

The Impact of Mitigating Factors on Sentence Reduction in International Criminal Courts and the Iranian Criminal Justice System

Zeynab Ghazi Khanloo Sani^{ID}: Ph.D. Student, Department of Criminal Law and Criminology, Science and Research Branch, Islamic Azad University, Tehran, Iran

Nasrin Mehra^{ID}: Professor, Department of Criminal Law and Criminology, Science and Research Branch, Islamic Azad University, Tehran, Iran (Corresponding Author).

Mohammad Ali Mahdavi Sabet^{ID}: Assistant Professor, Department of Criminal Law and Criminology, Science and Research Branch, Islamic Azad University, Tehran, Iran

Nourooz Kargari^{ID}: Assistant Professor, Department of Criminal Law and Criminology, Science and Research Branch, Islamic Azad University, Tehran, Iran

*Correspondence: docnqs@mail.com

Abstract

Mitigating factors play a significant role in reducing sentences and individualizing punishment. The statutes and laws of international criminal courts do not explicitly specify the extent to which these factors influence sentence reduction; rather, this matter is left to the discretion of judges. Determining the impact of mitigating factors on sentence reduction, as is done in domestic law, is not feasible, as case-by-case adjudication requires consideration of the specific circumstances of each case and the individual conditions of the accused. Consequently, a factor may not be considered mitigating in one case, or its weight and credibility may be minimal. Furthermore, the reduction of sentences in the presence of mitigating factors must be assessed in relation to the severity of the crime and aggravating factors. The presence of multiple aggravating factors and the gravity of the offense may limit or even neutralize the impact of mitigating factors. Therefore, the value, credibility, and influence of mitigating factors depend on multiple elements, including the specific circumstances of the case, the severity of the offense, and the presence of aggravating factors, making it impossible to establish a fixed standard for their impact. Courts evaluate and assess mitigating factors in relation to other elements, resulting in variations in their influence on sentencing across different cases. In the Iranian criminal justice system, within the framework of discretionary (Ta'zir) crimes, although judges have legal discretion to grant mitigation when mitigating circumstances exist, the legislature has specified the mitigating factors and the extent to which penalties may be reduced or commuted in such cases. Additionally, the law explicitly outlines instances where judges are prohibited from granting mitigation, thereby restricting their discretion in this regard.

Keywords: impact of mitigating factors, Iranian criminal justice system, practice of international criminal courts, severity of crime, specific case circumstances.

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1. Introduction

In criminal proceedings, attention should not be limited to the crime itself; rather, consideration must also be given to the fact that the punishment is imposed on the offender. Therefore, in addition to the severity of the committed crime, the circumstances influencing its commission must also be taken into account. In criminal law, this principle is known as the principle of individualization of punishment, which manifests in institutions such as mitigation. The principle of proportionality between crime and punishment is essential for achieving justice (Fallahi, 2018). Ensuring proportionality in sentencing is necessary to prevent vindictiveness, retribution, and bias (Hart, 1963). It can be argued that mitigating and aggravating factors serve as mechanisms for implementing the principle of proportionality between crime and punishment. Mitigating factors lead to sentence reduction and also contribute to the individualization of punishment. Initially, mitigating factors facilitate the individualization of penalties, ensuring that individuals do not rebel against the law in the hope of receiving a lighter sentence. Additionally, they enable the alignment of punishment with societal conditions and the circumstances surrounding the crime. This alignment helps reduce conflicts between legal principles and public opinion, thereby preventing the legitimacy of the law from being questioned (Ashouri & Fathi, 2009).

Mitigating factors are not explicitly mentioned in the statutes and procedural rules of the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). Instead, they have been recognized through judicial practice in these courts. However, unlike these two tribunals, the International Criminal Court (ICC) explicitly refers to mitigating factors in Rule 145, Paragraph 2(a) of its Rules of Procedure and Evidence. This inclusion has contributed to the comprehensiveness of the ICC Statute. Mitigating factors fall into two primary categories: first, those that do not amount to exculpation, such as significant impairment of mental capacity or duress; and second, post-offense behavior of the convicted individual, such as efforts to compensate victims or cooperation with the Court. The scope and definition of mitigating factors—especially in the judgments of ad hoc international criminal tribunals—are shaped by judicial discretion and jurisprudence, varying from case to case. No definitive or exhaustive list of mitigating factors has been established. One chamber of the ICTY has stated that mitigating factors "must be based on probable assumptions and not on mere doubt" (Razavi Fard, 2016).

Although Articles 23 and 24 of the ICTR and ICTY Statutes, as well as Articles 77 and 78 of the ICC Statute, do not explicitly mention mitigating or aggravating factors, Rule 101(1) and (2)(b) of the Rules of Procedure and Evidence of both ad hoc tribunals refer to the trial chamber's consideration of mitigating and aggravating factors. Similarly, the ICC Rules of Procedure and Evidence, in Rule 145(2)(a) and (b), acknowledge the relevance of these factors to some extent (Razavi Fard, 2016).

According to Article 76(1) of the ICC Statute, the Court takes into account the submissions and defenses of the parties when determining a sentence. Thus, the arguments, evidence, and defenses presented by the parties play a crucial role in sentencing decisions. Additionally, under Article 76(2) of the ICC Statute, upon request by the Prosecutor, the parties' legal representatives, or the trial chamber itself, the Court may hold a sentencing hearing. In this hearing, arguments regarding sentence mitigation or aggravation are presented, and the parties are given the opportunity to justify their respective positions (Salimi, 2020).

At the inception of the ICTR, its Rules of Procedure and Evidence required a separate hearing for sentencing after a conviction had been pronounced. For instance, in the *Akayesu* case, such a separate hearing was held. However, this procedural rule was later amended, eliminating the requirement for a distinct sentencing hearing primarily to expedite proceedings. A similar approach was initially adopted by the ICTY, as exemplified in the *Tadić* case (Beygzadeh & Mirzadeh, 2015). This practice led some defendants to refrain from presenting mitigating factors, as their defense attorneys had to submit these factors before the final verdict was issued. Many defense lawyers believed that submitting mitigating factors before the final judgment was tantamount to an implicit admission of guilt (Pruitt, 2014).

The principle of legality in criminal law necessitates that aggravating and mitigating factors be predetermined and codified. However, because the circumstances of offenses and offenders vary significantly, mitigating and aggravating factors influence sentencing outcomes. Even in the ICC, where the prescribed sentences range from a few years of temporary imprisonment to 30 years or life imprisonment, the role of these factors in determining maximum and minimum sentences becomes evident. The provision of a sentencing hearing after a conviction to assess mitigating and aggravating factors further underscores their significance.

Not only does the ICC Statute and international criminal tribunal laws lack an exhaustive list of mitigating factors—mentioning only a few examples in the ICC Rules of Procedure and Evidence—but there is also no explicit guidance on the extent to which these factors influence sentence reduction.

Since mitigating factors are not exhaustively defined, the trial chamber retains broad discretion in recognizing and weighing these factors. International judges have considerable latitude in determining the influence of mitigating factors. Given that the impact of these factors on sentence reduction has been acknowledged in international criminal tribunals, an analysis of relevant laws and case rulings can elucidate how mitigating factors are applied and the extent of their effect on sentence reduction.

Previous studies have examined lists of mitigating factors in international criminal tribunal jurisprudence. However, the present article seeks to address the following questions:

- In international criminal tribunal jurisprudence, does each mitigating factor contribute equally to sentence reduction across different cases?
- If the impact of mitigating factors on sentence reduction varies, what factors influence this variation?
- In domestic criminal law, how do mitigating factors affect sentencing, and what lessons can be drawn from international criminal tribunal practices to refine domestic approaches?

Considering the above discussions, this study first examines the effects of mitigating factors in international criminal tribunal jurisprudence, with an emphasis on key cases. Subsequently, it reviews the application of mitigating factors in Iranian criminal law.

2. The Effects of Mitigating Factors in International Criminal Tribunal Jurisprudence

Mitigating factors are not explicitly stipulated in the statutes and laws of international criminal tribunals. However, they are acknowledged in the ICC Rules of Procedure and Evidence to some extent. These factors are not exhaustively enumerated, and a review of international criminal tribunal jurisprudence reveals additional mitigating factors beyond those explicitly mentioned in the ICC procedural rules. Furthermore, the extent to which these factors influence sentencing is not explicitly defined. Nonetheless, an examination of international criminal tribunal case law can reveal the key factors that determine the weight of mitigating circumstances in sentencing decisions.

In certain cases, even when mitigating factors exist, the court may attribute minimal weight to them or reject some of the mitigating claims made by the defendant. The extent of sentence reduction depends on various factors and is ultimately left to judicial discretion. The following discussion highlights some of the factors that influence the degree to which mitigating circumstances affect sentencing.

2.1. Specific Case Circumstances

A wide range of aggravating and mitigating factors have been recognized by courts. Whether a specific factor is considered mitigating or aggravating largely depends on the unique circumstances of each case. For example, factors such as the defendant's educational background or respectable social status have been considered mitigating in some cases while being treated as aggravating in others (Hola, 2011).

Judges have rarely explained why a particular factor was deemed aggravating or mitigating. It was often assumed that the nature of a factor was self-evident and did not require explanation. Judges may have relied on the written submissions of the prosecution or defense to clarify the purpose behind each mitigating or aggravating factor. Additionally, courts seldom explained the extent to which these factors influenced the final sentence. Occasionally, courts attempted to state that all factors had been considered, yet such descriptions remained vague, using phrases such as "excessively aggravating circumstances" or "limited mitigation warranted." Even when "limited mitigation" was warranted, in light of the severity of the offense and the necessity of aggravation, defendants were still sentenced to 15 years of imprisonment. A court may note that "aggravating factors outweigh mitigating factors" before issuing a sentence, but it would often remain silent on the exact impact of these factors (Pruitt, 2014).

It has been stated that proving the existence of mitigating circumstances does not automatically entitle a defendant to a reduced sentence; rather, it merely requires the court to consider such circumstances in its final decision. The Appeals Chamber has affirmed that even the most severe punishment, such as life imprisonment, is not excluded solely due to the presence of mitigating factors. The emergence of mitigating circumstances pertains to sentencing evaluation and does not reduce the severity of the crime or diminish the defendant's culpability. Mitigating factors influence the penalty, not the offense itself. These factors must be established based on a balance of probabilities and do not necessarily require a direct connection to the accused's crimes (Hola, 2011).

In the case of *Milorad Stakić*, the appellant argued that the imposition of a life sentence indicated that the trial court had failed to properly assess all mitigating factors. The Appeals Chamber responded by referencing the *Mucic* case, in which it had previously

noted that even when mitigating factors are found, a life sentence may still be imposed if the gravity of the crime warrants the maximum penalty. Additionally, in the *Niyitegeka* appeal judgment, the ICTR Appeals Chamber ruled that the existence of mitigating factors does not automatically result in a sentence reduction; rather, the trial court is only required to consider them when rendering its final judgment. Consequently, the Appeals Chamber cannot conclude—solely based on the imposition of a life sentence, as the appellant contended—that the trial court failed to consider mitigating factors. The chamber had reviewed the relevant mitigating factors, and the appellant failed to demonstrate any manifest error in the court's assessment. Therefore, the Appeals Chamber dismissed this appeal issue. ([Prosecutor v. Milomir Stakic, 2006](#))

It should also be noted that judicial practice regarding mitigating factors is not entirely consistent, and courts have differed on whether specific factors should be considered in mitigating international crimes. In such cases, judges often refer to the concept of "case-specific circumstances" to justify these variations. For instance, factors such as good character before the conflict or the absence of a criminal record have been accepted as mitigating by some chambers, while others have rejected them or even treated them as aggravating, without clear guidelines on why such circumstances justify mitigation in some cases but not in others. Another example is "assistance to victims," which has been one of the most commonly cited mitigating factors in ICTR judgments. However, courts have frequently dismissed defendants' requests for sentence mitigation based on this factor. Notably, "selective assistance to victims" does not necessarily lead to sentence reduction. In some ICTR rulings, trial chambers have refused to accept this factor as mitigating or even suggested that it could be an aggravating factor.

For example, in the *Bikindi* case, the court exercised its discretion and ruled that Bikindi's talent and contributions to Rwandan culture did not mitigate his culpability. On the contrary, they reflected his prominent status in Rwanda in 1994, which he had exploited in the anti-Tutsi campaign. Furthermore, the chamber found that Bikindi's humility, his non-political position in the Ministry of Youth and his entrepreneurial activities had no bearing on sentencing. Similarly, the chamber ruled that his composition of peaceful songs did not serve as a mitigating factor because he had also composed songs with opposite intentions and effects. Bikindi's plan to establish a youth ballet to help street children in Rwanda was deemed insufficient to demonstrate his good character, and the chamber assigned no weight to it in sentencing. ([Prosecutor v. Simon Bikindi, 2008](#))

Similarly, in the appeal judgment of *Nahimana, Barayagwiza, and Ngeze*, the appellants argued that the trial court should have considered their prior good reputation, lack of a criminal record, and the fact that they were fathers. In this case, the Appeals Chamber recalled that, according to the practice of the ICTR and ICTY, a defendant's previous good character has only a minimal impact on sentencing. Likewise, the absence of a prior criminal record is "a common trait among many defendants and, unless exceptional circumstances exist, has little effect on sentence reduction." Similarly, the ICTY and ICTR do not treat an accused's family status as a significant factor, except in exceptional cases. ([Prosecutor v. Ferdinand Nahimana and ect, 2007](#))

Scholars have argued that a guilty plea is one of the most influential mitigating factors accepted by both tribunals. In fact, cases where defendants pleaded guilty and reached agreements with the prosecution generally resulted in lower sentences in both courts. At the ICTY, the average sentence for guilty pleas was 12.5 years, compared to 15 years for cases without a guilty plea. At the ICTR, the average sentence for guilty pleas was 11 years, compared to 45 years for cases without a guilty plea. However, it is important to note that a guilty plea does not automatically guarantee a lighter sentence. Jean Kambanda, the first individual to plead guilty before the ICTR, was sentenced to life imprisonment. Similarly, at the ICTY, Goran Jelisić received a severe sentence of 40 years despite his guilty plea. The practice of guilty pleas has been more prevalent at the ICTY, where 28% of defendants (20 accused individuals) have pleaded guilty, compared to 22.5% (9 accused individuals) at the ICTR. The association between guilty pleas and lower sentences may be considered a contributing factor to the generally lower sentences at the ICTY compared to the ICTR ([Holo, 2011](#)).

The gravity of the offense and the personal circumstances of the accused must generally be assessed in relation to the specific conditions of each case and, where necessary, its exceptional aspects. Therefore, the accused's circumstances determine which factors the court will recognize as mitigating or aggravating. In the *Tadić* judgment, the defendant's voluntary participation was considered an aggravating factor. In the *Erdemović* judgment (November 29, 1996), after observing that particular emphasis on aggravating factors was unnecessary in crimes against humanity—given their inherently severe nature—the court further noted that specific circumstances surrounding the crime might preclude sentence mitigation. ([Prosecutor v. Zdravko Mucic and ect, 1998](#))

Given the varying circumstances of each case, courts have considerable discretion in determining which factors constitute mitigating circumstances, in addition to those explicitly listed in Article 145(2) of the ICC Rules of Procedure and Evidence, and the weight assigned to such factors. For example, the behavior of a convicted individual while in detention may, under exceptional

circumstances, be considered mitigating, as may voluntary surrender following an arrest warrant or immediately thereafter. ([Prosecutor v. Bosco Ntaganda, 2019](#))

The court must be convinced of the existence of mitigating circumstances based on a balance of probabilities. These circumstances do not need to be directly related to the crimes and are not confined to the scope of the charges or verdict. However, they must be directly linked to the convicted individual. In assessing which factors warrant mitigation and the weight they should carry, courts retain significant discretion based on the specific circumstances of the case. While courts must consider all mitigating factors, they are not required to categorize them under a predefined framework. For instance, rather than treating certain elements as mitigating or aggravating, courts may evaluate them as part of the overall assessment of the offense's gravity. ([Prosecutor v. Ahmad Al Faqi Al Mahdi, 2016](#) and [Prosecutor v. Jean-Pierre Bemba gombo, 2016](#))

2.1.1. *Mode of Liability*

The mode of individual liability indicates how the accused participated in the crimes. Article 7(6) of the ICTY (and ICTR) Statute distinguishes between superior responsibility and other forms of individual liability. A person is responsible for a crime if they planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation, or execution of that crime. Participation in a Joint Criminal Enterprise (JCE) must be added to this list as a distinct mode of liability, particularly utilized by the ICTY. Jurisprudence has established that the nature and extent of the accused's participation in the crime are key elements shaping its gravity. Consequently, whether the accused is convicted as a principal perpetrator or as an accomplice should influence the severity of the sentence. However, neither the Statute nor the rules provide principles governing sentencing in relation to modes of individual liability. The relationship between modes of liability and sentencing severity has not been systematically addressed in judicial practice. Over time, some scattered principles have evolved to address this issue.

At the ICTY, sentencing principles concerning superior responsibility have been discussed. In recent case law, judges have emphasized the "unique nature" of superior responsibility, under which an individual is not convicted for failing to intervene in crimes committed by subordinates. The distinct nature of superior responsibility calls for greater flexibility in sentencing. Accordingly, in *Hadžihasanović*, the Trial Chamber argued that the unique nature of superior responsibility under Article 7(3) of the Statute could justify the fact that the sentence imposed on defendants convicted under Article 7(1) does not necessarily apply to those convicted under Article 7(3).

Other modes of individual liability may increase (e.g., direct commission with specific intent) or decrease (e.g., aiding and abetting with knowledge of the likely commission of the crime) the severity of the offense. The following principles have emerged from jurisprudence:

1. Aiding and abetting constitutes a lesser form of liability compared to ordering, committing, or participating in a JCE, and therefore warrants a lesser sentence.
2. At the ICTR, life imprisonment is generally reserved for those who planned or ordered heinous acts and those who participated in crimes with particular prejudice or sadism.
3. At the ICTY, under certain conditions, a participant in a JCE may receive a harsher sentence than the principal perpetrator ([Holo, 2011](#)).

2.1.2. *Position of the Accused*

The actual position of the accused within the governmental (political or military) structure at the time of the crime is relevant for assessing individual culpability and is another significant factor in determining the length of the sentence. As Judge Schomburg noted in the *Martić* case: "In principle, an individual's culpability should increase in tandem with their position and rank: a mastermind, who is higher in the hierarchy or distinguished from the direct perpetrator, bears greater responsibility."

The relationship between sentencing severity and the accused's position was raised in one of the first ICTY cases. In *Tadić*, the Appeals Chamber reduced the trial sentence, reasoning that the Trial Chamber had failed to adequately consider the necessity of imposing sentences that reflect the relative importance of the appellant's role within the broader Yugoslav conflict. The Appeals Chamber emphasized that "although the accused's conduct was undoubtedly heinous, his level within the chain of command was lower compared to his superiors—i.e., the commanders or strategic planners of ethnic cleansing." Over time, a general principle has emerged in ICTY jurisprudence that sentences should increase in accordance with the accused's authority within the governmental structure. This principle has also been emphasized by the ICTR.

The extent to which a leadership position may aggravate the relative severity of crimes and sentences depends on the accused's actual level of authority. As noted in the *Obrenović* case, authority is not solely determined by high-ranking status; even a mid-level command position can warrant an increased sentence. However, an important caveat to this principle must be highlighted: the accused's position is merely one factor among many, and not necessarily the most decisive one in sentencing. In exceptional cases, high-ranking accused individuals may receive relatively lenient sentences, and conversely, lower-ranking individuals may still face severe penalties: "Even if an accused's position within the overall hierarchy of the conflict was low, this does not mean that a lower sentence must automatically be imposed" (Holo, 2011).

A leadership position under Article 7(1) of the Statute increases the relative gravity of the crime if the individual has abused or unlawfully exercised power derived from their position. The extent to which a leadership role enhances the severity of crimes depends on the actual power held by the accused. An individual who commands a large group of people has the capacity to inflict greater harm than they could have done alone. Additionally, such an individual may serve as an example, influencing others to commit similar acts, thus amplifying the impact of their criminal behavior. (Prosecutor v. Momcilo Krajisnik, 2006)

In *Obrenović*, the Trial Chamber emphasized that an accused's leadership position can be an aggravating factor. Given the reality of authority, even mid-level commanders, and not just high-ranking officials, can face sentence enhancements. The court found that Dragan Obrenović, as the deputy commander of the Zvornik Brigade, held authority. The chamber noted that his criminal liability largely stemmed from his command responsibilities under Article 7(3) of the Statute. (Prosecutor v. Dragan Obrenovic, 2003)

2.1.3. Impact on Mitigating Factors

The presence of mitigating circumstances concerning the convicted individual does not reduce the gravity of the crime. Considering the objectives of sentencing, such factors must be weighed in determining whether the severity of the crime justifies a sentence reduction. (Prosecutor v. Bosco Ntaganda, 2019)

In the *Katanga* case, after receiving mitigating submissions, the court assessed them to determine whether they constituted mitigating factors and influenced the final sentence. The court emphasized that establishing mitigating factors serves solely to reduce the penalty and does not diminish the severity of the crime. Similarly, in the *Jean Kambanda* case, the court held that mitigating factors pertain to sentencing evaluation and do not lessen the gravity of the offense; rather, they result in a reduced sentence, not a lesser crime. In this regard, the court adopted the reasoning from the *Erdemović* case: "However, it must be noted that sentence mitigation in no way implies a reduction in the gravity of the crime. It is more an act of leniency than a defense; in other words, the assessed penalty is not an appropriate measure for evaluating the findings of the court concerning the severity of the crime." (Prosecutor v. Jean Kambanda, 1998)

In the *Muhimana* appeal judgment, the Appeals Chamber upheld the Trial Chamber's emphasis that the sentence must be proportionate to the gravity of the crimes and the degree of the offender's responsibility. Additionally, the Trial Chamber acknowledged its duty to assess the appellant's individual circumstances and role in the crimes, as well as any mitigating factors. However, it ultimately determined that imposing the maximum sentence was appropriate. In sentencing the accused to life imprisonment for all charges, the Trial Chamber considered the widespread impact and the violent and brutal nature of the defendant's conduct. The appellant did not argue that his crimes—many of which involved his direct participation—were not serious. The Appeals Chamber reaffirmed that even in cases where mitigating factors exist, courts are not precluded from imposing life imprisonment when the gravity of the offense warrants the maximum penalty. Given the extreme severity of the appellant's crimes, the Appeals Chamber, even if it accepted his claims regarding mitigating factors, found no discernible error in the sentence that would amount to a miscarriage of justice. (Prosecutor v. Mikaeli Muhimana, 2007)

2.2. Aggravating Factors

In the *Kambanda* case, the court examined all the arguments presented by both parties in determining the sentence, from which the following conclusions can be drawn:

1. Jean Kambanda cooperated and continues to voluntarily cooperate with the Prosecutor's Office.
2. Kambanda's guilty plea is likely to encourage others to acknowledge their responsibility for the tragic events that occurred in Rwanda in 1994.
3. A guilty plea is generally considered a mitigating factor in most national jurisdictions, including Rwanda.

However, the court also considered the following factors:

1. The crimes for which Jean Kambanda was responsible were inherently and extensively severe, brutal, systematic, and shocking to human conscience.
2. Jean Kambanda knowingly and deliberately committed these crimes.
3. Additionally, as the Prime Minister of Rwanda, Kambanda was entrusted with the duty and authority to protect the people, but he abused this trust.

Considering all the above, the court concluded that the aggravating factors surrounding Kambanda's crimes outweighed the mitigating factors, particularly since he held a high ministerial position at the time of the offenses. ([Prosecutor v. Jean Kambanda, 1998](#))

In the *Kayishema and Ruzindana* case, the Appeals Chamber noted that the Trial Chamber considered the horrific methods by which Ruzindana carried out killings as an aggravating factor. The court referred to the killing of Beatrice, a 16-year-old girl on Nyiramuruga Hill in Bisesero Sector, as an example, describing the particularly gruesome manner of her death. As a mitigating factor, the court acknowledged that Ruzindana was not a public official. The court found some mitigating circumstances for Ruzindana but determined that none of them carried significant weight given the gravity of the case. It ultimately concluded that the aggravating factors outweighed the mitigating ones.

Ruzindana argued that, by considering the gruesome manner in which Beatrice was killed and sentencing him for genocide, the court had conflated the material element of the crime with aggravating factors, thereby committing an error. The Appeals Chamber found no merit in this argument. Specifically, the horrifying manner in which Beatrice was killed constituted an aggravating circumstance. The fact that this killing also supported the genocide conviction—since it was part of the broader genocide policy in Kibuye Province—did not preclude the court from separately considering the manner of execution as an aggravating factor. As a result, this argument was rejected. ([Prosecutor v. Clement Kayishema and Obed Ruzindana, 2001](#))

3. Mitigating Factors and Their Effects in Iranian Law

Legal scholars classify mitigating factors into two categories: "statutory mitigating factors" and "judicial mitigating factors." Sentence mitigation is sometimes mandated by law and determined by the legislature, in which case judges are required to apply it. These are known as statutory mitigating factors (excuses recognized by law). In other instances, the judge has discretion to mitigate the sentence based on factors outlined in the law, known as judicial mitigating factors ([Mazhari & Varvaei, 2022](#)).

3.1. Statutory Mitigating Factors

As mentioned, statutory mitigating factors are determined by the legislature, apply only to specific crimes expressly provided for in the law, and are not generally applicable. Judges are obligated to enforce them when applicable. Examples can be found in Articles 521, 585, and 719 of the Islamic Penal Code (Discretionary Punishments) ([Ardabili, 2016](#)).

3.2. Judicial Mitigating Factors

Judicial mitigating factors, like statutory mitigating factors, reduce the sentence; however, judges have discretion in applying them if the factors are established. These factors allow judges to adjust sentences based on the offender's personality and public sentiment.

3.2.1. Types of Mitigating Factors

Article 38 of the Islamic Penal Code of Iran explicitly enumerates mitigating factors, making them exhaustive. The legislature has restricted courts to considering only the mitigating factors listed in this article when reducing sentences.

According to Article 38 of the Islamic Penal Code, the mitigating factors include:

- a) The victim or private claimant's pardon.
- b) The defendant's significant cooperation in identifying accomplices or accessories, obtaining evidence, or recovering assets and objects derived from or used in the crime.
- c) Special circumstances influencing the commission of the crime, such as provocative behavior or statements by the victim or an honorable motive behind the offense.

d) The defendant's voluntary disclosure of the crime before prosecution or their effective confession during investigation and trial.

e) Remorse, good character, or specific conditions of the accused, such as old age or illness.

f) The defendant's efforts to mitigate the consequences of the crime or compensate for the resulting harm.

g) The minor nature of the harm suffered by the victim or the limited detrimental consequences of the crime.

h) The minimal involvement of an accomplice or accessory in the commission of the crime.

As outlined above, since these factors are exhaustive, a judge may only reduce the sentence based on the listed factors. If a reduction is granted under this article, the judge must specify the mitigating factors in the judgment.

3.2.2. *Effects of Mitigating Factors*

The legislature has also explicitly outlined the effects and limits of mitigating factors on sentencing in Article 37, thereby restricting judicial discretion in assessing their impact. Judges may only reduce or modify sentences within the limits set by this article.

According to Article 37 of the Islamic Penal Code:

"If one or more mitigating factors exist, the court may reduce or convert the discretionary punishment in a manner more appropriate to the accused, as follows:

a) *Reducing imprisonment by one to three degrees for offenses classified as degree four or higher.*

b) *Reducing imprisonment by one to two degrees for offenses classified as degrees five and six or converting these sentences to fines of a corresponding degree. Likewise, imprisonment classified as degree seven may be replaced with a fine of the same degree.*

c) *Converting total asset confiscation to a fine of degrees one to four.*

d) *Reducing permanent dismissal from service to temporary dismissal for a period of five to fifteen years.*

e) *(Added on May 12, 2020) Reducing other discretionary punishments by one or two degrees or converting them to punishments of the same degree or one degree lower.*

This legal provision establishes clear guidelines on how mitigating factors influence sentencing, ensuring that judges operate within defined statutory limits when applying sentence reductions.

3.3. *Scope of the Impact of Mitigating Factors*

Although the court, upon establishing mitigating circumstances, can reduce discretionary (Ta'zir) punishments, its authority under Article 37 of the Islamic Penal Code is restricted. The court cannot reduce or convert a sentence beyond the limits prescribed in this article, meaning that the degree of the offense influences the effectiveness of mitigating factors.

In cases of multiple offenses or recidivism, the possibility of sentence reduction exists if mitigating factors are established. However, according to the Note to Article 139 of the Islamic Penal Code: "If the offender has three or more prior convictions subject to the provisions on recidivism, the provisions on mitigation shall not apply." Recidivism, which serves as an aggravating factor, may, under the conditions outlined in the Note to Article 139, prevent the application of mitigating factors.

In certain instances, the legislature has explicitly prohibited judges from applying mitigating factors. One example is Article 719 of the Islamic Penal Code (Discretionary Punishments), which states:

"If the injured person requires immediate assistance and the driver, despite the ability to transport the injured person to medical centers or seek help from law enforcement officers, refuses to do so or flees the scene to evade prosecution, they shall be sentenced to more than two-thirds of the maximum penalty prescribed in Articles 714, 715, and 716. The court may not apply mitigating factors in this case."

Another example is Note 5 of Article 2 of the *Law on Punishment for Disruptors of the Economic System* (adopted in 1990 and later amended), which provides:

"None of the penalties stipulated in this law shall be subject to suspension. Additionally, capital punishment, financial penalties, and permanent disqualification from public service and governmental institutions shall not be subject to mitigation or reduction by the courts." (Ardabili, 2016)

4. Conclusion

There is no explicit provision in international criminal statutes, laws, or jurisprudence specifying the extent to which mitigating factors can reduce a sentence. This is because multiple conditions influence the extent to which mitigating factors impact sentence

reduction. Even in practice, courts may disregard mitigating factors when reducing sentences or assign them minimal weight. However, at the very least, the recognition of such factors allows the accused to feel that all their arguments have been considered and that the issued verdict aligns with their character and the principles of justice.

Factors influencing the degree of sentence reduction through mitigating circumstances include the specific conditions of the case, the severity of the crime, and aggravating circumstances. A particular mitigating factor may have no effect—or may even be treated as an aggravating factor—in one case, while in another, it may be recognized as a mitigating circumstance. Although international criminal tribunals do not strictly rank the severity of crimes within their jurisdiction, in practice, crimes against persons are considered more severe than crimes against property. Additionally, the greater the severity of a crime or the presence of multiple aggravating factors, the less impact mitigating factors will have. In some cases, mitigating factors may be entirely neutralized. This is why international criminal jurisprudence emphasizes that mitigating factors do not diminish the gravity of a crime; rather, they must be assessed in relation to the severity of the offense to determine whether a sentence reduction is appropriate.

By contrast, the Islamic Penal Code of Iran categorizes discretionary punishments into specific degrees, and the legislature explicitly defines the extent to which mitigating factors can reduce a sentence. Courts only have discretion to mitigate sentences within the legally prescribed limits, and the recognized mitigating factors are exhaustive. Moreover, the law explicitly outlines cases in which judges are prohibited from applying mitigating factors.

Although, unlike international criminal tribunals, Iran's criminal justice system provides an exhaustive list of mitigating factors, it is noteworthy that Article 38, Paragraph (c), of the Islamic Penal Code recognizes "special circumstances influencing the commission of the crime" as a mitigating factor and provides only two examples. This allows judges to consider other relevant circumstances that influenced the crime's commission as mitigating factors. By doing so, judges can acknowledge additional arguments presented in favor of mitigation and ensure that the accused perceives the verdict as fair and reflective of their individual circumstances.

The International Criminal Court (ICC) holds a separate sentencing hearing, during which both parties present arguments regarding mitigating and aggravating factors, and the court responds to these arguments. While international criminal statutes and laws provide a limited list of mitigating factors, these factors are illustrative rather than exhaustive. This means that defendants may present additional arguments in support of mitigation.

In Iran's domestic legal system, no separate sentencing hearing is held, meaning that defendants and their attorneys often lack sufficient opportunity to present and argue mitigating factors. Additionally, some defendants may refrain from presenting mitigating factors for fear that doing so might be construed as an admission of guilt—an issue that previously arose in the jurisprudence of the former Yugoslavia and Rwanda tribunals.

While holding a separate sentencing hearing in Iran's criminal justice system could be time-consuming and costly, implementing this practice for major offenses could enhance the perceived fairness of the sentencing process. It would allow the accused to feel that all their arguments were heard, thereby reinforcing the legitimacy of the judicial process and reducing resentment and distrust toward the system.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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