THE SENSE OF IRRESPONSIBILITY DUE TO THE MENTAL STATE OF THE PERSONS

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Jetmire Zeqiri

Abstract

The irresponsibility institute represents the point of division between the subjects that will be considered accountable and the subject that cannot be subject to trial. Therefore the definition the concept of irresponsibility requires the individualization of the assumptions on which this category is based. Why does justice need the institute of irresponsibility? For what reasons are exempted persons who do not have the ability to understand the actions and consequences caused? This is one of the most difficult and controversial issues of criminal low. The establishment of irresponsibility relies on the problem of individual accountability, encountered ever, but never resolved. To give an answer question traditionally faced determinism and indeterminism. Even though most doctrines are oriented in favor of knowing the concept of self-determinism, or otherwise speaking of the concept of a person capable of acting by making free choice, there is still divergence as to the modalities in which this freedom is expressed.

Key words: the ability to understand the action, action, inaction, legal irresponsibility, legal consequences, condition, etc.

Introduction

The foundation of irresponsibility relies on the problem of the accountability of the individual, always encountered, but never resolved. To answer these questions traditionally have faced determinism and indeterminism. The deterministic concept considers that human action is governed by the principle of chance, on the basis of which no phenomenon can be ascertained if it is not preceded by a set of conditions that determine with certainty. Man acts on the basis of instincts, emotions, fears or external factors that can extend to the point of violation of will. For this reason, the possibility of acting differently from the way in which the person has acted exists only in the minds of others. This theory, supported by positivist schools, rejects the principle of individual responsibility, replacing that of social and legal responsibility, according to which any individual who has committed a criminal offense must respond to the society which is protected by this last with austerity or rehabilitation measures. Consequently, the distinction between responsible and irresponsible entities is denied. This stream is opposed to the indeterminist theory supported by the classical school, according to which the basis of irresponsibility is the free will. This theory affirms that the punishment as punishment presupposes that the subject has chosen free will at the moment of its action[1].

[1] Shefqet Muçi "E drejta penale, pjesa e përgjithshme", 2007, fq. 131.

In other words, supposedly he knowingly chose evil while having all the options to choose the good. Freedom of will and freedom of choice, according to the followers of this theory, would be lacking in subjects that do not have sufficient intellectual development and are affected by psychological anomalies because they do not have this freedom of will and therefore cannot punished. As if freedom of will is not ruled out, but is limited, as is the case with persons with reduced mental balance or with limited liability, the punishment for the same motive should be reduced. The foundation of irresponsibility is therefore the will of the individual. Although most of the doctrine is oriented in favor of the recognition of the concept of self-determinism or, in other words, of the concept of a person capable of acting by carrying out free-will choices, there is still divergence regarding the modalities in which this freedom is expressed.

1. Responsibility in Criminal Law

Criminal law is part of public law, as long as the benefits and rights that it protects are attributed to individuals (life, property, morality and dignity, etc.) and as long as they are protected by the state in the perspective of a collective and collective interest. Criminal law calls the facts the criminal acts and the perpetrators[1]. The facts relate to human behavior and legally important consequences, while the subjects are the persons who perform these facts. Therefore, the basis of criminal liability consists of the set of objective and subjective elements provided for in the criminal law, sufficient to take the person into criminal responsibility[2]. Criminal liability arises from the moment of commission of the offense and ends or ceases when the legal relations between the subjects, the state and the defendant cease. In terms of criminal responsibility it is very important that it is only individual. Criminal liability ends when the prescribed term of serving the sentence is exceeded by applying educational measures due to changing circumstances, the prescription of the offense, the amnesty and the forgiveness. The commission of a criminal offense implies the enforcement of punishment or other measures against its author, as an indispensable reaction of the society and the state for the damage caused or endangering the protected values as a result of the violation of norms of the juridical order. In order to apply the punishment, it is necessary for the author of the work to be responsible for the committed act, ie to have a certain psychic report with the offense committed as its author[3]. Therefore, for the enforcement of the punishment it is necessary that besides the existence of the criminal offense also exist the criminal responsibility of the offender. From this it can be concluded that the existence of criminal liability is a necessary condition for determining the punishment of the offender. Criminal liability represents a bunch of subjective conditions that determine the psychic condition of the perpetrator and his relation to the criminal offense. These subjective conditions are those that characterize the offender as mentally and guilty, implying at the same time his mental ability and guilt. From this notion defined it can be concluded that criminal responsibility is a psychic category and has a subjective character. In addition to this opinion based on the subjective conditions of the perpetrator, there is a broader view in the theory of law as well as objective - subjective thinking of criminal responsibility.

[1] I. Elezi, S. Kaçupi, M. Haxhia "Komentari i Kodit Penal të Republikës së Shqipërisë", 2001, fq. 12
[2] I. Elezi, S. Kaçupi, M. Haxhia "Komentari i Kodit Penal të Republikës së Shqipërisë", 2001, fq. 122.
[3] Shefqet Muçi "E drejta penale, pjesa e përgjithshme", 2007, fq. 93

According to this worldview, criminal responsibility consists of two elements [1]:

1) criminal offense (objective element);
2) guilt and mental ability (subjective element).

Criminal liability really presupposes the existence of a criminal offense, because the problem of determining criminal liability is presented after a socially dangerous and unlawful offense has been committed, which by law has been defined, poses the issue of criminal liability. This fact shows that criminal responsibility can be viewed also from the objective - subjective point of view[2]. In the theory of criminal law we can also find such thoughts that the central institute of this field is the "real" culprit, while the criminal responsibility presents only the finding, the determination that an individual fulfills the conditions for guilty. Criminal liability is therefore only a consequence of the commission of a criminal offense, such as legal-civil liability only as a result of the commission of a civil-criminal offense or of a civil offense (causing damage). Thus, criminal responsibility is only a technical term which indicates that an individual has committed a criminal offense and for that offense he is responsible. This means that the notion of criminal responsibility has only declarative and not essential character. Criminal liability is nothing other than the obligation of the perpetrator to be subject to the legal requirements and the punishment assigned to him for the criminal offense committed. It relates to the person's accountability, ie the ability to understand his behavior. On the other hand, its birth obliges the competent authorities to initiate criminal proceedings, in accordance with the rules provided for in the Criminal Procedure Code, in order to materialize this responsibility. In the essential aspect, the basis of criminal liability constitutes a criminal offense, within which expresses the social danger of acting or criminal inaction. Knowing and applying the principles and requirements of criminal liability is in itself the application of the principle of legality. Criminal liability does not apply to juveniles who have not reached the age stipulated in the law, to irresponsible persons due to their mental state and in the case of other circumstances that result in the exclusion from criminal liability[3]. Two of the main elements of the criminal offense that bring criminal responsibility are the subject, with its characteristics, namely, the age of criminal responsibility and accountability, as well as the subjective side, with the guilt, motives and purpose. The subject is an indispensable element of the offense, meaning the person who committed the offense and who will be responsible for the commission of it, but to be criminally liable as the perpetrator of the offense must maintain two qualities, age and responsive. The age criterion is foreseen by the lawmaker as a condition for having the awareness and ability to judge and distinguish between good and evil. Aging for criminal liability is related to the time of committing a criminal offense or criminal offense and not to the age of commencement of proceedings. This is important for taking a person into criminal responsibility and for imposing a punishment. In addition to the age, the indispensable feature of the subject of the offense is accountability, which consists in the person's ability to understand and control his behavior and the consequences. Rocco, during the preparation of the Criminal Code and the Criminal Procedure Code, specified that the parameters of responsibility should be sought in the legal institutes of the Civil Code. According to this interpretation, accountability would constitute some kind of general criminal abilities, isolated from the concrete case and assessed under the probability conditions. On the other hand, guilt, it would be the decision

[1] Luigi Delpino "Manuale di diritto penale, parte generale", 2010, fq. 395.
[2] Shefqet Muçi "E drejta penale, pjesa e përgjithshme", 2007, fq. 94.
[3] Shih po aty.

taken in the concrete case, ie at the moment when action is taken, ie when it is displayed in the outside world.

1.1 Exemption from criminal liability

In our Criminal Code, exemption from criminal liability is foreseen in 10 articles, ranging from age, causality, guilt and irresponsibility due to mental state, necessary protection, extreme need, etc. Referring to the legislator's prediction on the two main conditions for taking criminal responsibility, namely age and accountability due to mental state, entities subject to criminal law can be identified. Age for taking criminal responsibility is related to the time at which the subject understands the importance of acts and omissions and at the same time to control them, to realize that he is committing a criminal offense. Determining the age is directly related to the understanding of unlawful action and socially dangerous behavior. In the same spirit walks the irresponsibility because of the mental state, since the person affected by a psychological disorder at the moment of committing the offense has not had what is legally known as the ability to understand actions and omissions and to wish the coming of the consequence. The conditions of the company's development make it possible for a person who has reached the age of 14 at the moment of the commission of the criminal offense to have received sufficient knowledge and to understand what is good and bad, and therefore what is a crime and what is not. Meanwhile a person affected by a psychological disorder does not perceive reality and consequently no unlawful action at any moment in his life.

There are hypotheses for exclusion from criminal liability. The law provides that the subject cannot be held criminally liable whenever it suffers from mental disorders and pathological distress, such as to completely or partly disrupt the ability to understand the actions and to wish for the consequences. For a minor under the age of 14, there is an absolute presumption of exclusion from criminal liability. This list of causes for exclusion from criminal liability has no tax character but is limited to predicting some hypotheses. It is not about automatic exclusion of criminal liability, but case-by-case verification[1]. What matters in our work is the lawmaker's assessment of mental disorder, the general definition within which various causes are predicted, each with its own significance. As to the definition of mental disorder, Marini identifies it in "any change, intellectual or pleasure ability, or both, encountered in the subject"[2]. This psychic state is not necessarily sustainable, but it can also be a transient state. On the other hand, the term "mentally ill" was included in the criminal codes of the Middle Ages, according to which it was foreseen that no punishment was imposed on the person who committed a crime precisely in this condition. Regardless of the exclusion from criminal liability and the punishment of a criminal offense, there is special treatment outside the penitentiary system, specifically the educational measures and medical measures for persons who are not of age or are irresponsible. In the sense of the epidemic considered in this material, the medical measures are important, which will be discussed in detail in the following chapters.

[1] F. Antolisei “Manuale di diritto Penale, parte generale”, 1985, fq. 280.
[2] G. Marini “Imputabilità, in digesto delle discipline penalistiche”, 1988, fq. 255.

1.2 Irresponsibility as a condition for exclusion from criminal liability

Criminal law is defined as accountability, existence of sufficient conditions to attribute a criminal offense to a subject and to take legal consequences into account. No one can be held criminally liable if at the time of the offense he was unable to understand and control his actions or wish to have the consequences, but inability to exclude liability when it is a result of the subject's fault (for example jams). There are several theories about the importance of the concept of irresponsibility in criminal law:

Theory of free will; is classical and old theory, which still has many supporters. According to this view, criminal responsibility is the person who, in the face of good and bad, has chosen evil only by his free will. The charges raised to this theory are related to its ambiguous and philosophical character (the question whether or not free will exists, among other things, has been discussed for centuries in the field of philosophy). *The theory of normality;* according to which criminal responsibility is the only normal person, the only one who is spiritually healthy and mature and reacts in a certain way for certain reasons. Critics of this theory are many, as the concept of "normal human being" is passable, implying as a category of "abnormal" persons, the most dangerous delinquents. *Theory of personal identity;* for this theory the criminal liability exists when the act committed by the person relates to his personality, as a manifestation of his Unit. Starting from the assumption that the patient's actions are related to his personality distorted by the diseased condition, we go back to the concept of the "abnormal" person as in the previous theory. *Penalty theory as an effective intimidation threat;* This theory presupposes that the criminal punishment is an effective threat to intimidation, which cannot be understood by the immature, mentally ill, and other similar subjects. Though more solid and evolved than the previous theories, this concept supports those who say that in reality the threat scares anyone, including animals. *Positive school theory;* is the most special among the theories mentioned so far. This theory does not conceive the subjects as responsible or irresponsible, but asserts that any person as such can commit a criminal offense and in that case he must be subject to the decision of the state, which must be able to to prevent the perpetrator of committing the criminal offense again in the future. According to this view, the punishment is a safeguard of the state against itself, instead of a punishment against the perpetrators, being a remedial measure.
The theory of human responsibility; is a modern, highly debated and discussed theory, which is proposed by several jurists and various manuals of criminal law as a solution to previous theories. According to this theory, what makes a subject responsive is the ability to understand the anti-social character of his actions.

Since the criminal punishment in itself causes suffering, it would be unjust and unfortunate to be given to a person who is already suffering from immaturity or a mental illness; therefore, security measures should be implemented in this case, at the same time protecting the person in question and the community. However, the instigators of this idea think that it can change over the time as well as social awareness changes. Today, many lawyers and psychiatrists are discussing the law of irresponsibility at the time of the commission of the offense and not only. These discussions refer to the fact that irresponsibility, except at the moment of committing the criminal offense, can be encountered during the trial, rendering the person unable to undergo the process or even during the execution of the punishment. The concept of irresponsibility, nowadays, when he has lost the relationship he has had in the past with the term "mentally ill", has become dim and has become indefinite, losing any value he has had for psychiatry in the past. Moreover, it is created the awareness that psychic disorder is not only a mental illness, but constitutes a complex and indefinable entity, being the result of

many factors such as genetic factors, stress, and so on. Today there is no mental illness in the ancient sense of the term, today there is another vision regarding mental illness, consisting of many integrated factors together. The doctrine of criminal law does not in fact define the notion of mental ability, but the notion of mental disability. Mental disability is defined as the inability to understand or control the commission or failure to act, and the inability to understand that he or she is committing a criminal offense due to a temporary or permanent illness, mental disorder or mental retardation.

Non-responsiveness due to mental state is provided in Article 17 of the Code Criminal, according to which:

"There is no criminal responsibility for a person who at the time of the commission of the criminal offense was suffering from a mental or neuropsychic disturbance that has completely ruined his mental balance, and consequently has not been able to control acts or omissions, nor to realize that he does the offense The person who at the time of the commission of the offense was suffering from a mental or neuropsychic disturbance that has lowered his mental balance to fully understand and control the actions and omissions is accountable but this circumstance is considered by the court in determining the measure and type of punishment. "

The question of whether the person was irresponsible at the time of the commission of the offense, whether he or she was fit or not to contain itself and manifest the will, is verified for any person taken as a defendant. Accountability is presumed, while irresponsibility is proven and declared in court[1]. A person who has reached age is considered accountable until he or she does not the opposite is proven. It should be specified that accountability is investigated during the course of the criminal process, it always refers to the moment when the criminal act that is being prosecuted is committed. Accountability is perceived as the ability to understand and enable the commission of an unlawful act, so it means the subject's tendency to recognize reality, what is happening around it, and the ability to take the positive and negative values of this reality. It presupposes a psychic state that consists in understanding and judging its actions and omissions[2]. The ability to act is the ability of the entity to decide autonomously, to distinguish the legal and illegal, based on a reasonable opinion, and to resist negative external stimuli and to administer them properly[3]. Thus, it is clearly the premise of the model on which the foundation of the cultural, legal and moral system is based, in which accountability has as its prerequisite the freedom of copyright and criminal action. If that were not the case, it would not make sense of sanctions, social dislike, the idea of guilt and justice. It is important to differentiate criminal accountability, which is a legal concept and as such contributes to the field of law, with the use it finds as the primary need for the formation and association of man and his skills in every field[4]. From the accountability of the subject comes also its punishability, with its consequences as the application of security measures. This dual element also results in social risks. The law connects irresponsibility with the loss of two elements, intellectual and voluntary[5]. The Penal Code does not recognize the relationship between the affective sphere and the intellectual and voluntary sphere, and as such, under the influence of criminal policies for the prevention of criminal offenses, denies

[1] Shefqet Muçi "E drejta penale, pjesa e përgjithshme", 2007, fq. 131.
[2] Fiandaca G., Musco E. "Diritto penale, parte generale", 1989, fq. 252.
[3] Emilio Dolcini, Giorgio Marinuci "Codice Penale commentato, parte generale", 1999,fq.824.
[4] Borisllav Petroviq "E drejta penale", 2006, fq. 70.
[5] Shefqet Muçi "E drejta penale, pjesa e përgjithshme", 2007, fq. 132; I. Salihu "E drejta penale, pjesa e përgjithshme", 2003, fq. 277.

the impact of the emotional and passive state in taking criminal responsibility. The lawmaker has disciplined irresponsibility by considering it as a differentiation between pathological and non-pathological causes, excluding or categorizing particular states as passive emotional states and based on the expression that "a person who is not ill must control his instincts". So the nose, which should create a situation of clarity and uniform the trials, has in fact led to the possibility of re-introducing some situations that should be excluded from the law. The fact that, on the one hand, the nozzle is very wide and risks being not easily practicable in the psychiatric field, and on the other hand very narrow in unpredictable situations, has also led to strong criticism of the psychiatric nose. However, this does not mean that abandoning the nose, because uniform terminology reference is necessary, without removing the consequence it has in the forensic field. Jurisprudence has highlighted three psyche factors that characterize subjective action: feeling, intelligence, and will. The Penal Code, in the limits of irresponsibility, takes into consideration only the last two, not the first. Meanwhile, character abnormalities and the inadequacy of ethical and social feelings cannot be considered as an indication of irresponsibility because of the mental state, as long as they are not accompanied by disorders of the intellective or volitional sphere, ie of a pathological nature[1]. The doctrine agrees that irresponsibility cannot be limited to within clearly defined frameworks, but it expresses a wider concept than the concept of mental illness, and hence its content can be determined on the basis of the ratio, the rule index for irresponsibility. The concept of irresponsibility is wider than that of mental disorders, as provided in our Criminal Code, as not all mental disorders are classified in causes that lead to irresponsibility. Criminal liability is the obligation to be subject to the penalties provided by the Criminal Code in relation to the commission of a criminal offense.

1.3 Ability to understand and control the actions and the consequences and the guilt grounds

A considerable part of the doctrine acknowledges that criminal law also finds the concept of ability to understand acts or omissions and to wish for the consequences to come. The ability to understand actions and omissions is defined as attitude and orientation in the outside world according to a fair view of reality, and the ability to understand the importance of its actions and to assess the negative or positive consequences of such actions on third parties[2]. So the ability to understand is not just the attitude of the subject to know the external reality, but also to have the awareness and understanding of the universal values of the actions performed by it, or to understand that they come in opposition to the requirements of life. On the other hand, the ability to desire the coming of consequences implies the ability of the person to dominate his instincts and impulses by making logical choices in accordance with his intellectual level, values and culture. From this point of view, the ability to desire the coming of the consequences presupposes the necessary existence of the ability to understand - nihil volitum nisisi praecognitum[3]. Yet a part of the doctrine considers this division as ungrounded, since it is about equally important moments in the definition of human psyche, which should be considered as a whole. Both of these exigencies, namely the ability to understand the actions and omissions and the ability to wish for the consequences, must be present in the subject to be accountable under criminal law. Only at this time can be spoken of what is generally called psychic normality. This happens when the subject, the tensions determined by feelings, needs, desires and interests, develop without any particular psychic conflict and result in corresponding actions, which constitute a determinant motive based on

[1] F. Antolisei “Manuale di diritto Penale, parte generale”, 1985, fq. 540.
[2] Fiandaca G., Musco E. “Diritto penale, parte generale, 4a ed.”, 2001, fq. 297.
[3] Fiandaca G., Musco E. “Diritto penale, parte generale, 4a ed.”, 2001, fq. 297.

the normal behavioral parameters that essentially mean possession psychic autonomy, the existence of ethical notions, and the ability to decide itself [1].
According to the legal definition, the ability to understand actions and to wish for the consequences is missing in two categories of individuals, in those who do not have sufficient intellectual development and those who are affected by psychological anomalies. The essence of irresponsibility is individualized in psychic maturity and mental health.

In the doctrinal sense, this concept consists of:

1) the ability to understand and control actions and omissions, and to wish for the consequences that have to do with the individual's ability to understand unlawful behavior.
According to some jurists, this skill must be recognized to all natural persons, and according to some others, only those who for natural physical reasons are able to commit materially a criminal offense and would be missing others who are in the conditions of physical impossibility, such as newborns or tetraplegics.

2) criminal jurisdiction, which in itself is the ability of the individual to take criminal responsibility and to serve the appropriate punishment.

The opinion of the majority of scholars sees the ability to act according to the identified criminal law with both perspectives, ability to act and legal capacity, in the sense that it belongs to all persons regardless of sex, age, or other physical factors - Psychic[2]. According to another opinion, this responsibility would be lacking in juvenile persons under the age of 14 and in irresponsible persons, who can not legally be subject to punishment but only austerity measures. The concept of ability under criminal law has been criticized by Francesco Antolisei[3], which considers it without any practical significance. In the case of irresponsible persons, he states that they are not considered outside the criminal justice system but simply impossible to serve the sentence. However, they are subject to austerity measures that in some cases lead to deprivation of liberty. In this perspective, the author emphasizes that the concept of criminal jurisdiction is not grounded and there is no reason to exist.

Regarding the relationship between:

- Criminal responsibility and criminal legal capacity, Antolysis denies the existence of the latter, while the problem of responsibility lies only in the limits of the application of the sentence;
- Criminal responsibility and guilt, Antolysis excludes the fact that the latter presupposes the former by denying the alleged connection between moral and legal guilt.

In this sense, criminal responsibility keeps a person who understands the importance of their actions or omissions, the consequences they bring and their social risk [4].This consists in expressing the will to commit a criminal offense. A person who does not have these skills, ie consciousness and will, is called mentally incompetent, irresponsible and as such can not be taken into criminal responsibility[5].The irresponsible person lacks one of the essential

[1] Caraccioli I. “Manuale di diritto penale, parte generale”, 1998, fq. 558.
[2] Fiandaca G., Musco E. “Diritto penale, parte generale”, 1989, fq. 248.
[3] F. Antolisei “Manuale di diritto Penale, parte generale”, 2003, fq. 598.
[4] Vllado Kambovski “E drejta penale, pjesa e përgjithshme”, 2010, fq. 243
[5] Po aty.

elements of the criminal offense, the guilt. In the doctrinal sense of guilt, it is nothing but the psychic attitude of the perpetrator to the criminal offense during and after its commission or consciousness as a psychic capacity to distinguish between right and wrong. This psychic attitude expresses the consciousness of the action, the consequence, the mutual relationship between action and consequence, the existence of desire, or in harmony with the consequence. This notion of guilt represents the subjective element of the offense[1]. So guilt is the connection between the psychological personality of the author with the work, as an objective phenomenon, which is manifested in the outside world [2].

Conclusion

Criminal liability must be distinguished from the conscience and the will to carry out the action, which, in a literal sense, is the physical-psychic maturity normally found in the adult person. More specifically, the ability to understand actions and to wish for the coming of consequences is defined as the ability of the person to orient itself according to the perception of reality or, say, briefly, the ability to understand the importance of his action (the intellectual moment). The ability for the desired advent of consequences consists in controlling the impulse to act and deciding on the most reasonable motive. The formula of the ability to understand the actions and to wish for the consequences comes to a unified synthesis of physical and psychic development. The ability to understand the actions and to wish for the consequences should be assessed in close connection with the fact carried out at the time of its performance. In the case when it is found that someone is in unconsciousness to understand the actions and to wish for the consequences, with the intention of carrying out an action or finding a justification, the Latin term actio libera in causa is used. In this case, the punishment applies even though the person who committed the offense was incapable of understanding and controlling his actions at the time of criminal conduct.

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13. Borisllav Petroviq "*E drejta penale*", 2006,
14. F. Antolisei "*Manuale di diritto Penale, parte generale*", 1985,
15. Luigi Delpino "*Manuale di diritto penale, parte generale*", 2010.

[1] Po aty.
[2] Vllado Kambovski "E drejta penale, pjesa e përgjithshme", 2010, fq. 243.