

**APPENDIX: Eighteen Generic Full and Partial Nonresponsibility Standards Around the Globe<sup>1</sup>**

<b>CIVIL LAW COUNTRIES</b>	
<b>Napoleonic Code Legal Family</b>	
Brazil	<p>Art. 26:</p> <p>It is exempt from punishment the agent who, on account of mental illness or incomplete or retarded mental development, was at the time of the action or omission completely incapable of understanding the illicit nature of the fact or of taking decisions based on this understanding.</p> <p>Single paragraph. The sentence may be reduced from one to two thirds if the agent, in virtue of mental disorder or incomplete or retarded mental development, was not completely capable of understanding the illicit nature of the fact or is incapable of taking decisions based on this understanding.<sup>2</sup></p>
France	<p>Art. 122-1:</p> <p>A person is not criminally liable who, when the act was committed, was suffering from a psychological or neuropsychological disorder which abolished his discernment or his ability to control his actions.</p> <p>A person who, at the time he acted, was suffering from a psychological or neuropsychological disorder which reduced his discernment or impeded his ability to control his actions, remains punishable. However, the court shall take this circumstance into account when it decides the penalty and determines its regime.</p> <p>If the sentence is of imprisonment, it is reduced by one third or, in the case of a crime with an imprisonment penalty or life imprisonment penalty, the sentence is brought down to 30 years' imprisonment. In case of liability for a <i>delit</i> [which carries a possible sentence of less than ten years], the court can, however, decide not to reduce the sentence after having extensively stated its reasons. When, after medical advice, the court considers that the nature of</p>

<sup>1</sup> This table includes substantive standards for full and partial nonresponsibility and provisions relevant to sentence length. It omits some provisions specific to addiction and dangerous offenders. By and large, it does not include provisions relating to treatment, as these often extend beyond a country's penal code.

<sup>2</sup> Decreto No. 7.209 de 11 de Junho de 1984, Diário Oficial da União [D.O.U.] de 11.7.1984 (in Portuguese), [http://www.planalto.gov.br/CCIVIL\\_03/Decreto-Lei/Del2848.htm](http://www.planalto.gov.br/CCIVIL_03/Decreto-Lei/Del2848.htm) (Braz.); José G. V. Taborda, *Criminal Justice System in Brazil: Functions of a Forensic Psychiatrist*, 24 INT'L J.L. & PSYCHIATRY 371, 376 (2001) (translating D.O.U. Law No. 7.209/84, Art. 26). Although the language of the single paragraph denotes the penalty "may" be reduced, Brazilian authorities report that "may" is consistently interpreted as "must", and a judge is required to reduce the penalty of a semi-imputable defendant. José G. V. Taborda, *Criminal Justice System in Brazil: Functions of a Forensic Psychiatrist*, 24 INT'L J.L. & PSYCHIATRY 371, 376-78 (2001).

	the disorder justifies it, the chosen sentence may allow for the convicted person to undertake treatment adapted to his health status. <sup>3</sup>
Italy	<p>Art. 88: The person who, at the time of a crime, was, due to an infirmity, in a state of mind excluding the capacity to intend (intendere) or will (volere) is not criminally accountable.<sup>4</sup></p> <p>Art. 89: The person who, at the time of the crime was, due to an infirmity, in a state of mind greatly affecting, but not excluding, the capacity to intend or will, is criminally accountable, but the punishment is reduced.<sup>5</sup></p>
Luxembourg	<p>Art. 71: Is not considered responsible according to the penal law, the person who, at the time of the act, suffered from mental disorder suppressing discernment or control of her or his actions.<sup>6</sup></p> <p>Art. 71-1:</p>

<sup>3</sup> CODE PÉNAL [C. PÉN] [CRIMINAL CODE] art. 122-1 (current as of Apr. 6, 2023) (in French), [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006070719](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719) (Fr.); Audrey Guinchard, *The Insanity Defence in French Law: Are Prisons the ‘New Asylums’?*, in THE INSANITY DEFENCE: INTERNATIONAL AND COMPARATIVE PERSPECTIVES 223, 227 n.25 (R. Mackay & W. Brookbanks, eds.2022) (translating Article 122.1 of the Code Pénal).

<sup>4</sup> CODICE PENALE [COD. PENALE] [CRIMINAL CODE] art. 88 (current as of May 24, 2023) (in Italian), <https://www.altalex.com/documents/codice-altalex/2014/10/30/codice-penale> (Italy); Ester Messina et al., *Forensic Psychiatric Evaluations of Defendants: Italy and the Netherlands Compared*, 66 INT’L J. L. & PSYCHIATRY, Article no. 101473, 4 (2019) (providing unofficial translation); see also RITA J. SIMON & HEATHER AHN-REDDING, *Italy*, in THE INSANITY DEFENSE THE WORLD OVER, 89, 92 (2006) (translating Article 88 as: “A person who, at the moment in which he/she committed a crime, was, because of an infirmity, in such a state of mind as to exclude the capacities of understanding or willing, is not imputable.”).

<sup>5</sup> COD. PENALE, *supra* note 4, art. 89; Messina et al., *supra* note 4, at 4 (providing unofficial translation of Article 89); see also SIMON & AHN-REDDING, *supra* note 4, at 92 (translating Article 89 as: “A person who, at the moment in which he/she committed a crime was, because of an infirmity, in such a state of mind as to greatly diminish, without excluding, his/her capacities of understanding or willing, is imputable, but the sentence will be shortened.”).

<sup>6</sup> CODE PENAL [CRIMINAL CODE] art. 71 (current as of Dec. 24, 2021) (in French), <https://legilux.public.lu/eli/etat/leg/code/penal/20211224> (Luxembourg); Jean-Marc Cloos et al., *Luxembourg*, in PLACEMENT AND TREATMENT OF MENTALLY ILL OFFENDERS – LEGISLATION AND PRACTICE IN EU MEMBER STATES, 184, 185 (Hans Joachim Salize & Harald Dreßing eds., 2005) (quoting law of Aug. 8, 2000, which is currently in force).

	<p>The person who, while committing the acts, suffered from a mental disorder impairing his/her discernment or the control of his/her actions remains punishable; however, jurisdictions take into account this circumstance to determine the sentence.<sup>7</sup></p>
Portugal	<p>Art. 20-1: A person is not imputable if, due to a disease of the mind, he is incapable, at the time of committing the act, to appreciate its unlawfulness or to conform his conduct in accordance with that appreciation.<sup>8</sup></p> <p>Art. 20-2: A person may be declared not imputable if, due to a serious disease of the mind, not accidental and whose effects he cannot control, without being thereby censurable, has, at the time of committing the act, the capacity to appreciate its unlawfulness or to conform his conduct in accordance with that appreciation, sensibly diminished.<sup>9</sup></p>
Spain	<p>Art. 20.1: The following persons shall not be criminally liable: 1. Those who, at the time of committing a criminal offence, due to any mental anomaly or alteration, cannot comprehend the unlawful nature of the deed, or to act in line with that comprehension.<sup>10</sup></p> <p>Art. 21.1 (Incomplete exemption<sup>11</sup>): The following are mitigating circumstances: 1. The causes stated in [Art. 20], when not all the necessary requisites to exclude accountability in the respective cases concur.<sup>12</sup></p> <p>Art. 21.2, 21.3 &amp; 21.7 (General or analogous mitigation grounds):</p>

<sup>7</sup> CODE PENAL, *supra* note 6, art. 71-1; Cloos, *supra* note 6, at 185.

<sup>8</sup> CÓDIGO PENAL [CRIMINAL CODE] art. 20-1 (Enio Ramalho & William Themudo Gilman (Verbo Juridico) unofficial translation, Oct. 2006), [https://legislationline.org/sites/default/files/documents/ef/Portugal\\_CC\\_2006\\_en.pdf](https://legislationline.org/sites/default/files/documents/ef/Portugal_CC_2006_en.pdf) (Portugal).

<sup>9</sup> *Id.* art. 20-2.

<sup>10</sup> CÓDIGO PENAL [Cód. Pen.] [CRIMINAL CODE] art. 20 (current as of 2016), [https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal\\_Code\\_2016.pdf](https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Code_2016.pdf) (Spain).

<sup>11</sup> Manuel Cancio Meliá, *Partial Defences Due to Loss of Control and Diminished Responsibility under Spanish Criminal Law*, in *LOSS OF CONTROL AND DIMINISHED RESPONSIBILITY*, 341, 343 (Alan Reed & Michael Bohlander eds., 2011).

<sup>12</sup> Cód. Pen., *supra* note 10, art. 20.1.

The following are mitigating circumstances: ...

2. The convict acting due to his serious addiction to the substances mentioned in Section 2 of the preceding Article.
3. The convict acting due to causes or stimuli so overpowering that they produced fury, obstinacy or another similar state of mind. ...
7. Any other circumstance of a similar importance to the aforesaid.<sup>13</sup>

Art. 68 (Sentencing re incomplete exemption<sup>14</sup>):

In the cases foreseen in circumstance one of Article 21, the Judges or Courts of Law shall impose a lower punishment in one or two degrees to that stated in the Law, considering the number and entity of the requisites absent or concurring, and the personal circumstances of the offender, without prejudice to application of Article 66 of this Code.<sup>15</sup>

Art. 66 (Sentencing re mitigation grounds):

1. In application of the punishment, in the case of malicious criminal offenses, the Judges or Courts of Law shall abide by the following rules, according to whether or not there are mitigating or aggravating circumstances:

1. When only one mitigating circumstance concurs, the lower half of the punishment the Law sets for the criminal offence shall be applied.
2. When two or more mitigating circumstances concur, or one or [sic] several highly qualified ones, and there are no aggravating ones whatsoever, they shall apply the punishment that is lower by one or two degrees to that established by Law, in view of the number and entity of those mitigating circumstances. . . .
7. When mitigating and aggravating circumstances concur, these shall be valued and compensated rationally to individualise the punishment. In the event of a qualified ground of attenuation persisting, the lower degree of punishment shall be applied. If a qualified ground of aggravation is maintained, the upper half of the punishment shall be applied.
8. When Judges or Courts of Law apply a punishment that is more than one degree lower, they may do so to its full extent.

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<sup>13</sup> *Id.* art. 20.2.

<sup>14</sup> Cancio Meliá, *supra* note 11, at 343.

<sup>15</sup> Cód. Pen., *supra* note 10, art. 68.

	<p>2. In petty criminal offences and those arising from negligence, the Judges or Courts of Law shall apply the penalties at their prudent discretion, without being subject to the rules set forth in the preceding Section.<sup>16</sup></p> <p>Art. 71(2): [W]hen, due to application of the above rules, it is appropriate to hand down a sentence of imprisonment under three months, this shall be substituted in all cases with a fine, community work or permanent traceability, even though the law does not provide for these penalties for the criminal offence in question, substituting each day of imprisonment with two fine quotas or with a day of work or with a day of permanent traceability.<sup>17</sup></p>
<b>Germanic Legal Family</b>	
Chile	<p>Art. 10, No. 1: They are exempt from criminal responsibility: 1. The mad or demented, unless he has acted in a lucid interval, and the one who, for any reason independent of his will, is totally deprived of reason.<sup>18</sup></p> <p>Art. 11: The following are extenuating circumstances: 1. Those expressed in the previous article, when all of the requirements necessary to exempt responsibility in their respective cases do not occur.<sup>19</sup></p>
Germany	<p>Section 20: Whoever, at the time of the commission of the offence, is incapable of appreciating the unlawfulness of their actions or of acting in accordance with any such appreciation due to a pathological mental disorder, a profound disturbance of consciousness, mental deficiency or any other serious mental abnormality is deemed to act without guilt.<sup>20</sup></p> <p>Section 21: If the offender's capacity to appreciate the unlawfulness of the act or to act in accordance with any such appreciation is substantially diminished at the time of the commission of the offence due to one of the reasons</p>

<sup>16</sup> *Id.* art. 66.

<sup>17</sup> *Id.* art. 71.

<sup>18</sup> CÓDIGO PENAL [CÓD. PENAL] [CRIMINAL CODE] art. 10, n°1 (in Spanish), [https://leyes-cl.com/codigo\\_penal/10.htm](https://leyes-cl.com/codigo_penal/10.htm) (translated by Kendall Runyan on July 7, 2022) (Chile); *see also* Johnston et al., *supra* note 34, at 3.

<sup>19</sup> CÓD. PENAL art. 11.

<sup>20</sup> STRAFGESETZBUCH [STGB] [PENAL CODE], § 20 (current as of Nov. 2021), [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html) (Ger.).

	<p>indicated in Section 20 [“pathological mental disorder, profound disturbance of consciousness, mental deficiency or any other serious mental abnormality”], the penalty may be mitigated pursuant to Section 49 (1).<sup>21</sup></p> <p>Section 49 Special Mitigating Circumstances Established by Law:</p> <p>(1) If the law requires or allows for mitigation under this provision, the following applies:</p> <ol style="list-style-type: none"><li>1. Imprisonment for life is substituted by imprisonment for a term of at least three years;</li><li>2. In cases of imprisonment for a fixed term, no more than three quarters of the statutory maximum sentence may be imposed. In case of a fine, the same applies to the maximum number of daily rates.</li><li>3. Any increased minimum statutory term of imprisonment is reduced as follows: in the case of a minimum term of ten or five years, to two years; in the case of a minimum term of three or two years, to six months; in the case of a minimum term of one year, to three months; in all other cases to the statutory minimum.<sup>22</sup></li></ol>
Greece	<p>Art. 34: <u>Incapacity for imputation</u>. The act is not imputed to the perpetrator if, due to mental or intellectual disorder or disturbance of consciousness at the time of its commission, he/she did not have the ability to perceive the wrongfulness of his/her act or to act according to his/her perception of this wrongfulness.<sup>23</sup></p> <p>Art. 35: <u>Culpable disability</u> [...]3. An act which a person foresaw or could foresee he might commit if he were brought into a state of disturbed conscience or into a state of complete inability to act or to refrain shall be imputed to him as an act committed negligently.<sup>24</sup></p>

<sup>21</sup> *Id.* § 21.

<sup>22</sup> *Id.* § 49(1); Rüdiger Müller-Isberner et al., *Forensic Psychiatric Assessment and Treatment in Germany*, 23 INT’L J. L. & PSYCHIATRY 467, 473–75 (2000).

<sup>23</sup> POINIKOS KODIKAS [P.K.] [CRIMINAL CODE] 2:34 (Official Gazette 83/A/3-4-2023) (in Greek), <https://www.e-nomothesia.gr/kat-kodikis-nomothesias/nomos-4619-2019-phok-95a-11-6-2019.html> (Greece) (translated by Maria Panezi on May 26, 2023).

<sup>24</sup> *Id.* at 2:35.

	<p>Art. 36: <u>Reduced capacity for imputation</u></p> <ol style="list-style-type: none"><li>1. If, due to one of the mental states mentioned in Article 34, the capacity for imputation has not completely disappeared, but has been significantly reduced, a reduced penalty is imposed (article 83).</li><li>2. This provision does not apply in the case of a guilty party within the meaning of Article 35 who causes the reduced ability.<sup>25</sup></li></ol> <p>Art. 83: “<u>Reasons for reducing the penalty</u>. Where the general part provides for a reduced sentence without further specification, its context is defined as follows:</p> <ol style="list-style-type: none"><li>a) instead of life imprisonment, [a term of] imprisonment is imposed;</li><li>b) instead of imprisonment of at least ten years, imprisonment of not less than two years or imprisonment of up to eight years is imposed;</li><li>c) instead of imprisonment of up to ten years, imprisonment of at least one year or imprisonment of up to six years is imposed;</li><li>d) in all other cases, the judge shall reduce the sentence freely to the minimum.</li></ol> <p>If the law provides for a cumulative prison sentence and a fine, only the latter may be imposed.<sup>26</sup></p>
Switzerland	<p>Art. 19:</p> <ol style="list-style-type: none"><li>1. If the person concerned was unable at the time of the act to appreciate that his act was wrong or to act in accordance with this appreciation of the act, he is not liable to a penalty.</li><li>2. If the person concerned was only partially able at the time of the act to appreciate that his act was wrong or to act in accordance with this appreciation of the act, the court shall reduce the sentence.</li><li>3. Measures in accordance with Articles 59–61, 63, 64, 67, 67b and 67e may, however, be taken.</li><li>4. If it was possible for the person concerned to avoid his state of mental incapacity or diminished responsibility and had he done so to foresee the act that may be committed in that state, paragraphs 1–3 do not apply.<sup>27</sup></li></ol>
Turkey	<p>Art. 32:</p>

<sup>25</sup> *Id.* at 2:36.

<sup>26</sup> *Id.* at 2:83.

<sup>27</sup> CODE PÉNAL SUISSE [CP] [CRIMINAL CODE] Dec. 21, 1937, art. 19 (current as of June 2022), [https://www.fedlex.admin.ch/eli/cc/54/757\\_781\\_799/en](https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en) (Switz.).

	<p>Insanity</p> <p>(1) A penalty shall not be imposed on a person who, due to mental disorder, cannot comprehend the legal meaning and consequences of the act he has committed, or if, in respect of such act, his ability to control his own behaviour was significantly diminished. However, security measures shall be imposed for such persons.</p> <p>(2) Notwithstanding that it does not reach the extent defined in paragraph one, where a person’s ability to control his behaviour in respect of an act he has committed is diminished then a term of imprisonment for a term of twenty-five years where the offence committed requires a penalty of aggravated life imprisonment and to twenty years imprisonment instead of life imprisonment shall be imposed. Otherwise the penalty to be imposed may be reduced by no more than one-sixth. The penalty to be imposed may be enforced partially or completely as a security measure specific to mentally disordered persons, provided the length of the penalty remains the same.<sup>28</sup></p>
<p><b>Nordic Legal Family</b></p>	
<p>Finland</p>	<p>Section 4 of Chapter 3:</p> <p>(2) The perpetrator is not criminally responsible if at the time of the act, due to mental illness, severe mental deficiency or a serious mental disturbance or a serious disturbance of consciousness, he or she is not able to understand the factual nature or unlawfulness of his or her act or his or her ability to control his or her behaviour is decisively weakened due to such a reason (<i>criminal irresponsibility</i>).</p> <p>(3) If the perpetrator is not criminally irresponsible pursuant to subsection 2 but, due to mental illness, mental deficiency, mental disturbance or disturbance of consciousness, his or her ability to understand the factual nature or unlawfulness of his or her act or his or her ability to control his or her behaviour is significantly weakened (<i>diminished responsibility</i>), the provisions in Chapter 6, section 8(3) and 8(4) are to be taken into account in the determination of the sentence.<sup>29</sup></p> <p>Section 8 of Chapter 6:</p>

<sup>28</sup> TÜRK CEZA KANUNU [TCK.] [PENAL CODE] art. 32 (in Turkish), <https://mevzuat.gov.tr/mevzuat?MevzuatNo=5237&MevzuatTur=1&MevzuatTertip=5> (Turk.) (translated by Cennet Sert on May 13, 2023).

<sup>29</sup> RIKOSLAKI [RL] [CRIMINAL CODE] 3:4(2)–(3) (with amendments up to 766/2015), <https://leap.unep.org/countries/finland/national-legislation/criminal-code-finland> (Fin.). The sections of the Criminal Code cited here appear to be current as of July 14, 2022. This conclusion was reached after reviewing the titles of all acts and decrees passed by Parliament between 2016-2021 in Finlex, an online database of up-to-date legislative information owned by Finland’s Ministry of Justice. See Finlex Data Bank (Finland Ministry of Justice), <https://www.finlex.fi/en/laki/kaannokset/>; Allan Seppanen, Petteri Joelsson, Aulikki Ahlgren-Rimpalainen, & Eila Repo-Tiihonen, *Forensic Psychiatry in Finland: An Overview of Past, Present, and Future*, 14 INT’L J. MENTAL HEALTH SYS. 29, \*3 (2020) (describing conditions of diminished and irresponsibility).



	<p>(2) [A]t most three fourths of the maximum sentence of imprisonment or fine and at least the minimum sentence provided for the offence may be imposed on the offender. If the offence is punishable by life imprisonment, the maximum punishment is instead twelve years of imprisonment and the minimum punishment is two years of imprisonment.</p> <p>(3) What is provided in subsection 2 also applies in determining the sentence for a person who committed an offence in a state of diminished responsibility. However, diminished responsibility does not affect the applicable maximum punishment.</p> <p>(4) If the maximum punishment for the offence is imprisonment for a fixed period, the court may in cases referred to in this section impose a fine as the punishment instead of imprisonment, if there are especially weighty reasons for this.<sup>30</sup></p>
<b>Other Civil Law Jurisdictions</b>	
China	<p>Art. 18: If a mental patient causes harmful consequences at a time when he is unable to recognize or control his own conduct, upon verification and confirmation through legal procedure, he shall not bear criminal responsibility, but his family members or guardian shall be ordered to keep him under strict watch and control and arrange for his medical treatment. When necessary, the government may compel him to receive medical treatment. ... If a mental patient who has not completely lost the ability of recognizing or controlling his own conduct commits a crime, he shall bear criminal responsibility; however, he may be given a lighter or mitigated punishment.<sup>31</sup></p>
Japan	<p>Art. 39. (Insanity and Diminished Capacity)</p> <p>(1) An act of insanity is not punishable.</p> <p>(2) An act of diminished capacity shall lead to the punishment being reduced.<sup>32</sup></p>

<sup>30</sup> *Id.* at 6:8(2)–(4).

<sup>31</sup> Criminal Law of the People's Republic of China, art. 18 (1979), *Zhonghua Renmin Gongheguo Falu Huibian* (current as of Apr. 2, 2022) (copy on file with author); see Lilou Jiang, *The Insanity Defense in China*, in *THE INSANITY DEFENCE*, *supra* note 232, at 316, 320 (translating art. 18).

<sup>32</sup> KEIHŌ [CRIMINAL CODE] art. 39 (last amended 2017), <https://www.japaneselawtranslation.go.jp/en/laws/view/3581> (Japan); see Takayuki Okada, *The Forensic Mental Health System and Psychopaths in Japan*, in *THE WILEY INTERNATIONAL HANDBOOK ON PSYCHOPATHIC DISORDERS AND THE LAW: VOLUME II DIAGNOSIS AND TREATMENT* 359, 363 (Alan R. Felthous & Henning Saß eds., 2d ed. 2020) (“If the person is of diminished capacity, which is legally regarded as bearing partial responsibility, the court shall declare a verdict of guilty but shall mitigate the sentence. For example, the death penalty should be mitigated to imprisonment with indefinite term. Imprisonment with definite term should reduce the prison term by half, and consequently some individuals may receive a suspended prison sentence.”).

	According to the Japanese Supreme Court (1931), “a person is insane, if at the time of the offense as a result of disease of mind the person lacks capacity either to appreciate good and bad or to conform his conduct to the appreciation . . . a person has diminished capacity, even if these capacities are not completely lost but severely impaired.” <sup>33</sup>
Taiwan	<p>Article 19</p> <p>An offense is not punishable if it is committed by a person who is mentally disorder[ed] or [has mental] defects and, as a result, is unable or less able to judge his act or lack the ability to act according to his judgment.</p> <p>The punishment may be reduced for an offense committed for the reasons mentioned in the preceding paragraph or as a result of obvious reduction in the ability of judgment.</p> <p>Provisions prescribed in the two preceding paragraphs shall not apply to a person who intentionally brings the handicaps or defects.<sup>34</sup></p>
<b>Former Communist Countries</b>	
Czech Republic	<p>Chapter II Division 4</p> <p>Section 26 Insanity</p> <p>Anyone who due to a mental disorder cannot identify the illegal nature of an act at the time of its commission or control his/her conduct, shall not be criminally liable for such an act.<sup>35</sup></p> <p>Section 27 Diminished Sanity</p>

<sup>33</sup> Okada, *supra* note 32, at 363 (quoting the Japanese Supreme Court ruling of December 3, 1931).

<sup>34</sup> XING FA [CRIMINAL CODE] art. 19 (Feb. 18, 2022, translation by Ministry of Justice), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001> (Taiwan); see Wai-Cheong Carl Tam, *Comparison of Adult Defendants’ Forensic Psychiatric Evaluation in Criminal Courts between Mainland China and Taiwan China: From Law to Clinical Practice*, 8 J. FORENSIC SCI. MED. 32, 34 (2022) (“Article 19 states that if the defendant cannot judge the illegality of their behavior or act conforming to their judgment due to mental illness or psychological defect while committing an offense, the offense is unpunished. The penalty may be reduced if there is a noticeable diminution in the above judgment or behavior control ability [referencing insanity provision].”).

<sup>35</sup> TRESTNI ZÁKON [CRIMINAL CODE], Zákon č. 40/2009 Sb. (II)(4)(§26) (2011), [https://legislationline.org/sites/default/files/documents/05/Czech%20Republic\\_CC\\_2009\\_am2011\\_en.pdf](https://legislationline.org/sites/default/files/documents/05/Czech%20Republic_CC_2009_am2011_en.pdf) (Czech).

	<p>Anyone who due to a mental disorder suffers from a substantially diminished capacity to recognise the illegal nature of an act at the time of its commission or to control his/her conduct, is in a state of diminished sanity.<sup>36</sup></p> <p>Chapter V Division 2 Sub-Division 1 Section 40 Imposing Penalties to an Offender with Diminished Sanity</p> <p>(1) If an offender commits a criminal offence in a state of diminished sanity that he/she has not, even negligently, incurred to him-/herself by an addictive substance, the court shall take it into consideration when determining the type and extent of the sentence.</p> <p>(2) If the court believes that with regard to the medical condition of the offender referred to in Subsection (1) it would be possible to achieve the possibility of his/her correction also by a sentence of shorter extent with parallel imposition of protective therapy (Section 99), it shall reduce a sentence of imprisonment below the lower limit of the term of sentence; therein the court shall not be bound by the restriction referred to in Section 58(3) and shall at the same time impose a protective therapy.<sup>37</sup></p>
Poland	<p>Art. 31 §1. Whoever, at the time of the commission of a prohibited act, was incapable of recognizing its significance or controlling his conduct because of a mental disease, mental deficiency or other mental disturbance, shall not commit an offence.</p> <p>§2. If at the time of the commission of an offence the ability to recognize the significance of the act or to control one's conduct was diminished to a significant extent, the court may apply an extraordinary mitigation of the penalty.</p> <p>§ 3. The provisions of § 1 and 2 shall not be applied when the perpetrator has brought himself to a state of insobriety or intoxication, causing the exclusion or reduction of accountability which he has or could have foreseen.<sup>38</sup></p> <p>Art. 60 §6. The extraordinary mitigation of a penalty shall consist in the imposition of a penalty below the lower statutory level, or the imposition of a penalty of lesser severity, in accordance with the following principles:</p> <p>1) if the act in question constitutes a crime, the court shall impose a penalty of not less than one-third of the lower statutory level;</p>

<sup>36</sup> *Id.* at (II)(4)(§27).

<sup>37</sup> *Id.* at (V)(2)(1)(§40).

<sup>38</sup> KODEKS KARNY [K.K.] [CRIMINAL CODE] art. 31 (Oct. 12, 2016), [https://legislationline.org/sites/default/files/documents/6a/Poland\\_CC\\_1997\\_en.pdf](https://legislationline.org/sites/default/files/documents/6a/Poland_CC_1997_en.pdf) (Pol.). The document was published on legislationonline.org on Oct. 12, 2016, but it is unclear whether the translation is current as of 2016 or an earlier version.

	<p>2) if the act in question constitutes a misdemeanour, and the lower statutory level of the penalty is not less than one year's deprivation of liberty, the court shall impose either a fine, the penalty of restriction of liberty or deprivation of liberty;</p> <p>3) if the act in question constitutes a misdemeanour, and the lower statutory level of penalty is less than one year's deprivation of liberty, the court shall impose either a fine or the penalty of restriction of liberty.<sup>39</sup></p> <p>Art. 60 §7. If the act in question is subject, alternatively, to [a fine, restriction of liberty, or deprivation of liberty], the extraordinary mitigation of a penalty shall consist in renouncing the imposition of the penalty, and [in] the imposition of a penal measure as specified in Article 39 §§ 2-8 [pertaining to penalties such as interdiction on driving vehicles or on practicing certain professions].<sup>40</sup></p>
Russia	<p>Art. 21. Insanity</p> <p>1. A person who, at the time of the committing of a socially dangerous act, was insane, that is, was unable to understand the actual character or social danger of his actions (inaction) or to govern them as a result of a chronic or temporary mental derangement, mental deficiency or any other mental condition, shall not be subject to criminal liability.</p> <p>2. Compulsory medical treatment, as envisaged in this Code, may be imposed by a court of law on a person who has committed a socially dangerous deed in a state of insanity.<sup>41</sup></p> <p>Art. 22 Criminal Liability of Persons with Mental Derangement that Does Not Equal Sanity</p> <p>1. A person of sound mind, who during the commission of a crime, by virtue of mental derangement could not in full measure comprehend the actual character and social danger of his actions (inaction), or control them, shall be subject to criminal liability.</p> <p>2. Mental derangement that does not equal sanity shall be taken into consideration by a court of law when it imposes punishment, and may serve as grounds for the imposition of corrective medical treatment.<sup>42</sup></p>

<sup>39</sup>*Id.* art. 60.6.

<sup>40</sup> *Id.* art. 60.7. For a discussion of the variety of penal measures available under the Polish Criminal Code, see Krzysztof Indeckı & Justyna Jurewicz, *The Key Issues of Polish Penal Law* 54-65. (2014).

<sup>41</sup> UGOLOVNYĬ KODEKS ROSSIĬSKOĬ FEDERATSII [UK RF] [CRIMINAL CODE] art. 21 (current as of Jan. 29, 2013), [https://legislationline.org/search?q=lang%3Aen%2Csort%3Amost\\_read\\_first%2Clegislation\\_category%3A48%2Ccountry%3A80%2Cpage%3A1#](https://legislationline.org/search?q=lang%3Aen%2Csort%3Amost_read_first%2Clegislation_category%3A48%2Ccountry%3A80%2Cpage%3A1#) (Russ.). This version of Article 21 was current through March 25, 2022.

<sup>42</sup>*Id.* art. 22.

E. Lea Johnston, *Imperfect Insanity and Diminished Responsibility*, 76 FLA. L. R. \_\_ (2024)

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