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CIVIL LIABILITY FOR INJURY CAUSED TO THE VICTIM PROVOCATEUR BY THE OFFENDER UNDER THE INFLUENCE OF STRONG DISTURBANCE OR EMOTION

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Abstract: *In judicial practice and legal literature, the issue of civil liability for the damage caused to the victim provocateur by the offender's act committed under the influence of a strong disturbance or emotion caused by provocation forms the subject of discussion and various solutions. In view of the variety of solutions and their bases, in order to arrive at the conclusions that seem to us to be accurate, we consider it useful to start analyzing the problem from its primary elements.*

Keywords: *tortious civil liability; criminal law (provocation and emotional states); theory of causation and culpability; analysis of the victim's behavior in relation to the wrongful act.*

Introduction

In criminal practice (ICCJ, dec. no.12. /2016, M.Of., no.498 of July 4, 2016 and legal literature (Antoniu, & Toader, (coordonatori), Boroi, Brutaru, B. N. Bulai, C. Bulai, Dănișor, Drăghici, Duvac, Guiu, Ifrim, Ctin Mitrache, C. Mitrache, Niță, Ristea, Sima, Ștefănoaia, & Vasiu, p. 121) the issue of civil liability for the damage caused to the victim provocateur by an act committed under the control of a strong

disturbance or emotion, caused by a provocation, is the subject of discussion and various solutions. In view of the variety of solutions and their bases, to arrive at the conclusions that seem to us to be accurate, we deem it useful to start analyzing the problem from its primary elements.

We will begin by analyzing the conditions in which the act of the injured party affects the right to compensation for the damage suffered.

Some courts have adopted the view that in cases in which, from the point of view of criminal liability, there is a mitigating circumstance, pursuant to Art. 75 para. 1 lit. a, the commission of the offense under the influence of a strong disturbance, caused by a provocation on the part of the victim, consisting in an act of violence, or other serious act, committed against the offender or a person close to him, likely to cause him a strong disturbance, we are in the case of the so-called joint fault of the victim provocateur and the offender provocateur, which determines the restriction of the civil liability of the latter.

This point of view (Pușcașu, & Ghigheci, 2021, p. 356) although promoted by court judgments, is more asserted than substantiated. There is no proper analysis of the situation in the light of the requirements of common fault, but, we suspect, since, in terms of criminal liability, the victim's culpable act leads to a mitigation of liability for the crime committed by the offender, it is thought that these criteria of criminal law could also be applied to civil liability, leading to a reduction in the victim's civil liability. Rather, it would be an application by analogy of the rules governing civil liability, in the case of common fault, to the hypothesis in which, in terms of criminal liability, there is a legal mitigating circumstance, in accordance with Article 75 para. 1(a).

In another opinion, it is considered that, in this hypothesis, "the allegation that there is joint culpability, which would make it possible to compensate for the damage caused" is unfounded. In fact, in relation to the act held against the defendant, the victim had a provocative attitude which was considered by the court in the graduation of the sanction imposed, but this cannot be considered as the victim's fault in committing the crime, which constitutes an act of the defendant, which generates civil damages".

In this view, the theoretical thesis that seems to emerge is that there is no connection between the victim's provocative act and the damage caused by the victim through the provocative offender's act such as to affect the latter's civil liability, so that the damage must be made good in full by the provocative offender alone, the provocative victim not being required to bear any part of the damage. Lastly, it is also submitted that were (Oprișan,1960, pp. 906-912) in the case of criminal liability, the mitigating circumstance in Article 75 para. 1 lit. a, we are in the hypothesis in which the act causing the damage is the consequence of the victim's act, and this hypothesis includes two other sub-hypotheses. The first sub-hypothesis would be that in which "the perpetrator's culpable act disappears in the victim's unlawful act, even if not culpable, which is the sole and true cause of the damage". The second sub-hypothesis is offered by "the situation of a person who commits a wrongful act with intentional negligence (the concept is specific to civil law), or simply with intent (if the act is criminal), making the victim's culpable act an instrument of his or her culpable conception". The author argues that "this is the situation of the offender provoked by the victim's culpable wrongful acts". It rejects the theory of common fault and adopts the view that, in cases where provocation operates, there is no restriction of the civil liability of the offender for the damage caused by his act.

Civil liability for injury caused to the victim provocateur by the offender under the influence of strong disturbance or emotion

We will begin by analyzing the conditions in which the injured party's conduct has an influence on the right to compensate for the damage suffered. The act of the person sustaining the damage is of course a factor that cannot be ignored in resolving the question of the right to compensation. Where that act is the sole cause of the damage suffered, it is irrelevant whether it is culpable; it will in any event lead to the matter being resolved in such a way as to deprive the person sustaining damage of any right to compensation.

The nature of the act of the person sustaining damage begins to be relevant to the question of the right of reparation when, in addition to his own act, the act of another person has contributed to the damage and only if the act of the latter person is culpable,

a) If the act of the second person is not at fault, the fact that the act of the person sustaining damage contributes to the damage, whether at fault, removes any right to compensation. Thus, A was seriously injured by B, who was driving a motor car; B complied with all the traffic rules. In these circumstances, it is irrelevant whether A. was injured because he tried to cross the road irregularly and inopportunely or because, in hurting himself, he fell from the kerb onto the pavement just as B. was driving by. Or, another example: A. would not have gone out if B. had not suggested by telephone that they meet for a walk; on the way to the meeting place, A. falls and fractures his hand; since B.'s act was not at fault, A. will not be entitled to compensation, whether or not he himself is at fault for his fall.

b) If the act of the second person is culpable, then the nature of the act of the person who has suffered damage begins to be of importance in the question of compensation for the loss sustained. It is indisputable that, in such a case, only the fault of the person sustaining the damage can influence the way in which the question of compensation for the damage suffered by that person is resolved. No one could defend himself or herself against liability by pleading that the person sustaining the damage was not at fault. Thus, for the fault of the person who has suffered damage to affect the obligation of another person to make reparation for the damage suffered, the fault of the person who has suffered damage must be culpable, not only that of the other person. To make progress in clarifying the legal situation from the point of view of establishing civil liability, in cases in which, from the point of view of criminal liability, para. 1, letter a, of Article 75 of the Criminal Code, it is necessary to carefully examine the following question: are we, in these cases, in a genuine hypothesis of joint culpability, as some authors and practitioners claim? It seems to us that in order for fault to be common, (Dongoroz, *Tratat*, 1939, pp. 243-250) that is to say, concurrent, it is

necessary that the fault of both persons be reflected in the same event causing the damage and, thus, the damage caused must be directly linked to the culpable acts of the two persons, regardless of whether or not the damage is concentrated in the assets of only one of them. Disregarding, hypothetically and in turn, the acts of each of the two people, the acts of the other person remain sufficient to have caused the damage. The two acts are merged as the final moment in the event giving rise to the damage, which is therefore regarded as a joint act. It is only in this case that the fault is concurrent, or, as it is called, joint fault, causing one and the same damage. However, in the hypotheses in which the victim provocateur does not contribute directly, by his act, to the causing of the damage. The damage is the direct result solely of the act of the offender provocateur. A serious oral insult to another person can lead directly to one's own death; this may be the result of the offender's own acts, but not of the insult. The legal situation is therefore quite different from that of common fault, i.e. the hypothesis in which the act directly causing the damage is the consequence of the victim's own act.

Based on the above, it is also necessary to solve the problem that concerns us, to recall when an act is culpable.

Civil law links culpability to foreseeability or at least the possibility of foreseeing the harmful result of the act committed, and, in this connection, it is necessary to deal briefly with the content of the concept of culpability (Fleişiţ, 1954, p, 86). A culpable act, as a type of antisocial act, does not have this characteristic if, from an objective point of view, it is not capable of producing harmful results and, from a subjective point of view, it does not express a negative position of the perpetrator in relation to social realities; this subjective position of the perpetrator is culpa.

To be culpable, therefore, the act must subjectively express the offender's guilt. But this does not yet seem clear enough. Only by identifying the content of the subjective position that characterizes culpability will we be able to say what it consists of in. Guilt exists when the perpetrator has committed his or her act despite being aware of the negative, anti-social significance of the specific act committed. Fault, as

the subjective aspect of the act constituting a source of legal liability, is thus analyzed in terms of its specific content and in relation to the specific person of the perpetrator.

Guilt cannot be analyzed in the abstract, as a characteristic of an antisocial act "in itself", or of an act that constitutes a deviation from an abstract mode of conduct of a very prudent man or from any other predetermined standard of conduct. The requirement of awareness of the antisocial significance of the culpable act cannot be satisfied by reference to such a code of conduct, but to the concrete person of each individual offender. Going further with the analysis and going beyond notions, it is necessary to establish when the perpetrator is aware of the antisocial significance of his act, when it expresses a subjective antisocial position. This position is realized when the perpetrator is at least foreseeable of the harmful results of his act. When the perpetrator did not foresee, nor could it have foreseen such results, there is no awareness of the antisocial significance of the act, as it does not express any negative subjective position towards social realities. Therefore, guilt consists in a person's subjective position expressed by committing the act although the harmful results were foreseeable; it is a guilty subjective position, and the guilt of a concrete person can only be considered in relation to what, also in concrete terms, he foresaw or could have foreseen.

Even the slightest fault cannot be conceived without this subjective content. From the variety of results, even harmful, of an act, the perpetrator may be at fault only for some, and not for others, as he foresaw them or could have foreseen them.

The act is therefore culpable, by considering the subjective position of the suspect/defendant in relation to its harmful result, in the sense that he committed it although he foresaw or could have foreseen this result; without this subjective aspect of what was committed and caused, the act is not culpable, we are not dealing with a tort or quasi-delict as a legal fact giving rise to civil liability.

On the other hand, if it is culpable, the act must also be considered causal, because of this fact in relation to liability for the damage caused. In other words, an act with a causal value (we base this thesis on the

general principle of the theory of causation that the cause phenomenon - like the effect phenomenon - must be considered in a differentiated manner 'according to the specific features of the various fields of research, namely according to those attributes, characteristics and particularities in the light of which the given phenomena are of interest to the respective field of research'. However, civil liability, in cases in which provocation operates under criminal law, is investigated exclusively based on culpable acts in relation to the occurrence of the damage; therefore, only such culpable acts can, in the cases referred to have a causal value. Any strict liability is, in these hypotheses, excluded as regards civil liability for the damage caused can only be the culpable act and, conversely, the culpable act cannot be ineffective as regards civil liability for the damage caused.

We believe that this clarification is absolutely essential, because we have seen, in the above, that the victim's act influences civil liability for compensation for damage caused to his property by the culpable act of another person, only when that other person is also culpable and that, on the other hand, in the hypothesis of provocation, the culpable act that causes the damage is the consequence of the victim's act. Thus, in the analysis of the contributory antecedence (we refer to the set of phenomena that preceded the result and contributed to its production as the "contributory antecedence", since it is not yet certain whether all the phenomena that make up this antecedence have a causal value, some of which may remain mere conditions to produce the result. We call each component phenomenon of the antecedence a "contributory factor", because it may have the quality of a causal phenomenon or a mere condition, depending on whether, in the light of the characteristics of interest in the field of research, the factor in question has or does not have causal value in causing a harmful result, in order to select the factors with causal value and which give rise to civil liability for the damage caused, civil law requires us to focus only on those contributory factors which meet the conditions for such liability; these conditions are that the contributing factors be acts of culpable conduct, culpability meaning the foreseeability or foreseeability of the harm caused. No such

factor can be ignored; no other factor can be included in the causal antecedent.

What is the situation from the point of view of the culpability of the facts in cases where, from the point of view of criminal liability, provocation operates under art. 75, letter a, of the Criminal Code.

It is indisputable that the victim's provocative act, which resulted in the criminal act of the person provoked, forms part, together with the latter act, of the antecedent contributory cause of the damage to the victim's assets. Without the victim's act, the offender would not have committed the offense and therefore the damage would not have been caused. But, as we have seen, it is not enough for a given act to form part of the contributory antecedent to the causing of damage in order to incur civil liability for that damage; of all the contributory factors that make up that antecedent, only factors with causal value can incur such liability, and only culpable acts have such causal value. At the same time, we have seen that culpable acts are only those in the commission of which the perpetrator foresaw or could have foreseen the damage that occurred. The answer to the question as to whether both acts, which make up the contributory antecedent in the hypotheses in which provocation operates under criminal law, are culpable, will also be valid for the question as to whether both acts have causal value in relation to the result caused, thus determining the civil liability of the respective perpetrators and, in the final analysis, of the offender who has caused the damage.

It is indisputable that the act of the offender provocateur, who has directly caused damage to the assets of the victim provocateur, is, by hypothesis, a culpable act in relation to that damage. This act is an intentional or deliberate offense for which the perpetrator is subject to criminal liability, no doubt influenced by the provocation. The act is committed with direct intention - certainly under the conditions of provocation - and therefore with the foreseeability and intention of the harmful result, which includes the financial damage caused; it is therefore, also, in terms of civil liability, a culpable act.

But is the act of provocation on the part of the injured victim also a culpable act in relation to the damage caused and therefore with a causal value in relation to that damage?

As already mentioned, the Romanian Criminal Code provides as a mandatory mitigating circumstance that "the perpetrator committed the offense under the control of a strong disturbance or emotion caused by a provocation produced by violence, by a serious injury to the dignity of the person or by another serious unlawful action (Article 75 lit. a, Penal Code). An examination of the legal provision providing for this circumstance shows that for provocation to exist, three conditions must be met, namely: 1) the offense must have been committed under the influence of strong disturbance or emotion; 2) the disturbance or emotion must have been caused by provocation on the part of the injured person; 3) the provocation must have been caused by violence, by a serious violation of the dignity of the person or by another serious unlawful act.

For the circumstance to exist, it is therefore necessary to establish that at the time of the commission of the act the offender was in a state of strong mental disturbance (*perturbatio animi*) in a state of extreme nervous excitement or tension, anger or indignation affecting his whole being, or in a state of strong emotion. The existence of such a state of disturbance or strong emotion is essential, since it explains the perpetrator's action to the greatest extent and justifies the provision of this circumstance as a mitigating circumstance.

This state of strong distress or emotion must have been caused by provocation on the part of the injured person. If the disturbance or emotion had a cause other than provocation on the part of the victim, there could be no mitigating circumstance of provocation, even if the court could find that the circumstance could be regarded as a mitigating circumstance. Lastly, it is necessary that the provocation was caused by the victim by certain acts, namely violence, a serious violation of the dignity of the person or another serious wrongful act.

Violence (Ifrim, 2024, pp. 402-406) may consist of any aggressive act likely to cause distress or emotion to the person against whom it is directed. Since Article 75(a) refers to violence in general, the provocation

may be caused either by physical violence (blows or acts causing physical coercion or suffering, injury to body or health) or mental violence (threats). As criminal acts, they are certainly culpable acts, being committed with guilt. But this criminal culpability consists in a certain subjective position, in relation to certain consequences of a certain act, for a certain legally protected object, namely, this criminal culpability consists in the subjective position of the injured victim, in the context of the commission of his unjust act, considered as a crime, in relation to the socially dangerous consequences of this act, for the social-legal object protected by its criminalization. We, however, are not concerned with this subjective position, but with that of the injured victim, still in the context of the commission of his unjust act of provocation, but considered as a source of civil liability, in relation to other consequences, of a patrimonial nature, of another act, of the offender provocateur, for another protected legal object, the patrimony of the victim provocateur. Of course, the two subjective positions are not identical. The wrongful act of the victim provocateur, considered from the latter point of view, could not automatically be deemed to be culpable, solely because of its culpability as a criminal act. The elements based on which the two forms of culpability are determined are different and may give rise to different situations.

It should again be recalled that culpability in civil law means the foreseeability or the possibility of foreseeing the damage caused by the tort. A serious assault, violence or verbal abuse may give rise to a state of provocation - that is to say, that intense state of mental disturbance which for the time being alters the normal possibility of self-control, the normal self-control of the acts, the person provoked reacting, in these circumstances, by committing a crime - without the person who committed the act of assault, violence or insult having foreseen or being able to have foreseen this reaction and its harmful results.

The state of provocation is that of the provoked and the culpability is that of the provocateur. What justifies the provocation is the state of provocation of the provoked person, and this depends on his mental structure, his irritability, his power of inhibition, his conscience, and not

on the provocative act of the victim. What may, however, make the latter act culpable is linked to a different person and to entirely different determining factors, namely the foreseeability or foreseeability by the injured victim of the harmful result of the act committed by the person who has been provoked. It is not, therefore, correct to speak of a causal link between the state of provocation and the harm caused to the victim by the act of the person provoked. The criteria are therefore different and of a different nature. There is no doubt that, in very many cases, the victim's unjust act, which gives rise to the state of provocation, is also culpable; in other words, in very many cases, the injured victim, by committing the provocative act, foresees or could have foreseen, at least with some approximation, the harmful response of the person provoked. But there are situations in which the mental structure, irritability and inhibition of the person provoked are such that his reaction is so disproportionate to the act of provocation that the victim could not even have suspected such a reaction, with its corresponding prejudice. For example, violence, even intentional, but common enough, when boarding a crowded tram in a crowded streetcar, where the reaction of the victim is to shoot the perpetrator of the violence dead. On examination, it is found that the perpetrator of the murder is of such a mental structure that even simple violence leads to intense mental disturbance, accompanied by loss of self-control, and the circumstance is applicable. The violence committed by the victim provocateur remains, of course, an unjust act. But this does not make the unjust act culpable, where the condition of culpability - the foreseeability or foreseeability of the harm - does not exist. For these reasons, the wrongful act of the victim who has caused the harm is not always also a culpable act in terms of the harm caused. The scope of the two categories of wrongful acts is therefore interrelated, encompassing acts - most of them probably - which have both characteristics, but with their own distinct areas. When the victim's wrongful act is not also culpable, it will have no causal value in relation to the harm suffered.

In conclusion, in hypotheses in which the attenuated circumstance of provocation operates in terms of criminal liability, the acts that form

part of the contributory antecedent of the harm caused are presented, from the point of view of culpability, as follows: the act of the offender provocateur is not only an offense from the point of view of criminal liability, but also always a culpable act from the point of view of civil liability; the unjust, provocative act of the injured victim is not always also a culpable act; it is or is not culpable, depending on whether the offender foresaw or could have foreseen the harm that occurred.

Conclusions

In view of the above-mentioned theses, we can draw the conclusion on civil liability for the harm caused to the victim provocateur by the offender provocateur. The premises have been demonstrated above and are three in number: (a) in the hypotheses in which the mitigating circumstance operates, from the point of view of criminal liability, we are dealing with two successive acts, each with its distinct objective and subjective characteristics, one provocative, by the victim who has suffered damage, and the other, by the offender who has caused the damage directly, the second act being the consequence of the first; (b) these hypotheses are among the cases in which civil liability for the damage caused may be incurred only for culpable acts; c) between the two acts in relation to which the mitigating circumstance, Art. 175 para. 1, lit. a, in relation to the damage caused, the act of the person who caused the damage is always culpable, while the act of the victim of the damage is not always culpable.

The conclusion is easy to draw: the civil liability of the offender provocateur for the injury suffered by the victim provocateur will be limited or total, depending on whether the victim's act is culpable. Liability will often be limited, because the victim's act is often also culpable.

Therefore, we do not subscribe to any of the exclusive and formal remedies contemplated. We do not subscribe to the conclusion that the provocative act of the injured party always entails a reduction in the civil

liability of the person who has caused the damage, on the assumption that we are dealing with so-called joint fault. We have shown why this reasoning cannot be accepted and, therefore, neither can the solution. We do not subscribe to the exclusive solution of always restricted civil liability, based on an extension of the criteria of criminal law - which always attenuate criminal liability for an act committed in a state of provocation - to civil liability, even if this reasoning were to be reinforced by the argument that it is possible to apply by analogy, to the situation that concerns us, the rules governing civil liability in the case of joint fault.

These grounds and arguments are not compatible with our hypothesis. Criminal liability, in the case of the commission of an offense in the event of provocation, is always diminished, because provocation always involves an intense mental disturbance caused by the victim's wrongful act, without which the person provoked would not have committed the offense. In other words, because the act giving rise to attenuated criminal liability always has this subjective characteristic - attenuating as well. But the limited nature of the civil liability of the offender who has caused the damage does not depend on this mitigating and non-removable characteristic of the act of the person who caused the damage, but is a consequence of another act, the act of the victim who caused the damage, which does not always have the necessary characteristic to trigger civil liability.

This act is not always culpable, in terms of the damage caused, and for this reason, the civil liability of the offender cannot always be diminished. Therefore, the criteria of criminal liability, which are always attenuated in the event of the commission of an offense in a state of provocation, cannot be extended to civil liability for material damage caused by such an offense, because the consequence of attenuation of criminal liability in such cases derives from a certain characteristic of the given legal situation, and that of attenuation of civil liability from another characteristic, so that these two characteristics do not always coexist; the first is always present, the second may be absent.

For the same considerations, the further argument of the possibility of applying the rules governing civil liability in the case of common fault by analogy cannot strengthen the argument of the extension of the criteria of criminal law, as regards criminal liability always attenuated in the cases in which the attenuating circumstance under consideration operates, to civil liability, which must also always be restricted in these cases.

Joint fault, even if we disregard the fact that it is reflected in the same event which directly causes the damage, always presupposes, however, the culpable conduct of both parties to the legal relationship in respect of compensation for the damage thus caused. Now, in cases where provocation operates, from the point of view of criminal liability, the act of the offender provocation the victim is always culpable, but the act of the victim who has suffered damage is not always culpable either, from the point of view of the damage caused. For this reason, it is natural that in cases of common faults there should be compensation and therefore a reduction in civil liability, and that in cases where the mitigating circumstance under Article 75(1)(a) applies in relation to criminal liability, this reduction is not always admissible. These are the considerations for which the rules governing civil liability in the case of common fault cannot be applied even by analogy to our hypotheses.

Nor do we embrace the other exclusive solution, that the provocative act of the injured victim would never lead to the restriction of the civil liability of the offender for the damage caused, the offender always having to bear it exclusively and in full. We do not subscribe to this solution when it is based on the argument that "the victim had a provocative attitude which was taken into account by the court in the gradation of the sanction imposed, but this cannot be considered as the victim's fault in committing the crime, which constitutes an act of the defendant's own".

We have pointed out that when provocation operates, the consequence of attenuation of criminal liability derives from the state of provocation in which the offender committed his act, and the reduction of civil liability derives from the culpability of the victim's act of provocation, the act of the offender who has been provoked, as a crime,

is always culpable. So, we do not see the consistency of the above argument.

First, it is not the victim's provocative attitude or deed that justifies the attenuation of the criminal liability of the offender who has provoked the offender, but the state of provocation - of intense mental disturbance with all its characteristics - in which the offender committed the crime. The victim's unjust act, if this state is not established, has no bearing on criminal liability. Secondly, when discussing the issue of civil liability, the unjust act of the injured victim is not of interest in relation to the mental conditions in which the offender committed the crime, but in relation to the damage caused by the commission of the crime. Thirdly, we fail to see why the victim's wrongful act, which gave rise to the state of provocation, with its mitigating consequences for criminal liability, could not at the same time constitute an act which is culpable in relation to the harm caused by the act of the offender provocations the offender.

If the attenuation of criminal liability has its source in the state of provocation and the attenuation of civil liability has its source in the victim's culpable act, both these consequences are perfectly compatible, when the conditions mentioned are cumulatively met. The exclusive solution, therefore, that the victim's wrongful act of provocation would never give rise to a reduction in the civil liability of the offender who has caused the damage cannot be justified based on the arguments cited. But neither can the other arguments cited at the beginning of these lines. Starting from the precise observation that, when provocation operates in the context of criminal liability, we find ourselves in the hypothesis - which is given special consideration in the context of the criteria for establishing civil liability - in which the act causing the damage is the consequence of the act of the injured victim, two sub-distinctions are made, each of which envisages a different solution, with which we cannot agree.

First, it is pointed out that, where the act giving rise to the damage is the consequence of the act of the injured victim, the rule would be that "the perpetrator's culpable act disappears in the victim's wrongful act, even if not culpable, which is the sole and true cause of the damage".

First, we do not see how an unlawful act can be non-culpable, or conversely, how a non-culpable act can be unlawful. It is well known that the unlawfulness of an act, as a source of civil liability, is conditioned by damage, a causal link, and fault. If any of these characteristics are missing, the act is not unlawful. Moreover, we believe that the causal link itself implies fault, because in establishing civil liability for caused damage, a non-culpable act is not considered; in other words, it has no causal value. In such cases, it remains merely a condition for the occurrence of the damage.

But regardless of the meaning and scope we attribute to these notions, it is certain that civil unlawfulness must be culpable, and that civil liability can only arise from a culpable act; if detached from the possibility of establishing liability, it ceases to interest us as a legal institution. Let us, however, disregard the fact that, in the above opinion, fault was excluded from the concept of unlawfulness. Suppose the author of this opinion was referring to the non-culpable act of the injured victim as a hypothesis, alongside their culpable act—can a non-culpable act absorb the directly damage-causing culpable act, becoming the 'sole and true cause of the damage,' simply because without it, the culpable act would not have been committed? An affirmative answer would mean that even though the perpetrator of the harmful act could have foreseen—or even did foresee—the harmful result of their action, this act 'disappears' into the innocent, non-culpable act of the injured victim! Thus, they may act and cause harm without liability. Along with the culpable act disappearing into the innocent act, the entire legal conception of responsibility and causation disappears as well: liability without fault, irresponsibility despite fault, acts with no causal value regarding responsibility, despite being culpable, and acts with causal value under this aspect, but without fault. This is the most typical and, at the same time, exaggerated application of the *sine qua non* condition theory, and even legal doctrine expresses reservations about such a solution. We remain far from our legal conception of responsibility and causation when it is claimed that the directly damage-causing culpable act disappears into the culpable act of the injured victim, because the first act

is the consequence of the latter. We believe that, according to this conception, no culpable act can be excluded from the causal antecedents of causing damage—as a factor with causal value—just as no non-culpable act can be included in such antecedents.

The example chosen to illustrate the stated thesis is also interesting. The thesis is illustrated by the example of ‘a person who climbs onto a truck without the driver's will or knowledge. During the journey, due to an incorrect maneuver, an accident occurs, and the person who climbed onto the truck is injured. It seems clear that the points made above are well illustrated,’ that is, in this situation the driver would not be liable for the resulting damage. But does this example correspond to the hypothesis discussed, namely the hypothesis in which the culpable act, directly causing the damage, is the consequence of the act—culpable or non-culpable, it is indifferent to the author of the discussed opinion—of the injured victim? Firstly, the act of the driver—the incorrect maneuvers not culpable; because fault, in the well-established conception of our law, means a certain subjective position towards the specific harmful result suffered. Now, although the driver performed an incorrect maneuver, he could not have held any subjective position—of foreseeing or being able to foresee—that result, because he did not know and was not supposed to know that there was a passenger on the platform, the victim having climbed aboard, as stated in the example, ‘without the will or knowledge of the driver.’ This alone would be enough to make it clear why the driver, in this example, would not be liable for the damage caused; his act is not culpable, and this is the basis for which no right to compensation could arise in this example—not because his culpable act is the consequence of the victim's act. Nor is the latter part of the initial hypothesis confirmed. Is the driver's incorrect maneuver, that is, his action, a consequence of the passenger's boarding the truck, i.e., of the act of the injured victim? We see no such connection; on the contrary, if the driver had known there was a passenger on the platform, he might not have made the incorrect maneuver. Therefore, the given example does not match the discussed hypothesis in any way and cannot serve to illustrate the proposed theoretical solution. In any case, starting from the

proposed solution—namely that, if the damage-causing act is the consequence of the injured victim's act, the rule should be that the culpable, damage-causing act disappears into the victim's act, which becomes the 'sole and true cause of the damage'—we would reach the conclusion that even in cases of provocation, the provoked offender, whose act would disappear into the victim's provocative act, would not be liable at all for the caused damage, and the victim would have no right to compensation.

Since such a conclusion is diametrically opposed to the solution being discussed—namely, that the provoked offender must always be liable for the damage caused, exclusively and entirely—the opinion proposing the former creates a special sub-hypothesis to accommodate cases in which provocation, under criminal liability, operates according to Article 75, paragraph 1, letter a.

This would be the more general situation in which the act directly causing the damage, because of the victim's act, is intentional, the perpetrator 'making the victim's culpable act an instrument of their own plan.'

By framing cases of provocation in this sub-hypothesis, it is argued that, in these situations, the provoked offender must always be fully and solely liable for the damage caused to the victim, because 'by foreseeing and desiring, or merely accepting the socially dangerous consequences of their act, they used the victim's culpable, unlawful act as an instrument, as a means—a pretext. They directed the events knowingly, using the victim's act...' In this text, we are interested exclusively in the issue of civil liability for damage caused to the provocative victim by the act committed by the provoked offender. If we were to address other aspects of civil liability, we would also discuss the above sub-hypothesis and the proposed solution for the cases it encompasses. But the cases in which the state of provocation operates under criminal liability are far from fitting into this sub-hypothesis. We are confident that no court would recognize provocation by someone who uses the victim's wrongful act as a pretext to commit an offense. We have already seen what justifies and characterizes provocation and will not revisit it. In any case, the sub-

hypothesis created to deny any influence of the provocative act of the injured victim on the civil liability of the provoked offender does not correspond to the discussed legal situation. Therefore, the exclusive solution that the provocative act of the injured victim would never reduce the civil liability of the provoked offender cannot be justified even through the above construction.

We conclude our analysis by recalling our conclusion on the issue it addresses, as well as the essential grounds for this conclusion. The civil liability of the provoked offender for the damage caused by the offense committed against the provocative victim will be reduced or full depending on whether the victim's act was culpable or not. The essential grounds for this conclusion lie in our legal conception of causation and responsibility. According to this conception: fault is the subjective position of the perpetrator in relation to the resulting damage; only, and all, culpable acts have causal value in relation to the resulting damage; only, and all, such acts may serve as the basis for civil liability for the respective damage.

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