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DIMINISHED RESPONSIBILITY IN THE CRIMINAL LAW OF UKRAINE

The studies, conducted by the lawyers and forensic psychiatrists, have shown that a vast amount of people among prosecuted criminals have some form of mental disorder. Therefore, the research of such criminal law category as diminished responsibility is important and quite challenging for scientists nowadays.

Diminished responsibility can be described as a mental state, that does not exclude criminal liability and penalty, in which a person had a limited ability to realize or control their actions (or lack thereof) as their mental functions were diminished or impaired (because of mental abnormality) while committing a criminal offense. This criminal law category is enshrined in article 20 («Diminished responsibility») of the current Criminal Code of Ukraine.

Diminished responsibility is characterized by three criteria: judicial, psychological and medical. The judicial criterion includes the fact of committing socially dangerous, under the criminal law, deed (action or inaction), which reflects signs of a mental disorder of a criminal entity and a distinctly impaired ability to realize and (or) control their actions. The psychological criterion includes (quantitative) impairment of the ability of an entity to realize their actions and (or) control them. The medical criterion includes chronic or temporary non

psychotic disorders of mental activity (so-called borderline mental disorders and abnormalities), which are demonstrated by mental impairment, affective or volitional disorders, essential feature of which is limiting the ability to realize and (or) manage their actions while maintaining qualitative critical functions of consciousness.

The question of correlation between such terms as «sanity» and «insanity» also requires a thorough research. Diminished responsibility is a kind of sanity, and characterizes ability, impaired by a mental disorder, of an entity to act consciously and control their actions while committing a crime. The main difference between the notions of «insanity», «sanity» and «diminished responsibility» lies in the fact that «sanity» and «diminished responsibility» are the features of criminal entity. Offenders, which are recognized by the court as sane or partially insane, are criminally accountable and are subjects to punishment. In turn, «insanity» of a person, who committed a socially dangerous deed, leads to closure of criminal procedure due to lack of evidence, because the insane person is not liable to be convicted of criminal offense. Insanity is a phenomenon, antonymous to sanity, therefore, I believe, the norm that describes this state should be included in a separate article of The Criminal Code of Ukraine.

Theoretical and practical application of the Article 20 of the Criminal Code of Ukraine brings about major discussion between the analytics and practitioners. Analyzing said article shows that the legal consequences of diminished responsibility can be described by two main provisions: consideration by the court in sentencing and possible application of compulsory medical measures.

As it is shown in practice, even though the evident mental disorder is taken in consideration by the court, there is a major tendency toward mitigating the sentence as a display of individualization of criminal liability. It strikes as odd, because in some cases a psychopathy, voiced by psychiatric examination, needed some additional forensic psychological or complex forensic psychological and psychiatric examination. Indeed, in cases where the mental abnormalities of the accused, according to the court, were associated with crime or affected the degree of public danger of the entity, the court must appoint a forensic psychological or complex psychological and psychiatric examination because mental abnormalities within sanity are

beyond the competence of medical forensic psychiatric examination. The court must reflect the very results of the examination and its findings in the verdict and explain its decision regarding the sentence. The flaw of modern national jurisprudence lies in the absence of a court verdict links to criminal account of mental abnormalities at its individualization of criminal responsibility.

The court is also responsible in addressing the issue of compulsory medical measures toward partially insane persons, and determining the type of medical facility, in which such measure are to be conducted. The implementation of compulsory medical measures is entrusted to psychiatric institutions of the Ministry of Health of Ukraine. They determine the medical facility where the person should be treated. Compulsory medical measures and especially their use toward partially insane persons have a special place in the criminal and criminal procedural law, requiring further research and improvement of current legislation on their application for greater protection of citizens against socially dangerous attacks.

The concept of diminished responsibility covers a wide and multidimensional problem field, which incorporates the elements heterogenous in nature. Therefore, the research of the concept of diminished responsibility, defining its clear criteria and resolving issues relating to criminal liability, penalisation and the use of compulsory treatment regarding partially insane persons, is in need for in-depth study and development.