

VIEW FROM THE HAGUE

DEBATES ON GUILTY PLEAS

A deal of controversy surrounds the Tribunal's practice of plea agreements. Critics accuse the Tribunal of taking short cuts with justice by cutting deals with the accused. Victims despair that perpetrators get away with lighter sentences. This controversy is fueled by misunderstandings of plea agreements as a well-established legal practice and a failure to appreciate its benefits as a means of arriving at the truth. And arriving at the truth is the purpose of these criminal proceedings. It can be harrowing, but who can query the important role that such agreements can perform when an accused is prepared to reveal to grieving relatives the exact burial location of their missing sons, such as witnessed in court last month.

A plea bargain is an agreement between the defence and the prosecutor in which a defendant pleads guilty or no contest to criminal charges. In exchange, the prosecutor drops some charges, reduces a charge or recommends that the judge enter a specific sentence that is acceptable to the defence. In common law systems such as the United States, the United Kingdom and its former British colonies, if the accused pleads guilty, the court will not try the case, but will simply move to sentencing. In a continental system such as Serbia's, the judge will take the guilty plea into account, but will still hold a trial to independently establish the facts of the case.

The Tribunal's rules and procedures incorporate aspects of both common law and continental legal systems. In relation to plea agreements, the Tribunal borrows from the common law system, with one very important distinction: the ICTY's judges are not bound by any agreement between the accused and the Prosecution. Tribunal judges may impose any sentence up to and including life imprisonment, regardless of any agreement reached between the parties.

Making a deal

The method by which a plea agreements are reached at the ICTY is as follows: the accused and his or her defence counsel will have discussions with staff of the Office of the Prosecutor regarding a guilty plea. The results of those discussions are recorded in a written "Plea Agreement" which is signed by the accused, his or her lawyers, and the Prosecution. The major issues contained in the plea agreements are: the criminal acts charged in the indictment that the accused will admit s/he committed, the facts that the accused will admit to in support of the indictment, a statement as to whether the accused will co-operate with the Tribunal in telling what he or she knows about the crimes perpetrated and providing testimony in other trials, and the sentence the Prosecution will recommend to the Judges upon the accused's conviction. When the accused reports to the Tribunal that he or she is prepared to plead guilty, a hearing is scheduled. At the hearing, the plea agreement is given to the Judges and sentencing recommendations are made by both the Prosecution and the accused. As already stated, the Judges are not bound by these recommendations.

Since plea agreement draw a great deal of comment in the local media - much of it negative - it is worth pointing out a few very important benefits of this practice to the victims, to the accused and to the effort to establish the truth.

Vindicating the victims

When an accused pleads guilty and the Judges issue a factual judgment, the victims are vindicated and it then becomes impossible to deny the occurrence of crimes or certain individuals' participation in them. At the same time, many victim - witnesses are spared the often difficult experience of reliving the crimes they suffered by not having to testify to them in court, though the truth of their suffering is confirmed. As in national systems, the limited resources can then be devoted to investigating crimes suffered by other victims. More importantly, the facts of the crimes are confirmed by those who committed them revealing in the process the criminal nature of the system that allowed for their commission, a system which, as in cases of organized crime, is often accompanied by a conspiracy of silence. Pleading guilty gives the accused an opportunity to express remorse and to atone for his or her crimes by assisting to establish the truth. In doing so, these accused merit consideration of more lenient sentences than those who fail to show remorse or contribute to establishing the truth. And finally, because establishing the truth prevents revisionism, it is believed that it also promotes reconciliation.

Sixteen persons have so far pleaded guilty at the ICTY as a result of plea agreements. All of these pleas are different. Some included a statement of facts which led to the discovery of evidence of crimes previously unavailable to the victims, the Tribunal, and society as a whole. In other cases, those who pleaded guilty chose to further clarify the events by testifying against their co-perpetrators. And in still others, those who pleaded guilty apologised to their victims and expressed remorse in ways that had not previously been heard. However, plea agreements need to be used carefully. If the truth about the crimes addressed in ICTY and domestic cases is ever going to be established, it will have to be through a sensible combination of full trials and genuine confessions.

Outreach Programme

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