

**ADVANCE SOCIAL SCIENCE ARCHIVE JOURNAL**Available Online: <https://assajournal.com>

Vol. 04 No. 02. October-December 2025. Page# 327-333

Print ISSN: [3006-2497](#) Online ISSN: [3006-2500](#)Platform & Workflow by: [Open Journal Systems](#)<https://doi.org/10.5281/zenodo.17289867>**Insanity Defense in Criminal Law in Norway****Ali Ajmal**

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faizarasool2005@gmail.com**Abstract**

The objective of this study is to analyze the law governing the defense of insanity in Norway. The doctrinal legal analysis research method was used to study the law on the defense of insanity in Norway. Norway recognizes the defense of insanity in section 20 of the Penal Code of Norway (2005). Norway follows the medical model of insanity defense, which requires no proof of a causal link between the abnormal mental condition of an offender and the crime committed for the establishment of legal insanity of an offender; rather, the defense of insanity in Norway is based on the presence of the mental disorder in the offender. To determine the legal insanity of an offender, the mental health evaluation by the mental health professionals is mandatory in Norway, but ultimately it is at the discretion of the courts to decide on the legal insanity of an offender. This study has implications for legislatures and legal and mental health professionals in Norway.

Keyword: *Crime, Insanity, Legal, Mental, Norway*

Introduction

The defense of insanity can be found in most of the jurisdictions across the world (Neville, 2010). It is not only found in the national jurisdictions, but it is also recognized in international law. The modern-day defense of insanity went through several stages of evolution before coming to its current form (Ajmal & Rasool, 2024b). The insanity defense is a legal concept and is a defense against the criminal liability of an offender due to his abnormal mental health condition. A person with abnormal mental health cannot be declared guilty for his crime subject to meeting legal criteria, which vary from jurisdiction to jurisdiction (Ajmal et al., 2023c).

In the insanity defense an offender accepts that he has committed a crime, but he cannot be declared guilty for his crime due to his abnormal mental health (Renteln, 2001). Punishing a person suffering from an abnormal mental health condition is the violation of his human and fundamental rights (Gostin & Larry, 1977). Moreover, it violates the basic principles of criminal law (Morse & Bonnie, 2013). In Norway, the defense of insanity is recognized in section 20 of the Penal Code of Norway (2005).

Literature Review

There is no standard definition of insanity. Insanity has different meanings in different contexts. Although the term “insanity” is not used in the medical literature anymore and is replaced by the term “mental disorder.” But the term “mental disorder” cannot be taken as synonymous with “insanity.” Moreover, legal insanity is different from medical insanity. Insanity defense is a legal concept that is determined based on medical opinion. The interplay of law and mental health sciences in the determination of legal insanity of an offender makes this task complicated (Ajmal et al., 2023b).

The defense of insanity is found in every jurisdiction of the world in one way or another, but there is no universally accepted criterion of insanity defense. There are different criteria for the insanity defense, such as the Wild Beast Test, Irresistible Impulse, New Hampshire Product Test, Durham Rule, ALI Test, M'Naughten Rule, etc. (Ajmal et al., 2023a). The M'Naughten Rule was indeed a landmark development in setting the criteria of the insanity defense, which was made in the M'Naughten Case in 1843 and was adopted by many jurisdictions across the world (*R v. M'Naughten*, 1943).

The defense of insanity and the defense of automatism are two distinct defenses. Although these have a few apparently common grounds, these are not the same (*Hill v. Baxter*, 1958). The defense of automatism is primarily based on the lack of control of an offender over his body due to medical conditions, while the defense of insanity is concerned with the abnormal mental health of an offender (Ajmal & Rasool, 2024a). Furthermore, the criterion of the defense of insanity is also different than the criterion of competency to stand trial (Ajmal & Rasool, 2023). In the determination of legal insanity, the motive, intention, and kind of crime committed are irrelevant. Among different models of dealing with offenders with abnormal mental health, two models of insanity defense are widely adopted, i.e., the legal model and the medical model (Ajmal et al., 2023c).

Method

The doctrinal legal analysis research method was employed to study the law of defense of insanity in Norway.

Analysis

Norway uses the medical model of the insanity defense, unlike most of the countries, which use the legal model of the insanity defense. Adopting the medical model, legal insanity is determined based on the presence or absence of a mental disorder. The medical model further proposes that there needs to be no necessary association between the mental disorder of an offender and the criminal act to avail the insanity defense successfully, as the presence of an abnormal mental condition is sufficient (Gröning et al., 2019). In Norway insanity used to be

associated with psychotic disorder, which was later replaced with the wider criterion based on the presence of other mental disorders too. The case of Anders Behring Breivik, a serial murderer, brought significant attention towards the criterion of insanity and the insanity defense in Norway, and consequently the relevant rules were reformed in Norway. After the 2020 reforms to the insanity defense in Norway, the pleas of insanity have increased (Melle, 2013).

Statutory Provision on Insanity Defense in Norway

According to section 20 of the Penal Code of Norway (2005), a person is not criminally liable for his act if such a person, at the time of the act, is suffering from a severe deviant state of mind, severe impairment of consciousness or severe mental disability. The severity of the detrimental effects of mental conditions is relevant in determining the criminal responsibility of an offender suffering from mental conditions. However, the impairment of normal mental conditions due to self-induced intoxication is not an excuse, and such an offender shall not be exempted from punishment (Section 20 of Penal Code of Norway, 2005).

Criteria for the Insanity Defense in Norway

The criminal law in Norway recognizes the defense of insanity, and consequently, an offender with a mental disorder cannot be considered guilty of a crime committed by him. Such an offender shall be admitted to a psychiatric facility instead of prison. However, there is a certain criterion of legal insanity; an offender with mental health issues can successfully avail the defense of insanity in Norway.

1. Mental Health at the Time of Offense

The insanity defense in Norway can be invoked successfully only if an offender is suffering from a severe abnormal mental condition at the time of committing an offense. The mental health condition of an offender before or after the offense is irrelevant. Section 20 of the Penal Code of Norway considers the mental condition of an offender at the time of offense in insanity pleas (Section 20, Penal Code of Norway, 2005). However, the abnormal mental condition, temporary or permanent, of an offender before the offense is relevant in his forensic evaluation to ascertain his mental condition at the time of offense (American Academy of Psychiatry and the Law (AAPL), 2014).

2. Severe Deviant State of Mind, Impairment of Consciousness, and Mental Disability

Section 20 of the Penal Code of Norway 2005 considers severe deviant state of mind, severe impairment of consciousness, and severe mental disability of an offender as relevant in the case of an insanity defense. An offender can only be considered not liable for his offense if he suffers from a severe deviant state of mind, severe impairment of consciousness, or severe mental disability. The severity of abnormal mental condition(s) of an offender at the time of offense matters. Moreover, an abnormal state of mind due to self-induced intoxication is no excuse and is out of the scope of the insanity defense (Section 20, Penal Code of Norway, 2005). Inclusion of severe deviant states of mind, severe impairment of consciousness, and severe mental disability in the realm of the insanity defense in Norway is wide in scope, yet these mental states and conditions do not represent all abnormal mental conditions that are relevant in the defense of insanity. Furthermore, the law in Norway deals with the abnormal conditions associated with the

severe impairment of consciousness under the insanity defense, which in many countries is dealt with under a separate defense, the defense of automatism (Ajmal et al., 2023c).

3. Mere Presence of Certain Abnormal Mental Conditions is Sufficient

The criminal law in Norway recognizes the medical model of the insanity defense. Consequently, the presence of certain severe abnormal mental conditions is sufficient to invoke the defense of insanity against the criminal liability of an offender (Gröning et al., 2022). There is no need to prove necessarily a direct association between the abnormal mental condition of an offender and the committed offense to prove his legal insanity in Norway. However, in most countries, to invoke insanity defense successfully, there must be a direct link between the abnormal mental condition of an offender and the committed offense (Mackay & Brookbanks, 2022).

Diminished Responsibility in Criminal Law in Norway

Although the concept of diminished responsibility is not explicitly mentioned in the criminal law in Norway, there are statutory provisions that deal with mitigation of sentences due to the abnormal mental states of offenders at the time of offenses. If an offender is having a deviant state of mind, mental disability, impaired consciousness, or mental agitation and consequently impaired perception of reality at the time of offense, these conditions can be considered as mitigating factors in connection with sentencing under sections 78 (d) and 80 (f) of the Penal Code of Norway (2005). The insanity defense can only be availed in case of severe mental disability or mental condition. Mild and moderate mental abnormalities and mental conditions are considered as a mitigatory factor while sentencing and dealt with under the principle of diminished responsibility (Ajmal et al., 2023c).

Standard of Evidence and Burden of Proof in Insanity Plea in Norway

In most of the jurisdictions across the world, every offender is assumed to be sane unless otherwise proved. The burden of proof lies with the defendant, who must prove on the standard of proof of preponderance of evidence that at the time of the offense he was suffering from legal insanity (Ajmal et al., 2022). However, in criminal law in Norway, not every offender is assumed to be sane; rather, it puts the burden of proof on the prosecution to prove that the offender was sane at the time of the offense to declare him liable for his offense (Knudsen, 2024). The prosecution bears the burden of proof to prove that an offender is liable for his crime at the time of the commission of the offense (Kjelby, 2019).

Mental Health Evaluation and Role of Experts in Insanity Defense in Norway

The role of forensic evaluation by experts is central in the determination of legal insanity of an offender in Norway. These experts are appointed by the court (Gröning & Dimitrova, 2023). Two experts are usually appointed in insanity evaluations in Norway, who submit their mental health evaluation report of the offender in the court. These experts must be qualified professionals, and they are further expected to qualify for a two-stage mandatory course offered by the Norwegian Board of Forensic Medicine and the National Network for Forensic Psychiatry to qualify as mental health evaluators in insanity defense pleas (NOU, 2014).

The Norwegian Board of Forensic Medicine is the relevant authority to specify the criteria for forensic evaluations (Gröning & Dimitrova, 2023). The courts in Norway used to highly rely on the expert report in determining the insanity pleas (Gröning et al., 2019). However, after the

legal reforms introduced in 2020, the role of experts was limited to clinical evaluation and opinion on the mental health condition of the offender in the insanity defense. Moreover, the qualification and forensic evaluation criteria of experts were also further specified after the introduction of legislative reforms in Norway (Gröning & Dimitrova, 2023).

Admission to Compulsory Psychiatric Care

A person who is declared not liable for his crime due to his abnormal mental health pursuant to section 20 of the Penal Code of Norway (2005) may be committed to compulsory psychiatric care instead of prison subject to the fulfillment of certain conditions by the order of the court regulated by sections 62 and 63 (Penal Code of Norway, 2005). Compulsory psychiatric care of offenders is regulated by the Mental Health Act, 1999. There are no separate specialized hospitals for the psychiatric care of the offenders in Norway, and these offenders are placed in regular psychiatric hospitals (Holst, 2019).

Recommendations

The doctrine of legal insanity revolves around the concept of the commission of crime due to the abnormal mental health of an offender. There must be a link established between the offense committed and the mental health of an offender. In the absence of the link between the offense committed and the mental disorder of the offender, it cannot be established that the crime was committed due to the abnormal mental health of the offender. The legal dealing based on general assumptions about criminal responsibility and legal insanity, without establishing the link between the offense committed and the mental health of the offender, when an offender is suffering from mental health issues, is a theoretical violation of the basic principle of law. Not linking the mental health condition of an offender with the crime committed in the plea of insanity is a legal loophole that must be reformed, and the law must be amended.

Norway needs more experts for forensic mental health evaluations. The disciplines of forensic psychiatry and forensic psychology must be advanced. Forensic psychiatry and forensic psychology must be mandatory parts of the training of mental health professionals in Norway. Extensive training of the mental health professionals dealing with the offenders in psychiatric care is recommended. Moreover, there must be separate specialized psychiatric hospitals for the psychiatric care of the offenders.

Interdisciplinary research of psychiatry, psychology, and law must be promoted. Moreover, there must be interdisciplinary training of the mental health and legal professionals for their capacity building. Courses on mental health must be a mandatory part of the training of judges, lawyers, police and prison personnel, and social workers. Furthermore, preventive mental health is recommended to be prioritized in Norway.

Conclusion

Norway recognizes the defense of insanity in section 20 of the Penal Code of Norway (2005). Norway follows the medical model of insanity defense, which is based on the presence of a mental disorder in an offender and requires no proof of a causal link between the abnormal mental health of an offender and the crime committed for the establishment of legal insanity of an offender. However, a mental health evaluation of an offender is mandatory to establish his legal insanity in Norway. An amendment in law to make it necessary to establish a link between

the abnormal mental health of an offender and the crime committed to determine the legal insanity of an offender is recommended. Moreover, there must be specialized trainings for the capacity building of psychiatrists, psychologists, lawyers, judges, police and prison personnel, and social workers in Norway. The promotion of interdisciplinary research in the fields of psychiatry, psychology, and law is also recommended.

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