

Report of the Third Study Commission

2016

This year, the Third Study Commission, which is focused on Criminal Law, undertook the study of “The Sentencing of Criminal Offenders.” 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.

In order to facilitate our studies and discussions, a questionnaire was prepared and distributed to the IAJ/UIM member organizations. The questionnaire asked for information on procedures and practices in the member countries on what information, considerations and legal constraints are taken into account when the judge applies a sanction to a criminal offender.

31 responses were received, and all were quite comprehensive. Those countries responding were: Armenia, Austria, Belgium, Brazil, Bulgaria, Canada, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Liechtenstein, Netherlands, Norway, Poland, Portugal, Serbia, Slovakia, Spain, Sweden, Switzerland, Taiwan (ROC), United Kingdom, Uruguay and United States of America.

During our meetings, we debated and discussed the similarities and differences between the countries represented. Specifically, we studied the factors which the judges take into consideration in crafting a sanction, such as the circumstances of the crime, the harm done to the victim, the prior criminal record of the offender, his age, health, family circumstances and whether he has apologized for his misconduct. We also discussed the actual process which judges use in deciding a sanction, such as considering the aforementioned factors, and possibly consulting with colleagues and determining what sanction was applied in similar cases. We then discussed sentencing in specific types of cases, namely drug trafficking and child pornography. Our discussions were fullsome and comprehensive. Every delegate participated. Each described how such sentencing would take place in their home country.

Certain conclusions emerged from our work.

Every country has criminal laws, and every country has persons who violate those laws. It is the task of judges to apply sanctions to the violators. This is a difficult task. It should be difficult. If sanctioning another human being becomes easy, the judge is not doing his or her job well.

In most countries, the judges have significant discretion in choosing a sanction. In choosing a sanction, the judge must consider all aspects of the crime and its effect on the victim and on the community. The judge must also consider the personal characteristics of the criminal.

The sanction which the judge chooses should reflect the seriousness of the crime, the need to promote respect for the law, the need to protect the victim and the community from additional criminal conduct, the goal of deterring others from engaging in similar criminal conduct, and the possibility of rehabilitation of the criminal.

All these considerations, when taken together, constitute the ultimate goal of achieving justice in the court of law. This is a noble goal, and worthy of the hard task the judge undertakes.

All of this requires the judge to acquire as much information as is possible about the crime, the victim and the criminal. Sometimes it is difficult to get the necessary information. But the judge must at least try.

In applying a sanction to a criminal, the judge must also draw upon his or her experience and accumulated wisdom. This is where the profession of judging becomes an art form, because there is no school, no training and no formula that can necessarily tell the judge what the sanction must be. The judge must turn inward, draw upon his or her inner self, and temper justice with mercy. No sanction should be greater than necessary to meet the aforementioned needs and goals.

We found that while the possible sanctions for particular crimes varied from country to country, the factors the judges considered when crafting a sentence were very similar.

All the delegates to the Third Study Commission concluded that, in discussing these matters and comparing systems and practices, they learned some things that will make them better judges.

At the conclusion of the substantive part of our work, it was announced that elections were necessary. All of the current officers of the Third Study Commission indicated their willingness to serve an additional 2 year term. There being no opposition nor other nominations, the following were unanimously re-elected to 2 year terms: Charles R. Simpson III, (USA) President; Dieter Freiburghaus, (Switzerland) Vice President; and Lene Sigvardt, (Denmark) Vice President.

It was the unanimous agreement of those assembled that the Third Study Commission should, in 2017, continue our study of "The Sentencing of Criminal Offenders-Part II".

Our work this year was quite productive, but additional study is needed on the subject. In 2017, we will focus on sentencing in cases of embezzlement and illegal possession of weapons. We will also comprehensively study the treatment of victims of crimes, such as whether the victim

can participate in the prosecution and whether restitution can or should be awarded. We will also study mandatory minimum sentences and how those constrain judicial discretion. Another factor which affects sentencing is the settlement of criminal cases, and that will also be studied in 2017.

Respectfully Submitted,

For the Third Study Commission

Charles R. Simpson III, President

At Mexico City DF, this 20th day of October, 2016