

COURTSIDE: Todorovic Pre-Sentencing

How many years is a confession and cooperation worth?

Is an admission of guilt and cooperation with the prosecutor worth a 50 per cent reduction in an accused's sentence? This was the question put by presiding Judge Patrick Lipton Robinson to the prosecutor at the last week's pre-sentencing hearing in the case of Stevan Todorovic.

Todorovic, charged with crimes against humanity at Bosanski Samac, initially launched an aggressive defence, but subsequently became only the second defendant to admit guilt.

Prosecutor Nancy Patterson agreed that such a sentence reduction was appropriate. Arguing that if he faced trial, Todorovic could get as many as 25 years for his confessed crimes, she proposed a sentence of 12 years' imprisonment.

The defence, however, insisted that Todorovic deserves a still greater reduction, and proposed a sentence of 5 years.

The arguments were based on the agreement between Todorovic and the Office of the Prosecutor, in which the range of his potential sentence, 5 to 12 years, was specified. The prosecution has thus opted for the upper limit; the defence, for the lower.

The case is notable for the two-year tug-of-war over the circumstances of Todorovic's arrest or, as the defence claimed, "kidnapping", which seriously threatened to affect relations between the tribunal and NATO.

Then in December 2000, the accused unexpectedly admitted guilt on count 1, persecution on political, racial and religious grounds, and dropped his challenge over the legality of the arrest. In response to his agreement to cooperate with the prosecution and testify in the trial of the remaining four co-accused for crimes at Bosanski Samac, the prosecution abandoned the remaining 26 counts of the indictment against him, and agreed to recommend a significant sentence reduction. [See Tribunal Update Nos. 203, December 21, 2000, and 205, January 25, 2001.]

Since then, Todorovic has fulfilled his share of the deal. He dropped all discovery requests put to member states of NATO, and had several interviews with prosecution investigators. Prosecutor Patterson told the court Todorovic has cooperated "in an open and forthright manner . . . and is committed to following through on his commitments". In the process, Patterson noted, Todorovic has provided some "significant information that the prosecution would not have without his cooperation".

Despite this, Patterson argued that he should not be sentenced to less than 12 years because of the suffering of his victims - 13 of whom were beaten, one killed and several subjected to sexual abuse and humiliation. Thousands were also expelled. "As a chief of police, he had to protect people. Instead he mistreated them cruelly," Patterson said.

The defence countered that his admission of guilt, cooperation and his notable expression of remorse entitled their client to a lesser sentence.

As Todorovic stated in court, "I did not have enough courage to prevent inhuman acts towards the non-Serb population. I am aware that, unfortunately, many Croats and Bosniaks suffered. Because of that I sincerely and deeply regret. . . . Because of the speed of events, fear, stress, I made wrong decisions and committed wrong acts. Every day I pray to God to forgive me my sins."

Todorovic's lawyers, Deyan Brashich and Nikola Kostic, insisted that rewarding him with a further reduced sentence would be the best way encourage other accused to follow his example. Noting that he is the only defendant after Drazen Erdemovic - sentence to 5 years following a confession for participation in executions at Srebrenica - to admit culpability and a guilty conscience, they asked the judges to show "compassion" and give Todorovic "another chance".

In December, presiding Judge Robinson warned Todorovic that the trial chamber could give him a long sentence regardless of any deal with the prosecutor's office. At last week's hearing, he said its final decision on a prison term would be announced soon.

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