A BRIEF GENERAL PRESENTATION OF THE MITIGATING AND AGGRAVATING CAUSES IN ROMANIAN CRIMINAL LAW, IN THE CONTEXT OF SUMMARY COMPARATIVE REGARDS TOWARDS CERTAIN OTHER NATIONAL CRIMINAL LAW SYSTEMS*

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Abstract: *The present article aims to describe a general scheme of the mitigating and aggravating causes in existence in the present Romanian criminal law system. This topic will be placed into the bigger context of some brief comparative regards towards the (general) mitigating and aggravating causes regulated by certain others national criminal law systems, as they emerged from the presentation of the country reports submitted with the occasion of the 2nd Criminal Law Reforms Congress, hosted by the Faculty of Law from Istanbul University (Turkey), between 30th May and 6th June 2015, with the main theme – "Criminal Law Sanctions: The gap between idea and use", event attended by the author of this article, as (co)representative of Romania.*
Keywords: *reasons (causes) for the mitigation of punishment; reasons (causes) for the aggravation of punishment; Romanian criminal law; comparative criminal law; 2nd Criminal Law Reforms Congress, Istanbul (Turkey), 2015, "Criminal Law Sanctions: The gap between idea and use".*

1. THE GENERAL PRESENTATION OF THE REASONS (CAUSES) FOR THE MITIGATION OR AGGRAVATION OF PUNISHMENT IN ROMANIAN CRIMINAL LAW

The present Romanian criminal law is represented by a relatively new legislation, entered into force on the 1st of February 2014. In what regards the aspect of regulating the mitigating and aggravating reasons influencing the punishment, this new legislation keeps up the general tendency of balancing old provisions (inspired by Romania's own regulatory tradition in the field of criminal law) with new ones, inspired by foreign legislative solutions adopted in certain others national criminal law legislations.

Thus, the new Romanian Criminal Code (in short, the R.C.C.), regulates both general and special reasons (causes) of mitigation or aggravation of punishment. The difference is not only the part of the R.C.C. where they are prescribed (in principle, the general causes being regulated into the general part of the R.C.C., and the special causes

being regulated into the special part of the R.C.C.), but also (mainly) their area of incidence. The general mitigating or aggravating causes produce their specific effect upon the punishment of an indeterminate number of offences (all of them, or main categories, made up of numerous particular offences, different from one another in a number of aspects, besides the common thing that a certain mitigating or aggravating reason is applicable to them), while the special mitigating or aggravating causes produce their specific effect only upon a certain offence, or a small category of offences (bonded together, also, by other reasons than that of a certain mitigation or aggravation cause being applicable to all them).

The general causes of mitigation or aggravation of punishment are subsequently classified into two categories, namely: state and circumstance. The main difference regards their effects upon the punishment. Thus, they constitute (general) mitigating or aggravating circumstances all the reasons of mitigation or aggravation provided by the legislator under this particular classification, or those who can be retained as such by the courts, as a recognized prerogative awarded by the legislator to the judiciary (it comes out that general circumstances can be subsequently classified as legal or judicial ones; the legal ones are compulsory for the court, meaning that the judge cannot reject their observation and their retention, in his decision - apart from the effect that they will produce upon the punishment; the judicial ones are circumstances who's observation and retention, in the courts decision, is left to the motivated discretion of the magistrate - also apart from the effect they will produce upon the punishment; it must be said that only - certain - judicial mitigating circumstances are allowed by the present R.C.C., and no judicial aggravating circumstances may be retained, by difference from Romania's previous criminal legislation).

All the general mitigating circumstances produce the same mitigating effect, no matter if they were retained as legal or as judicial mitigating circumstances. As well, all the general aggravating circumstances produce the same aggravating effect upon the punishment. Those *effects* are as follows:

- In case of retaining *general mitigating circumstances* (no matter if they are legal or judicial ones), the effective punishment for the offence committed will be [mandatory prescription] awarded not between the special limits of the punishment prescribed by the law for that particular offence, but between those special limits reduced by a third (both the minimum and the maximum), with the sole interdiction that, by this reduction, the effective punishment may not be set under the general minimum limit of that certain category of punishment (as prescribed by law); if the prescribed punishment for that crime is lifetime imprisonment (detention for life), the mitigation effect of a general mitigating circumstance will be the exchange of the category of punishment applicable, namely, instead of detention for life, the perpetrator will suffer the application of imprisonment between 10 to 20 years. If more than one general mitigating circumstance is retained by the court, the mitigation effect produced upon the punishment will not be multiple, meaning that no matter how many general mitigating circumstances are being retained in a single case (only one, or several of them), the effective punishment will continue to be set between the same limits (the ones already indicated above), the reduction of these limits not being done separately in relation to each mitigating

circumstance retained, but only once (of course, between the new minimum and maximum limit, the court will be inclined to set a lower effective punishment when more general mitigating circumstances are being retained, then when only one is taken into consideration). In short, it can be said that, in Romanian criminal law, the effect of retaining a general mitigating circumstance (either a legal one, or a judicial one), consists in a mandatory reduction of the punishment [relevant legislation: art.76 and art.2 par.3 of the R.C.C.].

- In case of retaining general aggravating circumstances, the effective punishment for the offence committed may be awarded between the special limits of the punishment prescribed by the law for that particular offence [similar situation with the hypothesis when no aggravating circumstances are retained], and, if the special maximum limit of the punishment prescribed by the law for that offence is not regarded by the court as sufficient, because of the aggravating circumstance in which the offence was committed, than, the court may [optional provision] set an effective punishment higher than the special maximum of the punishment prescribed by law for that offence. In the case of imprisonment, the effective punishment thus set may not exceed with more than 2 years, nor with more than one third (either one of two is smaller) the special maximum of the punishment prescribed by the law for that offence. In the case of fine, the effective punishment thus set may not exceed with more than one third the special maximum of the punishment prescribed by the law for that offence. In either case, by increasing the punishment, the court may not pass over the general maximum prescribed by the law for that particular type of punishment. If more than one general aggravating circumstance is retained by the court, the aggravation effect produced upon the punishment will not be multiple, meaning that no matter how many general aggravating circumstances are being retained in a single case (only one, or several of them), the effective punishment will continue to be set between the same limits (the ones already indicated above), the aggravation effect not being produced separately in relation to each aggravating circumstance retained, but only once (of course, with the respect of the limit of aggravation, the court will probably be inclined to set a higher effective punishment when more general aggravating circumstances are being retained, then when only one is taken into consideration). In short, it can be said that, in Romanian criminal law, the effect of retaining a general aggravating circumstance consists in a optional increase (in a certain amount) of the punishment [relevant legislation: art.78 and art.2 par.3 of the R.C.C.].

According to art.75 par.1 from the R.C.C., *the general legal (mandatory) mitigating circumstances are*: a) committing the offence under the influence of a strong disturbance or emotion, caused by the victim either by violence, by infringement of a person's dignity or by other serious illicit actions (named, by the doctrine, *the provocation excuse*); b) the exceeding of the limits of legitimate defense (an intensive exceeding, meaning that the defense is more aggressive than the attack, and, also, an exceeding not based on powerful emotion / fear caused by the attack, because in such situation, the exceeding of self defense will be non-imputable - meaning that the act will no longer be officially regarded as an offence, according to the regulation prescribed by art.26 of the R.C.C. - and not only excusable - in this case, the act is regarded as an offence, but the perpetrator benefits from this general mitigating legal circumstance); c)

exceeding the limits of a state of necessity (also an intensive exceeding, meaning that the salvation act is more harmful than the danger would have been in it's consequences, if the salvation action would have not taken place, and, also, an exceeding based on the conscience of the supplementary harm thus produced, because in the opposite situation, the exceeding of the limits of a state of necessity will be non-imputable - meaning that the act will no longer be officially regarded as an offence, according to the regulation prescribed by art.26 of the R.C.C. - and not only excusable - in this case, the act is regarded as an offence, but the perpetrator benefits from this general mitigating legal circumstance); 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.

In what regards the last of these general (legal) mitigating circumstances, the law also prescribes o clause of non-application, based upon the type of offence committed. Thus, this last circumstance will not apply in relation to one (or more) of the following offences: offense against the person, aggravated theft, robbery, piracy, fraud committed through computer systems and electronic means of payment, assault, judicial assault, abusive behavior, offenses against public safety, offenses against public health, offenses against freedom of religion and respect due to the deceased, against national security, against the fighting capacity of the armed forces, crime of genocide, crimes against humanity and war crimes, offenses against Romanian state border, offenses against the law on preventing and combating terrorism, corruption offenses, offenses assimilated to corruption offenses, or against the financial interests of the European Union, violation of regulations concerning explosive, nuclear and radioactive materials, drug offenses, drug precursors offenses, money laundering offenses, offenses against civil aviation activities and which might endanger flight safety and aviation security, offenses against witness protection, offenses against bans on organizations and symbols with fascist, racist and xenophobic character and against the promotion of worship of persons guilty of crimes against peace and humanity, offenses relating to trafficking in human organs, tissues or cells, offenses relating to preventing and combating pornography and relating to adoption rules.

According to art.75 par.2 from the R.C.C., the general judicial (optional) mitigating circumstances are: a) the efforts made by offenders to eliminate or reduce the consequences of their offense; b) any other circumstances relating to the committed offense, which reduce the seriousness of the offense or the threat posed by the offender. It is clear that, even if, apparently, the list of judicial (optional) general mitigating circumstances seems to be limited only to circumstances described by the law, in reality, the second general judicial mitigating circumstance, as prescribed, is so loosely formulated that it really gives the court the power to retain (in a motivated manner, but, ultimately, at the discretion of the judge), almost any aspect, with the smallest connection to the act committed or with the person who committed it, as a general mitigating circumstance. Though this decision rest in the courts hands, once retained as a mitigating circumstance, that particular event will produce the standard effect of any mitigating circumstance, namely, the obligation of setting the punishment between the special limits provided by the law for that offence, reduced with one third.

Regarding the general aggravating circumstances, they are as follows (art.77 R.C.C.): a) committing the offence by three or more persons together; b) committing the offence with cruelty or subjecting the victim to a degrading treatment; c) committing the offence by methods or means of a nature likely to endanger other persons or assets; d) committing the offence by an offender who is of age, if he / she was joined by an underage person; e) committing the offence by taking advantage of a clear state of vulnerability of the victim, caused by age, health, impairment or some other reasons; f) committing the offence in a state of voluntary intoxication with alcohol or other psychoactive substances, when such state was induced with a view to committing the offense; g) committing the offence by a person who took advantage of the situation caused by a disaster, of a state of siege or a state of emergency; h) committing the offence 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.

As it was already indicated, the current R.C.C. does not prescribe anymore the possibility for the court to retain other situations (than these) as general causes of aggravating the punishment. If the judge considered that another situation produces an aggravating effect upon the criminal liability of the perpetrator of some offence, it can not impose a punishment exceeding the special limit prescribed by the law (as it can in case of retaining one or more of these general aggravating circumstances), being able only to apply a more serious punishment between the special limits ordinary prescribed by the law for that particular offence.

Beyond the general circumstances of mitigation or aggravation of punishment, there are also other general provisions regulating criminal law institutions which may produce (optional) or who produce (mandatory) a mitigating or aggravating effect upon the punishment, namely a different effect than the one prescribed in case of the circumstances. Those cases are called by the doctrine "states" of mitigation or aggravation of punishment, and they have, each one, a separate effect provided for by the law in regard to the punishment which is to be set in certain particular cases. They are also general reasons for mitigating or aggravating the punishment, because their effect has the potential ability to be produced in an indeterminate number of cases, in connection to indeterminate (or largely determined group) of offences.

Thus, as *general state of mitigation*, the current R.C.C. regulates the attempt of committing one of the offences for whom the attempt stage of *iter criminis* is both naturally possible and legally relevant (signaled as such by express legal disposition). According to the provision of art.33 from R.C.C., in case of attempt, the effective punishment will be set by the court between the special limits of punishment prescribed by law for that offence, reduced to a half (so, between the half of the minimum and the half of the maximum punishment prescribed by law), without the possibility of descending below the general minimum of the type of punishment (art.2 par.3 R.C.C.). When the attempt is related to a crime for which the law prescribes the punishment of detention for life, the perpetrator will be punished with imprisonment between 10 to 20 years. As an exception (through the doctrine discussed if this is an exception related to

the treatment of attempt, or a case in which the attempt is no longer considered as such, but becomes regarded as a form of offence assimilated to the consumed stage of the offence), art.36 par.3 of the R.C.C. regulates that, in case of a complex incrimination (an offence who comprises in it's legal definition, as part, yet another offence, who may be also committed separately, by its own), if committed by *praeterintention* (a over fulfilled intentional behavior, meaning that the *mens rea* manifest itself by initial intention to produce a smaller harmful result, specific to a certain offence, followed by the production of a more harmful result, by negligence, the whole act being prescribed as such by the law), and if only the secondary (final, more harmful) result is achieved, the punishment will be set between the full special limits prescribed by law, and not between these limits reduced to a half (as in regular cases of attempt). *E.g.*: attempt to robbery, in which case the perpetrator pushes the victim, or hits it slightly, but the unbalanced victim drops to the ground, suffers a hit to the head and dies, and the perpetrator runs without taking any goods; or, the same scenario in relation to a perspective victim of rape, who dies before being raped, because of the hits (normally, non-frightening life hits) produced by the offender in order to subdue her (etc.).

In the former R.C.C. there was regulated yet another general state of mitigation of punishment, namely the state of minority of the criminally liable underaged person, but this case no longer has this legal nature in the current legislation, because the new R.C.C. provides that this type of delinquents may only be criminally sanctioned by means of specific sanctions, named "educative measures", which are a distinct category of criminal sanctions, apart from punishment. Thus, it is no longer possible to regard the minority of criminal offenders as a state of mitigating the punishment, being a correct assessment that it is a state of diversification of the criminal treatment (reaction) against them, in comparison with the situation of offenders who are at age.

As *general states of aggravation of punishment*, the R.C.C. regulates: the continuing offence; the committing of multiple offence before a final courts decision of conviction is passed for at least one of them (committing concurrent offences); the recidivism (the relapse in committing offences, after a final conviction decision for another offence was passed, but only in certain conditions); the intermediate plurality of offences (situation similar to a type of recidivism, but without at least one of the conditions of the recidivism to be checked).

According to art.35 par.1 R.C.C., an offense is said to be continuing when a person commits, at various time intervals but for the realization of the same resolution and against the same passive subject, actions or inactions each having the content of the same offense (*e.g.*: repeated theft, for several nights, in accordance to the same plan, of building materials, from the same construction site). Art. 36 par. 1 R.C.C. prescribes that, in such a case, the penalty provided by law for the offense committed applies for the continuing offense, to which a maximum increase of 3 years can be added up for imprisonment, respectively at least a third in case of fines.

As regards the committing of multiple, concurrent offences, before receiving a final conviction for any of them, the present R.C.C. (art.39) provides several sanctioning systems in case of main punishment, namely: the absorption system, if at least one of the penalties is detention for life; the limited additions system, when all penalties are either

imprisonment or fines (the court will determine a punishment for each offence, and then it will apply the highest of them, to which it will mandatory add a third of the amount / duration of the other penalty / of the sum of the others penalties) – as an exception, the law prescribes that when several penalties of imprisonment have been established, if, by adding to the heaviest penalty a third of the total of all other penalties of imprisonment, the (mathematically calculated) result will go pass the general maximum of imprisonment (set at 30 years by art.60 R.C.C.) with more than 10 years, and for at least one of the multiple offenses the penalty provided by law is of 20 years imprisonment or more, the penalty of life imprisonment can be applied instead (even if it is not even stipulated by the law for any of the offences committed by the perpetrator) – art. 39 par. 2 R.C.C.; the cumulative system, when one / some penalty / penalties consist in imprisonment, and another / others is a fine / are fines (they will both be executed).

In the case of recidivism (according to art.41 par 1 R.C.C., a repeat offense exists when, after a conviction and sentence of more than one year of imprisonment remains final, and before rehabilitation or completion of sentenced term, the convicted individual commits another violation with direct intent or oblique intent - praeterintention - for which the law mandates a term of more than one year of imprisonment), it is necessary to distinguish between two forms: post-conviction recidivism, and post-execution recidivism. In the first case, the relapse in committing offences takes place before the punishment for the first offence is completely executed (or legally regarded as being executed). In such situation, according to art.43 par.1 R.C.C., if, before the previous sentence has been fully served or deemed as served, a new offense is committed and constitutes a repeat offense, the penalty attributed to it shall be added to the time of the previous sentence or the time not yet served from the previous sentence (so, the system of cumulative punishments). On the other hand, is the perpetrator relapses by committing multiple concurrent offences in the same situation, art. 43 par. 2 R.C.C. indicates that if at least one of these is a repeat offense (checks all the conditions for the existence of recidivism), penalties shall be merged as under the stipulations concerning multiple (concurrent) offenses and the resulting sentence shall be added to the time of the previous sentence or the time not yet served from the previous sentence. The same exceptional possibility prescribed in art. 39 par. 2 R.C.C. is also provided by art. 43 par. 3 in case of recidivism (the possibility for the court to apply, in some particular conditions, the punishment of detention for life, instead of that of imprisonment, even if for none of the offences committed the law does not provide such a punishment). Of course, if any of the punishments applied (the first or the second one) is detention for life, the absorption system will become active. In the situation of post-execution recidivism, the newly committed offence takes place after the former punishment was executed or regarded as such, but before rehabilitation (or before the completion of the term of rehabilitation). Art.43 par.5 R.C.C. prescribes that if after the previous sentence has been fully served or deemed as served, a new violation is committed as a repeat offense, the special thresholds for the penalty under the law for the new violation shall be increased by half.

The intermediate plurality of offences represents a situation positioned between the case of multiple (concurrent) offences, and the case of recidivism. In such a case, after a conviction remains final and before the date the sentence has been fully served or

deemed as served, the convicted person commits a new violation and the legal conditions are not met for the state of repeat offense to be declared (art. 44 par. 1 R.C.C.). The similarity towards the situation of multiple (concurrent) offences manifests itself at the level of sanctioning the perpetrator for committing this type of plurality of offences, the legislator indicating that the same rules will be applied here also (art. 44 par. 2).

It is indicated as yet another difference between states of mitigation / aggravation of punishment, and circumstances of the same sort, that (as it was already been indicated), the circumstances produce their specific effect only once, even if more then one has been retained, while the states produce their effect separately, each one, cumulating the mitigating or aggravating effect that they produce not only to the effect of the circumstances, but also to the effect of other states of the same type (this situation mainly interest the situation of multiple aggravating causes).

The R.C.C. provides also some special causes for the mitigation or aggravation of the punishment, whose effects are limited only to one particular determined offence, or a small determined group of related offences. Regarding those institutions, an important topic of analysis refers to the extend of clarity and the degree of correct legal or judicial determination of the proper nature of such special causes, and also to the distinction that separate them (or who should separate them) from other possible techniques the legislature has at disposal in order to express its mitigating or aggravating tendencies. Thus, alongside provisions expressly indicated as "special causes for reduction or aggravation of punishment", there also exists the method of developing attenuated or aggravated forms of some offences (forms who remain legally dependent to the basic particular incrimination whose derivates are), as well as the process of creating some autonomous offences by starting from a certain offence, adding to it mitigated or aggravated constitutive elements, and prescribing the result as some other separate offence than the one from whom it started the alteration process. The current problem in existence, in Romanian criminal law, towards all this methods, is a lack of clear rules and consistency in what regards the reasons why, in particular cases, one of these different paths is preferred by the legislator to the others, and what implications / effects would have been activated if another way would have been chosen; more so, if there are better paths to follow, in separate situation, and what gains or dangers are associated with following one legislative method, and not another one, in various particular cases. Sometimes, the legislators choice is not so clearly indicated, and it becomes the doctrine's and practice's job to determine what the presumptive will of the lawmaker was, choosing from these three alternatives; not always, in such cases, the choice is easy, and not always the effects of choosing one interpretation to another one are similar for all the persons involved in the judicial proceedings.

An important general rule related to all the institutions presented so far is the one regulating the question of priority who is to be stated between all of these various causes for aggravating or mitigating criminal liability. The general rule in this regard is stipulated by art. 79 of the R.C.C., named "*Concurrence between mitigating and aggravating causes*". In regard to the concurrence of (only) mitigating causes, par. 1 states that when two or more stipulations are applicable to one offense, that have the effect of reducing a penalty, the special threshold of the penalty stipulated by law for that

offense shall be reduced by successively applying (firstly) the stipulations concerning attempt, (secondly, the ones regarding) mitigating circumstances and (finally, if they exist, stipulations regarding) special cases for sentence reduction, in that order. Related to the concurrence of aggravating causes, par.2 of art.79 R.C.C. indicates that when two or more aggravating stipulations are applicable to one offense, the penalty shall be established by successively applying the stipulations concerning aggravating circumstances, continuing offense, multiple offenses or repeat offense. By difference to the previous regulation, in this case it is not indicated specifically if the indicated order is compulsory or not. In addition, there is no reference to the place / position of the special cases for aggravation of punishment, though such dispositions are (arguably) provided for by several dispositions from the special part of the R.C.C. (and also, from some special criminal laws). As such, there is some criticism towards the legislative formulation of this provision.

Finally, according to art.79 par.3 R.C.C., when one or more stipulations that have the effect of reducing a penalty, are applicable to one offence, and one or more stipulations that have the effect of increasing a penalty are applicable to the same case, the special threshold of the penalty stipulated by law for that offence shall be reduced according to the rules indicated by par. 1, after which the resulting penalty shall be increased according to rules described by par. 2. So, the mitigation reasons prevail before the aggravation ones, and each produces, separately, but in a specific order, it's own effect upon the punishment.

2. BREIF COMPARATIVE REGARDS TOWARDS THE REGULATION OF SOME MITIGATING AND AGGRAVATING CASES IN CERTAIN FOREIGN CRIMINAL LAW LEGISLATIONS, AS THEY EMERGED FROM THE COUNTRY REPORTS SUBMMITED TO THE 2ND CRIMINAL LAW REFORMS CONGRESS (ISTANBUL, TURKEY: 2015), REGARDING "CRIMINAL LAW SANCTIONS: THE GAP BETWEEN IDEA AND USE"

Between 30th May and 6th June 2015, the Faculty of Law from Istanbul University (Turkey) organized the 2nd Criminal Law Reforms Congress, with the main theme: "Criminal Law Sanctions: The gap between idea and use". The author of the present article attended the event, as (co)representative of Romania. The academic event consisted in representatives of some 30 countries elaborating, submitting, presenting and comparing their national reports upon the topic of criminal law sanctions, as those are regulated in their specific law systems.

As it was expected, apart some dramatic differences (for example, mainly between the European countries and non-European countries, in regard to different legislators attitude towards the regulations of the death penalty), there were to be also observed some close relations between different legislators solutions in resolving the same type of problem. This can be explained not only by the harmonization tendencies brought by the development of international treaties in matters regarding (also) some aspects of criminal law, but also by the legislators tendencies to renew and reform national criminal law systems thru the process of implementing viable and modern

solutions encountered in other national criminal law systems than their own. The openness that is manifested by many present legislators is bringing closer systems of law separated by enormous geographical and cultural gaps, and it encourages the progress that will certainly come by having more and more harmonized legislations worldwide.

This tendency was to be observed also in the field of the legal causes for mitigation or aggravation of punishment, and we will briefly refer to some examples, putting them into connection to the Romanian criminal law system in this matter, as it was depicted above.

Thus, in regard to the mitigating cases regulated by law, most national legal systems regulate the *attempt* either as a particular state with effect of reduction of punishment (either mandatory, or optional), either as a mitigating circumstance, alongside other causes with the same legal status [this it seems to be the case, for example, in Bosnia and Herzegovina – see: Borislav Petrovic, Amila Ferhatovic, *Country report for Bosnia and Hezegovina. Penal law sanctions*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 474]. Sometimes, this status is recognized either also to, either only to [for such cases see: Wlodzimiers Wrodel, Adam Wojtaszyk, Witold Zontek, *Poland country report*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 352] the impossible attempt, which in Romanian criminal law system is not regarded at all as an act capable to attract criminal liability.

Some systems provide (as the former Romanian system) the *minority* of the underaged offender, as a cause of mitigating the penalty [it is, for example, the case of China – see: Shizhou Wang, *Country report of Penal law sanctions in the People's Republic of China*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. II, p. 74], while others impose the same system that is currently in force in Romania, namely, the regulation of a entirely separate type of criminal sanctions as the only kind of criminal reaction towards this particular offenders, reasons for which the minority of the offender may not be still regarded as a reasons of mitigating *the penalty*, but as a cause of differentiating the criminal liability of responsible underaged offenders, by the criminal liability of adults. It appears that such a case can be found, for example, in Poland [Wlodzimiers Wrodel, Adam Wojtaszyk, Witold Zontek, *Poland country report*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 359]. Sometimes, though, the age factor, as reason for mitigating the penalty, is also active in opposite cases, namely of *old age* of the perpetrator; for example, such a motive seems to be usually retained by the Canadian jurisprudence [Nikolai Kovalev, *Penal Law Sanctions. National report on Canada*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 508], and is prescribed to by Norway's legislation, as the case consisting in that "the penalty would be a heavy burden due to advanced age, illness or other circumstances" [Ulf Stridbeck, *Penal Law Sanctions in Norway*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference

Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 564]. In Romania, the law also provides that, if the offender who committed a crime for which the detention for life is stipulated, turns 65 years old before the final sentence is passed, he or she will no longer be convicted to lifetime imprisonment, but to imprisonment for 30 years; at the same age, if turned when executing a lifetime imprisonment, the offender may be released, if he / she had a good behaviour and the punishment is replaced with imprisonment for 30 years, because all the time executed as detention for life it will be deduced from the 30 years of imprisonment into which the penalty is turned to.

Many national criminal law legislations give a special place in regulating the cases of mitigation of punishment to the aspects based on the offenders actions toward *compensating the victim, reducing the impact of the damage* done by committing the offence or coming to an *understanding (between perpetrator and victim)* in regard to the steppes needed in order to reduce the impact of the committed offence upon the victim or it's family. For example, dispositions in this regard are provided in Poland [Wlodzimiers Wrodel, Adam Wojtaszyk, Witold Zontek, *Poland country report*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 353; Davor Derencinovic, Marta Dragicevic Prtenjaca, *Croatia – Penal Law Sanctions*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 441; Byung-Sun Cho, *Penal law sanctions of Korea. An outline of country report of Korea*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. II, p. 160].

An interesting mitigation effect (though kind of exotic for the Romanian legislative landscape, which does not regulate such a case) is given by some legislators to the *consequences produced by committing an offence (especially a non-intentional offence) upon the perpetrator itself, or his close relations*. There is such a case in Poland's criminal law legislation [Wlodzimiers Wrodel, Adam Wojtaszyk, Witold Zontek, *Poland country report*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 353; Davor Derencinovic, Marta Dragicevic Prtenjaca, *Croatia – Penal Law Sanctions*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 442; Ulf Stridbeck, *Penal Law Sanctions in Norway*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 564].

Also, there are often encountered as mitigating circumstances the cases residing in *overstepping the boundaries of self-defence* and *overstepping the boundaries of urgency*, as in Romanian criminal law [Borislav Petrovic, Amila Ferhatovic, *Country report for Bosnia and Hezegovina. Penal law sanctions,* 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 474].

As for the aggravating causes regulated by most legislators, the *recidivism* seems to be a relatively constant reason for resorting either to a longer or more drastic

punishment, either to adopt some other kind of restrictive measures upon the individual who finds himself in such a situation. Sometimes, this actions are mandatory [it is, for example, the case in China – see: Shizhou Wang, *Country report of Penal law sanctions in the People's Republic of China*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. II, p. 76; apparently, a similar situation exist in South Korea - Byung-Sun Cho, *Penal law sanctions of Korea. An outline of country report of Korea*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. II, p. 168], in other legislations they are optional. For example, in Poland, it seems that the sanction for recidivism is the possibility, recognized to the court, to impose a penalty exceeding by half the upper limit of a statutory penalty provided for a certain offence [Wlodzimiers Wrodel, Adam Wojtaszyk, Witold Zontek, *Poland country report*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 352; see also: Ulf Stridbeck, *Penal Law Sanctions in Norway*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 564]; in Italy, the increase can be by half, or even by two thirds [Renzo Orlandi, *Penal Law Sanctions in Italy*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 609]; in Canada (and not only), apparently, previous convictions, as a personal state of aggravation of punishment, is not provided by law, but recognized by the courts, in a jurisprudential way [Nikolai Kovalev, *Penal Law Sanctions. National report on Canada*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 507]. Sometimes, even bad prior conduct (not only previous criminal convictions), possibly deduced even from acquittal decisions, may aggravate an offenders punishment [see: Stephen C. Thanam, Lauren Graham, *Penal Law Sanctions. Country report: United States of America*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. II, p. 39]

Also, many criminal legislations recognise an aggravating effect to other types of committing multiple offences, as it is the case of *concurrent offences* [Davor Derencinovic, Marta Dragicevic Prtenjaca, *Croatia – Penal Law Sanctions*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 443; Ulf Stridbeck, *Penal Law Sanctions in Norway*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 564], but also to some forms of committing a single offence, generally to the *continuing offence*, similar to the Romanian legislator [Davor Derencinovic, Marta Dragicevic Prtenjaca, *Croatia – Penal Law Sanctions*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 443].

There are also some recurrent aggravating circumstances similar to some encountered also in R.C.C., as it is the *committing of the offence by bias, prejudice or*

hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor [Nikolai Kovalev, *Penal Law Sanctions. National report on Canada*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 506], or whether the *crime* was *committed in a particularly dangerous way* [Ulf Stridbeck, *Penal Law Sanctions in Norway*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 563], or whether the *crime* was *committed against a defenceless person* [Ulf Stridbeck, *Penal Law Sanctions in Norway*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 563].

Of course, the aspect indicated above have only the status of examples, the present article being out of proportion as it is. We would like to come back upon the comparative regards topic (that we only began approaching here), into another (future) article. Meanwhile, we hope that the complete (maybe partially reviewed) reports submitted to the Istanbul 2015 Congress on criminal law sanctions will be published, giving us a more documented occasions to continue this line of academic interest in regard to the mitigation and aggravation reasons in comparative criminal law.

References

[1] Petrovic, Borislav; Ferhatovic, Amila: *Country report for Bosnia and Hezegovina. Penal law sanctions*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I.
[2] Cho, Byung-Sun: *Penal law sanctions of Korea. An outline of country report of Korea*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. II.
[3] Derencinovic, Davor; Dragicevic Prtenjaca, Marta: *Croatia – Penal Law Sanctions*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I, p. 441.
[4] Kovalev, Nikolai: *Penal Law Sanctions. National report on Canada*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I.
[5] Orlandi, Renzo: *Penal Law Sanctions in Italy*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I.
[6] Stridbeck, Ulf: *Penal Law Sanctions in Norway*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I.
[7] Thanam, Stephen C.; Graham, Lauren: *Penal Law Sanctions. Country report: United States of America*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. II.
[8] Wang, Shizhou: *Country report of Penal law sanctions in the People's Republic of China*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. II.
[9] Wrodel, Wlodzimiers; Wojtaszyk, Adam; Zontek, Witold: *Poland country report*, 2nd Criminal Law Reforms Congress "Criminal Law Sanctions: The gap between idea and use" Conference Volume, editor: prof. dr. Adem Sozuer, vol. I.