

THE IMPORTANCE OF POST-MORTEM FORENSIC PSYCHOLOGICAL EXAMINATION IN CONSIDERING THE ISSUE OF DEALABILITY IN CIVIL PROCEEDINGS

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Abstract. *The article discusses the criteria for the expert competence of a psychologist when conducting forensic psychological research, as well as forensic psychiatric examinations with the participation of a psychologist. Particular attention is paid to the trend towards objective interpretation of expert opinions in the aspect of legal law.*

Keywords: *forensic psychological examination, expert psychologist, expert opinion, law.*

It is known that at present the possibility of solving problems associated with forensic psychological examination is especially ripe, which requires clarifications and provisions necessary for the qualitative interpretation of research findings in civil proceedings. This statement is associated with the circumstance in which many errors and incidents were made, both in the parameters of law and in the parameters of competence in conducting a forensic psychological examination with a biased interpretation of conclusions that sometimes have fateful significance in making decisions. Despite the growing need for forensic psychological examinations and the increase in the number of their appointments, the qualitative aspects of forensic psychological examinations are expected to be much better.

The history of our many years of practical activity in the field of forensic psychology reveals many perspectives for a critical analysis of provisions, which allows us to move “from the point of stagnation” and clarify objective directions, taking into account the methodological positions adopted both in the CIS countries and in foreign countries.

Our observations show that forensic psychological examination related to civil proceedings is focused on identifying the parameters and levels of emotional response of a legal subject. In this regard, it should be noted that regardless of the subject type of forensic psychological examination, all issues related to the factor of human nature are directly related to the diagnosis of a particular emotional state in which the subject was from the point of view of legal law. In Uzbekistan, professional inconsistencies are often identified due to the lack of complementarity (mutually complementarity) of research versions for a certain legal subject of research. This provision is determined by the fact that the version of the psychiatric report often contradicts the version of the psychological report, which is associated with contradictory interpretations of the subject of research, which has a specific affiliation.

In the last decade, as part of socio-economic changes in the life of society, the development of market relations that influence the activity of citizens in disposing of their property rights, the number of civil transactions has been increasing. Recognizing a transaction as invalid is one of the ways to protect civil rights. Considering incidents of the psychological-psychiatric and purely psychological significance of conclusions presented in civil proceedings, we note some examples

relevant to this problem. This fact indicates that the bailiff is insufficiently informed, on the one hand, regarding psychological parameters that are equivalent to legal significance (Articles 122, 123 of the Civil Code of the Republic of Uzbekistan), which explain the cause-and-effect relationships of behavior (normative or non-normative) a person in legally significant circumstances, and on the other hand, by ignoring the significance of psychological knowledge, taking into account the authoritarian psychiatric position. This circumstance is explained by the insufficient development of the methodological base in the field of using forensic psychological knowledge in the judicial practice of the Republic of Uzbekistan.

According to the statistical indicators of our expert experience, 70% of the studies are relevant to the circumstances in which it is necessary to conduct a post-mortem forensic psychological examination in civil proceedings. A post-mortem forensic psychological examination in civil cases is ordered by the court in cases where the persons committing a particular contested act are deceased and the court has questions that require psychological knowledge for clarification.

It should be noted that in the Republic of Uzbekistan, until recently, only a forensic psychiatric examination was ordered in relation to contested transactions (on “purchase and sale”, “wills”, “gifts”), because the court usually had doubts about the mental integrity of the testator or other person. The experience of our practical activities (using the example of the analysis of materials from civil cases on judicial investigations in the Republic of Uzbekistan) allows us to assert that the adoption of a particular decision by a deceased person can be influenced by: the mental state, the psychological characteristics of the individual, and the emotional manifestations of the subject of the study at the time actions related to the legal period. In this case, it is necessary to take into account:

- a) the nature of the stimulus affecting the personality, deforming the behavioral structure of a person who is not a mentally disabled subject;
- b) various psychological reasons (loneliness, stress, death of loved ones) causing mental states, the influence of which cannot be overestimated during the execution of legally significant acts.

There are civil law circumstances that do not allow a person to correctly evaluate and perform actions that at first glance seem to be a true manifestation of the will of a legal entity. In the presence of these circumstances, this will in its content is vicious. Since “flaws of will” for declaring a transaction invalid are of a material nature, procedural actions are necessary to establish the presence of “flaws of will” in the transaction.

Will as a psychological reality is a person’s conscious regulation of his behavior and activities related to his abilities to overcome internal and external obstacles in the circumstances of achieving his goals. When the noted abilities are violated, then the question arises about violations of volitional qualities, i.e. about "vice of will". Arguing within the framework of psychological terminology, we mean both violations of a person’s intellectual capabilities and violations of the volitional regulation of behavior at the time of making a particular legally significant transaction. Understanding a “vice of will” as a certain psychological pattern, we assume that in the above sense, the causes of “vice of will” (volitional deformation of behavior) are individual in each case, and this is due to different mechanisms for the formation of one or another delusion in the circumstances of the need to make a decision [1],[2].

In our opinion, the psychological parameters of deformed will include: emotional stress syndrome; volitional frustration syndrome (in a hysterically accentuated personality); syndrome of personal asthenia (mental weakness) as a result of a somatic illness that weakens psychological compensatory mechanisms that affect adequate adaptation in the social environment [3].

The concept of psychological “vice of will” - as a basis for the invalidity of a transaction - also includes intellectual (cognitive) personality disorders, which can be caused by various reasons, both situational and reasons of a chronic (intractable) nature.

In our opinion, establishing a “vice of will” is impossible without substantiating the mechanisms of formation of this state. There are internal mechanisms that are related to the syndrome of “emotional stress”. External reasons related to the legal interpretation of events are also important. These reasons are due to the substantive meaning, which differentiates misconception as an essential element of a transaction declared invalid. In this case, the careless fault of the counterparty has a legal connotation. And here the transaction should be qualified as one made under the influence of deception. It is necessary to take into account additional significant criteria determined by the likelihood of the subject of the transaction to be deceived.

One of the means of proving “vice of will” is the examination of the inability of a mentally capable subject to control his actions in the circumstances of a temporary period. A post-mortem forensic psychological examination of a person who committed a legally significant act in the period preceding death is appointed in absentia. In the last decade in the Republic of Uzbekistan, the courts have expressed a fundamental disregard for the forensic psychological direction in the aspect of post-mortem forensic psychological examinations. This circumstance creates a scientific need to introduce specificity and clarity on the competence of a psychologist (as an expert) in civil proceedings, in connection with giving an opinion that may have evidentiary force.

An example of psychological conclusions in forensic psychological examination in civil cases is a comparative analysis of unethically made conclusions that do not fall into the category of orthodox post-mortem research in relation to P.V., who signed a will to strangers before his death without taking into account the interests of his family. Based on the circumstances of the case, it is known that P.V. who lived for 43 years, suffered from hemophilia since childhood, suffered two strokes, one of which occurred in adolescence. Sometime in the period preceding death, due to circumstances, P.V. lived alone and at the same time, for medical reasons, received “morphine” for 16 years. Statement of claim by the son of P.V. it was appealed to annul the will, which the father signed to strangers.

Several post-mortem examinations were carried out in this case, including: forensic psychiatric, complex forensic psychological-psychiatric and purely psychological examinations. Based on the results of a forensic psychiatric examination of P.V. was recognized as “competent” without taking into account the forced anesthesia of the subject. In the psychological and psychiatric examination, the psychologist based his conclusions on the fact that P.V. in the period preceding the transaction, no “addictive behavior” was observed, i.e. behavioral disorders. In accordance with this, the psychologist noted that at the time of signing the will of P.V. “could understand the meaning of his actions and direct them, since he was not subject to the influence of others when taking actions to alienate the apartment after using a solution of morphine hydrochloride.” Medical documentation data indicate that P.V. from the age of 25 suffered from convulsive seizures and, due to a severe form of hemophilia, had complications in the form of hemorrhages in the body tissues and joint cavities. At the same time, P.V. had 1 disability group.

In a post-mortem forensic psychological examination, without taking into account the above-mentioned circumstances, including the diagnosis of “drug addiction (morphine) due to medical use of the drug,” it was concluded that P.V. “I was not under stress”, “I was able to cope with critical situations without disrupting social adaptation”, “I could correlate my actions with the objective requirements of the circumstances of the execution of a will” [4].

A critical analysis of the current situation allows us to emphasize that the expert psychologist does not burden himself with knowledge of the fundamentals of somatopsychology, where any somatic manifestations have their psychological equivalents, despite the everyday human perspective of the problem under consideration. Can a person bleeding from the inside, suffering from a chronic “painful syndrome” due to the consequences of a double stroke, knowing in advance about his doom, be in a state of life and social comfort?

From a scientific point of view, according to psychological forecasts, the ability to “cope with critical situations” presupposes the presence, first of all, of somatic health. If a person is constantly dependent on certain medications that provide him with minimal comfort, then in critical situations this person becomes even more dependent on these same drugs. Coping refers to changing attempts to cope with external and internal demands, which are assessed in critical situations as enhancing a person’s ability to overcome obstacles. An individual's readiness to solve life problems presupposes the likelihood of eliminating the impact of stressors on the individual. In the circumstances of the civil case under study in relation to the subject P.V., suffering from a severe form of “hemophilia”, the question of adaptive (potentiating) capabilities, i.e., the possibilities of coping with a critical situation, both for scientific and human reasons, does not appear relevant.

Psychological analysis of scientific research positions regarding the connection between “pain and psychological state” showed that pain is always associated with anxiety and depression (Von Korff, 1996), which disorganize the ability to adapt in the social environment. Psychophysiological disorders in the form of sleep disturbances, restlessness, anxiety, asthenia, etc., are very often observed in people with the consequences of chronic “pain syndrome” that developed in the studied P.V. with a severe form of hemophilia. According to Fields (1991), depression increases the sensory transmission of pain, resulting in its somatic focusing. The resulting vicious circle leads to the so-called “catastrophization” of self-perception (there is no belief that one can be cured or solve problems), which, in turn, leads to an accentuation of pain. The chronic pain experienced by the doomed P.V. has a clear social function, consisting in the adaptive role of the “pain syndrome,” which confirms that the structure of the subject’s life was socially destroyed.

According to V.I. Bagaev, an increased level of personal and situational anxiety in all age groups indicates not only the distortion of psychological defense mechanisms, but also violations of socio-psychological adaptation, which can serve as a fundamental link against the background of correction and psychological rehabilitation of the patient [5]. Taking into account age categories, patients with hemophilia need to provide psychological, psychotherapeutic and social assistance.

In our opinion, in the psychology of “coping” the subject of a special area of research is the study of the mechanisms of emotional and rational regulation by a person of his behavior. The purpose of the “coping” mechanism under study is to study the optimal interaction of a person with life’s extreme circumstances. For the studied P.D. in this context, the dominant significance

is not the likelihood of optimal interactions with life circumstances, but the need to overcome the painful syndrome associated with dependence on morphine hydrochloride, the dosage of which influenced the feeling of physical conformity of the body, affected by the severity of the manifestations of the disease under the diagnosis of hemophilia.

Thus, a comparative analysis of expert forensic psychological post-mortem reports regarding the studied P.D. leads us to the conclusion that the emotional state of a somatically ill person who has the first disability group for the disease “hemophilia, complicated by medical drug addiction” cannot be diagnosed as a condition that supports the social control of the subject over circumstances of legal significance.

According to our research position and the noted circumstances, the emotional state of P.D. it was necessary to determine taking into account the experience of a “pain syndrome” of a chronic nature in combination with drug addiction (morphine) associated with the medical use of the drug. The conclusion made by an expert psychologist, namely: P.V. “was not under stress”, “was able to cope with critical situations without disrupting social adaptation”, “could correlate his actions with the objective requirements of the circumstances of the will”, is unfounded, i.e., does not correspond to expert psychological competence.

Thus, according to the above, an objective study of the parameters of “emotional response” in aspects of the civil investigation of the Republic of Uzbekistan. is of fundamental importance in the circumstances of both psychiatric and psychological examinations. Moreover, the research context in diagnosing the “human factor” for the types of forensic examinations under consideration is determined by the difference in platforms of competence, the complementarity of which is not intended to introduce disagreement in situations of judicial decision-making, but to represent the scientifically based clarity of expert research, the conclusions from which can be fateful.

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