

Not guilty by reason of insanity: A comparative analysis of different legislations

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Nothing to disclose

Background: The concept of not guilty by reasons of insanity is of the utmost importance in the field of Forensic Psychiatry. In certain countries, if an offender is judged to be not guilty by reason of insanity, he or she may be diverted from the criminal system and compelled to undergo treatment. This assessment poses significant challenges in mental health professionals as legal standards may differ across countries. **Methods:** A search for articles relevant in this topic was carried out in databases such as Pubmed, Medline, Web of Science and Scopus. Inclusion and exclusion criteria were applied to select articles and afterwards information was extracted from them. Articles were included if they contained descriptions of the legal standards required for the assessment of offenders. Articles with incomplete information on the topic or on other topics such as fitness to plead were excluded. An analysis and comparison among legislations of different countries was performed. **Results and Conclusions:** the results of the analysis and comparison of the legislations explored is illustrated in the table below. The analysis shows there is a wide variety in the legal standards required to be exempted from criminal responsibility on grounds of legal insanity across different countries and this also appears to influence both the assessment process and the legal consequences that offenders may undergo.

	UK	Sweden Norway	France	Spain	Italy	Argentina
Definition of legal insanity	Mental disorder at the time of the alleged offence may prevent the defendant forming the necessary state of mind (mens rea) for the offence. It may also allow a defence such as insanity or automatism or even to a partial defence such as diminished responsibility.	In the case of Sweden, there is no standard for legal insanity that defines specific criteria. In Norway, legal insanity requires a severe reduction in the defendant's capacity to understand his or her relationship with surroundings (psychotic states), defect of intellect or altered state of consciousness.	Inimputabilité "N'est pas responsable qui était atteinte, au moment des faits, d'un trouble psychique ou neuropsychique ayant aboli son discernement ou le contrôle de ses actes" In France, criteria for establishing legal insanity requires that the psychiatric or neuropsychiatric condition of the defendant abolishes either his or her understanding or the control of his or her behaviour at the time of the offence.	Inimputabilidad "Quien al momento del hecho por anomalías o alteraciones psíquicas no pueda comprender la ilicitud del hecho o actuar conforme a esa comprensión" Psychiatric anomalies or disturbances: this includes acute intoxication with or abstinence syndrome related to psychoactive substances and alcohol	Inimputabilità "Non é imputabile chi nel momento in cui a comesso il fatto era per infirmità, in tale stato de mente da escludere la capacità d'intendere o di volere" There is no specific mental health diagnosis but exclusion of CR requires total impairment of the ability to understand and control behaviour	Inimputabilidad "Quien al momento del hecho no pudo comprender la criminalidad del hecho o dirigir sus acciones" Causes of exemption of criminal responsibility: intellectual disability, morbid alteration of mental faculties (i.e. schizophrenia) and altered states of consciousness)
Legal framework	Criminal Procedure (Insanity) Act 1964	Swedish Criminal Code Norwegian Penal Code	Code pénal Article 122-1 Loi n°2022-52 (24-1-2022)	Código Penal Article 20	Codice Penale Article 88	Código Penal Article 34 (1)
Assessment	Legal tests apply taking into account the jurisdiction and the mens rea for the offence.	In Norway, assessments are carried out by official expert psychiatrists from Forensic Body of Medicine.	Assessed by expert psychiatrists, especially to discriminate and elucidate if the alteration caused by neuropsychiatric disorders is absolute or partial.	Assessed by expert psychiatrists especially to establish if disturbances caused by psychiatric anomalies lead to absolute or partial comprehension and control of behaviour.	Expert psychiatrists assess whether the alteration in understanding or in executing a behaviour is total or partial.	Assessed by expert psychiatrists but final decision established by the Judiciary (court judges).
Important considerations	Insanity implies that the severity of the mental disorder is such that impairs the defendant's understanding of the true nature of his or her doing.	In Sweden, even if legal insanity is present, the defendant is not spared from responsibility but may be compelled to treatment.	Attenuation of criminal responsibility (CR) is possible in cases of a partial compromise of the defendant's understanding of his doing or control of behaviour.	If a psychiatric disturbance partially abolishes capacity to understand or to behave according to that understanding, the defendant receives punishment but this can be attenuated. Intoxication with alcohol or psychoactive substances deserves special considerations	Attenuation of CR is possible. Intoxication with alcohol or psychoactive substances is assessed differently if voluntary or involuntary-	Attenuation of CR is not possible; the defendant is judged either guilty or not guilty.