Special features of the outpatient forensic psychiatric examination in civil proceedings according to the Varna district court docket for the period 2007-2012

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Summary: In recent years, in connection with reconsideration of the place of forensic psychiatry among other expert sciences, the apparent deficit of research in the field of forensic psychiatric examination methodology has been noted. The outpatient forensic psychiatric examination as well as other court expertises are procedural tools for collecting and verifying evidence in criminal and civil proceedings. *The aim* of the article is to examine the peculiarities of an outpatient expertise and the difficulties in preparing the post-mortem forensic psychiatric examinations in civil proceedings. *Material:* 327 individuals, certified by experts with subsequent judgments delivered by Varna District Court for the period 2007-2012, were examined. *Methods:* a specially designed card for collecting data from the certified individuals surveyed by: forensic psychiatric examinations, parts of disease histories, psychological research, and court decisions. **Results:** a post-mortem expert opinion is particularly complex due to the absence of the object of study and the conclusion is based on evidence from the case file. In a number of cases, a common difficulty in preparing post-mortem forensic psychiatric examination is the absence of medical documentation. The objectification of the status of the individual under examination during the act or during the conclusion of a civil act in such circumstances is significantly complicated and it is impossible to characterize the individual and the mental health. This raises the question of creating a national electronic database that provides timely and reliable access in case of preparation documents of expert significance, as well as a single institute for forensic expertise.

Keywords: civil proceeding; outpatient forensic psychiatric examination; post-mortem examination and expert evaluation.

Introduction

Forensic examination is evidence in pre-trial and court proceedings where special knowledge in science, art or engineering is required in order to clarify some of the circumstances of the case (2015). Examinations are carried out only at the request of pre-trial, prosecution and court bodies and are regulated by the basic laws in criminal, civil, administrative court procedure, and departmental instructions of the Ministry of Health and the Ministry of Justice (2013; 2004; 2015).

Depending on the place of the examination, the expertise may be outpatient and inpatient. Outpatient

forensic psychiatric examination is the most common expertise in judicial practice in our country and in other countries. The number of outpatient forensic psychiatric examinations assigned for different countries is around 70-90% of the total number of all expert opinions (Pishchikova, 2011). Due to the fact that there is no National Institute for Forensic Examinations established in Bulgaria, there are no accurate statistical data on forensic psychiatric examinations appointed in the country. Only forensic examinations in Criminal Law are concentrated in the Research Institute of Forensic Science and Criminology at the Ministry of the Interior with similar units in the Territorial Directorates of the Interior (Tsankov; 2012). More frequent appointment of

an outpatient examination is economically justified. This type of examination in most cases is carried out by a single expert through a single examination of the individual, having non-dynamic medical observation in a hospital and it does not require a significant loss of time and money (Stoimenov, 2003). *The aim of the article* is to examine the peculiarities of an outpatient examination and the difficulties in preparing the post-mortem forensic psychiatric examination in a civil proceeding.

Material and methods of study

Material of the study includes 327 individuals, certified by experts with subsequent judgments delivered by Varna District Court for the period 2007-2012. The survey method is a specially designed by the author tool which is in the form of a card for collecting data from the certified individuals. These data are derived from forensic psychiatric examinations, parts of disease histories, psychological research, and court decisions.

Results and discussion

There are only 25 forensic psychological examinations out of the 327 examinations examined, in the course of our study, and significant differences in the types of the assigned first and subsequent second forensic psychiatric examinations (FPE) are noted. The first examinations, appointed by the Court, are mostly forensic psychiatric examinations - 81.30%, followed by single psychological examinations. The re-appointed examinations are either psychiatric - with the participation of three psychiatrists or with the participation of other specialists from other expert areas, i.e. some of the re-appointed examinations are significantly different from the primary appointed as other areas of research are included in the expert evaluation (Djordjanova, 2015).

The tasks assigned to the experts by the Court on the development of FPEs differ significantly depending on the type of examination ($p < 0.001$), and the main task in the development of a single psychiatric examination is eventually placing in the position of lacking capacity (89.50%), and for the single psychological is determining child support (20.00%). A complex examination has two main tasks: possible placing in the position of lacking capacity and tort (28.60% for each task). The leading task in a combined examination is the tort (43.80%), and in the triple examinations (psychiatric and psychological), it is the determination of the parental rights of the individuals under examination. When comparing the tasks assigned to the experts in the development of the first and the subsequent second FPEs, a significant difference is found ($p < 0.01$). While the primary FPE explores primarily the limitation of civil rights, other tasks related to the ability of individuals to manage their personal affairs are enforced with the re-assigned FPEs. The basic law governing the judgments of the Court is the People and Family Act (68.80%), followed by the Obligations and Contracts Act (11.60%). All other acts - LSMDA, FC, LS, CPA, LPADV are less than 10%. Having in mind primary FPEs 93.00% of expert opinions have been accepted, for the secondary ones the percentage is 81%, and tertiary examinations have been accepted by the Court at

100% (Djordjanova, 2015).

When assessing civil rights for the first FPEs, the highest percentage possess those individuals under examination who had no diagnostic evaluation (37.70%). In the cases of individuals placed in the position of lacking capacity, the highest percentage possess those who suffer from paranoid schizophrenia - 31.30%, followed by those who suffer from vascular dementia - 11.20% and moderate mental retardation - 7.90%. In the cases with subsequent admission of restricted capacity, the individuals examined with a paranoid schizophrenia - 45.80%, took the first position. In the cases of age incapacity - 72.7% of the individuals examined had no diagnosis, and in the cases of age capacity - no diagnosis 60.00% out of the examinations ($p < 0.001$) (Djordjanova, 2015).

On the basis of these data, I found out that the outpatient forensic psychiatric examination is most often assigned by:

1. Individuals who do not suffer from mental disorders, i.e. mentally healthy individuals who have not been treated until the time of the examination and had no medical documentation available.
2. Individuals suffering from mental disorders in respect of which no diagnostic and forensic psychiatric difficulties arise, i.e. with the same diagnoses from psychiatric hospitals in the past. If an expert after the examination of the individual examined establishes and confirms the psychiatric diagnosis prior to the examination, then it is sufficient in this case to develop a reasonable outpatient expert opinion on the current mental state. It should not be forgotten that some of the mental disorders are dynamic in their course, and that the examination is for a given moment and for a given civil act, i.e. if at the particular moment, point of time, place, an individual has not been able to understand the nature and the significance of what he or she is doing, and has not been able to conduct their own actions, as well as to anticipate the consequences of their actions, this does not mean that he or she is in the same condition during the actual examination, especially if he or she is in psychopharmacological therapy and is in a condition of medication or non-medication remission.
3. Individuals with neuropsychological borderline pathology - with moderate atherosclerotic alteration, with neurotic, stress-related and somatonic disorders, with mild mental retardation, with personality disorders, with mental disorders due to the use of alcohol and other psychoactive substances, but not in a psychotic state.
4. People who are witnesses or victims and do not suffer from mental disorders.
Witnesses or victims are stationed for an inpatient examination only by the order of the Court or after the voluntary consent of the individuals examined (2004). This form is not applicable to plaintiffs and defendants in civil proceedings.
4. Individuals with somatic disorders - oncological, after suffering from vascular disorders and others that have led to certain mental changes.
5. All post-mortem examinations in criminal and civil proceedings, which are developed only on the base of the materials provided in the cases.

During recent years, according to the studies of A. P. Mohonko and L. A. Mugantseva from the Forensic Psychiatric Expert Service of the Russian Federation in 2005 the number

of post-mortem examinations has considerably increased over the past ten years (Mohon'ko AR, Mugantseva, 2008; Mohon'ko AR, Mugantseva, 2009). This is related to the intensification of socio-economic relations, the increase in the prevalence of elderly psychiatric disorders (due to extended life expectancy, and in some countries due to the demographic collapse, for example in Bulgaria) and with the current knowledge in neurobiology. According to the UN data, the number of persons at the age of 60 and over is projected to reach 2 billion in the period 2007 to 2050 (2011).

Post-mortem examinations are burdened with big risks of data incompleteness and uncertainty in diagnostic and expert evaluations. There is a lack of direct communication with the object of the examination, his or her non-verbal signals, way of participation in the examination, the ability to be asked the necessary clarifying questions (Gorinov, 1994). In these cases the expert most often does not have data from psychiatric examinations carried out during their lifetime.

If a psychiatric diagnosis is available, it is assessed to what extent the mental disorder, and especially its degree of expression, has reflected on the individual's ability to understand the nature and importance of his or her actions and to conduct them, as well as to anticipate the consequences thereof. Occasionally, the available medical documentation is exhausted by a document that contains only a diagnosis, most commonly of internal organ diseases in combination with brain atherosclerosis, without any arguments or description of the mental state. This situation does not justify the loss of mental fitness when using the testimony unilaterally, especially when they contradict each other (Shipkovensky, 1973).

If medical records for the corresponding period of time are not available but data of the existence of chronic mental illness are available in the documentation of the individual examined, it is necessary to carry out a dynamic analysis of the condition of the person being examined, taking into account the available medical records (Rachev, 1993). When developing post-mortem FPEs, both descriptions of clinical syndromes and the absence of a description of such syndromes are equivalent, the interpretation of which allows the opportunity for extrapolatory commentary. The presence of some somatic illnesses puts the examined individual in dependence on care, both in a biological and psychological aspect, by the people who care for him or her and makes the hypothesis of increased state to be suggested possible.

It is essential that handwritten letters and testaments, have to be judged for their content, as well as their stylistic, grammatical, and handwriting characteristics (Mancheva, Djordjanova, 2016; Pechernikova, 2004; Pishchikova, 2011). The connection between the content of the testament and the psychic characteristics of the testator's personality, his or her interests and views before becoming ill, as well as his or her attitude towards the family members during this period of time is also important (Tsankov, 2012). If the legal act of a private nature corresponds to the basic attitude of the individual under examination, if his or her behavior is embedded in the mood before the disease, coincides with it and maintains a reasonable sequence, he or she can be considered as legally capable with no doubt. A sudden change in relationships, coldness, distrust, complete

alienation from relatives give the reason to suggest the development of an insanity syndrome under the influence of which the patient, by writing a testament, donating or selling, may deprive the heirs of the inheritance. The increasing in a patient's state to be suggested should always suggest the use of the illness by selfish individuals, for example illegally (or under unprofitable conditions for the patients and their relatives) appropriate their property.

Sometimes a concluded civil act can leave the conviction that it is unmotivated. However, difficult in understanding motives of the deal, testament, donating themselves are not yet a mandatory sign of a mental disorder. The civil act may be concluded because of special considerations known only by the examined individual. These motives can be hidden from the surrounding people for various reasons. For this reason, the expert's conclusion on the legal capacity of the individual under examination should be based not so much and only on the evaluation of his or her motives but on the assessment of his or her overall mental state at the time of signing the legal act.

In the absence of medical documentation, the solution of the diagnostic and expert questions is based on the study and analysis of the materials in the case - testimonies and documents containing information (direct or indirect) about the psychic condition of the person under examination. In developing post-mortem FPEs, differences between the testimonies of different groups of individuals usually occur, that note too wide limits in the description of the mental state of the examined individual and which relate to the risk of an inaccurate interpretation. A typical kind of such an examination is challenging a will when another important argument-the interest of the parties and the risk of false testimony arises. Practice shows a wide variety of witness testimony. Once even their testimony is contradictory. The reasons for this may be different as V. R. Ileiko have mentioned in his studies (Ileiko, 1999). The witness may not have accurate observations, could not properly perceive one or another event or behavior of the examined individual. In some cases, it is possible that he or she deliberately wants to deposit untrue in order to do one or the other party of the case a favour. Controversial witness descriptions of the mental state of the deceased should generally be used to discuss alternative hypotheses by the expert, leaving the court to determine which ones are reliable. It is not in principle the examination of the expert to tell which witnesses can be trusted and who can not. The expert, however, on the basis of the existing medical records may and must inform the court which of the statements, according to him or her, are from a medical point of view implausible or even absurd.

Conclusion

Outpatient forensic psychiatric examination is economically more advantageous, but requires higher qualification of experts. A post-mortem expert opinion is particularly complex due to the absence of the object of the investigation and giving a conclusion based on the evidence from the case file. In some cases, however, there is no medical documentation available that would objectively state the status of the person under examination during the act or during the conclusion of a civil act that would

characterize his or her personality and give any indication of his or her mental health. These examinations are burdened with great risks of data incompleteness and uncertainty in diagnostic and expert evaluations. This raises the question of

the need to create a national electronic database that will provide timely and reliable access to the preparation of documents of expert value, as well as a single Institute of Forensic Examination.

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