

# Limited Sanity in the Legislation of Russia and Europe

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**Abstract:** This article presents the author's analysis of the problem of limited sanity in the criminal law theory and practice of Russia and Europe. The author established that the problem of limited sanity, despite its long history, has not yet been developed in many countries, and that the boundaries of the concept of limited sanity are extremely vague and indefinite. However, the experience of some foreign countries in terms of ensuring security measures can be used in the Russian Federation.

**Keywords:** Legislation, limited sanity, reduced sanity, mental disorders, subject of crime, analysis.

## INTRODUCTION

The modern criminal law doctrine, following the principle of subjective imputation, covers many heterogeneous mental states that affect the criminal liability and punishment of persons who have committed a crime or socially dangerous act. One of the prerequisites for the responsibility of the subject of crime is sanity. The legislation of most foreign countries considers sane any person who has reached the age of criminal responsibility and who did not suffer from a serious mental disorder during the commission of an offense (Zhilina *et al.*, 2019; Afriyani, *et al.*, 2018). Severe mental disorders can cause insanity.

Insanity indicates the absence of the subject, as well as elements of crime, which means the absence of grounds for criminal liability and, as a consequence, the impossibility of its incurrance.

Criminal law presumes the sanity of the person who committed the crime: "Each person is considered sane until proven otherwise". Despite the absence of legislative consolidation of this presumption, courts proceed from it in their practice. The presumed sanity is evidenced by the UN International Standard for the Protection of Human Rights and Freedoms, which has legal force for Russia (<https://www.un.org>).

Based on part 4 Art. 15 of the Constitution of the Russian Federation, the provision on the presumption of sanity is valid in Russia (Kuksin *et al.*, 2016). "A person whose sanity is presumed to be criminally liable in the event of a crime, while the legal relationship of liability is implemented without the participation of this presumption". Moreover, the importance of this

presumption is manifested in law enforcement and is associated with the release of law enforcement from the burden of proof. However, the considered presumption is rebuttable. The presence of a mental illness or mental retardation of a person who committed a socially dangerous act obliges the investigating authorities and the court to specifically check his/her sanity. If there is reasonable doubt about the sanity of a person, a forensic psychiatric examination and a decision on the issue of his insanity are required.

Sanity is a legal sign of the subject of crime and characterizes not the level of his health, but the ability to consciously volitional behavior, by virtue of which people with some mental disorders within the psychiatric norm can be sane.

Due to the difficulties in determining the severity of mental disorders and their impact on criminal behavior, Europe faced with erroneous ideas about the mechanisms of mental disorders, the concept of "reduced" sanity, in the middle of the XVIII century, which made it possible to give a criminal legal assessment of borderline states between mental health and mental disorder. This concept was not adopted unambiguously and came under sharp criticism. As the Russian psychiatrist, one of the founders of forensic psychiatry in Russia, V.P. Serbskii (and the followers of this view completely agree with him), the recognition of limited sanity indicates that the experts did not bother to delve into the mental state of the accused, the nature and depth of mental disorders (Serbian, 1895). And Professor G. Aschaffenburg, head of the scientific and criminological institute at the University of Cologne, believed that "a weaker punishment for mentally disabled persons for crimes committed by them would be a very risky concession" (Aschaffenburg, 1929).

Nevertheless, despite such harsh criticism from psychiatrists, the institution of reduced sanity has long

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existed in the criminal legislation of foreign countries and is interpreted differently. By reviewing the previous studies it was founded that there is a gap for analysis of the problem of limited sanity in the criminal law theory and practice of Russia and Europe in this cases. The author established that the problem of limited sanity, despite its long history, has not yet been developed in many countries.

## METHODS

The research was based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systematic and logical methods, analysis and synthesis) and specific scientific methods. The criminal codes of the Federal Republic of Germany, Switzerland, and Russia are examined. The focus group included also the texts of the criminal legislation of some European countries, which were taken from the database of the Legal Aid Center of the National Library of Russia "Legislation of the leading countries of the world" (<http://nlr.ru>, <https://worldconstitutions.ru>).

## DISCUSSION AND RESULTS

International law does not establish the concept of limited (reduced) sanity. An analysis of the criminal law of individual foreign countries also indicates a lack of uniformity in the issue (<https://worldconstitutions.ru>). Although the content is similar, the terminology and legal design of the institution of limited sanity in the criminal law of different countries have their own characteristics. And the legal consequences of recognizing a person with limited sanity have separate differences.

The criminal legislation of Russia, Azerbaijan, Kazakhstan, and Kyrgyzstan applies the definition "mental disorder that does not exclude sanity"; the legislation of Belarus, Germany, Switzerland, and Panama apply "reduced sanity"; the Codes of Armenia, Georgia, Tajikistan, Latvia, Lithuania, Estonia, and Ukraine apply "limited sanity"; the Criminal Code of Bolivia use "half-sanity"; the legislation of Pennsylvania and some other states use "guilty, but mentally ill".

Currently, the institution of limited sanity is somehow recognized by the criminal law of many developed countries (Denmark, Italy, Finland, Switzerland, and Japan).

The concept of "reduced" sanity is present in English criminal law. The concept of "conditional

(limited, border, partial, reduced)" sanity in various formulations is also included in the criminal law of Sweden, Spain, China and other countries.

Belarus, Ukraine, the Republic of Lithuania, and Latvia have made attempts to define the considered phenomenon in their criminal codes.

Article 29 of the Criminal Code of the Republic of Belarus explains "reduced sanity" as a condition in which a person "could not fully recognize the significance of his/her actions or manage them due to a severe mental disorder or mental retardation".

According to article 20 of the Criminal Code of Ukraine, the inability to "fully realize one's actions (inaction) and (or) manage them" in the commission of a crime is the basis for recognizing a person as partially sane.

The Criminal Code of the Republic of Lithuania contains a similar in content article 18 "Limited sanity": "1. The court shall recognize a person partially sane if, at the time of the commission of an act prohibited by this Code, this person, due to mental disorders that are not sufficient grounds to recognize him as insane, could not fully realize the danger of the criminal act or manage his actions".

The Criminal Law of Latvia (Art. 14) establishes "limited sanity" if a person "at the time of committing a criminal offense due to impaired mental activity or dementia" was unable to "fully be aware of or manage his/her actions".

Despite the lack of a clear legislative definition of the concept of "reduced" ("limited") sanity in most European countries, the criteria for "reduced" ("limited") sanity are mental or neuropsychic disorder (medical) and a decreased ability to recognize or control one's actions (psychological).

The grounds for recognition of a person "partially" sane is the presence of a mental disorder within the psychiatric norm. Limited sanity is not an "intermediate stage" between sanity and insanity: a person, even in the presence of psychological pathology, remains within the limits of sanity.

Moreover, the state of "reduced" ("limited") sanity does not exclude criminal liability. It is considered only as an optional basis for mitigation of punishment.

Thus, § 34 of the Austrian Criminal Code explicitly states: "A mitigating circumstance is, in particular, that

the criminal committed an act while under the influence of an abnormal mental state”.

Part 2 of § 16 of the Danish Criminal Code states: “2) Persons who, at the time of the commission of the act were slightly mentally deficient, are not subject to punishment, except in special circumstances. The same applies to persons in a condition comparable to mental deficiency”.

Polish law is also following the way to the mitigation of punishment in the case of “limited” sanity. §2 of Art. 31 of the Polish Criminal Code states that the court has the right to apply extraordinary leniency if the defendant “at the time of committing the crime was significantly unable to understand the meaning of the act or to control his/her behavior”.

French criminal law also contains provisions on “reduced sanity”: “A person who at the time of the commission of the act was subject to some kind of mental or neuropsychic disorder that reduced his/her ability to realize or interferes with his ability to control his actions is subject to criminal liability; however, the court considers this circumstance when determining the punishment and establishing the regime for its execution”.

According to Article 22 of the Criminal Code of the Russian Federation: “2. Mental disorder, not excluding sanity, is considered by the court when sentencing and can serve as the ground for prescribing compulsory medical measures”. It is noteworthy that in judicial practice, a sanction is imposed on a person with limited sanity, usually in the amount closer to the lower limit of the sanction. The application of a compulsory medical measure to a person with limited sanity is possible at the discretion of the court.

Section 11 of the Swiss Criminal Code states: “If, during the commission of a criminal offense, a person had a reduced ability to realize the wrongfulness of his criminal act or to act with the consciousness of this wrongfulness due to a disturbance in mental activity or a mental disorder, the judge may, at his/her discretion, mitigate punishment”.

We shall note that objections to limited sanity arise from a forensic and psychiatric point of view. B.A. Spasennikov, a Soviet and Russian scientist, neurologist, psychotherapist, finds it “unacceptable to recognize persons with mental disorders that do not

exclude sanity less responsible for their actions. The establishment of a mental disorder that does not exclude sanity cannot be a ground for mitigation of punishment. This gives rise to a feeling of “conditional pleasantness, desirability” of mental disorder” (Spasennikov *et al.*, 2014; Mardani, & Fallah, 2018).

Similar conclusions were found among jurists. Thus, M. Ansel, judge of the highest court of France (1953 - 1970), pointed out that “the mitigation system is ridiculous for abnormal criminals who, by virtue of their defect, become antisocial and commit a crime”. The presence of a mental disorder that does not exclude sanity cannot significantly change the general approach to criminal liability (Ansel, 1970).

Nevertheless, the criminal law of many European countries not only establishes the rules on “limited” (“reduced”) sanity, sets the limits of liability of persons suffering from mental disorders, not excluding sanity, but also determines the grounds and criteria for the use of coercive safety measures and treatment (Kulzade, 2011).

The ground for the use of compulsory safety measures and treatment is the public danger of a mentally disordered person who is unable to fully realize the significance of his/her actions in a criminally significant situation. The main purpose of security measures is to prevent the “dangerous state” of the person who committed the socially dangerous act, which is achieved through its re-socialization or through isolation from society. At the same time, the presence of this institution in each of these countries is characterized by a number of national features (Sarbaev, 2015).

In accordance with §63 of the Criminal Code of the Federal Republic of Germany, a person who commits an unlawful act in a state of insanity or reduced sanity must be placed in a psychiatric hospital. The court shall make such a decision if it concludes that a person, as a result of his mental state, may commit serious unlawful acts and therefore is dangerous for society.

As for the person who committed the crime in a state of reduced sanity, §67 of the Criminal Code of Germany provides for the prescribed security measure (placement in a psychiatric hospital or in a medical institution for alcohol addicts), executed before the punishment. According to the court, if the purpose of the security measure is achieved in this way better, the

punishment is executed before the correction and security measure. The German Criminal Code also provides for the possibility of conditionally delaying security measures in case the court finds that it is possible to achieve the goal of security measures without placing a person in a medical institution.

Art. 12 of the Criminal Code of Switzerland confirms in turn that persons who worked themselves into a state of severe mental disorder or blurred consciousness with the intention of committing a crime in such a state are not subject to the provisions of the Criminal Code on insanity and reduced sanity. For example, the use of alcohol or drugs. For such criminals, security measures in Germany and Switzerland are isolation and correction.

Thus, the criminal law of Germany and Switzerland applies a "double-track" system of criminal legal influence: punishment and security measures. Security measures for mentally disordered persons in these countries are allocated in a separate chapter of the Criminal Code: "Security Measures" in Switzerland, and in Germany - "Correction and Security Measures" (Mikhailova, 2008).

In UK criminal law, reduced liability is a mitigating factor and, in certain cases, allows reclassifying a murder into a second-degree murder. The reduced liability rule applies only to cases of murder charges and cannot be applied, for example, in the case of attempted murder.

The English case law states that a combination of three elements is required to apply the reduced sanity rule. First, the accused must suffer from such an "abnormal consciousness" at the time of the commission of the crime, which an ordinary reasonable person would define as "abnormality". Secondly, an "abnormal consciousness" must arise from one of the specific causes, namely, from a delay or retardation in development, or from any congenital cause caused by this disease or damage. Thirdly, this abnormality mentioned in the Law should significantly reduce the mental responsibility of the accused for his/her actions or inaction. However, there is no single answer, what the word "significantly" means (Fiandaca & Musco, 1989).

According to the French Criminal Code (Art. 122-1), medicinal measures are applied to a person recognized as partially sane. These persons should be held in a

specialized institution, whose regime combines the regime of imprisonment and the conduct of medical and psychiatric activities.

## SUMMARY

A detailed comparative analysis of the foreign criminal legislation shows that some countries have not fully developed or resolved at all the issues related to a person committing a crime in a partially sane state, and this is of fundamental importance for criminal prosecution. The concept of insanity and sanity for people with mental disorders is a combination of criteria (mental and legal), which, undoubtedly, require further study, clarification and improvement in terms of medicine, the theory of criminal law and judicial investigative practice. World criminal law practice has not developed a unified point of view regarding the nature and essence of the criminal liability of persons with a mental disorder that does not exclude sanity, therefore its generalized legislative experience cannot serve as a weighty argument in favor of some point of view in the science of Russian criminal law.

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