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CRIMINAL RESPONSIBILITY (INSANITY DEFENSE)

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ABSTRACT

Criminal responsibility refers to a person's ability to understand his action, behavior at the time a crime is committed, what a person is thinking when he commits a crime or the expected result when a crime is committed. Crime is defined in terms of an act or omission (actus reus) and a mental state (mens rea). In this paper, is presented the general concept of irresponsibility and essentially reduced responsibility as a reason to be exempted from the punishment provided by the Criminal Code. Any perpetrator of a criminal offense who is capable of undertaking any action can be an active subject of a criminal offense, with the fact that regarding their sanctioning by the criminal system is concerned there are some restrictions related to age as well as dividing the perpetrators into responsible and non-responsible ones. For a person to be convicted of a crime, there must be evidence that proves his guilt, and that proves whether the perpetrator was in a regular state of mind or committed the criminal offense due to his irresponsibility.

Another important element of this scientific paper is the historical aspects of how irresponsibility has been treated from the customary law to the present day, a huge focus gets also the treatment of the biological-psychological concept on one hand and the treatment of the legal concept on the other hand for this category of people. A criminal defendant who turns out to have been incapacitated at the time he committed a crime may be acquitted because of his incapacity, or he may be sentenced leniently because he was unable to understand the importance of his actions. Legally, the defendant must prove and convince the court that he was not able to understand his actions, or he is not able to distinguish right from wrong, or he must prove that he committed the act in uncontrolled impulses.

Keywords: criminal responsibility, insanity defense, guilt, human action, mental state.

HISTORICAL DEVELOPMENT OF THE CONCEPT OF CRIMINAL RESPONSIBILITY

The process of interest in criminal responsibility and the mental health of persons was not immediate but went through different stages throughout history. The treatment of criminals in the various historical stages where the expulsion and deportation of criminals were used in order to physically eliminate dangerous persons and cleanse society of these persons. This method was used in particular in ancient Athens and is defined by the term ostracism. (Halili, 2011). The interest in the perpetrators of criminal offenses started in the humanitarian period, where the main torchbearers of this period are Thomas Moore, Hugo Grocius, Hobbes Montesquieu and Jean Jacque Rousseau, authors who are committed to replacing the death penalty with a prison sentence and which have opposed torture as a means of paying for the crime committed, the other main goal of these authors was also to raise the importance of prevention for the prevention of criminality (Halili, 2011).

If the humanitarian stage began the creation of a basic concept which is also of interest to the status and engagement of criminals at work, after the French bourgeois Revolution, the stage of individualism models and reinforces the interest of the perpetrators of criminal acts.

The purpose of this stage lies in the theoretical and practical commitment that the punishment is adapted to the properties and subjective qualities of the perpetrator of the criminal offense. The greatest exponents of individualization can be found in the Italian positivist school, and these are: Cesare Lombroso, Enrico Ferri and Rafaello Garofalo (Halili, 2011).

THE PROCESS OF TREATING PEOPLE WITH MENTAL ILLNESS

Quite important are the studies of the Greek physician and philosopher Hippocrates, who found that diseases have their foundation in the natural phenomena of the body. According to him, mental disorders are the result of the imbalance in the body of four fluids in the body: blood, phlegm, bile and black bile produced by particular individuals (Hardy, 2015).

The presence of a mentally ill person in a family in the past has been a huge shame, and as a result of social stigma these people have been isolated from the others, abandoned without any support, often have been pushed on the streets to face the reality of society. This situation also leads to the commission of various criminal offenses and severe corporal punishment as well as death.

At the beginning of century XV people with mental disorders began to accumulate in "workhouses", insane asylums which were followed by inhumane and very bad conditions. Further, Sigmund Freud, the creator of psychoanalysis, has used other methods of regulating the patient's emotional state such as hypnosis, somatic treatment, pharmacology, psychosurgery, electroconvulsive therapy, etc (Hardy, 2015).

Today, medicine has advanced and as a result, the methods of treating people with mental disorders have also advanced. These treatments have become safer, and society's interest has increased towards these categories of people. The personality of the delinquent receives a lot of attention from the general society and much importance is given to finding the internal and external factors as well as the causes of the appearance of criminality.

In addition to the objective factors of criminality (economic-social, micro group, socio-pathological factors, ideopolitical factors, means of public communication, etc.) there are also the so-called subjective or internal factors, which require observation and psychological and psychiatric study to achieve thorough understanding of an individual's behaviors and personality (Halili, 2011).

These factors that make up a person's personality include psychological/psychological factors and biological factors. Psychological properties are considered: character, temperament, emotions, habits, intelligence, abilities, attitudes, memory, thinking, motives, etc., while biological properties are mental disorders, which include neuroses, psychopathy's and psychoses (Halili, Penologjia, 2011). These two factors (subjective and objective) in most cases cannot be considered totally separate; from practice it can be seen that both have a correlative

relationship and that any of the external factors is also present in the internal factors and vice versa. For these reasons, an interdisciplinary sociological and psychological study is important for the identification of dangerous people in society and for their more efficient treatment (Halili, 2011).

The analysis of the adaptation of the punishment to the perpetrator of the criminal offense involved the structuring of various scientific and technical methods which are used today, also studied by the science of criminology, which enable the discovery of social and criminogenic factors.

These are: the individual case study method, the criminal behavior forecasting method, the survey method, the survey and interview method, the comparison and measurement experiment method, the statistical method, the law of large numbers method, the model method, as well as the method of correlation, average and percentage (Halili, 2011).

LIABILITY FOR BEING GUILTY

For the determination of criminal responsibility, it is important to prove guilt, which as a subjective element is considered a concrete subjective fundamental element of the criminal offense, which is based on one of the basic principles of criminal law, which is the principle of guilt, which means that there is no criminal offense, there is no conviction without fault. Nullum crimen nulla poena sine culpa. On the criminal code of the Republic of North Macedonia it is noted that: “guilty is the responsible perpetrator who committed the criminal offense intentionally or negligently and was aware or was forced or could have been aware of its obstruction (Criminal Code of Republic of North Macedonia).

Anyone can commit a criminal offense, even a child, but not every individual is affected by the legislation for that criminal offense.

Based on the criminal code of the Republic of North Macedonia, article 10: “ In the first instance, every child up to the age of 14 is considered incapable of committing a crime, while juvenile delinquency means the totality of criminal behavior committed by persons who have reached the age of 14 and, they are not older than 18 years” (Criminal Code of Republic of North Macedonia, Article 10).

The limit of determining the age from which minors entered the criminal sphere is not the same in all countries of the world. Different criminal systems assign different categorization based

on criteria that characterize the same state. In general, the age limit for determining criminal responsibility in the world ranges from the age of 6 to the age of 18, where the average age of criminal responsibility is 12 (PRI, 2013).

Irresponsibility and essentially diminished responsibility

There has always been a tendency to label a criminal, a classification that helps the legal system of different countries in the world. Still, the practice and diversity of the crimes committed, and the perpetrators make it possible to overlook the dualism: healthy-normal person and sick-criminal.

Criminal Code of the RNM in article 12, paragraph.1 cites that "A offender, shall not be considered mentally competent, if when committing the crime he wasn't able to understand or could not control his actions due to some disorders (mental incompetence)" (Criminal Code of Republic of North Macedonia).

"The offender of a crime whose ability to control his actions was significantly decreased as a result of the condition as referred to in paragraph 1, may be sentenced more leniently (significantly decreased mental competence)" (Criminal Code of Republic of North Macedonia).

"Criminally liable shall be the offender of a crime who under the influence of alcohol, drugs or in any other manner shall reach a condition of incapability to understand his actions, in case if prior to such condition the act was premeditated or negligence was present in regard to the crime, while for such crime the law envisages criminal liability for negligence as well" (Criminal Code of Republic of North Macedonia).

The will and awareness are the main elements for identifying the mental health of the person, where the performer of the criminal offense at the time of committing the offense is capable of knowing the conditions, situations and the consequences that will be caused by his action, while the wrongdoer realizes out his actions with full awareness taking into consideration the various risks. It is impossible to define a dividing line between irresponsibility and essentially reduced responsibility, since in both cases the person cannot be compared to a healthy person who is responsible, since in these categories of persons we can notice complete or partial stagnation in understanding what is or is not harmful to society.

In contrast to irresponsibility, the perpetrator with essentially diminished responsibility is responsible (capable of guilt) but that capacity is considered diminished and results in a lower degree of culpability (Zejneli & Kambovski, 2018, p. 318).

The court, together with legal psychiatry, and the detailed studies of the expert doctor, deals with the determination of the criminal responsibility of the perpetrator of the criminal offense, and determines whether the person had a mental retardation in the conduct of his actions.

During this a number of different methods are used that help in the treatment of people with mental disorders, and at the end of this finding, the court gives the final conclusion if the perpetrator was irresponsible or with essentially reduced responsibility.

In the judicial system, forensic psychologists are used both in civil and criminal cases. In the criminal sphere, forensic psychologists are often asked to evaluate the competences and capacities of the defendants. An accused person can be assessed for the possibility and ability he has to face the trial and the ability to make legal decisions in his interest, but when the accused does not have the capacity to defend himself, then the forensic psychologist is required to make assessments, especially in cases when the accused suffers from a mental defect, such as an acute psychiatric disorder or a mental disability (Dragoti, 2007).

Often a psychologist is asked to evaluate the disabilities, or the level of trauma experienced by the accused and the plaintiff. From these evaluations, the court decides whether damages should be requested for the accused and the plaintiff. It is worth noting that psychologists are experts in psychologically motivating witnesses. They inform the defense lawyers of the accused about the possible questions that can be asked to the prosecution witnesses, these questions have the effect of confusing them in such a way that they are forced to extract something from the truth. These kinds of things can have a strong positive impact on the court, be in favor of the accused (Dragoti, 2007).

SECURITY MEASURES ACCORDING TO THE CRIMINAL CODE OF THE REPUBLIC OF NORTH MACEDONIA

1. **Definition and Implementation in the Criminal Code of the Republic of North Macedonia:**

   Security measures are measures that apply under certain legal conditions. These measures are presented as an alternative to punishments thanks to the dualistic system of sanctions and the main goal is to reduce the circumstances or situations that may influence the one

who commits a criminal offense in the future, also the proper application of these measures affects the improvement of behavior than the perpetrators of the criminal offense and affects the achievement of social stability.

2. **Types of insurance measures**

On the criminal code of the Republic of North Macedonia in article 61 are specified the following types of security measures such as: "compulsory psychiatric treatment and custody in a health institution, compulsory psychiatric treatment in freedom, compulsory treatment of alcoholics and drug addicts and pharmacological medical treatment" (Criminal Code of Republic of North Macedonia/ Article 61).

2.1 Mandatory psychiatric treatment in a health institution

- The treatment of irresponsible perpetrators and with essentially reduced responsibility through health institutes represents an insurance measure that removes the social risk from these persons and also guarantees the most adequate medication and treatment for these persons as well.

  Keeping in health institutions is considered an alternative to prison for these people who commit criminal offenses for whom the prison environment would only worsen their condition and present a danger to other prisoners and themselves.

  The primary condition for the treatment of irresponsible persons committing criminal offenses and persons with essentially reduced responsibility is the existence of the risk of committing a new criminal offense.

  The risk is established through two stages: first, it is established whether the committed act is reasonably and consequently related to the special condition of the perpetrator (it is established that it is motivated by such condition); and the court must find that the dangerous state of the perpetrator has not been interrupted and that the same may influence him to commit such crimes in the future.

  In most cases, such people are paranoid and suffer from the mental illness of schizophrenia, and often their violent actions are reactive, i.e., reactions after an attack, which unfortunately many times is only a fictional imagination of their mind.

  Treatment and care in these institutes guarantee the avoidance of the risk of committing any new crime by isolating the person and observing him for the necessary medical needs and treatments.

Based on the criminal code of the Republic of North Macedonia in article 63, paragraph 2-4, the court is supposed to reconfirm every year whether the convicted person still needs treatment or care in a health institution and to take the decision to terminate the security measure when it finds that the perpetrator is better (Criminal Code of the Republic of North Macedonia/ Article 63).

It is preferable to first execute the security measure and then the prison sentence. The time spent in the health institution is calculated for the perpetrator in the prison term, and if the perpetrator has spent longer or the same time in the health institution, it is considered that the sentence has been carried out (Criminal Code of Republic of North Macedonia).

a. Compulsory treatment in freedom

Compulsory treatment in prison is applied in those cases when the court finds that irresponsible persons with essentially reduced responsibility, for whom there is a risk that they may commit a criminal offense again, should be cured in prison (Zejneli & Kambovski, E drejta Penale, Pjesa e përgjithshme, 2018).

For the implementation of this sanction, the following legal conditions are necessary: the commission of the criminal offense in a state of irresponsibility or with essentially reduced responsibility, risk from serial commission of the offense and the need for medication to avoid the risk. For a person with essentially reduced responsibility, the duration of the imposition of the measure of mandatory treatment in freedom is two years, and if a prison sentence has been imposed, the time spent in treatment in freedom is not counted as a prison sentence (Zejneli & Kambovski, E drejta Penale, Pjesa e përgjithshme, 2018).

b. Compulsory treatment of alcoholics and drug addicts

An important factor that attracts the attention of legal systems in different legislations of the world is alcoholism and drug addiction and the dependence of perpetrators of criminal acts on these substances.

For the implementation of this measure, there must be a cause-and-effect relationship between the dependence of the perpetrator and the committed act. Also, another condition is the assessment of the risk that the perpetrator is at risk of committing a criminal offense under the influence of psychotropic substances or under the influence of alcohol.

Compulsory treatment of alcoholics and drug addicts is imposed together with the prison sentence and is executed in institutions for the execution of sentences or in health institutions or other specialized institutions, and the time spent in such an institution is counted towards the sentence. The duration of the imposition of this measure with a penalty other than prison sentence, conditional, conditional with increased supervision, judicial notice or release from punishment, is limited to more than two years (Zejneli & Kambovski, E drejta Penale, Pjesa e përgjithshme, 2018).

c. Medicinal pharmacological treatment

This medication, which is also called "Chemical castration", is imposed to the perpetrators of these criminal acts such as: sexual assault on a child, sexual relations with a child and other acts against gender freedom and morality committed against children and other sexual abuses: assault sexual intercourse with a child who has not reached the age of 14 (Article 188), satisfying sexual desires in front of a child who has not reached the age of 14 (Article 190, paragraph 2), or child prostitution (Article 191, paragraph 3.

Looking back in history, this method was used in ancient Egypt, for rape in 12th century Western Europe and for homosexuality in 13th century France, for trade in ancient Greece and for slaves and prisoners of war. Medical-pharmacological treatment consists of the use of specific medications to eliminate sexual desire and activity (Koshevaliska, 2014).

The practice and existence of this measure creates different contrasts; its opponents are based on basic human rights and on the physical and mental integrity of the convict as well as on the efficiency and medical safety of the castration procedure and for these reasons this measure is applied when the convict consents to such treatment (Koshevaliska, 2014).

Regarding the imposition of this sanction, if the perpetrator consents to medical-pharmacological treatment, for criminal offenses punishable by life imprisonment, the court may impose imprisonment of 40 years (paragraph 2); if a sentence of 40 years is foreseen, the court may impose a prison sentence of 20 years (paragraph 3); for sentences of 20 years, the court can impose a minimum sentence of imprisonment for that offense (Article 188 p.1 – 12 years, p.2) 15 years. Consent to the submission of medical-pharmacological treatment is excluded in cases where the perpetrator is a

repeat offender (par. 7) or in case of abandoning treatment or not submitting to it (par. 6) (Criminal Code of Republic of North Macedonia).

Today, the implementation of the imposition of chemical castration as a sanction has some legislative loopholes because the measure is implemented and put into operation, but the court cannot impose it because the method of execution has not yet been regulated (even if the convicted person agrees to submitted to the treatment, it is not yet known how it will be applied specifically to him). Another shortcoming has to do with the financial aspect of treatment expenses. Such a procedure and its control also mean huge expenses for the state and, correlatively, for the citizens as well.

One thing which is certain is the high number of cases of criminal offenses of sexual assaults, and the number of their unsolved cases, while for the rest, the dark number of these cases is still greater, the legal instruments remain in operation and to a large extent and the interest and intervention of the whole society.

In the criminal code of the Republic of Northern Macedonia is defined that the criminal offense as the action of the guilty perpetrator, defined by law as an illegal and punitive act, as well as in relation to irresponsible persons, as an action is an indicator of the condition of irresponsible persons to whom special measures are applied for treatment, assistance or supervision (Criminal Code of Republic of North Macedonia). The main elements of the criminal offense are:

1. Human action,
2. Determinability in law,
3. Illegality,
4. Guilt and
5. Punishment.

Responsibility is one of the basic elements of guilt; capable of guilt is the perpetrator who is responsible during the time of the commission of the criminal offense. According to the criminal code of the RNM (article 11 parag.11), “Criminal responsibility has the perpetrator who is responsible and capable of guilt”. The law also connects the capacity for guilt with the age of the perpetrator at the time of the commission of the criminal offense, against persons who at the time of the commission of the criminal offense have not reached fourteen years, criminal legal sanctions cannot be applied (Zejneli & Kambovski).

The concept of irresponsibility can be constructed according to two criteria: biological and psychological.

1. The biological concept explains that the irresponsibility of a person exists when the perpetrator at the time of the criminal offense suffers from a mental illness or disorder.
2. The psychological concept is based on the ability of the perpetrator to be aware, and to have the will to judge and lead by his actions (Kambovski & Zejneli).

A permanent mental illness in contemporary psychiatry is defined as progressive, irreversible disorder of life, it is a disease of the central nervous system that results in pathological disorders of psychic functions.

Mental retardation is intellectual retardation due to underdevelopment of the nervous system, caused by congenital anomalies (oligophrenia, cretinism), or acquired anomalies (dementia, sclerosis), etc. Intellectual disability means inability to judge, consciousness is a basic precondition for understanding the importance of actions and their consequences.

Criminal legal action of irresponsibility

Irresponsibility excludes guilt, the perpetrator who in a state of irresponsibility will commit an offense that is provided by law as a criminal offense is not treated as a perpetrator of a criminal offense. Therefore, the criminal code of North Macedonia provides for the imposition of security measures which are: necessary psychiatric treatment, safekeeping in the health institution and necessary treatment at liberty. Such measures may be imposed by the court when it finds that due to irresponsibility the perpetrator may commit a criminal offense again, and in order to avoid such a risk he needs to be treated and kept in a health facility, or treated at liberty (Kambovski & Zejneli).

Irresponsibility is an institute through which criminal law is related to the medical sciences, more precisely to psychiatry, The law operates with psychiatric notions, for which the judge has only superficial knowledge, so to establish irresponsibility he needs help from a psychiatrist.

Criminal defendants may be motivated to abuse the law in order to avoid the law and criminal prosecution by appearing mentally ill, but with the help of contemporary science a lot of research has been conducted to determine the correct methods for detecting abuse, these include clinical interviews, intelligence tests and personality tests.

To identify mental illnesses, medicine uses different tests such as: The Rorschach test, which is a psychological test used to identify mental illnesses, which was inspired by patients who suffer from schizophrenia. Based on several different research this test is used by many different psychologists whose purpose is to discover the personality and emotional functioning of a person. Usually, this test is used to detect thinking disorders, especially in cases where patients are reluctant to reveal their way of thinking. "The test is named after its creator, Swiss psychologist Hermann Rorschach. According to psychologist Hermann Rorschach, the Rorschach can be thought of as a psychometric examination of perceiving objects, shapes, or scenery as meaningful things to the observer's experience, the most common being faces or other pattern of forms that are not present at the time of the observation" (Cherry, 2022).

OTHER TESTS FOR LEGAL INSANITY

"The Model Penal Code test is much broader than the M'Naghten Rule and the Irresistible Impulse Test. The M'Naghten rule requires the inability to understand right from wrong under. The Irresistible Impulse Test requires the inability to control an impulse even though the defendant knows that it is wrong." (The 'Model Penal Code' Test for Legal Insanity, 2019).

It is worth noting that even though forensic psychology is a relatively new discipline, psychology and law have been intertwined since the beginning of history. Nowadays the expert's testimony has a very important role in making the final decision by the court, since the expert or the forensic doctor with the evidence and the facts they possess reveal many truths from a committed crime.

Psychiatric hospitals in the Republic of the North Macedonia, which provide treatment and recovery for patients with mental disorders and various mental illnesses, are located in Skopje, Demir Hisar and Gevgelija.

In controlling and giving various advices in psychiatric hospitals, the Ombudsman has an important role, which according to Article 29 of the Law on the Ombudsman as well as the Constitution and international documents and the Law on Mental Health, the Law on the Protection of Patients' Rights, follows the situation through the institutes and verifies the respect for the protection of the constitutional and legal rights of the citizens.

The organizational structure of the Psychiatric Hospital - Skopje consists of the directorate and wards: center for reception, diagnostics and intensive treatment; psychiatry ward for acute and emergency conditions; ward for the treatment of somatic conditions; men's ward for emergency psychiatry; women's ward for emergency psychiatry; center for continuing treatment; rehabilitation and resocialization; alcohol addiction prevention and treatment center; centers for forensic psychiatry and forensic psychiatric expertise and centers for treatment and continuing care.

The “Demir Hisar" psychiatric hospital, founded by RMV, is also divided into specific wards and these are: Acute ward (with wards for women and men); ward for alcoholism; judicial-psychiatric department; ward for continued treatment and rehabilitation; rehabilitation centers (where therapists from various fields such as art, music, labor and physical education are employed); the department of psychogeriatric and the department for out-of-hospital health protection (mental health center in Prilep and day hospital for psychosis).

People with various mental illnesses and disorders need special and detailed treatment and care, depending on their personality, age or their disability. The professional medical staff analyzes the patient's personality and based on various tests and discussions, compiles a healing program and prescribes, as necessary, the necessary medications. After the acute phase, it is necessary to prevent subsequent situations by educating the patient and his family members for the necessary help in order to avoid risk, stress and lack of sleep.

Treatments prescribed to patients with mental disorders must be in accordance with the law and basic human rights. For this reason, many medications that have been used in the past have been replaced with humane treatments with the aim of respect and integrity and the physical and mental health of hospitalized persons.

Reintegration of persons in society

1.1. Efficacy of treatments in freedom

The goal of resocialization and reintegration of the convicted person into the community must also be fulfilled through encouraging and organizing the participation of institutions or public and private bodies (The law on execution of criminal sanctions/ law no.04/L-149).

The process of resocialization does not end with the serving of the sentence by the convicted person, but includes, among other things, the measures that the institution undertakes after the convicted person serves the sentence, that is, the help that can be given to him after he is released (Osmani, 2013).

This assistance is called post-penal assistance which represents the totality of measures and procedures that are applied for the inclusion of convicted persons released to free life, while it consists of- ensuring placement and food, medical insurance, advice on choosing a place of residence, harmonizing family relationships, employment, completing professional training, providing cash assistance to cover the most essential needs, as well as other forms of help and support.

Necessary treatment of convicted persons after serving their sentence and their release from the institution is needed (Osmani, 2013). In the event that a person released from the institution in which he served his sentence is found to have a worsening health condition, then such cases should be taken care of by the social work centers of the relevant ministry.

Medical treatment is necessary after release, the doctor, in consultation with the director of the correctional institution, enables such treatment before release. The convicted person is given the necessary amount of drugs only for three (3) days after release. The convicted person who is seriously ill, or who is unable to travel due to illness, is sent from the correctional institution to the nearest health care institution.

Based on the law on execution of criminal sanctions after the person is released from the health institution, the competent guardianship body is responsible for the person against whom the measure was executed in providing assistance after release from the health institution (The law on execution of criminal sanctions/ law no.04/L-149).

If the perpetrator who has committed a criminal offense in a state of reduced mental capacity is released from the health institution, and if he has spent a shorter time in the health institution than the duration of the specified imprisonment, the court examines the conditional release for that person (The law on execution of criminal sanctions/ Article 172).

The role of the court

The court is the basic subject of the criminal procedure, in criminal proceedings, it exercises the function of judgment; however, its function is not limited only to the function of

judgment. Based on the literature of criminal procedure law the court as an independent body of judges on the basis of the constitution and the law and on the basis of international agreements ratified in accordance with the constitution (Ismail Zejneli, 2017).

The type, competence, establishment, organization, composition of the courts, as well as the procedure before them, is determined by law, which is issued with a majority of two-thirds of the votes of the total number of deputies.

In the case of illuminating and solving a criminal case, in which case the truth about that event must be revealed, the court analyzes numerous data derived from different sources. The knowledge gained about proving any fact in criminal proceedings can be direct and indirect. They are direct, when the court verifies a fact through its own personal perception, while indirect evidence is that which the court relies on the perception of other persons for a certain issue, such as witness statements.

Based on the law on execution of criminal sanctions, especially article 172 : the court pronounces the mandatory rehabilitation treatment measure, it immediately sends the decision and all other data it possesses to the health care institution, or the relevant institution for the execution of this measure (The law on execution of criminal sanctions/ Article 172).

In the procedure of clarifying and proving the relevant non-legal facts of a criminal case, the court often needs knowledge from natural or technical science, knowledge which the judge as a jurist does not have. Therefore, for their verification by court decision, persons who, based on their professional qualification and skills acquired in the given field, can provide an objective professional opinion and conclusion can be engaged in the procedure.

There are situations in which there is a need for the professional opinion of an expert from a given field and a response is required as follows:

-that the opinion of the expert is necessary to determine the guilt, namely the innocence of the defendant,

- the degree of damage caused by the commission of the criminal offense,

- the answer can only be given by specialized or technical expertise (Criminal Procedure Code, Article 136).

Expertise: - Irresponsibility is the institute through which criminal law is also connected with medical sciences, more precisely with psychiatry. The law operates with psychiatric notions (permanent mental illness, mental disorder, etc.) of which the judge has only superficial knowledge, so for the finding of irresponsibility he needs help from an expert - a psychiatrist (Zejneli & Kambovski, E drejta Penale, Pjesa e përgjithshme, 2018).

Irresponsibility excludes guilt. The perpetrator who could not understand the importance of the act or lead with his actions, cannot be given any reprimand (Kambovski & Zejneli).

Some older (French) but also newer (Croatian) legislation precisely adheres to the principle "nullum crimen, sine culpa" and the definition - criminal law deals only with the perpetrators of responsible and guilty. The one, who, in an irresponsible state, commits an act that is considered a criminal act by law, is not treated as a "perpetrator of a criminal act", but he, like mentally ill persons, is dealt with according to the principles of medical law (Kambovski & Zejneli).

CONCLUSION

Criminal responsibility refers to a person's ability to understand his actions at the time a crime is committed, or to understand his behavior, what a person is thinking when he commits a crime or the expected result when a crime is committed. Crime is defined in terms of an act or omission (actus reus) and a mental state (mens reas).

In contemporary science, the criminality committed by normal persons and the criminality committed by persons with defects and mental disorders are compared and discussed.

Mentally ill persons are considered those persons who are distanced from reality, they are usually individuals who close in on themselves, and in the criminological literature mentally ill persons are treated as special delinquents, but this does not mean that all persons that are mentally ill commit crimes and that their mental state is a necessary factor for committing a criminal offense.

For the determination of criminal responsibility, it is important to prove guilt, which as a subjective element is considered a concrete subjective fundamental element of the criminal offense, based on one of the basic principles of criminal law, which is the principle of guilt, based on which there is no criminal offense and there is no conviction without guilt (nullum crimen nulla poena sine culpa).

The perpetrator is not responsible if, during the commission of the criminal act, was unable to understand the importance of his act due to a permanent or temporary mental illness. It is worth noting that the person with essentially reduced responsibility, in addition to the sentence, the court will also impose security measures, such as mandatory psychiatric treatment and stay in a health institution, with the aim of eliminating the risk of repeating the criminal offense.

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