ¶ 30.

213. Emina Dizdarevic, *Hague Court Denies Early Release to ‘Unrehabilitated’ Convicts*, BALKAN TRANSITIONAL JUST. (Apr. 8, 2020) <https://balkaninsight.com/2020/04/08/hague-court-denies-early-release-to-unrehabilitated-convicts/#gsc.tab=0> [perma.cc/RF8W-GXK9] (quoting Murat Tahirović, President of the Association of Victims and Witnesses of Genocide).

214. *Id.* (quoting Aleksandar Lazarević, International Criminal Law lawyer).

215. For an extensive discussion on this issue, see MICHAEL PROEVE & STEVEN TUDOR, REMORSE: PSYCHOLOGICAL AND JURISPRUDENTIAL PERSPECTIVES 139–155 (2016).

216. Hola et al., *supra* note 3, at 365–6.

217. Petrović, *supra* note 23, at 344.

serving the two-thirds of the sentence. Although, one can argue that such procedural improvements were implemented too late and will not change the overall statistics or perception of the Tribunal with regards to early release practice, such signs of progressive development in the post-conviction phase cannot be neglected since they serve positive and valuable example for other actors of the ICJS.

IV. SIGNS OF REHABILITATION AT POST-INCARCERATION STAGE

A. Life after release – does it matter?

There is a certain gap in the literature concerning the complex assessment of rehabilitation of released former Yugoslavian perpetrators. Hola and van Wijk assess three stages where rehabilitation is a relevant consideration: sentencing, incarceration, and early release,²¹⁸ setting aside the systematic overview of the post-release stage. Only a couple of prominent examples have, until now, been used by academics to illustrate that, first, early release practice might not be suitable for this type of offenders, taking into account the gravity of the committed crimes; second, that rehabilitation programs provided for by the enforcement states are not tailored for the international perpetrators; and, third, that the President failed to assess the successful rehabilitation based on the prisons' report in many cases. However, as of the date of this writing, no overarching general research was conducted to provide complete statistics of signs of rehabilitation of already released perpetrators. The below provided empirical research aims to fill this gap, stressing, however, that it is impossible to create an absolute statistic by working primarily with the secondary sources.

The assumption that ICTY and IRMCT fail in their rehabilitation evaluations can affect the perception of the ICTY in the local post-conflict communities and lead to the loss of ICTY's credibility in the eyes of victims. The inhabitants of former Yugoslavian territories constantly observe the homecomings of the released perpetrators. Usually, the assessment of their rehabilitation, their attitude towards the committed crimes, the country where they served their sentences — and all the information that can be taken from the decisions on early release, is reported in the local news.²¹⁹ The lives of the released perpetrators can be easily traced by the population of the post-conflict regions. One can argue that monitoring the lives of the released perpetrators falls out of the scope of the ICJS because once the person has served his sentence, he is entitled to reintegration into the society.

218. Hola & van Wijk, *supra* note 17 at, 109, 121–122, 125.

219. Jovana Mihajlović Trbovc, *Homecomings From “The Hague”: Media Coverage of ICTY Defendants After Trial and Punishment*, 28 INT'L CRIM. JUST. REV. 406, 416 (2018).

However, when considering the exclusivity of ICJS and the example of ICTY, the fact that the majority of the perpetrators returned to the successor countries of former Yugoslavia and can influence the reconciliation process there,²²⁰ the broader goals of ICJS to bring justice to the region should not be disregarded.

B. Relevant factors

Andrew Merrylees takes Biljana Plavšić and Veselin Šljivančanin as examples of false remorse and unsuccessful rehabilitation,²²¹ so do Hola and van Wijk,²²² as well as Choi,²²³ however, a more nuanced approach should be taken when assessing the rehabilitation progress of these perpetrators. The above-mentioned individuals differ significantly because, first, Ms. Plavšić pleaded guilty and expressed remorse, and Mr. Šljivančanin did not;²²⁴ and second, the former spent many years in the Swedish prison, whereas the latter served his relatively short sentence at the UNDU.²²⁵ They were treated differently, served different time in different types of prisons, and, therefore, cannot be taken as equivalent examples, which prove the ineffectiveness of the ICJS with regard to rehabilitation. Simić and Hola examine remorse and public apologies of Biljana Plavšić and Esad Landžo, taking them as the two most documented cases.²²⁶ Katarina Ristić when analyzing the books of the ICTY convicts in light of the emergence of the “ICTY Celebrity” concept, takes Milan Lukić (serving a life sentence), and again Biljana Plavšić and Veselin Šljivančanin as examples;²²⁷ whereas Susanne Karstedt, while elaborating on the re-entry of war criminals into the society in her comparative research, mentions Simo Žarić, Blagoje Simić, Nikola Šainović, Momčilo Krajišnik, and Johan Tarčulovski as

220. *See id.* at 408.

221. Merrylees, *supra* note 115, at 71–72.

222. Hola & van Wijk, *supra* note 17, at 129–130.

223. Choi, *supra* note 39, at 1786–87 (mentioning Plavšić).

224. Merrylees, *supra* note 115, at 71–72.

225. *See* Ian Traynor, *Leading Bosnian Serb war criminal released from Swedish prison*, THE GUARDIAN (Oct. 27, 2009) <https://www.theguardian.com/world/2009/oct/27/bosnian-serb-war-criminal-freed> [<https://perma.cc/MQK8-MXYV>]; Prosecutor v. Šljivančanin, Case No. IT-95-13/1-ES, Decision of President on Early Release of Veselin Šljivančanin, ¶ 14 (Int'l. Crim. Trib. for the Former Yugoslavia July 5, 2011).

226. Olivera Simić & Barbora Hola, *A War Criminal's Remorse: the Case of Landžo and Plavšić*, 21 HUM. RTS. REV. 267, 269 (2020).

227. Ristić, *supra* note 2, at 392.

the examples of a return to politics post-incarceration.²²⁸ Such selectivity can be dictated by the specific goal of each researcher as well as by the wish to use the most straightforward illustrative examples to underline specific gaps in the ICTY practice. This research seeks to statistically assess the signs of rehabilitation post-release to provide the more objective and comprehensive picture of post-incarceration lives of the members of the Research Group.

1. The rank of the perpetrator

Martin Petrov and Dejana Radisavljević claim that ICTY convicts are generally highly educated individuals, different from the rest of the prison population, and often not suited to educational activities since they are over-educated.²²⁹ Choi argues that “the prototypical international defendant is a former high-ranking political leader, often very old.”²³⁰ It is indeed a prevailing perception of the typical international war criminal.²³¹ I attempted to divide the 38 released perpetrators according to their military rank and/or position in society and came to the conclusion that only seven can be considered purely high-level perpetrators (18%), whereas perpetrators between low and medium levels amount to 29 persons (76%).²³² Therefore, the assumption that the majority of international criminals are high-level leaders should be made with caution.²³³ It is fair to mention that, in its early years, the ICTY targeted “small fish,”²³⁴ which can serve as a justification for such statistics.

228. Susanne Karstedt, “*I Would Prefer to Be Famous*”: *Comparative Perspectives on the Reentry of War Criminals Sentenced at Nuremberg and The Hague*, 28 INT’L CRIM. JUST. REV. 372, 383 (2018).

229. Petrov & Radisavljević, *supra* note 65, at 356 n.1.

230. Choi, *supra* note 39, at 1811.

231. *See Politicians, War Criminals: 10 Top Figures in the Balkan Wars*, FRANCE24 (Nov. 22, 2017) <https://www.france24.com/en/20171122-politicians-war-criminals-10-top-figures-balkan-wars> [<https://perma.cc/N2RA-XUEV>].

232. Five categories were identified: low, low/medium, medium, medium/high, high. The division is made in consultation with the retired Austrian Military Officer and the retired Military Officer of the Army of Republika Srpska (‘VRS’). *See* Mirza Buljubašić & Barbora Hola, *Perpetrators on Trial: Characteristics of War Crimes Perpetrators Tried by Courts in Bosnia and Herzegovina and ICTY*, in PERPETRATORS OF INTERNATIONAL CRIMES: THEORIES, METHODS AND EVIDENCE 293 (Alette Smeulers et al. eds., 2019).

233. High-level perpetrators constitute 18.3% of all the ICTY convicts. *See id.* tbl. 15.5.

234. Victor Peskin, *Beyond Victor’s Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda*, 4 J. HUM. RTS. 213, 222 (2005).

It can be assumed, that those who had higher military or political position during the conflict potentially have a greater influence on the post-conflict society after their homecoming and, therefore, should be separated from low-level perpetrators who often disappear from the public life. From the perpetrator's perspective, the reintegration into the society can be arguably smoother for those who were fully integrated before the conviction. For example, educated high-ranking politicians have a better prospect for reintegration than low-level camp guards, who had no education before the war and will face challenges post-release. On the other hand, high-level perpetrators must confront the fact that everybody recognizes them and seeks their opinion on the ICTY conviction. According to the analysis of the signs of rehabilitation at the post-release phase, the lives of low-level offenders often can be hardly traced, whereas the former politicians and high-level military officials often re-enter the local political scene after release.²³⁵ Generally, they all have difficulties in re-entering society, albeit difficulties of different types. The only trait of the high-level perpetrators is their wide publicity, apart from the fact that they did not commit the crimes personally,²³⁶ which is crucial for rehabilitation. Therefore, this division is more important for the creation of the TRPs, which should satisfy the requirements of the perpetrators of all levels and correspond to the type of committed crime (low-level sex offenders differ from other low-level perpetrators, for example.)

2. Age of the perpetrator

The average age of the perpetrators from the Research Group at the time of their release is 52.4 years. The majority are in the range of 50-60 years (16 persons) and 40-50 (9 persons); only Dražen Erdemović was released before 30,²³⁷ and only four people between 30 and 40 years old. The two most advanced-aged perpetrators were released between the ages of 70 and 80. Interestingly, the average age for all the ICTY convicts at the time of the commission of the crimes is 38 years, and at the time of verdict is 48 years.²³⁸ It can be concluded that the average perpetrator has a prospect to work again since the age of the majority is not advanced at the moment of their release. This fact also confirms that particular impact should be put on their rehabilitation.

235. Hola & van Wijk, *supra* note 17, at 131–132.

236. *See, e.g.*, Jens David Ohlin, *The Co-Perpetrator Model of Joint Criminal Enterprise*, CORNELL L. FAC. PUBL'N 739, 741 (2008).

237. *See* Buljubašić & Hola, *supra* note 232, at 288–289; *see also* Prosecutor v. Erdemović, Case No. IT-96-22-ES, Decision regarding Mr. Erdemović's early release from prison (Int'l Crim. Trib. for the Former Yugoslavia July 16, 1998); *see also* Kelder et al., *supra* note 140, at 1189.

238. Buljubašić & Hola, *supra* note 232, at 288–89 tbls. 15.3, 15.4.

3. Time served

Another division can be made based on time spent in prison—the rehabilitation progress of those perpetrators, who were released shortly after they were transferred to prison and were not integrated into prison life should differ from those who served many years in custody. As the statistical analysis of the time spent in prison shows, the average time in prison is five years,²³⁹ which is not much given the general gravity of the committed crimes. This average time-index was calculated based on the time served in prisons, excluding the time spent during the trial and waiting for the transfer to the prison at the UNDU, showing the disbalance regarding enforcement of sentences and underlying the enormous length of the proceedings, which further indirectly affects the rehabilitation of the perpetrators. On average the perpetrators served only 33% of their sentences in prisons when in the case of Nikola Šainović this index constitutes only 6% (he served less than one year in Sweden);²⁴⁰ in the case of Miodrag Jokić only 11% (he served a little over one year in Austria);²⁴¹ whereas the maximum index constitutes 55% in the case of Radomir Kovač (served the longest time of eleven years in Norway)²⁴² and Biljana Plavšić (served six years in Sweden).²⁴³

239. This metric is derived from the author's independent research.

240. Five perpetrators served around one year in prisons: Zlatko Aleksovski, Dražen Erdemović, Nikola Šainović, Damir Došen, and Dragan Jokić. *See Case Information Sheet – Zlatko Aleksovski*, ICTY, https://www.icty.org/x/cases/aleksovski/cis/en/cis_aleksovski_en.pdf [perma.cc/2FZA-BXXB]; *Case Information Sheet – Dražen Erdemović*, ICTY, https://www.icty.org/x/cases/erdemovic/cis/en/cis_erdemovic_en.pdf [perma.cc/H4Z8-VAJP]; *Case Information Sheet – Šainović et al.*, ICTY, https://www.icty.org/x/cases/milutinovic/cis/en/cis_sainovic_al_en.pdf [perma.cc/C5ST-C2TX]; Press Release, Int'l Crim. Trib. For the Former Yugoslavia, The ICTY President Grants Damir Došen's Request for Early Release, ICTY Press Release J.L./P.I.S./737e (Mar. 13, 2003), <https://www.icty.org/en/press/icty-president-grants-damir-do%C5%A1en%E2%80%99s-request-early-release> [perma.cc/YSG4-JJZ8]; *see ICTY: Jokić to be Released from Prison*, BALKANINSIGHT (Jan. 14, 2010), <https://balkaninsight.com/2010/01/14/icty-jokic-to-be-released-from-prison/> [perma.cc/NV6M-R5HN].

241. *See Case Information Sheet – Miodrag Jokić*, ICTY, https://www.icty.org/x/cases/miodrag_jokic/cis/en/cis_jokic_en.pdf [perma.cc/3ACP-LPP2].

242. *See Case Information Sheet – Kunarac, Kovač & Vuković*, ICTY, https://www.icty.org/x/cases/kunarac/cis/en/cis_kunarac_al_en.pdf [https://perma.cc/5QCU-SB6E].

243. *See Case Information Sheet – Biljana Plavšić*, ICTY, https://www.icty.org/x/cases/plavsic/cis/en/cis_plavsic_en.pdf [perma.cc/M2RX-2WUY].

The time served in prisons is not proportional to the sentence due to three factors: (i) enormous length-of-time of court proceedings; (ii) lengthy time spent waiting for the transfer at the UNDU; and (iii) almost presumed release after having served two-thirds of the sentence. Given the fact that the majority of the Yugoslavian convicted criminals did not speak the languages of the enforcement state,²⁴⁴ the opportunities to participate in the offered rehabilitation programs in often very short time periods were limited. It seems that the time-factor should play a significant role in the rehabilitation progress since only a profound and sustained rehabilitation program can deliver positive results. However, it can be concluded from the statistical research that it is not indicative for the Research Group. Esad Landžo, can be considered a positive example of the expression of sincere remorse and acknowledgement of his crimes because he is the only person from this group who proactively searched for his victims in order to apologize and reconcile; he spent only three years in detention in Finland, the country he relocated to after his release.²⁴⁵ The infamous Duško Tadić, whose surname is well-known to every ICL-student, served for a relatively long time of nine-years in Germany and shows no signs of regret for the committed crimes;²⁴⁶ he gives interviews, writes books, and denies the committed crimes, stating “I will be the first Serb, whom the Hague would say: ‘I am sorry!’”²⁴⁷ Mr. Tadić expresses no public apology or remorse, considers himself innocent, and searches for evidence to overturn his conviction.²⁴⁸ Six years spent in a Swedish

244. *See Translation and Interpretation*, INT’L CRIM. TRIB. FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/about/registry/translation-and-interpretation#:~:text=The%20two%20official%20languages%20of,least%20one%20of%20these%20languages> [perma.cc/UCS6-TBML].

245. Prosecutor v. Landžo, Case No. IT-96-21-ES, Public Redacted Order of the President on Commutation of Sentence, ¶¶ 6–7 (Int’l Crim. Trib. For the Former Yugoslavia Apr. 13, 2006) (showing good behavior in prison, working at a laundry, visiting a psychologist every week, and expressing remorse). *See* Feldballe Petersen, *supra* note 74 (working as a cleaner in the café-house, proactively searching reconciliation with his victims).

246. *See Hague’s First Indictee ‘To be Released’*, BALKANINSIGHT (July 18, 2008), <https://balkaninsight.com/2008/07/18/hague-s-first-indictee-to-be-released/> [perma.cc/D5LU-QLUP].

247. *See* Dragan Vujčić, *Duško Tadić: Ja sam prvi Srbin kojem će Hag da kaže: “Izvini!”*, NOVOSTI RS (Apr. 30, 2018) <https://www.novosti.rs/vesti/naslovna/dosije/aktuelno.292.html:724910-Dusko-Tadic-Ja-sam-Srbin-kojem-ce-Hag-da-kaze-izvini> [perma.cc/UJ9T-H397].

248. *See generally* Prosecutor v. Tadić, Case No. IT-94-1-ES, Public Redacted Decision of the President on the Application for Pardon or Commutation of Sentence of Duško Tadić (Int’l Crim. Trib. for the Former Yugoslavia July 17, 2008). Mr. Tadić showed good behavior, but the consulted judges expressed doubts on his rehabilitation, *id.* ¶¶ 16, 20.

prison did not help Biljana Plavšić to re-evaluate her role in the conflict because in 2005 she acknowledged that her guilty plea was not sincere.²⁴⁹ Ranko Češić, who pleaded guilty, spent nine-years in prison in Denmark, described as a quiet and polite prisoner who “feels bad for his crimes, regrets, and wants to change the country of residence and live with his wife”²⁵⁰ was suspected of attacking his ex-wife’s house with a hand bomb after his release.²⁵¹ Darko Mrđa, who also pleaded guilty, served nine-years in custody in Spain, showed good behavior, participated in the rehabilitation programs, and was considered “ready to live a normal life,”²⁵² demonstratively laughed and spat at the reburial procession of the remains of the Bosniaks’ victims in his hometown of Prijedor, where he committed the crimes during the war.²⁵³

The analysis of the time spent in prisons shows that this factor does not play a major role in the rehabilitation of the international perpetrators. In this regard, the importance of the integration of TRPs should not be underestimated given the different time that they serve and generally unsatisfactory results of rehabilitation. The tailored, elaborated program would efficiently serve the purposes of rehabilitation independent from the time spent in custody.

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249. *See* *Zatvorski dani Biljane Plavšić*, B92 (Mar. 12, 2005), https://www.b92.net/info/vesti/index.php?yyyy=2005&mm=03&dd=12&nav_category=64&nav_id=164146 [perma.cc/EU4E-2KA3]; *see also* Marko R. Petrović, *Ekskluzivni Intevju Biljana Plavšić: Da se nije trgovalo, rat bi se završio ranije*, EKSPRES (Aug. 17, 2019), <https://www.ekspres.net/vesti/biljana-plavsic-da-se-nije-trgovalo-rat-bi-se-završio-ranije> [perma.cc/85FR-8S6U].
250. Prosecutor v. Češić, Case No. MICT-14-66-ES, Public Redacted Version of the 30 April 2014 Decision of the President on the Early Release of Ranko Češić, ¶¶ 19–21 (Int’l Crim. Trib. for the Former Yugoslavia 28 May 28, 2014).
251. *See* *Plašim se za svoju porodicu, pretio mi je da neću još dugo: Žena bivšeg haškog optuženika o bombi koju joj je bacio*, ESPRESO RS (Apr. 3 2019), <https://www.espreso.rs/vesti/politika/370442/plasim-se-za-svoju-porodicu-pretio-mi-je-da-necu-jos-dugo-zena-bivseg-haskog-optuzenika-o-bombi-koju-joj-je-bacio> [perma.cc/7MPE-2BMX].
252. Prosecutor v. Mrđa, Case No. IT-02-59-ES, Public Redacted Version of the Decision of President on Early Release, ¶¶ 23–24 (Int’l Crim. Trib. for the Former Yugoslavia Dec. 18, 2013).
253. Sudbin Musić, *Krvnik ponovo pred licem pravde: Darko Mrđa, zločinac koji se lažno pokajao*, MOJ PRIJEDOR (Feb. 18, 2016), <http://www.mojprijedor.com/krvnik-ponovo-pred-licem-pravde-darko-mrda-zlocinac-koji-se-lazno-pokajao/> [perma.cc/4U6F-3QRF].

4. Enforcement state

The division based on the enforcement state and participation in national rehabilitation programs is also worth considering to find out what programs were most effective. However, due to the unproportionate allocation of prisoners among the enforcement states, and small numbers of the perpetrators in some states, this approach might lead to errors in the assessment. The examined perpetrators served their sentences in 11 European countries; Belgium accepted only one offender²⁵⁴ while Austria had the largest group of total perpetrators with six,²⁵⁵ followed by Finland, Norway and Spain with five offenders each.²⁵⁶

Both perpetrators who served the sentences in the UK, namely Momčilo Krajišnik and Blagoje Simić, re-entered political life and expressed no remorse or public apology for the victims.²⁵⁷ Mr. Krajišnik writes books, gives interviews, denies his crimes, and heavily criticizes ICTY, stating, *inter alia*, “[m]y conscience is clear.”²⁵⁸ Mr. Simić continues to work as a doctor and director of a medical center and was selected as the Serbian Democratic Party (“SDS”) party leader in Šamac, BiH.²⁵⁹

254. Portugal also accepted only one convict, Mile Mrkšić (deceased). See *ICTY Facts & Figures*, INT’L CRIM. TRIB. FOR THE FORMER YUGOSLAVIA (Nov. 2017), [255. The numbers are given for those, who have already served their sentences. For an overview of the allocation of perpetrators in the enforcement states, see ‘Enforcement of Sentences’ section on the official website of IRMCT, at: <https://www.irmct.org/en/about/functions/enforcement-of-sentences>. See *ICTY Facts & Figures*, *supra* note 254.](https://www.icty.org/en/content/infographic-icty-facts-figures#:~:text=The%20ICTY%20deals%20with%20war,II%20Nuremberg%20and%20Tokyo%20trials%20[perma.cc/Y79V-72SC]; see also Case Information Sheet – Mrkšić et al., ICTY, https://www.icty.org/x/cases/mrksic/cis/en/cis_mrksic_al_en.pdf [perma.cc/W48Y-YSHV].</p></div><div data-bbox=)

256. *Id.*

257. See Karstedt, *supra* note 228, at 379–383.

258. See Denis Džidić, *The Three Trials of Momčilo Krajišnik*, DETEKTOR (June 3, 2015), <https://detektor.ba/2015/06/03/the-three-trials-of-momcilo-kraj-isnik/?lang=en> [perma.cc/2G9S-KKNX].

259.

Osudeni ratni zločinac imenovan za direktora Doma zdravlja Bosanski Šamac, ABNA (Nov. 6, 2017), https://bs.abna24.com/news/vijesti-iz-bosne/osudeni-ratni-zlocinac-imenovan-za-direktora-doma-zdravlja-bosanski-sa-mac_865092.html [perma.cc/HD62-VMUQ]; Доктор Благоје Симич нови-стари председник ОО СДС Шамац, СРПСКА ДЕМОКРАТСКА СТРАНКА (Apr. 29, 2017), <http://www.sdsrs.com/sr/news///5704.doktor-blogoje->

The only perpetrator who was released from Belgium, Dragan Zelenović, assumed “partial responsibility for acts committed by his subordinates, whose actions he regrets,” generally, admitted that “he had various sexual relations, but regrets his inability to recall the specific facts” and demonstrated only “some signs of rehabilitation,”²⁶⁰ has further expressed remorse and testified as a prosecution witness in the domestic court in BiH, acknowledging his mistake.²⁶¹ Out of three perpetrators who served their sentences in Denmark, only Ljubomir Borovčanin has explicitly expressed his personal views on the offered rehabilitation programs, generally thanking the country for the provided possibilities for labor rehabilitation.²⁶² As mentioned earlier, Mr. Borovčanin might serve as an example of good resocialization.²⁶³

Scandinavian rehabilitation programs might also be ineffective for international perpetrators. As far as Finland is concerned, four out of five war criminals are considered not sufficiently rehabilitated based on some indirect evidence of their life post-release. Hazim Delić, generally characterized by his good behavior in prison and a person who “took steps to avoid problems,”²⁶⁴ was suspected of threatening one of his victims in BiH after his release.²⁶⁵ Zlatko Aleksovski still considers himself innocent and feels humiliated because of the verdict.²⁶⁶ Anto Furundžija supports Croatian Defence Council (“HVO”) veterans’ group, military police HVO group, that praise the “freedom war of

simic-novi-stari-predsjednik-oo-sds-samac-.html [perma.cc/DHC6-PHZU].

260. Prosecutor v. Zelenović, Case No. IT-96-23/2-ES, Decision of President on Early Release, ¶¶16–20 (Int’l Crim. Trib. for the Former Yugoslavia Nov. 30, 2012).

261. E.L., *Umro ratni silovatelj iz Foče Dragan Zelenović Zelja*, INDEX (Feb. 18, 2019), <https://www.index.ba/umro-ratni-silovatelj-iz-foce-dragan-zelenovic-zelja/> [perma.cc/EC5C-272P].

262. Ljubiša Borovčanin, *supra* note 46.

263. *Id.*

264. Prosecutor v. Delić, Case No. IT-96-21-ES, Public Redacted Version of the Decision on the Hazim Delić’s Motion for Commutation of Sentence, ¶¶ 7–8, 15 (Int’l Crim. Trib. for the Former Yugoslavia June 24, 2008).

265. *Ratni Zločinac Preti Srpskim Žrtvama!*, SVE VESTI (June 19, 2009), <http://www.svevesti.com/a140538-ratni-zlo%C4%8Dinac-preti-srpskim-%C5%BERTvama> [perma.cc/YA48-LN2F].

266. *Pred Sudskim Vijćem Haški Osuđenik Zlatko Aleksovski: Čekanje Izrica nja Presude Isto je kao sa čekaš Pogubljenje*, VEČERNJI LIST (Apr. 15, 2011), <https://www.pressreader.com/croatia/vecernji-list-hrvatska/20110415/281547992438914> [perma.cc/EP3N-AH2H].

Croatia;²⁶⁷ he regularly posts wartime photos, receives support, and praises his comrades.²⁶⁸ Momir Nikolić demonstrated exemplary behavior in prison, however, “he feels that he himself did not participate in the crimes to which he was privy because of his position;”²⁶⁹ he writes books about Srebrenica operation and never used the opportunity to approach his victims, which they consider very disappointing since he often visits the house of his mother in Bratunac where they see him.²⁷⁰ It should be stressed that those indirect signs cannot serve as any proof of the absence of sufficient rehabilitation *per se*; however, they should be taken into consideration as well, given the general scarcity of the information that could be found in the open sources. Only one perpetrator can be taken from the Norway group, because of the lack of information about the others, namely Vidoje Blagojević, who explicitly denies his crimes and ICTY Judgements in general.²⁷¹ Mr. Blagojević demonstrated very good behavior in prison;²⁷² he receives a military pension, proactively participates in different events, such as the conference “Srebrenica — truth and manipulation” (August 2019), where he stated, *inter alia*, “I am innocent, I am convicted unlawfully!” and denied the established version of the events in Srebrenica.²⁷³

267. See *Case Information Sheet – Anto Furundžija*, ICTY, https://www.icty.org/x/cases/furundzija/cis/en/cis_furundzija.pdf [perma.cc/JBA5-YUQ8]; see also *Anto Furundžija*, FACEBOOK, <https://www.facebook.com/anto.furundzija> [perma.cc/8Z92-N5BL].

268. Information taken from the personal Facebook page. *Anto Furundžija*, FACEBOOK, <https://www.facebook.com/anto.furundzija> [perma.cc/8Z92-N5BL].

269. Prosecutor v. Nikolić, Case No. MICT-14-65-ES, Public Redacted Version of the 14 March 2014 Decision on Early Release of Momir Nikolić, ¶¶ 21–22 (Int’l Crim. Trib. for the Former Yugoslavia Oct. 12, 2015).

270.

Filip Rudić, *Život na slobodi osuđenika za genocid u Srebrenici*, BALKAN TRANSITIONAL JUST. (July 7, 2017), <https://balkaninsight.com/2017/07/07/%C5%BEivot-na-slobodi-osu%C4%91enika-za-genocid-u-srebrenici-07-06-2017/?lang=sr> [perma.cc/8U9R-UBTB].

271. See Prosecutor v. Blagojević, Case No. IT-02-60-A, Judgement, ¶ 47 (Int’l Crim. Trib. for the Former Yugoslavia May 9, 2007). See also *Serb Colonel Denies Genocide Charge*, CNN (Aug. 16, 2001), <https://www.cnn.com/2001/WORLD/europe/08/16/bosnia.blagojevic/> [perma.cc/7BRJ-3ZGK].

272. Prosecutor v. Blagojević, Case No. IT-02-60-ES, Confidential Decision of the President on Early Release of Vidoje Blagojević, ¶ 22 (Int’l Crim. Trib. for the Former Yugoslavia Feb. 3, 2012).

273. See Prosecutor v. Blagojević, Case No. IT-02-60-A, Judgement, ¶ 47 (Int’l Crim. Trib. for the Former Yugoslavia May 9, 2007). See also *Serb Colonel Denies Genocide Charge*, CNN (Aug. 16,

Nikola Šainović and Biljana Plavšić, who served their sentences in Sweden, noting that the latter did not engage in any activities in prison apart from “walking and baking,”²⁷⁴ were both high-level politicians and received a warm welcome back home.²⁷⁵ On September 3, 2015, just a week after being released from prison, Mr. Šainović was appointed to the board of the Socialist Party of Serbia, one of the ruling parties in the country.²⁷⁶ In December 2017, he was nominated for the Chairmanship board of the Socialist Party of Serbia;²⁷⁷ Ms. Plavšić gives multiple interviews stressing her innocence and unjust conviction.²⁷⁸ In conclusion, it is impossible to find out what country’s approach to rehabilitating war criminals is the most effective due to the insufficiency of the information, however, no country provided stable positive results in this field.

5. Ethnicity and homecoming

The perpetrator’s ethnicity does not seem to play a significant role in assessing their rehabilitation. Their receipt in the local communities and their influence on the reconciliation process can be assessed only on the “country-by-country” basis. Generally, all of them receive a warm welcome in their respective ethnical communities and trigger dissatisfaction of the victims.²⁷⁹ Statistically, there are more convicted

2001), <https://www.cnn.com/2001/WORLD/europe/08/16/bosnia.blagojevic/> [perma.cc/7BRJ-3ZGK]; Merdijana Sadović, *Blagojević Sentenced for Srebrenica Genocide*, IWPR (Nov. 18, 2005), <https://iwpr.net/global-voices/blagojevic-sentenced-srebrenica-genocide> [https://perma.cc/2WTD-44K2]; *Bosnian Serb Wrongly Calls Srebrenica Massacre a ‘Myth’*, AP (Apr. 19, 2019), <https://apnews.com/article/ba3e3d6495c545bab2592b8e197be030> [https://perma.cc/X244-4B3R]; ‘Пуковник Видоје Благојевић: Осуђен сам на бази лажи, манипулација и примјене сурове силе ради туђих интереса’, SRBIJADANAS (Aug., 19 2019), <https://www.srbijadanas.net/pukovnik-vidoje-blagojevic-osudjen-sam-na-bazi-lazi-manipulacija-i-primjene-surove-sile-radi-tudjih-interesa/> [https://perma.cc/T3UP-4HJ2].

274. Prosecutor v. Plavšić, Case No. IT-00-39 & 40/I-ES, Public Redacted Decision of the President on the Application for Pardon or Commutation of Sentence of Mrs. Biljana Plavšić, ¶ 9 (Int’l Crim. Trib. for the Former Yugoslavia Sept. 14, 2009).

275. Karstedt, *supra* note 228, at 383.

276. Marija Ristic, *Serbian Socialists Appoint War Criminal as Senior Official*, BALKANINSIGHT (Sept. 4, 2015), <https://balkaninsight.com/2015/09/04/war-criminal-joins-serbia-s-ruling-party-board-09-04-2015/> [perma.cc/TL6W-ED3H].

277. *Id.*

278. Petrović, *Eksluzivni Intevju*, *supra* note 249.

279. Karstedt, *supra* note 228, at 383.

Serbs at the ICTY,²⁸⁰ and therefore, according to my independent research, there are more Serbs among the released perpetrators from the Research Group, namely 25 out of 38, which constitute 66%. According to my research, there is no information about the countries of return of three of them; the other 22 returned to RS BiH (15) or Serbia (7). It can be concluded that 88% of Serbs returned to RS BiH or Serbia. Out of the nine Croats, three returned to their homes in BiH (Drago Josipović to Ahmići, Vinko Martinović to Mostar, Vladimir Šantić to Široki Brijeg), place of residence of Dražen Erdemović is not known, the other five returned to Croatia, although all of them were originally from BiH (Mladen Naletilić, Ivica Rajić, Anto Furundžija, Dario Kordić, Zlatko Aleksovski).²⁸¹ One of the two released Bosniaks, Esad Landžo relocated to Finland, which is the place of residence of the Landžo, Hazim Delić, is not known (he showed up in BiH at least twice in the last years); one released Albanian and one Macedonian, both returned to their respective countries and received welcome as national heroes.²⁸² Both Johan Tarčulovski and Haradin Bala were high-level perpetrators; Johan Tarčulovski is active on the Northern Macedonian political scene²⁸³ and Haradin Bala, who denied his crimes from the very beginning, showed risk of recidivism and risk to society,²⁸⁴ no progress in rehabilitation after his application for early release was denied,²⁸⁵ and yet surprisingly received recognition and appreciation for his deeds during the war and state-funeral in Kosovo.²⁸⁶

Importantly, the homecomings of the perpetrators should also be analyzed from a political perspective — such events are often organized

280. See Buljubašić & Hola, *supra* note 232, at 287 tbl. 15.2; see also *Key Figures of the Cases*, *supra* note 16.

281. See generally *id.*

282. See Sinisa Jakov Marusic, *Macedonia Stages Hero's Welcome for Tarčulovski*, BALKAN TRANSITIONAL JUST. (Apr. 11, 2013), <https://balkaninsight.com/2013/04/11/macedonia-thorws-hero-s-welcome-for-tarculovski/> [perma.cc/2T8U-WZF9].

283. See *id.* See also *Interview of Johan Tarčulovski*, YOUTUBE (Dec. 5, 2016), <https://www.youtube.com/watch?v=JqhUjSGnwag> [perma.cc/8Z2E-MA8N].

284. Prosecutor v. Bala, Case No. IT-03-66-ES, Decision on Application of Haradin Bala for Sentence Remission, ¶¶ 19, 28 (Oct. 15, 2010).

285. Prosecutor v. Bala, Case No. IT-03-66-ES, Public Redacted Version of the 28 June 2012 Decision of the President on Early Release, ¶¶ 9, 25, 31 (Jan. 9, 2013).

286. See Perparim Isufi, *Kosovo, Serbia Criticised for Honouring War Crimes Convicts*, BALKAN TRANSITIONAL JUST. (Feb. 9 2018), <https://balkaninsight.com/2018/02/09/kosovo-parliament-criticised-for-commemorating-war-crimes-convict-02-09-2018/> [perma.cc/882M-Y8BC].

by different political actors and do not necessarily reflect the overall support of the former “war heroes” within society.²⁸⁷ This factor, to some extent, lays outside of the perpetrator’s control. And not every released convict aims at using this warm welcome as an immediate (re-)start of a political career. For example, Tihomir Blaškić, repeatedly stated that those responsible for the crimes in Ahmići shall be brought to justice, whereas the public, ignoring his statements, shouted “nationalist slogans;” from this, it can be assumed that society incites the perpetrator to accept himself as a national hero.²⁸⁸ The importance of the systematic critical reflection on the crimes conducted in prisons and during conditional releases with the assistance of the specialists is crucial for the individual rehabilitation of the perpetrator, who should be prepared for this unique situation of full acceptance by the society. The opportunity to be heard should be used by the perpetrator as a reconciliatory attempt since his voice might still have weight for his supporters and will be heard by his victims.

6. Recidivism

Although this fact falls outside of the scope of this sub-factor, it is worth mentioning that five individuals were convicted by domestic courts for the crimes committed *during* the conflict after their release; two Bosnian Croats (Mladen Naletilić,²⁸⁹ Vinko Martinović²⁹⁰) were

287. See Mihajlović Trbovc, *supra* note 4, at 415–417.

288. *Id.* at 417.

289. Mr. Naletilić was sentenced to 3 and half years by the Croatian court for the order to murder during the war. See Željko Petrušić, *Mladenu Naletiliću Tuti Ptvrdena presuda od tri i pol godine zatvora [Mladen Naletilić Tuta Sentenced with Three and a Half Years in Prison]*, JUTARNJI VIJESTI (Mar. 4, 2020), <https://www.jutarnji.hr/vijesti/crna-kronika/mladenu-naletilicu-tuti-potvrdena-presuda-od-tri-i-pol-godine-zat-vora-jednom-od-pripadnika-kaznjenicke-bojne-naredio-da-ubije-privedenu-osobu/10051420/> [perma.cc/535P-VV2B].

290. Mr. Martinović was sentenced to 7 years by the Croatian Court for the murder committed during the war; he left the court building during the delivery of the verdict and travelled to BiH, international arrest warrant issued. *Штела осуђен на седам година затвора [Stela Was Sentenced to Seven Years in Prison]*, RTRS (Nov. 4 2016), <https://www.rtrs.tv/vijesti/vijest.php?id=228630> [perma.cc/J5KB-8H38]; Jutarnji List, *Hrvatski ratni zločinac nekoliko minuta pre izricanja presude odšetao do Bosne?*, BLIC RS (Nov. 4, 2016), <https://www.blic.rs/vesti/svet/nasamario-sud-hrvatski-ratni-zlocinac-nekoliko-minuta-pre-izricanja-presude-odsetao/6kgt19j> [perma.cc/63KX-KDRY].

convicted by Croatian Court, two Bosnian Serbs (Zoran Žigić,²⁹¹ Darko Mrđa²⁹²) by the BiH Court and one Bosnian Serb (Zoran Vuković²⁹³) by the Montenegrin court. This fact indicates, on the one hand, the positive dynamics of domestic investigations into the crimes committed during the war, but on the other hand, that the investigations conducted by the ICTY were incomplete, which led to those five individuals serving another sentence that could have been cumulated in the ICTY sentence. This observation does not, however, influence the evaluation of their rehabilitation at the post-incarceration phase, since the crimes were committed before their transfer to the ICTY.

Choi states that the “inability to regain former power, increased international scrutiny that accompanies criminal conviction, and changed political circumstances, it is difficult to imagine recidivism in [ICL].”²⁹⁴ However, since this applies only to high-level perpetrators, it can be assumed that the regular sex offender, who committed his crimes during the war, might re-offend in the future. It cannot be stated with certainty that solely the extraordinary circumstances of armed conflict were “the main determinants of his criminal behavior.”²⁹⁵ Different factors should be taken into consideration when assessing the potential to re-offend.²⁹⁶ Notably, the vast majority of the ICTY convicts had no

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291. Mr Žigić was sentenced to 11 years in BiH for the murder committed during the war; he did not want to be extradited to BiH after release from Austria. Moj Prijedor, *Monstrum Zoran Žigić iz Austrije prebačen u BiH*, MOJ PRIJEDOR (Jan. 5, 2015), <http://www.mojprijedor.com/monstrum-zoran-zigic-iz-austrije-prebacen-u-bih/> [<https://perma.cc/N8T8-24SH>]. See Prosecutor v. Žigić, Case No. MICT-14-81-ES.1, Prosecution’s Response to Zoran Žigić’s Request for Non-Compliance with the Republic of Austria’s Extradition Decision, ¶ 2 (Mechanism for Int’l Crim. Tribs. Oct. 3, 2014) (arguing that the MICT has jurisdiction).
292. Mr. Mrđa was sentenced to 20 years in BiH for crimes against humanity committed during the war. *Bosnia: Sentence Against Darko Mrđa Raised to 20 years*, TRIAL INT’L (Sept. 18, 2019) <https://trialinternational.org/latest-post/bosnia-sentence-against-darko-mrda-raised-to-20-years/> [<https://perma.cc/BK2F-8W5F>].
293. Mr. Vuković was sentenced in Montenegro to 20 years in absentia for murder during the war, captured when crossing the border from BiH to Serbia. *Podgorica: Vukoviću novo suđenje*, NOVOSTI RS (Jan. 27, 2016) <https://www.novosti.rs/vesti/planeta.300.html:588083-Podgorica-Vukovicu-novo-sudjenje> [<https://perma.cc/6LQV-TFN4>]; *Crna Gora od Srbije traži izručenje zločinca*, ALJAZEERA, (Jan. 23, 2016) <http://balkans.aljazeera.net/vijesti/crna-gora-od-srbije-trazi-izrucenje-zlocinca> [<https://perma.cc/JU36-FFPN>].
294. Choi, *supra* note 39, at 1811.
295. Hola & van Wijk, in RESEARCH HANDBOOK, *supra* note 15, at 291.
296. See, e.g., Alette Smeulers, *Perpetrators of International Crimes: Towards a Typology*, in SUPRANATIONAL CRIMINOLOGY: TOWARDS A CRIMINOLOGY OF INTERNATIONAL CRIMES, 233 (2008).

prior criminal record,²⁹⁷ which confirms the assumption that their crimes were mostly provoked by the situation of severe violence.²⁹⁸ There are only two indications of possible re-offending within this group of perpetrators, namely in the case of Hazim Delić, who was suspected in threatening one of his victims²⁹⁹ and Ranko Česić, who allegedly dropped a bomb into his ex-wife's house.³⁰⁰ Both were low-level perpetrators and their actions, although not considered recidivism, may indicate some risk of it, which was overseen by the President while granting early release.³⁰¹ Nevertheless, the statistical outcome supports the argument that the perpetrators of international crimes are usually not recidivists.

Noting the scarcity of information, it can be deduced from the statistical analysis of the Research Group that the so-called “highly educated international perpetrator” is only a sub-category and not the main type of perpetrator. The analysis also points out that the majority were not sufficiently rehabilitated, independent from the state of enforcement, time spent in custody, their ethnicity as well as their rank. Such a conclusion serves as a further basis for a proposed change of the attitude towards rehabilitation in the ICJS.

V. IMPROVEMENT PROPOSALS – NEVER TOO LATE?

*“We must transition our thinking. We are no longer in the world of ad hoc institutions.”*³⁰²

The analysis provided above identified many disadvantages and discrepancies of the ICJS regarding enforcement and especially to rehabilitation. Mulgrew argues that “ideally, international courts should be able to cater for and exercise direct control over the prison

297. Buljubašić & Hola, *supra* note 232, at 287 tbl. 15.2.

298. Smeulers, *supra* note 296, at 234.

299. *Ratni Zločinac Preti Srpskim Žrtvama!*, *supra* note 265.

300. *Plašim se za svoju porodicu, pretio mi je da neću još dugo: Žena bivšeg haškog optuženika o bombi koju joj je bacio*, *supra* note 251.

301. *See generally* Prosecutor v. Delić, Case No. IT-96-21-Abis, (Int'l Residual Mechanism for Crim. Tribs. Apr. 8, 2003); *see also* Denis Dzidic, *Ranko Cesic Granted Early Release*, JUST. REP. (May 29, 2014) <https://www.justice-report.com/en/articles/ranko-cesic-granted-early-release> [<https://perma.cc/57SR-PLNT>].

302. Judge Kimberly Prost, Int'l Crim. Ct., Keynote Address at the International Bar Association Conference Seeing Justice Through: Long-Term Issues in International Justice (Oct. 21, 2019).

populations they create;³⁰³ the absence of an international prison has been identified by academic writers as a “major shortcoming” that creates an “institutional lacuna.”³⁰⁴ In her proposal to create an international prison, Mulgrew, however, does not elaborate extensively on the rehabilitation programs that should be implemented.³⁰⁵ Setting aside this proposal, this research seeks to solidify an argument that centralized rehabilitation programs would have a positive effect on the convicted perpetrators in the absence of centralized sentence enforcement.

A. Release under conditions

Conditional release, which is typical for many domestic criminal systems,³⁰⁶ was introduced — for the first time — in the ICJS with regard to Yugoslavian perpetrators in the case of Valentin Ćorić,³⁰⁷ after the proposal of the UNSC.³⁰⁸ It can be argued that the UNSC only encouraged the Mechanism “to consider an appropriate solution, including by considering putting in place conditions on early release in appropriate cases,”³⁰⁹ which was taken by the President as a guide to action and resulted in immediate imposition of conditions on the next released perpetrator.³¹⁰ Neither the IRMCT Statute nor RPE or Practice Directions contain a clause on conditional release.³¹¹ In

303. RÓISÍN MULGREW, TOWARDS THE DEVELOPMENT OF THE INTERNATIONAL PENAL SYSTEM 276 (2013).

304. *Id.* at 277.

305. *See generally id.*

306. *See generally* RELEASE FROM PRISON: EUROPEAN POLICY AND PRACTICE (N. Padfield, D. v. Zyl Smit, & F. Dünkel eds. 2010).

307. Only a few days earlier, conditional release was imposed on the ICTR convict Aloys Simba. Prosecutor v. 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, at Annex A (Int’l Residual Mechanism for Crim. Tribs. Jan. 7, 2019); Prosecutor v. Ćorić, Case No. MICT-17-112-ES.4, Decisions on Motions Related to Valentin Ćorić’s Request for Variation of Early Release Conditions, ¶ 43 (Int’l Residual Mechanism for Crim. Tribs. Feb. 21, 2020).

308. S.C. Res. 2422 ¶ 10 (June 27, 2018).

309. *Id.*

310. Letter dated 20 May 2019 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council, S/2019/417 (May 20, 2019).

311. *See generally* S.C. Res. 1966 (Dec. 22, 2010); Int’l Trib. for the Prosecution of Persons Responsible for Serious Violations of Int’l Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, *Amendments to the Rules of Procedure and Evidence*, U.N. Doc. IT/282 (July 10, 2015).

discussing such an important and sensitive issue as enforcement and supervision of such release in the country of return, where the Yugoslavian perpetrators receive a warm welcome,³¹² the President only mentioned that “all the states are obliged to cooperate with the Mechanism.”³¹³ However, the differences in national supervision practices might create further difficulties. This practice was welcomed by victims³¹⁴ but also criticized by defense lawyers as undermining the principle of equal treatment of the prisoners,³¹⁵ which the President omitted to discuss in the decision.³¹⁶

What does it mean for rehabilitation? First of all, Mr. Ćorić served two-thirds of his sentence at the UNDU during the trial.³¹⁷ The assessment of rehabilitation in his case again degenerated to the assessment of behavior at the UNDU,³¹⁸ mentioning regret during the

312. Barbora Hola, *ICTY Celebrities: War Criminals Going Home*, 28 INT’L CRIM. JUST. REV. 4, at 285-90 (2018).

313. S.C. Res. 1966, at art. 28 (Dec. 22, 2010).

314. Journalist Dženana Karup-Druško even stated that this practice was triggered by the consistent dissatisfaction of victims, who expressed their views on early release of perpetrators in their letters to the Tribunal (although in this case, the victims’ views were not taken into account). See *Dženana Karup-Druško i Erna Mačkić o slučajju Valentina Ćorića*, YOUTUBE (Jan. 16, 2020), <https://www.youtube.com/watch?v=ATg3Lwkl6AE> [<https://perma.cc/F87X-Q3W8>].

315. Prosecutor v. Ćorić, Case No. MICT-17-112-ES.4, Decisions on Motions Related to Valentin Ćorić’s Request for Variation of Early Release Conditions, ¶ 28 (Int’l Residual Mechanism for Crim. Tribs. Feb. 21, 2020).

316. *Id.* ¶¶ 36–42.

317. *Id.*

318. It is worth mentioning that a lacuna in the legislation was identified when first applications for early release were filed from the perpetrators who served two-thirds of their sentences at the UNDU; there was no special procedure foreseen for such cases. In his discussing of the early release of Zdravko Mucić, the President stated that a convicted person had served his sentence in The Netherlands, which had no enforcement agreement with the Tribunal and ruled that the condition for early release shall apply equally for all the convicts in his early release decisions in similar cases, he also considered the information provided in the UNDU reports concerning the behavior of the convict, assessing it as rehabilitation, which, however, to the author’s view shall be taken with caution as compared to the regular prisons’ reports because of the presumption of innocence during the court proceedings and generally different conditions of detention. Prosecutor v. Mucić, Case No. IT-96-21-Abis, Order of the President in Response to Zdravko Mucić’s Request for Early Release, (Int’l Crim. Trib. for the Former Yugoslavia July 9, 2003).

Appellate Hearing.³¹⁹ Generally, release under conditions is beneficial for the convict in cases when he starts his preparation for early release already in detention and further proceeds smoothly into conditional release with the help and assistance of the *same* therapists, psychologists, consultants.³²⁰ Such a system is implemented, for example, in Austria, where life in detention and post-release is supported by the organization Neu Start.³²¹ Given the complexity of reintegration into the society that may be divided between supporters and victims, the special impact should be put on the continuous accompaniment and support of the perpetrator during this period, assisting him primarily by facilitating critical reflection on his crimes.

Mr. Čorić simply returned to Croatia, where he received a warm, but fair to say, not a huge public welcome at the airport.³²² He does not communicate to the press, and there are no indications of non-fulfilment of the imposed conditions at the moment.³²³ Every deprivation of liberty leaves a trail on a human being; however, it can be assumed that since Mr. Čorić served his sentence under very liberal conditions and was not subject to any rehabilitation programs,³²⁴ his time spent in custody under a presumption of innocence likely did not contribute to a deep reflection on his crimes. To improve the contemporary system on conditional early release in ICJS, it can be proposed that the special rehabilitation program that will be discussed below should encompass the post-release stage by maintaining the psychological and other support of the released perpetrators. Although the creation of a special program for the Yugoslavian war criminals can be seen as merely an academic proposal because the majority of them have been released, the analysis provided in this thesis builds a fundamental basis for the

319. Prosecutor v. Čorić, Case No. MICT-17-112-ES.4, Decisions on Motions Related to Valentin Čorić's Request for Variation of Early Release Conditions, ¶¶ 64–65 (Int'l Residual Mechanism for Crim. Tribs. Feb. 21, 2020).

320. See generally Yvon Dandurand, et al., *Conditional Release Violations, Suspensions, and Revocations – A Comparative Analysis*, INT'L CTR. CRIM. L. REFORM CRIM. JUST. POL'Y (NOV. 2008).

321. See generally NEUSTART, https://www.neustart.at/at/de/unsere_angebote/index2.php [https://perma.cc/KN3F-DRQC].

322. *Valentin Čorić Sletio u Zagreb Nakon Odsluženja Dvije Trećine Kazne*, YOUTUBE (Jan. 16, 2019) <https://www.youtube.com/watch?v=GhWxmc8XDjg> [https://perma.cc/PG7B-75XX].

323. See *id.*

324. See Prosecutor v. Čorić, Case No. MICT-17-112-ES.4, Decisions on Motions Related to Valentin Čorić's Request for Variation of Early Release Conditions, ¶ 49 (Int'l Residual Mechanism for Crim. Tribs. Feb. 21, 2020).

implementation of such programs for the rehabilitation of the other international perpetrators.

B. Tailored rehabilitation programs

The problem is that in order to implement an effective working solution, more criminological and psychological research is needed given the complexity and under-researched stage of the subject. Rehabilitation should be approached from different sides: first, we need to establish a clear goal and desirable result of the TRPs; second, we need to identify the type of perpetrator that can be positively affected by such a program; third, we need to develop the framework to rehabilitation, which would be adaptable for the needs of the particular perpetrator; and finally, the operational moments should be elaborated upon. Any proper rehabilitation, according to Tony Ward and Shadd Maruna should include a clear and explicit account of (i) the general principles underlying rehabilitation; (ii) objectives; (iii) etiological assumptions; and (iv) the intervention implications.³²⁵

1. Typological division of international perpetrators

The typological division of the perpetrators is essential for setting the scope of rehabilitative goals. Academic attempts to provide such a division vary in their approaches, however, the unique trait of this group of perpetrators remains the same — the period of violence at the time of the commission of crimes. The crimes should be examined in the context of the conflict, whereas the latter is not the only justification of the crimes. Smeulers identifies three major groups: (i) law-abiding, successful citizens; (ii) borderlines, and (iii) criminals; and nine types of international perpetrators, namely, the criminal mastermind, the fanatic, the criminal/sadist, the profiteer, the careerist, the devoted warrior, the follower/conformist, the comprised perpetrator, the professional.³²⁶ In some cases, the perpetrator falls exactly into one of the categories (Goran Jelisić is a clear criminal, sadist), in other cases, the division can be blurred (can Slobodan Milošević be considered pure criminal mastermind or mastermind mixed with careerist?). These types of people have their reasons to commit crimes. The causes of criminal behavior are crucial for establishing the type of offender and organizing further suitable treatment and assistance.³²⁷ Practically thinking, an individual approach and constant assistance is needed to establish the individual needs of every perpetrator as well as his type, and to develop the

325. F. McNeil, *Four Forms of 'Offender' Rehabilitation: Towards an Interdisciplinary Perspective*, 17 LEGAL CRIM. PSYCH. 1, 18 (2012).

326. Smeulers, *supra* note 296, at 237–60.

327. See Eveline De Wree, et al., *The Transfer of Sentenced Persons in Europe*, 11 PUNISHMENT & SOC'Y 111, 121 (Jan. 1, 2009).

program of rehabilitation for him, which would be possible only in case when the same specialists work with him closely for a prolonged period.

The division provided by Smeulers is not absolute; Hola argues that since this division remains “general in nature” and “lacks empirical validation,” and “we are left with a largely theoretical account on why the individuals commit international crimes,” much more research is needed to implement special rehabilitation programs and interventions.³²⁸ Indeed, it should be noted that Smeulers worked with secondary sources — books, speeches, cases.³²⁹ Without contesting this view, it should be mentioned that this division could be refined if more perpetrators could be personally assessed from a psychological point of view, which in its turn would be possible if the TRPs are implemented. In this regard, the TRPs would be a perfect place to develop and deepen this theoretical framework, which, would imply an element of learning-by-doing.

2. Rehabilitation approach

Next, the approach to rehabilitation must be chosen and further refined and adapted to the needs of the perpetrator. In discussing the four approaches to rehabilitation, Fergus McNeil identifies two prevailing contemporary concepts, namely the Risk-Needs-Responsivity model and Risk-Based model;³³⁰ the former targets criminogenic needs of the perpetrator, whereas the latter aims at encouraging the perpetrators “to take control of their lives and make more pro-social choices.”³³¹ Since it is well-established that the criminality is not a pathology,³³² rehabilitation programs generally concentrate on learning social behavior.³³³ Resocialization *per se* would not be sufficient for this group of perpetrators, considering the possible readiness of the society to accept them. Bearing in mind the desired goal of reconciliation, the critical reflection on the crimes and potential acceptance of responsibility, remain crucial for international perpetrators, therefore, “moral reform and social rehabilitation in the *broadest* sense” should be seen as major goals of the TRPs.³³⁴

328. Hola & van Wijk, *in* RESEARCH HANDBOOK, *supra* note 15, at 292.

329. Smeulers, *supra* note 296, at 240.

330. McNeil, *supra* note 325, at 3.

331. Hola & van Wijk, *in* RESEARCH HANDBOOK, *supra* note 15, at 276–7.

332. De Wree, et al., *supra* note 327, at 114; Smeulers, *supra* note 296, at 234.

333. De Wree, et al., *supra* note 327, at 115; Smeulers, *supra* note 296, at 234.

334. Hola & van Wijk, *in* RESEARCH HANDBOOK, *supra* note 15, at 292 (emphasis added).

The effectiveness of individual assistance especially focused on psychological problems is proved.³³⁵ Furthermore, the now-existing regular domestic rehabilitation programs, such as cognitive behavior programs, which “seek to engage the perpetrators . . . as moral actors with the capability both to re-evaluate the past (anti-social) choices,” can be adjusted to the international perpetrators as well.³³⁶ Such programs encourage the criminal to admit the crimes and develop empathy.³³⁷ The development of the TRP will not start from scratch; the conducted research in the fields of criminology with regard to typology, social characteristics of the perpetrators, books authored by them, conducted interviews, research of the public opinion, homecomings, media-coverage already provides for a launching pad for further elaborating on the types and needs of the perpetrators, taking into account the overarching goal of reconciliation. Regarding rehabilitation, research of the domestic rehabilitation programs, statistical data on their effectiveness, experience which can be collected from every country and combined for the purposes of the TRP — all these arguments should inspire hope.

3. Operational proposals

Apart from criminological aspects, different relevant considerations should be included while elaborating the special program, such as:

(i) for those perpetrators, who pleaded guilty the program can start as soon as possible at the UNDU during the trial;

(ii) for those perpetrators who did not plead guilty and were further convicted, the program should start after the conviction at the UNDU intensively and last till the transfer to the prison in the enforcement state in person; this is an important stage for preparation for the incarceration and building up the trust to the supervising specialists;

(iii) the further supervision of the perpetrators while serving their time in prisons should be conducted on the module basis and partially remotely; the intensity and interval of the sessions should be established according to the needs of each specific perpetrator;

(iv) the module system of in-person sessions, which are to be conducted, for example, at the UNDU should be coordinated to encompass several perpetrators of the similar background and with the same needs; this should be made for the purposes of cost optimization as well as for implementation specially created group therapies; victims' inclusion is possible;³³⁸

335. De Wree, et al., *supra* note 327, at 115.

336. Hola & van Wijk, *in* RESEARCH HANDBOOK, *supra* note 15, at 293.

337. *Id.*

338. *Id.*

(v)the program should be flexible and allow for the rehabilitative work with the perpetrator in the prison of the enforcement state, in cases when his transfer to the UNDU is not possible; for these purposes, special arrangements should be made with the prison authorities of the enforcement state;

(vi)the program should be adapted for different types of offenders; for high-level perpetrators, the program should put a particular focus on the psychological assistance and reflecting on the committed crimes in the context of the conflict, for low-level and de-socialized offenders the focus should be put on classical rehabilitative activities, such as acquiring new skills or profession and training to control aggression,³³⁹ alongside moral transformation;

(vii)learning the language of enforcement state should be started as soon as possible at the UNDU in order to integrate into prison life rapidly and smoothly;

(viii)the program should have a unique focus to re-integrate the released perpetrators into the country of return since the statistical analysis of the released Yugoslavian perpetrators showed, they tend to go back to their home countries; therefore, the special impact must be put on the systematic update of the specialists working with the perpetrator on the political situation in the respective country;

(ix)the program should be developed by highly qualified criminologists, psychologists, psychotherapist, occupational therapists, historians, and linguists with specialized knowledge of the region;

(x)during the conditional release, the perpetrator should be supported by the same specialists on a remote basis; the specialists should report the Tribunal on the progress in reintegration and resocialization of the released perpetrator.

(xi)as far as the international criminals are concerned, since the International Criminal Court, for example, has a goal to prosecute those most responsible for the crimes, then the basic program can be developed with precise focus on the high level of command or political influence of the convicted perpetrators; such program can be further modified with regard to the specifics of the country of return and other relevant factors.

Since I, the author of this research, am neither a criminologist nor a psychologist, in my attempt to bring up such a proposal, I acknowledge that the above-provided list of the considerations is of operational character, not exhaustive, and might serve only as a starting point for the further developing of suitable and effective TRPs

339. Interestingly, the Polish prison provided for a possibility to participate in a special “aggression and violence prevention pro-gramme with a trainer who speaks Serbian,” which Mr. Krstić successfully accomplished. Krstić Decision, Case No. MICT-13-46-ES.1, Decision of the President on the Early Release of Radislav Krstić, ¶ 31 (Mechanism for the Int’l Crim. Tribs. Dec. 13, 2016).

for international perpetrators. It is also worth mentioning that the financial cost of the development and implementation of such programs can be very high, which might also provoke the dissatisfaction of the victims, who often want to lock the perpetrators up and throw away the key, instead of watching such an attentive and respectful attitude towards them, that I propose. Nevertheless, the far-reaching goal of such a profound rehabilitation remains the peaceful co-existence of the perpetrators and the victims in a healthy and prosperous society and contribution to the reconciliation process. Therefore, the success in the operationalization of such program depends on its systematic implementation and can be achieved only after many years; it would be unreasonable to expect immediate positive results, given the complexity of the project.

VI. CONCLUSION

As the international criminal courts assume responsibility for imposing international criminal justice, they should also assume responsibility for its implementation.³⁴⁰ Holding the Judgements as the most important elements of ICJS, the Tribunal further showed no interest in the lives of perpetrators post-sentence and post-release.³⁴¹ The fact that rehabilitation was not given sufficient attention at the ICTY is indisputable. The situation where the contemporary system of rehabilitation of international perpetrators stands now is unacceptable, however, abandoning the whole idea of rehabilitation in ICJS would potentially lead to the collapse of the whole project. The Yugoslavian perpetrators, in fact, instructed the ICTY or even taught it a lesson by successfully sabotaging the convictions at the post-release stage in their unique way. Who could imagine in 1993 that the court, which was a hope for many victims in the region, would be ridiculed by the released perpetrators 25 years later?

It is true that nowadays only a marginal group of international perpetrators repent, but rehabilitation is not an empty box — it is a well-researched and empirically tested concept.³⁴² It works. Penal rehabilitation provides good results, and the TRPs for international perpetrators have a prospect of being developed and integrated. The ICJS should face the problem and finally recognize its omissions. Being from the affected region herself, the author acknowledges the difficulties of accepting the wrongfulness of crimes committed by its own ethnic group. The public process of transformation of national heroes into

340. Mulgrew, *supra* note 83, at 49.

341. See Hola, *Seeing Justice Through*, *supra* note 11.

342. De Wree, et al., *supra* note 327, at 72.

génocidaires might be even more hurtful. Justification of the committed crimes is natural not only for the perpetrator but for his sympathizers as well. The changes need to be made in the heads first. Regarding international perpetrators, constant deep reflection on the committed crimes and working towards a moral change, supported and assisted by the specialists, will potentially influence the changes in the perpetrator's attitude. Personal remorse of the perpetrator, being not a *panacea* regarding reconciliation *per se*, can lay the foundations for further positive developments in this complicated field.