

## Cases of exemption from criminal liability according to the criminal code

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### ABSTRACT

This paper analyzes the institute of insanity, incapacity because of a mental disorder, as one of the main causes of exemption from criminal liability, in order to present a more comprehensive configuration of this institute. The institute of insanity presents sufficient interest, as much as unclear points. The uncertainty that characterizes the field, the fact that different thesis and orientations are radically at odds with each other, necessarily requires reflection, grounding and continuous proposals from the doctrine and practice as well. There are numerous uncertainties, especially those dealing with the impeachment of insane subjects and their final legal treatment. In terms of risks, we are dealing with an area where criminal law, inevitably, interacts with other disciplines (psychiatry), due to which lawyers must be careful not to infringe balances already established from both criminal and forensic sciences in solving cases of exemption from criminal liability because of a mental disorder.

The following paper tries to give an overview of the different orientations that characterize the problem in question, to underline the conclusions achieved from the jurisprudence, to reason not only on the basis of the effective normative, but also on the basis of perspective and the capacity of reformation, seeking to develop points of reflection and also to avoid unreasonable controversies. The main issue, as well as the most controversial one, deals with the question: What does insanity mean and whom it serves?

**Key words:** mental capacity, insanity, legal criterion, diminished mental capacity, medical measures, forensic expertise.

### Liability according to the criminal code

Criminal law is part of public law, as long as the goods and rights it protects are attributed to individuals (life, property, morality and dignity, etc.) and as long as they are protected by the state from the point of view of a common and collective interest. Criminal law calls facts criminal offenses and perpetrators subjects. The facts belong to human behavior and the legally important consequence, while the subjects are the persons who commit these facts<sup>1</sup>. Therefore, the basis of criminal responsibility consists of the set of objective and subjective elements provided for in the criminal legislation, sufficient for the person to be held criminally responsible. Criminal liability arises from the moment of committing the criminal offense and ends or ceases when the legal relations between the subjects, the state and the defendant also cease. In terms of criminal responsibility, the fact that it is only individual is very important. Criminal liability ends when the specified term of serving the sentence passes, implementing educational measures, due to the change of circumstances, with the prescription of the criminal offense, amnesty and forgiveness<sup>2</sup>. The commission of a criminal offense means the application of punishment or other measures to its author, as a necessary reaction of society and the state to the damage caused or the endangering

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<sup>1</sup>I. Elezi, S. Kaçupi, M. Haxhia “*Comentary on the Criminal Code 2001. Pagei .12*”,

<sup>2</sup>Shefqet Muçi “*Criminal law part*”, 2007, p. 93.

of protected values, as a result of violating the norms of the legal order. In order for the punishment to be applied, it is necessary for the perpetrator to be responsible for the committed crime, i.e. to have a certain psychic relationship with the committed crime as its author. Therefore, for the implementation of the punishment, it is necessary that, in addition to the existence of the criminal offense, the criminal responsibility of the author of the offense also exists. From this it can be concluded that the existence of criminal liability is a necessary condition for determining the punishment for the perpetrator of the criminal offense.

According to this worldview, criminal liability consists of two elements:

1. Guilt and mental capacity (subjective element)
2. Criminal offense (objective element)

Criminal liability really presupposes the existence of a criminal offense, because the problem of determining criminal liability arises after a socially dangerous and illegal offense has been committed, which is defined by law as a criminal offense for which punishment is provided. Without the existence of a criminal offense, the issue of criminal responsibility cannot be raised. This fact shows that criminal responsibility can be viewed from an objective-subjective point of view.

In the theory of criminal law, we can also come across such opinions according to which the central institute of this field is the "real" culprit, while criminal responsibility represents only the finding, the determination that an individual fulfills the conditions for guilt. Criminal responsibility is thus only a consequence of the commission of a criminal offense, as legal-civil liability is only a consequence of the commission of a legal-civil delict or a civil delict (causing damage). So, criminal responsibility is only a technical term which indicates that an individual has committed a criminal offense and that he is responsible for that offense. This means that the notion of criminal responsibility has only a declarative and non-essential character<sup>3</sup>.

Criminal responsibility is nothing but the obligation of the author of the criminal offense to submit to legal requirements and the punishment assigned to him for the criminal offense committed. It is related to the person's responsibility, that is, to the ability to understand his behavior. On the other hand, its birth obliges the competent bodies to start criminal proceedings, in accordance with the rules provided in the Code of Criminal Procedure, in order to materialize this responsibility. In the essential aspect, the basis of criminal responsibility is the criminal offense, within which the social dangerousness of the criminal action or inaction is expressed. Knowing and applying the principles and requirements of criminal responsibility is in itself the application of the principle of legality. Criminal liability does not apply to minors who have not reached the age provided by law, to persons who are irresponsible due to their mental state and in the case of other circumstances that lead to exemption from criminal liability.

Two of the main elements of the picture of the criminal offense that bring criminal responsibility are the subject, with its characteristics, specifically, the age for criminal responsibility and responsibility, as well as the subjective side, with guilt, motives and purpose. The subject is a necessary element of the criminal offense, by which is understood the person who committed the criminal offense and who will be responsible for its commission, but to be criminally responsible as the author of the criminal offense must maintain two qualities, age and be responsible. The age criterion is provided by the legislator as a condition for having awareness and the ability to judge and distinguish between good and bad. The age of criminal responsibility is related to the time of

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<sup>3</sup> Yes there.

the commission of the crime or criminal misdemeanor and not to the age of initiation of the proceedings. This is important for holding the person criminally responsible and for determining the punishment. In addition to age, a necessary feature of the subject of the criminal offense is responsibility, which consists in the person's ability to understand and control his behavior and the consequences<sup>4</sup>.

### **Cases of exemption from criminal liability**

In our Criminal Code, the exemption from criminal liability is provided in 10 articles, starting with age, causation, guilt and irresponsibility due to mental state, necessary protection, extreme need, etc. Referring to the legislator's provision on the two main conditions for taking criminal responsibility, namely age and responsibility due to mental state, the subjects that are subject to criminal law can be identified. The age for taking criminal responsibility has to do with the time in which the subject manages to understand the importance of actions and omissions and at the same time manages to control them, to understand that he is committing a criminal offense. Age determination is directly related to the understanding of illegal action and socially dangerous behavior. In the same vein, irresponsibility due to mental state also follows, given that the person affected by a mental disorder at the time of committing the criminal offense did not have what is legally known as the ability to understand actions and inactions and to wish the arrival of the consequence.

The conditions of the development of the society make it possible for the person who has reached the age of 14 at the time of committing the criminal offense to have acquired sufficient knowledge and to understand what is good and bad, and consequently also what is a crime and what is not. Meanwhile, the person affected by a mental disorder does not perceive the reality and therefore the illegal action, at any moment of his life. There are hypotheses for exemption from criminal liability. The law provides that the subject cannot be held criminally responsible whenever he suffers from mental disorders and pathological intoxication, such as to completely or partially disrupt the ability to understand actions and to desire the consequences. For minors under 14 years of age, there is an absolute presumption of exemption from criminal liability<sup>5</sup>.

This list of reasons for exemption from criminal responsibility is not taxing in nature, but is limited to predicting some hypotheses. It is not a question of reasons for automatic exemption from criminal liability, but of case-by-case verification<sup>6</sup>. What is important in our paper is the legislator's assessment of mental disorder, the general definition within which different causes are foreseen, each with its own importance. Regarding the definition of mental disorder, Marini identifies it as "any change in intellectual or volitional ability, or both, encountered in the subject"<sup>7</sup>.

This mental state is not necessarily permanent, but can also be a transitory state. On the other hand, the term "mentally ill" was included in the penal codes of the Middle Ages, according to which non-punishment was provided for the person who had committed a criminal offense in this state.

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<sup>4</sup> Yes there.

<sup>5</sup> F. Antolisei "*Manuale di diritto Penale, parte generale*", 1985, pg. 521.

<sup>6</sup> F. Antolisei "*Manuale di diritto Penale, parte generale*", 1985, pp. 280

<sup>7</sup> G. Marini "*Imputabilità, in digesto delle discipline penalistiche*", 1988, pf. 255

Despite the exemption from criminal responsibility and the imposition of criminal punishment, for persons who have not reached the age or who are irresponsible there is a special treatment outside the penal system, namely educational measures and medical measures.

### **Irresponsibility as a condition for exemption from criminal liability**

In criminal law, responsibility is defined as the existence of sufficient conditions to attribute a criminal offense to a subject and to consider the legal consequences. No one can be held criminally responsible if at the time of the offense he was unable to understand and control his actions or to desire the consequences, but incapacity does not exclude responsibility when it is a consequence of the subject's culpable actions (for example drunkenness)<sup>8</sup>.

The concept of irresponsibility, in today's times, when it has lost the connection it had in the past with the term "mentally ill", has faded and become undefined, losing any value it had for psychiatry in the past. Moreover, awareness has been created that mental disorder is not only a mental illness, but constitutes a complex and indefinable entity, being the result of many factors such as genetic factors, stress, etc. Today there is no longer mental illness in the ancient sense of the term, today there is a different vision of mental illness, consisting of many factors integrated together. The doctrine of criminal law does not actually define the notion of mental capacity, but the notion of mental incapacity. Mental incapacity is defined as the inability to understand or control the performance or non-performance of an action, as well as the inability to understand that one is committing a criminal offense due to a temporary or permanent illness, mental disorder or retardation in mental development. Irresponsibility due to mental state is provided for in Article 17 of the Criminal Code, according to which:

"There is no criminal liability for a person who, at the time of the commission of the criminal offense, suffered from a mental or neuropsychic disorder that completely disturbed his mental balance, and as a result was not able to control his actions or omissions, nor to understand that he committed a crime criminal. The person who at the time of committing the criminal offense suffered from a mental or neuropsychic disorder that has reduced his mental balance to fully understand and control his actions and omissions is responsible, but this circumstance is taken into account by the court in determining the amount and type of punishment. punishment."

The issue of whether the person was irresponsible at the time of committing the criminal offense, whether or not he was able to contain himself and manifest his will, is verified for each person taken as a defendant. Responsibility is presumed, while irresponsibility is proven and declared in court. A person who has reached the age of majority is considered responsible until the contrary is proven<sup>9</sup>.

It should be specified that responsibility is investigated during the development of the criminal process, it always refers to the moment in which the criminal act for which the proceedings are being carried out was committed. Responsibility is conceived as the ability to understand and

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<sup>8</sup> Shefqet Muçi "Criminal law part ", 2007, pg. 131

<sup>9</sup> Item - Giancarlo Zappa, Carlo Alberto Romano "Infermita mentale, pericolosita sociale e misure di sicurezza alla prova degli anni duemila"; can be found on the website [www.rassegnapenitenziaria.it](http://www.rassegnapenitenziaria.it).

enable the performance of an illegal action, so it means the tendency of the subject to recognize reality, what happens around him, as well as the ability to take the positive and negative values of this reality. It presupposes a mental state that consists in understanding and judging his actions and inactions. The ability to act is the ability of the subject to decide autonomously, to distinguish between legal and illegal based on a reasonable opinion, as well as to resist negative external stimuli and to manage them well. So, the premise of the model on which the foundation of the cultural, legal and moral system rests is clearly visible, in which responsibility has as a precondition the freedom of the author and of the criminal action. If it were not so, sanctions, social disapproval, the idea of guilt, justice and right would have no meaning. It is important to differentiate criminal responsibility, which is a legal concept and as such contributes to the field of law, with the use that finds as a primary need the formation and socialization of man and his abilities in every field. From the responsibility of the subject also derives its criminality, with its consequences such as the application of security measures. From this double element derives the social dangerousness. The law connects irresponsibility with the loss of two elements, intellectual and volitional<sup>10</sup>.

The Penal Code does not recognize the relationship between the affective sphere and the intellectual and volitional sphere, and as such, under the influence of criminal policies for the prevention of criminal offenses, denies the influence of the emotional and passionate state in taking criminal responsibility. The legislator has disciplined irresponsibility by considering it as a differentiation between pathological and non-pathological cases, excluding or schematizing special states such as passionate emotional states and based on the expression that 'if a person is not sick, he must control his instincts'. So nosography, which was supposed to create a situation of clarity and unify judgments, has actually led to the possibility of re-introducing some situations that should have been excluded from the law. The fact that on the one hand nosography is very broad and risks not being easily practicable in the psychiatric-forensic field, and on the other hand very narrow in non-obvious situations, has brought strong criticism towards psychiatric nosography<sup>11</sup>. Jurisprudence has emphasized the three psychic factors which characterize the action in the subjective aspect: feeling, intelligence and will. The Penal Code, bordering on irresponsibility, considers only the last two and not the first. Meanwhile, character anomalies and insufficiency of ethical and social feelings cannot be considered as indicators of irresponsibility due to mental state, as long as they are not associated with disorders of the intellectual or volitional sphere, i.e. of a pathological nature.

The doctrine agrees that irresponsibility cannot be limited only within clearly defined frameworks, but it expresses a broader concept than the concept of mental illness, and therefore its content can be determined on the basis of the ratio, the index of the rules for irresponsibility. The concept of irresponsibility is broader than that of mental disorders, provided for in our Criminal Code, given that not all mental disorders are classified as causes that bring about irresponsibility. Criminal responsibility is the obligation to be subject to the penalties determined by the Criminal Code in relation to the commission of a criminal offense<sup>12</sup>.

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<sup>10</sup> Fiandaca G., Musco E. *"Diritto penale, parte generale"*, 1989, pg. 252

<sup>11</sup>Nosography is the systematic classification or description of mental illnesses.

<sup>12</sup> Item - Giancarlo Zappa, Carlo Alberto Romano *"Infermita mentale, pericolosita sociale e misure di sicurezza alla prova degli anni duemila"*; mund të gjendet në faqen e internetit [www.rassegnapenitenziaria.it](http://www.rassegnapenitenziaria.it).

## Conclusion

The issue of criminal irresponsibility is regulated in the Criminal Code with the aim of satisfying the needs of the law once and for all, being enriched with doctrinal and jurisprudential orientations regarding the concept of the ability to act and to desire the consequences and mental disorder, very soon the codification in question showed the impossibility of satisfactorily solving the cases faced by the practice, making the interpretive lines that permeate until today the entire debate on mental illness, as a reason for exemption from criminal responsibility, began to lose their sharpness under the influence of alternative orientations, which include in the debate not only legal sciences but also medicine, psychiatry, psychology and criminology. Currently, according to the unanimous opinion of the doctrine, the concept of criminal irresponsibility due to mental state is in the conditions of a crisis, which in short is summed up in the impossibility to answer precisely the question: When can a subject be declared irresponsible? This is due to the fact that the concepts that should serve the definition of the article, such as "the ability to understand the actions and to desire the consequences" and "mental disorder" turned out to be extremely general and difficult to interpret. The uncertainties that made the interpretation of Article 17 of the Criminal Code problematic are related to many factors of different natures, although they depend mainly on the evolution of psycho-pathological sciences, which on the one hand made the discipline of the code inappropriate and outdated, and on the other hand brought about the loss of the limits of the definition of irresponsibility due to the mental state, through the elaboration of concepts on the disease carried by the jurisprudence, often of opposite orientations, as in terms of the mental disorder that excludes the ability to understand, also in terms of the very structure of the judgment of irresponsibility.

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