

SENTENCING IN INTERNATIONAL CRIMINAL LAW

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Introduction

- sentencing is discretionally responsibility of a judges in international tribunals
- no guidelines or scales for the various crimes, as there might be in domestic jurisdictions
- the judges emphasise a principle of equal treatment or consistency in sentencing
- the relevance of previous cases is restricted by the principle of individualisation of sentences



Article 24 ICTY Statute

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners

- Rule 101 ICTY Rules of Procedure and Evidence (RPE)



General practice regarding prison sentences in the courts of the former Yugoslavia

- ICTY Statute- life imprisonment
- the courts in Croatia apply the law that was in force at the time when the crimes were committed
- the highest prison sentence prescribed in the Republic of Croatia was 20 years of imprisonment
- not interpreted as obligation for the Trial Chambers
- may be taken into account if the court finds it appropriate and helpful



Gravity of crime

- the most important factor considered by the tribunals
- genocide has been treated as a more serious crime than war crimes or crimes against humanity
- Tadić and Čelebići: does not support difference between war crimes and crimes against humanity
- Blakšić: objective-subjective method for assessing the seriousness of a crime



The individual circumstances of the convicted person

- the form of responsibility of the accused is important factor when considering sentencing
- an accused's individual circumstances, including time already served in detention waiting for the judgement, will also have an impact on sentencing
- the Trial Chambers at the ICTY are required to consider aggravating and mitigating circumstances when determining a sentence for an accused



Aggravating circumstances

- the prosecution must establish aggravating circumstances beyond a reasonable doubt
- only circumstances directly related to the offence can be considered aggravating
- a factor that is also an element of the crime that the accused has been convicted of or that has been taken into account in assessing the gravity of the crime cannot be considered as an aggravating factor



Mitigating circumstances

- the defence must prove mitigating circumstances on the balance of probabilities, a lower standard
- factors that count towards grounds for excluding criminal liability cannot be counted twice and also serve as a mitigating circumstance (such as lack of mental capacity)
- the only expressly recognised mitigating circumstance in the RPE is substantial cooperation with the prosecution



Rule 62*bis*: Guilty Pleas

- If an accused pleads guilty or requests to change his or her plea to guilty and the Trial Chamber is satisfied that:
 - (i) the guilty plea has been made voluntarily;
 - (ii) the guilty plea is informed;
 - (iii) the guilty plea is not equivocal; and
 - (iv) there is a sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case, the Trial Chamber may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing.



Guilty pleas

Trial chambers have not explicitly guaranteed discounted sentencing if a guilty plea is entered

Sentence	Guilty plea (20)	Full trial (34)	All convicted (54)
Below 10 years	30% (6)	32% (11)	31% (17)
10-19 years	50% (10)	35% (12)	41% (22)
20 years and above	20% (4)	32% (11)	28% (15)
average	14.0 years	16.6 years	15.6 years
median	12.5 years	15 years	15 years



A study on the sentencing practice of the ICTY has demonstrated certain patterns in ICTY sentencing:

- High-ranking perpetrators in influential positions receive longer sentences
- More extensive criminal activities are punished more severely than isolated, single acts
- Crimes against humanity generate longer sentences than war crimes
- Instigators are punished more than all other participants in the crimes



Thank you for your attention

