

Sentencing in the international criminal law

Sabina Zgaga, LL.B. Faculty of Law, University of Ljubljana, Poljanski nasip 2, 1000 Ljubljana, Slovenia

The article deals with the provisions of the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), with the sentencing practice of this court, its aims of punishment and the impact of national criminal justice systems on the judicial practice of the ICTY. The paper also focuses on the corresponding provisions of the Rome Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY). The principal problem in determining the aims of punishment is the concurrence of different legal cultures and systems, since the aims of punishment depend to a large extent on the time of decision making as well on the values and theories prevailing in a given legal environment. Court panels deciding before the ICTY invoke absolute and relative theories, but in the opinion of the author, absolute, i.e. retributive theories are those which prevail. The second issue which has been considered in detail by the ICTY is the individualisation of punishment. By referring to the individualisation of punishment, the court tends to justify its sentencing disparity. A consistent individualisation of punishment seems to be the only way of enabling the equality of offenders and thus a uniform sentencing practice. On the other hand, a historical survey of the regulation of punishment indicates that sentencing has become more and more determinate. One further shortcoming remains in the Rome Statute, which is a lack of the precise aim of punishment. It is nevertheless possible to perceive a prevailing role of absolute theories of punishment from other provisions in the Rome Statute, from a constant requirement to end the impunity of potential offenders of the most serious criminal offences and, finally, from the culture of sentencing widespread in the international community.

Keywords: Statute of the International Criminal Tribunal, ICTY, sentencing, sentencing policy

UDC: 341.645 : 343.15