

The contemporary concepts on the management of forensic psychiatric services

Silvia Gherasim, Mihail Hotineanu, Valentin Oprea

Silvia Gherasim – M. D., MPH., Forensic Psychiatrist, Chief of the Forensic Psychiatry Department, Clinical Psychiatric Hospital, Chişinău, Republic of Moldova

Mihail Hotineanu – M. D., Ph. D., Associate Professor, Chair of Psychiatry, Narcology and Medical Psychology, State University of Medicine and Pharmacy “Nicolae Testemiţanu”, General Director, Clinical Psychiatric Hospital, Chişinău, Republic of Moldova.

Valentin Oprea – M. D., Ph. D., Associate Professor, Chair of Psychiatry, Narcology and Medical Psychology, State University of Medicine and Pharmacy “Nicolae Testemiţanu”, Medical Director, Clinical Psychiatric Hospital, Chişinău, Republic of Moldova

ABSTRACT

Forensic psychiatry, at a first glance, seems to differ from one country to another due to different historical developments, different legal systems and different mental health systems. In spite of that, forensic psychiatry has several goals shared across countries. The European Commission recommended the harmonization terminology and to respect the same standards in forensic psychiatric evaluation. This article focuses on the contemporary concepts on management and issues of regulation in forensic psychiatric services in the Republic of Moldova.

KEYWORDS

forensic psychiatry, expertise, expertise person, forensic psychiatry evaluation

INTRODUCTION

Axiomatically, in the European Union, it is considered that forensic psychiatry specialists are the people who deal with criminal's mental disorders (or with other people having legal problems), but also with their delinquent-legal history, including, in their area of competence, the mental status evaluation, preparing a written report, the testimonial evaluation, the treatment of this segment of patients, knowing the legislation on mental health.

It is found that among these 15 states that participated in a study of the European Commission about the legislation and practice of expertise criminal mental patients, there are more similarities than differences. The differences appear mainly in the area of terminology and in detailing the objectives of a forensic psychiatric service, reflecting, in general, the legislators' mobility to adapt to psychiatric concepts and nosology. The 15 countries recommended, as working tools, the classification of Mental and Behavioral Disorders ICD-10 supported by the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders) classification. In terms of knowledge of the legislation is ascertained that in these 15 countries that have participated in the project, the provisions of the law relate, in the majority, to the Roman Penal Code (except from the United Kingdom and Ireland), the national or private health systems and health insurance (Austria, Belgium, France, Germany, Luxembourg, Netherlands). The terminology of psychiatric concepts, to which the provisions of the law refer, differs, often being redundant and reflecting both the concepts of each country and the justice's low flexibility (otherwise specific), according to modern medical concepts.

The common fact in all the countries that participated in the research is that absolutely all professionals who have the right to produce

reports have the officially recognized quality of experts. The expertise/evaluations are arranged in most countries by the courts. It should be noted that in none of the countries that participated in this study, the injury organs do not include conducting the expertise. The explanation is given by the need to respect the ethical rules of writing the EPL reports.

In most countries of the EU, the objectives and the time reference, with liability in establishing the former mental condition, as well as the current mental condition are stated. In all countries, it is stipulated that the experts consult documents provided by the court, including the ones belonging to the prosecution, and, on a mandatory level, the ones belonging to the defence.

In terms of forensic psychiatric evaluation, most countries do not have a detailed presentation of it, but it must be carried out so as to respond to the desideratum's evaluation. Scientifically, the report represents a case presentation [7].

At the European level, the legal norms concerning the ages of criminal irresponsibility, the methodology of expert practice, the methods of legal qualifications of the facts, the application or not of some extenuating circumstances as well as concerning the penalty system, all these are essentially represent the attributes of the sovereignty of each State of the EU and the application of the principle of subsidiarity. A legislative harmonization within the EU, however, is badly needed. [9].

In Romania, the legal and organizational framework of the forensic expertise and of the national legislation in force stipulates the fact that the forensic psychiatric expertise is carried out by a Commission represented by the forensic expert who is also the President of the Commission and two psychiatrists, noting that – in the case of forensic psychiatric expertise in

children – it is indicated that the psychiatrist be specialized in child and adolescent psychiatry and that the Commission should have a psychologist. Regarding the objectives of forensic psychiatric expertise, these are usually listed in the ordinance and related specifically in: 1. the existence or not of a mental illness; 2. the presence or absence of discernment when committing a crime; 3. the presence of social danger and which are the medico-pedagogical and medico-social measures that can help redressing the pathological behaviour [8].

Between 2010 – 2013, the Project “European standards for postdoctoral competitive training programs in research management and advanced medical and forensic psychiatric expertise” was carried out within the Operational Field Programme of Human Resource Development, coordinated by the Institute of Forensic Medicine Iași. This project came to cover a white blob of professionalization of the forensic psychiatric expertise and performance of some scientific standards in one of the most difficult and important expert areas (PH. D. Vasile Astarastoae, 2013).

MATERIAL AND METHODS

The secondary study is completed – narrative review. Ten scientific sources, the results of the studies from different countries (the Republic of Moldova, Romania, the EU) have been accumulated to describe the problem.

RESULTS

In the Republic of Moldova, Forensic Psychiatric Expertise (EPL) is carried out in two medical institutions. The Psychiatric Hospital, in Chisinau, has a separated subdivision – the Forensic Psychiatric Department (FPD) where forensic psychiatric expertise of all kind is carried out, in stationary and ambulatory conditions, as well as for arrested people and for the examination of

people that are investigated in liberty, from all areas of the country. In the PMSI Bălți Hospital, there is the section of forensic psychiatric expertise that performs ambulatory FPE only on people who are directed by the investigation bodies, the prosecutor’s office and the courts from the North of the Republic of Moldova. The purpose of the forensic psychiatric department is to ensure the correctness of forensic psychiatric research, aimed at solving problems that arise in connection with the exercise of justice in criminal and civil trials.

All FPD subdivisions are operating in accordance with the regulations, the methodological guidelines, the instructions and other normative acts that regulate the conduct of different types of forensic psychiatric research.

The forensic psychiatric service, in ambulatory conditions, ensures that the following legal forms of forensic psychiatric expertise are performed:

- FPE in legal files – accused, suspect, victims, injured parties, witnesses, on the basis of documents submitted to the posthumous;
- FPE in civil files – the exercise capacity, heritage, without frequency and on the basis of documents submitted to the posthumous;
- FPE in administrative files – infringers.

The stationary section for arrested people is equipped according to the requirements of the medical penitentiary institutions; this section’s guard is carried out by specialized formations of MIA of RM. The purpose of the activity of this subdivision of FPD consists in ensuring the performance of FPE in criminal cases like those of peoples who are in police custody (accused, suspect, victim, injured parties, witnesses; convicted). The department has wards for men, women, minors and a temporary isolation ward.

The expertise people straighten in stationary FPE, which are not arrested are hospitalized in PMSI CPH sections, are distributed according to the territorial principle and depending on sex, psychic state, somatic condition, age and they are looked after by nurses and by the hospital's employees. The ambulatory forensic psychiatric service ensures that the following forms of forensic psychiatric expertise are performed:

- expertise in legal files – accused, suspect, victims, injured parties, witnesses;
- expertise in civil files – the exercise capacity;
- expertise in administrative files – infringers.

The legal basis of forensic psychiatric activity, is – the provisions of the Criminal Procedure Code no. 122-XV, March 14, 2003; the Penal Code no. 985-XV April 18, 2002; Civil Procedural Code no. 255-XV, May 30, 2003; the Enforcement Code of the Republic of Moldova No. 443-XV, 23.06.2000; the Law No. 1086-XIV June 23, 2000 on judicial expertise, technical and scientific findings and forensic expertise; the Health Care Law No. 411-XIII March 28, 1995; the Mental Health Act No. 1402-XIII, 16.12.1997; the norms and the international law and other legal acts and the provisions of the Internal Regulation of organization of the activity of the forensic psychiatric service and its subordinated divisions.

In the Republic of Moldova, psychiatric experts acquire expert qualification according to article 35 and article 36 of the law on judicial expertise, technical and scientific findings and also on forensic findings [5].

There are a few rules that determine the scope of the work, the rights and responsibilities of public providers of forensic services, such as:

- The RM Government's decision regarding the approval of the State Register of the

judicial experts as certified. 1147 September 9, 2003;

- The RM Government's decision concerning the remuneration of the staff in the field of judicial expertise, technical-scientific findings and forensic expertise. 122 of February 2, 2007;

- The RM Government's decision regarding the National Centre for Judicial Expertise of the Ministry of Justice 1052 September 12, 2006;

- The RM Government's decision regarding the approval of the Forensic Regulation Centre Low no. 58 February 4, 2010 [10].

According to the article 142 of the Criminal Procedure Code (CPC) and article 148 of the Civil Procedural Code (CPC), forensic psychiatric expertise performance, like other types of expertise, is required by the prosecution or by the Court whenever the explanation of the facts or of the circumstances of the case is needed, when there are suspicions over the mental state of the accused, of the injured party or of the witness in the criminal trial, of the defendant and of the plaintiff in civil trials [1],[3].

The judicial expertise is mandatory, pursuant article 143 of the Criminal Procedure Code of RM, for the consolidation of: a physical and mental state of the suspect, of the accused, of the defendant – in cases where doubts arise regarding the responsibility status or their ability to defend their own legitimate rights and interests in legal trials; a physical and mental state of the person in respect of which there are complains that they have committed acts of torture, inhumane or degrading treatment; a mental or physical condition of the injured party, of the witness if any doubts appear concerning their ability to rightfully perceive the circumstances that have significance in the case and the capacity to make statements about them, if those

statements later will also be made exclusively or mainly, on the basis of the decision in due time; in other cases, when other evidences cannot determined the truth of the matter.

The forensic psychiatric expertise is carried out only on the basis of an ordinance/decision, issued by the prosecution or the Court. The ordinance/decision of performing forensic psychiatric expertise includes: the name of the issuing institution, the registration number and the date issued, the expert's name (or the name of the institution that performs the expertise), the identity data of the expertise person, a detailed description of the circumstances of the facts, the expertise objectives (the questions that will be answered by experts). The ordinance must also contain safety elements (the signature and the stamp of the establishment). At the presentation of the expertise person before the Commission, there will be made available: the complete case file, the medical documentation of the expertise person, the social investigation. If these items are missing or have insufficient data, in accordance with the legal provisions, experts may refuse, to perform the expertise, citing the reason of the refusal and noting the items that are required in order to perform it [1].

In large part, the expertise people are citizens who have committed criminal acts. The witnesses, the injured parties, the defendant and the plaintiff, represent a smaller part of the total number of expertise persons. The assessment of the critical discernment is required in the following situations: the suspension of criminal investigation or of judgement; the ending of criminal actions as a consequence of the application of the provisions of article 95 of the Penal Code (PC) RM (irresponsibility); the application of the safety measures or their revocation; the application of coercive measures; cases in which the delinquents are between 14 and 18 years [1], [2].

In civil cases, the critical discernment shall be assessed for: the determination of the civil capacity (under interdiction); the validation of civil type contracts, donations, wills; marriage annulments; entrusting the growth and education of minors [3], [4].

The methodological rules on performing the FPE provide that the expertise is developed in the Commission, which includes 3 legal expert psychiatrists, one of them is the President of the Commission, and a clinical psychologist (if applicable). The forensic psychiatric expertise of documents is carried out in cases where it is not possible to examine the person in the competent institution or in cases in which the death of the person is necessary to determine the mental state during certain periods of life. This *post mortem* expertise is carried out in cases of suicidal attempts, as well as in civil trails, when the mental condition of the person is questioned when acts like wills, donations, etc. are performed [6].

The following objectives, which are solved by the legal expert psychiatrists, are settled by the Investigation bodies, the Prosecutor's Office and the Courts, in the disposing ordinances of the performance of the EPL. In legal trials are the following objectives:

- Assessment of the mental state of the suspect, of the accused and settling questions concerning the person's ability to understand the meaning and character of social dangerous actions (or inactions) and its ability to steer them, the announcing the conclusion on the application of adequate medical measures of constraint to the expertise person;
- Diagnosing the mental disease of a person who committed the crime and got ill until the sentence was pronounced, settling questions relating to the person's ability to understand the meaning of his actions and to steer them, and announcing the verdict on the application

of adequate measures of constraint to the medical mental state of the expertise person;

- Assessment of the degree of hazard of the mental disease manifestations for other people and for themselves of the suspect and of the accused;
- Appreciation of the mental state of the suspect, of the accused and settling questions relating to the person's ability to defend its own interests and its rights in legal trials;
- Assessment of individual and psychological particularities of the suspect, of the accused, in legal psychological psychiatric examination and settling questions concerning the influence of the detected behaviour particularities while committing the charged offences;
- Evaluation of affective states and reactions, including the effect state on the suspect, charged and the settling of questions relating to the expert's ability to make sense of her actions or conduct them;
- Appreciation of the necessity of the appliance of the safety measures and the treatment of people that have committed offences and are diagnosed as addicted to psychoactive substances (alcoholism, drug abuse, drug addiction);
- Appreciation of the presence or absence of signs of minors, linked to psychiatric disorders, to restraint psycho-emotional development, this is why the person is not able to understand the nature and the gravity of the committed actions;
- Appreciation of the mental state of the injured party, of the witness and solving the question regarding the expert to receive the correct circumstances, which have importance for the legal trail and to make statements;
- Appreciation of the mental development's level, the individual-psychological peculiarities, the mental status, the presence or absence of mental disorders of the suffering party (victim, damaged person) in cases related to sexual life

and solving the questions related to the person's ability to understand the character and significance of the actions committed to him or deny them;

- Appreciation of the mental state of the injured party during the predecessor suicide tentative period and solving questions concerning the presence or absence of the causal link between the actions of the suspect or accused and the particularities of the mental state of the injured party, which caused the suicide tentative;
- Appreciation of the character and the volume of mental disorders resulting from the committed crimes; the objectives of forensic psychiatric expertise in civil trials:
- Appreciation of the mental status of the people, the capacity or incapacity to exercise, and to resolve the questions regarding the mental ability of these people, according to their state to understand the meaning of their actions and steer them;
- Appreciation of the defendant and of the plaintiff's mental state, and the settling of the question about their ability, according to his mental state, of understanding the meaning of his actions and steer them during the preparation of the contract or of another act of legal significance to the establishment, amendment or termination of the rights and obligations of the individual;
- Appreciation of the presence or absence of mental disorders and to resolve the question about the person's ability to correctly understand the facts and circumstances that have significance in civil trial, and to submit truthful statements;

Besides the already listed ones, while carrying out the expertise you can also solve other legal problems, which require the special knowledge of the psychiatry, psychology, narcology and sexual pathology field.

The results of the examinations and analysis of the available documentation, are concluded in a Forensic Psychiatric Expertise Report. The structure and the principles of this act are established in legal and normative acts, and have three parts: the introduction, the descriptive part and the part of the synthesis.

The Forensic Psychiatric Expertise Report is one of the acts with evidential value and, therefore, must:

- contain factual data by enumerating all the sources;
- be intelligible to persons outside the medical sphere;
- contain not only conclusions but also scientific rationales, which follow from the description of the specific data concerning the mental state of the examined person.

In cases where new data emerged, when the prosecution or the Court that has called the

expertise is not sure enough or doubts the results, it may request an additional expertise or a forensic psychiatric expertise; the same or other experts can be assigned [6].

In judicial practice, psychiatrists are often called to evaluate whether an individual who has committed a crime, possesses a psychic integrity, so as to be able to be held liable for the committed crime, or if the committed act is the consequence of a mental disorder. In other circumstances, experts are involved in solving the problem of mental integrity and, consequently, of the civil capacity to conclude certain contracts, to make charity acts, wills, sale-purchase of goods contracts, etc. The validity or cancellation of a legal document depends on what the expert has established in it.

CONCLUSIONS

The criteria approach of forensic psychiatric expertise in most countries of the EU and in the Republic of Moldova is associated with both the legal requirements and the psychiatric theory.

The judicial psychiatric expertise in civil or criminal trials has the duty to meticulously and multilaterally examine the structure of the subject's personality, which is determined by the degree of intellectual development, the general and professional training degree, the level of family education, of life experience. The fundamental task is to appreciate and assess the detainee and consciousness disorders, that the examined person presents (in particularly his state in the moment of committing the offence or the civil action), to demonstrate to the court that the deed that he committed is the consequence of some psychiatric disorders, and also talking about the medical and medical-social measures that are necessary in this cases.

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The authors declare that they have no potential conflicts of interest to disclose.

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Correspondence:

SILVIA GHERASIM

PMSI Clinical Psychiatric Hospital, Costiujeni Street No. 3, MD-2011,

Chișinău, Republic of Moldova

Phone: + 373 22 85 72 41

Fax: + 373 2276 15 69

E-mail: imsp_scp@mail.ru

silgera@yahoo.com

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