

VIOLENT EMOTION AND UNJUST PROVOCATION: LEGAL LIMITS OF CRIMINAL MITIGATION UNDER INTERDISCIPLINARY ANALYSIS



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ABSTRACT

This article analyzes the violent emotion and the unjust provocation of the victim from the legal and psychological perspectives in the context of Criminal Law. A qualitative and explanatory approach is adopted, based on bibliographic research in updated sources, aiming to understand the interaction of these categories in the dynamics of criminal practice. The normative and doctrinal elements that underlie the application of the criminal mitigating factor are examined, with emphasis on the limits and interpretative possibilities in the treatment of the agent acting under intense emotional load. The analysis emphasizes the importance of the factual and subjective contextualization of those involved, promoting a critical reflection on the state's action in the face of crimes committed under strong emotional impact and provocation. It is concluded that the integrated understanding between Law and Psychology contributes to a fairer application of the criminal law, respecting the principles of proportionality and individualization of the penalty.

Keywords: Violent Emotion. Unfair provocation. Victim. Criminal law.

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INTRODUCTION

In the context of criminal law, the issue of violent emotion and unjust provocation of the victim presents a series of challenges that demand a detailed and critical analysis. One of the main problems that arise in this context is the difficulty in defining and interpreting these concepts consistently and fairly within the legal system.

Violent emotion is a subjective element that can vary significantly according to the individual circumstances of each case. Determining when a violent reaction is justified by intense emotion and when it crosses legal boundaries is a complex task for the courts. Additionally, the cultural and social interpretation of these cases can influence court decisions, leading to disparities in law enforcement.

The issue of unjust provocation of the victim raises questions about the legal responsibility of the aggressor and the limits of self-defense. The assessment of whether the victim's conduct was provocative enough to justify a violent reaction can be highly subjective and subject to prejudice and stereotypes. Thus, the context in which the provocation occurred, including issues such as power inequality, history of abuse, and individual vulnerabilities, is often not adequately considered in legal analyses.

Another important problem related to this association is the lack of resources and support for victims of emotional violence and unfair provocation. Victims often face significant obstacles to seeking justice, including social stigma, fear of retaliation, and lack of access to adequate support services.

This can result in underreporting and underrepresentation of these cases in the legal system, perpetuating a cycle of impunity and injustice. The guiding problem of the present work is to answer the following question: **How does the violent emotion and unjust provocation of the victim occur through a legal and psychological analysis of the criminal context?**

In view of these contexts presented, the objective of this article is to analyze the violent emotion and unjust provocation of the victim through a legal analysis in the criminal context. As specific objectives: To investigate the elements that lead to the practice of crime under violent emotion, to delimit the normative parameters on the unjust provocation of the victim and to critically examine the state action in these cases.

For the composition of the methodological path, a bibliographic research was used with a qualitative and explanatory approach, through consultations in books, articles and master's dissertations searched in the databases, Scielo, Capes Journal and google

scholar, using studies from the years 2019 to 2020 through the descriptors: Violent emotion, unfair provocation of the victim, legal analysis and Criminal Law, using the doctrinal foundation of Monebhurrin (2022) valuing research in legal works that contributes to the theory and practice of Law, and that is aligned with concrete legal problems.

CRIME UNDER VIOLENT EMOTION AND THE UNJUST PROVOCATION OF THE VICTIM

For a doctrinal foundation on violent emotion and unjust provocation in the criminal context, one can consider the work of several authors who address these themes. An example is the work of Monebhurrin (2022), which discusses the relationship between emotion, human behavior, and the application of criminal law.

Jesus (2011) argues that violent emotion can be understood as a psychological response to external stimuli that deeply affect the individual, leading him to act impulsively. The author points out that, in criminal law, this condition can be considered a mitigating factor, as it reflects the decrease in the agent's capacity for self-control at the time of the crime.

In addition, the unjust provocation is analyzed from the perspective that the aggressor's reaction must be understood in relation to the context in which it occurred. In line with this thought, Mello (2020) emphasizes that provocation should be evaluated not only in terms of its nature, but also in relation to the intensity of the emotion that generated the violent response. This analysis is critical to the fair application of criminal norms, allowing the legal system to take into account the nuances of human interactions.

CONCEPT OF VIOLENT EMOTION

Violent emotion is characterized by a psychological state of great intensity, capable of momentarily compromising the agent's self-control. It is a sudden and violent emotional reaction, which can be triggered by several factors, including fear, anger or despair. It is important to emphasize that violent emotion should not be confused with the total absence of discernment or the inability to understand the illegality of the act, which are more extreme conditions and can constitute non-imputability or semi-imputability (Nascimento et al., 2022).

Violent emotion does not eliminate the agent's capacity for understanding and self-determination, but significantly diminishes it, reducing his culpability (Calazans et al.,

2014). On the other hand, the unjust provocation of the victim refers to an action or omission that, being morally or legally reprehensible, incites the agent to commit the crime.

CONCEPT OF UNFAIR PROVOCATION

It is important to cite what Netto et al., (2019) say, that provocation should be enough to cause an immediate and intense reaction in the agent, leading him to act under violent emotion. For this provocation to be considered "unfair", it must be disproportionate or unacceptable in the face of the behavior that preceded it. It is not required that the provocation be necessarily intentional, and it can also be culpable or even without specific intention to provoke the agent.

The interaction between these two elements - violent emotion and unfair provocation of the victim - is crucial for the application of the mitigating factor (Santos, 2020). It is necessary that the crime be an immediate response to provocation, configuring an understandable, albeit illicit, human reaction. Jurisprudence and doctrine emphasize that there must be a direct causal relationship between the provocation and the violent emotion that triggered the crime. The mitigating factor is not admitted when there is a significant time lapse between the provocation and the criminal act, since the violent emotion must be contemporaneous with the provocation.

LIABILITY

The relevance of violent emotion and unjust provocation lies in the search for a fairer and more proportional criminal response. By recognizing that certain emotional and contextual conditions reduce the culpability of the agent, the Brazilian legal system promotes a more humanized and differentiated treatment of criminal behaviors (Braga, 2019). This understanding is in line with the constitutional principles of individualization of punishment and proportionality, contributing to a more balanced and fair penal system.

Regarding the emotional criminal, it is important to quote what the doctrinaire Pedroso et al., (2019, p. 34) says: "returning to his normal state, the emotional delinquent almost always indulges in demonstrations of remorse, in deep dejection. He does not try to deny the crime, and confesses it spontaneously, although with gaps in memory." It makes you reflect, as an emotional crime it is one of those with the highest rate of confession, even because emotional crimes are usually committed with witnesses and without any premeditation, which makes it impossible to be denied.

According to what Goleman (1996, pg. 268) explains, "emotional personalities are actually people without pathologies. These people usually do not remember the acts they did when they are under the domination of violent emotion", due to the size of their psychological explosion.

It is important to add what Faria (2021) informs: emotion cannot be confused with passion, since passion is permanent, while emotion is fast and violent. In addition to the violent emotion, the unjust provocation on the part of the victim must be observed. On this subject, Viana (2019) understands that it should be observed objectively, that is, according to the opinion of the average, and not of the agent.

LEGAL SYSTEM IN THE CASE OF A CRIME UNDER VIOLENT EMOTION AND THE UNJUST PROVOCATION OF THE VICTIM

The analysis of the violent emotion and the unjust provocation of the victim occupies a significant place in Brazilian Criminal Law, particularly in the study of the causes for reduction of sentence provided for in article 65, item III, paragraph "c", of the Penal Code. This legal provision establishes that the agent can have his sentence mitigated if the crime is committed under the influence of violent emotion right after unjust provocation by the victim. Understanding this institute requires a detailed approach to the concepts of "violent emotion" and "unjust provocation", in addition to the interaction between both (Capez, 2004).

However, in our positive law, emotion and passion do not present major problems, although they can undeniably reduce the *vis electiva* between right and wrong. These emotional states do not eliminate the reprehensibility of the conduct (art.28, I, of the CP), although they can reduce it, when violent, with the corresponding reduction of the penalty, as provided for in arts. 121, § 1, and 129, § 4, 2nd part, provided that certain legal requirements are simultaneously met. These requirements are: the victim's unfair provocation, the dominance of violent emotion, and the immediate between provocation and reaction (Santos, 2020).

In fact, violent emotion receives different treatment according to the degree of influence it may have on the agent's self-determination: on the one hand, it may assume the condition of a mere mitigating factor (when it has a simple influence), or, as may occur in the crimes of homicide and bodily injury, it may characterize a cause for reduction of sentence or a reduction (when it assumes control). In any case, it is essential that it has

been originated by unfair behavior of the victim of the taxable person, that is, in the terminology of the Penal Code, as long as it results from unfair provocation (Borges et al., 2020).

The emotion can, in fact, be graded into more or less intense, more or less acute and more or less violent. Criminal Law recognizes this plurality of intensity that the emotional state can present and the value proportionally, as occurs when it recognizes, in homicide and bodily injury, the dominance of violent emotion and the influence of violent emotion in other criminal offenses and completely ignores simple emotion as a determining factor of a criminal conduct (art. 28, I, of the CP) which points out:

It can be seen, in fact, that it is not just any emotion that can assume the condition of privilege in homicide, but only the intense, violent, absorbing emotion, which is capable of almost completely reducing the *vis electiva*, due to the motives that erupted it, dominating, holding the agent's own self-control in legal terms (Brasil, 1940, p. 34).

The intensity of the emotion must be such that the subject is dominated by it, that is, the active subject must act under the impetus of emotional shock. Under the domination of violent emotion, it means acting under the emotional shock of those who are absorbed by a state of mind characterized by extreme sensory and affective excitement, which subjugates the individual's nervous system (Greco, 2012).

In the hypothesis of mere mitigating factor (art. 65, c), the agent would only be under the influence of violent emotion, unlike the cases of mitigating factors, which require that the agent be dominated by violent emotion. In addition, in the case of mitigating factors, there is no requirement for the temporal requirement "soon after", as it is irrelevant that the crime was committed some time after the victim's unjust provocation (Cirqueira, 2019).

It should be noted, however, that, both under the domination and under the influence of violent emotion, neither of the two states justifies the action or excludes its reproachability, since the active subject will always have the option of not committing the crime. In other words, in none of the hypotheses will the subject lose consciousness (it does not exclude imputability), and the unenforceability of other conduct is not configured (it does not exclude culpability). Therefore, the criminal responsibility of the emotional criminal remains intact (Nascimento et al., 2019).

Emotional trauma can erupt in a psychotic break, and, in this state, the agent can commit a crime. In this case, the problem must be analyzed in the light of non-imputability

or diminished culpability, under the terms of article 26, sole paragraph of the Penal Code. For example, the extreme aggressiveness of a paranoid personality, which demonstrates a pathological emotional imbalance; drunkenness itself can, by habituality, lead to the outbreak of a toxic psychosis, ceasing to be a problem of drunkenness (or any other toxic substance) to be treated in the light of the same legal provision (Segal., 2019).

In the hypotheses of item IV of paragraph 2 of article 121 of the Penal Code, what qualifies homicide, according to Justor et al., (2020), is not the means chosen or employed to commit the crime, but the insidious way in which the agent executes it, using, for this, a resource that makes it difficult or impossible to defend the offended party.

In item IV, the qualification of homicide does not result from the means used, but from the insidious way in which the criminal activity is practiced, making it difficult or impossible for the victim to defend himself. The Penal Code, in this item, exemplifies some of these modes of execution of homicide, with betrayal, ambush and dissimulation, which serve only as a paradigm of the various modes of execution of the crime of homicide that make it difficult or impossible to defend the victim (Bruno et al., 2012).

FUTILE MOTIVE AND VIOLENT EMOTION

The reasons that lead people to commit a homicide can be numerous, from the most futile to the most justifiable. Thus, privileged and qualifying forms emerge, typifying the crime according to subjective requirements, motivations and means. To assess what the real reason was, and whether it is futile or not, one must analyze not only the fact, but the entire situation, the people, their history, and everything that happened at the time the conduct occurred (Franco et al., 2020).

The futile motive is the one considered insignificant, the relationship of this motivation with the agent's action is totally disproportionate, and the motive is so small that it makes it impossible to explain how it generated that result (Pierangeli and Zaffaroni, 2024). Such disproportionality demonstrates a greater indifference of the agent in relation to others, a greater insensitivity and selfishness, therefore, it makes the conduct more reprehensible than that provided for in the caput of the article referring to the criminal type (simple homicide).

This motive is provided for in item II of paragraph 2 of article 121 of the Penal Code, it is one of the subjective ways of qualifying the crime, as it concerns the reasons, motives, that is, subjectivity of the agent's action. (Nucci, 2019). The Explanatory Memorandum of

the Penal Code states that the motive is futile when, "due to its minimal importance, it is not sufficient cause for the crime". This inappropriate disproportion must be seen according to the vision of homo medius.

The absence of a reason cannot be considered as a futile reason. The one who kills for the pleasure of committing homicide, without any other motive to trigger the action at that moment, commits homicide for a vile motive. On the other hand, the real absence of motive or absence of knowledge of the motive cannot be considered futile, because if one does not know the motive, there is no way to interpret it extensively stating that it would be futile. (Jesus, 2011).

According to the doctrinal teachings of Camargo (2019), when talking about futile motive and stating that there is a total insignificance in it, the existence of emotions is not disregarded. The human being, despite being a rational being, is endowed with feelings, whether positive or negative. Thus, it is not possible to analyze a person's conduct and forget the existence of feelings and emotions, that is, their humanity, no matter how much in the end it is stated that in that particular conduct, the subject acted in a cold, calculating and devoid of feelings.

Even in this case this must be evaluated, or it would not be a complete analysis of the case and what generated the homicide. Without going into the merits of the possible or non-coexistence of violent emotion and futile motive in homicide, it is worth noting that there is a type of feeling often framed in the futile motive, not as coexisting with this motive, but as being the futile motive itself (Estefam, 2013).

This feeling is passion and, normally, when it leads to premeditated death, it is possible to verify the futility in the very emotion of passion, not only because of its disproportionality with the result achieved, but because there is an abysmal distance in this disproportionality in the eyes of society. The motive camouflaged there as passion would actually be unjustifiable in current times, being considered in reality a narcissistic, selfish and insignificant motive. This passion is not to be confused with violent emotion, as will be explained later (Eluf, 2013).

JURISPRUDENTIAL ANALYSIS OF THE CRIME OF UNDER VIOLENT EMOTION AND THE UNJUST PROVOCATION OF THE VICTIM

After defining and conceptualizing the main constitutional hypotheses of homicide pertinent to the study, it is relevant to relate them, analyzing the confusions and the

relations of (in)compatibilities associated with them. In view of this, Mello (2009, p. 76) emphasizes that "there can be no doubt as to the possibility or not of violent emotion coexisting with the futile motive". The doctrinaire also clarifies that if this possibility does not even exist, the discussion is reduced in this sense, however the responsibility to make a very well made interpretation when differentiating them increases, as the hypotheses would prove to be really opposite, one increasing the penalty and the other decreasing.

The currently accepted understanding is that it is possible to accumulate qualifying causes and privilege, as long as one is an objective circumstance and the other subjective. In view of the fact that privileged homicide, in all its forms, is of a subjective order, qualified-privileged homicide can only occur if the qualifier is objective, thus being related to the means of execution (Mello, 2009).

In this way, it is impossible for the same conduct to be under the domination of violent emotion right after unjust provocation by the victim and for a futile reason, since both are reasons for the commission of the illicit act and are also opposite reasons (Brasil, 2020). This is demonstrated by the jurisprudence of the Superior Court of Justice when it allows cumulation, but emphasizing that the qualifying circumstance is of an objective nature:

CRIMINAL. HC. QUALIFIED HOMICIDE-PRIVILEGED. IMPOSSIBILITY. APPEAL THAT MADE IT DIFFICULT FOR THE AGGRIEVED PARTY TO DEFEND HIMSELF. CRIME COMMITTED UNDER VIOLENT EMOTION, IMMEDIATELY AFTER THE UNJUST PROVOCATION OF THE VICTIM. ABSENCE OF INCOMPATIBILITY. ORDER DENIED. I. Hypothesis in which the accused was convicted of the practice of homicide privileged by violent emotion, immediately after the unjust provocation of the victim, combined with the qualifier of the use of a resource that hindered the defense of the offended party. II. There is no incompatibility between the privilege provided for in paragraph 1 of article 121 of the Penal Code and the qualifying circumstances provided for in paragraph 2 of the same legal provision, provided that these are not of a subjective nature. Precedents of the STJ and STF. III. Order denied. (HC 74.362/MG, Rel. Minister GILSON DIPP, FIFTH PANEL, judged on 05/17/2020, DJ 06/25/2020, p. 273 – emphasis added).

This understanding remains firm (Brasil, 2020). However, to try to demonstrate that there was a counterposition of ideas to reach this conclusion, the justices always cite in their votes the same decision of the Supreme Court:

HABEAS CORPUS. JURY. NULLITY. ITEMS. THERE IS NO LOGICAL INCOMPATIBILITY BETWEEN THE VIOLENT EMOTION, WHICH IS THE QUALITY OF THE AUTHOR'S STATE OF MIND, AND THE POSSIBLE AGGRAVATING CIRCUMSTANCES THAT ARE REVEALED IN THE WAY OF CARRYING OUT THE CRIME, SUCH AS BETRAYAL OR TAKING ADVANTAGE

OF THE FACILITIES OF DOMESTIC LIFE. THERE IS INCOMPATIBILITY IN THE SIMULTANEOUS RECOGNITION OF THE FUTILE MOTIVE AND THE STATE OF VIOLENT EMOTION, PROVOKED BY THE VICTIM'S UNJUST ACT - TWO STRICTLY SUBJECTIVE ELEMENTS, AND OF INADMISSIBLE COEXISTENCE. (HC 61490, Rapporteur: Justice FRANCISCO REZEK, Second Panel, judged on 12/09/2020, DJ 10-02-1984 PP-01016 EMENT VOL 01323-02 PP-00240 RTJ VOL-00109-01 PP-00131 – emphasis added).

Handed down by former minister Francisco Rezek, this decision remains current, as it is the theory of law and human motivation and not rules that are outdated. While Rezek gives a duly motivated decision, the STJ does not justify the reason for its understanding. The simple point that mitigating factors are not to be confused with privilege, which is a clear and undisputed fact, does not explain the reason for the understanding that the first can coexist with qualified homicide for futile reasons and the other cannot (Brasil, 2020).

If it were possible to understand the inexistence of incompatibility between futile motivation and violent emotion in a real case, the mere reference to it, as occurs in a note by the STJ, consequently, also does not justify the reason for choosing the mitigating factor to coexist with the subjective qualifier and not the reduction of the sentence. Thus, it is not possible to understand, with the decisions given, why coexistence is possible as a mitigating factor and not as a privilege (Brasil, 2020).

It is important to cite what the case analysis tells us: futile motive under the influence of violent emotion in recognition of the generic mitigating factor of the influence of violent emotion in the crime of homicide qualified by futile motive. Precedent, provided by the E. Court of Justice of Rio de Janeiro (Brazil, 2019).

Appeal. Article 121, caput, § 1 of the CP. Defensive appeal . The Sentencing Council recognized the cause for reduction of sentence of article 121, § 1 of the CP because the crime was committed under the domination of violent emotion, immediately after the unjust provocation of the victim. The fact that the offenses were repeated for a long period of time, in fact, makes the victim's unjust provocation more intense and increases the violent emotion that motivated the defendant's behavior. Opinion of the PGJ for the merits. Modified to 1/3 the fraction of decrease due to privileged homicide, as the unjust provocation of the victim is more reprehensible. Appeal granted. (TJ-RJ - APL: 00678587520138190038 202205018351, Rapporteur.: Des(a). MÔNICA TOLLEDO DE OLIVEIRA, Judgment Date: 03/14/2023, THIRD CRIMINAL CHAMBER, Publication Date: 03/30/2023)

This is an appeal, based on article 121, §1 of the Penal Code, against the decision of the first instance, when judging the appeal of the defense, as far as it is concerned, accepted the modification of the fraction to reduce the penalty, since the unjust provocation of the victim was verified.

The Colenda Turma, when voting on the questions, recognized that the accused would have acted under the influence of violent emotion caused by the victim's unjust act. The STJ's understanding in this case is in accordance with the majority understanding already mentioned at the beginning of this chapter. Although there was a Special Appeal, the understanding that there was no contradiction in the recognition of both circumstances was maintained.

PROTECTION NETWORKS THE VIOLENT EMOTION AND UNJUST PROVOCATION OF THE VICTIM

Among the main protection networks in the face of the violent emotion and unjust provocation of the victim, Efig (2014) highlights the participation of the Public Prosecutor's Office, which is composed of the Public Prosecutor's Office for Women, whose purpose is to guarantee constitutional rights, well-being and quality of life for people who suffer this type of infraction.

However, Braga (2005) still emphasizes that the main focus of the prosecutor's office is against the actions of mistreatment and abusive abuse of violence, which becomes one of the main factors that affect the psychology of people who suffer these injuries, however, inspection actions are carried out in residential environments, organizational institutions, and the social environment in which the individual lives.

The Public Prosecutor's Office, according to Távora and Alencar (2016), still aims to propagate and disseminate the rights provided for these subjects, aiming to establish denunciation in the fight against emotional violence, in addition, it also provides the community with accredited places where complaints can be made.

Another protection network is the Specialized Police Stations for Women's Assistance (DEAI), which are the main victims of these cases, where their purpose is to provide clarification and follow-up of cases of violent emotion and provocation of the victim, the actions of the police station establish as a method of repression in preventive relationships, and in the investigation of complaints that are made mainly by people closer to the victims and members of their family environment, who in most cases witness the criminal acts (Brasil, 2003). These police stations follow the legal system as provided for in article 96 of Criminal Law:

Article 96. Discriminating against people and causing violent emotion, preventing or hindering their access to a social life, such as free will, the right to contract or by

any other means or instrument necessary for the exercise of citizenship, due to oppression: Penalty - imprisonment from 6 (six) months to 1 (one) year and a fine.; § 1 The same penalty is incurred by anyone who disdains, humiliates, belittles or discriminates against people, for any reason, including injury and provocation of the victim. (Brasil, 2003, p. 35).

The (DEAI), according to Faleiros (2013) , also seeks to promote the rights accessible to the community with the purpose of reducing the infractions of violent emotion and unjust provocation of the victim. The protection network is intended to give priority to the follow-up focused on the profile of individuals affected by this crime, as well as to act in the investigation of crimes and abuses for those who may suffer from the violation of the principle of human dignity, psychological damage, some types of physical injuries, misappropriation of financial resources, among other types of violence such as homicide and femicide.

According to Távora and Alencar (2016), the Civil Police is also an important protection network in these cases, it is composed of police officers and agents, with the main role of the actions and interventions of the judicial police, investigating the acts of violent emotion and unfair provocation of the victim, to the detriment of people who are more vulnerable, such as adolescents and the female public. In this sense, the authors also argue that:

In their daily actions, these protection networks record the due occurrences, with the purpose of collecting the initial information by investigation, as well as diligences and also through the registration of the Occurrence Report (BO) and, later, moves on to the elaboration of the Inquiry (Távora; Alencar, 2016, p. 45).

Regarding the performance of the police in relation to coping with the violent emotion and provocation of the victim, Braga (2005) emphasizes that it is relevant to the performance of the military police, showing that they are public security agents of fundamental relevance, because, in some cases of complaints of these infractions, they perform the initial care while still at home or even approaches on public roads of people involved in the case. so that it can later be forwarded to other protection networks.

EVALUATION OF DISCIPLINARY MEASURES UNDER VIOLENCE, EMOTION AND UNFAIR PROVOCATION OF THE VICTIM

According to Peres (2013), the Federal Public Prosecutor's Office develops strategic interventions to enable efficient assistance and dignified follow-up to people who suffer from violent emotion and unjust provocation of the victim. One of the actions to combat this type of provocation was the creation of the National Human Rights Hotline (DDHN), creating and strengthening the services of the support networks, strengthening the right of these people to make complaints confidentially and thus be able to receive disciplinary measures and conducts in these cases.

Távora and Alencar (2016, p. 115) reveal that "these telephone actions are characterized as ombudsman shifts and, therefore, as instruments that facilitate the exercise of citizenship." As a result, people closer to these subjects, when they perceive an incidence of violent emotion, can make complaints without their identity being revealed.

A project developed by the Police Station for the Elderly, in the city of Campinas-SP, has as its main actions the planning of workshops and conversation circles with family members of people who have already suffered violent emotion, bringing the theme of the harm that these practices can cause to the psychological state of these human beings (Peres, 2014).

Civil police stations in the state of Rio de Janeiro, on the other hand, carry out inspection actions in the communities and even approach and interview people possibly affected by this criminal act. If there are incidents of the cases, the inquiry is opened and later directed to people who have been infringed on psychological support networks linked to the Brazilian judiciary (Finger, 2014).

METHODOLOGY

For the elaboration of this work, bibliographic research was used with the objective of knowing and understanding the authors' thinking for the foundation of the literature review, through scientific publications of books, articles, magazines, master's dissertations and websites using the data search on the platforms: scielo, google scholar and capes journal in the period from 2014 to 2019.

According to Boccato (2008), bibliographic research seeks to support the resolution of a given problem (hypothesis) through published theoretical references, discussing and analyzing the various contributions to scientific production. This type of research will

provide subsidies for proper knowledge in relation to the subject on which it was researched, how and from what perspectives or focus the research presented in the scientific literature was treated.

In addition, we also use explanatory research, where according to Lakatos and Marconi (2011) they point out that this technique records facts, analyzes them, interprets them and identifies their causes. This practice aims to broaden generalizations, define laws in broader ways, structure and define models with theoretical bases, relates hypotheses in a more unitary observation of the productive scope or universe of a general method, and originates ideas as a result of logical deduction. Explanatory research requires a high foundation in theorizing, synthesis and reflection taking into account the object of research. It aims to identify the factors that enable the emergence of variables or phenomena that affect the due process of study.

The research also fit with the qualitative approach, Meadows (2007) characterizes qualitative research as any related type of research that works on the production of discoveries not obtained by statisticians, procedures or other means of quantification by field research. It can refer to this research on the state of people's lives, behaviors, lived experiences, emotions, feelings, as well as the proper organizational functioning, phenomena, and cultural interactions between nations.

The doctrinal foundation of Monebhurrin (2022) was used, valuing research in legal works that contributes to the theory and practice of Law, and that is aligned with concrete legal problems. The author also emphasizes that the results of the research must result from research that contributes to the advancement of reflection for the practice or theory of Law.

CONCLUSION

From a legal point of view, violent emotion can be considered a mitigating circumstance in cases of crimes of passion, where the agent commits a violent act in response to a situation that provokes him intensely. Criminal legislation recognizes that the capacity for self-control can be affected by extreme emotions, which can lead to a decrease in the culpability of the perpetrator.

Throughout the study, it was found that unfair provocation is associated with situations in which the victim, by his actions or words, provokes the aggressor in a way that the aggressor feels compelled to react disproportionately. The legal analysis seeks to

understand if the provocation was really unfair and if the aggressor's reaction was proportional to the situation. Thus, it can be seen as a trigger that activates intense emotions, leading to a response that can be unmeasured. Understanding the emotional state of the perpetrator at the time of the crime is crucial to understanding their motivations and the dynamics of the situation.

Not perceiving the existence of a tenuous limit between privileged homicide, committed as a consequence of violent emotion, as well as that qualified as futile motive, is to erroneously interpret unleashing offenses to constitutional principles. Thus, not to take to a legal factor a lack of control in the emotional sense, in an event that should be properly framed in privileged homicide is to take into account the motivation of the crime as futile, because in the personal understanding of the interpreter of the law it seems to be an insignificant reason to motivate the crime, causes the accused to be punished in excess. And in this way, it violates the constitutional principles described.

With the present study, it was possible to perceive that there is a doctrinal distortion on the part of the interpreters. Words must be read and translated according to their meaning and the reality represented, which does not necessarily occur in reality. The doctrine cannot be used as a puzzle that is shaped in a precarious, imprecise, incomplete and superficial way, without at least understanding the values and meanings contained therein.

In view of all the contexts presented, it is necessary to develop future studies to strengthen the scientific knowledge of other law students, lawyers, the judiciary and the community in general.

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