

## Mitigating and Aggravating Circumstances. Their Impact on Judicial Individualization of Punishment

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**Abstract:** For an act to fall under criminal law it is sufficient for it to meet the minimum conditions to achieve constitutive content of the offense. However, committing a criminal act takes place, in most cases, in a complex set of variables specific to each case, variables that, without characterizing the act as an offense or the perpetrator's person as subject of that offence, helps determining, on one hand, the social danger of the committed crime and, on the other hand, knowing the offender as an individual and its social dangerousness. Mitigating and aggravating circumstances are such variables and they have a specific impact on criminal responsibility of the perpetrator. These circumstances have a major influence on judicial individualization of punishment because their effect is preset by the Law and acts separately on the length or amount of punishment. This study aims both students and practitioners or academics and highlights on one hand, the legislative solutions of the new Criminal Code and on the other hand, the differences between the old and the new Criminal Code.

**Keywords:** criminal sanction; adaptation; personalization; mitigation cause; aggravation cause

### 1. Concept and Reason

The mitigating and aggravating circumstances belong to a wider concept called attenuated and aggravation causes of the duration or amount of punishment. The notion of mitigation and aggravation *causes* of punishment has a general meaning that includes both the notion of *circumstances*, representing those “*states, situations, events, or other data from reality situated beyond the content of the offense, but which, being related with the committed offense or with the offender's person, aggravate or attenuate the seriousness of the offense or the offender's dangerousness*” (Bulai, 1997), and the notion of *states* that, without being directly linked to the commission of the offense, is still capable to characterize the seriousness of the act or the dangerousness of the offender. Therefore, the mitigation or aggravation causes represents the *gender* and the circumstances and states, *species*.

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Mitigating or aggravating circumstances of the length or amount of punishment doesn't belong to the legal content of the offense, as it was criminalized by law, instead they are circumstances influencing punishment imposed. The reason of introducing these criminal law institutions, as a part of punishments individualization of penalties, is to sanction - positive or negative - some circumstances that, although they cannot act as evaluators for determining the offense and the offender's threat to society, precisely because they don't occur to every offense, but they repeat often enough to have a certain legal value established by the legislator.

The circumstances are divided into two subcategories, namely: *mitigating circumstances* (art. 75 Criminal Code.) and *aggravating circumstances* (art. 77 Criminal Code.). The states are divided, also, into two categories: *mitigation states* (the attempt)<sup>1</sup> and *aggravation states* (the continuing offense, multiple offense and intermediate plurality).

Considering the nature of this study, in the following, we will only study the circumstances that change the length or amount of punishments. As for the *states*, they will be subject of future research to complement the study of the larger concept of mitigation and aggravation causes of punishment.

## **2. Mitigating Circumstances and their Effect**

*Legal grounds.* Mitigating circumstances and their effect are regulated in Section 2, entitled *Mitigating and aggravating circumstances* in Chapter V, Title III of the General Part of the Criminal Code (art. 75 and 76).

*Concept.* Mitigating circumstances are those states, situations, events, qualities or other reality data's – concurrent or subsequent committing the offense – which are not related with the legal content of the offense, but which, being related to the offense committed or to the offender, attenuate the degree of social danger or the offender's dangerousness.

*Content.* From the regulation of art. 75 Criminal Code results that mitigating circumstances are of two kinds: *legal mitigating circumstances* [paragraph (1)] and *judicial mitigating circumstances* [paragraph (2)]. Legal mitigating circumstances are precisely determined by the legislator [paragraph (1) a) – d) Criminal Code], the court not being able to ignore them since their existence is proven. *A contrario*,

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<sup>1</sup> Unlike the previous Criminal Code, who had *two* attenuation states: *attempt* and *minority*. Due to the changed sanctioning regime under the Criminal Code in force, to minor offenders can be applied only *educational measures*; thus, the mitigate state of *minority* no longer finds application, since to minor offenders are no longer applicable punishments. The 1969 Criminal Code regime, if the judge found appropriate to applying a punishment to minors, then he had to relate to the penalty limits applicable to adults reduced by half – *see*, art. 109 of the 1969 Criminal Code for all the solutions prescribed by the old criminal law.

judicial mitigating circumstances [paragraph (2) letters a) and b) Criminal Code] are left to the discretion of the court, even though they are exhaustively listed by the law.<sup>1</sup>

The legal mitigating circumstances are:

a) *Offense committed under the influence of a strong disturbance or emotion, caused by the victim, caused either by violence, by infringement of a person's dignity or by other serious illicit actions* [art. 75 paragraph (1) a)]. It is represented by the fact that the offense is committed under a strong disorder or excitement, caused by a defiance from the injured party, resulted from violence, serious prejudice to human dignity or another serious and illegal act. The achievement of all conditions regarding, on the one hand, to the provocative act and, on the other hand, to the replication to the person that was defied, needs to be accomplished together, otherwise the legal mitigating circumstance of defiance does not apply.

b) *Exceeding the limits of legitimate defense* [art. 75 paragraph (1) b)]. Excusable excess of defense – as it is called in the criminal doctrine – it is represented by that circumstance where the person who is self-defending exceeds the limits of proportional defense with the seriousness of the attack caused by excessive defense, thus committing an offense to the criminal law.

c) *Exceeding the limits of the state of necessity* [art. 75 paragraph (1) c)]. As in the case of exceeding the limits of legitimate defense, the legislator considered to grant attenuated sanctioning treatment to the one who exceeds the limits of the state of necessity in order to save from immediate danger the values listed in art. 20 paragraph (2) Criminal Code.

d) *covering all the material damage caused by an offense, during criminal investigation or trial, until the first hearing, if the offender has not benefited from this circumstance within 5 years prior to committing the crime* [art. 75 paragraph (1) d)]<sup>2</sup>. This mitigating circumstance works for certain offenses, offenses that are

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<sup>1</sup> Unlike previous legislation, where judicial mitigating circumstances were listed as examples, the judge having the ability to grant extenuating character to any event that he considers appropriate.

<sup>2</sup> Letter d) of paragraph (1) art. 75 was not part of the initial draft of the new Criminal Code; its introduction was made through art. 245 pt. 5 of Law no. 187/2012 of enforcement of the Law no. 286/2009 regarding the Criminal Code. We believe that it is not the happiest choice of the legislator because it promotes a discretionary treatment from the criminal law between offenders who have the financial means to cover all the damage recorded by committing the offense and the ones who have not, such behavior coming from criminal law is profoundly unconstitutional because it violates the right of citizens for equal treatment of the law. Moreover, by Decision No. 573/2011 (published in the Official Gazette no. 363 of 25 May 2011), the Romanian Constitutional Court declared *unconstitutional* the provisions of art. 74<sup>1</sup> of the 1969 Criminal Code (which regulated the reduction of the penalty or the application for the defendant of an administrative penalty fully covering the damage caused in the event of committing the offenses listed exhaustively) because it violates the

not included within the enumeration from the 2<sup>nd</sup> part of the letter d) paragraph (1) art. 75. We believe that the legislator introduced this new mitigating circumstance to find a legal way through which the offenders responsible of producing property damages when committing an offense should be interested to cover them in order to beneficiate the penalty reduction, according to art. 76 Criminal Code.

The judicial mitigating circumstances are:

a) *efforts made by an offender to eliminate or reduce the consequences of their offense* [art. 75 para. (2) litter a)];

b) *circumstances relating to the committed offense, which reduce the seriousness of the offense or the threat posed by the offender* [ art. 75 para. (2) litter b)].

The legislator of the new Criminal Code chosen to limit the number of mitigating circumstances that may be retained by the judge to a number of two. From this point of view, we think that the legislator's vision has changed profoundly since judges cannot give mitigating value to any circumstance related to the person of the offender. Basically, the only circumstance related to the person of the offender which may have mitigating character remains the one exposed to the letter a) paragraph (2) of art. 75 of the Criminal Code. The other circumstances related to the person of the offender [for example, the attitude of the offender after committing the offense - lit. c) paragraph (1) art. 74 of the 1969 Criminal Code] does not escape to the judge because they constitute, in the view of the new Criminal Code, an indicator for assessing the gravity of the offense and the offender's dangerousness [see, art. 74 paragraph (1) f)]. On this plan, we believe that this new vision creates the premises for a better individualization of punishment when facing to an a real case, because it provides predictability in terms of circumstances that may have mitigating value and removes from their field those situations that represents clues to normal behavior of a person who violates the criminal law.

As for the circumstances surrounding the deed, that diminishes the gravity of the offense or the offender's dangerousness, we believe that the facts offer clues about lower social danger of an offense, clues to which the judge must assign real meaning.

*The effect of the mitigating circumstances.* The legal regulation is found in art. 76 Criminal Code, which establishes the following rules:

- if the penalty prescribed by law is life imprisonment, if withholding mitigating circumstances, the penalty by imprisonment shall be set to no less than 10 and no more than 20 years, and

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constitutional principle of equality of citizens before the law. For a much larger exposure to the problem, *see*: (Dima, 2014).

- if the penalty prescribed by law is imprisonment or a criminal fine<sup>1</sup>, the special limits of the penalty shall be reduced by one-third.

Very important, in mitigating circumstances field, it's the rule stated in paragraph (3) that the special limits of penalty are reduced only once, regardless of the number of mitigating circumstances applying.

### 3. Aggravating Circumstances and their Effect

*Legal grounds.* Aggravating circumstances and their effect are regulated in Section 2, entitled *Mitigating and aggravating circumstances*, from Chapter V, Title III of the General Part, Criminal Code (art. 77 and 78).

*Concept.* Aggravating circumstances are those states, situations, events, qualities and other data of reality – simultaneous or subsequent with the commission of an offense –, which do not belong to the legal content of the offense, but who, being related to the committed offense or to the person of the offender, indicates a higher degree of social danger of the crime or the offender's dangerousness.

*Content.* Unlike mitigating circumstances regulation, art. 77 the Criminal Code states only *legal* aggravating circumstances. The new Criminal Code no longer provides the possibility for retaining judicial aggravating circumstances, because it contravened the article 7 of the European Convention on Human Rights since it requires the criminal law enforcement by analogy, with effects in detriment of the defendant (Udroiu, 2014).

The aggravating circumstances are:

- *The offense was committed by three or more persons together* [art. 77 letter a) Criminal Code]. The aggravating circumstance in question involves simultaneous collaboration of three or more persons whether they are authors, co-authors or concurrent accomplices when committing the same offense/offences. Therefore, it is irrelevant if some of the perpetrators aren't liable, as long as at least one of the participants can be held accountable.

- *The offense was committed with cruelty or subjecting the victim to degrading treatment* [art. 77 letter b) Criminal Code]. This aggravating circumstance incorporates within its content two factors assigned with the same effect in legal terms but with different significance. The offense committed with cruelty involves the use of ferocious methods on the victim causing her extraordinary suffering – both physical and mental –, methods that inflicts horror and indignation among the general public. Subjecting the victim to degrading treatment, does not have the

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<sup>1</sup> When the only penalty prescribed by law is a criminal fine or the court has chosen to apply the fine when it is prescribed as an alternative punishment, the reduction of the limits by a third only applies to the specific limits of the day-fine and not the amount of a day-fine.

same effect within the society, but it supposes the use of different means when committing the crime that brings humiliation to its victim, both physically and mentally.

- *The offense was committed by methods or means of a nature likely to endanger other persons or assets* [art. 77 letter c) Criminal Code]. By methods or means of a nature likely to endanger other persons or assets it should be seen as any methods or means which, by utilization, are capable of producing severe consequences both on life, body integrity or health of a undefined number of individuals and, also, on their property. *Exempli gratia*, such methods or means can be: fire, explosions, spreading harmful, toxic or radioactive chemicals, etc.

- *The offense was committed by an offender who is of age, if they were joined by an underage person* [art. 77 letter d) Criminal Code]. This aggravating circumstance sanctions the adult offender that takes advantage of the reduced capacity of a certain underage person when it comes to understand the consequences of his actions, by luring him in hostile activities to the criminal law. We must point out that this aggravating circumstance becomes active only if the major isn't in fault about age of the juvenile.

- *The offense was committed by taking advantage of a clear state of vulnerability of the victim, caused by age, health, impairment or other reasons* [art. 77 letter e) Criminal Code]. This is a new aggravating circumstance, which didn't exist in the 1969 Criminal Code. We believe that this new aggravating circumstance comes to fill a previously legislative void, because the judicial practice pointed out a high frequency of offenses targeting vulnerable persons; therefore, the reason for introducing it, was to better protect older people, sick people or the ones with different disabilities to become victims of this kind of crime.

- *The offense was committed in a state of voluntary intoxication with alcohol or other psychoactive substances, when such state was induced with a view to committing the offense* [art. 77 letter f) Criminal Code]. If in the previous Criminal Code regulation the complete voluntary drunkenness could be either mitigating or aggravating circumstance, in the new Criminal Code this circumstance can be taken only as aggravating circumstance, thus losing its bivalent character. Of course, this circumstance – as mitigating circumstance – doesn't remain unnoticed, instead it will be taken in consideration by the court when judicial individualizing the length or amount of the punishment between the special limits prescribed by law, in accordance with art. 74 Criminal Code in force. On the other hand, we must underline that the new criminal law includes, also, with aggravation effect the psychoactive substances poisoning, which clearly is a step forward in criminal law evolution in today's modern society.

- *The offense was committed by a person who took advantage of the situation caused by a disaster, of a state of siege or a state of emergency* [art. 77 letter g)

Criminal Code]. The criminal law in force has extended the possibilities regulated by the old legislation by adding, besides taking advantage of the situation caused by a disaster, *the state of siege* and *the state of emergency*<sup>1</sup>. All three of these circumstances occur only in special cases, the aggravated nature of the offenses is given by the fact that society should protect with greater intensity its social values during these periods of time due to specific threats (economic, political, natural), threats that make it more vulnerable.

- *The offense was committed for reasons related to race, nationality ethnicity, language, gender, sexual orientation, political opinion or allegiance, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection, or for other reasons of the same type, considered by the offender to cause the inferiority of an individual from other individuals* [art. 77 letter h) Criminal Code]. By analyzing the above list, we conclude that the legislator assigns aggravating character to the offender who commits an offense based on one of the motives enlisted in art. 77 para. (1) h) of the Criminal Code.

*Effects of aggravating circumstances.* The legal grounds can be found in art. 78 provisions, which establishes the following rules:

- if the penalty provided by law is imprisonment, sentencing can go up to the special maximum. If the special maximum is insufficient, an addition of up to 2 years can be added that cannot exceed one-third of the maximum, and
- if the penalty provided by law is the criminal fine, the court can go up to the special maximum. If the special maximum is insufficient, the judge can add an increase up one-third of the maximum.

As in the case of mitigating circumstances, when talking about effects of aggravating circumstances, the courts should never lose sight of the rule stated in art. 78 para. (2), according to whom increasing the threshold of the maximum penalty can only be done once, irrespective of the number of aggravating circumstances found.

#### **4. Concurrence between Mitigating and Aggravating Causes**

The Criminal Code in force lays down in art. 79, compared to previous criminal legislation, a different legal regime regarding mitigating or aggravating mechanism of punishments when dealing with a concurrence between mitigating circumstances or with a concurrence between aggravating circumstances. In addition, to cover all situations that may arise in practice, the Law shows the steps to follow when faced

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<sup>1</sup> For the exact legal view over the *state of siege* and *state of emergency*, see G.E.O. no 1/1999 concerning the state of siege and state of emergency regime.

with concurrence between both mitigating and aggravation circumstances in the same case.

Therefore, while performing the judicial individualization of punishment, the courts can be faced with two categories of situations when facing with the existence of concurrence between circumstances:

a) *The existence of concurrence between mitigating circumstances or concurrence between aggravating circumstances.* These situations are separately regulated by art. 76 para. (3), respectively, by art. 78 para. (2) of the Criminal Code. According to specified provisions the reduction / aggravation of punishment special limits is made once, regardless of the number of mitigating circumstances / aggravating faced with.

b) *The existence of concurrence between both mitigating and aggravation circumstances for the same offence.* If found this type of concurrence, according to art. 79 para. (3), the court have to apply: first, the provisions concerning the effect of mitigating circumstances and, only after this step, the provisions stating the effect of aggravating circumstances. In other words, firstly, the judge will have to reduce the special limits of the sentence by one third [see art. 76 para. (1)] or to apply imprisonment from 10 to 20 years [see, art. 76 para. (2) - if the original sentence is life imprisonment] and, secondly, to increase the penalty limits<sup>1</sup> according with the effect of aggravating circumstances.

When, for the same offense, are incident multiple mitigating circumstances *and* multiple aggravating circumstances, the court will take into account the explanations given in paragraph *a*), namely, it will reduce and increase separately once, regardless of the number of circumstances; after doing that, it will proceed according to the provisions of art. 79 paragraph (3) - explained in paragraph *b*).

## **5. Conceptual Delimitations that need to be taken into Account in the Work of Judicial Individualization of Punishment**

1. We must emphasize, *ab initio*, that all causes modifying the length or amount of criminal penalties, thus, the criminal liability, are external to the legal content of the offense, meaning that they are not influencing the legal qualification of the offense; in other words, they are accidental. In this regard, we believe that this was exactly the reason why the legislator has removed from the new Criminal Code, the „circumstances which mitigate or aggravate the criminal liability” as a general criteria for individualization of punishments, precisely because it does not affect the assessment of the gravity of the offense and the offender's dangerousness

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<sup>1</sup> Please note, the limits that should be increased are the ones resulted from the first step, and not the original limits.

universally - in all cases - but only accidentally, when such circumstances arise within the offense.

In the same vein, we must understand that the provisions set by the art. 74 of the Criminal Code can only be applied to determine the base criminal liability for all crimes, whether they are provided in the special part of the Criminal Code either in special criminal laws or in other laws that, although not of criminal origin, contain and regulate certain offenses. Based on these provisions, the judge determines the actual punishment for each unique offender brought for judgment, but without exceeding the relative limits set by the criminal provisions for each offence. A *contrario*, if the judge finds grounds for mitigating or aggravating of punishment, he can, *de lege lata*, surpass the length or the amount of the sentence by exceeding the special limits. Violations brought to these special limits – the minimum ones or the maximum ones – aren't done anyway, but mathematically, with the exact percentage established by law [e.g. when dealing with mitigating circumstances the special limits prescribed by law shall be reduced exactly by one-third - art. 76 para. (1) Criminal Code].

Concretely, the judge, based on all the evidences presented, will *first* proceed to check if all the conditions of the legal content of the offense are met, certifying both its existence and its commission by the offender. In a *second* step, he will determine the length or amount of the punishment reporting his judgement to the general individualization criteria's; only after this step, he will proceed to investigate for circumstances exterior to the legal content of that specific offence. If found, such circumstances will influence only the length or amount of the penalty and not the penalty itself.

2. Regarding the circumstances which enter into content of mitigating or aggravating causes that modify the length or amount of the punishment, we believe that some clarifications are need. By interpreting the provisions from article 74 Criminal Code and other provisions governing the mitigating or aggravating causes of punishments, it appears that we will encounter two categories of circumstances.

On one hand, we encounter those circumstances not strong enough to determine mitigation or aggravation of criminal liability beyond the limits set by law although they influence the seriousness of the committed offense or the offender dangerousness. Such circumstances helps personalizing the length or amount of applied penalty, which will be proportional with the *in concreto* created danger for the protected social value. More specifically, their role is to guide the judge to individualize the punishment within the special relative limits provided by law and not outside them (Ciopec, 2011).

On the other hand, we encounter circumstances that are sufficiently energetic and which contain enough significance for the legislator that it considered necessary to allocate them separate legal value. How is easy to understand, these circumstances

are those that fall under the content of mitigating and aggravating influencing the length or the amount of punishments and they are expressly regulated by the legislature both in content and effects on the final sentence.

The distinction between the two categories is very important because the circumstances falling in the *first* category have the effect of altering the length or amount of the applied punishment only between its special limits prescribed as they were prescribed by criminal law, while the circumstances falling in *second* category have as effect the modification, with the fraction prescribed by law, of offence's very specific limits, which attracts a greater or smaller punishment than the one prescribed by law. A very important role in this matter is played by the criminal court that will have to, in its individualization of punishment, to unravel the threads of each case and assign the appropriate significance to each of these circumstances.

3. Within the framework of the attenuation or aggravation causes of punishments do not enter those circumstances which the legislature has already included into the legal content as elements of the offence aggravated forms. When adapting the length or amount of punishments, these circumstances are not taken into consideration, since the aggravation or mitigation of the offender criminal liability has already been determined *ope legis*.

4. Last but not least, we believe that it is necessary to underline the conceptual delimitations between the species of mitigating and aggravating *causes*, namely, the delimitation between circumstances and states.

*The circumstance* is a fact that doesn't exist previously to commission of the offense but only appears with the beginning of criminal activity, accidentally accompanying the committing or consequences of the act, or the person's perpetrator. The circumstances don't have independent existence, but they only appear on the background of criminal activity. *The states* are those facts that exist prior to the offense and subsist during its perpetration, having an independent existence.

In view of all the above, the delimitation between states and circumstances appears as essential when the judge is dealing with a concurrence between circumstances and states. In case of concurrence between multiple circumstances, their effect is not acting successively but simultaneously, resulting with only one aggravation or mitigation, regardless of their number<sup>1</sup>. *Per a contrario*, the states – as we already seen, have independent existence – shall be applied one by one, resulting in aggravation or mitigation one for each case of incidence.<sup>2</sup> Moreover, the

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<sup>1</sup> See, art. 76 para. (3) Criminal Code – for concurrence of mitigating circumstances, and art. 78 para. (2) – for concurrence of aggravating circumstances.

<sup>2</sup> See, art. 33 Criminal Code – for the attempt, art. 39 – for multiple offence and art. 43 Criminal Code – for repeat offence.

conclusion we reached is backed, in addition to the specific regulations of each case of mitigation or aggravation, also by art. 79 of the Criminal Code, which establishes the rules of the concurrence between the mitigation or aggravation causes, where the effect of circumstances is unique, while the effect of states – whether mitigation or aggravation – act's for each one of them..

## 6. *De Lege Ferenda* Proposals

As no law is immutable, we believe it should be normal for the legislator to take into consideration some proposals coming from both the competent institutions and the civil society, thought the solutions issued by doctrinaires. Given the scientific approach of this paper, we believe it is advisable to consider the following *de lege ferenda* proposals:

- It is requires legislator intervention point out the exact facts that compose the notion of judicial mitigating circumstances, set out by the art 75 para. (2) letter b) Criminal Code provisions. The purpose of this proposal is to clearly distinguish between the above circumstances and the circumstances surrounding the act falling within the art. 75 para. (1) letter a) of the Criminal Code provisions; in other words, to draw the border between these two, for exactly knowing where the first ones end and the last ones begin.

The introduction of explicit obligation to highlight the circumstances effect, where dealing with these, and the obligation to motivate these effects. For these reasons, we believe it is necessary to introduce a new article in Section 2 of Chapter IV. Title III Criminal Code, with the following content: „**Art. 79<sup>1</sup>. Underlining the circumstances in the sentence.** *It is mandatory for courts to show in the judgment the withholding of mitigating and / or aggravating causes, as well as their effect on punishment*”.

In this way, the courts will be more responsible when applying the effect of aggravating and mitigating circumstances, because it would give the higher courts the possibility to conduct a judicial review on these effects. Furthermore, we believe that would also benefit in terms of procedure, the convict may appeal to the court decision only on added length/amount to the punishment; the appeal court will not check the entire individualization of punishment, but only the correct application of the added length/amount, seen as enough by the previous court.

## **7. Conclusions**

The institution of criminal sanctions individualization is vast and complex, framing a desideratum of the last century and also a fundamental instrument in service of criminal law. Through this mechanism is made the legal, judicial and administrative *personalization* of all criminal coercive measures as an expression of society's response to the never-ending antisocial behavior of people. Reporting to the individual case, by taking into account the offender's personality, dangerousness and his abilities to straighten himself, aims to fulfill the criminal sanctions functions and purposes with maximum efficiency and purpose of the sanction of law Criminal (Papatheodoru, 1993).

To achieve this goal, the judge must have a vision as wide as possible over of all circumstances that have worked for committing the offense. In this regard, he will have to investigate circumstances other than those that make up the offence legal content, circumstances which may have a noticeable influence over the seriousness of the offense and/or the offender's dangerousness.

The lawmaker understood the importance of these circumstances by giving express legal value for some of them when introducing into criminal law provisions the so-called mitigating and aggravating causes of the length or amount of punishment. Among them, the circumstances prominently come forth because they don't have independent existence, but only appear on the background of the criminal activity. Therefore, it's very important to assign the right legal value in order not to be confused with other facts, that don't have the same effect as the circumstances, but that will be taken into account when determining the length or amount of the punishment based on art. 74 prescriptions.

With such a strong influence over seriousness of the offense and over the offender's criminal liability, the circumstances have a critical role in proportionalization and individualization of criminal penalties. That is why, when regulating the punishment individualization legal process, it never lacked the lawmaker concern to determine which those are/could be such circumstances, how could they influence the sentence and how should be used by the judge when accomplishing the individualization (Dongoroz, 2003).

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