

Third Study Commission.

Marrakech November 2005

Criminal sentencing

A. General questions

1. In your system, how does a judge decide the appropriate sentence in a criminal case? What are the most important factors he has to consider? Does a judge have a complete discretion as to sentencing? Is he bound in some cases (and if so, in which ?) to pass a sentence which is fixed by law? Are there crimes (apart from minor motoring cases) or circumstances in which mandatory minimum sentences are laid down by law? Please give examples.
2. Does your system try to see that for similar offences different courts pass similar sentences? If so, how does it do this?
3. Are judges in your system given guidance about the appropriate sentence for a particular crime? If so, does this guidance come from higher courts, from judges' professional associations or from some other source? Where there are sentencing guidelines, may a judge depart from them?
4. In your system, are there more mandatory or mandatory minimum sentences than there used to be? If so, why do you think this is? What is the reaction of judges? Do judges feel that their independence is threatened?
5. Is there a way in your system in which a sentence which is thought to be too lenient can be reviewed and increased by a higher court? If so, who can use this procedure?
6. In your system, is a defendant entitled to a reduction in sentence if he pleads guilty? If so, how is the reduction calculated?

B. Sentencing examples.

Only very brief facts are given, but please indicate what in your system the sentence would be.

1. A is 25 and known to be a drug dealer. Acting on information, the police stop and search him in the street. He has no drugs but is found to be in possession of a revolver which is loaded. He says he carries it to defend himself. He is charged with possessing a prohibited weapon.
2. B is 30 and has no criminal record. He meets a woman at a club and they drink together. At the end of the evening, he walks her home and makes it clear he wants to have sex with her. She says no but he pulls her into a quiet place and forces her to have sex. The woman submits out of fear of being injured. He claims that he thought she was consenting but is found guilty of rape.
3. C is a heroin addict who pays for his drugs by committing burglaries. He breaks into a dwelling house intending to steal but is caught. It is the third time he has been convicted of a dwelling house burglary since 2000. He is 22.
4. With 1 gram of alcohol in his blood, D, who is 40 and has no criminal record, drives his car. Affected by the alcohol, he drives dangerously by pulling out to overtake into the path of an oncoming car. The driver of the oncoming car is killed. D is charged with causing death by dangerous driving.
5. E is 50 and has been the manager of a branch of a major bank. He has no criminal record and is well-regarded in the local community. Over a period of about 2 years he has stolen money from the bank and used his knowledge of the bank's accounting procedures to cover up his thefts. The sum involved is £150,000, say 200,00 euros.

Please will Member Associations send their answers to this questionnaire to the IAJ Secretariat by the 1st October 2005.

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