

UNJUST PROVOCATION AND INFLUENCE OF GUILT

PROVOCAÇÃO INJUSTA E INFLUÊNCIA DA CULPA

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ABSTRACT

Objective: the purpose of this study was to unjust provocation and influence of guilt.

Methods: This is descriptive research in which the researchers have examined documents related to the subject and have used bibliographic sources.

Results: In our law, in order to be able to say that culpability is affected by an act that constitutes injustice, pain, and anger, which are all types of excitement, these feelings must be intensely concentrated in the individual. However, when we analyze comparative law, it becomes evident that defining it in every legal system may not be possible. The level of excitement that can lead to unjust provocation varies depending on the legal systems of different countries. In our law, the pain and anger that result in injustice are considered to be of the equal significance.

Conclusion: Accordingly, when individuals commit a crime under varying conditions and with a certain level of excitement, anger, and pain, they may receive a reduced criminal punishment. However, not every type of excitement can be considered a situation that warrants individuals to be punished under criminal law.

Keywords: Unjust Provocation, Fault, Suffering and Anger, Punishment



RESUMO

Objetivo: o objetivo deste estudo foi a provocação injusta e a influência do crime.

Métodos: Trata-se de uma pesquisa descritiva em que os pesquisadores examinaram documentos relacionados ao tema e utilizaram fontes bibliográficas.

Resultados: Em nossa lei, para podermos dizer que a culpabilidade é afetada por um ato que constitui injustiça, dor e raiva, que são todos tipos de excitação, esses sentimentos devem estar intensamente concentrados no indivíduo. Contudo, quando analisamos o direito comparado, torna-se evidente que pode não ser possível defini-lo em todos os sistemas jurídicos. O nível de excitação que pode levar a uma provocação injusta varia dependendo dos sistemas jurídicos dos diferentes países. Na nossa lei, a dor e a raiva que resultam em injustiça são consideradas de igual importância.

Conclusão: Assim, quando os indivíduos cometem um crime sob diversas condições e com um certo nível de excitação, raiva e dor, podem receber uma punição criminal reduzida. No entanto, nem todo tipo de excitação pode ser considerado uma situação que justifique a punição dos indivíduos nos termos da lei penal.

Palavras-chave: Provocação Injusta, Culpa, Sofrimento e Raiva, Castigo

INTRODUCTION

In criminal law, unjust provocation is addressed in Article 29 of the "*Penal Code of Turkey*" (Government Gazette, 2003) (PCT) No. 5237 as a general regulation that serves as a factor in reducing criminal liability. Unjust provocation is one of the reasons for personal reduction that diminishes the perpetrator's ability to blame (culpability). Accordingly, by examining the specifics of the incident, the judge can determine the criminal liability of the perpetrator in accordance with the provisions of unjust provocation. When the unjust act causes anger or severe criticism towards the perpetrator and the perpetrator reacts as a result, the reduction of unjust provocation will need to be applied. This aspect of tort law is seen as a psychological factor.

In the first section of our study, we will explore the definition of the unjust provocation concept, its principles, development throughout history, and the regulation and conditions of this concept in our legal system. In this context, we will also examine the role of unjust provocation in comparative law. The second section of the study will specifically analyze the impact of unjust provocation on culpability as outlined in the Penal Code of Turkey. Additionally, we will discuss the connection between unjust



provocation and other legal practices, as well as its relevance to specific types of crimes in criminal law.

DEFINITION OF UNJUST PROVOCATION

Meaning of provocation

The concept of provocation is to move something, to set it in motion, to mobilize it (TDK Dictionary, 2023) It is defined as directing, provoking, influencing and inciting a person to commit a bad deed (Nihat Özön, 1973). In the Penal Code of Turkey (Supreme Court C.G.K. in its decision number T19.11.1990, 1990), this concept is addressed with two different meanings. One of them is found in the types of crimes related to provocation crimes. (Amendments to the Regulations under the Patent Cooperation Treaty (PCT), 2019) These crimes are also known as provocation crimes. Another type is, which will be the basis of our stud (Hakeri, 2011, Volume 11 p.348). According to Article 29 of the Penal Code of Turkey, unjust provocation is considered as an practice that leads to a reduction in criminal liability. Therefore, this concept can be defined as the perpetrator committing a crime out of anger or intense pain while under the influence of an unjust act. In other words, a crime is committed by the perpetrator out of anger or severe sadness caused by an unjust act of the victim of the crime (Demirbaş, 2009, p. 401). Accordingly, due to the excitement or other enthusiasm caused by the victim, the perpetrator's ability to control their actions weakens to a certain extent, ultimately reducing their culpability in the crime they committed. The essence of this concept is the provocation by the victim rather than the actions of the perpetrator (Demirbaş, 2009, p. 401). Therefore, unjust provocation is considered a situation in which the victim incites a crime (Dursun, 2003, vol: LXI, p. 20-21.).

The psychological states of fear, surprise, anger, aggression, etc. experienced by an individual have a temporary effect. During these states, the individual may struggle to control their actions and thoughts, remaining under the influence of a specific emotion. This can sometimes lead to an individual seeking revenge against someone who has wronged them (Demirbaş, 2009, p. 401). These types of situations are addressed and regulated within the field of criminal law, with consideration given to crime policy.



Unjust provocation is not the same as provocation to commit a crime, which is addressed in Article 214 of the Penal Code of Turkey. When inciting someone to commit a crime, the instigator directs an indefinite number of individuals to take action. In order to discuss a criminal offense, it is not necessary for the crime proposed by the instigator to actually be committed in order for it to be considered a criminal act. If the crime is committed as requested by the instigator, they must be held accountable as the instigator of the crime. Therefore, according to Article 214 of the Penal Code of Turkey, there must be agreement between the will of the instigator and those who are incited, or at least an attempt to reach understanding. In cases of unjust provocation, the instigator and the provocateur are confronted against each other (Demirbaş, 2009, p. 401).

In instances of unjust provocation, the victim commits a tort. When this tort provokes the perpetrator, the perpetrator then commits a crime. Through the act of incitement to commit a crime, an undetermined number of individuals may be motivated to engage in criminal behavior. In cases of unjust provocation, it is not necessary for the victim to intentionally provoke the perpetrator (Duran, 2010, p. 6.)

It would not be correct to consider unjust provocation as equivalent to instigating and abetting, which are forms of participation that express responsibilities as perpetrators in the commission of a crime. In the case of instigation, a certain act that constitutes a crime is carried out as a result of an agreement between the instigator and those who are instigated. In the case of abetting, it involves the wills of both those who help and who are helped. In the case of unjust provocation, the instigator and the provoked individual confront each other. In other words, when someone is unfairly provoked, they may be more inclined to retaliate by committing a crime against the person who provoked them (Demirbaş, 2009, p. 401).

There are various perspectives within legal doctrine that attempt to explain the concept of unjust provocation, with most emphasis placed on objective and subjective viewpoints (Demirbaş, 2009, p. 401, p. 402). According to those who defend the objective viewpoint, an action is committed by an individual when provoked. The criminal action of this individual under provocation is being questioned. In addition to this action, the provocation of the victim also plays a role in the emergence of the criminal act. Therefore, both the perpetrator and their victim are at fault, and due to this fault, it is deemed necessary to reduce the sentence of the perpetrator. While this



perspective is effective in reducing the perpetrator's punishment, it is not widely accepted.

On the other hand, those who defend the subjective view argue that the psychological state of the person affected by the tort should be considered. The perpetrator's will may be compromised as a result of an unjust act, potentially making it easier for them to commit a crime. When the perpetrator's will is influenced by an unjust act, their capacity to take responsibility may also be affected. Consequently, the impact in question would necessitate a reduction of the perpetrator's sentence (Demirbaş, 2009, pp. 402-403).

Difference Related to Unjust Provocation

Difference Between General and Specific Unjust Provocation

General Unjust Provocation

The section of the Penal Code of Turkey titled General Provisions which addressed the Unjust Provocation is included in Article 29. Considering the way it is regulated in the law and its location, the reduction foreseen in the regulation due to unjust provocation will be applied to all types of crimes and individuals, provided that the conditions are present in the specific case. Therefore, this reduction should be applied to anyone who commits a crime as a result of unjust provocation, without restricting it to specific types of crimes or perpetrators with certain qualifications. This appears to be in line with legal characteristics of unjust provocation in terms of the broad scope of its regulation. However, there is significant criticisms that the failure to specify which acts will be considered under unjust provocation could result in granting judges/courts wide discretion (Duran, 2010, p. 10.)

Despite the general nature of unjust provocation in the Penal Code of Turkey, the Supreme Court has stated that there should be no reduction in criminal acts that fall under certain exceptions due to unjust provocation. This is because some crimes cannot be justified by provocation, which goes against the essence of this legal principle. In addition, acts that may be considered crimes against sexual integrity are often not carried out with sadness or anger resulting from an unjust act, but are carried out with the aim of satisfying the sexual desires of perpetrator. As a result, it is argued in doctrine (LAW REFORM COMMISSIONER, 1979) that unjust provocation cannot



be applied in these crimes (Erhan, 2009, p. 136). However, the Supreme Court of Appeals CGK (turkish minute, 2023) emphasized in one of its decisions that regulations regarding unjust provocation can be applied even in cases of sexual assault. In our opinion, sexual assault is not only for the satisfaction of lust, but also for purposes such as torture, revenge, humiliation (Bozbayındır, 2013, p. 172). Depending on whether the conditions of Article 29 of the Penal Code of Turkey are met or not, if the conditions are present, it would be appropriate to apply the provisions of unjust provocation.

Specific Unjust Provocation

Unjust provocation is specifically mentioned in some of the laws included in the Penal Code of Turkey. During the period of Penal Code of Turkey No. 765 (PCT) (Code of Turkey Publication: PC No. 5237.), specific cases of provocation were outlined for certain actions (Penal Code of Turkey,). In this law, unjust provocation was recognized as a factor that could influence a crime. Consequently, unjust provocation was essentially recognized as one of the mitigating circumstances in general accordance with the law (Sulhi, 2003, p.237; Önder, p.346). Article 51 of the PCT serves as a general provision on unjust provocation, while also listing some specific cases of provocation. In the specific scenario, if one of these special circumstances is present, only the special provision would apply (With the "Law on the amendment of various laws" with number 4771 dated 03.08.2002T, many of the special regulations were abolished).

Only Article 129 of the Penal Code of Turkey No. 5237 (Penal Code of Turkey, art 129, n.d.) addresses the specific scenario of unjust provocation in relation to the crime under discussion. However, if a particular instance of unjust provocation is outlined in the Penal Code of Turkey, the provisions concerning general unjust provocation will not be relevant (C.G.K, n.d.).

Difference Between Simple and Serious Unjust Provocation

Simple Unjust Provocation

In Article 51 of PCT No. 765, after specifying the amount of reduction that should be made in cases of unjust provocation, it was stated that an additional reduction



should be made in cases where the provocation is severe and serious (extreme). Therefore, it is evident that unjust provocation is addressed in a secondary manner in the Penal Code of Turkey, classified as simple and serious. The Penal Code of Turkey explains that this distinction is made because the emotional impact of the provocation on the perpetrator's psychology may vary in different cases, leading to varying level or pain and anger (Demirbaş Ekerbiçer, p. 20;).

On the other hand, the criteria for simple and aggravated provocation are not clearly stipulated in the Penal Code of Turkey, and it has been observed that the Supreme Court has attempted to establish a certain framework for this (Decision of Supreme Court. C.G.K, 2023). In this context, in various jurisprudence of the Supreme Court:

- Forms of addressing that humiliate a person, swearing and threatening actions (Decision of Supreme Court. C.G.K, 2023),
- Punching someone, slapping them, hitting them with wood, etc., are acts that may seem insignificant (Gökalp, 2007, p. 56.),
- Introducing animals into a person's field or garden, etc., are acts against property (Decision of Supreme Court. C.G.K, 2023),

These are shown as examples of simple provocation cases. When the decisions are examined in general, it is seen that they were overturned by the Supreme Court of Appeals due to the local courts' erroneous or incomplete interpretation of the legal provision.

Serious Unjust Provocation

In Article 51 of the Penal Code of Turkey No. 765, different reduction rates were foreseen for simple and serious forms of unjust provocation. However, it has not been determined which acts will be subject to simple provocation and which will be subject to serious forms of provocation. The Supreme Court in certain decisions has provided some examples of serious unjust provocation. Some examples that can be counted include:

- Abuse and mass assault (Decision of Supreme Court. C.G.K, 2023),
- Behaviors that violate sexual commitment and mutual trust (Decision of Supreme Court. C.G.K, 2023),
- Violation of personal space at night (Decision of Supreme Court. C.G.K, 2023),



- Repeated threats and insults (Decision of Supreme Court. C.G.K, 2023),
- There is no distinction between simple and serious unjust provocation in Turkish Penal Code No. 523 (Penal Code of Turkey, p. p.602). In our opinion, it would be more appropriate not to make such a distinction because the judge has broad discretionary power, and determining the reduction rate by examining the form and nature of an unjust action will result in a fairer outcome. If a continuous action is taken against the perpetrator, the actions should be evaluated separately. The Supreme Court overturned a decision made by the local court on the grounds that, by evaluating the actions collectively, a serious and violent state of provocation had occurred when (Decision of Supreme Court. C.G.K, 2023),

Terms of Unjust Provocation in Turkish Criminal Law

In general

Although unjust provocation is generally cited as a reason for reduced charges, certain restrictions have been put in place to prevent its application due to potential psychological consequences. It is important to note that these conditions vary among legal systems in different countries and are not clearly outlined within the scope of the Penal Code of Turkey (Tutumlu, 1999). Various opinions have been expressed in both doctrine and Supreme Court decisions regarding the circumstances in which unjust provocation can be invoked (C.G.K, n.d.) It is understood that there are three, four, five, and six divisions among these distinctions. According to the perspective that accepts the triple distinction, there must be an unjust act that causes anger or severe pain to the perpetrator, and the crime must be committed under the influence of this anger or severe pain (Çağlayan, 1982, p. 15).

According to a perspective that examines unjust provocation in a quadruple distinction, the crime committed under the influence of the tort must be committed as a response to a state of depression caused by anger or severe pain. Therefore, those who support this distinction introduce an additional element, beyond the triple distinction, in relation to unjust provocation. Hence, there must be an act that "causes provocation" and "constitutes injustice", "a state of severe excitement, a crisis", must occur as a result of the act, and "the crime must be committed as a reaction to the crisis in question" (Penal Code). According to those who examine the criteria for unjust provocation in the quintuple distinction, in which we also participate, there are the



following points to consider: "there must be a provocative act", "the act in question must be unjust", "the perpetrator must cause anger or severe pain due to this unjust act", "a reaction action must be carried out", and "a causal connection must be established between the reaction action and the act of provocation." (Şen & Centel, 2013) According to a perspective that examines unjust provocation through a six fold distinction, certain criteria must be met. There must be an act that "causes provocation" and is deemed "wrongful," "the principal must act under the influence of pain or anger," "a cause must establish the connection between the perpetrator's act and their mental state", "the crime must be committed as a reaction arising from the mental state", "the crime must be directed towards the person who committed the provocation act" (Açıkgöz, Soyaslan, & Dönmezer, 2012, p. 61-62).

There is no general acceptance in the Supreme Court or in the legal doctrine regarding the distinctions mentioned above. Upon examining the opinions in question and the jurisprudence of the Supreme Court, it appears that unjust provocation can be analyzed under five headings.

Presence of an Unjust Act That Constitutes Provocation

The first factor to consider in unjust provocation is the presence of an unjust act that causes the provocation and that it incites anger or strong criticism. Unjust provocation cannot be claimed if the perpetrator's actions are solely driven by their own emotions, such as passion or depression, without any external influence (Kazancı, 2013, p.1326.). On the other hand, no specific regulations have been made regarding the nature of the act that constitutes provocation. It is stated that certain actions within the scope of the Penal Code of Turkey will be considered as unjust provocation. Therefore, this act may be related to people's lives, sexual integrity, honor, freedom and physical integrity (Tan, 2013 , Volume 1, 2011, 1022.). Furthermore, the act that constitutes provocation must be determined by considering the situation of the victim who committed the crime, the personality of the perpetrator, the personal relationship between the victim and the perpetrator, and the place and time when the act was committed (Koray Özbek, 2017, 8th Edition. Ankara, Seçkin Publishing, p. 397-398). On the other hand, the perpetrator of the act can benefit from personal impunity, which does not affect the unjust nature of the act they committed. This lack of consequences is not conducive to enforcing regulations against unjust provocation



(<https://www.seckin.com.tr/browser/fa/231865813/kitap/Prof.%20Dr.%20Mehmet%20Emin%20Artuk>, p.952; Koca/Üzülmez, p. 362).

There is no agreed-upon view in the doctrine regarding whether the person who commits the act that constitutes unjust provocation should be considered at fault or not. In our view, it is not necessary for the person who commits the act of unjust provocation to be held accountable. Therefore, the actions of those who lack the ability to understand and comprehend due to their young age, as well as the actions of those who are disabled to the extent that they cannot perceive the legal meaning and consequences of their actions due to mental illness, may also result in unjust provocation (Yavuz, 2013). The injustice of the action that caused the provocation is deemed sufficient, as actions taken by an individual under the influence of mental illness, underage, alcohol or drugs taken against their will may also be considered unjust (Karadeniz & Mahmutoğlu).

On the other hand, some authors of the doctrine argue that since the individuals listed do not possess the power to appeal, they are unable to engage in actions that would constitute unjust provocation, and the perpetrator can only benefit from this mistake if they mistakenly believe that these individuals have the power of appeal. However, since they do not have the ability to understand and comprehend, it will not affect the objective injustice of the action in question (Karadeniz & Mahmutoğlu, p. p.611). Therefore, we believe that this view is not suitable in the doctrine because in criminal law, it is considered sufficient for an action to constitute objective injustice (Karadeniz & Mahmutoğlu, p. p.103).

On the other hand, an objectively existing action does not necessarily have to be carried out directly against the perpetrator. There is no obstacle to the injustice of the action in cases where the perpetrator is not present and only learns about the action later (Shahbaz, p. p.603). The key point that needs to be emphasized here is that in cases where the perpetrator commits a crime against the victim without being aware of their actions, it cannot be argued that the perpetrator committed the act out of anger or severe pain caused by this action. In such cases, it can be argued that the perpetrator cannot benefit from unjust provocation arrangements. Furthermore, since the act does not necessarily have to be committed directly against the perpetrator, it is also possible to target their family, close friends, strangers, animals, or objects (Shkëlqe, 2015). It is necessary to assess whether the perpetrator is acting under the influence of anger or violence when committing actions that are not directly aimed



against them, and whether they are carrying out the criminal act under this influence (Dönmezer et al, 2022, p. 604).

There is no clear regulation in the Turkish Penal Code regarding what constitutes an act of provocation. Therefore, it can be said that any act can be considered unjust provocation, as long as it involves injustice. Consequently, the act that incites provocation must be communicated verbally, in writing, through facial expressions, signs, etc. It will be possible to process all forms of communication (Dönmezer et al, 2022, p. 23). However, for a person to claim unjust provocation, they must commit an action that constitutes such provocation (Karadeniz & Mahmutoğlu, p. 640). This is because it is stated that the action that is unjust occurs as a result of negligence or an intentional will (Karadeniz & Mahmutoğlu, pp. 70, 641), and this intentional will is based on human-specific phenomena (Karadeniz & Mahmutoğlu, pp. 33, 103, 640-641). Therefore, no one's sentence shall be reduced due to unjust provocation for a crime committed in response to an attack with an animal.

On the other hand, if an individual fails to properly supervise their animal and the animal causes harm, or if an individual intentionally provokes an animal to attack, they may be able to claim unjust provocation as the person instigating the action is human (Decision of Supreme Court. C.G.K, 2023)

It can be argued that an act resulting from negligence can also be seen as unjust provocation. This is because, even if the action is negligent, it can still be deemed as unjust (Bostancı Bozbayındır , p. 182). In the doctrine, there are those who believe that if a negative outcome occurs even when the victim complies with the duty of care, the unjust provocation reduction should not be applied to the perpetrator for the crimes committed (Karadeniz & Mahmutoğlu, p. 653). In our opinion, if the victim complies with the objective duty of care and it is acknowledges, there should be no reckless action. For an act to be deemed negligent, the perpetrator must not have acted in accordance with the duty of care and attention. Therefore, there is no doubt that the act committed by the victim does not constitute unjust provocation.

It is possible for an act that constitutes injustice to be committed through intentional or negligent actions (Decision of Supreme Court. C.G.K, 2023). The act itself is deemed unjust if it is sufficient, meaning it does not necessarily have to be a criminal act (Özen, 2013). It does not have to fall under the category of torts addressed in the law of obligations (Koca, 2007, p. 557). Furthermore, since there are no



restrictions in the Penal Code of Turkey, it can be argued that abuse of rights can also fall under this scope (Zafer & Çakmut, 2019, p. 444.).

In criminal law, there are specific situations where certain actions are not considered acceptable. These include situations where an individual is being drowsy, unconscious, anesthetized, or acting out of reflex during an epileptic seizure. In such cases, since there is no deliberate action in terms of criminal law, the actions committed do not meet the qualities that would constitute unjust provocation. In our opinion, if the perpetrator is unaware of the acts committed unconsciously by the victim and makes an unavoidable mistake, the unjust provocation reduction should be applied in accordance with Article 30/3 of the Penal Code of Turkey. According to this paragraph, a reduction for unjust provocation needs to be considered. In order for this reduction to be applied in accordance with the paragraph mentioned, the perpetrator must make an inevitable mistake regarding the existence of an act that constitutes unjust provocation. If an inevitable error is made, it may be taken into consideration when determining the basic penalty according to Article 61 of the PCT.

In terms of unjust provocation, for an action to be deemed illegal, it must provoke anger or strong criticism in the perpetrator. Simply being unfair is not enough to justify a reduction based solely on provocation. The action must also trigger feelings of anger or sadness in the perpetrator. For provocation to be valid, the perpetrator's emotional response (anger and sadness) must be a result of the victim's unjust behavior.

The Commitment of a Reaction Crime and the Existence of a Causal Link Between the Reaction Crime and the Act of Provocation

For a perpetrator to benefit from the provisions of unfair provocation, the anger or pain they feel must stem from the act of provocation itself, specifically due to the injustice of the act. In other words, the perpetrator's reaction must be a direct result of the anger or pain caused by the victim's provocation, establishing a causal link. Therefore, it should be acknowledged that the perpetrator would not have committed the crime if their actions were driven by anger or intense pain resulting from the act of provocation, and if the provocation itself had not occurred.



Situations Affecting Fault and Its Relationship with Unjust Provocation Mental Illness and Unjust Provocation

According to Article 32 of the Penal Code of Turkey, a perpetrator will not be punished or their sentence will be reduced due to mental illness, which is considered a reason for diminished and reduced immutability. If the perpetrator is deemed mentally ill as stated in the first paragraph of the regulation, and they commit an act under conditions of unjust provocation, no reduction for provocation will be applied to their sentence. This is because it is not possible to hold the perpetrator accountable in any way due to their mental illness, making provocation reduction unnecessary (Başar, 1980; p353-365). However, if the perpetrator has a mental illness as specified in Article 32/2 of the Penal Code of Turkey, a reduction for unjust provocation may be considered. Since the perpetrator is not completely exempt from criminal liability under the regulation, and their ability to control their behavior is diminished, their sentence may be reduced if provocation is present (Gürelli, p. 341; Erem/Danışman/Artuk, p. 603.).

Underage and Unjust Provocation

According to the Penal Code of Turkey, children between the ages of 0-12 are not considered criminally responsible if they do not have the ability to understand and intend their actions. Only security measures can be applied to these children. Therefore, since criminal liability cannot be imposed on individuals in this age group, it is not possible to make an unjust provocation reduction (Duran, 2010, p. 6.)

According to the Penal Code of Turkey, if a perpetrator is in the 12-15 age group and lacks the maturity to comprehend the legal implications and ramifications of their actions, as well as the ability to control their behavior, they are not held criminally responsible, and only security measures for children can be enforced in such cases. Therefore, unjust provocation regulations cannot be applied to individuals in this age group. Conversely, those who understand the legal implications and ramifications of their actions can potentially benefit from the unjust provocation reduction (Tutumlu, 1999).

According to the Penal Code of Turkey, children between the ages of 15-18 have more developed understanding and desire abilities compared to younger



children, but they are not as developed as adults over the age of 18. As a result, their sentences are reduced. Since they are held criminally liable, there is no barrier to reducing their sentences due to unjust provocation, provided that certain conditions are met. (Bostancı Bozbayındır; Dönmezer et al., p. 351; Tutumlu, p. 64; Duran, p. 227; Başar, p. 359.)

Reasons for Compliance with Law and Its Relationship with Unjust Provocation

Unjust provocation should not be confused with legitimate defense, which eliminates criminal liability. Legitimate defense is justified by the need to comply with the law. For this legality to be implemented, there must be an ongoing attack or a certain threat of recurrence that has not yet ended, and this attack must be repelled, meaning eliminated. However, when we talk about unjust provocation, we are referring to an unjust action that has already come to an end (Decision of Supreme Court. C.G.K, 2023). Therefore, if the perpetrator fails to demonstrate a legitimate defense during the ongoing attack, but instead takes action afterwards, regulations regarding unjust provocation may be implemented. The General Criminal Assembly of the Supreme Court of Appeals shares similar opinions (Savaş/Mollamahmutoğlu, p.103; See also Supreme Court CGK decision No., 13.02.1984T. 1-305/61E/K see lexpara.com.tr, Online Access Time, 19.06.2023.).

Based on the explanations provided, it is not possible to depend on regulations concerning unjust provocation when legitimate defense is being questioned (Yaşar/Gökcan/Artuç, p.743; Öztürk B./ Erdem M.R., "Applied Criminal Law and Security Measures Law", 11th Edition, Ankara 2011, p.279; Zafer H., "General Provisions of Penal Law", Istanbul, 2010, p.268; Demirbaş, p.411.). Similarly, in the event of exceeding the limit in self-defense, Article 27 (Article 27 of the Penal Code of Turkey states: "In cases where the limit is exceeded without intent in circumstances that eliminate criminal liability, and if the act is punished even when committed negligently, the penalty prescribed by law for a negligence) of the Penal Code of Turkey should be applied, otherwise it is not necessary to apply regulations on unjust provocation in such instances (Yaşar, Osman ; Gökcan, Hasan Tahsin : Artuç, Mustafa. (2014)).



Relationship between Unjust Provocation and Circumstances Affecting Punishment

Relation between Blood Feud Drive and the Motive of Design

There are differing opinions within the doctrine regarding whether unjust provocation regulations should be applied in cases where an action is carried out intentionally (by design). These differences stem from differing views on intent (design). If the "cold-blooded theory" (Yerdelen & Beyhan, 2016) regarding design is accepted, it will not be possible for design and unjust conduct to coexist (Gürelli, (1951)). On the other hand, the Supreme Court generally accepts the aforementioned view and rules that unjust provocation and design can coexist (Öztürk, p.280.). However, the Supreme Court has determined that it is not appropriate to apply unjust provocation regulations in conjunction with actions carried out with the motive of bloodshed and planning (Yaşar, Osman ; Gökcan, Hasan Tahsin : Artuç, Mustafa. (2014)). Because the motive of bloodshed is considered a qualifying circumstances that necessitate an increase in the penalty for the crime of intentional murder, it is not possible to apply a reduction in punishment due to unjust provocation in this case (Decision of Supreme Court. C.G.K, 2023).

On the other hand, according to an opinion we also agree with, if the theory of "making a plan" (Yerdelen & Beyhan, 2016, pp. 29-61) regarding design is accepted, unjust provocation provisions may be applied. If a person who is provoked makes a plan and carries out an action with anger and pain, unjust provocation regulations may be applied. This is because there is nothing preventing the perpetrator from making a plan in the face of provocation (Yerdelen & Beyhan, 2016, pp. 281, 412, 680).

Relationship with the Motive of Custom

There is no provision in the Penal Code of Turkey regarding whether the provisions of unjust provocation can be applied in conjunction with intentional killing for a customary motive. In the justification of Article 29 of the Penal Code of Turkey regarding unjust provocation, the requirement for "anger or severe pain to occur as a result of an unjust act" in cases of tort is meant to preventing the incorrect application of leniency granted for unjust provocation in cases of killing relatives, particularly in instances of customary or honor killings in our country. This provision is intended to



ensure that the reduction is not misused or misinterpreted in such serious cases. Furthermore, Article 82 of the Penal Code of Turkey justifies that in order for a person to be sentenced to life imprisonment for committing murder with a moral motive, there must be no circumstances of unjust provocation present in the incident. This is because the legislator also aims to prevent reductions based on unjust provocation resulting from actions that go against morality, customs and traditions (Aydın, 2005). Therefore, if there is an action that is against the law and a reaction is carried out towards this illegal action, the regulations regarding unjust provocation must be applied.

Increasing the penalty due to moral motives and reducing it due to unjust conduct would not be compatible with the purpose of the law (Kangal, 2010). Therefore, it is essential to determine whether the criminal action occurred as a result of the psychological state stemming from an unlawful action that a person faced, or due to moral motives (Behiy, 2013). It is not possible for a perpetrator to experience both of these situations simultaneously (Koca & İlhan, 2018).

Relationship between Various Types of Crimes

Relationship between Crimes of Negligence

There are debates within the doctrine as to whether negligent actions and unjust provocation regulations should be considered together. According to the doctrine, unjust provocation cannot be accepted in cases of crimes of negligence, the action taken as a result of unjust provocation should be directed towards the person provoking and should be a reaction to the provocation. For these conditions to be met in an incident, the person must act deliberately (Pulat, 2018).

Since negligent crimes occur due to a person's imprudence, carelessness, and failure to comply with regulations, they are situations where the individual who has committed an unjust action should be held accountable. Therefore, the regulations concerning unjust provocation should not be applied to negligent crimes. In one of its rulings, the Supreme Court of Appeals stated that the provisions of provocation should be applied in favor of the defendant if the deceased caused damage to the defendant's vehicle due to their unjust act resulting from their carelessness and imprudence (Decision of Supreme Court. C.G.K, 2023).



According to the doctrine, which we also agree with, reductions can be made for negligent acts caused by unjust provocation. Provocation reduction in criminal law is not only applicable to intentional crimes, but the regulation of unjust provocation is also addressed in the general provisions of the law (Erhan, 2009, p. 136). Therefore, it is mandatory to apply the provocation provisions, except for cases where it is ordered not to be applied by law. The act of reacting simply demonstrates the intention behind the action; the outcome of the action does not need to be desired for the reaction to take place. (Artuk/Gökçen/Alşahin/Çakır, p. 543, Savaş/Mollamahmutoğlu, p. 692)

Relationship between Chain Crimes

According to Article 43 of the Turkish Penal Code, if the same action is committed more than once within the scope of the decision to commit the same crime, a subjective connection between the crimes will exist. For this reason, an exception has been made to the rule of strict aggregation, which dictates that the more actions committed, the harsher the punishment will be (Bayar, 2012). If an action is carried out more than once due to unjust provocation within the scope of a chain crime, there is no legal obstacle in the law regarding reduction for unjust provocation.

In the event of a chain crime, even if multiple actions have been committed, the perpetrator has the option to be charged with only one crime. If the perpetrator is acting out of anger and intense emotional pain caused by unjust actions from the victim when deciding to commit a crime, and if other circumstances of unjust provocation are present, unjust provocation provisions may be applied. In this case, it is irrelevant whether the crime was committed by a single victim or multiple victims.

In order for the provisions of provocation to be applied, the only condition is that all actions must be carried out in a psychological state of mind that causes excitement and weakness of will. When determining the sentence, the basic penalty is imposed first, followed by an increase in the chain crime in accordance with Article 43 of the Penal Code of Turkey, and then Article 61/5 of the Penal Code of Turkey. According to this paragraph, an unjust provocation reduction must be applied (Bakıcı, 2007).



Relationship between Continuous Crimes

In cases where illegal activity does not cease immediately and continues for a certain period of time (Penal Code of Turkey, art 129, n.d.), a reduction for unjust provocation will be applied if the conditions for unjust provocation are present (Tutumlu, 1999). However, unjust provocation conditions must also exist during the period of uninterrupted actions. If an action that meets the conditions required for the application of unjust provocation regulations continues after these conditions are eliminated, a reduction cannot be applied due to unjust provocation (Erem, Artuk, & Danişman, (1997)).

Relationship to Aggravated Crime as a Consequence

If a perpetrator intends and anticipates an action, a different and more severe consequence may occur. The perpetrator may act with intent up to the point he intended, or act recklessly resulting in consequences that are more serious than intended. In this scenario, it can be referred to as "a crime aggravated by the consequence" or "a crime committed by exceeding the intent" (Dönmezer, et al., 2019). It is possible to apply the provisions of provocation in conjunction with acts that go beyond intent. If an action is carried out with the intention of performing it, but the gravity of the result of the action is considered, a more severe consequence than the original intention may arise. However, even if there is a difference in typicality compared to the intended action, a new action will not emerge. In this case, only the qualified version of the action intended by the perpetrator occurs. Therefore, there is no reason why unjust provocation regulations should not be applied to these crimes.

Unjust Provocation with a Crime Remaining at the Attempt Stage

For an act to be considered an attempt, the perpetrator must initiate the action with the intention of seeing it through, but the action itself does not have to be completed objectively (Penal Code of Turkey,, p. art 35). There is no barrier to applying the attempt provisions and provisions on unjust provocation simultaneously.



Participation and Unjust Provocation

In actions carried out with accomplice participation, unjust provocation only affects the individual who committed the crime (Zafer H, 2010). The decisions of the Supreme Court aligns with this principle (See Supreme Court of Appeals 1st CD., T30.11.2006, Decision No. E/K2540/5341, lexpara.com.tr, Online Access Time, 10.10.2023). In a recent ruling, the Supreme Court clarified that there were no grounds for claiming unjust provocation in the case of the perpetrator, who was an accomplice that aided in the crime, and that the perpetrator's sentence could not be reduced. This is because, unjust provocation is considered a personal reason that impairs one's ability to avoid making mistakes. Therefore, simply carrying out the physical act of the action by the main perpetrator will not enable other accomplices to take advantage of unjust provocation arrangements. For this reason, each individual must be evaluated based on their own circumstances. However, if all accomplices were subject to unjust provocation, it may be appropriate to reduce the punishment for all involved (Zafer & Çakmut, 2019, p. 444.).

For example, in cases where siblings have killed someone who intentionally caused the death of their own sibling, it is important to lessen (reduce) the punishment for all perpetrators (the siblings) due to unjust provocation circumstances. In cases of incitement, the individual who carried out the act will not be able to benefit from the instigator's unjust provocation. Nevertheless, if the person they incited has a valid reason for being provoked unjustly, their sentence may be reduced provided certain conditions are met (Yaşar/Gökcan/Artuç, p.743; Öztürk B./ Erdem M.R., "Applied Criminal Law and Security Measures Law", 11th Edition, Ankara 2011, p.279; Zafer H., "General Provisions of Penal Law", Istanbul, 2010, p.268; Demirbaş, p.411.).

CONCLUSION

Unjust provocation is addressed in Article 29 of the Penal Code of Turkey as a factor that reduces criminal liability in criminal law. Unjust provocation is a reason that diminishes the perpetrator's culpability and can lead to a reduction in sentence. The Penal Code of Turkey specifically addresses provocation provisions stemming from anger or extreme sadness caused by unjust acts. Consequently, the court considers the level of anger or distress caused by the unjust act when determining the extend of



the reduction in penalty. Factors such as the intensity of the provocation, the circumstances of the incident, the progression of events, the manner in which the act was carried out, the social backgrounds of both the perpetrator and the victim, and the local conditions are all taken into consideration by the court when determining the degree of the unjust provocation reduction.

One of the controversial issues surrounding unjust provocation is whether it can be applied in conjunction with other legal principles in criminal law, and whether it can be applied to certain types of crimes. For example, there is debate in legal doctrine about whether principles such as unjust provocation, self-defense, mental illness, and minor age should be considered together. However, it appears that the relationship between certain types of crimes (such as blood feuds and honor-motivated murder crimes) is being evaluated separately. According to the generally accepted theory of planning, which we also support, in cases where unjust provocation and premeditated murder occur together, the increase in punishment due to premeditation and unjust provocation can be applied concurrently. However, viewed through the lens of the cold-blooded theory, premeditation and unjust provocation cannot be applied together.

It is also being discussed whether the crimes of unjust provocation, blood-feuds, and honor-motivated murder can be addressed collectively. Since actions committed with these motives serve as aggravating factors in determining the punishment for the perpetrator, it may not be feasible to both lessen (reduce) the penalty and increase it simultaneously in cases involving unjust provocation.

It is also debated in doctrine whether an action carried out with unjust provocation can be considered negligent. Since there is no provision in the Penal Code of Turkey stating that an action committed with unjust provocation must be intentional, it is possible to apply the regulations regarding unjust provocation in cases where actions are committed recklessly. It is important to emphasize that only the person who provokes unjustly should be considered the victim of a retaliatory crime.

In cases of continuous crimes, if it can be argued that the individual who committed the crime was acting under the influence of provocation until the completion of the act, their sentence should be reduced due to the unjust provocation. In series of actions (acts performed in a chain), there must be a psychological link between the multiple acts carried out. If the perpetrator's choice to commit the initial crime is a result of the victim's wrongdoing and it can be said that the perpetrator was influenced by



this, unjust provocation must be considered for each subsequent action stemming from the initial decision to commit the same crime.

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