

Specific Characteristics of Criminal Responsibility of Persons with Disordered Mental Conditions in a Way that Does Not Exclude Insanity

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Abstract:

The article analyzes the specific features of the liability of mentally disturbed persons, the conditions of criminal responsibility, theory and practice issues in a way that does not exclude sanity. The article also reveals the criteria for establishing the responsibility of persons with mental disorders in a way that does not exclude sanity, and the criteria that allow distinguishing this institution from mental retardation. In most cases, the article raises the issue of finding persons with mental disorders to be sane and considers the problems of distinguishing limited sanity from crimes committed in a state of affect. Due to the variety of mental abnormalities that represent mental disorders, medical coercive measures can be applied to them as a punishment. Medical coercive measures cannot be applied to persons who have committed a crime in a state of physiological affect, because the state of affect does not represent a disorder of the mental state, but a mental state similar to that of a healthy person.

Keywords: sanity, insanity, limited sanity, criminal liability, mental state disorders that do not exclude sanity, mental anomalies, affective state.

Introduction

Modern society has a history of progressive and stable development of human personality from simple perception of the surrounding world, to knowledge about it and from it to self-awareness that allows self-evaluation and control. The experience of our past generations, expressed in scientific achievements and cultural traditions, moral and legal norms, and political views, has a formative effect on the consciousness of a certain individual and the general community. At the same time,

consciousness is not only a product of social development, but also a set of psychophysiological characteristics of a person. The mental-willing ability of a person is the result of the development of higher nervous activity, and it is given to a person from birth and conditioned by his biological nature.

Consciousness is one of the main categories studied by the natural sciences, philosophy, culture, religion, psychology, psychiatry and many other fields. It is also important in the field of law, and it is one of the necessary features of any offense, including crime. However, legal coercion measures can be applied only to persons who have the ability to understand the legal significance of their actions in accordance with the law. This situation has a decisive place in the issue of finding a person incompetent in civil law, and in administrative and criminal law, in order to hold a person responsible for a socially dangerous act (action or inaction) prohibited by law, finding him sane or insane. Therefore, the integral connection between awareness and sanity is manifested in the ability of a person to understand the socially dangerous nature of his actions (inaction) and to foresee the socially dangerous consequences that arise as a result, to control his actions.

According to the norms of the current criminal law, only a person who is guilty of committing a crime is prosecuted and punished. In turn, the content of guilt is conditioned by the consciousness of the individual. Non-manifestation of a person's conscious attitude towards a socially dangerous act being prepared, committed or committed also excludes responsibility for it.

In addition to age, the issue of sanity determines the threshold for determining whether or not a person is capable of criminal responsibility based on their mental state in relation to a socially dangerous act and its consequences. This extremely complex and responsible task is solved only on the basis of an expert's opinion, which answers the question of how pathological changes in the human psyche have affected the level of awareness of his criminal behavior. Also, clear conclusions in this area may be far from the truth, for example, when crimes are committed by people with a mental disorder, it is usually thought that they are mentally ill, but it is always the case that a person with a mental disorder is aware of the socially dangerous nature of their actions and their actions. does not completely deprive the person of control, and this, in turn, does not always imply the conclusion that the mental state disorder is a mental disorder.

Until recently, that is, until the adoption of the Law of the Republic of Uzbekistan on September 12, 2019 "On Amendments and Additions to Certain Legislative Documents of the Republic of Uzbekistan in Connection with the Improvement of the Psychiatric Care System", such issues were considered within the framework of the criminal law's norms for the regulation of issues of insanity. However, according to psychiatric sources, the percentage of persons referred to forensic psychiatric examination due to suspicion of sanity is 20-60 percent of persons recognized as sane, but with obvious mental abnormalities. At the same time, up to 70 percent of violent offenders have non-pathological mental disorders.

As we noted, with the Law of the Republic of Uzbekistan "On Amendments and Additions to Certain Legislations of the Republic of Uzbekistan in Connection with the Improvement of the Psychiatric Care System", the current Criminal Code of Uzbekistan was supplemented with the following Article 18¹:

Article 18¹. Liability of a person whose mental state is impaired in a way that does not exclude sanity

A sane person who could not fully understand the significance of his actions (inactions) or control them due to his mental state at the time of committing a crime shall be held responsible.

In addition to punishment, coercive medical measures may be ordered by the court against a person whose mental state is disturbed in a way that does not exclude sanity.

However, it should be noted that, despite the fact that the issue of the liability of a person with a mental disorder in a way that does not exclude sanity is expressed in the law (Article 18¹ of the Criminal Code), it is the cause of intense debate due to its vagueness and theoretically insufficient research, and until now, mental in the science of criminal law a single approach to the problem of abnormality has not been developed. For this reason, the study of this problem is extremely relevant, especially the scientifically based conclusions on this issue serve, first of all, as a methodological basis for the correct application of the norms of criminal and criminal law in this regard. Also, the law enforcement practice urgently requires the development of methodological guidelines and rules that will allow for the uniform and correct application of the norms on the issue of responsibility of a person with a mental disorder in a way that does not exclude sanity.

2. Methodology

The current study is conducted using several general scientific methods including historical, systematic, structural, comparative legal, logical, accurate sociological, scientific, comprehensive research, induction and deduction, statistical data analysis.

3. Discussion

The emphasis on the responsibility of a mentally disturbed person, which does not exclude sanity, is new for the national criminal law. In this matter, Professor M. Kh. Rustambaev “Sane can be considered not only a mentally healthy person, but also a person who has some kind of mental disorder, but who has the ability to consciously and correctly assess his actions in one or another situation or situation at the time of committing a crime” noted [14, p. 197]. In fact, individuals in a stressed state have the ability to understand the social significance of their actions and control their behavior. However, as we regrettably noted, there are a number of difficulties and problems in considering the issue of responsibility of mentally disturbed persons in a way that does not exclude sanity in law enforcement practice. This is due to the fact that at present there are no clear concepts about which state of limitation of sanity causes criminal liability, its level and duration, and according to which criteria it should be distinguished from insanity [18, p. 95; 12, p. 23].

In the literature, “disorder of mental state that does not exclude sanity” is also called “limited sanity”. However, there are different opinions about the concept of limited sanity [18, p. 95; 12, p. 23]. For example, A.B. Giorgidze stated that “Limited sanity means that at the time of committing a crime, due to mental illness, physiological state, development of the psyche or other circumstances, he does not fully understand the illegality or factual nature of his act, or although he may understand it, but it is understood that he cannot fully control it” [2, p. 154]. Also, A.D., who studied this problem. And Kononov wrote, “Limited mental sanity is a significant decrease in mental and voluntary behavior of a person during the commission of a crime due to a disorder of his mental state” [7, p. 117]. In addition, according to R.R.Tugushev, “Limited sanity means not fully understanding the illegality and factual nature of one’s act due to a disturbed mental state at the time of committing a crime or not being able to control them”. [19, p. 90].

As we can see from the above definitions, special attention is paid to the medical and legal criteria when determining and defining the issue of responsibility of a person whose mental state is disturbed (limited sanity) in a way that does not exclude sanity at the time of committing a crime. Therefore, in order to reveal the content of limited sanity, it is appropriate to analyze its medical and legal criteria.

Although in the literature, the medical criterion of mental retardation is described as a disorder of mental state. However, the term “*mental disorder*” is not defined in the legislation. This leads to different application of this norm in law enforcement practice. For example, some researchers state that the medical criteria for limited sanity are similar to the medical criteria for sanity [11, p. 124]. But we do not support this approach to the medical criteria for mental retardation. Because, if we

pay attention to the phrases used in the legislation and its structure in the classification of the medical criteria of sanity and limited sanity, we can see that there is no basis for determining their similarity.

In addition, in the second part of Article 18 of the Criminal Code, the legislator associates mental deficiency with “*disorder of mental state*” and classifies the reasons leading to the violation of mental state. However, although the first part of Article 18¹ of the Criminal Code mentions mental disorder at the time of committing a crime, it does not specify the signs of mental disorder or the reasons leading to it. This means that the medical criteria for mental retardation include various mental disorders that cause mental disorders, as well as disorders of mental states that are pathological in nature. The medical criteria for limited mental retardation, however, do not have the pathological features of a mental disorder.

Furthermore, the medical criteria for mental retardation are interpreted differently in the literature. For example, in this matter, N.I. Khojaeva and A.U. Shoyusupovas said, “In psychiatric practice, due to the multifaceted and diverse nature of the disorder of the mental state that excludes sanity, its medical criteria have not yet been clearly classified, therefore any research on such a diagnosis is determined on the basis of medical analysis” [20, p. 182]. However, in forensic psychiatry, it was also noted that despite the fact that there are various disorders of the mental state that exclude sanity, they can be regulated. In particular, it developed criteria and signs that express the characteristics of sanity, including limited sanity, from the point of view of various nosological forms of pathology. In particular, signs of limited sanity include functional and organic disorders of the mental state. It includes functional *disorders of the mental state* – neuroses and psychopathies, and *organic disorders* include a mild degree of oligophrenia caused by organic diseases of the central nervous system under the influence of brain damage, chronic changes in the psyche during epilepsy, alcoholism and drug addiction [3, p. 86; 4, p. 11; 17, p. 46].

In addition, some researchers pay attention to this issue. For example, A.N. Shamgunov divides the medical criteria of limited sanity into the following groups: *mild chronic mental illnesses* (epilepsy, organic damage to the brain, schizophrenic defects, cerebral syphilis, chronic alcoholism); *temporary disorders of the mental state* (reactive and intoxication psychoses, post-traumatic stress disorders), *mental anomalies* (mental retardation, psychopathy, accentuation of behavior), neuroses, anomalous processes (pregnancy) and other similar disease states [22, p. 107]. These enumerated cases of mental disorders cause limited sanity at the moment.

At the same time, S.V. Dolgova writes in this regard, “Medical criteria of limited sanity may include any disorders of the mental state that do not reach the psychotic level, without excluding sanity. These are: *endogenous* (for example, schizophrenia, persistent remission or epilepsy at the debut stage), *exogenous mental disorders caused by external factors* (organic diseases of the brain), *disorders of the circulatory system caused by infectious diseases* (brain disorders due to encephalitis), *addiction to psychoactive substances* (alcoholism, drug addiction, toxicomania) and *mental disorders caused by pathological development* (oligophrenia, psychopathy) may occur” [3, p. 88]. But we cannot fully support this opinion, because limited sanity does not imply cases of mental disorder that acquire a pathological character. According to the law, when a person does not have cases of severe mental disorder, he is exempted from responsibility, because severe mental disorder distorts the movement of the person’s body in relation to the environment, directs it in the wrong direction and gives false information about the mind.

Based on this, it can be said that the sensory organs of a person with a disturbed mental state lead to confusion of true and false information to the extent that he cannot solve it on his own. This causes a disconnection between the general concepts of “*I want*”, “*I can*” and “*I should*”. People with mental illness find it difficult to implement not only the feelings of “*I should*” and “*I can*” but also “*I want*” in life.

The sensibility and rational perception of individuals in the state of sanity and limited sanity allow them to align themselves with objective and subjective existence. A mild mental disorder does not affect the ability to understand the requirements of the criminal law and to control one's behavior in accordance with them. Therefore, the freedom of choice between the concepts of "*I want*", "*I can*" and "*I must*" is preserved in this category of persons. However, the more severe the disorder of a person's psyche, the more difficult it is for him to perceive the surrounding reality.

The next sign of limited sanity that should be considered is its *legal criterion*. At the moment, this issue is controversial in law enforcement practice and legal literature. Because most of the authors rightly stated that the limited mind of the legislator expresses the legal criterion of sanity in the form of "*not being able to fully understand the importance of his actions (inactions) or to control them*" is ambiguous and allows it to be interpreted in different ways. Therefore, science and practice have not yet developed clear criteria for what level of understanding should be considered "*complete*" or "*incomplete*". Such an interpretation is "*ultimately implausible*" and therefore creates difficulties in finding the person's actions to be limited mental disorders.

In order to understand the meaning of this phrase expressed in the legislation, it is necessary to determine the nature of the legal criterion of limited sanity, first of all, the "incomplete level" of consciousness and will. Of course, fully revealing the exact content of this evaluated phrase is a complex process, but it is possible to clarify it to the maximum, to set certain limits and levels for its understanding. Consequently, different opinions on this issue have been expressed in the legal literature. In particular, G. V. Nazarenko's wrote, "incomplete level" - includes a change in the level of mental-willing decline from a imperceptible to a significant change, but the courts often consider the imperceptible decline of consciousness and will as a mitigating circumstance, it is unreasonable [9, p. 35]. Therefore, he recommends that this phrase be defined in the criminal law as "*incomplete sanity*". According to him, the author divides incomplete sanity into *altered sanity* (persons with mental anomalies, which represent an imperceptible decrease in mental and willpower at the time of committing a crime, are held liable according to general principles) and *limited sanity* (when a mental disorder leads to a significant decrease in mental and willpower of a person, is taken into account by the court when imposing a sentence) [10, p. 104]. As we can see, G.V. Nazarenko considers only a significant decrease in the mental-will capacity of a person as limited sanity, which makes him liable. However, we cannot agree with this opinion. This is because the proposed concept of mental retardation becomes an evaluable feature, increasing the number of categories available for differentiation in this situation. This imposes additional tasks and creates difficulties for the law enforcer in terms of distinguishing these categories.

By the way, the legal criteria of limited sanity are expressed in not fully understanding the importance of one's actions at the time of committing a crime or not being able to control them. This means that the mental and voluntary activity of the person committing the crime is significantly limited. So, a person understands the factual and social nature of his actions and acts freely, but it is not complete and his ability to subordinate his actions to specific demands and goals and to control his emotions is limited.

At the same time, the legal criteria of limited sanity are revealed in a unique way in the psychiatric literature. For example, T.V. According to Klimenko, the expression "*inability to fully understand the factual characteristics of one's actions*" expresses the mental limitation of one's behavior and means that one does not adequately perceive the environment, the situation, in relation to the objective meaning of the action. In relation to the "*social danger of one's own actions*", it means insufficient perception of the objective and legal significance of one's actions, limitation of the individual's ability to choose and evaluate the negative social consequences of a specific situation in the process of realization and formation of criminal intent, and a lack of socio-normative and substantive assessment in it, as well as in which he is not sufficiently aware of the real risk of

harming or harming social relations as a result of his actions [5, p. 111-112]. Therefore, the criminal-legal significance of limited sanity does not exclude criminal liability if a person commits an act prohibited by the criminal law. Because this situation is determined by the fact that the person who committed the crime in the state of limited sanity does not lose the possibility of being guilty for his act, although his mental and voluntary activity is limited during the commission of the crime, but he is not deprived of it.

Also, based on the above-mentioned, the phrase “*incompletely*” used in the legislation in the formation of the legal criterion of limited sanity should be interpreted as a significant decrease in the mental and voluntary behavior of a person. Therefore, the mental sign means that a person is not able to fully understand the social danger and factual characteristics of his act at the time of committing a crime.

Voluntary symptoms of the legal criterion are expressed in the inability to fully control one’s actions during the commission of a crime. This means insufficient understanding in choosing the methods of achieving the goal, limited control in their implementation, inability to assess the situation, use of inappropriate methods in influencing social relations. In addition, the legislator separates the inability to fully understand the significance of one’s actions (inaction) and the inability to control them with the word “or”. Often, individuals are fully aware of their actions at the time of committing a crime, but cannot fully control their actions. From this point of view, is the behavior of persons who are fully aware of the social danger of the act, but could not fully control it, considered to be of limited sanity or not? a reasonable question arises.

However, based on the stated structure of the law, it allows such a situation to be recognized as limited sanity. Because according to the content of the law, a person should not fully understand the significance of his actions (inaction) or be unable to control them due to the violation of his mental state at the time of committing a crime. This means that the state of limited sanity means that the person is not fully aware of his actions due to a disturbed mental state, or if he is fully aware of his actions, he is not able to fully control his actions.

At the same time, limited sanity in the literature should be associated only with the voluntary sign of the legal criterion thoughts about league are found [13, p. 598; 23, p. 448]. Although voluntary signs represent the main structural aspects of the legal criterion. *In this regard, it is necessary to take into account the presence of a willful sign even if there is no mental sign when determining the willful sign of limited sanity.* This is one of the practical issues that should be clarified. Because it is almost impossible or very difficult to assess whether a person did not fully understand his actions at the time of committing a crime, but it is possible to determine the voluntary behavior of a person as a result of an objective assessment of some of its aspects. Although the disorder of the mental sphere is always determined by the violation of the will sign (the ability to control one’s actions). At the same time, the voluntary sign of limited sanity has its expression even in a situation where there was no mental sign at the time of the crime. *For this reason, the sign of volition represents the main structural aspect of the legal criterion, and it is always required to be identified and present in order to confirm the fact of limited sanity.*

It should also be noted that in the second part of Article 18¹ of the Criminal Code, it is indicated that coercive medical measures may be imposed by the court on a person whose mental state is disturbed in a way that does not exclude sanity. If it follows from this norm of the law, it follows that the court should impose a punishment on a person who committed a crime in the case of mental retardation according to general principles. But in criminal law, this issue is solved differently. For example, V.I.Kolosova and A.N. Podnebesnii says that the condition of limited sanity should be considered a mitigating circumstance and it is proposed to include it in mitigating circumstances [6].

In addition, S.V.Veklenko and P.N.Putilov's wrote that complete sanity is a condition for applying full guilt and responsibility, and limited sanity is one of the conditions for mitigating responsibility [1, p. 27]. According to other scientists, in solving the problem of "less sanity - less punishment" it is necessary to take into account a number of other factors, in addition to the state of limited sanity, as well as the degree of influence of this state on the ability of self-control aimed at neutralizing the mental state of a person. As a result, they recommend giving the court the right to consider such a situation as a mitigating circumstance rather than an obligation [15, p. 125; 21, p. 20].

Other authors also state and said that "Limited sanity is often a person's lack of conscious control over his behavior, that is, it is caused by alcoholism and drug addiction, so this condition should not be considered as a mitigating circumstance, only if such a mental state disorder occurs without criminogenic factors. may be the basis for reducing the punishment" [8, p. 139; 24, p. 127]. Also, in this regard, B.A. Spasennikov, wrote that, "limited sanity refers to a person's inability to fully understand the significance of their actions while committing a crime and to be unable to control them. After the diagnosis of a mental disorder in a sane person, the court, relying on the forensic psychiatric examination report and case materials, must determine to what extent this mental disorder affected his behavior at the time of committing the crime. The assessment of limited sanity is based on medical criteria and is determined by the level of awareness of the social danger of the person's actions. In this case, the court is not obliged to take into account limited sanity in sentencing" [16, p. 177].

4. Results

The current criminal law of Uzbekistan does not specify the rule that the act of a person who committed a crime in a state of limited sanity should be evaluated as a mitigating circumstance. Based on this, in our opinion, when considering limited sanity as a mitigating circumstance at the time of sentencing, it is necessary to pay attention to the fact that it is caused by the specific characteristics of the mental state disorder (affective, psychogenic, not deliberately provoked by the subject, etc.). At the same time, it should be noted that *if the state of limited sanity was deliberately caused or in cases where a person consciously allowed his illness to develop pathologically (alcoholism, drug addiction, drug addiction), such a state cannot be considered as a mitigating state.*

Whereas, limited sanity includes all the features of sanity, but it implies that at the time of committing a crime, due to mental abnormality or mental deficiency, he cannot fully understand the significance of his actions (inaction) or control them.

A person should always, without exception, recognize the presence of a mental anomaly as a condition that limits his ability to fully understand the significance of his actions and control them. Mental anomalies contribute to the emergence of characters such as irritability, aggressiveness, cruelty, and at the same time a decrease in volitional processes, a weakening of inhibitory control mechanisms. Therefore, mental anomaly should always be considered as the main factor that limits the ability of a person to realize the nature of social danger and control their actions.

At the same time, the absence of a mental anomaly also excludes the condition of limited sanity. Therefore, limited sanity should be distinguished from other similar categories and concepts of criminal law, which describe the characteristics of the criminal subject and are associated with qualitatively different specific manifestations of mental activity, in particular: retardation of mental development in minors, which is not related to mental illness; inability of a person who does not suffer from mental disorders to understand the factual characteristics of his actions or to control his actions (inaction) due to individual psychological characteristics; the presence of a state of strong mental excitement during the commission of a crime.

Therefore, based on this, it can be said that a state of limited sanity cannot be compared with a state of strong mental excitement during the commission of a crime. Strong emotional excitement implies a state of physiological affect that cannot be recognized as a psychopathological phenomenon. In such a case, the condition of mental abnormality would not exist, and therefore the medical criteria of limited sanity would not exist. A prerequisite for the application of this norm is that the state of physiological affect in a person occurs suddenly as a result of illegal violence or severe insult by the victim, as well as his other illegal actions. In other words, this norm reflects the victimological rather than the psychopathological aspect of mental state arousal.

In judicial practice, in order to fully, impartially and comprehensively clarify all the circumstances of the cases against persons who committed crimes as a result of mental anomalies, including the expert opinion aimed at identifying such cases, it is necessary to answer the following questions: a) what is the nature of the origin of these mental anomalies in a person; b) whether the commission of a socially dangerous act was affected by one or another mental anomaly, if so, to what extent it affected the ability to fully understand the factual features of the person's actions (inaction) at the time of committing the crime; c) at the time of committing the crime, was the person able to fully control his actions or not?

Clarification of these issues by the law enforcer allows to determine the legal criteria of limited sanity. At the same time, the features of limited sanity should be manifested in the way that at the time of committing the crime, the person could not fully understand the significance of his actions and (or) could not fully control them due to existing mental anomalies.

5. Conclusion

The following conclusions can be drawn from the above, namely:

firstly, the expression of the institution of limited sanity in the legislation serves to ensure that socially dangerous acts committed by mentally disturbed persons are given a full legal assessment in a way that does not exclude sanity, that mental deficiency and limited sanity are differentiated from a psychiatric point of view, and that such categories of sane persons are held accountable ;

secondly, limited sanity is distinguished from mental insanity by the following characteristics, a person in a state of limited sanity:

at the time of committing a crime, he does not fully understand or cannot control the importance of his actions (inaction), mentally retarded persons are not able to do this at all;

the medical criteria of mental retardation refers to various mental diseases leading to mental state disorders and disorders of the mental state with a pathological nature, while the medical criteria of limited mental retardation do not have the pathological nature of a mental state disorder;

persons in a state of limited sanity may be assigned coercive medical measures along with the punishment, while mentally deranged persons are not held responsible, only medical coercive measures are assigned to them, not punishment;

thirdly, at the time of committing the crime, due to the violation of the mental state, the person must not fully understand the significance of his actions or be unable to control them, that is, the state of limited sanity means that the person cannot fully understand his actions due to the violation of his mental state, or even if he does not fully understand it , but means that he could not fully control his actions. When determining the willful sign of limited sanity, it is taken into account that even if there is no mental sign, there must always be a willful sign. Voluntary character represents the main structural aspect of the legal criterion and it is always required to be identified and present to confirm the fact of limited sanity;

fourthly, in order to prevent misunderstandings in the application of Article 181 of the Criminal Code, a decision of the Plenum of the Supreme Court should be developed and adopted. In it, the medical and legal criteria for determining the sanity (insanity) of the accused person, as well as the impact of his mental state on the committed crime, will be disclosed in detail, and the list of specific names of mental state disorders and the procedures for determining these cases of mental state disorders will be described in it without excluding sanity. required;

fifthly, it is appropriate that the crime committed by a person whose mental state is disturbed in a way that does not exclude sanity is considered as a mitigating circumstance. However, if a mental state that does not rule out sanity occurred in cases where the person deliberately caused it or the person consciously allowed his illness to develop pathologically (alcoholism, drug addiction, drug addiction), such a state cannot be considered a mitigating state;

sixthly, the issue of responsibility of persons whose mental state is impaired in a way that does not exclude sanity at the time of committing a crime, today, exactly what limitation of circumstances causes criminal liability, how long this limitation lasts, what criteria should be used to distinguish it from insanity and its level are sufficiently developed due to the fact that it has not been released, it requires further in-depth study and special research;

seventhly, in order to achieve the uniform and correct application of the legal norms regulating the state of limited sanity, it is appropriate to state the norms of the criminal law in the following version:

Article 18¹. Liability of a person whose mental state is impaired in a way that does not exclude sanity

At the time of committing a crime, a sane person who could not fully understand the importance of his actions (inactions) or control them due to mental anomaly and (or) mental deficiency shall be held responsible.

In addition to the punishment, the court appoints coercive medical measures against a person whose mental state is disturbed in a way that does not exclude sanity, and this situation is taken into account as a mitigating circumstance when imposing a punishment.

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