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**THE ISSUE OF IMPROVING THE LEGAL DEFINITION OF THE  
DIMINISHED CAPACITY AND INSANITY IN THE CRIMINAL  
LEGISLATION OF GEORGIA**

***Summary.** The article will discuss the expediency of a new formulation of the legal wording of diminished capacity in the Criminal Code of Georgia. The current legal definitions of the diminished capacity and insanity do not fully reflect their legal nature and content; therefore, it is advisable to change them. The article will address the issue of the relationship between insanity, diminished capacity and guilt, which will make the expediency of the change even more obvious. A summary of the diminished capacity and circumstances causing the insanity will also be considered, which will allow us to use these legal categories in a different, broader sense.*

***Key words:** diminished capacity, insanity, mental illness, guilt, age, minority, mistake.*

**Statement of the Problem.** The issue of diminished capacity and insanity is one of the most difficult and controversial issues in the theory and practice of criminal law, it is directly related to issues of guilt and criminal liability. The involution of the problems of diminished capacity and insanity can be explained by the fact that they are complex in nature, which cannot be explained within the

framework of one branch of science. This leads to different approaches to this problem and disagreements.

**The purpose of this article is** to offer the reader new definitions of insanity and diminished capacity which will more fully reflect their legal nature and will contribute to the development of correct legal thinking in this field.

**Recent researches and publications.** The professors M. Ugrekhelidze, O. Gamkrelidze, N. Todua, M. Turava, G. Nachkebia and others are working on this issue in Georgia. Their studies have made a significant contribution to the research and better understanding of this problem. But today, many issues remain the subject of discussion, and additional research is needed to better understand them.

**The main material.**

**1. Circumstances that are the cause of the release from liability in accordance with the Criminal Code of Georgia.**

In accordance with the Criminal Code of Georgia, one of the circumstances causing release from criminal liability is minority, that is, not reaching the age of 14. Article 33 of the Criminal Code of Georgia states: "A person who has not attained the age of 14 at the time of the commission of an unlawful act provided for by this Code shall be considered to act without guilt" [1]. The development of basic human mental functions (memory, attention, thinking, etc.) is associated with attaining a certain age. Consequently, these functions are developed in a minor improperly or, one might say, insufficiently, which deprives him/her of the opportunity to adequately perceive, understand, control and so forth his/her own behaviour. As it is known, minors tend to be easily inspired, they often find it difficult to concentrate, they are characterized by a rapid change of interests and needs, a desire to satisfy them immediately, etc. All these features exclude the possibility of imposing criminal liability for actions committed by them. Therefore, a minor must be released from liability. Releasing from liability is also linked to

mental illness. In accordance with Article 34 of the Criminal Code of Georgia: "Any person who at the time of the commission of an unlawful act provided for by this Code is incapable of appreciating the actual nature or unlawfulness of his/her actions or controlling those actions due to his/her chronic mental illness, temporary mental disturbance, debility or other mental condition shall be considered to act without guilt" [1]. Similar legal definitions for non-imposition of liability may be found in the legislation of other countries. For example, U.S. law and practice link the non-imposition of liability to mental illness. Paragraph I of Article 4.01 of the Model Penal Code states: "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law") [2]. Articles 19-20 of the German Criminal Code, as well as Articles 33-34 of the Criminal Code of the Georgia, link insanity and diminished capacity with mental illness and age [3]. Similar legal definitions of non-imposition of liability can be found in the criminal codes of other countries [4]. The understanding of the non-imposition of liability given in the criminal legislation of Georgia cannot fully reflect the legal nature of this category, since it is understood in a limited way. Our understanding of the non-imposition of liability is broader and includes all circumstances excluding guilt. Since non-imposition of liability is a circumstance excluding guilt, its content may include any case where a person is held irresponsible for the action committed by him/her, that is, there is a person's insanity in all cases where he/she is not incriminated for wrongfulness of his/her conduct, while mental illness and age represent specific circumstances causing the non-imposition of liability, and the use of only this content for excusing a person from responsibility is not correct.

Therefore, the definition of insanity may be formulated as follows: Insanity is the behaviour of a person when he/she is not charged with an illegal act due to

age, mental illness, physical illness, level of socialization, socio-psychological development, error or other circumstances, when he/she lacked the capacity to understand the actual nature or wrongfulness of his/her actions committed, or was able to understand them, but had no ability (possibility) to act otherwise. Accordingly, in a legal sense, a person can be excused from responsibility in all cases when he/she cannot be charged with an illegal act committed by him/her, the cause of which may be any circumstance. We consider O. Gamkrelidze's opinion to be fair that it is not necessary for a person to be insane for a long time, as sometimes happens with mental illness, so that he/she is disabled and deprived of being held responsible. A person with a very sound mind and will may also be insane, if in some particular case he/she made a mistake or a specific fact occurred, for the commission of which he/she was excused from responsibility [5, p. 88]. With this understanding of the insanity, we do not suggest legislators to combine the circumstances causing the insanity in one article, but we believe that such an understanding of the insanity will help establish an idea in the theory and practice of criminal law, that we are dealing with insanity in all cases where we cannot hold a person criminally responsible for his/her wrongful conduct.

Therefore, it would be proper if, like Articles 33 and 34, where release from liability due to age and mental illness is discussed, Articles 36, 37 and 38 are also titled as release from liability due to an excusable mistake, due to the execution of an order or instruction, and due to other non-culpable actions. This will be better for a proper understanding of the nature of insanity, because the insanity means being held irresponsible, and all of the above articles are circumstances excluding guilt. It will also contribute to judicial practice through making it easier for the court to apply the relevant article of circumstances excluding guilt. We still have a strong influence of the old tradition, when only a mentally ill person was considered to be insane. We interviewed 10 prosecutors and 10 judges about their

opinion when a person is insane. And only two judges and one prosecutor answered that our legislation recognizes two circumstances that cause insanity - age and mental illness, the rest respondents defined a mentally ill person as insane. This fact also clearly confirms the need for appropriate amendments, thereby definitively consolidating the idea that we are dealing with insanity in all cases whenever we cannot impose liability on a person for his/her wrongful conduct. Moreover, the criminal legislation of Georgia allows this opportunity.

## **2. Circumstances causing a diminished capacity in accordance with the Criminal Code of Georgia**

In accordance with Article 35 of the Criminal Code of Georgia: "An adult person who at the time of committing a crime was in a state of diminished capacity, i.e. due to his/her mental illness was unable to fully appreciate the actual nature or unlawfulness of his/her acts or control those acts shall not be released from criminal liability". As we can see, the criminal legislation of Georgia links diminished capacity only with mental illness [1]. The situation is similar in the legislation of foreign countries [2; 3]. If we follow the logic of the discussion on insanity, it becomes clear that even in the case of a diminished capacity, its legal understanding may not be considered correct, since it limits the scope of the diminished capacity. In accordance with the Criminal Code of Georgia, a diminished capacity is a mitigating circumstance of culpability, therefore, the degree of culpability is directly related to the degree of insanity, since the insanity, like guilt, has degrees and can be greater or lesser. Therefore, if the degree of insanity decreases, the degree of culpability decreases accordingly. All circumstances mitigating culpability must be attributed to a diminished capacity, since the diminished capacity is a person's condition and is related to the time of the crime. A diminished capacity must include any circumstance that limits a person's conscience and will and reduces the degree of his/her culpability. In the

private part of the Criminal Code of Georgia, we find special cases of diminished capacity. For example, a murder committed in a state of strong emotional excitement (Article 111), the murder of an infant by the mother during or immediately after the labour (Article 112) and others.

Accordingly, any circumstance that limits a person's ability to fully realize the actual nature or wrongfulness of his/her action or direct it at the moment of committing an injustice can be considered a diminished capacity. We are dealing with diminished capacity in all cases where a person who has committed an injustice is held liable in a mitigated manner. A diminished capacity is the condition of a person, which is associated with the time of the commission of a crime. If at the time of the commission of the crime there were some circumstances that limited a person's ability to fully realize and control the wrongful conduct, only in this case we can talk about a diminished capacity.

**Conclusion.** Based on the above, we propose to Georgian legislators to formulate the first paragraph of Article 35 of the Criminal Code as follows: "An adult person who at the time of committing a crime was in a state of diminished capacity, i.e. due to his/her mental illness, non-morbid mental, physiological or other condition, was unable to fully appreciate the actual nature or unlawfulness of his/her acts or control those acts shall not be released from criminal liability." It is also desirable to consolidate the abovementioned definition of insanity in the theory of criminal law of Georgia: Insanity is the behaviour of a person when he/she is not charged with an illegal act due to age, mental illness, physical illness, level of socialization, socio-psychological development, error or other circumstances, when he/she lacked the capacity to understand the actual nature or wrongfulness of his/her actions committed, or was able to understand them, but had no ability (possibility) to act otherwise. In addition, it is preferable if, like Articles 33 and 34 of the Criminal Code of Georgia, Articles 36, 37 and 38 will be also titled as

release from liability due to an excusable mistake, due to the execution of an order or instruction, and due to other non-culpable actions.

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