

# **Punishment and Sentence Serving for Serious Violations of International Humanitarian Law**

*- Enforcement of the ICTY-imposed Sentences -*

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# 1. General Overview: Regulative Framework

→ ICTY Statute: **Articles 27 & 28**

Tribunal ↔ States

Article 27:

- enforcement in the national prison systems
- willingness of the State
- in accordance “with the applicable law of the State concerned”
- subject to the supervision of the Tribunal

## Article 28: Pardon and Commutation

condition: eligibility under national law, but the final decision lies with the Tribunal

- supplement to the general provisions:
  - Rules of Procedure & Evidence (A. 103-104; 123-125)
  - Practice Direction for Designation of State
  - Practice Direction for Pardon, Commutation & Early Release

# \*Agreements on the Enforcement of Sentences\*

- 17 States (Germany – 4 ad hoc Agreements)

- 47 Convicts

# ICTY State

## Agreement

- transfer of the convicted person
- \*- conditions of imprisonment
- \*- pardon, commutation & early release
- monitoring
- termination of enforcement

## Previous analyses:

- insufficient legal framework
- intrusion of the constitutional prerogatives
- “inequality of the prison treatment”
  - early release
  - conditions of imprisonment

## 2. “The Next Step”:

- the main question:

“How are the ICTY-imposed sentences enforced through various national prison regimes?”

- wide-range; in depth; theoretical/empirical approach

- analysis of different areas on scale:

*ICTY - State Authorities - Prison Institutions - Convicts”*



## Aims:

- To what extent does such practice provide for the completion of the primary sentencing objectives of the Tribunal (retribution and deterrence) and rehabilitation? Which aspect is prevailing?
- To what degree can the equality of prison treatment; with regard to the conditions of imprisonment and substantive rights of the ICTY convicts in different countries, really be achieved?
- Does the existing mechanism present an adequate model which should be further maintained for the treatment of international offenders in the future (relation to the ICC)?
- What impact does such enforcement have on the level of implementation of the international human rights law within the national prison systems in Europe?
- What trends have developed within european prison regimes, with relation to the enforcement of the ICTY sentences?



Thank you for your time.