

## **Mitigating Circumstances as a Mean to Ensure Proportionality between Crime and Punishment: A Study in the Jordanian Cybercrime Law**

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### **Abstract**

This study explores the concept of mitigating circumstances in Jordanian legislation, with a particular focus on cybercrime. Mitigation is presented as a key mechanism for achieving individualized justice and ensuring proportionality between crime and punishment. It does not eliminate criminal responsibility but influences the severity or type of penalty imposed. The research finds that while the Jordanian legislator acknowledged mitigation in cybercrime, its application was narrowly confined to Article 29 of the Cybercrime Law, drafted in a limited and ambiguous manner. This undermined the legislative aim of encouraging offender cooperation with authorities. In contrast, the Penal Code provides broader grounds for mitigation, whether through statutory excuses or judicial discretion. Although this flexibility enhances fairness, it also risks inconsistency in judicial practice due to the absence of unified standards. The study concludes that Jordan's criminal policy requires reform, particularly by clarifying cybercrime provisions and establishing coherent criteria for judicial discretion.

**Keywords:** *Cybercrime, Mitigating Circumstances, Discretionary Mitigation, Principle of Proportionality.*

### **Introduction**

Contemporary societies have undergone profound transformations as a result of the digital and technological revolution. Criminal activity is no longer confined to traditional forms of crime; instead, what is now known as *cybercrime* has emerged, relying on modern technological means to infringe upon legally protected rights and interests. The Jordanian legislator recognized the seriousness of these crimes at an early stage, issuing the first special law to combat them in 2010, amending it in 2015, and ultimately enacting Law No. 17 of 2023, which provides a more comprehensive and detailed framework for addressing various forms of electronic criminal behavior.

Nevertheless, criminal punishment - regardless of its severity - cannot be understood in isolation from the principle of proportionality, which constitutes one of the cornerstones of modern criminal policy. Proportionality requires that the penalty be commensurate not only with the gravity of the act but also with the offender's personality and circumstances (Alkharman, 2025). From this perspective, mitigating circumstances acquire particular importance as a legal tool that allows the judge to reduce the prescribed penalty when facts or considerations justify such a reduction.

The study of mitigating circumstances is especially significant in the context of cybercrime, since these offenses may vary considerably from one case to another. Some offenders may be young or lack full awareness of the seriousness of their actions, while others may possess personal traits or circumstances that distinguish them from typical offenders. In certain cases, such crimes may be committed out of curiosity or technical experimentation rather than a clear criminal intent, raising questions about whether harsh penalties are always appropriate in such situations (hammour, 2024).

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This highlights the research gap: most previous studies have addressed mitigating circumstances within the general framework of the Penal Code, without examining in depth how they apply specifically to cybercrimes - particularly under Jordan's new 2023 law. Accordingly, this study seeks to fill that gap through a specialized analysis that links the general provisions of the Penal Code with the specific rules of Cybercrime Law.

The central research problem can be summarized in the following question: *What mitigating circumstances are applicable to cybercrimes under Jordanian legislation, and how does the legislator balance the requirements of general deterrence with the pursuit of individualized justice?* From this main question several sub-questions arise: What is meant by mitigating circumstances and what is their underlying philosophy? What legal provisions address them in the Jordanian Penal Code? How can they be applied to cybercrimes under the new 2023 law? And what are the limits of judicial discretion in this regard?

The importance of this study lies in its focus on a contemporary and vital issue in Jordanian criminal policy. It aims to bridge the gap between the general provisions of the Penal Code and the specific rules of the Cybercrime Law, while offering a critical analysis of whether these provisions are sufficient to achieve criminal justice considering mitigating circumstances. The study also seeks to provide practical recommendations that may contribute to the development of Jordanian legislation, ensuring a balance between deterrence and rehabilitation, and enhancing the fairness of the criminal justice system in addressing the emerging challenges of the digital sphere.

## Background

### Definition of Mitigating Circumstances

Mitigating circumstances are among the most important tools adopted by modern criminal legislation to achieve individualized justice in sentencing. They represent objective or personal factors surrounding the crime or the offender that reduce the seriousness of the act or the dangerousness of the offender, thereby justifying a reduction of the penalty below the level prescribed by law. This reflects a shift in legislative philosophy: crime is no longer treated as a purely material act, but rather as conduct that must be assessed considering its surrounding circumstances and the offender's personal characteristics. This development marks the transition from uniform punishment to flexible sentencing (Obeid, 1980).

The significance of mitigating circumstances lies not in showing leniency toward the offender, but in ensuring individualized justice and tailoring the penalty to both the gravity of the act and the personality of the offender (Makhmudov, 2022). They also contribute to the offender's rehabilitation and reintegration into society, since modern laws grant judges broad discretion to apply mitigating circumstances, allowing penalties to be adapted to each case.

It is important to distinguish mitigating circumstances from related concepts:

- They differ from grounds of justification, which eliminate criminal liability altogether due to the absence of illegality, such as self-defense (Najm, 2018).
- They also differ from grounds excluding responsibility, which negate the mental element of the crime, such as insanity or irresistible coercion (Amoush, 2024).
- Discretionary mitigating factors are closer in nature, but they give the judge broader authority to infer them from the facts of the case even without an explicit legal provision (Al Majali, 2025).

This distinction is essential to understanding the role of mitigating circumstances in Jordanian criminal policy: they do not negate the crime or responsibility, but only affect the degree or type of punishment, thereby ensuring proportionality between the act and the sanction. Hence the need to examine the legal basis adopted by the Jordanian legislator in regulating and applying these circumstances, particularly in the field of cybercrime.

### Philosophy and Purpose of Mitigating Circumstances

Mitigating circumstances embody the principle of proportionality, a constitutional principle firmly established in criminal thought, which requires that punishment corresponds to both the seriousness of the act and the circumstances of the offender (Jubour, 2009). They do not diminish the authority of the law or weaken general deterrence; rather, they reflect the modern philosophy of punishment, which emphasizes individualized sanctions linked to personal responsibility (Al Jabari, 2023).

From this perspective, mitigating circumstances serve multiple purposes: they provide judges with the flexibility to assess the unique circumstances of each case, while also offering offenders an opportunity for reintegration into society by correcting their behavior (Damad & Al Qudah, 2005). This rehabilitative dimension is particularly relevant in cybercrimes, where many offenders are young people or students lacking legal awareness or experience, making it inappropriate to equate them with those who commit crimes for illicit profit or with deliberate intent to harm public interests.

In comparative scholarship, mitigating circumstances are often viewed as a mechanism of corrective justice, balancing deterrence with rehabilitation and helping to rebuild trust between the individual and society (Ashworth, 2010).

### Types of Mitigating Circumstances

Mitigating circumstances can be divided into two main categories (Al Majali, 2025):

- **Objective mitigating circumstances:** related to the criminal act itself and the conditions under which it was committed.
- **Personal mitigating circumstances:** related to the offender's characteristics or situation.

Another classification distinguishes between (Sulbi, 1978):

- **General mitigating circumstances,** which apply to all crimes.
- **Special mitigating circumstances,** which apply only to specific types of crimes.

Mitigating circumstances may either reduce the penalty or exempt the offender from punishment altogether. Exemptive excuses prevent the imposition of punishment, based on considerations tied to societal values, public interest, and sound criminal policy (Al Sayyid Jad, 1984). Because of their exceptional nature, they are exhaustively enumerated in the law (Jubour, 2012).

When addressing mitigating circumstances in the context of cybercrime under Jordanian legislation, three categories can be identified:

- a. Mitigating circumstances under the Cybercrime Law.
- b. Mitigating circumstances under the Penal Code.
- c. Discretionary mitigating factors under the Penal Code.

This theoretical framework clarifies the definition, philosophy, and types of mitigating circumstances, while distinguishing them from related legal concepts. Building on this foundation, the following sections analyze how these categories are reflected in Jordanian legislation, particularly under the Cybercrime Law of 2023 and the general provisions of the Penal Code.

### Research Methodology

This study relies primarily on a doctrinal and analytical approach, supported by a critical evaluation of the relevant legal texts. The methodology is structured as follows:

1. **Doctrinal/Analytical Method:** The research examines the provisions of the Jordanian Penal Code and the Cybercrime Law No. 17 of 2023, with particular focus on Article 29. The analysis involves interpreting statutory texts, identifying their legislative intent, and linking them to the general principles of criminal policy, especially the principle of proportionality between crime and punishment. This method ensures a systematic understanding of how mitigating circumstances are legally framed and applied.
2. **Critical Method:** Beyond description, the study adopts a critical perspective to evaluate the adequacy and effectiveness of the current legislative framework. This includes identifying gaps, ambiguities, and inconsistencies in the drafting of Article 29, as well as assessing the risks posed by broad judicial discretion under the Penal Code. The critical method allows the research to move from mere description toward constructive evaluation.

By combining doctrinal analysis with critical evaluation, the study provides both a precise interpretation of the legal texts and an assessment of their practical implications. This dual approach ensures that the research not only clarifies the existing legal framework but also highlights areas in need of reform, thereby contributing to the development of Jordan's criminal policy.

## Results

### Mitigating Circumstances in the Cybercrime Law

Article 29 of the Jordanian Cybercrime Law provides: *"The court may reduce the penalties stipulated in this law by up to half if the offender provides information about any of the crimes covered by this law before the case is referred to the Public Prosecutor, and if such information contributes to uncovering the crime, identifying the perpetrators, or facilitating their arrest."*

Upon examination, this provision establishes a personal mitigating circumstance, but one that is also general in nature, since it applies to all offenders and all crimes under the law without distinction.

Several key observations can be drawn:

1. Provision of information by the offender: The law does not specify the mechanisms or procedures for providing such information. It leaves the matter open - whether the disclosure is direct or indirect, oral or written - and does not clarify the competent authority to which the information must be submitted (security services, investigative bodies, or judiciary). This legislative ambiguity weakens the clarity and effectiveness of the provision.
2. Applicability to all cybercrimes: The mitigating effect is not limited to a specific crime or category of crimes but extends to all offenses under the Cybercrime Law. This contrasts with the Penal Code, where mitigation - particularly in state security crimes - may even lead to full exemption from punishment in certain cases. This raises the question: why should cybercrimes against state security be treated differently from their traditional counterparts? (Sharari, 2025).
3. Condition of disclosure before referral to the Public Prosecutor: The law requires that information be provided before referral to the Public Prosecutor. However, in practice, the Public Prosecutor is already mandated to investigate certain crimes directly, while others may be referred to by the police or other authorities. This raises practical difficulties: how can an offender report a crime before it is even discovered, and still expect to benefit from mitigation?
4. Information must lead to uncovering the crime or perpetrators: The disclosure must have a tangible effect - facilitating the discovery of the crime, identifying perpetrators, or enabling their arrest. This condition is crucial, but it also raises evidentiary challenges, especially in cases involving multiple offenders. Would partial disclosure about some perpetrators suffice, or must it cover all? Moreover, under Jordanian law, a confession against others requires corroborating evidence, which complicates the practical application of this provision.
5. Scope of reduction limited to half the penalty: The law caps mitigation at a 50% reduction, unlike the Penal Code where mitigation or exemption may be broader. This creates inconsistency, since cybercrimes are not fundamentally different from traditional crimes in this respect. The legislator could have followed the established model of full exemption in certain cases to better achieve the intended policy goals (hammour, 2024).
6. Discretionary nature of mitigation: The text states that the court *may* reduce the penalty, not that it *must*. This discretionary formulation undermines the incentive for offenders to cooperate, since they may risk self-incrimination without any guarantee of benefiting from mitigation. This contradicts the legislative purpose of encouraging offenders to disclose crimes and assist in apprehending perpetrators.

Conclusion of Article 29: Considering these observations, Article 29 of the Cybercrime Law suffers from legislative and drafting inconsistencies that deviate from the general philosophy of criminal law in Jordan. By limiting mitigation to a single, vaguely defined circumstance, and by making its application discretionary and capped at half the penalty, the legislator has created a framework that is less effective than the general provisions of the Penal Code. This suggests a lack of coherence in legislative policy, as if the Cybercrime Law were adopting a completely different criminal philosophy - something not reflected elsewhere in the law.

### Mitigating Circumstances in the Penal Code

The Jordanian Penal Code does not contain provisions specifically addressing cybercrimes. Consequently, the special mitigating circumstances prescribed for certain offenses do not directly apply to cybercrimes. However, Article 26 of the Cybercrime Law stipulates that any crime committed by

electronic means shall be subject to the Penal Code, which means that the general provisions of the Penal Code, including those on mitigating circumstances, are applicable.

One general mitigating circumstance under the Penal Code that may be considered in relation to cybercrimes is found in Article 98, which provides: *"The perpetrator of a crime who committed it in a state of intense anger resulting from an unlawful and dangerous act committed by the victim shall benefit from a mitigating excuse."*

This provision requires that the anger be provoked by the victim's wrongful and dangerous conduct, creating a state of intense provocation in the offender. Article 98(2) excludes cases where the victim is a female, except in the specific situation addressed in Article 340 concerning adultery in flagrante delicto—matters that fall outside the scope of cybercrimes.

The Penal Code also recognizes mitigation in limited cases of reporting crimes, which could apply if such crimes were committed electronically. For example:

- Article 109: grants mitigation to anyone who reports a conspiracy before any act of execution has begun, or before its completion, or even after investigations have commenced if the report enables the arrest of the perpetrators. This is treated as a mitigating excuse under Article 97, not a complete exemption.
- Article 259: exempts from punishment anyone who participated in certain felonies (Articles 236–257, relating to crimes undermining public trust) if they report the crime before its completion, or if their report enables the arrest of the perpetrators, even after proceedings have begun.
- Article 413: exempt from punishment anyone who committed the crime of concealing stolen property if they report the perpetrators of theft or those concealing stolen goods before prosecution, or if their report enables their arrest, even after investigations have started.

These provisions demonstrate that the Penal Code provides broader and more effective avenues for mitigation than the Cybercrime Law, particularly in cases involving state security or public trust.

### **Discretionary Mitigating Factors in the Penal Code**

Discretionary mitigating factors differ from statutory mitigating circumstances or excuses, even though the Jordanian legislator uses the term "reasons" to refer to both in Articles 79 and 105 of the Penal Code (Al Majali, 2025). The distinction lies in the wording: when the law refers to "discretionary mitigating reasons," it grants the court broader authority to infer such reasons from the facts of the case, even without explicit statutory enumeration.

The legal basis for discretionary mitigation in felonies is found in Article 99, which authorizes the court, if mitigating reasons exist, to:

1. Replace the death penalty with life imprisonment or with temporary hard labor of 15–25 years.
2. Replace life imprisonment or life detention with 15 - 20 years of hard labor or detention.
3. Replace 20 years of hard labor or detention with 12 - 15 years.
4. Reduce any other felony penalty by up to one third.
5. Reduce any penalty by a minimum of three years to no less than one year, except in cases of recidivism.
6. Apply mitigation without being bound to the statutory minimum.

For misdemeanors, Article 100 provides that the court may:

1. Reduce the penalty to the statutory minimum under Articles 21 and 22.
2. Convert imprisonment into a fine, or - except in cases of recidivism, convert a misdemeanor penalty into a contravention penalty.
3. Ensure that any decision granting mitigation is fully reasoned, whether in felonies or misdemeanors.

From these provisions, the legislator has granted judges wide discretion in applying mitigating circumstances, whether under the Cybercrime Law or the Penal Code. This discretion is a double-

edged sword: on the one hand, it allows the court to tailor punishment to the offender's individual circumstances; on the other, it risks inconsistency in judgments if not guided by clear standards.

For example, Article 99 allows the court to reduce a penalty to half its minimum if discretionary mitigating reasons exist, without specifying these reasons exhaustively. This opens the door for judges to infer them from case facts, such as the defendant's confession, cooperation with authorities, or young age (Amoush, 2024). In cybercrime cases, such reasons might include committing the offense out of technical curiosity or ignorance of its seriousness.

However, this flexibility may lead to disparities: one judge may treat a confession as sufficient for mitigation, while another may consider the gravity of cybercrime too severe to allow reduction. Such inconsistency undermines the principle of equality before the law (hammour, 2025).

Overall, judicial discretion enables courts to align punishment with the offender's personal, social, and psychological circumstances, thereby enhancing individualized justice. Yet, the absence of precise standards risks uneven application, which calls for stronger oversight by the Court of Cassation to ensure that discretion serves justice rather than personal inclination (Almomani & Said, 2025).

## Discussion

The analysis of mitigating circumstances under both the Cybercrime Law and the Penal Code reveals a persistent tension between legislative intent and practical application. Article 29 of the Cybercrime Law was designed to incentivize offender cooperation, yet its vague drafting and discretionary nature undermines this purpose. By contrast, the Penal Code provides broader and more flexible grounds for mitigation, including statutory excuses and discretionary factors, which allow judges to tailor punishment to the offender's circumstances. This divergence highlights a lack of coherence in Jordan's criminal policy. While the Penal Code reflects a modern philosophy of individualized justice, the Cybercrime Law adopts a narrower and more rigid approach. Such inconsistency risks creating unequal treatment of offenders depending on whether their conduct is prosecuted under the general code or the special law.

Comparative scholarship reinforces this concern. Ashworth (2010) emphasizes that mitigation should serve corrective justice by balancing deterrence with rehabilitation. Similarly, Abbas (2021) stresses the rehabilitative potential of sentencing flexibility across jurisdictions. The Jordanian framework, however, falls short of these principles by limiting mitigation in cybercrime cases to a single, ambiguously defined circumstance. Another critical issue is judicial discretion. While broad discretion can enhance fairness by considering the offender's personal and social context, it also risks inconsistency in judgments. As noted by Al-Jabari (2023) and Makhmudov (2022), the absence of clear standards may lead to disparities that undermine equality before the law. This is particularly problematic in cybercrime cases, where offenders often include young or inexperienced individuals whose conduct may not reflect high criminal intent.

From this study, several key findings emerge:

1. Mitigating circumstances functions as a tool of individualized justice. They do not negate crime or responsibility but adjust the degree or type of punishment, ensuring proportionality and reflecting the evolution of criminal thought toward flexible sentencing.
2. The provisions on cybercrimes remain limited. Article 29 of the Cybercrime Law is narrowly drafted and lacks clarity, creating a gap between the special law and the general provisions of the Penal Code.
3. Judicial discretion is broad but inconsistent. While it allows consideration of case-specific factors, the absence of precise standards risks unequal judgments and undermines equality before the law.
4. Reform is necessary. Jordan's approach to mitigation in cybercrime requires expansion, whether by redrafting Article 29 or introducing additional grounds such as victim pardon, kinship, or absence of serious harm.

Considering these findings, several recommendations can be made to guide legislative and judicial reform:

- **Clarify Article 29** by addressing legislative and linguistic ambiguities, specifying the mechanisms for providing information, the competent authorities to receive it, and its legal effect, thereby ensuring that offenders are genuinely encouraged to cooperate with authorities.

- **Broaden the scope of mitigating circumstances** in cybercrimes beyond the sole excuse of reporting the crime, by incorporating additional grounds such as victim pardon, kinship, or absence of serious harm, to achieve a more balanced approach between deterrence and rehabilitation.
- **Develop unified judicial standards** through guidelines or precedents to regulate the exercise of judicial discretion in applying mitigating circumstances, reducing disparities in judgments and reinforcing equality before the law.
- **Strengthen the rehabilitative dimension** of criminal policy by considering the characteristics of cybercrime offenders - particularly youth or those with limited awareness- through adopting a reform-oriented philosophy that emphasizes reintegration and alternative sanctions rather than relying solely on deterrence and harsh punishment.
- **Harmonize the Penal Code and the Cybercrime Law** by unifying the legislative approach to mitigation, ensuring consistency in philosophy, and building an integrated system that balances societal protection with individualized justice.

Ultimately, aligning the Cybercrime Law with the principle of proportionality is not only a legislative necessity but also a prerequisite for ensuring fairness, consistency, and rehabilitation in Jordan's criminal justice system. Such reforms would enhance coherence between the Penal Code and the Cybercrime Law, reduce disparities in judicial practice, and strengthen the capacity of the legal system to respond effectively to the evolving challenges of the digital era.

## Conclusion

This study demonstrates that mitigating circumstances are no longer a mere procedural detail in criminal law, but rather a fundamental tool for achieving individualized justice and ensuring proportionality between crime and punishment. By examining the theoretical and philosophical foundations of mitigation and analyzing both the specific provisions of the Cybercrime Law and the general provisions of the Penal Code, it is evident that the Jordanian legislator has sought to balance general deterrence with individual reform. However, this effort has not always succeeded, particularly in terms of legislative drafting and the absence of clear standards for application.

The research revealed that Article 29 of the Cybercrime Law was formulated in a restrictive and imprecise way, undermining its legislative purpose of encouraging offenders to cooperate with authorities. By contrast, the Penal Code provides a broader scope for mitigation, whether through statutory excuses or discretionary reasons, reflecting greater flexibility but also opening the door to inconsistency in judgments due to the lack of unified standards.

Accordingly, Jordan's criminal policy requires review and development. This includes revisiting the provisions specific to cybercrimes, regulating judicial discretion with clearer criteria, and introducing additional mitigating grounds that reflect the nature of these crimes and their perpetrators.

In conclusion, developing an integrated system of mitigating circumstances in Jordanian legislation requires more than improved legal drafting; it demands a comprehensive vision that balances the protection of society from the risks of cybercrime with empowering the judiciary to achieve individualized justice and social rehabilitation. Ultimately, such reform is essential to ensure fairness, consistency, and coherence in Jordan's criminal justice system in the digital era.

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