

DETERMINATION OF THE SENTENCE AND PLEA-AGREEMENT

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Summary: Determination of the sentence is traditionally considered as one of the most importunate judicial role in criminal procedure that, in addition to legal education, requires certain knowledge from other fields, like sociology, psychology, etc. According to the Serbian Criminal Code, when determining the punishment the judge must take into account the sentencing range prescribed by the law, the purpose of the punishment (special and general prevention) and mitigating and aggravating circumstances like a degree of culpability, the motives of perpetrator, his personality and so on (Article 54 of the Serbian CC). Public trust in courts and judiciary in general largely depends on common agreement about fairness and adequacy of imposed penalties. That is the reason why individualization of the sentence is considered as one of the most importunate principles in the policy of crime prevention. Introduction and widespread implementation of plea-bargaining put into the question this traditional judicial role to determine the sentence, having in mind that here the judge only passes the sentence previously determined by the parties. Consequently, it raises questions whether the article 54 of Serbian CC could apply on this “arranged” sentence and whether the purpose of the punishment, reflected in general and special prevention, could be achieved likewise. Taking into consideration that plea-bargaining is a product of American practice, a comparative analysis of the US sentencing system served as starting point for searching. Part I deals with general issues related to determination of the sentence and circumstances that judge, performing this task, must consider. Contrary to the American law where the sentence is always determined by the judge at the special sentencing hearing, the Serbian law, despite the transition to the adversarial model of criminal procedure, is not familiar with separate sentencing hearing. Instead of that, the sentence is always determined at the main hearing which raises the question of proof of mitigating and aggravating circumstances in the situation when the accused pleads guilty at the trial. Part II explains in details determination of the sentence in the US, according to the Federal Sentencing Guidelines. It explains why the parties do not precise the sentence in the plea-agreement, but narrow sentencing ranges enable them to precisely predict “judicial” sentence, that will be passed for a certain crime. Prosecutorial determination of the sentence in Serbian plea-agreement and judicial control of such sentence is analyzed in the last - third part.

Keywords: determination of the sentence, plea-agreement, Sentencing Guidelines, purpose of the punishment.