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PSYCHOLOGICAL INFLUENCE AND CAUSATION IN TORT LAW**

Abstract: *Causation is the prerequisite for establishing tort liability and the presumption for damage attribution to a particular defendant. Physical causation is often indisputable but psychological influence is largely problematic because people respond differently to the same stimuli, thus making causal uncertainty inevitable. Induction, incitement, intimidation, persuasion, provocation or seduction are all different, and they need to be valued accordingly. Damage caused by psychological influence is challenging because it sparks a key question: who is to blame – the person who succumbed to influence, or the “influencer” who exerts his psychological impact on another? The issue of causation is here intertwined with other elements of liability, such as culpa and wrongfulness. After providing an overview of Roman law on this matter, the article describes various relations in which the influencer, the tortfeasor and the plaintiff can find themselves regarding mutual psychological stimuli. The major forms and intensity of psychological influence are illustrated by cases from comparative judicial practice. Due to its immaterial nature, psychological influence calls for tailor-made evaluation criteria aimed at determining the legally relevant cause of specific damage (provocation formula). Moreover, the over-extensive concept of psychological influence may lead to unjustified burden for the influencer.*

Keywords: *causation, psychological, consequence, tort liability, damage.*

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1. Introduction

The notion of “psychological causation” (English) or “*psychische Kausalität*” (German) is elaborated in foreign tort law literature as a topic that deserves a separate chapter (like in Digest of European Tort Law, Bd. I: Essential Cases on Natural Causation, 2007), or as a chief theme of publications (like *Die psychische Kausalität im Deliktsrecht*, 2003 and *Aktiv psychische Kausalität im Deliktsrecht*, 2016). Some jurisdictions simply accept or reject psychological influence as the cause of damage, while others set up an entire theoretical system with specific conditions. The goal of this article is to elaborate on the concept of psychological causation and to discuss whether it should be incorporated it into domestic legal doctrine and practice, considering that the examination of Serbian literature and case law has shown that this subset of causation is underdeveloped. The term “psychological causality” is used by some authors to denote the psychological consequences of a harmful event that causes emotional pain and suffering of the injured party (Young, 2008). Quite the reverse, this paper focuses on the initial element of the causal connection.

The concept of psychological influence opens up a variety of theoretical and practical questions. Unlike mechanical causality, it is often quite difficult to determine whether a person acted under someone else’s influence, which is immaterial and immeasurable. As it is a “phenomenon within a person”, its assessment is based on clues rather than obvious facts, by taking into account the personality and psychological constitution of the individuals involved. Independent individuals are able to freely decide on their actions and resist external influence, and vice versa. Thus, the main question is whether the person could have resisted or had to resist someone else’s actions. Psychological influence assumes that several persons participated in the tort-generating event. Sometimes they are defiant, sometimes they cooperate (Winiger, 2007: 252). Serbian authors have studied the intersection of psychology and civil law (Mojašević & Radulović, 2020; Mojašević & Nikolić, 2018).

The cooperation of several tortfeasors is correlated with the idea of “psychological causation”. It often leads to ignoring the challenging question: who is the leader of the tortious group? Stubborn insisting on discovering the leader can interfere with the claim for damages. For example: student A brought staples to school and handed them out to the peers so that a benign game of tossing paper ammunition suddenly became dangerous; B injured V with a staple, but both A and B are jointly and severally liable (von Bar, Clive, Schulte-Nölke, *et al.*, 2009: 3599). Paragraph 830 of the German Civil Code (*Bürgerliches Gesetzbuch BGB*) provides for the joint and several liability of co-perpetrators, accomplices, helpers and persons who encourage the tortfeasor. Thus, the psychological influence

alone, as an encouragement, suffices (von Bar *et al.* 2009: 3598). Similarly, the Serbian Civil Obligations Act refers “the instigator and the helper” (Art. 206, para. 2). Although psychological influence is very much present in cases where damage is caused by multiple tortfeasors, this issue is not the topic of this paper. Here, we will primarily discuss the psychological influence of the tortfeasor on the injured party, and vice versa, as well as situations when third parties are involved.

Given that the conclusion about concrete-case causality is based on pure fiction, jurisprudence on causation encounters difficulties in explaining psychological influence. It is difficult to talk about any real causal connection between psychological assistance and the tortious act if a person, for example, verbally diminishes the perpetrator’s conscience dilemma regarding the planned act. Moreover, any failed physical contribution could be translated into an active causal psychological contribution through the alleged strengthening of the tortfeasor’s decision (Vuković, 2015a: 49). This refers to influences inside a delinquent group but it shows how difficult it is to assess physical or psychological borderline cases.

2. Roman law

Roman jurists distinguished a situation where a tortfeasor acts directly and physically (*suis manibus*) from a situation where he creates such circumstances that the consequence is almost inevitable (*mortis causa praestare*). The latter situations, where the causal chain is not entirely certain, are puzzling. If person A gives person B a poisonous drug and B dies, two variants are distinguished. When the victim drinks the medicine “from the tortfeasor’s hands”, the damage is clearly determined by the will of A; so, he is fully liable (*actio legis Aquiliae*). Liability is also clear if A forces B or intensively urges him to take the medicine through the mouth, by injection or by rubbing it into the skin. In the second variation, A only makes an emotional impact on B in the form of a suggestion or expert recommendation, without any direct physical connection and with a loose psychological persuasion. The chain of causality is not strong enough now. The consequence of such a factual situation is the application of praetorian action *in factum* (Bogunović, 2013: 439). Therefore, psychological causation was followed by a milder reprisal.

When others persuade a slave to run away from his master, it will be considered to be “in his nature”, although he would not have done it without counsel. There is no physical causal connection between the instigator and the slave, perceived as commodity who becomes *fugitivus*; there is only a psychological stimulus in the form of persuasion, encouragement, disclosure of poor personal prospects,

etc. For Roman lawyers, causality in this case was indisputable. Persuasion to undertake dangerous activities (e.g. going down the well or climbing a tree) is similar (Bogunović, 2013: 440). In such cases, a special *actio de servo corrupto* made a third person liable for any damage caused to the owner (Jansen, 2007: 193). From the non-Romanist perspective, it seems that the maxim “When others persuade the slave ...” actually says the opposite: the instigator is not the cause but the slave himself is to blame because “it was in his nature”. But if psychological influence of a third person was a *conditio sine qua non* for escape (Cvetković, 2020: 46), it is irrelevant that the slave was ready to flee.

Legal history recorded unintentional psychological influence as well. It may be illustrated by the “Revenge” case. The defendant killed a man. In revenge, the son of the murdered man later set fire to the defendant’s house, and the fire then spreads to the neighboring house of the plaintiff who is suing the defendant for damage. The killer, a victim of revenge himself, is responsible for the damage to the neighbor. By killing the arsonist’s father, he “created an opportunity for damage”, which is equated with direct damage causation. He intentionally committed an illegal act (murder), so he bears all the consequences of his mistake. The solution is based on the canonical theory of guilt, not on causality. Similarly, a person who initiated a fight or a riot is also liable for damage caused by aggressive behavior of third parties. Although there is no explicit discussion on psychological causality in historical sources, it is obvious that the psychological influence on a third person was sufficient to establish liability (Jansen, 2007: 194-195). Entanglement with culpa and wrongfulness was also evident.

3. The tortfeasor’s influence on the injured party

In the “Pursuit” case, the conductor at the train station (a plaintiff) finds the defendant without a ticket. In order to avoid a punitive ticket and identity disclosure, the defendant attempts to flee. During the chase, the conductor runs up and falls from steep stairs, sustaining a complicated leg fracture. The court ruled that defendant clearly caused the fall in terms of the *conditio sine qua non*, which does not mean automatic attribution of all damages. By fleeing, the defendant provoked a lawful pursuit and increased the risk of injury, even though he could have foreseen and avoided it. The conductor acted properly, while the fugitive deserves no protection. The fact that the conductor made and implemented his decision to chase the wrongdoer does not prevent damage attribution to the fugitive. However, the liability is limited only to the consequences of the risks created by the chase, including the fall from steep stairs which the conductor would not have used otherwise. The risk is proportional to the interest to reveal the identity of the fugitive (Zimmermann, Kleinschmidt, 2007: 195). The role

of wrongfulness should be noticed here: the conductor acted properly, and the fugitive acted illegally.

Conversely, there are situations when ascribing the damage to the defendant is not justified because the independent and free decision of the injured party created an entirely new risk. In other words, the conduct of the defendant only provided an opportunity for the injured party to expose himself to danger. In German case law, the “provocation formula” examines the reasonableness and justification of the injured party’s decision, and establishes a balance between the risks and the desired benefits. If the defendant created a socially unacceptable risk and a situation in which the injured party felt obliged to act against his legally protected interests, then the damage is covered by the protective mantle of the violated norm. The formula clearly indicates that illegality is more important than causality.¹ In a similar case, the pursuer slipped on wet grass, which was a general (common) risk of life, not a typical chase-related risk. Likewise, the chase of a fugitive whose identity is known to the police for a minor offense is not justified (Zimmermann, Kleinschmidt, 2007: 197).

In the “Pursuit” case, the *conditio sine qua non* test is positive: if the fugitive had not traveled without a ticket and fled from the conductor, or had he revealed his identity and paid the penalty ticket as required by the law, the conductor would not have fallen. Thus, in terms of Article 3:101 of the Principles of European Tort Law (PETL, 2005), there is a natural causality between the psychological impact exerted by the fugitive and the injury to the conductor. First and foremost, in order to consider whether it is legally significant, psychological influence must be a natural cause.

Unlike the clear provocation in the “Pursuit” case, there are more subtle types of influence in the form of incorrect information which induces the injured party to undertake a harmful action. It may be illustrated by the “Suggestive self-damage” case, where the insurer incorrectly announced a generous amount of indemnity. Trusting the assessment, the insured party took a mortgage loan. It turned out that the indemnity was three times lower than announced; the insured party faced significant difficulty in repaying the loan, and sued the insurer. There is a causal link between the misinformation and the investment of the insured party, who now cannot service the loan due to incorrect data (Durant, 2007: 213). Unlike the previous illustration where the injured party reacted almost instinctively to the physical action of the fugitive, here the injured party made a deliberate harmful decision due to wrong oral information.

1 The conduct of the injured party must not be unlawful. A person driven by a bad example of other pedestrians crossing the road even though the traffic light is red cannot hold them accountable in case he was hit by a car.

In German traffic law, psychological causality is a subset of indirect causation. In contrast to numerous foreign legal systems, it is irrelevant whether the accident was caused directly or indirectly. The damage can also be caused by the operation of the vehicle although there is no physical contact with the injured person or the damaged property. Psychological causality is present when the injured party acted in a self-endangering or harmful manner because of the tortfeasor (e.g. if the driving style of one vehicle causes another vehicle to drive into the ditch) (Greger, Zwickel, 2014: 46).

If the injured party's own behavior leads to the accident, this can be attributed to another owner if the operation of his vehicle prompted the injured party to "feel provoked" (*psychische Kausalität*). The injured party has to prove that he was challenged. A "provocation" resulted in a positive action (e.g. if a vehicle on a narrow road forces an oncoming vehicle to move to the right, so that it ends up in the ditch; when a motorist, by signaling and tailgating, urges the person in front to turn right into a gap that is too narrow, resulting in an accident; if a vehicle blinds the driver of an oncoming vehicle which crashes while attempting to stop; if a pedestrian runs away from a skidding vehicle and falls; if a motorist violates the right of way because he is being threatened by another, or is being pursued or forced to flee). On the other hand, there is no attribution connection if a vehicle is caused to move into the fast lane by a stationary car and ends up in the central island, or if a truck is steered into the fast lane because a car is driving in front of it without collision risk (Greger, Zwickel, 2014: 47).

4. The tortfeasor's impact on a third party (cases involving three persons)

Model situations occur primarily in the field of contractual liability. In case of non-contractual liability, it will actually be treated as a collaboration of multiple tortfeasors (Cvetković, 2020: 178). It may be illustrated by the "Breach of contract inducement" case. The club owner A and the musician concluded an exclusive contract for the musician's performance at Disco A, in exchange for a fee. The contract explicitly prohibits the musician to play elsewhere, especially in competitor B's discotheque. Soon after, B convinces the musician to violate his contractual obligation and promises to bear all the negative consequences of the breach. Owner A seeks performance of the contract from the musician and compensation from B for interference with his contractual rights. In one opinion, B caused a breach of contract and his activity is the *conditio sine qua non*. The fact that a deliberate act by the musician was necessary for breach to occur does not break the causality between the act of B and the damage (Kadner Graziano, 2007: 251). Despite the established causality, compensation is not gu-

aranteed as this kind of damage (pure economic loss) enjoys a lower degree of protection. In the opposite opinion, defendant B cannot be made contractually liable for the breach of a contract which he was not a party to. Although defendant B contributed decisively by reassuring the musician that he would pay for any negative consequences of the breach, the causal link is broken by a willful act of the musician (Ribot, Ruda, 2007: 221, 222). Therefore, the musician's fault, reflected in his decision to perform in disco B, is more important than the psychological influence of owner B, who acted intentionally with the same goal.

In the realm of non-contractual liability, there is a well-known problem of "Unlucky Rescuer 1". The moral third party suffers damage while trying to rescue the victim from the risk created by the reckless tortfeasor (e.g. X gets hurt while trying to rescue Y from fire that started after major traffic violation by Z). The psychological influence is "silent"; the unspoken action provokes the reaction of the injured party. The influence is accidental since Z never knew that X would interfere. Conversely, the influence of B is intentional and the musician was exposed to verbal statements.

In a similar litigation case, involving two persons, the court concluded that there was no psychological causality. In the case "Unlucky Rescuer 2", after seeing a car crashing into the sidewalk, a pedestrian in panic crosses the highway to provide assistance, and gets hit by another vehicle while crossing. The Court of Appeals deliberated that there was no causal link between the first accident (the first driver's negligence) and the pedestrian's injury; the pedestrian violated the legal ban on highway-crossing although he did not have to do so. Nevertheless, it is understandable that the pedestrian tried to claim the compensation from the first driver because without his mistake the pedestrian would not have been run over (the *conditio sine qua non* test is positive); the pedestrian reacted spontaneously at the scene of the accident. The Court ruled that the pedestrian's behavior was not an essential necessity and that it was illegal. The crossing was the result of an individual decision, so the first accident is not the cause (Durant, 2007: 212). However, literature cites opposite decisions on a similar situation. In the "Unlucky Rescuer 1" case, three persons were involved: the tortfeasor Z created the psychological pressure on the rescuer to help the crash victim. In the "Unlucky Rescuer 2" case, the plaintiff was affected by the defendant himself (i.e. by the traffic accident he produced). Due to the wrongfulness of his act, plaintiff remained uncompensated although his action was humane. This is not appropriate.

In German traffic law, deliberate self-endangering by the injured party is to be regarded as being "provoked" by the operation of the other vehicle if the latter had provided reasonable motivation. If a third party exposes himself to danger

in order to provide accident assistance or to ward off a hazard (e.g. to move cargo off the road) and the accident occurs as a result, this is attributable to the operation of the vehicle triggering the causal chain. It is irrelevant whether the third party stepped in voluntarily or was driven by a professional obligation (the paramedics, the fire brigade) and whether the assistance was intended for the person who is liable for damage or for another accident victim (Greger, Zwickel, 2014: 49).

5. The injured party affects the tortfeasor

When the injured party psychologically affects the tortfeasor, it is treated as his contribution to damage. It may be illustrated by the “Drunk co-driver” case. The plaintiff convinced the indecisive A to drive a car even though they were both drunk. Due to excessive speed, driver A and the plaintiff as a co-driver were injured in the accident with another vehicle, whose passengers were also injured. Acknowledging his 40% contribution, the plaintiff pursues the compensation of 60% of damages from the driver. The driver compensated the damage to the passengers from the other vehicle and seeks the recourse from the co-driver. The Federal Supreme Court of Switzerland explained the plaintiff’s contribution: “... he persuaded the drunk person A to drive and dispelled his hesitation, although it was dangerous for them and for public transportation as well. Due to the influence on the driver, the plaintiff himself is responsible for drunk driving, and thus for the consequences”. The Court distinguishes the plaintiff’s contribution of 40% in his “own damage” from his contribution to the damage of the passengers from the other vehicle of 15% because the main liability rests with the driver. The Swiss doctrine regularly acknowledges the psychological causality in mass fights and street riots when all participants are jointly and severally liable because the actual tortfeasor cannot be determined. Judgments are based on equity, fairness and special cases of alternative causality (Wingier, Krell, 2007: 201). This case is a combination of multiple tortfeasors and the injured party contribution via psychological influence on the tortfeasor (the driver).

6. Intensity of psychological influence

The gradation of psychological influence is of practical importance: strong influence is more easily recognized as the cause, and vice versa.

1) The *minimal influence* includes the usual excitement caused by an event involving third parties. For example, in “Unlucky Rescuer 1”, a court may find that there is no “sufficient” causal link between the accident and the illegal crossing of the road, despite the fact that the accident was the *conditio sine qua non* for

the rescuer's damage. This conclusion is less applicable in "Unlucky Rescuer 2", where the influencer himself needed help and the rescuer got hurt while trying to help him. A special form of psychological influence is seduction. In one Italian case, the promise of marriage served to establish an intimate relationship. The husband-to-be paid compensation because he eventually refused to get married (Graziadei, Migliasso, 2007: 217)

2) The *mild influence* includes imitations. For example, boys targeted their neighbors with an air-gun. In addition to boy A1, whose shot caused damage to B, boy A2 (who was the first to shoot and then handed the gun to A1) was also held responsible. A special category of mild influence are situations when the tortfeasor tries to avoid a penalty (e.g. by fleeing from a conductor, a police officer, or a guard). The damage is sustained either by the pursuer or by the fugitive. The Supreme Court of Germany recognizes the causal link between the escape and the injury of the conductor; on the contrary, the Spanish court deliberates that the police officer contributed to the injury of the fugitive (Winiger, 2007: 253-254).

3) The *medium influence* is an explicit persuasion to perform a dangerous or illegal act (e.g. persuading a drunk person to drive a car, or a party to breach his contractual obligation) (Winiger, 2007: 254). The causality of actions by which the perpetrator is fortified in his own previously taken decision is not unanimously accepted in criminal law. Treating psychological support as a causation would lead to almost unlimited expansion of complicity, without valid criteria how to assess whether the psychological impact on the perpetrator was an effective contribution to his delict (Vuković, 2015a: 56). This explanation supports the opinion that the verbal influence of the owner of discotheque B is not causal for the musician's contractual breach.

4) The *strong psychological influence* includes orders (e.g. to perform dangerous physical exercises² or to go on strike). These include intimidation and provocation (e.g. stating that a pub guest will not be able to drink alcohol supply at once, which results in death from alcohol poisoning) (Menyhárd, 2007: 246). An impressive example is a case from Yugoslav court practice. While her mother O. was hitting the victim who was lying on the ground in the head and body, M. squatted next to them and said: "Hit him, he is still alive", or "He is still alive, he is still alive". Although M. did not physically participate in killing (she did not

2 The physical exercise that the plaintiff participated in (tossing a stone) was part of his professional education and improvement of his police skills. It was an element of obligatory check during physical training, related to his job which itself carries an increased risk of injury and particularly considering the consequences that may occur during its performance and despite the application of appropriate procedures (Court of Appeals in Belgrade, Gž. 1. 877/2014 dated 16 April 2014. Paragraf database).

cast the blows), the court concluded that the daughter's contribution in this case amounted to complicity. Even though the daughter's comments may be regarded only as psychological contribution, they are the *conditio sine qua non* of death (Vuković, 2015b: 138).

Roman law acknowledged liability based on orders or instructions given by a person of authority. A subordinate man was not liable under *Lex Aquilia* if he acted on the order of a superior or the master. If such relationship was non-existent, and the tortfeasor still acted on the instructions of a third party, then he was not released from Aquilian liability (Bogunović, 2013: 440).

5) A special form of psychological influence refers to incorrect or insufficient information. For example, erroneous information from the insurer about future compensation may cause the injured party to become over-indebted; false information about the financial condition of the company causes damage to investors (Winiger, 2007: 255). The relevant issues are: 1) whether the defendant was obliged to inform; and 2) whether the injured party would have acted differently if he had been informed correctly. The most important subgroup refers to insufficient information to patients about the risks and harmful consequences of the forthcoming intervention (Manić, 2019: 217). This is not an instance of psychological pressure but doctor's omission, due to which the elements for informed consent are missing (Radišić, 2004: 212).

7. Additional criteria for assessing the psychological cause and limits of influencer's liability

On a theoretical level, the important issue is how to reconcile strict determinism (the party's will as a predetermined consequence) and the party's full freedom to act (Lukić, 1958: 414). Absolute freedom does not exist, and anyone trying to prove it is bound to fail. If freedom implies an unprovoked choice in a decision-making process, it must be acknowledged that there is no freedom of will (party autonomy) in the true sense of the word. Thus, will and decisions cannot be exempted from general determinism and causality. One really chooses between several possibilities, but his choice is predetermined (Lukić, 1958: 416). If this is true, and if unprovoked decisions do not exist, then psychological influence can be found in every single harmful incidence. The same can not be said for mechanical causation. Determination of psychological causation presumes examination if the will of one human being was a result of another's influence. If we recognize psychological causation too easily, that would ignore the autonomous expression of will (Dubarry, 2012: 635). Human nature is characterized by autonomous decision-making, which would be undermined by over-extensive conception of psychological causation.

Considering the different forms and situations in which psychological influence occurs, as well as its intangible (immaterial) nature, supplementary criteria are desirable, in addition to the standard *conditio sine qua non* test.

The higher level of the influencer's fault entails the stronger causality; for example, an adult A induces a minor B to steal a car; the minor exceeds the speed limit and causes a car accident. As the psychological exertion of influence can seldom be established retrospectively, these cases almost always concern merely a "suspicion of causation". However, the weakening of the causation is compensated by especially serious degree of fault, specifically intention (Koziol, 2012:140). Predictability is important for detection of intention (Cvetković, 2017: 110). When the minor was injured while fleeing from the guards, the Spanish court deliberated that the chase was the cause of the damage because a conscientious person would have anticipated that the chase could diminish the perception of the injured party (Ribot, Ruda, 2007: 259, 216). Quite the reverse, in German traffic law, it is irrelevant for the causal connection whether the influencer acted without fault of his own, negligently or intentionally. The older idea that the intentional action of the injured party or a third person "breaks the causal connection" has long been recognized as erroneous (Greger, Zwickel, 2014: 46).

Justification of the injured party's action requires assessment. In certain cases, very strong psychological pressure has no effect, while in other situations slight suggestions may produce severe consequences. The intensity of the impact is crucial (Winiger, 2007: 263). Reliability of information given by the influencer is important. The injured party bought a plot of land after receiving information about railway relocation. The planned reconstruction was the most important fact that induced him to purchase the land. After the urbanization plan modification, he seeks compensation from the source of information – the local authority as a seller. The information was given as "final and secure"; so, the court established a cause-effect relation with the decision of the injured party to buy the land (Menyhárd, 2007: 247).

The reaction of the party under psychological influence must be reasonable. There is no adequate causality if his/her behavior was quite unusual and unexpected on the basis of general life experience. Therefore, adequate causality is to be affirmed, for example: if a vehicle driving in the right lane suddenly brakes without reason so that an overtaking motor vehicle brakes sharply and consequently slides from the road; if a person with the right of way is forced to brake excessively and skids due to the rapid approach of the person who is obliged to wait at the intersection; if a motorist jerks his leg up just before colliding with a skidding vehicle and injures his knee; if a motorist is injured as a result of annoying horn honking by another driver; if a cyclist or a moped rider becomes

unsafe and falls as a result of an unreasonable action of an overtaking vehicle; if a pedestrian or cyclist distressed by the driving style of a vehicle jumps to the side and falls; if a cyclist unsettled by an oncoming motor vehicle falls while taking an evasive action; if a pedestrian frightened by a suddenly appearing vehicle steps too close to tram tracks and is hit by a tram. On the other hand, there is no attribution if someone else misinterprets the correct behavior of the vehicle driver and consequently suffers damage or injury (Greger, Zwickel, 2014: 47-48).

The psychological influence is more prominent in asymmetric relationships, such as parenting. After divorce, the father requests from his ex-wife compensation for psychological (emotional) pain because he believes that she persuaded the child not to keep contact with him. Here, an intermediary person (a child) is involved between the alleged influencer and the plaintiff. From this starting point, the father suffers either from his son's decision to refuse to meet him or from the mother's manipulation, which was channeled against him through the child (Dubarry, 2012: 635). As the son's autonomous decision is capable of breaking the causality, the father's claim against the mother would be groundless. Notwithstanding the mother's conduct, the question is whether the son's decision was autonomous (Dubarry, 2012: 635). Causation cannot be established unequivocally, either because of the autonomous decision of the son or because the extent of the mother's conduct cannot be determined with sufficient precision (Dubarry, 2012: 636). In the absence of an evident causal relationship, the concept of loss of chance makes it possible to award compensation when causation is not certain. The use of this institute from the law of medical negligence should be included in psychological causation situations (Dubarry, 2012: 637).

The allocation of damage in cases of psychological causation implies that the person who reacts to stimuli must feel obliged to act, not just in a general sense but exactly in the manner he/she did. However, the person can take a risk which is so excessive that allocation of risk would make the influencer disproportionately liable. For example, in case a police officer pursuing a fugitive jumps from a window which is not too high from the ground (2-3m), the fugitive should be fully liable for the pursuer's injuries; but in case of greater heights, he should not be liable at all. However, this "all-or-nothing" principle would often preclude a just assessment of each individual case. Instead, if the fugitive has foreseen the pursuit and if the potential harm does not exceed the threshold mentioned above, the judge should allocate the damage in accordance with § 254 BGB (Contributory negligence) (Markesinis, Unberath, 2002: 642).

Larenz emphasized that even objective liability can also be precluded due to intervening willful act. He highlighted the cases in which the consequences are a product of an independent decision, where they are not provoked by the

process initially providing a basis for liability. The victim or a third party are solely responsible for further damage. From a value judgement perspective, the secondary conduct of the victim or a third party was not provoked and, thus, there is no “internal connection”. However, the provocation formula on its own is not enough to resolve an individual case. A comprehensive evaluation of interests must take place just like in case of determining wrongfulness in cases of inducing a third party to engage in a harmful act (i.e. psychological causation). If the criteria inculcating the victim or a third party outweigh by far those inculcating the first perpetrator, then it is inappropriate to impute the damage to the perpetrator (Koziol, 2012: 286-287).

8. Conclusion

Psychological causality is not systematically treated in the same way as other types of causality (e.g. alternative, hypothetical or cumulative), nor is there a theory dedicated specifically to this phenomenon as is the case with adequate or indirect causes. Despite that, many authors from different countries explain “psychological causality” or “*psychische Causalität*”³ with similar examples, hypothetical situations and case law. Therefore, common notion is evident. One person (the influencer) impacts another person (the person under influence) who then reacts to the stimulus and takes some harmful action. Most commonly, the tortfeasor influences the injured party to put himself at risk through self-damaging or wrongful behavior. Psychological influence is exerted physically (during some physical process such as fleeing, pursuing, road rage) or verbally (through misinformation, persuasion, encouragement, or even a friendly pun).

Psychological causality occurs beyond the collective infliction of damage. Considering the vector of psychological influence, the following classification emerges: 1) psychological influence of the tortfeasor on: a) the injured party; b) a third party; and 2) psychological influence of the injured party on the tortfeasor.

Psychological influence is causal if, but for the absence of it, the person under the influence would not have taken a harmful action or his position would have been better (*condicio sine qua non* or “but for...” test is positive). In the absence of a mechanical (physical) contribution to damage, psychological influence alone may lead to liability. In principle, everybody should be able to make up their own mind autonomously; therefore, they should be liable for their own acts. However, in instances of psychological influence, this principle demands that the influencer is held liable instead of the person under his influence or at least together with him.

3 German term is more appropriate for Serbian translation: “*psihički*” (mental) instead of “psychological”.

The reaction of a person under the influence depends on one's personal characteristics, mainly one's character, but there are also objective criteria for assessing whether submission was justified. Therefore, the relationship with the influencer (commander, parent, public authority) is also taken into account; the provocation formula compares the risks with protected interests; the capacity to resist is evaluated against the intensity of influence. The reaction should pass the adequacy test; thus, the influencer is not responsible for another's overreaction (e.g. jumping from excessive height). The idea of *novus actus interveniens* also benefits the influencer. Induction, incitement, intimidation, persuasion, provocation, seduction are different; they need to be valued accordingly.

The difference between legal and natural causality is well exposed in psychological causality because other conditions of liability are also involved: culpa and wrongfulness. This is understandable; in a majority of the cases cited in this paper, a person under the influence would be protected in Serbian law (even without mentioning the psychological influence), on the grounds that the person was not at fault due to coercion, or that he/she acted in an emergency or provided necessary assistance to another, or that he/she was a victim of fraud. The rules on contributory negligence may also allocate liability without referring to psychological influence.

Psychological consequences have long been recognized in the Serbian law. Emotional pain, psychological suffering and mental balance are often mentioned in judgments and literature. There may be room to include psychological causes, not so much due to the need to protect a person under influence (which is achieved by existing institutes) but to better explain the causal link with the influencers.

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ПСИХИЧКИ УТИЦАЈ И КАУЗАЛНОСТ У ОДШТЕТНОМ ПРАВУ

Резиме

Узрочност има значајну улогу у одштетном праву, представља услов одговорности и претпоставку за приписивање штете одређеном лицу. Мада физичка узрочност углавном није спорна, психички утицај представља готово увек сложено питање зато што људи реагују различито у истим околностима што повлачи узрочну несигурност. Навођење, хушкање, застрашивање, убеђивање, провокација, завођење су различити и у складу са тим их треба вредновати. Штета настала услед психичког утицаја отвара кључно питање: ко је одговоран – лице које је подлегло туђем утицају или лице од кога утицај потиче. Овде је проблем узрочности испреплетен са другим условима одговорности као што су кривица и противправност. Након увода из римског права, рад описује различите односе у којима се штетник, оштећени и треће лице налазе поводом међусобног менталног притиска различитог интензитета. Облици психичке узрочности илустровани су упоредном судском праксом. Због своје нематеријалне природе психички утицај захтева посебне критеријуме приликом процене да ли у конкретном случају постоји узрочна веза. Прешироко схватање психичког утицаја излаже одређена лица прекомерној одговорности.

Кључне речи: узрочност, психички притисак, последица, грађанскоправна одговорност, штета.