

Miroslav Goreta, *The Concept of Diminished Responsibility in Supranational Criminal Law (psychiatric approach)*

Miroslav Goreta, *The Concept of Diminished Responsibility in Supranational Criminal Law (psychiatric approach)* xvii+109 pp. University of Zagreb – Faculty of Law, Vrapce Psychiatric Hospital, Medicinska Naklada, Zagreb 2007, ISBN 978-953-97666-4-9

The book analyses the concept of diminished responsibility in international criminal law from a psychiatric point of view. It gives an overview of the application of the concept of diminished responsibility in international criminal law, focusing on its application by the ICTY.

The opening chapter, which is an introductory part, gives a critical review of the abovementioned concept as applied by the ICTY. It stresses out that this concept has been taken over from the English legislation (The English Homicide Act 1957), thus admissible only in the case of indictment for the crime of murder when done in the state of ‘abnormal mind’. The defense of diminished responsibility, as applied by the ICTY, differs from the European countries, especially those emerged after the collapsing of the Former Yugoslavia. Accordingly, the performance of all lawyers and psychiatric experts from Europe engaged in the proceedings has been worsened in practice. Thus the author calls for a need to create a universal concept, which could be applicable even in the International Criminal Court (ICC) Statute, where so far it is not contemplated. In Chapter 2 the author points to the insufficiency of the Rome Statute in the part referring to the defense by mental element, where now exists only a decree on non-responsibility (Art. 31, ICC St), while diminished responsibility is not mentioned at all. It also points out the concrete difficulty to translate psychiatric dimensions, such as mental illness, mental abnormality, into legal categories. Another main problem concerns the expertise of judges, which should be accompanied by expertise-psychiatrists, a formula which should be considered while drafting the article in the Statute. In particular, he criticizes the proposal to change the heading of Art. 31 ICC Statute as ‘grounds to mitigating punishment’ because, first and foremost, non-responsibility cannot lead to a mitigation of punishment, precisely because the individual cannot be criminally responsible. The diminished responsibility, thus, is a slightly different concept.

Chapter 3 analyses the concept of diminished responsibility according to the criminal law of Croatia, providing for such an excuse. According to the author, Croatian legislation on the subject-matter is ineffective and the main reason is because it attributes to the excuse of diminished responsibility a ‘mildly’ punishment of the alleged perpetrator. This substantiates a scale of different forms of punishments derived from the diminished responsibility of the perpetrator, which are difficult to assess legally. This is a new interpretation of the Croatian system but the solution provided for is unsatisfactory both for national and international law. Another backdrop is the link of this broad concept of diminished responsibility with security measures of psychiatric compulsory treatments. The author points out a solution to overcome such a failure, namely to *diminish* the responsibility according to three levels: milder, moderate and severe degree. Chapter 4 gives an overview on how the concepts is disciplined in different legal systems, which can be summarized in two main groups: the first one defines the concept of diminished responsibility as the expression of the defendant’s mental disorders, in particular with his volitional and intellectual function. The second one refers to more severe mental disturbances as a ground to mitigate punishment but without including it in the concept in diminished responsibility. Moreover the author points out the deficiencies of the application of the concept of diminished responsibility in the ICTY (Celebici

case), as influenced by the English legislation. The application of such concept will lead to absurd results. Indeed, if the judge finds an individual diminished responsible he will not pronounce himself for a less degree penalty. On the contrary the judge will re-qualify the crimes from i.e. murder to manslaughter, pronouncing then the according punishment. In Europe the outcome is completely different, since if one is found non-responsible is free from punishment, while if found diminished responsible he will be sentenced to a lesser punishment. The author considers the English concept as unsatisfactory because it forces for a total evaluation of the individual and his disorders by a judge, which he is lacking of the necessary expertise. A reasoned solution seemed not to allow the judge to depart from the medical evaluation and thus base on its own evaluation the verdict, but to make the matter reconsidered by other expert in order to have the most accurate assessment.

Chapter 5 classifies in a technical manner the different types of mental disorders and stresses out the inherent difficulty for lawyers, as it is for experts, to properly apply them. Precisely then he goes on to analyze the diminished responsibility in the Celebici case. In this case the court found that the accused had an 'abnormality of mind', not amounting to diminished responsibility. However, it is not defined but it is accepted as a form of mitigation of punishment. The conduct of the proceeding is critically considered as it reflects an important weakness which lies in the different nature of experts, with different backgrounds and education and a scarce interaction between the legal part and the medical one.

In the final part the writer presents its own suggestion by stressing out that the court will be obliged to perform a psychiatric expertise aimed to diagnose the defendant's mental disturbances. Then, the expert will give its own assessment of the reduction of the defendant's abilities to understand his conduct and give its motivated opinion. Moreover, he underlines the necessity of a rationale division of competences between experts and judges, with the task to translate into legal terms the experts findings in an interactive way. This implies, for example for the ICC possible expertise a learned screening process on the stage of recruitment.

Finally the author points to some specificities stemming from the ICTY proceeding, where Celebici was finally found unable to enter his plea and stand trial, as a result of an 'overall' conclusion reached by the Chamber and the Defence's Experts Reports.

The book gives a complete presentation on how the criminal concept is interpreted and applied, with reference to the unsatisfactory solution of the ICTY. The critical review emphasizes the greatest deficiencies of the actual solutions: the imprecise definition of the term "abnormality of mind", giving unreasonably great significance to biological causes of psychiatric disorders; the restriction of the application of the institute "diminished responsibility" only to murders; too much judicial freedom in the non-acceptance of forensic psychiatric assessments. Moreover, there is a too close connection between the degree of diminished responsibility and specific diagnostic category, and insufficiently neutral position of the expert engaged by one or the other of the opposing parties. Conclusively, the author suggests a formation of an international expert committee which would create the final draft of legal regulations about diminished responsibility and irresponsibility for the permanent International Criminal Tribunal. The author gives an insightful presentation, highly technical; but perhaps the work does not comprehensively deal with how supranational criminal law applies and conceives the excuse of diminished responsibility.

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