

# Some Circumstances That Exclude Recognition of a Person as the Subject of a Crime

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**Sunnatov Vohid Tashmurodovich**<sup>1</sup>

<sup>1</sup> Associate Professor of Tashkent State University of Law, Doctor of Philosophy (PhD) in Law

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## **Abstract:**

Insanity is the opposite concept of sanity. An insane person who has committed a crime is not considered a subject of the crime and is not subject to criminal liability. Only compulsory medical measures can be applied to him. Thus, an insane person is deprived of the main feature of a subject of a crime - sanity. The problem of insanity is of great importance both in forensic psychiatry and in criminal law and forensic practice. It is closely related to the institutions of guilt, criminal liability and punishment, and also plays an important role in observing the law in relation to mentally ill persons who have committed a crime. Sanity distinguishes a person who is able to understand the factual side and social significance of his actions, and at the same time consciously control his actions, from an insane person. A crime is committed as a result of the influence of many external circumstances, but none of them affects a person, bypassing his consciousness. A person with a normal psyche is able to adequately assess the circumstances in which he finds himself, and choose actions that correspond to his goals.

**Keywords:** Such conditions occur in people, moment of will, debility (mild form), imbecility (less profound), idiocy (the most severe form), criminal act, person and citizens.

Sanity distinguishes a person who is able to understand the factual side and social significance of his actions, and at the same time consciously control his actions, from an insane person. A crime is committed as a result of the influence of many external circumstances, but none of them affects a person, bypassing his consciousness. A person with a normal psyche is able to adequately assess the circumstances in which he finds himself, and choose actions that correspond to his goals. Criminal law proceeds from the premise that only those who are able to understand reality and its laws can act freely.

Insanity is the opposite concept of sanity. An insane person who has committed a crime is not considered a subject of the crime and is not subject to criminal liability. Only compulsory medical

measures can be applied to him[1]. Thus, an insane person is deprived of the main feature of a subject of a crime - sanity. The problem of insanity is of great importance both in forensic psychiatry and in criminal law and forensic investigative practice. It is closely related to the institutions of guilt, criminal liability and punishment, and also plays an important role in observing the law in relation to mentally ill persons who have committed a crime[2]. This problem is one of the most complex and not fully studied both in forensic psychiatry and in criminal law, despite a large number of scientific studies devoted to this issue.

Insanity is, as before, a combination of two criteria - medical (biological or psychiatric) and legal (legal), which corresponds to the doctrine of domestic, and in particular modern, criminal law. At the same time, the medical criterion, in turn, assumes that the person actually has a mental disorder. The legislator specifies the content of the medical criterion, focusing on the morbid state of the person's psyche, and not just his morbid state at the time of the crime. In the Criminal Code, the legal criterion is directly considered as the inability of a person to understand the actual nature and social danger of his actions (inaction) or to control them. The state of insanity under the current criminal legislation is determined by a combination or combination of two criteria - medical and legal. Insanity covers various forms of mental disorders in a person who, at the time of committing a socially dangerous act, causes or may cause harm to social relations protected by criminal law, and is unable to understand the actual nature and social danger of his actions (or inactions), and is also unable to control them. This excludes the guilt of such a person and his recognition as the subject of a crime, as well as his bringing to criminal responsibility and sentencing. The medical (biological or psychiatric) criterion is directly represented by the presence of four groups of mental illnesses: 1) chronic mental disorder; 2) temporary mental disorder; 3) feeble-mindedness; 4) other mental disorder[3].

The first group of chronic mental disorders in forensic psychiatry and criminal law include mental illnesses of a person that are long-term and practically incurable. These illnesses tend to both progress and weaken. They lead to profound and persistent changes in the patient's personality. Such mental disorders in psychiatry are considered to be: schizophrenia, epilepsy, manic-depressive psychosis, syphilis of the brain, progressive paralysis, senile dementia, epidemic encephalitis and some other difficult-to-treat or completely incurable mental illnesses. The second group of diseases of the medical criterion is formed by temporary mental disorders that occur, in comparison with the first group of mental illnesses, in a shorter period of time and are amenable to treatment. In most cases, these illnesses can occur suddenly and end with the complete recovery of the patient. Such disorders include the so-called exceptional states in psychiatry, which arise suddenly in connection with an external situation and are accompanied by a short-term disorder of consciousness. Exceptional states occur in individuals who do not suffer from mental illnesses and can usually be episodic in life. Exceptional states include: 1) pathological intoxication, which should be distinguished from simple alcoholic intoxication; 2) pathological affect; 3) twilight states of consciousness; 4) short-circuit reaction; 5) pathological pro-sleep state, as well as alcoholic psychoses, etc[4].

The third group of medical criteria is dementia (oligophrenia). In psychiatry, oligophrenia or congenital dementia is understood as a pathological condition caused by brain damage during childbirth or acquired in early childhood as a result of painful mental states of the child. Most often, feeble-mindedness is characterized by underdevelopment of thinking, mental abilities, memory, attention and mental functions of a person, not only as a result of organic changes in the brain, but also after all kinds of injuries, infectious and other human diseases. The main symptom of feeble-mindedness is general mental inferiority.

According to the degree of depth of congenital or acquired underdevelopment, three types of feeble-mindedness are directly distinguished: 1) debility (mild form); 2) imbecility (less profound); 3) idiocy (the most severe form)[5].

The fourth group of mental illnesses of the medical criterion is formed by mental disorders, which in the law are classified as other mental disorders. At the same time, the legislator does not mean any types of morbid conditions, but only those that are associated with a morbid state of the psyche of a person and can be the cause or be the basis for recognizing a sick person as insane. These diseases are usually accompanied by various temporary mental disorders, are not chronic or temporary mental disorders, but by their psychopathological signs and properties, depending on the course of the disease, can be equated to them. Such diseases include: some forms of psychopathies, characterized by congenital or acquired disorders of the emotional-volitional sphere of the personality with general preservation of intelligence; various mental disorders after severe infectious diseases (with typhus or typhoid fever); neuropsychiatric disorders in drug addicts during drug starvation; mental changes in personality associated with deaf-muteness or complete blindness, etc. Any of the listed mental disorders or mental illnesses individually may be sufficient to recognize the presence of a medical criterion of insanity.

The content of the intellectual moment of insanity indicates that the person does not understand the danger of his behavior for society. A disorder of the intellect, as a rule, also causes a disorder of the will - the person cannot control his actions. However, there are cases when a person gives up face in his actions, that is, he is aware of the nature of his behavior, but due to a morbid condition he cannot control his actions. For example, such conditions occur in people suffering from drug addiction during a period of drug starvation. The person is well aware of the criminality of his behavior when stealing or extorting drugs, but at the same time is unable to restrain himself due to a deep defeat of the sphere of will caused by drug addiction.

However, the presence of any mental disorder (medical criterion) will not always give grounds to speak about the state of insanity. It is necessary that the mental illness has reached such a degree that when committing a crime, the person could not understand his actions or could not control them. In this case, we are talking about the legal (psychological) criterion of insanity, which determines the depth and essence of mental illnesses of the medical criterion.

The legal criterion is determined by the court when it evaluates a person who has committed a socially dangerous act as incapable of understanding the nature of his actions and controlling them. In this case, the court bases its conclusions on the medical criterion of insanity (the act of forensic psychiatric examination).

Directly reflecting the legally significant properties of mental disorders, the legal criterion brings all the diversity of psychopathological manifestations to a common denominator and makes this clinical material comparable in content with legal concepts and suitable for solving legal problems. With the help of the legal criterion, forensic psychiatric terms are "translated" into the language of law, understandable to judicial bodies.

The legal criterion of insanity is the lack of ability of a person to understand the actual nature and social danger of their actions (inactions) - this is the intellectual moment, or to control their actions - the volitional moment.

The intellectual feature is considered as the ability of a person at the time of committing a crime to understand the actual nature and social danger of the actions (inactions) being committed, and the volitional feature of the legal criterion is considered as the ability of a person to control their actions during the commission of a criminal act, that is, the ability to control their will according to their inner conviction and desire. Along with this, the emotional feature is not included in the formula of sanity - but must be taken into account without fail when establishing this state of a person when they commit a crime.

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To recognize a person as insane, the direct presence of one of the signs of the legal criterion in combination with the medical criterion is required[6].

The modern formula of insanity provides for the coordinated application of legal and medical criteria when deciding on insanity[7].

The above of this paragraph allows us to conclude that the state of insanity of a person at the time of his commission of a socially dangerous act is a circumstance excluding his recognition as the subject of a crime. In turn, the scientific understanding of insanity by theorists and practitioners determines their correct approach to this complex problem and the resolution of specific tasks in combating crime and administering justice in general. However, the question arises of how the issue of responsibility is resolved in a situation where a minor has a mental retardation not associated with a mental disorder, and when at the time of committing a crime he cannot fully understand the social danger of his actions or control them. In this case, the developmental retardation of a minor to some extent allows us to speak of one or another type of infantilism, as a result of which and under certain circumstances the person commits a crime. In our opinion, here we should rather speak of a limited capacity of a minor, which does not arise in connection with any mental disorder, but as a result of a retardation or delay in his mental development, caused by a variety of reasons, factors, age, medical and biological characteristics. Such reasons, for example, may be: general underdevelopment of the entire organism, in particular mental activity, organic damage to the central nervous system, social and pedagogical neglect, various anomalies manifested in mental development disorders, and others. The reasons for mental retardation not associated with a mental disorder in minors are quite diverse and, as a rule, are rooted in the early stage of a child's development and even before the moment of his birth, and subsequently after birth: clinical, chronic diseases.

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