Abbreviated criminal procedures for core international crimes

Agata Odrobińska

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BOOK REVIEW


This book is the first collective publication focused on the analysis of abbreviated criminal procedures for core international crimes. It contains 10 edited papers, originally prepared for a conference by the same name in Sarajevo on 9 October 2009.

In the ten chapters, authors try to answer numerous questions and solve challenges linked to abbreviated criminal procedures. Addressed subjects include: analysing situations where abbreviated criminal procedures may be used and what types of crimes they should apply to; how to address problems concerning backlogs of criminal case files and the length of proceedings; judicial economy; and how to balance the interests of victims and perpetrators. It ends with posing a fundamental question: what is the role of abbreviated criminal procedures in cases involving the commission of core international crimes?

The main text of the book is preceded by four foreword sections. In addition to the editor’s preface, there are forewords written by Ambassador Jan Braathu; Judge Meddžida Kreso, President of the State Court of Bosnia and Herzegovina; and Judge Milorad Novković, President of Supreme Court of the Federation of Bosnia and Herzegovina, all of which contain useful insights on the subject.

This publication is significant for many reasons. First, as underlined by the editor, abbreviated criminal procedures for core international crimes remain an under-researched area of international criminal procedure. Second, the publication is, without a doubt, extremely useful for professionals dealing with post-conflict accountability mechanisms – it contains comparisons of abbreviated procedures among different countries and essentials required by such procedures for core international crimes. Moreover, the publication is notable due to the number of distinguished experts who have contributed to the volume, who share their knowledge and experience using clear and accessible theoretical analysis based on case studies from post-conflict or conflict regions.

The first chapter by Morten Bergsmo, entitled ‘More Opened Case Files Than Trial Capacity’, contains a general overview both of the issue of abbreviated criminal procedures and of the other papers in the volume. It also introduces to on important issues related to the compliance of such proceedings with human rights requirements, victims, legal policy, and broader challenges associated with this legal tool. Bergsmo also rightly underlines that abbreviated criminal procedures cannot be considered in isolation from national criminal procedures. On the contrary, national procedures should be the starting point in all our thinking on this subject. This idea has been developed in further chapters. Kai Ambos and Alexander Heinze present comparisons of different models of abbreviated procedures implemented in Europe and the United States (including immediate proceedings, direct trial, etc.). The authors also discuss consensual procedures in a broad sense and commit a lot of attention to plea-bargaining and guilty pleas, both within national jurisdictions and international criminal tribunals. The subject is extended by Gorana Žagovec Kustura, as the author presents special procedures of German, Polish, Italian and, particularly, Colombian criminal procedures. Importantly, the book is not limited to theoretical descriptions of legal institutions, but also provides specific examples of abbreviated criminal procedures. For example, Maria Paula Saffon explores the Colombian Justice and Peace Law, while Phil Clark examines the
gacaca mechanism, which was implemented in Rwanda in the aftermath of the 1994 genocide, and has prosecuted 40,000 suspects. Also, Marieke Wierda tries to answer the question of how to deal with backlogs in trials of international crimes based on case studies from Argentina, Colombia and Timor-Leste.

A very important insight is presented by Mark A Drumbl. He shows why abbreviated criminal proceedings need to be a part of the transitional justice toolbox, although he is aware that they are not a panacea. One of the reasons he mentions is the mass character of atrocities, which are group crimes that implicate a large number of perpetrators and victims. The international atrocity trial model usually allows only a small number of main perpetrators to be prosecuted, and in consequence, many others who are responsible for atrocity crimes manage to avoid accountability. While the author has concerns related to the use of abbreviated criminal procedures and cautions that there are many challenges relating to their use, he remains optimistic, and points out that these challenges can be converted into a justification for the idea of abbreviated criminal procedures. The necessity of innovative approaches such as abbreviated criminal procedures is also underlined by Ilia Utmelidze and it is hard to disagree with his approach. He refers to a case study of Bosnia and Herzegovina and suggests such procedures can provide expeditious ways of resolving certain types of core international crimes that can accelerate overall accountability processes (117).

A great asset of the publication is a comprehensive list of arguments for and against the use of abbreviated criminal procedures for core international crimes. This allows us to look critically and to examine thoroughly this important issue.

I hope this publication will bring more attention to the topic of abbreviated criminal procedures for core international crimes. This allows us to look critically and examine thoroughly this important issue.

As the editor Morten Bergsmo aptly emphasises, ‘… deliberately avoiding opening case files when criminal justice is in possession of strong evidence of such crimes is the hallmark of impunity’ (17). Abbreviated criminal procedures might be a missing tool in dealing with less serious core international crimes and those perpetrators who are often left behind by the criminal justice system. Obviously, its construction and realisation will not be simple, but the necessity of finding new solutions in improving the capacity of the criminal justice system for atrocity crimes remains paramount, and this book provides a first step in that direction.