



## APPROACH AND REPORTING TO FORENSIC PSYCHIATRIC CASES: EXAMPLES OF FORENSIC PSYCHIATRY PRACTICES IN THE WORLD

Adli Psikiyatri Olgularına Yaklaşım ve Raporlama: Dünya'da Adli Psikiyatri Uygulamalarından Örnekler

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### Abstract

Forensic psychiatry is one of the most important subjects of forensic medicine, psychiatry and pediatric psychiatry clinics and requires a multidisciplinary approach. The aim of this study is to examine the issues that physicians should take into consideration in the forensic psychiatric examination. However we have tried to emphasize similar and different aspects of these countries with Turkey by giving general information about forensic psychiatric practice of various countries in this study.

**Keywords:** Assessment of criminal responsibility, Forensic psychiatric examination, Forensic psychiatry practices in the world, Forensic report, Victim examination.

### Öz

Adli psikiyatri; adli tıp, psikiyatri ve çocuk psikiyatri kliniklerinin en önemli uygulama alanlarından biri olup multidisipliner bir yaklaşım gerektirmektedir. Bu çalışmada amaç adli psikiyatri muayenesinde hekimlerin dikkat etmesi gereken hususları ve muayene basamaklarını ele almaktır. Aynı zamanda çeşitli ülkelerin adli psikiyatri uygulamaları hakkında genel bilgi verilerek Türkiye ile benzer ve farklı yanlar vurgulanmaya çalışılmıştır.

**Anahtar Kelimeler:** Ceza ehliyeti değerlendirmesi, Adli psikiyatrik muayene, Dünyada adli psikiyatri uygulamaları, Adli rapor, Mağdur muayenesi.

### Forensic Psychiatry Cases

In the Penal Code, the criminal responsibility assessment of the defendant older than 15 years is tried to determine whether there is a mental illness or limitation during the examination. Unlike the defendants who have completed the age of 18; reduction of punishment is applied to the defendants who have completed the age of 15 but have not completed the age of 18. Children under 12 years of age cannot be prosecuted regardless of the nature of the offense. Children who have completed 12 years of age and have not completed 15 years of age are examined by forensic psychiatric examination to determine whether they have mental disability and the

ability to perceive the legal meaning and consequences of the verb and the ability to direct their behavior. Deaf and mute children who are under 15 years of age cannot be prosecuted according to the Turkish Penal Code, with the idea that physical and psychosocial development in deaf and mute children is 3 years behind compared to other children. In the deaf and mute, that requires the presence of the ability to perceive the legal meaning and consequences of the verb and to direct their behavior in relation to this verb is the age of children who have completed the age of 15 and have not completed the age of 18. According to the TPC, deaf and mute individuals who have completed the age of 18 and have not completed the age of 21 receive

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a punishment reduction. Therefore, the forensic psychiatric examination is more important for deaf and mute 15-18 age group and for other children 12-15 age group. In these age groups, in addition to mental illness, it is necessary to determine whether it has the ability to perceive the legal meaning and consequences of the act committed and to direct its behavior in relation to this act<sup>2</sup>.

In all crimes committed against the person, the TPC shall increase the punishment if the victim is unable to defend himself/herself mentally. The forensic psychiatric examination should examine the victim and determine whether he can defend himself mentally. To determine this, the victim should be determined whether he/she has mental retardation, mood disorder, dementia, psychotic disorder or a psychiatric disorder that disrupts cognition, perception, comprehension and prediction skills. In the TPC, if the victim is mentally unable to defend himself/herself, the punishment is increased. These crimes are; intentional killing, intentional injury, torture and degrading behavior, miscarriage of the pregnant woman, sexual assault, sexual abuse of the child, limiting freedom, theft and looting. However if the victim of the offense of not informing the competent authority is mentally incapable of defending himself/herself, the punishment is increased. In case of intentional killing, retrospective medical documents, case files and statements are examined and decided<sup>3</sup>.

Our laws are to increase the punishment of sexual crimes (sexual intercourse with fraud, sexual abuse, harassment and rape attempts) in which the victim is mentally unable to resist. TPC defines a new victim group here; Children who have completed the age of 15 but have not developed the ability to perceive the legal meaning and consequences of the act. In

assessing the ability of the child in this age group (15-18 years) to perceive the legal meaning and consequences of the act; They should be evaluated like criminal responsibility cases in children aged 12-15 years and whether they have adequate mental development<sup>3</sup>.

In TPC, sexual offenses and offenses of abortion of a woman without her consent, the punishment increases if the mental health of the victim deteriorates. Forensic psychiatric examination of these offenses is required to determine whether the mental health of the victim is impaired or not<sup>3,4</sup>. In TPC before 2014, sexual offenses and offenses of abortion of a woman without her consent, the punishment would have been increased if the mental health of the victim deteriorated. Forensic psychiatric examination of these offenses was required to determine whether the mental health had deteriorated. In 2014, 10 years after the enactment of Turkish Criminal Code, with the Law No.6545 a number of changes were made in the provisions related to sexual crimes. In the changes, firstly, the structure of the Law No. 6545 and its approach to increasing punishments are emphasized. The new hypothesis which is added to the crime of sexual assault, the consequences of the abrogation of deterioration of body and mental health from the aggravating cause of the sexual assault offense, the new aggravating causes added to this crime, the extended conditional release period in the offense of sexual assault, the consequences of treatment regulation and the new aggravating causes added to the crime of sexual harassment are the subjects which are examined. Consequently, all provisions related to sexual crimes are more or less affected by this change<sup>4</sup>.

In TPC, if the defendant has mental illness the criminal responsibility may be restricted or

eliminated. A disease that abolishes a criminal responsibility for one offense may not have an impact on a criminal responsibility for another offense. For example, in alcohol and substance use disorder, stealing the addicted substance to alleviate deprivation may restrict or eliminate criminal responsibility but criminal responsibility in a non-addictive criminal act is complete<sup>5</sup>.

Another issue concerning forensic psychiatry in the TPC is the crimes committed by alcohol and drug addicts. The effects of alcohol and substance addiction on criminal responsibility and the determination of use or dependence are the subjects of forensic psychiatric examination. No criminal responsibility for crimes committed under the influence of alcohol and substance taken involuntarily. Alcohol and drug addiction; may cause alcohol or drug-related mood disorder (mania), psychotic disorder and amnesia. In these cases, they do not have criminal responsibilities because their ability to evaluate the truth and make judgments is impaired. Another forensic psychiatry issue in alcohol and drug addiction is the use of alcohol and drug and the determination of addiction. Determining whether guardianship is required, reporting alcohol dependence in cases of domestic violence and probation are some of the situations that may be requested<sup>6</sup>.

The subjects that require forensic psychiatric examination in Civil Code are;

- a. situations that require restriction; a guardian or legal counsel may be assigned to persons in case of mental illness, old age, severe physical illness or determination of the person's dependence on alcohol or substance which may lead to mismanagement of his property or endanger the safety of others
- b. determination of the validity of a legal transaction in the past (power of attorney,

testament, sale of goods); mental illness or weakness, detection of situations that eliminate consciousness and will at the time of the event

- c. Determination of marriage adequacy; those who do not have the power to discriminate cannot marry, limited persons cannot marry without the permission of their legal representative, mentally ill patients can marry if documented by the official medical board report

- d. Invalidity of marriage; one of the spouses is mentally ill enough to prevent marriage, one of the spouses lacks the power to discern for a permanent reason during marriage<sup>7</sup>.

### **Forensic Psychiatric Examination and Reporting**

In all forensic cases, psychiatric examination should be performed and psychiatric symptoms should be taken into consideration. In forensic psychiatric examination, patient's privacy should be given importance and interview environment should be selected considering this issue. In addition to verbal communication, the body language of the patient should be paid attention, the interviewer should be interested in the patient, have empathy, questions should be easy to understand and open-ended. During the interview, the patient and his/her relatives should be informed and cooperated to ensure correct information flow and treatment compliance while trying to diagnose and obtain information about the event<sup>8</sup>.

Forensic psychiatric evaluation should determine whether the patient has a psychiatric illness, and if possible, medical examinations should be performed and the medical history of the person should be used. The mental and physical illnesses of the person should be taken into consideration, if they use alcohol and substance, the frequency of use should be evaluated and the previous crime history, if any, should be

examined. If necessary, intelligence level should be measured by IQ assessment with psychological tests and neuropsychological tests should be applied<sup>7</sup>.

In order to reveal the mental state of the person at the time of the incident, the statements of the defendant and witness must be read in the case or investigation file; the manner in which the incident occurred and the change in the attitudes and behaviors of the defendant after the event should be examined<sup>5</sup>.

After determining the mental state of the person at the time of the event, the person is examined for a psychiatric illness. If psychiatric illness is present, it is checked whether it is active at the time of the event. If it is active at the time of the crime, criminal responsibility assessment is made by looking at the effect of the crime committed<sup>5</sup>.

a. If no mental illness is detected in the person, it is decided that the person's criminal responsibility is complete.

b. If a psychiatric disorder is detected in this Person, it is evaluated whether it is active at the time of the event. If this Person has a psychiatric illness which is not active at the time of the event and therefore has no effect on the crime, the criminal responsibility is evaluated fully.

c. If it is determined that the disease detected in the person is active at the time of the event, it is examined whether the detected disease has an effect on the occurrence of the event. If the detected disease does not have an effect on the crime committed, the responsibility of the crime is fully evaluated.

d. If it is determined that the disease which is found to be active at the time of the event is less effective on the occurrence of the event, it is decided that the criminal responsibility is reduced.

e. It is concluded that there is no criminal responsibility in cases where active psychiatric illness detected in the event is significant or completely effective in the occurrence of the event<sup>6</sup>.

In the examination, each medical condition should be evaluated separately for each action. For example, a person diagnosed with kleptomania, the criminal responsibility for small objects worthless, which he has stolen and does not earn financially, is reduced or absent. If the same person is involved in a violent act, criminal responsibility is complete<sup>5</sup>.

Changes in diseases over time should be taken into consideration during the examination. Even in cases where there has been a report on criminal responsibility for the same offense in the past, the course of the disease should be evaluated again in the event of a crime. For example, a person diagnosed with bipolar disorder can be determined to be in full good condition at the time of the crime and the criminal responsibility can be fully evaluated. If the same person is found to be in partial well-being or in the period of active illness on the date of the offense, it may be decided that criminal responsibility is restricted or not. Therefore, it should not be decided based on medical diagnosis without examination of the person. The person should be evaluated with the medical condition in the event of a crime. The statements in the case or investigation file and, if available, the person's medical records should be used<sup>5</sup>.

When assessing criminal responsibility in children, it should be examined whether psychosocial and cognitive development (Does identity show characteristics of period of development? Does she/he know abstract concepts? Is there impulse control? Are their comprehension, judgment and decision-making

capabilities sufficiently developed?), value judgments and moral development, mental illness, or any other disorder that may affect cognitive abilities<sup>7</sup>.

Forensic psychiatric examination begins with the evaluation of the person's external appearance. The evaluation of the external appearance gives an idea about self-care, attention-grabbing behaviors and suitability of clothing to sociocultural level. Interview gives to interviewer an idea of tone of voice, speech content, ability to use abstract concepts and vocabulary. Cognitive abilities (consciousness, orientation, memory, attention, perception, intelligence level, abstract thinking ability, judgment, ability to evaluate reality) should be assessed during the interview. Consciousness can be defined as the awareness of the person, herself/himself and her environment. When evaluating the orientation, questions such as which day it is, where it is examined, can be asked. When evaluating the attention, it is checked whether the person is able to maintain his/her attention on a subject and whether or not he/she is forced to pass from subject to subject. When evaluating the ability to think abstractly, one can ask proverbs and idioms and ask if they know what they mean. When evaluating the ability to judge, it is examined whether the person can establish a cause-effect relationship and distinguish between right and wrong. During the examination, the subjects' ranking, vocabulary, judgment and evaluation skills provide information about the person's level of intelligence<sup>9</sup>.

Another condition that should be evaluated in forensic psychiatric examination is the affect and mood of the person. The observable expression of the person is described as affect. Appropriate affect, the affect of the patient's accompanying thoughts and expressions are found to be

appropriate; inappropriate affect, affect being different from the patient's thoughts and expressions; Blunt Affect is defined as a severe decrease in the intensity of projected affect. Mood is the emotion that the patient expresses in subjective terms and that can be observed from the outside and prevails for a certain period of time. Depression, exuberance, euthymic, anger, euphoria and depression are various mood expressions<sup>9</sup>.

In forensic psychiatric cases, the investigation or case file submitted should be examined and the report on the incident in which the incident took place should be carefully evaluated. In order to determine the medical condition of the person on the date of the incident, the statements on the date of the incident should be taken into consideration and the medical document of that period should be evaluated together<sup>4</sup>.

The forensic report should include the history of the incident, medical documents, examination findings and conclusion sections separately. In the conclusion part of the report, the opinion should be clearly stated and if a disease is found related to the incident asked by the judicial authority, it should be mentioned in the conclusion section. If a disease has been identified that occurred at the time of the incident or that did not affect the incident asked by the judicial authority, it should also be included in the conclusion of the report. The report should avoid legal and medical terminology and use as much everyday language as possible. If the report cannot be sent within the required time, additional time should be requested by informing the relevant authority<sup>4</sup>.

### **Forensic Psychiatry Practices in the World**

In 1990, an international conference organized by the Pan American Health Organization in

Caracas introduced a new model to be followed in the treatment process of mentally ill patients, which was adopted by many international health organizations. This new model focuses on five items: 1. Distancing from the centralization of authority in distributing Treatment 2. Adopting community-centered care instead of hospital-centered care 3. Active participation of family and community in the treatment process 4. Integration of non-specialist health personnel into the treatment process 5. Preventive measures and health improvement works. Furthermore, in 1991, the United Nations General Assembly adopted a declaration of principles consisting of 25 articles for the protection of mentally ill persons and the improvement of mental health services. This declaration is important in terms of representing the consensus of nations in structuring mental health norms. With this new approach, the reactive pattern characterized by hospitalization in psychiatric hospitals has been removed and the process of transition to a proactive system integrated into the general health system has begun<sup>10</sup>.

There are similarities and differences in forensic psychiatry practices around the world. Professional and ethical difficulties in conflicts of interest between individuals and society in forensic psychiatry practices are common to all over the world. Another common point is that social control institutions have to solve all violent problems of patients. The different points are that in many countries, forensic psychiatry is not recognized as a separate area of expertise, and in countries with forensic psychiatry specialty education, the duration and curricula of the curriculum vary. In addition, the content and support services offered in the field of forensic psychiatry vary from country to country<sup>10</sup>.

Latin American countries have adopted the Roman law tradition. In contrast to the Anglo-Saxon model, cognitive and motivational aspects are taken into consideration in assessing criminal responsibility. Therefore, criminal responsibility is determined by evaluating the capacity to perceive the legal meaning of the act, as well as the ability to direct its behavior (will). However, even today, most of the expert assessments in Latin America are carried out by non-specialists in forensic psychiatry. Although studies have identified a link between the public health system and the forensic psychiatric system in Argentina, this is not the case in other Latin American countries. The existing relationship between health and legal systems is generally unsatisfactory because both systems operate in an isolated and non-integrated manner<sup>10</sup>.

In the United States, where common law applies, there is controversy regarding the inclusion or exclusion of the will element in judicial psychiatric assessment. Although the US state and federal laws are generally similar in structure, they differ significantly in practice. Therefore, forensic psychiatric assessment can vary greatly from region to region<sup>10</sup>.

Australia is a federation of six states and two regions. In principle, the country applies the legal tradition of common law. However, each of the eight states and territories has its own mental health legislation, criminal laws and public health system. Therefore, despite efforts to achieve legal homogeneity, there are different forensic psychiatric systems. For example, in South Australia, the element of will is taken into account in forensic psychiatric assessment and is not considered in Victoria or the Australian Capital Territory. However, interestingly and inconsistently, although the will element of forensic psychiatric assessment in South

Australia is taken into account, personality disorders are not considered as conditions preventing criminal responsibility even if they are severe<sup>10</sup>.

Many European countries have provisions that reduce criminal responsibility in appropriate cases (schizophrenia and related psychoses, organic psychoses, mental disability, personality disorder, substance abuse). In the UK, Ireland and Scandinavian countries, there is an approach in criminal responsibility cases that tries to answer whether the offender is mentally ill and needs treatment rather than criminal responsibility. In the Netherlands there is a well-established system known as Terbeschikkingstelling or 'TBR'. In this system, treatment measures are applied together with punishment to the criminals who suffer from severe personality disorder, who are considered to be a serious risk to others and who have limited criminal responsibility. Provisions for involuntary detention in offenses related to substance abuse (self-harm, harm to others) are only available in German and Austrian law<sup>11</sup>.

Forensic psychiatry approach in Turkey, Germany, is similar to many European countries such as the Netherlands and Austria<sup>1,3-6</sup>.

In 1976, Gunn described two systems involving the treatment processes of forensic psychiatric patients. In the integrated care system, once the offender disease has stabilized, it is transferred from forensic care units to clinical psychiatrists and treated. In parallel care system, after being discharged from safe centers, treatment continues in forensic outpatient care centers. Currently, Germany offers mostly parallel care system, while in most European countries both systems are mixed<sup>11</sup>.

There are significant differences in forensic psychiatry education standards across Europe. Only in the UK, Ireland, Sweden and Germany as a separate specialist training. There is no forensic psychiatric specialist training in the Netherlands. In Denmark, forensic psychiatry training is provided, but no specialization certificate. Forensic psychiatry training is developed in Russia and Bulgaria but is not sufficient in other Eastern European countries<sup>11</sup>.

It is the lack of professional resources that best characterize the situation in Africa. Most professionals in the field of forensic psychiatry cannot receive appropriate training before working in this field. Most psychiatric hospitals in Africa are located in the economic ghettos of cities and forensic facilities are located within these hospitals. Although located in hospitals, these units are practically an extension of prisons. In addition to the lack of appropriate facilities, most African countries have an average of one psychiatrist per million people. Most African countries do not have mental health legislation. It is also a forensic problem that most people in Nigeria seek sorcerer's help to solve their physical and mental problems. Because the testimony of these magicians is not accepted in court. Another challenge in Nigeria is that although 70% of Nigerians do not speak English, the penal code is written in English. In various African regions, such as Nigeria, suicide attempts are considered a crime. With the exception of South Africa, most African legal systems regard homosexuality as madness or crime<sup>9</sup>.

Most Arab countries do not have specific mental health legislation. In Islamic law, only a Muslim physician can give advice to a court about a Muslim patient. However, there is no single satisfactory description of the mental health services, because there are more than 50 Islamic

states. By western standards, such treatment resources are scarce in the Islamic states. On the other hand, those who do not have the requisites of reason and power to distinguish between good and evil to use civil rights are considered legally incapable of choosing. Nevertheless, since they also have legal needs, Islamic jurists acknowledged that their guardians could carry out legal affairs on behalf of these persons who are unqualified due to some mental illnesses or as such. As in other legal systems, Islamic law considers freedom of expression as a right and brings some limitations to it by taking into consideration requirements of individuals and society<sup>9,12</sup>.

In Japan, mentally ill individuals and their families experience a great exclusion in society. Such patients have difficulty in finding accommodation and employment. Patients have no right to a judicial hearing. Even the informal hearing provided may be limited, or eliminated in the The Psychiatric Review Board's discretion. However, the Psychiatric Review Board is not independent. It is appointed by the prefectural governor and its functional units, the review panels, are controlled by Designated Physicians judging, in most cases, decisions or actions taken by other Designated Physicians. There are no appeal procedures and no access to the courts specifically provided within the Law's system of safeguards. Certain areas of concern, such as the right to refuse certain types of medical treatment, are not addressed in the Law at all. As a result, Japan has received many criticisms of human rights violations against psychiatric patients<sup>9</sup>.

In India, forensic psychiatry law can be called beautiful in theory, but has been lacking in practice. Indian mental health law is an ideological plan rather than reality due to due to insufficient mental health infrastructure. New

services are being produced, which are produced by an increasing public awareness of the media's interest and mental illness. Voluntary organizations providing crisis response, consultancy and rehabilitation services are growing in urban areas. Mental health has not been adequately addressed, as the Government of India initiated an ambitious national health policy that envisions "health for all by 2000". The National Mental Health Program has made a number of recommendations to ensure that the mental health service is explicitly included. One of the most important elements in the provision of health services in India is the primary health center. The biggest driving force of the National Mental Health Program was to provide mental health services in these centers and centers. However, indigenous or traditional practitioners continue to practice throughout the country. The two main forms of traditional medicine are the herbal medical practice and with the aryuvedic ("science of life") system that emphasizes a holistic approach that combines mental, physical and spiritual well-being. Hence, since there are no more consistent and determined initiatives throughout the country, the desired success has not been achieved. Despite all these attempts, the results of the study showed that most people who need a psychiatric ward meet with traditional healers, although many of them have chronic problems, they do not receive services from general hospital units<sup>9,13</sup>.

## CONCLUSION

The forensic psychiatric cases and the points sought in the examination vary considerably. Therefore, it requires a good standardized education and experience. In addition to experienced physicians, psychologists, social workers, forensic psychiatric nurses are among the components of forensic psychiatry services.

Countries should improve the training and service conditions of physicians and other support staff to improve forensic psychiatric services. It is not possible to standardized forensic psychiatric examination, treatment phase and post-criminal services due to different legal practices in the world, the difference in the number of qualified personnel and the educational conditions. The aim of the forensic psychiatry services should be to make the right decision by considering the rights of both the individual and the society and to provide the necessary social support and treatment support.

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