

6.1.1. Mental disease or defect and involuntary intoxication

Article 31(1)(a) of the Rome Statute refers to a mental disease or defect that destroys a person's ability to understand the unlawfulness or nature of their conduct, or that impairs their capacity to act in conformity with the law. In the context of asylum, this ground was considered by the Dutch Council of State in *Applicant* v *State Secretary for Justice and Security* (20 April 2021). The council found that the Dutch asylum authority failed to consider evidence that the applicant suffered from bipolar personality disorder (BPD) which was directly relevant to his individual responsibility for committing rape in his country of origin. The court gave weight to a statement from the Iranian military commission exempting the applicant from military service following the BPD diagnosis by a panel of medical professionals and noted that the authority had also failed to address the applicant's claim that he had attempted suicide shortly after committing the crime.

This case also shed light on the interplay between mental disease and involuntary intoxication, which is another negating factor identified by the EUAA’s practical guide that can impede an applicant’s capacity to act. This aligns with Article 31(1)(b) of the Rome Statute. In this regard, the court held that the fact the applicant stated he was under the influence of narcotics at the time of the crime did not preclude the asylum authority from conducting further investigation, as the applicant had undisputably stated that the use of these substances followed from his psychological condition. This reasoning, which treats a mental disease as the cause of the intoxication rather than assessing the two separately, shows a different type of involuntary intoxication beyond its more obvious application to forced drug administration by third parties.

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