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für ausländisches und  
internationales Strafrecht

***BALKAN CRIMINOLOGY:***

***Punishment and Sentence Enforcement  
For Serious Violations of International  
Humanitarian Law Committed in the  
Former Yugoslavia***

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***“1st Annual Conference of the MPPG for Balkan Criminology”***

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## Research Project Overview: a. Issues under Scrutiny

ICTY Statute A. 27 – Enforcement of sentences in **national** prison systems, based on **“Agreements on the Enforcement of Sentences”**

- 17 European states (Germany – 4 ad hoc agreements)
- 14 effectively enforcing sentences
- 51 prisoners
  
- **Normatively:** **Supervision** of enforcement by the **ICTY**
- **Practice:** Adjustment of **terms and conditions of imprisonment** to **national penal policies?**



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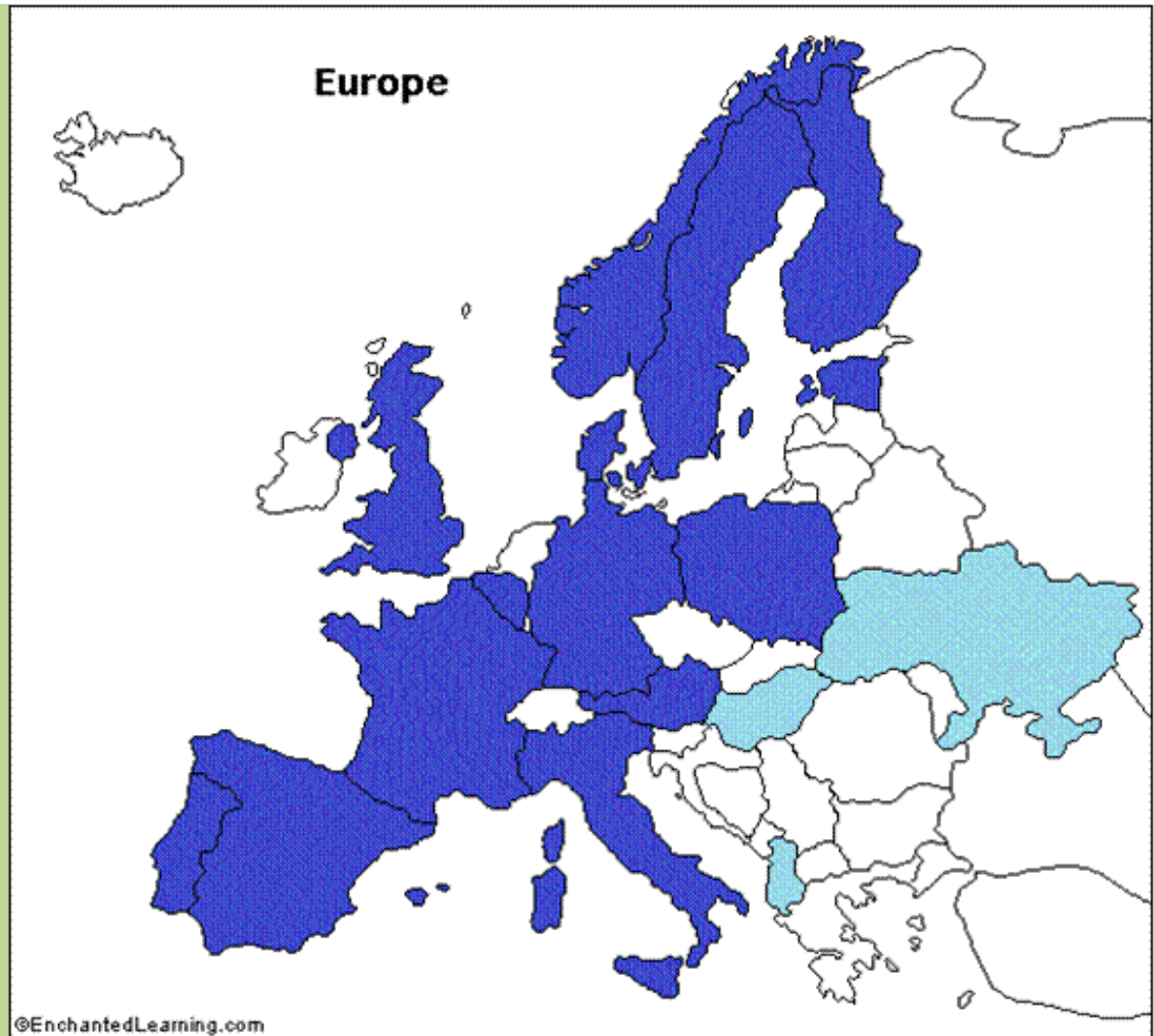


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## The Principle Issue: ***Fundamental Conflict of Enforcement Purposes***

### I. approaches to the “***ordinary***” perpetrators:

- Enforcement Purpose: ***Rehabilitation, Special Prevention, Resocialization***
- Fostered by international & regional human rights standards
- ***Rehabilitation is inherently concerned with crime aetiology***

VS.

### II. Macro-criminality: 1 **CRIME CONTEXT!** (State conflict – actions on behalf/in conformity with the state-policy)

#### 2 **AETIOLOGY OF PERPETRATORS**

- situational aspects lead to **change of moral frame** and **reinforce neutralization** (of humanity and victim status)



-“the application of concepts such as ‘social rehabilitation’ would be manifestly inappropriate, if not absurd, in case of war criminals and genocidaries!” – **inadequate approach!**

System criminality – criminal law should strive to change the system which supports or enables mass atrocities (Jaeger, 1995)

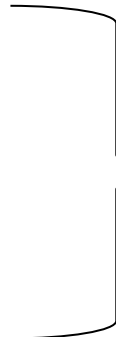
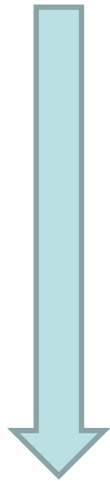
- “rehabilitation of the society” through utmost desolidarization with the perpetrators

“Basic story of separation” – the new beginning also needs a new basic story in which the break with those things and those people who were the chief actors in the conflict is implemented (von Trotha, 2004)



Archetype :

- **Nuremberg trials, Spandau prison** - death penalties, life imprisonment without parole, consolidation system, **“victor’s justice”**



*developing system of international human rights and prison law*

- **ICTY** → **ICTR**



- **ICC, MICT**

- Suitable approach?



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Preliminary comparison:

➤ Krstić case **vs.** Plavšić case

**The Issue of (In)equality of Treatment** (2 dimensions):

➤ STATE vis-a-vis STATE

➤ International prisoners vis-a-vis national prisoners





## Research Project: b. Questions/Methodology/Aims

- Governing research questions:
  - “What is the goal of the ICTY-imposed sentences’ enforcement?”
  - “How are the ICTY-imposed sentences enforced through national prison regimes?”
  - “What are the outcomes of the enforcement?”
    - qualitative analysis of different areas on scale:  
*ICTY – State Authorities – Prison Institutions - Convicts*
- place for the improvement?



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## Summary indications:

- No penological justification
  - Not firmly established set of rules
  - Regulatory inconsistency
  - Discretionary decisions
  - Inequality
- 
- Diminished legitimacy!



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## Question of improvement:

- Introduction of penologically justifiable prison policy
  - understanding the aetiology of international crimes
  - symmetric vs. asymmetric approach
  - opening ways to communication, reparative and restorative actions
- Structural & regulatory consolidation
- Standardization and equality
- Strengthened legitimacy



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# Thank you for your attention!

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