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FORENSIC PSYCHIATRY PRACTICE IN TURKEY

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Review

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Abstract

Forensic medicine is a multidisciplinary science, with forensic psychiatry comprising the most important part of the field. Furthermore, in many countries forensic psychiatry is also practiced in non-medical disciplines, such as forensic sciences framework. In Turkey, there are special fields of practice in forensic medicine and forensic psychiatry clinic as medical science. In this review, we examined the circumstances in which the application of forensic psychiatry is necessary according to the Turkish Penal Code, Turkish Civil Law and the Turkish Code of Obligations. In addition, we also aim to provide an overview of legislation and law related to different aspects of forensic psychiatry in Turkey.

Key Words: Forensic psychiatry, Forensic medicine, Medicine, Medicine and law, Turkish laws.

Özet

Adli Tıp multidisipliner bir bilim alanı olup, adli psikiyatri bu alanın en önemli kısmıdır. Adli psikiyatri, birçok ülkede adli bilimler çerçevesinde olduğu gibi tıp dışı disiplinlerde de uygulanmaktadır. Türkiye'de ise, tıp bilimi içerisinde Adli Tıp Kliniği ve Adli Psikiyatri Kliniğinde özel uygulama alanları bulunmaktadır. Bu derlememizde, Adli Psikiyatri'nin Türk Ceza Kanunu, Türk Medeni Kanunu ve Türk Borçlar Kanunu için gerekli olduğu konuları inceledik. Ayrıca, Türkiye'deki adli psikiyatri alanına bağlı olarak farklılıklara ilişkin mevzuat ve yasaların da tanıtılmasını amaçlamaktayız.

Anahtar Kelimeler: Adli psikiyatri, Adli tıp, Tıp ve yasa, Tıp, Türk kanunları.

1. Introduction

Forensic psychiatry is a discipline that encompasses forensic medicine, psychiatry, child and adolescent psychiatry and neurology with the aim of helping judicial authorities (Biçer et al., 2011).

The need for laws governing for forensic psychiatry arises when the proceedings are carried out according to Criminal Law (under the Turkish Penal Code), Civil Law (under Turkish Civil Law) and the Turkish Law of Obligations (Soysal & Yeşilbursa, 2009).

Criminal liability refers to the ability to protect oneself under the Turkish Penal Code. The capacity to act, the validity of marriages, and circumstances regarding the right to divorce and change gender fall under Turkish Civil Law. Finally, the effect of mental trauma on disability falls under the Turkish Law of Obligations (Soysal & Yeşilbursa, 2009).

1.1. Forensic Psychiatry in Turkey in the Context of the Penal Code

According to modern law, the main purpose of punishment is to rehabilitate, to make an example of the offender and to protect society from criminals. For this reason, it is meaning less to impose punishment on people who will not benefit from it, unless it is for the purpose of protecting society.

The criteria for criminal responsibility are as follows: The person must be mature in terms of age, mentally and physically, the person had the ability to control his or her behavior at the time of the crime act and the person is able to comprehend the meaning and consequences of the act committed (Gündüz, 2019).

1.1.1. Age and criminal liability (Article 31)

According to the Turkish Penal Code, children under the age of 12 cannot be held criminally responsible for their actions, though child-specific conserve measures may apply (Gündüz, 2019).

For children who were 12 or older but younger than 15 during the time the act was committed, it is necessary to determine whether they had the ability to perceive the legal understanding and consequences of the offense and had the capacity to control their behavior. These criteria indicate whether the child is or is not held criminally responsible for the offense. It is stated in the law that an investigation by social services is required to determine this responsibility (Gündüz, 2019).

Reduced penalties are imposed on children who are determined to be criminally responsible. Security measures can be applied if there is no criminal responsibility was established (Gündüz, 2019).

The Turkish penal code recognizes that the ability to perceive the legal meaning and consequences of the offense and to control behavior is enhanced in children over the age of 15. The exception to this is if the child suffers from intellectual disability or psychiatric illness. Penalties for such individuals are reduced. The reason for this is that although they may possess some understanding of the legal aspects and consequences of the act, it does not rise to the same level of understanding as an adult's (Gündüz, 2019).

1.1.2. Deafness and dumbness (Article 33)

According to Article 33 of the Turkish Penal Code, the minimum age of criminal responsibility is 15 years old in hearing-and speech-impaired individuals whose social development is considered to be limited in comparison with their peers (Öncü & Sercan, 2018).

For hearing-and speech-impaired individuals aged 15-18, the ability to perceive the legal meaning and consequences of the offense, and to direct their behavior is questioned; for those aged between 18-21, reduced penalties are imposed (Öncü & Sercan, 2018).

In cases where the criteria to be held criminally responsible are met, full criminal liability will be imposed after the age of 21 (Öncü & Sercan, 2018).

1.1.3. Suspension of criminal responsibility and reduced criminal liability (Article 32)

1.1.3.1. Article 32/1 of the Turkish Penal Code relates to situations in which the criteria for criminal responsibility have not been met

In cases of severe psychotic disorders, schizophrenia, paranoid disorders, organic brain syndrome, dementia and severe intellectual disability such as imbecility (high-grade) and idiocy, the person may not be held criminal responsible (This should be decided not only by clinical diagnosis but also by examining the person's consciousness and freedom of movement at the time of the crime) (Biçer et al., 2011).

In terms of community safety, the person will be kept and treated in a high-security health care institution (Article 57). If the person is able to live independently without posing any danger to society or him or herself, he or she will be released by the court (Biçer et al., 2011).

1.1.3.2. Reduced criminal liability (Article 32/2)

In some cases, the person's criminal responsibility is reduced; Examples include cases involving mild psychoses, severe neuroses, severe personality disorders, severe stress reactions, low grade intellectual disability such as imbecility (border-line). These persons will be subject to a penalty reduction (Article 32/2) (Öncü & Sercan, 2018).

1.1.3.3. Temporary suspension of criminal liability (Article 34)

In some temporary medical circumstances, a person's criminal liability may be temporarily suspended. This includes, for example, cases of carbondioxide intoxication, high fever, epileptic seizures, uremia, diabetic coma and manic-depressive episodes of bipolar disease (Gündüz, 2019).

1.1.4. Forensic psychiatric aspects of alcohol and substance dependence (Criminal liability of alcohol and substance dependence)

People who use alcohol or substance voluntarily have full criminal responsibility in their criminal activities. On the other hand, if alcohol or substances are used with threat or coercion or although they are used voluntarily, they do not have criminal responsibility in case of psychosis, mania and dementia. The criteria for criminal responsibility are not met (Öncü & Sercan, 2018).

Criminal responsibility for offenses committed to obtain substance to eliminate abstinence in drug addicts is reduced or suspended (Öncü & Sercan, 2018).

1.1.5. Crimes against those who cannot defend themselves spiritually and physically

The Turkish Penal Code provides for an increase in the penalties for crimes committed against persons who cannot defend themselves mentally and physically. So, whether a person can defend himself in terms of physical and mental health is one of the most frequently asked questions of the forensic psychiatrist (Oral, 2011).

1.1.6. Effect of trauma on mental health

In criminal law, the increase in punishment is mentioned in traumatic mental disorders. In such cases; The relationship between injury and mental disorder should be investigated between

causality, clinical condition and functionality of the patient, and how long the mental exposure lasts (Oral, 2011).

1.2. Forensic Psychiatry in Turkey in the Context of the Civil Law

In some cases, the forensic psychiatrist may be required to report on a person's capacity to act. Examples for the cases are senility, addiction, inexperience, drafting a testament, recognition of majority, making a donation, marriage, purchase and sale, adoption etc. (Gündüz, 2019).

Restrictive measures:

Measures taken in case the person is deemed to have no capacity to act. These measures include the appointment of a guardian or the appointment of legal counsel (Gündüz, 2019).

Situations requiring restriction:

1) Mental diseases and mental weakness

2) Senility

3) Severe physical illness

4) Ignorance and inexperience

5) In cases of alcohol and drug addiction, such as putting oneself and his / her family in a difficult situation, a person's capacity to act is completely or partially suspended (Gündüz, 2019).

1.2.1. Legal capacity

1.2.1.1. Turkish Civil Law (Article 405)

Any adult who is unable to work due to mental illness or mental weakness, or who needs constant help to protect and care for his/her or endangers the safety of others is restricted (Gündüz, 2019).

1.2.1.2. Turkish Civil Law (Article 406)

Any extravagance, alcohol or drug addiction, poor lifestyle, or mismanagement of property leads to the danger of inflicting on himself/herself or his/her family into poverty and therefore in need of constant protection and care, or threatening the safety of others (Gündüz, 2019).

1.2.1.3. Turkish Civil Law (Article 407)

Any adult who is sentenced to one year or more of freedom-binding punishment is restricted (Gündüz, 2019).

1.2.1.4. Turkish Civil Law (Article 408)

Any adult who proves that he cannot properly manage his/her work due to his old age, disability, inexperience or severe illness may require restraint (Gündüz, 2019).

1.2.1.5. Turkish Civil Law (Article 409)

The restriction can only be decided upon the official medical board report. The judge may listen to the person who is required to be restrained, taking into account the board's report, before making a decision. Addicts of alcohol and substance and persons restricted by themselves cannot be restricted without rest. According to the report of the institution, it decide whether or not those who are restricted due to mental illness or weakness can be listened (Gündüz, 2019).

1.2.2. Marriage and divorce

Man or woman cannot marry unless they reach the age of seventeen (Soysal & Yeşilbursa, 2009).

However, the judge may allow the marriage of a man or woman who has reached the age of sixteen in exceptional circumstances and for a very important reason. Whenever possible, the parents and guardian are rested before the decision (Article 124). In the event that the person has reached the age of 16 but has not attained the age of 17, the court may ask the forensic psychiatrist whether he or she is spiritually prepared to marry and has the ability to appeal (Soysal & Yeşilbursa, 2009).

Mental disordement patients cannot marry unless the official medical board reports that there is no health problem that prevents marriage (Article 133) (Soysal & Yeşilbursa, 2009).

If a spouse turns out to be mental disordement during marriage, marriage is considered invalid (Soysal & Yeşilbursa, 2009).

Mental disordement may also develop after marriage. If marriage becomes unbearable or if the official health committee reports that the disease is not cureable (Article 165) partner is given the right to divorce (Soysal & Yeşilbursa, 2009).

1.2.3. Gender change

It is regulated under article 40 of the Turkish Civil Law. According to this provision; a person who wishes to change gender may apply to the court personally and request a change of gender.

In order to allow sex change in the face of this request; that the claimant is over 18 years of age, is not married, is transsexual and has a mental health imperative and is permanently deprived of reproductive ability by documenting a formal medical board report from an training and research hospital (Soysal & Yeşilbursa 2009).

1.3. Forensic Psychiatry in Turkey in the Context of the Law of Obligations

Article 49 of the Turkish Law of Obligations provides the general principle for indemnification under Turkish law and states that “*Whoever damages someone else with an unlawful and culpable act is obligated to compensate that damage*”. In accordance with article 49, while determining the compensation paid to the victims who face an unjust act and who are disabled, mental trauma is also considered in determining the rate of disability (Eren, 2019).

2. Materials and Methods

In order for the physician to prepare a forensic psychiatry report of an event, he or she must have a command of the legal aspect of the situation, in addition to the medical information.

Based on this objectives of this review, various clinical fields have worked our writers experiences about the practice and legislation of forensic psychiatry in Turkey and forensic books from was prepared from both clinical current practice guidelines.

3. Conclusions and Recommendations

For the fair decisions, it is important that the medical and legal practitioners are adequately equipped for forensic psychiatry. In addition, it would be beneficial for all citizens to be aware of the laws and their rights.

As a result, during or after medical specialty education, basic legal knowledge is needed, as well as a standardized forensic psychiatry education.

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