

Life After Conviction at the International Criminal Tribunal for the former Yugoslavia

Mapping the Empirical Reality

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Abstract

Of the 92 persons convicted at the International Criminal Tribunal for the former Yugoslavia (ICTY), 60 have already served their sentences and been released. Even though in post-conflict environments, the public behaviour of perpetrators can help counter (atrocious) crime denial, establish an authoritative version of the truth and contribute to sustainable reconciliation, we still know little about what happens once they return to their communities. This article is one of the first attempts to systematically map and understand what pathways the ICTY convicts take after release, and why. It finds that those who promote nationalist interpretations of the past and deny their responsibility and involvement in crimes are often hailed by receptive domestic audiences across the Western Balkans. They successfully use certain support networks, such as dominant political parties or military and war veterans' organizations, to take back their place in public life. On the other hand, those convicts who have admitted their guilt and responsibility and do not promote a nationalist interpretation of the past often find themselves ostracized, living in poverty and seclusion.

1. Introduction

The International Criminal Tribunal for the former Yugoslavia (ICTY) was designed to deal with core international crimes that took place during the conflicts in the Balkans in the 1990s. It has charged over 160 persons,

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including heads of state, prime ministers, army chiefs-of-staff, interior ministers, and many other high- and mid-level political, military and police leaders from various parties to the Yugoslav conflicts. By September 2022, out of the 92 persons convicted by the ICTY or its successor, the International Residual Mechanisms for Criminal Tribunals (IRMCT) (hereinafter referred to as 'ICTY convicts'), 60 have already been released. Fifty-six of them have been granted early release after serving two-thirds of their total sentence (93% of all those released to date). The literature on truth and reconciliation suggests that perpetrators' confessions and their public behaviour in post-conflict environments can be of immense importance for countering denial, establishing an authoritative version of the truth and contributing to reconciliation.¹ However, at the moment, we know relatively little about what exactly happens after prisoners complete their sentences or are released early. Until quite recently, as the ICTY/IRMCT initially did not have a monitoring/supervision system for released convicts, they would often fall off the radar.²

Existing literature on the subject is scarce. Research by Holá, van Wijk and Kelder,³ Choi,⁴ Rauschenbach,⁵ Yarnell,⁶ Riegler⁷ and Karstedt⁸ are notable exceptions. However, these authors mainly focused on the criteria used by the ICTY to assess the level of convict rehabilitation and conditions for granting early release. They found that according to the ICTY Rules of Procedure and Evidence, four factors are considered when granting early release: the gravity of the crimes committed; the treatment of similarly situated persons; the level of rehabilitation; and substantial cooperation with the prosecutor. However, in practice, presidents have often interpreted similar treatment of prisoners as implying the two-thirds rule standard of early release, whereas other factors did not play a significant role. Even when the convict had repeatedly denied

- 1 L.A. Payne, 'Perpetrators' Confessions: Truth, Reconciliation, and Justice in Argentina', in S.E. Eckstein and T.P. Wickham-Crowley (eds), *What Justice? Whose Justice? Fighting for Fairness in Latin America* (University of California Press, 2003) 158–185, at 158–159.
- 2 J.M. Kelder, B. Holá and J. van Wijk, 'Rehabilitation and Early Release of Perpetrators of International Crimes: A Case Study of the ICTY and ICTR', 14 *International Criminal Law Review (ICLR)* (2014) 1177–1203, at 1198; S. Karstedt, "'I Would Prefer to Be Famous': Comparative Perspectives on the Reentry of War Criminals Sentenced at Nuremberg and The Hague', 28 *International Criminal Justice Review (ICJR)* (2018) 372–390, at 373; E. Riegler, 'Rehabilitating Enemies of Mankind: An Exploration of the Concept of Rehabilitation as a Sentencing Aim at the ICTY and the ICC', 20 *ICLR* (2020) 701–727, at 710.
- 3 B. Holá and J. van Wijk, 'Life After Conviction at International Criminal Tribunals: An Empirical Overview', 12 *Journal of International Criminal Justice (JICJ)* (2014) 109–132; Kelder, Holá, and van Wijk, *supra* note 2.
- 4 J.H. Choi, 'Early Release in International Criminal Law', 123 *The Yale Law Journal* (2014) 1784–1828.
- 5 M. Rauschenbach, C. Staerklé and D. Scalia, 'Accused for Involvement in Collective Violence: The Discursive Reconstruction of Agency and Identity by Perpetrators of International Crimes', 37 *Political Psychology* (2016) 219–235.
- 6 P. Yarnell, 'Relativising Atrocity Crimes: The Message of Unconditional Early Release of Perpetrators Convicted by the ICTY (1998 – 2018)', 21 *ICLR* (2021) 67–96.
- 7 Riegler, *supra* note 2.
- 8 Karstedt, *supra* note 2.

any responsibility for or participation in the crimes, the two-thirds rule prevailed in determining whether and when early release should be granted. However, since Judge Carmel Agius became the president of the IRMCT in January 2019, 'serving two-thirds of the sentence no longer seems to be an automatic pass to freedom'.⁹ He began to examine rehabilitation much more meticulously, which led to several rejections of early release requests (e.g. Dragoljub Kunarac, Miroslav Bralo, Jadranko Prlić or Milan Lukić). In addition, some ICTY convicts were granted early release with specific conditions and under supervision. For example, Sreten Lukić was released on the condition that he would not deny the crimes he committed in the Kosovo war or any crimes committed during the Yugoslav conflicts.¹⁰

There are also several other noteworthy studies that focus on selected perpetrator experiences, typically drawing on interviews with the most notorious convicts. Such studies find that they often feel disillusioned and treated unfairly by the ICTY, stressing bias, political pressure, illegitimate and unrestrained power and general untrustworthiness of the judicial truth.¹¹ According to this research, they see themselves as victims, not perpetrators. In addition, anecdotal evidence from the region demonstrates that returning ICTY convicts are often glorified, placed in the spotlight in public spaces and praised as role models.¹² Some are even elected to parliament or municipal governing bodies, where they continue to incite ethnic hatred and promote ultranationalist interpretations of the past war.¹³ At the same time, we see that others have

9 T. Meron, *Early Release of Prisoners Decisions, Standing Up for Justice: The Challenges of Trying Atrocity Crimes* (Oxford Academic, online edition, 2021).

- 10 See page two of the Conditional Early Release Agreement, Annex to the Decision on the Application for Early Release of Sreten Lukić, *Lukić* (MICT-14-67-ES.4), The President of the Mechanism, 7 October 2021, available online at https://www.irmct.org/sites/default/files/case_documents/211007-decision-lukic-early-release-14-67-MSC9529R0000638994-en.pdf (visited 16 December 2022).
- 11 M. Rauschenbach, 'Individuals Accused of International Crimes as Delegitimized Agents of Truth', 28 *ICJR* (2018) 291–316; J. Subotić, 'The Cruelty of False Remorse: Biljana Plavšić at The Hague', 36 *Southeastern Europe* (2012) 39–59; O. Simić, 'I Would Do the Same Again: In Conversation With Biljana Plavšić', 28 *ICJR* (2018) 317–332; V. Petrović, 'The ICTY Library: War Criminals as Authors, Their Works as Sources', 28 *ICJR* (2018) 333–348.
- 12 See K. Panić, 'Balkan's War Leaders' Renaissance – From Criminals to Heroes', Fair Planet, available online at <https://www.fairplanet.org/story/balkans-war-leaders-renaissance-from-criminals-to-heroes/> (visited 10 February 2022); N. Pejić, 'A Land Where War Criminals Are Heroes', Radio Free Europe, available online at https://www.rferl.org/a/A_Land_Where_War_Criminals_Are_Heroes/1865935.html (visited 10 February 2022); F. Rudić, 'Serbia: Unrepentant War Criminals Enjoy Public Spotlight', Balkan Insight, available online at <https://balkaninsight.com/2018/12/27/serbia-unrepentant-war-criminals-enjoy-public-spotlight-12-21-2018/> (visited 10 February 2022).
- 13 M. Stojanović, 'War Criminals Prepare to Run in Serbian Elections', Balkan Insight, available online at <https://balkaninsight.com/2020/05/26/war-criminals-prepare-to-run-in-serbian-elections/> (visited 10 February 2022); N. Džaferagić, 'Freed War Crimes Convicts Become Public Servants in Bosnia', Balkan Insight, available online at https://balkaninsight.com/2021/04/21/freed-war-crimes-convicts-become-public-servants-in-bosnia_trashed/ (visited 10 February 2022).

expressed remorse and sought forgiveness,¹⁴ or, upon their return, lived in seclusion and even poverty.¹⁵ Without a comprehensive overview of the post-conviction stage at the ICTY, we thus lack a clear understanding of what happens to the convicts after they have been released, and of the factors that affect specific post-release trajectories.

This article aims to systematically identify the different pathways that ICTY convicts take upon their release and present preliminary theoretical arguments as to why they differ. It argues that many returning ICTY convicts often promote nationalist interpretations of the past, deny their responsibility and involvement in crimes and try to reframe themselves as victims of unfair trials. Receptive domestic audiences across the Western Balkans often hail them. Specific support networks have emerged in a moral climate of defiance (involving, namely, the dominant political parties, military and veteran organizations). They help ICTY convicts take back their place in public life. At the same time, convicts lacking social or political capital or those who refuse to promote a nationalist interpretation of the past often find themselves isolated, ostracized, and living in poverty and seclusion. This contribution is explorative and primarily descriptive, aiming to open up an evidence-based discussion on this crucial yet understudied aspect of international criminal justice.

2. Research Methodology

In order to identify the pathways of released ICTY convicts, the research draws upon various public domain sources, such as online media, social networks, newspaper articles, documentaries and video interviews. Many convicted persons are public personalities with an extensive media presence. Thus, information about their activities was readily available. The data were coded into a table covering information regarding the sentence imposed, guilty pleas, early release, participation in politics (membership in political parties, participation in elections at any level and election into office) and participation in public debates about the past (publishing books/articles regarding the war, participation in public discussions about the war, participation in commemoration events as guests of honour, giving public lectures, speeches, participation in conferences regarding the war). Open-source materials were complemented with reports comprised by local human rights organizations and academic articles and books on the subject.

The information gathered was sometimes insufficient or was impossible to triangulate with at least two mutually independent sources. Therefore, additional interviews throughout the region were conducted, targeting experts who work in

14 L. Grebo, 'A Bosnian War Criminal's Quest for Forgiveness', *Balkan Insight*, available online at <https://balkaninsight.com/2017/08/10/a-bosnian-war-criminal-s-quest-for-forgiveness-08-08-2017/> (visited 10 February 2022).

15 M. Urban, 'What Now for Bosnia Victims as Hague Tribunal Closes?' *BBC News Services*, available online at <https://www.bbc.com/news/world-europe-41918411> (visited 10 February 2022).

the field of transitional justice and have knowledge about the prosecution of war crimes. A snowball sampling strategy was used: experts who had participated in documenting and reporting on the subject were contacted first. At the end of each interview, they were asked to identify other relevant persons for further interviews. Eventually, of the 46 individuals invited to participate in the study, 23 agreed to be interviewed. Respondents included local human rights organizations and non-governmental organization (NGOs),¹⁶ victim organizations¹⁷ and academics who had previously investigated the topic. At least two respondents from each successor state (Bosnia and Herzegovina (BiH), Croatia, Serbia, Kosovo, North Macedonia and Montenegro) were interviewed to better observe the differences between the former Yugoslav states.

The interviews were conducted between January and May 2021. All of the respondents gave permission to be identified by name, stressing how important it is to shed light on the topic.¹⁸ The experts were asked to comment on the tendencies of ICTY convicts to participate in public life, to explain the existing (if any) legislation preventing their public participation, the general political climate conducive to perpetrators' public engagement and predominant societal attitudes. In addition, they were asked to comment on specific convicts and their behaviour in the public domain. A content analysis of the interviews was then conducted.

The data gathered is slightly biased towards more well-known perpetrators whose cases and re-entry caused interest in the media and society. Information regarding lower-ranking perpetrators was scarce, as they do not attract sufficient media attention. The interviews helped fill in the gaps, but since most experts were human rights activists with a potential bias against the perpetrators of gross human rights violations, the information provided had to be cross-checked. Moreover, due to a potential risk of researcher bias (ICTY convicts are sentenced for particularly gruesome crimes)¹⁹ this project needed a great deal of reflexivity and caution.

3. Life After Conviction at the ICTY

Out of 92 persons convicted at the ICTY/IRMCT, 36 were coded as active (39%) and 56 as inactive (61%). The majority of the active convicts (20) were participating in public discussions about the past via media platforms or publishing

16 Youth initiative for Human Rights (YIHR) in Serbia, Croatia, Bosnia and Herzegovina, and Kosovo, Humanitarian Law Center in Kosovo and Serbia, Documenta in Croatia, Post-Conflict Research Centre in Bosnia and Herzegovina, Balkan Investigative Reporting Network, Children's Embassy Medjashi in North Macedonia.

17 Association of Witnesses and Victims of Genocide, 'Bridges for the Future' Association in BiH, Centre for Women War Victims — ROSA in Croatia, Srebrenica Memorial Centre.

18 Due to the travel restrictions arising from the global pandemic, all interviews were conducted via Zoom or e-mail. They lasted from 45 minutes to one hour and 30 minutes. The interviews were conducted in English, and a few responses received via e-mail were in the languages of the region (Bosnian, Serbian, Croatian).

19 See also the article of Thijs Bouwknecht and Bart Nauta in this issue of the *Journal*.

books. Others were active in politics (eight) or participated in public life via military or war veteran organizations (eight). The 56 convicts coded as inactive included: (i) 14 deceased,²⁰ (ii) 16 currently serving their sentence,²¹ (iii) five indicted for other crimes²² and (iv) at least seven who entered the Tribunals' victims and witness protection programme. The latter had their identities changed or partially changed and overwhelmingly lived outside the region due to fears for their safety (as they testified in other cases as insider witnesses). This leaves only 14 convicted and released perpetrators, who do not have objective obstacles for participation in public life. Nevertheless, they choose not to. The following sections will focus on the messages the released ICTY convicts are communicating to domestic audiences, their reception and the emerging support networks, providing details about specific convicts who managed to use those networks to regain their place in public life. Finally, a section on inactive convicts will explain the life trajectories of those who have chosen to stay outside the public eye.

A. Publicly Active Convicts

1. (Lack of) Remorse and Acknowledgement

The literature on truth and reconciliation suggests that perpetrators' confessions, like victims' testimonies, can defy official silence and denial by recounting the violence used, contribute to an authoritative and truthful version of the past, and reveal previously censored information that helps the families of victims to reach closure regarding their losses.²³ However, the reality often falls short of these lofty goals. Most perpetrators, at least in public, do not repent, but rather justify, or even glorify, their acts of violence.²⁴ According to Holá et al., only 19% of all ICTY early released convicts as of 2017 acknowledged their personal responsibility and expressed remorse for the crimes committed. Others denied, only partially accepted responsibility and/or showed remorse on a general level.²⁵ However, Holá et al.'s analysis was based on the information provided in sentencing judgments and early release decisions of ICTY convicts. Once released, many convicted perpetrators retracted their confessions without any ICTY/IRMCT

20 Died while in prison: Drago Nikolić, Ljubiša Beara, Milan Babić, Mile Mrkšić, Miroslav Deronjić, Zdravko Tolimir; died after being released: Dragan Nikolić, Dragan Zelenović, Milan Gvero, Pavle Strugar, Stevan Todorović, Drago Josipović, Zravor Mucić, Radoslav Brđanin.

21 Bruno Stojić, Dragomir Milošević, Radivoje Miletić, Dragoljub Kunarac, Sreten Lukić, Jovica Stanišić, Mićo Stanišić, Franko Simatović, Vlastimir Đorđević, Vujadin Popović, Goran Jelisić, Milomir Stakić, Miroslav Bralo, Radislav Krstić, Sredoje Lukić, Stanislav Galić.

22 Zoran Vuković, Darko Mrđa, Vinko Martinović (Štela), Radomir Kovač, Ranko Česić.

23 R. Saunders, 'Questionable Associations: The Role of Forgiveness in Transitional Justice', 5 *International Journal of Transitional Justice* (2011) 119–141, at 127; B. Hamber, 'Does the Truth Heal? A Psychological Perspective on the Political Strategies for Dealing with the Legacy of Political Violence', in N. Biggar (ed.), *Burying the Past: Making Peace and Doing Justice after Civil Conflict* (Georgetown University Press, 2001) 155–176.

24 Payne, *supra* note 1, at 160–161.

25 B. Holá et al., 'Does Remorse Count? ICTY Convicts' Reflections on Their Crimes in Early Release Decisions', 28 *ICJR* (2018) 349–371, at 357.

sanction, and put forward a new version of events that perpetuate the very same denials the ICTY is supposed to combat.²⁶

The absolute majority of the experts interviewed were convinced that instead of acknowledging their crimes and demonstrating remorse or acting in a reconciliatory manner, on release, ICTY convicts choose to deny their responsibility and offer an alternative interpretation of past events, disregarding the judicially established facts: 'The reality is that many of the convicted war criminals not only come back and take an active role in society, they also do not see themselves as convicted criminals, they see themselves as victims How can, for example, a mother who lost her entire family, how can she feel that justice has been served, when she sees convicted war criminals walking free in her city and speaking unspeakable things?'²⁷ In the words of another human rights activist in Serbia: 'They [convicts] often share common themes and values: denial of crimes, delegitimization of The Hague tribunal, opposition to membership in the European Union and incitement of hatred and intolerance towards the peoples in the region.'²⁸

This is also evident in the open-source materials analysed. Only several of the convicted perpetrators have been documented to take a conciliatory public stance, understood as publicly accepting guilt and responsibility, apologizing to the victims and seeking forgiveness. One such person was Esad Landžo, who was sentenced to 15 years of imprisonment for wilful killing, torturing and causing serious injury to detainees at the Čelebići camp in BiH. After serving two-thirds of his sentence and being granted early release he settled in Finland. Landžo and a Danish filmmaking crew then embarked on a project, making a documentary about his remorse and regret. They travelled back to the region where Landžo sought out individual victims and tried to apologize.²⁹ Unfortunately, none of the victims he encountered agreed to grant him forgiveness. His story, however, did receive a lot of media coverage and provided a different understanding of what an ICTY convict might look like and act.³⁰ At least five different respondents mentioned Landžo's example as sincere remorse: 'This is not often seen That is what I am talking about when I say sincere remorse. The film shows that Landžo insists on his plan to apologise even though his relatives tell him that he should not because the Serbs did not apologise to the Bosniaks for the crimes in Srebrenica. That is how most people think — we will not apologise until our rivals do it first.'³¹

Several scholars who have attempted to document the message the ICTY convicts communicate to the public at home came to a similar conclusion —

26 Subotić, *supra* note 11, at 57.

27 Interview, Fuad Avdagić, YIHR, BiH, 1 March 2021, on file with the author.

28 Interview, Marko Milosavljević, YIHR, Serbia, 12 February 2021, on file with the author.

29 O. Simić, 'Traumatised War Criminal? Documenting the Case of Esad Landžo', 32 *ICJR* (2022) 357–373.

30 O. Simić and B. Holá, 'A War Criminal's Remorse: the Case of Landžo and Plavšić', 21 *Human Rights Review* (2020) 267–291.

31 Interview, Anja Vladisavljević, Balkan Investigative Reporting Network, Croatia, 7 April 2021, on file with the author.

persons convicted for grave international crimes are trying to reassert an essentialist, nationalist worldview and reconstruct their public self by reframing the past and criminal responsibility.³² The single most striking common trait is a complete absence of remorse and acknowledgement.³³ Similar tendencies were also documented outside the Balkans. For example, nearly all Nuremberg convicts published autobiographic accounts, where they attempted to engage with the public and offer a careful rendition for a historical record mostly aimed at managing their own reputations, often against all evidence.³⁴ Perpetrator confessions following the Dirty War in Argentina rarely advanced truth, acknowledgement, justice and collective memory because of perpetrators' deep socialization in the repressive apparatus, self-protection, trauma, fear of retribution and use of rhetorical devices.³⁵ In other words, truthful recognition of guilt, remorse and active contribution to transitional justice efforts seem to be rare: the exception rather than the rule.

2. Domestic Reception

Transitional justice literature offers some insights as to why the domestic public is receptive to the denials and justifications of international convicts. According to Karstedt, their popularity speaks to a collective need to reassure a shared fate and identity not blemished by past crimes. Convicts' stories address their groups and, in a way, relieve them of guilt and shame, providing a possible template for constructing their own individual involvement in past events. In such discourse, victims are excluded, often blamed or seen again as enemies.³⁶

Studies that focus on former Yugoslav countries find two diametrically opposing sets of narratives of national identity that could explain why a major portion of society still supports the ICTY convicts. For example, Russell-Omaljev argues that in Serbia there is the so-called 'First' Serbia narrative and the 'Other' Serbia narrative. Whereas the illiberal First Serbian narrative generally opposes Kosovo independence at all costs, is against cooperation with the ICTY, insists on Serbian victimhood in the 1990s wars and is decidedly anti-European Union (EU), the Other Serbia takes an opposing view on these critical issues.³⁷ Bešić and Džuverović call such narratives (i) extreme

32 K. Ristić, 'Freed by the Court: The Role of Images Between Remembrance and Oblivion of War Crimes', 13 *Pólemos* (2019) 91–108; K. Ristić, 'The Media Negotiations of War Criminals and Their Memoirs: The Emergence of the ICTY Celebrity', 28 *ICJR* (2018) 391–405.

33 Petrović, *supra* note 11, at 342.

34 Karstedt, *supra* note 2, at 380; S. Karstedt, 'Life After Punishment for Nazi War Criminals: Reputation, Careers and Normative Climate in Post-war Germany', in R. Sparks, S. Maruna, M. Hough and R. Farrall (eds), *Escape Routes: Contemporary Perspectives on Life after Punishment* (Routledge, 2011) 240–275; S. Karstedt, 'Managing Criminal Reputations. West German Elites after the Nuremberg Trials, 1946–1960', 13 *JICJ* (2015) 723–743.

35 Payne, *supra* note 1, at 158–159.

36 Karstedt, *supra* note 2, at 384.

37 A. Russell-Omaljev, *Divided We Stand: Discourses on Identity in 'First' and 'Other' Serbia: Social Construction of the Self and the Other* (Ibidem Verlag Press, 2016), at 18–19.

nationalist (only our victims are real victims, our war criminals are heroes) and (ii) extreme anti-nationalist approach (we have to take responsibility, acknowledge war crimes, punish the guilty).³⁸ This was also confirmed by the Serbian experts interviewed: 'There is a narrative that Serbs are victims of international conspiracy of all of Serbia's neighbours. Nationalists want to protect Serbia, they only fought defensive wars in the 1990s to protect their land, their people and the whole world was against them. And then this international ad hoc tribunal was set up to convict all Serbs and all the Serbs were convicted, this is all a big injustice and we need to protect them.'³⁹ This narrative is visible in public opinion polls conducted in Serbia through the years,⁴⁰ as well as in some other countries across the Western Balkans.⁴¹

The main actors behind the nationalist vision are the media dominated by political parties, the educational system supportive of the nationalist vision and the religious structures, which are often proponents of the ethnic truth.⁴² Civil society organizations, citizen groups, marginal political parties, international actors are the main advocates of the anti-nationalist approach, but they are in the minority.⁴³ Due to power asymmetry among the patriotic structures and civil society, the latter are often attacked and disliked, and regularly accused of being traitors.⁴⁴ In the words of one Croatian NGO worker: 'If you dare to say something, then you are a national traitor. You can be even physically attacked, like, on some demonstrations that we organized against the celebration of the military operation Storm . . . You cannot openly debate about the responsibility of Croatia in war.'⁴⁵ Similar views were shared by other respondents from Croatia, Serbia, BiH, Kosovo and Montenegro.

Therefore, upon their return, some ICTY convicts chose to deny responsibility or seek justifications for their past action. Some perpetrators who initially attempted to act reconciliatory and demonstrate remorse were even pressured into fulfilling the domestic expectations towards their behaviour upon return. For instance,

38 M. Bešić and N. Džuverović, 'How Many Truths are There? Reconciliation and Agonistic Dialogue in the former Yugoslavia', 20 *Southeast European and Black Sea Studies* (2020) 455–472, at 461.

39 Interview, Ivan Đurić, YIHR, Serbia, 10 February 2021, on file with the author.

40 See M. Ristić, 'Serbs Defensive Over War Crimes, Survey Shows', *Balkan Insight*, available online at <https://balkaninsight.com/2012/03/01/serbian-attitudes-towards-war-crime-prosecution/> (visited 1 June 2022); S. Mihailović and S. Lazarević, *Obaveštenost Građana Srbije o Ratovima '90-ih godina, Ratnim Zločinima i Suđenjima Optuženima za Ratne Zločine*, Humanitarian Law Center, Demostat, August 2017, available online at http://www.hlc-rdc.org/wp-content/uploads/2018/01/Istrazivanje_javnog_mnjenja_Suđenja_za_ratne_zlocine_Demostat.pdf (visited 2 June 2022), at 14–16, 31, 52.

41 Bešić and Džuverović, *supra* note 38; G. Ognjenović and J. Jozelić (eds), *Nationalism and the Politicization of History in the Former Yugoslavia* (Palgrave Macmillan Cham, 2021); L. David, 'Policing Memory in Bosnia: Ontological Security and International Administration of Memorialization Policies', 32 *International Journal of Politics, Culture, and Society* (2019) 211–225.

42 Russell-Omaljev, *supra* note 37, at 133, 135.

43 *Ibid.*, at 90.

44 *Ibid.*, at 67.

45 Interview, Nela Pamuković, co-founder of the Centre for Women War Victims — ROSA, Croatia, 5 April 2021, on file with the author.

Dragoljub Ojdanić (former Chief of the General Staff of the Armed Forces of Yugoslavia and Minister of Defence of Yugoslavia) was tried and convicted of the deportation and forcible transfer of Kosovo Albanians during the Kosovo War. Despite his high rank, he pleaded guilty and dropped his appeal claiming that he fully supported the sentence imposed.⁴⁶ Upon his return to Serbia, Ojdanić was not greeted with the usual state honours. The state of Serbia reprimanded him for expressing remorse and for not appealing the verdict. However, after he 'corrected' himself, withdrew his confession and pointed out that The Hague tribunal was a 'false' court, he again became a welcome guest at state ceremonies. His official biography on the Defence Ministry website does not contain any information about the verdict or his sentence.⁴⁷

3. Support Networks

As explained above, the support of perpetrators in transitional and post-conflict situations is indicative of the general social landscape: a moral climate of defiance. It can interfere with the envisaged societal and political transition, leaving victims feeling particularly offended and vulnerable, especially if such support is publicly given.⁴⁸ If the prosecution and punishment of perpetrators is widely contested, seen as unfair or as 'victor's justice', collective defiance leads towards assumptions of a shared fate with the perpetrators (as the 'defeated') and adopting an identity as 'the true victims' of the transition and transitional justice. In such a social and moral climate, social support for perpetrators of atrocity crimes can thrive and develop, involving all social strata and groups, as well as society's most respected institutions.⁴⁹ Karstedt, who analysed the case of post-war Germany, found that initially, solidarity and support might be focused on evading justice altogether, i.e., hiding perpetrators or supporting their escape. It then might move on to those in prison, including campaigns for their release and for amnesties more generally. After release, support might be offered for reintegration, for example, appropriate positions and employment for individual offenders. Support is first and foremost provided by families and friends, but also by wider social networks and organized pressure groups political and professional networks, and regional elites.⁵⁰

46 M. Ristić, 'Yugoslav Army General Admits Kosovo War Crimes', *Balkan Insight*, available online at <https://balkaninsight.com/2013/01/28/yugoslav-army-general-admits-kosovo-crimes/> (visited 12 October 2022).

47 M. Stojanović, 'Yugoslav General Convicted of Kosovo War Crimes Dies in Serbia', *Balkan Insight*, available online at <https://balkaninsight.com/2020/09/07/yugoslav-general-convicted-of-kosovo-war-crimes-dies-in-serbia/> (visited 10 February 2022).

48 Subotić, *supra* note 11; O. Simić, 'Bringing Justice Home? Bosnians, War Criminals and the Interaction between the Cosmopolitan and the Local', 12 *German Law Journal* (2011) 1389–1407.

49 S. Karstedt, 'Like Mirrors of Morality', in A. Smeulers, M. Weerdesteijn and B. Holá (eds), *Perpetrators of International Crimes: Theories, Methods, and Evidence* (Oxford Scholarship Online, 2019) 296–314, at 301.

50 *Ibid.*, at 298.

According to the experts interviewed, very similar support networks emerged in the post-Yugoslav states. Support was first and foremost provided by shielding the perpetrators from justice and refusing to transfer them to the ICTY. For example, both Radovan Karadžić and Ratko Mladić, indicted for, among other things, genocide in Srebrenica in 1995, found shelter in Serbia and were only transferred years later (Karadžić in 2008 and Mladić in 2011). Governments of post-Yugoslav states have also been routinely assisting high-ranking perpetrators with their defence or paying generous sums to their relatives at home. For example, the wife of ICTY indictee Johan Tarčulovski received payments from the Macedonian government of 5000 euros a month during the eight years her husband spent in jail abroad.⁵¹ Once their sentences were served, the returning ICTY convicts were greeted by their family and friends and welcomed by nationalist political parties or their successor organizations, army and veterans' clubs as well as regional and local elite networks. The following section will explain each of the support networks in more detail.

(a) Conservative and nationalist political parties

One of the main support networks that emerged in the post-war period in this region was the political parties, many of which retained some of the same members and similar political stances to their extreme right-wing predecessors. Eight persons out of the 59 released to date have successfully re-entered politics (14%).

Three out of eight ICTY/IRMCT convicts who returned to politics (Vojislav Šešelj, Veselin Šljivančanin and Nikola Šainović) resumed their political careers in Serbia. Upon his return to Belgrade, ultranationalist Šešelj led the Serb Radical Party (*Srpska Radikalna Stranka*) in the 2016 elections and won 23 seats in parliament. During his time in parliament, he denied that genocide took place in Srebrenica,⁵² promoted the idea of 'Greater Serbia',⁵³ advocated violence against his political opponents, journalists and human rights activists,⁵⁴ repeatedly mocked the ICTY,⁵⁵ opposed EU membership and supported

51 S.J. Marušić, 'Macedonia Made Huge Payments to War Crimes Convict', *Balkan Insight*, available online at <https://balkaninsight.com/2017/10/19/macedonia-paid-hefty-sum-to-war-crimes-convict-10-19-2017/> (visited 28 September 2021).

52 Srebrenica Memorial, 'Genocide Denial Report 2020', Srebrenica, May 2020, available online at <https://weremember.gov.tr/documents/Srebrenica-Genocide-Denial-Report-min.pdf> (visited 9 October 2022).

53 'Remorseless Šešelj Still Dreams about Greater Serbia', *France24.com*, available online at <https://www.france24.com/en/20180408-remorseless-seselj-still-dreams-about-greater-serbia> (visited 9 October 2022).

54 'Intensifying Attacks and Calls For Violence Against CSOs and Journalists By the Serbian Government', *Civicus, Monitor Tracking Civic Space*, available online at <https://monitor.civicus.org/updates/2021/03/23/intensifying-attacks-and-calls-violence-against-csos-and-journalists-serbian-government/> (visited 9 October 2022).

55 D. Orentlicher, *Some Kind of Justice – The ICTY's Impact in Bosnia and Serbia* (Oxford University Press, 2018), at 162.

a closer alliance with Russia.⁵⁶ At the 2020 and 2022 elections, his party failed to win enough votes to overcome the 3% threshold to enter the Assembly, causing him to resign as party leader. Irrespective, he vowed to stay in politics as a private individual.⁵⁷ Aside from his political career, Šešelj is also a famous author who has published over 180 volumes. His publishing house Greater Serbia (*Velika Srbija*) often gets a central position at the main hall of the Belgrade Book Fair. The current president of Serbia Aleksandr Vučić has even written several forewords for his books.⁵⁸

Another ICTY convict, Montenegrin Serb Veselin Šljivančanin, sentenced to 10 years in prison for his role in the 1991 Vukovar massacre, was granted early release in 2011. He returned to Serbia, joined the ruling Serbian Progressive Party (*Srpska Napredna Stranka*, or SNS) and became a member of its board.⁵⁹ He often gives interviews to the media where he speaks about the need to prepare for a new war and a looming attack from Albanians and Croats, accuses the ICTY of bias and politicization, repeatedly claims to be not guilty of anything and that he does not regret anything.⁶⁰ Like, Šešelj, Šljivančanin has also published several autobiographic volumes, which he tirelessly promotes throughout Serbia while the local media report on these public events. He is welcomed by the media and was interviewed by *TV Prva* on the 20th anniversary of the ICTY.⁶¹

Similarly, Nikola Šainović, former Deputy Prime Minister of Serbia, a close ally of Slobodan Milošević, immediately joined the Main Board of the Socialist Party in 2015 (direct successor of the Communist party led by Milošević) upon his return to Belgrade. He has given countless interviews since then where he denies any responsibility and fails to demonstrate any feelings of guilt or remorse.⁶² For example, last year Šainović appeared on Serbia's public broadcaster Radio–Television Serbia's discussion programme '*Upitnik*', which focused on the anniversary of the start of the NATO bombing campaign of Yugoslavia and denied he committed the crimes of which he was convicted: '[T]hose were acts by individuals, for which the Yugoslav authorities could not be held responsible. Someone had to pay for that, and we paid.'⁶³

56 I. Nikolić, 'Serbian Radical Party Leader Burns EU, NATO Flags', *Balkan Insight*, available online at <https://balkaninsight.com/2016/03/10/serbia-s-radical-party-boss-protests-over-court-hearing-03-10-2016/> (visited 9 October 2022).

57 'Šešelj to Step Down as SRS leader', *Tanjung*, available online at http://www.tanjung.rs/full-view_en.aspx?izb=727532 (visited 10 October 2022).

58 See 'Rewriting Yugoslav History: Serbian War Criminals Turned Authors', *Al Jazeera English*, available online at <https://youtu.be/q-bUxkmjBQY> (visited 24 September 2021).

59 See 'Osuđeni Ratni Zločinac Izabran u Vrh Socijalističke partije Srbije', *Aljazeera Balkans*, available online at balkans.aljazeera.net/vijesti/osudeni-ratni-zlocinac-izabran-u-vrh-socijalisticke-partije-srbije (visited 4 December 2021).

60 Interview, Murat Tahirović, President of the Association of Genocide Victims and Witnesses, BiH, 7 April 2021; Interview, Aleksandra Vukčević, YIHR, Montenegro, 29 March 2021, on file with the author.

61 Ristić, 2018, *supra* note 32, at 400.

62 Interview, Marko Milosavljević, YIHR, Serbia, 12 February 2021, on file with the author.

63 M. Stojanović, 'Serbian Public Broadcaster Airs War Crimes Convicts Denials', *Balkan Insight*, available online at <https://balkaninsight.com/2021/03/24/serbian-public-broadcaster-air-war-crime-convicts-denials/> (visited 2 June 2022).

Momčilo Krajišnik (recently deceased), Simo Zarić, Blagoje Simić and Dario Kordić re-entered politics in BiH. All except for Kordić have been involved in regional politics in *Republika Srpska* (RS). Krajišnik, a Bosnian Serb politician, a co-founder of the Serb Democratic Party (SDS), the first speaker of the RS Assembly, was sentenced to 20 years of imprisonment for crimes against humanity in 2009 and granted early release in 2013. When he returned to RS, SDS organized a hero's welcome for him.⁶⁴ Krajišnik quickly took a prominent role in public life by becoming the first president of the Creators of RS Association, which the government funds in Bosnia's Serb-dominated entity.⁶⁵ Among other activities, this association also supports (alleged) war criminals during their trials and subsequent rehabilitation.⁶⁶ Zarić, convicted by the ICTY for crimes against humanity in Bosanski Šamac (including for inhumane acts, torture and violence against civilians) became the deputy mayor of the same town where his crimes were committed upon his return in 2008.⁶⁷ Simić (former president of the Crisis Staff in Bosanski Šamac; granted early release in 2011) participated in the local elections in BiH in 2012. He ran for office in Bosanski Šamac with an SDS list and won, becoming the leader of the Assembly. Simić served two terms in office. In 2020 he again became a municipal councillor.⁶⁸ Kordić, a former military commander of the Croatian Defence Council who planned and instigated crimes in Ahmići, was granted early release in 2014. Upon his release, he received a hero's welcome at the airport in Croatia attended by some formerly high-ranked politicians and the Bishop of Sisak Vlado Košić.⁶⁹ He soon entered the Catholic Faculty of Theology in Zagreb and has since graduated with a Master's degree in Theology.⁷⁰ He still holds the highest military decorations of the Republic of Croatia and often gives public lectures on morality and God.⁷¹ On the 25th

64 E.M. Jukić, 'Bosnian Serbs Welcome Home Freed Wartime Politician', *Balkan Insight*, available online at <https://balkaninsight.com/2013/09/02/pale-prepares-to-welcome-momcilo-krajsnik/> (visited 23 September 2021).

65 M. Lakić, 'Bosnian Serb Government Funds Organisation Led by War Criminal', *Balkan Insight*, available online at <https://balkaninsight.com/2019/04/22/bosnian-serb-govt-funds-organisation-led-by-war-criminal/> (visited 23 September 2021); Interview with Murat Tahirović, President of the Association of Genocide Victims and Witnesses, BiH, 7 April 2021, on file with the author.

66 Interview, Velma Šarić, founder and director of the Post-Conflict Research Center, BiH, 25 March 2021, on file with the author.

67 T. Jelin-Dizdar, 'Gdje su i Šta Rade Bivši Haški Osuđenici?', *Radio Slobodna Evropa*, available online at <https://www.slobodnaevropa.org/a/gdje-su-i-sta-rade-bivsi-haski-osudjenici/24910546.html> (visited 25 September 2021).

68 Karstedt, *supra* note 2, at 383.

69 J. Mihajlović Trbovc, 'Homecomings From "The Hague": Media Coverage of ICTY Defendants After Trial and Punishment', 28 *ICJR* (2018) 406–422, at 412.

70 'Nakon Povratka iz Zatvora Dario Kordić Upisao je Fakultet. Danas je Postao Magistar Teologije', *Jutarnji.hr*, available online at <https://www.jutarnji.hr/vijesti/hrvatska/nakon-povratka-iz-zatvora-dario-kordic-upisao-je-fakultet-danas-je-postao-magistar-teologije-15020502> (visited 10 October 2022).

71 P. Arbutina, 'Zločin i nagrada', *Portal Novosti*, available online at <https://www.portalnovosti.com/zlocin-i-nagrada> (visited 10 October 2022).

anniversary of the Ahmići massacre in 2018, Kordić announced his return to politics and joined the Croatian Bells (*Hrvatska zvona*) platform supporting the Croatian Republican Party in BiH elections.⁷² The main aim of Croatian Bells is to promote the Homeland War, Christian values and advocate for the rights of the Croatian veterans in BiH and Croatia.⁷³

The only Macedonian sentenced by the ICTY, Johan Tarčulovski, also received a heroic welcome home. Tarčulovski entered parliament as a candidate of the ruling VMRO-DPMNE⁷⁴ party in 2016, and became executive secretary and an icon of the ruling party. He is considered a defender of Macedonia and a victim of an unfair trial. After VMRO-DPMNE lost the elections, Tarčulovski no longer has a seat in parliament but he still works for the party.⁷⁵

It is important to stress that political party support is not given unconditionally; dividing lines between the deserving and undeserving are still in place, limiting the potential support activities. Networks as well as organizations tend to pursue their own interest at the expense of members asking for support, and cautiously navigate these lines.⁷⁶ For example, Mihajlović Trbovc found that large welcomes for returning ICTY convicts were relatively rare (25%). Large celebrations with heavy media coverage were organized for popular high-ranking perpetrators. Most often this was done by political parties or individual politicians in order to gain political profit. The return of lower-level defendants, who do not possess the symbolic capital of wartime political or military leaders, are often private family events that the media does not report upon.⁷⁷

From the data analysed we see that all those who re-entered politics were well educated,⁷⁸ experienced political or military leaders who had started their career in politics before the war. All of them were tried for command responsibility;⁷⁹ none plead guilty in the courtroom. They mostly returned to politics in Serbia or RS, despite legal restrictions in place.⁸⁰ The ruling conservative, right-wing political parties in Serbia (Serbian Progressive Party, Socialist

72 'Osuđeni ratni zločinac se vraća u politiku?', Net.hr, available online at <https://net.hr/danas/svijet/osuđeni-ratni-zločinac-se-vraca-u-politiku-djelovat-cemo-poput-ledolomaca-a-imat-cemo-izanos-koji-nas-je-krasio-90-ih-c04d71c4-b1c2-11eb-a8d0-0242ac130051> (visited 12 October 2022).

73 See the party website at <http://www.hrvatskazvona.com/> or their Facebook profile: https://www.facebook.com/Hrvatska-zvona-949910148517391/about/?ref=page_internal (visited 16 December 2022).

74 Internal Macedonian Revolutionary Organization — Democratic Party for Macedonian National Unity, Macedonian: Внатрешна македонска револуционерна организација - Демократска партија за македонско национално единство.

75 Interview, Aleksandar Krzalovski, director of the Macedonian Center for International Cooperation, Macedonia, 17 March 2021, on file with the author.

76 Karstedt, *supra* note 49, at 314.

77 Mihajlović Trbovc, *supra* note 69, at 413.

78 All have at least an undergraduate degree from a university (Šešelj has a doctoral degree).

79 Šešelj, Šljivančanin, Šainović, Krajišnik, Zarić, Simić, Kordić and Tarčulovski.

80 Electoral laws both in Serbia and RS prevent participation in elections if a person has received a final court sentence of six months or more. See Republic of Serbia Law on Election of People's Deputies, Art. 14 available online at <https://www.rik.parlament.gov.rs/tekst/en/68/laws.php>

Party), RS (SDS,⁸¹ SNSD⁸²) and Macedonia (VMRO-DPMNE) endorse nationalist interpretations of war and gladly score political points by welcoming returning convicts who have similar views. Thus, parties tend to use the social capital of returning ICTY convicts to get more votes whenever the political climate is favourable. As explained by the experts interviewed, even their family members are welcome guests in political rallies as they help to attract voter attention. For example, the daughter of Radovan Karadžić, Sonja Karadžić, supported the SDS campaign in Banja Luka and spoke on their centre stage. Milorad Dodik, on the other side of town, with the Social Democrats, had Darko Mladić, the son of Ratko Mladić to endorse the SNSD.⁸³

(b) State support via military and war veteran organizations

Other important support networks that emerged are different types of military and war veteran organizations, particularly in Serbia, BiH and Croatia. ICTY-convicted persons have been invited to guest lecture at military academies, have been contracted to publish books regarding the war by the Ministry of Defence, have been awarded with military honours and have become active members or at times even presidents of veteran organizations. All of these organizations are essentially funded from state budgets; therefore, they are an important example of public and official governmental support.

Numerous high-ranking Yugoslav military officers have returned to Serbia after having been granted early release or fully serving their sentences. For example, Vinko Pandurević, Lieutenant Colonel in command of the Zvornik Brigade of the Bosnian Serb Army who was responsible for aiding and abetting crimes against humanity and violations of the laws or customs of war, including in Srebrenica, was granted early release in 2015 and currently lives in Belgrade. He is a famous book author, recipient of numerous awards⁸⁴ and an active member of a veteran association Covenant to the Fatherland.⁸⁵ In 2021, Pandurević received an award from the Serbian Army for participating in the defence against NATO aggression, handed to him by Milan Mojsilović, the current chief of the General Staff of the Serbian Army.⁸⁶ Pandurević is often invited to various public events

(visited 2 December 2022); Election Law of the RS, Art. 6 available online at <http://www.ohr.int/laws-of-bih/election-legislation/> (visited 2 December 2022).

81 Serb Democratic Party, Serbian: *Srpska Demokratska Stranka*.

82 The Alliance of Independent Social Democrats, Serbian: *Savez nezavisnih socijaldemokrata*.

83 Interview, Velma Šarić, founder and director of the Post-Conflict Research Centre, BiH, 25 March 2021, on file with the author.

84 D. Karabegović, 'Pandurevića Haški Tribunal Osudio, a Višegrad mu Dodijelio Grb', Radio Slobodna Evropa, available online at <https://www.slobodnaevropa.org/a/plp-orden-za-vinka-pandurevicaratnog-zlocinca/27273324.html> (visited 28 September 2021).

85 YIHR, *War Criminals in the Public Space 2015-2019*, unpublished report on file with the author.

86 See 'YIHR: Spomenica Pandureviću Nastavak Državne Zaštite Murala Mladić', Radio Slobodna Evropa, available online at <https://www.slobodnaevropa.org/a/vinko-pandurevic-vojska-srbije-spomenica/31633591.html> (visited 30 December 2021).

and is a frequent guest on various Serbian TV shows where he shares his military expertise, discusses the ICTY, events in Srebrenica and the past war in general where he basically engages in genocide denial and claims that the ICTY is an anti-Serb court.⁸⁷ An even more notorious case is that of Vladimir Lazarević, Serbian colonel Albanian general, sentenced to 14 years in 2014 for war crimes against Kosovo Albanians during the Kosovo war. After being granted early release in 2015, Lazarević flew to Serbia on a government plane, accompanied by the then Ministers of Defence, Bratislav Gašić, and Justice, Nikola Selaković. He was welcomed at Niš airport by an honorary delegation composed of Ministers Aleksandar Vulin and Bratislav Gašić, Chief of General Staff Ljubiša Diković and city officials. Especially the Minister of Justice, Nikola Selaković (currently the Secretary General of the President of the Republic) had nothing but praise for Lazarević, stating that it was not only his ‘duty but also a great honour to bring our general to our Serbia today’, calling him ‘a role model for the younger generation’.⁸⁸ During 2018 and 2019, Lazarević was one of the most visible ICTY convicts in Serbia. During 2019, he participated in a series of events organized by the state institutions (from the local to the national level) to commemorate the 20th anniversary of NATO aggression and the end of the war in Kosovo.⁸⁹ In addition, the Serbian Ministry of Defence has published and promoted a book series called ‘The Warrior’, which also includes the memoirs of Lazarević.⁹⁰

Similar tendencies have been observed in the Bosnian Federation and the RS. In the Federation, Bosniak commander of the Army of the Republic of BiH Amir Kubura after having been granted early release in 2006 became the head of the Association of the 7th Muslim Army corps brigade. He was elected in 2019 for a four-year term.⁹¹ Kubura often appears in public to mark various war anniversaries and at one point even became a member of a faculty board at the University of Sarajevo.⁹² Former Chief of Staff of the Army of the Republic of BiH Enver Hadžihanović who was charged with crimes against Bosnian Croats and Serbs was released in 2008 after having served his sentence. In addition to being active in Bosniak general and veteran organizations, he often appears in public to mark various war anniversaries and occasionally communicates an ultranationalist interpretation of the past war to the press.⁹³ Another former Chief of Staff of the

87 Interview, Marko Milosavljević, YIHR, Serbia, 12 February 2021, on file with the author.

88 YIHR, *supra* note 85.

89 Interview, Jelena Krstić, programme director at the Helsinki Committee for Human Rights, Serbia, 1 April 2021, on file with the author.

90 YIHR, *supra* note 85.

91 ‘Amir Kubura Ostaje na Čelu Udruženja Sedma Muslimanska Viteška Brigada’, Zenicainfo.ba, available online at <https://zenicainfo.ba/2019/04/08/amir-kubura-ostaje-na-celu-udruzenja-sedma-muslimanska-viteska-brigada/> (visited 28 September 2021).

92 Z. Jurilj, ‘Optužen za Ratni Zločin, a Sjedi u Odboru Fakulteta’, Vecernji.ba, available online at <https://www.vecernji.ba/optuzen-za-ratni-zlocin-a-sjedi-u-odboru-fakulteta-440950> (visited 28 September 2021).

93 Karstedt, *supra* note 2, at 376.

Bosnian Army, Rasim Delić, died in prison while his appeal was pending. There is a street with his name in Bihać and he was buried at the Kovači Martyrs cemetery in Sarajevo with the highest military honours. His funeral was attended by several thousand people, including numerous representatives of the religious, military, political and public life of BiH. BiH Presidency Chairman at the time, Haris Silajdžić, gave a speech and claimed that all Bosnians and Herzegovinians know the role of General Delić in the fight for freedom of BiH.⁹⁴ Delić authored numerous books about the war, again, very much in line with the ultranationalist narrative of the past. Similarly, in the RS a former commander of the Bratunac Brigade, convicted by the ICTY for his involvement in the Srebrenica massacre, Vidoje Blagojević remains active in the RS Army Officers' organization. More recently, he was invited by the president of the Officers of the Army of RS to give a speech at an international conference 'Srebrenica — reality and manipulations' in 2019 in Banja Luka, where he spoke about how he was falsely accused by the ICTY, how he considers himself to be a victim and thanked the military organizations who treat him as a human being.⁹⁵ Blagojević also testified as a defence witness at former RS president Karadžić's trial, where he also claimed to be a victim and that crimes in Srebrenica had been committed by private individuals and uncontrolled groups.⁹⁶ A lower rank perpetrator Damir Došen (Bosnian Serb, guard shift leader at the Keraterm detention camp in Prijedor), after being granted early release, returned to Prijedor and became a member of a paramilitary formation called 'Serbian Honour' (*Srpska čast*). Allegedly Russian-trained and funded, it is a Serbian ultranationalist, Russophilic, Islamophobic paramilitary organization acting in support of separatist leader Milorad Dodik.⁹⁷ According to one of the concentration camp survivors interviewed: 'These are really bad guys, they are really dangerous. I remember once, during the 5th of August commemoration, I think it was in 2012, several of those [*Srpska čast*] guys were standing in a bar next to us. Yelling at us, they were really hostile, like putting three fingers in the air, you know, Serbian signs. I'm

94 S. Boračić-Mršo, 'Sahranjen Rasim Delić', Radio Slobodna Evropa, available online at https://www.slobodnaevropa.org/a/rasim_delic_komemoracija/2018013.html (visited 27 September 2021).

95 'Pukovnik Vidoje Blagojević: Osuđen Sam na Bazi Laži, Manipulacija i Primjene Surove Sile radi Tuđih Interesa', Vesti.rs, available online at <https://www.vesti.rs/Vojaska-Srbije/Pukovnik-Vidoje-Blagojevic-Osudjen-sam-na-bazi-lazi-manipulacija-i-primjene-surove-sile-radi-tudjih-interesa.html> (visited 16 September 2021).

96 R. Irwin, 'Karadžićev Svedok Odbrane "Ne Zna Ništa" o Srebrenici', Institute for War and Peace Reporting, 13 December 2013, available online at <https://iwpr.net/sr/global-voices/karadzicev-svedok-odbrane-ne-zna-nista-o-srebrenici> (visited 28 September 2021).

97 'Preživjeli Logoraši Keraterma u Šoku: Osuđeni Haški Zločinac Damir Došen Pripadnik Paravojne Formacije "Srpska čast"', MojPrijedor.com, available online at <https://www.mojprijedor.com/prezivjeli-logorasi-keraterma-u-soku-osudjeni-haski-zlocinac-damir-dosen-pripadnik-paravojne-formacije-srpska-cast/> (visited 28 September 2021).

not sure if he [Došen] was there, but that was the same group.’⁹⁸ A former Deputy Commander of the Special Brigade of the Ministry of Interior of RS, Ljubomir Borovčanin, sentenced by the ICTY to 17 years in prison and granted early release in 2016, currently lives in Bijeljina and runs a private company (*‘Tehnički remont Bratunac’*) that builds armoured vehicles DESPOT and pistols VAMPIR. The Ministry of Interior of RS sells old weapons collected from the war to his company to fix and resell, primarily to Namibia and Saudi Arabia.⁹⁹ Borovčanin also joined Milorad Dodik on his campaign in Bijeljina, granted him his full support and went to rallies.¹⁰⁰

Another case, that of former Croatian Army general Mirko Norac, is worth mentioning. Strictly speaking, he is not an ICTY-convicted person; however, his name repeatedly came up during interviews. Norac was initially indicted by the tribunal, but the case was transferred to a domestic jurisdiction pursuant to Rule 11*bis*. He was subsequently sentenced for war crimes by Zagreb District Court to seven years of imprisonment.¹⁰¹ The respondents explained how Norac now runs a successful private security company ‘Noky Security’ in Zagreb, one of the most successful security companies in Croatia. A large number of state institutions do business with them (e.g. Croatian Post, the State Audit Office, the Croatian Financial Services Supervisory Agency, the Croatian Health Insurance Institute, Zagreb city museums, the Croatian Bank for Reconstruction and Development, the city of Osijek, The Ministry of Croatian Veterans, etc.).¹⁰² Recently, Norac attended a commemoration of the 25th anniversary of the Operation Medak Pocket — the operation within which crimes he was convicted of were committed. Top state officials attended, including the Minister of Defence, who issued a special greeting to Norac during his speech.¹⁰³

98 Interview, Satko Mujagić, concentration camp survivor, activist, former president of the Association of Witnesses and Victims of Genocide, Sweden, 4 March 2021, on file with the author.

99 D. Momić, ‘Oružje Građana Srpske Završice u Namibiji!’, Capital.ba, available online at <https://www.capital.ba/oruzje-gradjana-srpske-zavrstice-u-namibiji/> (visited 28 September 2021).

100 ‘Ratni zločinac Čuva Leđa Dodiku: General Borovčanin Osuđen za Genocid u Srebrenici Priključio se Dodikovoj Kampanji’, Slobodna-Bosna.ba, available online at https://www.slobodna-bosna.ba/vijest/90852/ratni_zlochinac_chuva_ledja_dodiku_general_borovchanin_osuden_za_genocid_u_srebrenici_prikljuchio_se_dodikovoj_kampanji.html (visited 28 September 2021).

101 Norac was later also sentenced by Rijeka District Court to 12 years of imprisonment for war crimes committed in Gospić in 1991.

102 Interviews — Aleksandra Vukčević, YIHR, Montenegro, 29 March 2021; Anja Vladisavljević, Balkan Investigative Reporting Network, Croatia, 7 April 2021; Branka Vierda, YIHR, Croatia, 12 February 2021; Nela Pamuković, victims association — ROSA, Croatia, 5 April 2021, on file with the author.

103 A. Vladisavljević, ‘Croatian War Criminal’s Memorial Appearance Condemned’, Balkan Insight, available online at <https://balkaninsight.com/2018/09/10/croatian-ngo-condemns-war-criminal-presence-on-commemoration-09-10-2018/> (visited 12 October 2022).

4. Media Appearances

As explained in the section on domestic receptions, the media across the Western Balkans is often loyal to the government and is supportive of the nationalist vision of the past war. Therefore, it is unsurprising that ICTY convicts have a strong media presence, especially in Serbia and BiH. In the words of one of the experts interviewed: 'Šešelj, Šainović, Šljivančanin — they are in all the morning TV shows, speaking about politics, society, everything. They have total freedom of speech, and they are considered experts. For example, Pandurević, convicted for the Srebrenica genocide, was invited as an expert on security and Kosovo to speak at some roundtables with the government. It is getting so much worse in recent years.'¹⁰⁴ From the media files and local NGO reports analysed, all of the ICTY-convicted persons with strong support networks described in the section above have a large media presence. They are often invited to talk-shows, give interviews, and are treated as experts of the past war, security issues, foreign policy, etc.¹⁰⁵

Aside from those convicted individuals already mentioned in the two previous sections on support networks, several others are noteworthy. First is the Bosnian Serb former politician and university professor Biljana Plavšić who served as President of RS. She is the only woman to have been convicted by the ICTY, after pleading guilty. Upon being granted early release in 2009 she frequently spoke to the press about pleading guilty in order to avoid the remaining charges including genocide.¹⁰⁶ Plavšić has authored books where she details her point of view about the war and basically denies her responsibility and fails to demonstrate any remorse for the crimes committed.¹⁰⁷ She is a public personality, often appearing together with one of the members of the BiH Presidency — Milorad Dodik.¹⁰⁸ Another example is Duško Tadić, a Bosnian Serb politician, former SDS leader in Kozarac and a former member of the paramilitary forces, famous for being the first ICTY indictee. He was granted early release in 2008 and currently lives in Serbia. He often gives interviews, has published an autobiographic account of his trial and is currently preparing to publish a new book which blames The Hague tribunal and demands an apology.¹⁰⁹

Interestingly, eight other convicted persons regularly use media platforms to participate in public debates about the past war from inside their prison cells. Although they represent different warring factions, they all share specific common

104 Interview, Marko Milosavljević, YIHR, Serbia, 12 February 2021, on file with the author.

105 YIHR, *supra* note 85.

106 Currently less so, as she is 92 years old. For one of her most recent interviews see: Aleksandar Apostolovski, 'Mladić je Plemenit, Karadžić je Hteo da me Ubije', *Politika.rs*, available online at <https://www.politika.rs/scc/clanak/481208/Mladic-je-plemenit-Karadzic-je-hteo-da-me-ubije> (visited 12 October 2022).

107 Ristić, 2018, *supra* note 32, at 392–393.

108 Subotić, *supra* note 11.

109 D. Vujičić, 'Duško Tadić: Ja sam Srbin Kojem će Hag da Kaže Izvini!', *Novosti.rs*, available online at <https://www.novosti.rs/vesti/naslovna/dosije/aktuelno.292.html:724910-Dusko-Tadic-Ja-sam-Srbin-kojem-ce-Hag-da-kaze-izvini> (visited 12 October 2022).

characteristics: they are all well educated,¹¹⁰ high-ranking military or political leaders, none of them pleaded guilty in court, all are serving sentences above the ICTY average (15 years) and all have strong support from domestic audiences. Among them, there are four politicians: former RS president Radovan Karadžić, two former presidents of the Autonomous Region of Krajina (ARK) Radoslav Brđanin and Milan Martić, and former Prime Minister of the Croatian Republic of Herzeg-Bosnia, Jadranko Prlić. Another four are military leaders or high-ranking officials in state security services: Bosnian Serb general Ratko Mladić, Serbian army general and Chief of the General Staff of the Armed Forces of Yugoslavia (JNA) Nebojša Pavković, Chief of the Regional Security Services Centre of Banja Luka and a member of the Crisis Staff of the ARK Stojan Župljanin and paramilitary leader Milan Lukić. The message they are communicating is very similar — a lack of remorse, a lack of acceptance of responsibility, criticism of the ICTY and the West in general.¹¹¹

B. Inactive ICTY Convicts

Out of the 56 ICTY convicts coded as inactive only 14 do not have any objective obstacles to participation in public life across the Western Balkans.¹¹² Three of them are currently pensioners who live with their families, often already in poor health (Dragoljub Prcać, Milorad Krnojelac, Miodrag Jokić). Four work in private business, again, often, with their family (Dragan Jokić, Mitar Vasiljević, Dragan Kolundžija), sometimes abroad (Zlatko Aleksovski). Among this group is Miroslav Kvočka, a former deputy officer at Omarska, responsible for the persecution of prisoners. He was granted early release in 2005, returned to Prijedor, sold his house and currently lives in a village nearby, taking on seasonal jobs. Kvočka has given several interviews, where he explains that he is facing hardships and ostracism from the community.¹¹³ No information could be found about the whereabouts of the remaining six convicts.¹¹⁴ All of them were direct perpetrators charged with brutal crimes (military policemen, concentration camp guards and commanders, police officers, etc.). It would be fair to assume that they are inactive in the public domain, as otherwise, there would be evidence to the contrary.

110 Except for paramilitary leader Milan Lukić and chief of police Milan Martić who have correspondingly elementary and secondary school certificates. All others have university degrees (including two graduate and two doctoral degrees).

111 E. Rose, 'Radovan Karadzic Interview Angers Srebrenica Survivors', *Balkan Insight*, available online at <https://balkaninsight.com/2016/12/16/karadzic-claims-srebrenica-victims-were-not-civilians-12-15-2016/> (visited 23 September 2021); Petrović, *supra* note 11, at 340, 343.

112 Others are deceased, currently serving prison sentences, on trial for other crimes or are protected witnesses.

113 Jelin-Dizdar, *supra* note 67.

114 Berislav Pušić, Duško Sikirica, Mario Čerkez, Milojica Kos, Zoran Žigić and Mlado Radić.

Many of the inactive convicts have in some form admitted their guilt and responsibility (Kolundžija,¹¹⁵ M. Jokić,¹¹⁶ Duško Sikirica,¹¹⁷ Momir Nikolić,¹¹⁸ Ivica Rajić¹¹⁹). This, therefore, makes it harder for their stories and ideas to be used for political gain at home. Alternatively, they were low-level perpetrators who possessed only limited social and political capital prior to and during the war, thus were quickly ostracized by their communities (e.g. Kvočka¹²⁰). In some cases, they are of particularly old age and poor health (Berislav Pušić, Krnojelac, Prcać), which may have also contributed to why they chose to abstain from participation in public life. However, these insights are only preliminary and should be tested in more detailed research, ideally, by reaching out to those perpetrators and interviewing them about their choices.

4. Conclusions

This article provided an empirical overview of the current whereabouts and activities of ICTY-convicted persons that has been lacking in academic literature. Looking at the data presented, we can conclude that more than one-third of the released ICTY convicts have returned to positions of power in the Balkans (whether political, social or economic) and are participating in public debates about the past war, undermining fragile transitional justice processes in the region. Some even attempt to do this from inside their prison cells (most notably Mladić and Karadžić). Their success and level of influence depend on various factors — such as their health and age, previous position of power, financial circumstances of their family members, support networks on the ground and attitudes towards their crimes. The most crucial underlying commonality between those coded as active seems to be the denial of their own responsibility and endorsement of ethnonationalist views of the past war. In fact, perpetrators, who initially attempted to act reconciliatory and demonstrate remorse, were sometimes pressured into fulfilling domestic expectations towards their behaviour upon return.

115 ICTY Press Release, 'Dragan Kolundžija', available online at <https://www.icty.org/en/content/dragan-kolund%C5%BEija> (visited 2 June 2022).

116 ICTY Press Release, 'Judgement in the Case the Prosecutor v. Miodrag Jokic: Miodrag Jokic Sentenced to 7 Years' Imprisonment', 18 March 2004, available online at <https://www.icty.org/en/press/judgement-case-prosecutor-v-miodrag-jokic-miodrag-jokic-sentenced-7-years-imprisonment> (visited 2 June 2022).

117 ICTY Press Release, 'Dusko Sikirica and Damir Dosen Enter Guilty Pleas', 19 September 2001, available online at <https://www.icty.org/en/press/dusko-sikirica-and-damir-dosen-enter-guilty-pleas> (visited 2 June 2022).

118 C. Stephen, 'Key Srebrenica Witness Apologises for Lies', Institute for War and Peace Reporting, available online at <https://iwpr.net/global-voices/key-srebrenica-witness-apologises-lies> (visited 2 June 2022).

119 ICTY Press Release, 'Ivica Rajic Pleads Guilty', available online at <https://www.icty.org/en/press/ivica-rajic-pleads-guilty> (visited 9 June 2022).

120 'Life of Convicted War Criminals - Life After Prison Sentence?', TV Justice Magazine, available online at <https://www.youtube.com/watch?v=NAEgHronjZw> (visited 12 October 2022).

At the same time, a significant portion of convicted perpetrators have stayed off the public radar. Aside from those who have died, who were indicted for other crimes or entered the Tribunals' victims and witness protection programme, the remaining inactive convicts were pensioners living with their families (often in poor health) or working in private business in the region or abroad. A few were living in poverty and seclusion. Most of them have, in some form, admitted their guilt and responsibility. Alternatively, they were low-level perpetrators with limited social and political capital before and during the war. This lack of social and political capital might have contributed to their decision to abstain from participation in public life and limited the incentives of national political parties, media and government institutions to involve them.

Understanding that a perpetrator's admission of guilt and responsibility can significantly contribute to countering denial, establishing an authoritative version of the past and contributing to reconciliation — a paradox has been observed. From the individual perspective of the ICTY convict, it makes much more sense to subscribe to nationalistic narratives about their victimization during the war and about the ICTY being a political and unfair court. Hailed by certain enthusiastic audiences back home, ICTY convicts often fulfil their expectations, closing a vicious circle that dramatically curbs the individual or collective transformative potential of their punishment in terms of reckoning with the past and moving towards reconciliation. Scholars have documented similar tendencies in other parts of the world, suggesting that deep socialization in the repressive apparatus, self-protection, trauma, fear of retribution and a prevailing moral climate of defiance are major contributing factors to post-release denials of guilt and responsibility. The predominant societal views can thus interfere with the envisaged societal and political transition, leaving victims feeling offended and vulnerable, especially when, as in the case of former Yugoslav countries, such public support is official and publicly given.

The recent changes in the IRMCT policy regarding early release, stipulating conditions and instituting a form of post-release supervision, in a way, reflect concerns regarding the detrimental effects of released convicts' participation in politics and public life in the Western Balkans. The new possibility of restricting their involvement in public affairs through conditions attached to their early release, at least until the completion of the sentence, is indeed a welcome one. Its long-term impact, however, might be limited because imposed conditions do not apply to those convicts already released and those who have served their sentence in full.

This article is primarily an explorative and descriptive contribution, attempting to document the empirical realities of the post-conviction stage for those prosecuted at the ICTY/IRMCT. Therefore, the conclusions are preliminary and should be tested further, including by interviewing the convicts themselves, to understand better their choices regarding participation/non-participation in public life and the societal pressures experienced. First-hand interviews might also help to counter any potential bias, which may have resulted since most of the information collected was from the media, NGO reports and transitional

justice experts. Sources tended to focus only on participation deemed improper (awards given, public honouring ceremonies, etc.) and might have unintentionally omitted other forms that rarely make the news or NGO reports. In addition, information on several ICTY convicts was unavailable, allowing us to conclude only that they have not been active participants, without shedding any light on the reasons as to why. Moreover, a comparative study of the post-conviction phase of several international tribunals, for example, the International Criminal Court, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone, would allow more rounded conclusions to be drawn about the major contributing factors to certain post-conviction trajectories that are valid across different contexts.