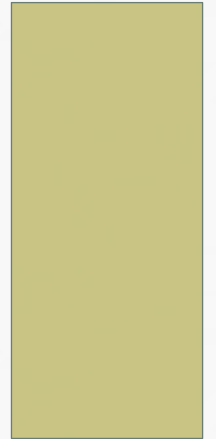


GENERAL NOTIONS REGARDING THE FORENSIC PSYCHIATRY EXPERTISE



DEFINITIONS, GENERAL AND JURIDICAL ASPECTS

Forensic psychiatry is a complex medical domain

The spectrum of individual behaviour within a “normal” population is extremely

Normality is influenced by ethnical, social, religious, philosophical, national and geographical aspects. The abnormal behaviour, frequently called “mental disorder” can be easily observed from the moment when it becomes unacceptable for the other members of the community.

Mental disorders = congenital or gained.

congenital = mental defect, retardation, handicap or under-development

gained = mental illness.

These apparently distinctive categories are not clearly defined, because some mental illnesses, like schizophrenia, can have congenital origin but their manifestations are belated.

Congenital mental illnesses have some forensic implications, because they can lead the subject to various antisocial acts, or even to murder.

Often this situation is the result of the interaction between the subject's distressed mental status and various social disadvantages, or particular occupational or domestic conditions.

Nowadays the old theory according to which the “village idiot” is a criminal has been abandoned, because it has been unjustly applied to many mentally challenged individuals.

THE FORENSIC PSYCHIATRY EXPERTISE

= the complex, interdisciplinary medical activity with the main purpose of revealing certain psychopathological alterations and their effects upon an individual's capacity to discern upon the content and the consequences of his acts (considered antisocial), or the possibility to express free will regarding his freely consented actions.

- it offers specific medical information to various juridical instances, regarding the offenders' psycho-pathological personality.
- it must bring consistent argumentation to sustain its conclusions regarding a person's mental state, namely if it can be considered within the limits of normality or it is deviant.
- it must offer a general image of the offender's personality, with emphasise on the mental state in the moment of committing the unlawful deed.
- can be requested whenever expert opinion is required for the interpretation and elucidation of the circumstances and the conditions in which an unlawful deed was committed.
- it is compulsory in severe crimes, such as aggravated homicide and also when the investigators or the court of law have doubts regarding the mental state of the victim or the offender.

SAFETY MEASURES / COMPULSORY TREATMENT

Safety measures are taken with the purpose of avoiding dangerous situations or to prevent certain criminal acts. They apply to persons that have already committed criminal acts and are represented by:

- obligatory medical treatment;
- hospitalisation;
- interdiction to occupy a professional position, to exercise a profession or other occupations;
- interdiction to enter certain communities;
- expulsion of foreigners;
- special forfeit.

Regarding the compulsory *treatment*:

- if the offender, due to an illness or chronic intoxication with alcohol, narcotics or other substances, represents a potential danger for the society, he can be obligated to report for medical treatment on a regular basis;
- If the person does not report for treatment, hospital admission can become compulsory;
- If the person obligated to medical treatment is convicted, the treatment undergoes while executing the sentence;
- This measure can also be provisory, for the duration of the criminal investigation or of the criminal trial.
- If the offender is mentally ill or a drug addict and represents a menace to society, the authorities can order the *compulsory hospitalisation* in a specialised medical unit, until the medical problem is remitted.

COMPONENCE/VENUE

The members of forensic psychiatry commissions are forensic pathologist, forensic psychiatrists, psychiatrists, psychologists, social workers – depending on the specific legislations.

The expertise can be performed while the subject is hospitalised in a medical unit or ambulatory, if the commission is provided with medical documents regarding the pathological (including psychiatric) history of the case.

During the examination, the subject can either display obvious mental disorders or no psychiatric changes at all. In some cases, the commission faces the difficult task of having to establish retroactively the mental status of an offender in the moment of committing the antisocial or unlawful deed.

DOMAIN

The forensic psychiatry expertise can be requested to establish the degree of discernment in extremely various situations, like:

- discontinuance of the criminal investigation or of the trial;
- discontinuance of the criminal investigation for reasons of irresponsibility;
- applying or revoking various safety measures;
- applying various coercive measures;
- expertise for all juvenile delinquents (14-18 years old);
- post-traumatic psychiatric evaluation for the temporary or permanent degree of invalidity or loss of work capacity due to post-traumatic psychiatric disorders.

In civil law, the mental capacity evaluation can be requested for:

- establishing the civil (contractual) capacity;
- annulment of marriage according to family law;
- custody of minors;
- evaluation of work capacity for the calculation of pension;
- the validity of civil acts (contracts, donations, wills).

THE RESPONSIBILITY

Human behaviour = as a sum of reactions to various internal and external stimuli, based on congenital or gained reflexes in which the nervous system plays the main role (Saragea).

Responsibility = the sum of mental particularities that render an individual capable of understanding its freedom and the necessity of certain actions, in dialectical unity with the objective laws of society development, and to evaluate the consequences of its actions, when they are opposite to this unity (Moraru).

Ergo, responsibility implies the capacity to be conscious of the character of one's actions or inactions, the aptitude to be master them, to consciously manifest free will in the sense of committing law-enforced acts and not committing law-prohibited ones.

Any person over 16 who has discernment can be held responsible for its actions.

Normally, a child cannot be considered responsible for his actions under a certain age limit that varies with each country's legal system.

In Romania, minors under 14 are considered irresponsible for any crime; between 14 and 16 the minors are held responsible only if there is positive evidence that the deed was committed with discernment. Over 16 minors are responsible for the deeds included in the criminal code. It is almost unanimously considered that in children under 10, the awareness regarding the malefic nature of their acts cannot be proven with certainty.

Likewise, a mentally disturbed adult can be "forgiven" for various crimes or antisocial behaviour.

So the main problem is to establish if the degree of mental disturbance is high enough to exonerate the offender from responsibility. Each country has its own system and criteria for evaluating the abnormality degree, but the differences are not very significant.

IRRESPONSIBILITY

Irresponsibility is a fundamental notion.

It involves:

- a medical criterion, represented by the presence of a chronic, mental or somatic disorder or of a temporary mental alteration;
- a juridical criterion, represented by the lack of capacity to be conscious and in control of one's own actions.

From the forensic point of view, irresponsibility is represented by:

- the lack of critical discernment,
- severe mental or psycho-sensorial handicap,
- alterations of the elementary or operational-logical consciousness,
- the psycho-pathological motivations for deviant or antisocial behaviour,
- pathological reactivity etc.

So, an individual can be declared irresponsible (regarding an unlawful deed) if it is objectively proven that, in the moment of committing the deed, he was mentally incapacitated or disturbed at a degree that rendered him incapable of controlling and evaluating the consequences of his actions or inactions.

THE DISCERNMENT

= the mental faculty or aptitude of discerning between good and bad, moral and immoral, real or false, legal or illegal, correct or incorrect, useful or useless etc, based on the integrity of one's affective and volitive processes.

The result is the awareness regarding the content and the consequences of one's actions.

The evaluation of discernment in the forensic psychiatry commission can lead to the juridical assessment of criminal responsibility of a person accused of committing an antisocial or unlawful deed.

The basis of the discernment = the perception and representation of reality (of the nature, content and consequences of an action), in other words by the mental capacity to anticipate the consequences of one's own actions by means of representation.

= one of the most important criteria of evaluation for a person's responsibility because it reflects the capacity to conceive a plan of action, to foresee its purpose and result, and also the dynamic phases of the whole process.

Besides the motivated, organized character of the deed, the discernment is also conditioned by the individual personality structure, especially by the conscience structure at a particular time. It represents the synthesis between personality and conscience in the moment of fulfilling a certain action (Dragomirescu).

= a complex process, based on logical thinking and affective functions, but also by certain volitive functions that can motivate an individual's specific behaviour.

Previous experiences and the cultural level also represent important factors that indubitably participate in determining the discernment.

As a conclusion it can be stated that the discernment is a synthesis function of the mental activity as a whole, in a given situation.

THE DISCERNMENT

The discernment is in relation with two important categories of factors (Dragomirescu):

- a. The personality structure (mature, immature, disharmonious, neurotic, psychotic, deteriorated-demented);
- b. The conscience structure, with four specific levels:
 - the elementary conscience (it ensures the awaken state, the temporal and spatial orientation);
 - the operational-logical conscience (the intellectual processes are coherent and reflect the objective reality);
 - the axiological conscience (the value options according to current social criteria);
 - ethical conscience (the capacity to discern the good from the bad effects of one's actions in the context of society).

THE DISCERNMENT

The discernment disorder (discernopathy) = a particular state characterised by the abolition of the mental capacity to discern between several behavioural alternatives.

The subject perceives reality incorrectly, loses the aptitude to correctly project and logically evaluate a certain situation; it also loses the capacity of learning from personal experience and to foresee the consequences of its own actions.

These disorders are characterised by the absence of the conscience of evil, distancing from normality, incapacity to maintain a durable and stable balance between the positive and the negative elements of life.

Under these circumstances, the subject manipulates reality with difficulty, reacts to concrete situations within this reality, reported to his interior universe, outside the objective reality.

Consequently he will not consider himself sick, will not have the aptitude to deny or evaluate his unconscious actions, due to the loss of criticism against the own deranged imagination.

The functional norms of consciousness and the axiological sense of adaptation to these norms are also lost in these situations.

THE DISCERNMENT

There are various types and degrees of discernment alterations:

- logical (confusion between true and false),
- - non-logical (lack of distinction between causal and aleatory),
- axiological (lack of discrimination between value and non-value),
- ethical (ill-separation between good and bad),
- teleological (confusion between means and purposes) and
- juridical (lack of discrimination between just and unjust).

The forensic psychiatry expertise recognises the following degrees of discernment:

- *unaffected discernment*: the subject is aware of the nature and the consequences of his actions;
- *diminished discernment*: usually the result of border-line states, between normality and mental illness (mental debility with mainly cognitive disorders, personality disorders with affective alteration but with unaffected cognitive functions, pathological impulses like the epileptic characteriopathy with predominant volitive disorders);
- *abolished discernment*: characteristic for psychoses and other states with abolished conscience, secondary to profound mental alterations (cognitive, affective and volitive functions). In these cases, the deed appears as a mental disorder symptom, manifesting mainly as pathological ignorance or guilt, false perceptions (hallucinations), pathological reasoning (delirium), pathological motivation or uncontrollable compulsion, secondary to the lack of reflexive and volitive control of the own actions.

The notion of critical discernment is more of a restrictive, medical term, as opposed to the notion of responsibility that has a wider applicability and it is essentially juridical.

METHODOLOGY; GENERAL PRINCIPLES

The commission must have the complete file of the case at disposal; it has to offer information regarding the history of previous illnesses and details about the modus operandi for the unlawful deed for which he is judged.

The psychiatric examination has to take in consideration various important elements, such as:

- the general aspect: the aspect of clothing (tidy, negligent), mimic and pantomimic, verbal contact (easy or difficult to establish);
- the perceptive functions (e.g.: sensorial hypoesthesia with auditive and visual hallucinations);
- the attention (unmodified or modified);
- the memory (fixation hypomnesia, evocation hypermnesia, ecmnesia or memory gaps);
- the orientation (oriented or disoriented – in time and space)
- the consciousness (lucid, obnubilated etc.)
- the thinking process (coherent, incoherent) and its contents (poor in elements, unclear);
- the affectivity (unmotivated hypertimia, even affective flattening with affective indifference towards the environment or depressive state);
- the basic instincts (more or less evident increase or decrease of instinctive reactions – self-defence, alimentation, maternity, sexuality);
- the activity (hyper- or hypobulia, sometimes by a general decrease of activity);
- the nyctemeral rhythm (possible reversal, nocturnal insomnia with somnolence by day).

Based on the psychiatric and the psychological examination, associated with the rest of the information in the file, the personality of the examined person is contoured, as the basis for the objective juridical interpretation of the the unlawful deed. A correct and complete expertise must not ignore the issues regarding the social reinsertion; this implies a large vision upon the deviance that altered the specific human aspirations and measures of efficient prophylaxis.

THE FORENSIC PSYCHIATRY EXPERTISE OF THE MINORS

The expertise involves prolonged observation of the minor and, in some cases, the involvement of specialists from other domains.

It is a vast activity, an analysis and synthesis of all psycho-pathological particularities of the minor, in connection with the mode and the concrete conditions for committing the unlawful act.

The main purposes of the expertise are:

- to assess the discernment of the minor in the moment of committing the crime;
- to offer objective medical criteria for an efficient solving of the case, with gradual punishment and efficient safety and prophylaxis measures against antisocial acts.

The expertise of the minor involves a special methodology because its main purpose is to recuperate the child, to rather offer educative then restraining solutions, that can do more bad than good to the child.

According to the Romanian law, children that were under 14 in the moment of committing a crime are not held responsible for their actions. Minor between 14 and 16 can be held responsible only if it can be proven that the unlawful deed was committed with discernment. Minors that are over 16 in the moment of committing the crime are responsible for their crimes.

Regarding the legal consequences of antisocial acts, it is stipulated that either educative or coercive measures can be taken.

In choosing the type of sanction, the severity of the crime, the physical state of the minor, the domestic environment in which the minor grew up and any other element that can help characterise the minor, are taken into account.

Coercive measures are only taken if it is considered that educational measures would not be enough for correcting the minor.

THE FORENSIC PSYCHIATRY EXPERTISE OF THE MINORS

It is recommended that a psychologist and a paediatric psychiatrist take part in the commission.

The expertise should always take in consideration the fact that most of the crimes committed by minors are the consequence of specific pubertal disorders that are most often transitory.

The main role in preventing juvenile delinquency devolves upon strong family ties, the educative function of parents and other family members, the entourage - the primordial basis for the education and development of all minors.

Most minors implicated in antisocial acts are probably psychotic, with behaviour disorders, either in the pre-pubertal or the post-pubertal period. Those with various mental deficiencies or forms of epilepsy usually commit severe crimes (aggravated assault, homicide, sexual assaults).

In the juvenile forensic psychiatry practice, other mental disorders like schizophrenia or post-traumatic alterations can also be encountered.

THE FORENSIC PSYCHIATRY EXPERTISE OF THE MINORS

A correct and thorough anamnesis is crucial for the expertise. It involves experience and special attention, because it is well-known that children are very imaginative, have a tendency to exaggerate the reality with the purpose of rendering themselves more interesting, of drawing attention, of gaining appreciation from the entourage. In order to perform a objective, correct and comprising evaluation, it is of utmost importance for the examining expert to gain the child's confidence.

If the minor is convinced that the outcome of the expertise will be to his benefit, he is more likely to offer more details as to the modus operandi, the premeditation or lack of premeditation, the motivation etc.

The information obtained from interviewing the minor are corroborated with the medical history and information regarding the minor's behaviour in the family, in school, in the society; all these will reveal the nature of the mental disorders, their nature, the evolutionary possibilities and the correlation between them and the unlawful deed. In some cases the ambulatory examination does not suffice; the hospitalisation of the minor is then necessary, for observation and further medical examination.

The expertise must also offer indications as to the degree of mental development, if it is according to the age or it is deficient, the degree of discernment and of the capacity to assess actions and their consequences.

Long-term follow-up and regular treatment recommendations will also be made, as social protection measures. These recommendations must be adapted to the severity of the antisocial behaviour, ranging from entrusting the minor to the family or the school, to institutionalisation in specialised facilities.

THE FORENSIC PSYCHIATRY EXPERTISE OF THE MINORS

The conclusions of the forensic psychiatry expertise for minors include the following elements:

- the positive diagnosis, the nature of the mental disorders and the elimination of any simulation tendencies;
- the essential particularities of the personality structure of the minor, reflected in his deviated behaviour and reported to the diagnosis;
- the evolutionary state of the diagnosed disorders and the potential risk of aggravation or chronic evolution;
- the degree of social danger and the crime-related potential;
- the discernment in the moment of committing the crime.

The evaluated discernment of the minor dictates certain specific measures that can be recommended by the commission:

- a. psycho-pedagogical measures of medical and social recuperation. They are to be taken in institutions specialised in the re-education of minors over 14 or in special re-education schools for minors under 10;
- b. medical-educational measures, for cases that require medical and pedagogical treatment and surveillance, because of their particular physical or mental state.

For minors that require medical treatment and long-term follow-up, strictly medical indications are given (some psychoses, epilepsy). Other minor disorders may only require social measures, with the purpose of isolating the minor from a noxious environment.

THE FORENSIC PSYCHIATRY EXPERTISE IN CIVIL LAW

The mental capacity represents the ensemble of cognitive, intellectual, character and affective-volitional aptitudes of an individual. They can determine the motivated organisation of an activity or profession and insure its performances.

The mental capacity is also determined by the degree of personality development and it is reflected in certain actions and their consequences.

The personality is a historical-social feature that develops under the influence of life, educational and social conditions; it represents the sum of all mental features of an individual.

Some activities like writing a will or other self-administrating documents, selling or buying etc., require certain integrity of the mental functions. Thus, in civil law, the forensic psychiatry expertise is often requested to establish the capacity to contract = civil capacity for a person (mostly elderly) that perfected a transaction of material assets – selling, donation, will.

The civil capacity refers to a person's capacity to exercise its rights, to assume certain obligations and to personally sign juridical documents.

The civil capacity must be differentiated from the possession capacity that refers to the capacity of all persons to have rights and obligations, including persons without conscientious will or with underdeveloped will.

THE FORENSIC PSYCHIATRY EXPERTISE IN CIVIL LAW

The forensic psychiatry expertise for civil cases follows the same methodology.

Some cases may prove more difficult, especially those in which the expertise must be performed post-mortem, by analysing documents that attest certain mental disorders of a person that signed various contracts (will, donation etc.); the expertise is even more difficult if the medical documentation is incomplete.

Sometimes, such documents are signed shortly before death or even during agony; considering the various types of agony (lucid, alternant, delirious), these documents can easily be contested.

The commission can encounter two distinctive situations:

- the person can be placed under interdiction, being considered incapable to contract a civil document;
- There are recent medical documents, almost concomitant with the moment when the document was signed, that mention the presence of certain mental disorders, a mental illness or other medical problems that can be significant for the commission.

The difficulty of this type of expertise resides in the fact that it is very difficult to diagnose a mental illness capable to annul a civil document, based only on medical documents, even more so if a longer period of time passed since the document has been signed.

In such cases, the expert must also bear in mind the possibility that the person was convinced to sign the document by false promises, use of intimidation, torture, starvation. Other information in the case file can be of utmost importance; they offer details regarding contradictory statements, handwriting analysis, social investigation data etc.

THE FORENSIC PSYCHIATRY EXPERTISE IN CIVIL LAW

In civil cases, the forensic psychiatry commission must take in consideration the following possibilities:

- usually an institution contests the civil document, accusing a procedure defect;
- The argumentation for contesting the document can be based on new, possibly relevant, medical documents;
- The document refers to various forms of alienation of material possessions (wills, donations, selling-buying);
- the document is usually perfected at home;
- the posthumous expertise is often performed on incomplete, mostly medical documentation;
- Most of the times, the diagnosis is situated in the area of deteriorative organic psychopathology;
- the insufficiency of medical information can impede the commission from drawing a conclusion;
- The commission can conclude that the person lacks the capacity to contract, due to the absence of the mental capacity for critical evaluation regarding the content and the consequences of a civil document.

In some cases the experts cannot answer to all the questions of the Court; it can only offer certain evaluations and appreciations that can be taken into account by the Court when pronouncing the sentence. A good collaboration between the juridical system, forensic medicine and psychiatry ensures the basis for an objective expertise.

It is our opinion that, before signing any civil document, a forensic psychiatry expertise should be requested; if the commission rules for the integrity of civil capacity, the document, signed in front a public notary, can no longer be contested later on.