

Judicial Individualization of Punishments in Romanian Criminal Law

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ABSTRACT: This study focuses on the judicial individualization of punishments, a fundamental principle of Romanian criminal law as provided in the Romanian Criminal Code. It aims to explain how this principle serves to adapt sanctions based on the gravity of the crime, the social danger it represents, as well as to the particularities of the offender. The purpose of judicial individualization is to ensure the application of fair, proportionate and efficient punishment, in accordance with the preventive and educational functions of criminal sanctions.

KEYWORDS: judicial individualization, punishments, dangerousness, gravity, consequences

Introduction

The commission of a crime and the establishment of criminal liability for it have as an inevitable consequence the application of criminal law sanctions provided by law (punishments and educational measures), for the restoration of the rule of law, for the coercion and re-education of the offender. The operation by which the punishment is adapted to the needs of social defense in relation to the abstract or concrete gravity of the crime, as well as to the dangerousness of the offender, in order to ensure the fulfillment of its functions and purposes, is called the individualization of punishment (Grigoraş 1969, 76).

The judicial individualization of punishment is a part of the criminal law enforcement activity that is carried out based on the conditions and limits established by law. In this sense, the legislator sets certain coordinates within which judges carry out the operation of establishing and applying the concrete norm (Radu and Franguloiu 2004, 153).

The institution of individualization of punishment is dedicated to Chapter V entitled Individualization of Punishments, from Title III of the General Part of the Romanian Criminal Code. To these provisions are added those regarding the individualization of punishments in the case of aggravating circumstances –

concurrency of offenses, recidivism, continued offense, or mitigation – attempt and which are provided for in the regulations of the respective institutions.

There are three forms of individualization in Romanian Criminal Law: legal, judiciary or court and administrative (Mitrache and Mitrache 2016, 452-453). Legal individualization is carried out by the legislator in the phase of drafting the law and constitutes a materialization of the principles of legality and individualization of punishments. Judiciary or court individualization of punishment is carried out by the court and is materialized by applying the specific punishment to the offender for the committed act, depending on the specific gravity of the act, the dangerousness of the offender, the specific mitigating or aggravating circumstances in which the crime was committed. Administrative individualization of the prison sentence is carried out within the framework offered by legal and judicial individualization, depending on the severity of the applied punishment, the state of recidivism, the conduct of the convict in the place of detention, etc.

Judicial individualization of punishment is the individualization carried out by the court when applying the punishment provided by law for the crime committed depending on the gravity of the crime committed and the dangerousness of the offender which is assessed according to the general criteria of individualization. The adaptation of the concrete punishment carried out by the court takes place in compliance with the criteria of legal individualization, between the special limits of punishment provided by law for the crime committed, limits whose exceeding is possible depending on the states and circumstances of aggravation or mitigation and whose effect is provided by law. Compared to legal individualization, which, no matter how much the legislator tries to achieve it, remains within a general framework, judicial individualization is the one that is achieved in the specific case and plays an important role in individualization, and through the punishment applied to the offender, the violated order is restored, the offender is coerced and re-educated (Mitrache and Mitrache 2016, 453-454).

Individualization criteria

According to the provisions of art. 74 of the Romanian Criminal Code, it follows that the individualization of the punishment based on general criteria only considers its establishment or application and not the manner of execution.

Determining the punishment, whether it is deprivation of liberty or another criminal sanction, is a complex process that requires the analysis of several factors to ensure proportionality between the gravity of the offense and the sanction applied. Establishing the duration or amount of the punishment is done in relation to the gravity of the offense committed and the dangerousness of the offender, which is evaluated according to the following criteria (Duvac 2019, 542-548):

- The circumstances and manner of committing the crime, as well as the means used;
- The state of danger created for the protected value;
- The nature and severity of the result produced or other consequences of the crime;
- The reason for committing the crime and the purpose pursued;
- The nature and frequency of crimes that constitute the criminal record of the offender;
- Conduct after committing the crime and during the criminal process;
- Level of education, age, state of health, family and social situation.

The criterion regarding *the circumstances and manner of committing the crime*, as well as the means used, involves a detailed analysis of the circumstances in which the crime was committed, including: the presence of elements of premeditation or spontaneous actions, the use of violent means, weapons, advanced technology or other dangerous instruments, the place and time of the crime, such as in public, in the presence of minors or in a private environment, the participation of other persons - co-authorship or instigation.

The state of danger created for the protected value refers to the extent to which the crime has endangered: the fundamental rights of the person, such as life, health, physical or mental integrity, social order, public security or material goods and trust in state institutions or social relations. For example, a shoplifting may be less dangerous than an armed robbery, even if the value of the stolen goods is similar. As regards the nature and seriousness of the result produced or other consequences of the crime, the concrete and immediate effects of the crime are analyzed: the seriousness of the harm caused to a person (e.g. physical injuries, death of the victim, psychological trauma), the size of the material damage (value of the goods destroyed or stolen), the indirect consequences, such as the damage to family relationships, loss of a job or the impact on the community.

The motive for committing the crime and the intended purpose. Motivation can considerably influence the moral gravity of the act. A distinction is made between: personal motives (revenge, jealousy, and despair due to a difficult economic situation), ideological, political or religious motives and selfish motives, such as the desire for easy enrichment. The intended purpose is also essential. For example, a crime committed to protect a family member may be viewed more leniently than one committed out of greed.

Regarding *the nature and frequency of the offenses that constitute the offender's criminal record*, the criminal history of the defendant is taken into account: if there is a criminal record, the type of offenses previously committed (for example, violence or economic crimes), the frequency of these acts and the time elapsed since the last conviction are analyzed, whether the defendant has benefited from more lenient measures in the past (such as suspension of the execution of the

sentence) and has not complied with them. Regarding the conduct after the offense and during the criminal trial, this may suggest the level of regret and the desire for rehabilitation: whether he tried to repair the damage or support the victim, whether he cooperated with the authorities, admitting the facts and providing useful information, whether he showed an attitude of defiance, tried to influence witnesses or fled from justice.

Education level, age, health status, family and social situation. These personal aspects of the defendant influence the assessment of the degree of culpability and can lead to the individualization of the punishment. A person with higher education is considered to be more aware of the legal and moral implications of his actions. Young or old people may benefit from mitigating circumstances, given their immaturity or specific vulnerability. Chronic illnesses or mental disorders can influence the severity of the punishment applied. The responsibility of supporting a family or social integration (a stable job, positive social relationships) can constitute an argument in favor of a milder punishment.

These criteria allow for a fair and proportionate approach in determining the punishment, emphasizing the individualization of sanctions and the prevention of recidivism.

Mitigating and aggravating causes

For a fair individualization of the applicable punishment, the legislator has provided in the criminal legislation, both in the general part, but also in the special part or in special laws with criminal provisions, certain institutions that mitigate or aggravate criminal liability (Duvac 2019, 549). Mitigating or aggravating causes are those states, circumstances or qualities related to the crime or the offender that precede, accompany or succeed the criminal activity, expressly or implicitly regulated by the criminal law and that reduce or increase the seriousness of the crime or the dangerousness of the perpetrator, consequently mitigating or aggravating criminal liability (Molnar in Dobrinoiu et al 1997, 430).

Mitigating and aggravating circumstances play an essential role in the individualization of punishments within the framework of criminal law. They allow the courts to adapt the sanctions according to the concrete context of the act and the accused person, contributing to achieving a balance between the severity of the law and the need for social justice. The Romanian Criminal Code, updated through various legislative amendments, regulates these circumstances to ensure a proportionate and fair application of the law.

Mitigating circumstances are situations that reduce the degree of social danger of the act and allow the court to apply a lighter punishment than that provided by law. Article 75 of the Romanian Criminal Code expressly regulates these circumstances, in a manner that leaves room for judicial interpretation, but maintains a clear general framework.

The following circumstances constitute legal mitigating circumstances according to art. 75 of the Romanian Criminal Code:

a) Committing the offence under the influence of a strong disturbance or emotion, determined by a provocation from the injured person, produced by violence, by a serious violation of the dignity of the person or by another serious illicit action;

b) Exceeding the limits of legitimate defense;

c) Exceeding the limits of the state of necessity.

d) Full coverage of the material damage caused by the offence, during the criminal investigation or trial, until the first trial date, if the perpetrator has not benefited from this circumstance within a period of 5 years prior to the commission of the offence. The mitigating circumstance does not apply in the case of the following crimes: against the person, aggravated theft, robbery, piracy, fraud committed through computer systems and electronic payment means, outrage, judicial outrage, abusive behavior, offences against public safety, offences against public health, offences against religious freedom and respect due to deceased persons, against national security, against the fighting capacity of the armed forces, offences of genocide, offences against humanity and war, offences regarding the state border of Romania, offences under the legislation on the prevention and combating of terrorism, corruption offences, offences assimilated to corruption crimes, those against the financial interests of the European Union, offences regarding non-compliance with the regime of explosive materials, nuclear materials or other radioactive materials, regarding the legal regime of drugs, regarding the legal regime of drug precursors drugs, those regarding money laundering, those regarding civil aviation activities and those that may endanger flight safety and aviation security, those regarding witness protection, those regarding the prohibition of organizations and symbols of a fascist, racist or xenophobic nature and the promotion of the cult of persons guilty of committing offences against peace and humanity, those regarding trafficking in organs, tissues or cells of human origin, those regarding the prevention and combating of pornography and those regarding the adoption regime.

(2) The following may constitute judicial mitigating circumstances:

a) The efforts made by the offender to eliminate or diminish the consequences of the offense;

b) The circumstances related to the committed act, which diminish the seriousness of the offense or the dangerousness of the offender”.

Strong disturbance or intense emotion caused by the victim. This circumstance refers to offences committed under the impulse of an intense emotional reaction caused by serious illicit actions of the victim (violence, serious insult, provocation). It is a fair provision, aiming to understand the human nature of reactions in the face of extreme situations. However, the application of this circumstance requires careful analysis in order to avoid abuses and unjustified pretexts. The circumstance

that the defendant caught his concubine having sexual relations with the victim, whom he repeatedly hit, causing her death, represents a state of strong disturbance caused by the victim's attitude (Criminal Decision no. 114/Ap of May 23, 2001, Braşov Court of Appeal).

Exceeding the limits of self-defense – this circumstance applies when the person who acted to defend himself or someone else reacted disproportionately to the attack. It is a valuable provision, which underlines that self-defense is a fundamental right, but must be exercised proportionally. However, the assessment of “excessive limitation” can be subjective and requires clear legal expertise.

Exceeding the limits of necessity refers to situations where the perpetrator acted to prevent an imminent danger, but created a greater harm than the one he wanted to avoid. Similar to self-defense, this circumstance recognizes the decision-making difficulties in extreme situations, but requires a detailed analysis to determine proportionality.

Covering the material damage before the first trial shows a reparative behavior and can influence the reduction of the sentence. However, this circumstance does not apply to an extensive list of serious offences, such as those against the person, corruption, or national security. The exclusion of certain offences is justified, given their seriousness and social impact. However, it is important that the reparation of the damage is considered a gesture of good faith, not just an attempt to obtain a reduction of the sentence.

With regard to *efforts to mitigate the consequences*, this provision recognizes the active involvement of the defendant in remedying the negative effects of the act. Courts must objectively assess whether these efforts are significant or merely symbolic.

Circumstances that mitigate the seriousness of the offence or the dangerousness of the offender allow the court to take into account the particular circumstances of the case or the perpetrator. It is a flexible provision, but it can generate inconsistency in the application of the law.

According to art. 76 of the Romanian Criminal Code, the effects of mitigating circumstances are: “(1) In the event that there are mitigating circumstances, the special limits of the punishment provided by law for the offence committed shall be reduced by one third. (2) If the punishment provided by law is life imprisonment, in the event that mitigating circumstances are retained, the penalty of imprisonment from 10 to 20 years shall be applied. (3) The reduction of the special limits of the punishment shall be made only once, regardless of the number of mitigating circumstances retained”.

Aggravating circumstances

Aggravating circumstances are factors that increase the seriousness of the act and lead to the application of a more severe punishment. They are regulated by article

77 of the Criminal Code. The following circumstances constitute aggravating circumstances according to art. 77 of the Romanian Criminal Code:

- a) The commission of the act by three or more persons together;
- b) The commission of the offence by cruelty or subjecting the victim to degrading treatment;
- c) The commission of the offence by methods or means likely to endanger other persons or property;
- d) The commission of the offence by an adult offender, if it was committed together with a minor;
- e) The commission of the offence by taking advantage of the state of obvious vulnerability of the injured person, due to age, health, and infirmity or other causes;
- f) The commission of the offence in a state of voluntary intoxication with alcohol or other psychoactive substances, when it was provoked with a view to committing the offence;
- g) The commission of the offence by a person who took advantage of the situation caused by a calamity, a state of siege or a state of emergency;
- h) Committing the offence for reasons related to race, nationality, ethnicity, language, religion, gender, sexual orientation, political opinion or affiliation, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection or for other circumstances of the same kind, considered by the perpetrator as causes of the inferiority of a person in relation to others”.

The commission of the act by three or more persons together. The participation of several persons in the commission of a offence indicates greater premeditation, increased organization and high social danger. This circumstance underlines the seriousness of group crimes, which often create difficulties in law enforcement and increase fear in the community. The application of a more severe penalty is justified in order to deter such actions.

The commission of the offence by means of cruelty or degrading treatment. Cruelty and degrading treatment denote an attitude lacking in humanity and an intensification of the suffering of the victim. This circumstance is essential to protect the fundamental rights of individuals and to sanction inhumane behavior.

Committing the offence by methods or means that endanger other persons or property. This includes situations in which the methods used to commit the offence create an extensive danger to other persons or property, for example, the particular aggressiveness of the defendant who committed the offence of robbery in the home of the injured party, the specific manner of committing it (blocking the door and lighting a fire) proves an increased dangerousness, which must be sanctioned accordingly (Criminal Decision no. 235/Ap of September 11, 2003, Braşov Court of Appeal). This provision highlights the importance of protecting public safety and material property, and the seriousness is increased by the indirect impact on third parties.

Committing the offence by an adult together with a minor. This situation involves the exploitation of the vulnerability of a minor, who can be influenced or manipulated by an adult. It is an important provision that protects minors and severely sanctions their negative influence. The application of this circumstance sends a clear message about the need to protect young people.

Taking advantage of the victim's state of vulnerability. Vulnerability can be determined by factors such as age, health, disability or other causes. It is a circumstance that protects vulnerable people, highlighting the increased moral and legal responsibility of criminals who abuse this condition.

Committing the offence in a state of voluntary intoxication caused for the commission of the act. This concerns cases in which the defendant induces his state of intoxication in order to reduce his inhibitions and facilitate the commission of the offence. The aggravation of the punishment is justified, since voluntary intoxication reflects additional premeditation and a lack of responsibility.

Taking advantage of situations caused by calamities, states of siege or emergency. In such situations, the offences committed demonstrate a serious lack of social solidarity and the exploitation of crisis circumstances. This sanctions behavior lacking empathy and respect for the community in moments of collective vulnerability.

Committing the crime for discriminatory reasons. Crimes motivated by hatred towards race, religion, gender, sexual orientation, disability or other personal characteristics reflect intolerance and can generate major social tensions. It is an essential provision for combating discrimination and protecting equality in society. The seriousness of this circumstance is justified by the wide-ranging impact on victims and society. The effects of aggravating circumstances are provided for in art. 78 of the Romanian Criminal Code: "(1) In the event of aggravating circumstances, a penalty up to the special maximum may be applied. If the special maximum is insufficient, in the case of imprisonment an increase of up to two years may be added, which may not exceed one third of this maximum, and in the case of a fine an increase of no more than one third of the special maximum may be applied. (2) The increase in the special limits of the penalty shall be made only once, regardless of the number of aggravating circumstances retained".

The courts have the responsibility to assess the mitigating and aggravating circumstances in light of the existing evidence. The final decision must reflect a balance between the gravity of the act and the individual characteristics of the defendant. In addition, the courts must respect the principles of proportionality and legality. The regulation of mitigating and aggravating circumstances in the Romanian Criminal Code allows for a flexible adaptation of sentences to the particularities of each case. These mechanisms contribute to ensuring fair criminal justice, which responds to the needs of society and respects the individual rights of the defendants. At the same time, they emphasize the importance of the context of the act and personal factors in the individualization of the act of justice.

Conclusion

The judicial individualization of punishments is a complex process essential for ensuring fairness and proportionality in the application of criminal sanctions. It requires a detailed analysis of the circumstances of the act, the profile of the offender, and the social effects of the punishment, thus contributing to the administration of justice in a responsible and efficient manner. The judge has a margin of appreciation to adapt the punishment according to the particularities of the case. However, he must respect the minimum and maximum limits provided for by law, as well as thoroughly motivate the choice made. This principle guarantees respect for human rights and the balance between prevention and re-education, avoiding excessive or weak sanctions. It also contributes to the social reintegration of the convicted person and to the deterrence of criminal behavior.

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