

by modern scholars, such as O. Kopylenko, analyze the legal traditions of the Ukrainian People's Republic.

The Directory period of the Ukrainian People's Republic was a crucial moment in the Ukrainian legal history. The power of that phase left a noticeable mark in the history of Ukraine, especially in aspects of public administration, the legal system and national identity. Although the Directory did not exist for long, that experience remains important for understanding state-building processes and the modern struggle for independence. History is cyclical. Everything is repeated. Unfortunately, again.

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LEGAL AND MEDICAL CRITERIA OF INSANITY: CHARACTERISTICS AND CRIMINAL-AND-LEGAL SIGNIFICANCE

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The theory of the legal protection of insanity has evolved over hundreds of years. Indeed, even the Romans deemed it improper to impose criminal liability on the mentally ill. In the twelfth century, courts in Europe started searching for a definition of insanity to excuse defendants from criminal liability. In 1313, the first insanity defense, known as “the good and evil” test, appeared in English common law. The “good and evil” test embraced the idea that because mentally ill people

were unable to differentiate between good and evil (similar to infants), they were unable to commit sins. Moreover, the mentally ill did not need to be punished through the legal system because the insanity they suffered was a sufficient punishment in itself.

In 1616, courts narrowed the test by determining that only those who were considered “idiots” were not liable for criminal punishment. An “idiot” was considered as a person who was illiterate and unable to count from one to twenty, who did not recognize the parents, or who could not tell what matters were useful as opposed to harmful. Courts replaced the “idiot” test with the “wild beast” test in 1724. The “wild beast” test provided that a defendant should not face criminal liability if he did not understand his actions any more than a wild animal would. The “wild beast” test narrowed the criteria under which one would qualify as insane, and therefore decreased the number of cases in which a court accepted the defense.

The legal protection of insanity underwent major changes in 1843 following the trial of Daniel M’Naghten.³⁴ M’Naghten, delusional at the time, attempted to assassinate the Prime Minister of England, Robert Peele, but accidentally shot Peele’s secretary instead. When the Queen asked the House of Lords how it could acquit M’Naghten, the House of Lords answered that:

“To establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong” [1].

From this case, over 150 years ago, the modern insanity legal defense was born.

If a person is unable to realise the social danger and (or) cannot control his or her behaviour, he or she is declared insane and cannot be a subject of criminal liability. The inability to understand and realise the nature of the actions performed means that the person is innocent and therefore there are no grounds for bringing him to criminal liability.

An insane person shall not be held criminally liable for a socially dangerous act committed by him/her, since it is committed without appropriate awareness of the social danger of such behaviour and the ability to control it. Such a person may be a subject of compulsory medical measures by court order if such a person, by the nature of the act committed and his or her mental state, poses a danger to society.

According to Article 19(2) of the Criminal Code of Ukraine, “a person who, at the time of committing a socially dangerous act under the Code, was in a state of insanity, could not realise his/her actions (inaction) or control them as a result of a chronic mental illness, temporary mental disorder, dementia or another disease state of mind, shall not be a subject of criminal liability” [6].

Insanity is the inability of a person to realise or control his or her actions (inaction) when committing a socially dangerous act as a result of a chronic mental illness, temporary mental disorder, dementia or other morbid state of mind.

The concept of insanity includes two criteria : **medical** and **legal**. The signs enshrined in the law are equally binding for both experts and lawyers when deciding on the insanity of a particular person.

The medical (biological) criterion of insanity is related to the painful nature of a mental health disorder. This is a chronic mental illness, temporary mental disorder, dementia or other pathologic state of mind .

The second part of the insanity formula is the legal (psychological) criterion of insanity. The legal criterion of insanity means the inability of a person to be aware of their actions or to control themselves as a result of a mental illness or mental disorder. It indicates the degree or depth of mental disorder as a result of mental illness . The legal criterion has two features: **intellectual** and **volitional**.

Intellectual insanity means that a person is unable to realise (understand) the factual side or social meaning of his or her behaviour and its consequences at the time of committing a particular socially dangerous act. When a person does not understand the factual state of his/her actions, what he/she is doing, the causal link between the actions committed by him/her and their consequences, he/she naturally does not realise the social danger of the act.

The volitional feature of insanity is the inability of a person to control his or her actions during the commission of a socially dangerous act.

The state of insanity can be determined if there is a legal criterion established on the basis of a medical criterion. Thus, a person who is not aware of his or her behaviour or is aware but cannot control his or her actions due to a mental disorder is considered insane and is not subject to criminal liability. If there is evidence that raises doubts about the sanity of the accused or defendant, a forensic psychiatric examination is mandatory.

To recapitulate, the issue of sanity (insanity) is always decided to a specific act. No one can be declared insane in general, regardless of the act committed. Therefore, only the presence of signs of the medical and legal criteria must be established at the time of the socially dangerous act. As it is stated in part 2 of Article 19 of the CC, “ a person who was in a state of insanity at the time of committing a socially dangerous act shall not be subject to criminal liability” [6]. The problem of sanity or insanity in relation to the act committed by a person is decided by the court on the basis of a forensic psychiatric examination.

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