

P02-53 - IS DIMINISHED RESPONSIBILITY RELEVANT? EXPERIENCES IN MACEDONIA

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Is Diminished Responsibility (diminished Capacity) relevant today? Are those jurisdictions that have abolished this defense harsh and unreasonable?

Diminished Responsibility occurs when a person commits a unlawful homicide and is suffering from a serious and recognized psychiatric disorder (with the exception of personality disorder) which is of a temporary nature but may be one episode in a chronic illness and the offence occurs as a result of this psychiatric disorder. There has to be concomitant serious impairment of cognition and/or judgment and/or affect at the time of the offence due to the psychiatric disorder which led to strong and substantial reduction of responsibility and culpability. Personality disorder by itself is not enough and must have other serious and recognized psychiatric disorder as well. If the Jury is convinced that all these conditions are met on the balance of probabilities then the charge of murder is to be reduced to manslaughter. I would foresee that the reverse onus of proof should stay and that it would be up to the defendant to prove that he was impaired at the time of the offence then for the prosecution to displace this defence (once it is set up by the defendant) beyond reasonable doubt.