

Third Study Commission Questionnaire

For 2016

For 2016, the Third Study Commission, which focuses on Criminal Law, decided to study “The Sentencing of Criminal Offenders.”

That is, we decided to critically examine one of the most important and difficult tasks that a judge performs, namely the imposition of a sanction upon a person who has violated a criminal law.

Of course, the range of sanctions available is very broad, and is driven by many factors. These include, but are not limited to, the seriousness of the crime, the impact of the crime on victims, the need to promote respect for the Rule of Law, the personal characteristics of the perpetrator, and the goal of achieving justice.

In order to facilitate discussion, provoke thinking, and to assist us in learning from colleagues, we ask that each country answer the following general questions:

1. In your country, do judges have broad discretion in choosing a sanction, or are the available sanctions limited by law, guidelines or regulations such as mandatory minimum sentences?
2. Are practical considerations taken into account by the judge, such as the cost to the government of imprisoning a person or the fact that a foreign perpetrator will be expelled after having served a prison sentence? Or are these irrelevant?
3. Are victims of the crime permitted any input in the sanction process? If yes, is such input required to be given any weight by the judge?
4. Please describe what information is provided to the judge regarding the crime, the victims, and the perpetrator. Specifically, whether the judge receives information before imposing a sanction on:
 - A) The details of the crime, including the circumstances, the investigation and the harm done.

- B) The personal characteristics of the perpetrator, including education, family background, health, financial resources, prior crimes, etc.
 - C) The characteristics of the victim or victims, if any, including the effects of the crime on them and the nature and extent of any injury caused by the crime.
5. What may a judge NOT consider in crafting a sanction?
 6. Indicate whether the judge is required to give the reasons for the sanction which is imposed either in writing or orally.
 7. If your country has mandatory sentences, or mandatory minimum sentences, are such sentences more or less common than previously? Please explain.
 8. Please identify the country providing these answers.

FURTHER DISCUSSION TOPICS

Please consider these areas of inquiry and be prepared to discuss during the meetings of the Third Study Commission.

What are the rights of the victims? Can a victim speak in court? Can the victim address the perpetrator, or only the judge?

Can family of the victim and/or the perpetrator speak?

Can police, friends, politicians or religious leaders speak?

Is information given to the judge confidential, or open to the public or the media?