

## Legal irresponsibility

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**Abstract.** Committing a crime always creates an imbalance in society, requiring a reaction of "self-defense" from it. From the creation of the first forms of state organization, the task of punishing those who violated the norms of social coexistence was taken over by the state, no longer left exclusively to the injured parties. Initially, there was no clear distinction between forms of liability, with civil and criminal liability often conflated. Later, this distinction was made, with the state assuming the responsibility for criminal liability, while civil liability remained primarily the responsibility of the injured parties. It is indisputable that throughout history, madness has been a cause for excluding the culpability of the perpetrator. Thus, since antiquity, insane individuals were not subject to criminal punishment but could be held civilly liable. Roman law did not punish the insane. Likewise, irresponsibility was a cause for excluding criminal wrongdoing in both canon law and barbarian law. However, during the Middle Ages, some mentally ill individuals were regarded as "possessed by the devil," a classification that attracted harsher penalties than for sane individuals. The concept of not punishing irresponsible individuals due to a lack of discernment became widely accepted later, during the Renaissance, under the influence of humanist ideas. In doctrine, criminal liability is defined as the most severe form of legal liability, involving the obligation of an individual to answer before the criminal investigation bodies and then before the court for acts committed that are provided for in criminal law, the obligation to endure coercive measures prescribed by law for committing the crime, and the obligation to serve the imposed penalty. According to the Criminal Code, "a crime is the sole basis of criminal liability," with the crime being the cause of criminal liability, and the application of criminal sanctions as its consequence. Thus, Article 15 paragraph (1) of the Criminal Code outlines the essential features of a crime: typicity (the act must be provided for by criminal law both in its subjective and objective aspects), unlawfulness (the act must be unjustified and illicit), and culpability. These three conditions must be cumulatively met; the absence of any of them eliminates criminal liability. This paper necessitates a profound analysis of irresponsibility from both a criminal and psychological perspective, as it holds significant importance in the institution of criminal liability. For an act stipulated by criminal law to constitute a crime, the perpetrator must be in full possession of their mental faculties, capable of understanding their conduct and its consequences. Consequently, human behavior can be restricted by legal norms only when it is exhibited by an individual capable of controlling their actions. Therefore, in the absence of the biopsychophysical aptitude necessary and indispensable to a mentally healthy individual, such a person cannot become the subject of a juridical-criminal constraint relationship, as they are considered irresponsible. Criminal law exclusively sanctions individuals with appropriate behavior within the limits of normality.

**Keywords.** criminal prosecution bodies, justifiable causes, mental disorders, psycho-physical incapacity, state of responsibility

Unlike the old regulation<sup>1</sup>, the New Criminal Code has rethought the institution of the offense, abandoning the substantive definition and providing in Article 15 paragraph (1) of the New Criminal Code a formal definition, according to which an offense is an act provided by criminal law, committed with guilt, unjustified, and imputable to the person who committed it. The new regulation combines elements from the definitions of European Codes as well as the traditional conception of Romanian criminal law from the interwar period. From the above-mentioned definition, three essential features<sup>2</sup> of the offense can be identified, namely:

a) The provision of the act by criminal law (typicity) is the first characteristic of the

offense, also constituting the guarantee of compliance with the principle of legality. Offenses may be provided for in the Criminal Code – Special Part, special criminal laws, or non-criminal laws with criminal provisions.

Typicity refers to the commission of an act in its consummated form, in the form of an incriminated attempt, as well as to criminal participation. Moreover, in the logic of the current Criminal Code, although guilt is listed in the definition of the offense, it does not in fact constitute a distinct essential characteristic but rather the subjective element within the incrimination norm (intent, negligence, praeterintent). Thus, typicity as an essential feature of the offense will include two of the provisions of the definition provided in Article 15 paragraph (1) of the Criminal Code, namely the provision of the act in the criminal law (objective typicity) and guilt (subjective typicity).

Fulfilling the first condition does not always constitute an offense, as it is also necessary to meet the other two features, namely unlawfulness and imputability.

The lack of the essential feature of typicity leads to the prosecutor ordering a solution of dismissal or the judge ordering a solution of acquittal, based on Article 16 paragraph (1) letter b of the Criminal Procedure Code<sup>3</sup>.

b) Unlawfulness (the act is not justified) represents the second essential feature of the offense. The unlawful or unjustified nature of the act provided by criminal law implies that it is not permitted by the legal order; in other words, it has an illicit character. Thus, an act provided by criminal law is not always illicit—for example, in the case of self-defense, a person may strike another person to defend themselves against an attack. In such cases, the justifying cause of self-defense can be upheld, provided the necessary requirements are met. The fulfillment of the condition of unlawfulness must be proven with evidence by the prosecuting authority or the court so that it can be established whether the act is illicit or lawful. According to Article 18 paragraph (1) of the Criminal Code, an act provided by criminal law does not constitute an offense if one of the justifying causes provided by law exists. Thus, if one of the justifying causes regulated in Articles 19–22 of the Criminal Code is present, the unjustified nature of the act will be removed. In addition to the general justifying causes provided in the general part of the Criminal Code, there are also special justifying causes provided in the special part of the code or in special legislation<sup>4</sup>.

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<sup>1</sup> Article 17 of the 1969 Criminal Code: An offense is an act that presents a social danger, committed with guilt, and provided for by criminal law. An offense is the sole basis for criminal liability.

<sup>2</sup> In doctrine, some authors identify four general characteristics in the definition of an offense, namely typicity, guilt, unjustified nature, and imputability. However, the majority opinion accepted in doctrine supports the idea that the definition of an offense reveals three essential characteristics.

<sup>3</sup> Article 16 paragraph (1) A criminal action cannot be initiated, and if it has been initiated, it can no longer be pursued if: (...)b) the act is not provided for by criminal law or was not committed with the guilt required by law.

<sup>4</sup> Justifying causes regulated in the Special Part of the Criminal Code: Article 201 paragraph (6); Article 203 paragraph (2); Article 272 paragraph (2); Article 277 paragraph (4).

Justifying causes remove only the illicit nature of the act provided by criminal law and not the guilt in the form of the imputability of the act. If a justifying cause is found to exist, according to Article 18 paragraph (2), the effect of the justifying causes extends to all participants, and the act is considered lawful, thus removing its criminal character. Upholding a justifying cause eliminates the possibility of applying penalties, educational measures, or safety measures, and, in principle, the defendant cannot be held civilly liable.

The justifying causes are: self-defense (Article 19 of the Criminal Code), necessity (Article 20 of the Criminal Code), exercising a right or fulfilling an obligation (Article 21 of the Criminal Code), and the consent of the injured party (Article 22 of the Criminal Code).

c) Imputability is provided as the third and final essential feature of the offense. In this regard, the Constitutional Court has stated that “starting from the new regulation of the offense and the manner in which it has been addressed in doctrine, the Court has noted that, at present, the essential features of the offense are the provision of the act by criminal law (typicity), its unjustified nature (justifying causes), and its imputable nature (causes of non-imputability)<sup>5</sup>. Thus, guilt as a general feature of the offense is referred to in the current Criminal Code as imputability, thereby being included in the third feature of the offense<sup>6</sup>.

Over time, two theories have been outlined regarding the concept of imputability: the psychological theory and the normative theory. The psychological theory formed the basis of the old regulation, where guilt was present both as a constituent element and as an essential feature of the offense. The definition of the offense outlined in Article 15 of the Criminal Code reflects the legislator's choice to move away from the psychological theory, which caused much controversy by conflating guilt as a subjective element and guilt as a general feature of the offense (imputability).

Thus, the current Criminal Code addresses guilt from the perspective of the normative theory, characterized as an imputation made by society against a person for violating the legal order by committing an act provided by criminal law. According to this theory, guilt as a constituent element of the offense cannot be equated with imputability as an essential feature of the offense; the latter can be determined by judicial bodies as either present or absent.

If it is found that the act is not typical or is justified, judicial bodies<sup>7</sup> will not analyze the feature of imputability further. For an offense to be imputable, it is necessary that the person committing it is responsible, meaning they must have the psychophysical capacity to understand the significance of their actions or inactions, their consequences, and to control them. Therefore, the cumulative fulfillment of both the intellectual and volitional factors is required.

The causes of non-imputability are provided in the Criminal Code in the General Part, Articles 23–31, as well as in the Special Part of the Criminal Code,<sup>8</sup> where specific causes of non-imputability are addressed.

According to Article 23 of the Criminal Code, the effect of non-imputability causes does not extend to participants, except in cases of fortuitous events (which have in rem effects), and thus they apply only to the person to whom the typical act cannot be imputed (in personam).

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<sup>5</sup>Decision of the Constitutional Court (DCC) no. 82/2016, paragraph 20  
(Published in the Official Gazette no. 370 of May 13, 2016)

<sup>6</sup> Mihail Udroi, *Criminal Law, General Part*, 4th edition, C.H. Beck Publishing House, Bucharest, 2017.

<sup>7</sup> Ivan Anane, *Elements of Theory and Tactics for Criminal Investigation Bodies*, Pro Universitaria Publishing House, Bucharest, 2014.

<sup>8</sup>Article 90 paragraph (2) of the Criminal Code, Bribery:

The act provided for in paragraph (1) does not constitute an offense when the briber has been coerced by any means by the person who accepted the bribe.

Unlike justifying causes, when a cause of non-imputability is upheld, the court may impose a safety measure, with the sole exception being extended confiscation, which requires a conviction.

The causes of non-imputability include:

- Physical coercion (Article 24 of the Criminal Code);
- Moral coercion (Article 25 of the Criminal Code);
- Unimputable excess (Article 26 of the Criminal Code);
- Minority of the perpetrator (Article 27 of the Criminal Code);
- Irresponsibility (Article 28 of the Criminal Code);
- Intoxication (Article 29 of the Criminal Code);
- Error (Article 30 of the Criminal Code);
- Fortuitous event (Article 31 of the Criminal Code).

Irresponsibility is provided in Article 28 of the General Part of the Criminal Code, Title II, Chapter III, titled Causes of Non-Imputability. The regulation of irresponsibility in Article 28 of the Criminal Code is similar to the previous regulation (Article 48)<sup>9</sup>, but some differences can also be identified.

The first difference lies in the placement of the regulation. In the previous Criminal Code, irresponsibility was included in the category of causes that remove the criminal nature of the act, while in the new Criminal Code, irresponsibility is classified as a cause that removes the imputable nature of the act.

The second difference concerns the cause that generates irresponsibility<sup>10</sup>. The new Code replaced the term "mental alienation" with "mental illness," which renders the perpetrator incapable of understanding their actions or inactions, or controlling them. This change is justified by psychiatric medico-legal practice as well as by the nomenclature of the World Health Organization, as the term "mental alienation" is no longer used.

The third and final difference refers to the replacement of the term "could not control them" with "could not understand or control them," as provided in Article 28 of the Criminal Code.

According to Article 28, "The act provided by criminal law committed by a person who, at the time of committing it, could not understand their actions or inactions or could not control them, either due to a mental illness or other causes, is not imputable."

The state of irresponsibility is specifically characterized by the lack of psychophysical capacity of the person, involving both the intellectual and volitional factors, or even both elements of guilt. The current Criminal Code has regulated the state of irresponsibility by recognizing the existence of mental illness or other causes affecting the intellectual and volitional capacity of the subject. Through this formulation, the legislator intended to encompass all forms of psychological disorders that can affect a person's capacity to understand and exercise willpower to such an extent that criminal liability is excluded<sup>11</sup>.

For irresponsibility to constitute a cause of non-imputability of the act, the judicial body must establish the cumulative fulfillment of the following conditions<sup>12</sup>:

<sup>9</sup> An act provided by criminal law does not constitute an offense if the perpetrator, at the time of committing the act, either due to mental illness or other causes, was unable to understand their actions or inactions or was unable to control them.

<sup>10</sup> Dobrinou Vasile, et al., *The New Criminal Code Annotated, 3rd Revised and Expanded Edition as of May 23, 2016*, Universul Juridic Publishing House, Bucharest.

<sup>11</sup> Dobrinou Vasile, et al., *The New Criminal Code Annotated as of October 1, 2012*, Universul Juridic Publishing House, Bucharest.

<sup>12</sup> V. Dongoroz, *Theoretical Explanations*, Vol. I, op. cit.; C. Bulai, B.N. Bulai, op. cit.; I. Pascu, op. cit.; M.A. Hotca, op. cit.; T. Dima, op. cit.

a) The action or inaction committed by the perpetrator must constitute an act provided by criminal law and be unjustified. If the act is not provided for in criminal law, the application of Article 28 of the Criminal Code cannot even be discussed, as the act cannot constitute an offense due to the absence of the first feature of the offense, namely typicality. In situations where a justifying cause is upheld, it will operate *in rem*, rendering the analysis of the imputability of the typical act unnecessary<sup>13</sup>. It is irrelevant whether the act was committed as an author, co-author, accomplice, or instigator. Moreover, the act can be in its consummated form or in the form of a punishable attempt<sup>14</sup>.

b) The existence of a state of mental incapacity at the time of committing the act. To uphold this cause of non-imputability, it is necessary that the perpetrator lacked the capacity to understand their actions or inactions (intellectual factor) or to control them (volitional factor). It is not sufficient for the perpetrator to merely fail to recognize that the activity committed is immoral or illicit; rather, it is necessary that their capacity to understand the consequences of the act is impaired.

Regarding minority, I considered making some clarifications in this section because minority represents a cause of non-imputability that removes the criminal nature of the act due to its commission by a person who lacks the capacity to understand the significance of their act due to insufficient psychophysical development, a consequence of their young age<sup>15</sup>. Thus, minority and irresponsibility share similar features, as both constitute causes of non-imputability and both involve an impairment of judgment.

There is an absolute presumption of lack of judgment for minors under 14 years old; therefore, they are not criminally liable, and the cause of non-imputability provided in Article 27 of the Criminal Code—minority of the perpetrator—is upheld. For minors aged 14–16 years, there is a relative presumption of lack of judgment, meaning they are criminally liable only if it is proven that they committed the act with judgment. As this is a relative presumption, it can be overturned through a medico-legal examination<sup>16</sup> and other pieces of evidence corroborated with the examination. In this case, as mentioned for minors aged 14–16, the cause of non-imputability of minority will apply. For minors over the age of 16, there is a relative presumption of judgment, which can be overturned with expert evidence and other means of proof provided by the Code of Criminal Procedure. Thus, in this latter case, if it is determined that a minor who has reached the age of 16 acted without judgment, “irresponsibility (Article 28 of the Criminal Code) will be upheld as a cause that removes the criminal nature of the act<sup>17</sup>.”

Psychophysical incapacity must exist at the time of committing the act provided by criminal law and throughout the duration of the act; otherwise, the perpetrator will be held liable for actions or inactions committed when they were responsible. Psychophysical incapacity will be established based on a medico-legal psychiatric examination. An exception to these provisions is the concept of *actio libera in causa*, which represents the prior, voluntary, intentional, or negligent provocation of a state of irresponsibility to commit the act.

Based on various possible hypotheses of *actio libera in causa*, doctrine has shown that distinctions must be made depending on the subjective position of the author, as follows<sup>18</sup>:

<sup>13</sup> Mihail Udroui, *Criminal Law, General Part*, 4th Edition, C.H. Beck Publishing House, Bucharest, 2017.

<sup>14</sup> If the attempt is not incriminated, analyzing imputability is irrelevant because an unpunishable attempt does not meet the characteristic of typicality and therefore does not constitute an offense.

<sup>15</sup> Doli incapax

<sup>16</sup> According to Article 184 paragraph (1) of the Code of Criminal Procedure, conducting a medico-legal examination is mandatory in the case of minors aged between 14 and 16 years.

<sup>17</sup> Mihail Udroui, *Criminal Law, General Part*, 4th Edition, C.H. Beck Publishing House, Bucharest, 2017.

<sup>18</sup> Florin Streteanu, Daniel Nițu, *Criminal Law, General Part, Vol. 1*, Universul Juridic Publishing House, Bucharest, 2014.

1. The author induces a state of irresponsibility to commit an offense. If the intended offense is committed, they will be held accountable for the intentional act, and if they also commit another offense, they will be held accountable for the latter as negligence.

2. The author did not intend to commit an offense and did not induce the state of irresponsibility for that purpose but, at the time of inducing the state of irresponsibility, foresaw and accepted the possibility of committing an offense under its influence. The author will be held accountable for the offense committed with indirect intent. If the subject induces the state of irresponsibility negligently, they will be accountable for a negligent act, not an intentional one<sup>19</sup>.

c) The perpetrator's psychophysical incapacity must be caused by a mental illness or other abnormal causes with similar effects. Article 28 of the Criminal Code explicitly provides that the state of irresponsibility must be caused by a mental illness or other causes that can generate the perpetrator's psychophysical incapacity.

In both cases of mental illness and other causes underlying the state of psychophysical incapacity, these are abnormal causes, unlike situations such as minority, intoxication, or factual error, where the inability to understand the nature of the acts committed and to control them is due to somewhat normal states, such as a lack of psychological maturity at a certain age, involuntary intoxication, or a relative, non-pathological distortion of the intellectual factor<sup>20</sup>.

Irresponsibility, due to its complexity, constitutes a factual state before being a legal state. Determining the existence or absence of a state of irresponsibility is within the competence of specialized physicians, and the criminal investigation body<sup>21</sup> is obligated to request a medico-legal examination whenever there are doubts about the perpetrator's mental capacity at the time of committing the act.

As a result of the absence of the essential feature of imputability, the criminal nature of the act committed in a state of irresponsibility is removed. If the cause of non-imputability of irresponsibility is upheld, the perpetrator cannot be subjected to penalties or educational measures, but safety measures can be applied, such as compulsory medical treatment (Article 109 of the Criminal Code) or medical hospitalization (Article 110 of the Criminal Code).

According to Article 23 paragraph (2), "the effect of causes of non-imputability does not extend to participants,"<sup>22</sup> producing effects only *in personam*. When irresponsibility is established, the prosecutor will order dismissal during the criminal investigation, and if it is determined during the trial, the court will order acquittal.

In principle, irresponsibility excludes the tort liability of the perpetrator under Article 1367 paragraph (1): "A person who caused harm is not liable if, at the time of committing the harmful act, they were in a state, even temporary, of mental disturbance that rendered them incapable of understanding the consequences of their act." However, under paragraph (2) of the same article, "liability will be engaged for a person lacking judgment if the temporary state of mental disturbance was self-induced through intoxication caused by alcohol, narcotics, or other substances."

Thus, civil law establishes a presumption of judgment until proven otherwise, meaning the person who committed the act must provide evidence of the lack of judgment at the time of

<sup>19</sup> Florin Streteanu, Daniel Nițu, *Criminal Law, General Part, Volume I*, Universul Juridic Publishing House, Bucharest, 2014.

<sup>20</sup> Dobrinioiu Vasile, et al., *The New Criminal Code Annotated as of October 1, 2012*, Universul Juridic Publishing House, Bucharest.

<sup>21</sup> Ivan Anane, *Management of Criminal Investigation Bodies*, Pro Universitaria Publishing House, Bucharest, 2014.

<sup>22</sup> Except for the fortuitous event, which produces effects on all participants (*in rem*).

committing the harmful act<sup>23</sup>. Nevertheless, the liability of the person lacking judgment will be engaged whenever the liability of the person who, by law, had the duty to supervise them cannot be engaged, with the compensation being determined equitably, taking into account the financial situation of the parties<sup>24</sup>. According to Article 1372 paragraph (2), “The person obligated to supervise is exonerated from liability only if they prove that they could not have prevented the harmful act.”

The state of responsibility of a person presupposes that they possess the psychological attributes (intelligence, reasoning) that enable them to understand the socially dangerous nature of their actions and to control them—that is, they are capable of understanding the consequences of committing actions prohibited by law. Responsibility is assessed based on two factors:

- An intellectual factor, which consists of the person’s capacity to understand their actions or inactions, their social significance, and their consequences.
- A volitional factor, which consists of the same person’s ability to control their actions, in the sense that they can consciously direct them.

The absence of one of these two psychological factors—intellectual or volitional—indicates incapacity, as an irresponsible person cannot recognize the illicit nature of their actions or control them<sup>25</sup>. The presence of both factors is necessary and has a decisive effect on establishing responsibility. Thus, the state of responsibility represents the normal psychophysical state of an individual, while irresponsibility constitutes an abnormal psychophysical state, essentially a state of exception.

A significant aspect in assessing responsibility is the relationship between responsibility and guilt. If responsibility is absent, guilt cannot be analyzed, as an incapable person cannot act with intent or negligence, lacking control over their will and actions.

Analyzing the concept of psychological responsibility, authors such as V. Dongoroz, I. Fodor, S. Kahane, and others concluded that “psychological responsibility” and “criminal liability” should not be equated. The former is a consequence of biopsychological capacity and is a psychological notion (or category), while the latter, criminal liability, may be excluded even if the perpetrator has psychological responsibility (i.e., is psychophysically capable)—for instance, in cases of self-defense or extreme necessity<sup>26</sup>.

Thus, for a person to be a legal-penal subject under criminal law, they must be responsible, as irresponsible individuals lack the necessary and indispensable biopsychophysical capacities of a mentally healthy person. Criminal law exclusively sanctions individuals whose behavior falls within the bounds of normalcy.

Some researchers argue that a person’s mental incapacity to understand the meaning of their actions and to self-regulate does not necessarily involve a pathological condition of the human psyche. Thus, such a state can manifest even when a person is mentally healthy but, in certain situations, cannot normally use the psychological attributes they possess to understand the significance of their actions, their consequences, or simply to self-control their behavior.<sup>27</sup>

Similar to other criminal codes (Italian, Spanish, German, French), our current Criminal Code has adopted the biopsychological criterion to define irresponsibility, stating that

<sup>23</sup> Ivan Anane, *Investigation by Criminal Investigation Bodies*, Pro Universitaria Publishing House, Bucharest, 2014.

<sup>24</sup> Gabriel Boroi, C.A. Angheliescu, Bogdan Nazat, Ioana Nicolae, *Civil Law Notes*, 4th Edition, Hamangiu Publishing House, 2019.

<sup>25</sup> M.A. Hotca, *Criminal Code: Comments and Explanations*, C.H. Beck Publishing House, Bucharest, 2007.

<sup>26</sup> V. Dongoroz, I. Fodor, S. Kahane, I. Oancea, N. Iliescu, C. Bulai, R. Stănoiu, *Theoretical Explanations of the Romanian Criminal Code, General Part, Vol. I*, Romanian Academy Publishing House; All Beck, Bucharest, 2003.

<sup>27</sup> Ivan Anane, *Elements of Criminal Procedural Law*, Pro Universitaria Publishing House, Bucharest, 2015.

“it is not sufficient to merely ascertain the existence of a mental disorder to conclude in favor of irresponsibility; it is also necessary to establish that this disorder concretely eliminated the capacity for understanding and will<sup>28</sup>.” Thus, as mentioned in the previous section, responsibility constitutes the rule, the norm, while irresponsibility is the exception.

To determine the state of irresponsibility, the law employs several methods, one being the biological method, by which the law explicitly specifies the mental disorders that cause irresponsibility. Another method is the pure psychological method, which “describes only the consequences of mental disorders and their effects on the intellect and will of the subject.”<sup>29</sup> George Antoniu, in his work, mentions a third method, which he considers “superior to the other two,” namely the mixed method, characterized by “the description of both the mental disorders and the effects they must have on the subject's capacity for understanding and will.” This latter method has also been adopted by our Criminal Code, describing both the perpetrator's mental disorders at the time of the act and their consequences on the subject's intellect and will<sup>30</sup>.

According to Article 28, the state of irresponsibility is due to “a mental illness” or “another cause,” so that “the legislator aimed to encompass all forms of mental illnesses that can affect a person’s capacity for understanding and will to such an extent that criminal liability is excluded.”<sup>31</sup>

Through the phrasing used in the law, the aim was to encompass all forms of mental disorders that could determine the state of irresponsibility of the perpetrator, excluding criminal liability. Under these conditions, the following are classified<sup>32</sup> as pathological mental disorders<sup>33</sup>:

- Organic psychoses, which are mental disorders resulting from progressive paralysis, cerebral syphilis, senile dementia, atherosclerosis, brain tumors, brain injuries, and genuine epilepsy;
  - Endogenous psychoses, which are mental illnesses affecting only the functional part of the psyche, without a known anatomical basis. This category includes schizophrenia, delusional psychoses<sup>34</sup>, and manic-depressive psychoses;
  - Toxic disorders, including poisoning of any kind caused by endogenous or exogenous factors, as well as disorders caused by alcoholic and narcotic substances. The concept of mental illness also includes:
    - Mental disorders caused by insufficient development of psychological functions, such as mental debility, idiocy, infantilism, and cretinism;
    - Non-pathological disorders of consciousness caused by factors such as alcohol, fatigue, exhaustion, or hypnotic states, which manifest as twilight states, hallucinations, or severe emotional instability<sup>35</sup>.
- The state of mental incapacity can be<sup>36</sup>:
- permanent or temporary;

<sup>28</sup> Florin Streteanu, Daniel Nițu, *Criminal Law, General Part, Volume I*, Universul Juridic Publishing House, Bucharest, 2014.

<sup>29</sup> George Antoniu, *Criminal Guilt*, Romanian Academy Publishing House, Bucharest, 2016.

<sup>30</sup> This method is known as the biopsychological method but may also be referred to in doctrine as the biological-normative or psycho-normative method.

<sup>31</sup> George Antoniu, *Criminal Guilt*, Romanian Academy Publishing House, Bucharest, 2016.

<sup>32</sup> “Disorders that originate from organic causes, true illnesses of the brain.”

<sup>33</sup> George Antoniu, *Criminal Guilt*, Romanian Academy Publishing House, Bucharest, 2016.

<sup>34</sup> Paranoia and paraphrenia

<sup>35</sup> Fear, anger, rage

<sup>36</sup> Alexandru Boroi, *Criminal Law, General Part*, C.H. Beck Publishing House, Bucharest, 2014.



- congenital or acquired;
- innate or developed.

Mental incapacity is not always permanent and incurable. Cases of temporary mental incapacity are common (for example, during natural or hypnotic sleep) or with intermittent periods of lucidity (as in the case of epilepsy patients who may commit criminal acts during a crisis and then return to a temporary normal mental condition). Similarly, the state of incapacity can be innate (e.g., autism) or acquired during life (e.g., schizophrenia).

Mental illnesses lead to a person's irresponsibility as a consequence of the decisive influences exerted by mental disorders on the following processes:

- cognitive processes,
- volitional processes, and
- affective processes.

Cognitive processes are affected insofar as the subject's ability to perceive the surrounding world (sensations and perceptions) is altered. Pathological disorders of sensation and perception can manifest as:

- increased sensitivity to stimuli such as light, noise, vibrations, or skin contact, occurring in cases of neuroses or paranoid disorders;
- decreased receptivity to various stimuli, observed in cases of hysteria, oligophrenia, or schizophrenia.

Illusions are a more severe impairment of cognitive capacity, characterized by the erroneous perception of objects, either through the projection of imagination and the unconscious into perceptual acts or through the erroneous assimilation of perceived images.

In the case of pathological illusions, the patient perceives them as real, causing delusional interpretation. Examples include:

- visual illusions – where the individual perceives close acquaintances as harmful, fantastical beings and may attack or even kill them, believing it to be beneficial;
- auditory illusions – where the individual perceives real noises as insults directed at them;
- gustatory-olfactory illusions – where the person erroneously perceives the taste or smell of substances.

These disorders may be caused by temporal lobe damage or febrile states in infectious or toxic diseases, as well as neuroses. In cases of post-traumatic disorders affecting cognitive functions, the individual's ability to control and foresee the consequences of their actions is diminished.

Hallucinations are among the most severe forms of cognitive impairment. They can be classified as:

- auditory hallucinations – where the person hears words or phrases that they misunderstand, sometimes attributed to living or deceased individuals. These “voices” often urge the individual to commit violence or self-harm, potentially leading to crimes or suicide;
- visual hallucinations – which pose a significant danger, as they involve the perception of non-existent objects or situations;
- olfactory hallucinations;
- gustatory hallucinations;
- tactile hallucinations;
- visceral hallucinations.

The most significant attention disorders include:

- hyperprosexia – excessive attention, observed in cases of depression, paranoia, or phobias and obsessions;
- hypoprosexia – lack of attention or low concentration levels.

The most common memory disorders are amnesias, which can be classified as:

- fixation amnesia – where the person cannot remember or retain recent events but can recall past ones;
- evocation amnesia – where the person cannot remember past events and has difficulty recalling recent ones<sup>37</sup>.

The most common thought disorders include delusional ideas, where “the patient makes judgments or reasoning that erroneously reflect reality.” In advanced phases, the individual experiences unusual or fantastical events.

The most common disorder affecting willpower is abulia, characterized by weakened or absent will. Special forms of abulia include<sup>38</sup>:

- disabulia – difficulty in taking action;
- parabulia – characterized by insufficient willpower;
- impulsivity – a state where the individual loses control over their actions, potentially leading to antisocial behavior. “Impulsivity is specific to psychopathic states,”<sup>39</sup> commonly observed during epileptic crises. After the crisis, the individual has no recollection of events.

Psychomotor disorders involve the alteration or psychopathology of psychomotor skills. In other words, they include abnormalities, deficits, or movement disorders. The main psychomotor disorders are:

- psychomotor agitation – the most common, involving rapid and successive gestures, movements, and behaviors without a specific objective;
- stupor – involving psychomotor inhibition or delay, characterized by a state of consciousness dominated by the absence (akinesia) or reduction (hypokinesia) of movement and reactions. The person remains indifferent, detached from their surroundings, with absolute bodily paralysis and mutism (the person does not speak);
- tremors – characterized by oscillatory muscle movements around a fixed point on the body, manifesting as involuntary shaking, primarily in the head, face, tongue, and extremities, less frequently in the torso. They can be classified as resting, postural, or intentional tremors;
- convulsions – muscular movements involving violent and uncontrollable contractions of voluntary muscles, specific to epilepsy and certain toxic-infectious conditions involving the brain;
- tics – involuntary, isolated, unexpected, repetitive, frequent, purposeless movements occurring at irregular intervals;
- spasms – involuntary, exaggerated, and persistent muscle contractions affecting voluntary muscles or muscle fibers of internal organs;
- catatonia – a syndrome involving symptoms such as catalepsy, negativism, stupor, mutism, muscle rigidity, stereotypies, and echo phenomena;
- stereotypies – continuous, unnecessary repetition of movements or

<sup>37</sup> Opium smokers have the ability to recall long-forgotten scenes, even from their early childhood.

<sup>38</sup> George Antoniu, *Criminal Guilt*, Romanian Academy Publishing House, Bucharest, 2016.

<sup>39</sup> George Antoniu, *Criminal Guilt*, Romanian Academy Publishing House, Bucharest, 2016.

gestures, typically complex, and associated with disorders such as autism or schizophrenia.

Affective disorders are characterized by changes in mood, feelings, and thoughts. The way individuals with these disorders relate to life changes drastically, with frequent behavioral transitions being observed. Changes may occur on physical, emotional, and cognitive (thought) levels.<sup>40</sup>

The most significant affective disorders are:

- depression;
- bipolar disorder;
- anxiety disorders.

Other conditions that alter mental processes refer to states of consciousness, characterized by "disorientation in time and space, manic states of depersonalization, and derealization."<sup>41</sup> The causes of these mental conditions are numerous and complex, with some still unknown or under research.

The most significant of these conditions include<sup>42</sup>:

- Oligophrenia – also referred to as "dementia," "mental insufficiency," "intellectual retardation," or "mental delay," is a condition characterized by diminished development of intellect, personality, and psyche in general. It is most often congenital or acquired in childhood. According to the MBK-10 classification, there are four main degrees of oligophrenia: idiocy (IQ < 20)<sup>43</sup>, imbecility (IQ = 20–40), moderate imbecility (IQ = 40–50), and debility (mild form – IQ = 50–60). The condition is also divided into two major groups: primary disorders (hereditary and congenital) and secondary disorders.

- Schizophrenia – the most common mental illness, it is a major psychiatric disorder that affects the entire personality of the individual. In advanced stages, it manifests through delusional states, disturbances in self-perception leading to self-mutilation, suicide, aggressive and violent behavior toward others, incoherence in thought and action, and delusions. In this state, patients often commit violent crimes.

- Paranoia – "a thought process heavily influenced by anxiety or fear, often to the point of irrationality and delusion."<sup>44</sup> Common themes include persecution, victimization, as well as grandiosity and megalomania. A paranoid individual is suspicious, interprets communication abnormally, feels offended without reason, and is driven by suspicion to abnormal behavior.

- Manic-depressive psychosis – manifests either through euphoric states or depressive states.

- Epilepsy – arises from abnormal brain activity, causing seizures, unusual behavior, or sensations. During epileptic seizures, there may be "twilight states, confusion, aggression<sup>45</sup>, impulsivity, and instability."

- Pathological intoxication – manifests through hallucinatory states often leading to aggression. After the crises end, the individual cannot remember the actions committed during these states.

<sup>40</sup> <https://mental-training.ro/tulburarile-afective>

<sup>41</sup> George Antoniu, *Criminal Guilt*, Romanian Academy Publishing House, Bucharest, 2016.

<sup>42</sup> These disorders affect all mental functions—intellect, will, and affectivity—being subject to varying intensities, developments, and degrees of severity.

<sup>43</sup> The intelligence quotient represents the ratio between mental age and chronological age.

<sup>44</sup> [www.wikipedia.ro](http://www.wikipedia.ro)

<sup>45</sup> Murders are committed with cruelty, the perpetrator having no purpose or motive.

Aside from mental illnesses, irresponsibility may also result from other conditions that alter the subject's capacity for understanding and will. These causes may induce only temporary deviations.

It is considered that affective disorders, such as emotions (anger, fear, joy, revenge) or passions (jealousy, hatred, fury), play a significant role in a person's life, influencing their capacity for understanding and will. However, they cannot entirely remove the individual's mental capacity.<sup>46</sup>

Nonetheless, emotions and passions can cause profound mental disorders, such as depressive psychoses or delusional jealousy. In such cases, irresponsibility may be established if its conditions are met.

Among the "other causes" that remove mental capacity, the following states may also justify establishing irresponsibility:

- Sleep – a periodic and reversible physiological state characterized by temporary suppression of consciousness, partial abolition of sensitivity, and slowing of organic functions.<sup>47</sup> Actions or inactions committed during this state are considered those of an irresponsible person. If it is proven that sleep was induced, the rules of *actio libera in causa* will apply, and if the individual had an obligation to stay awake, the act may be attributed to negligence. If the sleep resulted from a fortuitous event, the non-imputability cause of the fortuitous event will apply.

- Sleepwalking – a behavioral disorder during sleep characterized by performing activities specific to the waking state.<sup>48</sup> A person committing criminal acts in this state will not be held responsible. If the person intentionally induced this state, the rules of *actio libera in causa* will apply.

- Hypnosis – a suggestion technique and form of treatment that can influence an individual's responsibility. If the hypnotist acts in good faith and the hypnotized person commits a crime during the hypnotic state, neither will be held criminally responsible. If the hypnotized person intentionally induces the hypnotic state to commit crimes, they will be held responsible under the rules of *actio libera in causa*. If the hypnotist intentionally induces this state to cause the hypnotized person to commit a crime, the hypnotist will be held responsible as an instigator. However, if the hypnotist did not intend for the hypnotized person to commit crimes but should and could have foreseen this possibility, they will be held responsible<sup>49</sup> for negligence.

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<sup>46</sup> George Antoniu, *Criminal Guilt*, Romanian Academy Publishing House, Bucharest.

<sup>47</sup> www.wikipedia.ro

<sup>48</sup> This mental disorder may also be caused by mental illnesses, in which case this basis for irresponsibility will be applied. However, in this section, we refer to mental disorders that have a cause other than mental illnesses.

<sup>49</sup> The hypnotist will be held responsible if the offense to which they instigated the hypnotized person is incriminated as negligence; otherwise, no offense will be considered committed.

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