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Psychological Expertise – A New Occurance

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Abstract: The Romanian forensic legislation is currently one of the most coherent within the European Union. There are, however, issues where regulations have changed and Law 271/2004 no longer responds to all challenges: new RCA law no. 132/2017, provides some unsuspecting issues in forensic legislation. Thus, there are no general criteria for the unitary evaluation of physical injury, and the major problems of mental/psychological injury assessment lie primarily in the lack of ways to confirm on its forensic criteria or to quantify its gravity. Changing the current legislation, introducing a specialized criterion which combine the principles of forensic activity and psychological assessment, is a priority in the field of compensation for victims of aggression and road traffic accidents. Of particular interest would be a scientific evaluation of the psychological damage caused by medical malpractice, even if the courts have customary assumed the role of fixing the amounts in question.

Keywords: psychological expertise; psychological injury assessment; civil liability for psychic trauma

Introduction

WHO defines health as being?

Health is a fully favored state both physically, mentally and socially, and not just the absence of illness or infirmities (1946) and also “the capacity to lead a productive social and economic life.”³

The Romanian forensic legislation is currently one of the most coherent within the European Union. There are, however, issues where the regulations have changed and Law 271/2004, which regulates the forensic activity, no longer satisfies all the requests: the new law on compulsory motor third party liability insurance (RCA), no. 132/2017, provides some unanswerable issues in forensic legislation:

„Art. 22 – Determination of damage [...]

(5) Amicable compensation is established on the basis of the following general assessment criteria:[...]

e) the score for suffering caused by injury to bodily integrity or human health includes only physical injury; for injuries related to psychological trauma, the injured person can bring documents to prove them.

(6) Establishment of legal remedy is based on medical, forensic, psychological and statistical evidence.”

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³ <https://ro.wikipedia.org/wiki/S%C4%83n%C4%83tate>.

It is noted that in order to allow the courts to value the damages they will grant, in order to prove the gravity of the damage, “the injured person may bring documents in their proof”¹, but the provisions of the law in question do not specify the state of the respective documents.

In general, the forensic activity in Romania is the one that responds to the court's demands regarding all aspects related to the state of health of the persons, especially when the damage was caused by a circumstance with criminal implications. From the practice of the courts we have faced in the last 3 years, there have been two tendencies: the traditionalist, in which the psychological evaluation was sent to the forensic physician for the purpose of being introduced and taken into account in forensic expertise, and the modern one, in which the court was asked directly by the psychologist to draw up a forensic expertise. In addition to this situation, the psychologist is also asked to draw up an out-of-court expertise, meaning that the expertise is not requested by the court but by the injured party, which then presents the document either to the forensic doctor or to the court.

Regarding the legal framework for the development of psychological expertise, it is incompletely defined. Thus, a general legislative framework is given by Articles 330-340 of the Code of Civil Procedure, which generally define the way in which civil law expertise is developed. More specifically, there has been in Romania since 2016, the Institute of Judicial Psychology, which periodically publishes the on-line “Board of Psychological Experts” and organizes courses in the field of judicial psychological expertise.² However, this Institute and its decisions appear not to be recognized by the College of Psychologists, which states that “judicial psychological expertise is not legally regulated. There are some legislative provisions in Art. 330, within the Code of Civil Procedure”.³

According to the Decision of the College of Psychologists in Romania regarding the regulation of the psychological expertise of judiciary and extrajudicial - no. 4 of November 24, 2017, “a Psychological Expert Registry will be set up, which will include psychologists competent to conduct judicial and extrajudicial expertise”.⁴ Until the date of its completion, judicial and extrajudicial expertise may be performed by specialist and principal psychologists, in compliance with the other professional regulations in force, in accordance with the same judgment. Such a judgment, even if provisionally, gives the right of psychologists and principals to conduct judicial and extrajudicial psychological expertise, recognizes that “in order to acquire the status of judicial expert, the practitioner with a right to free practice” must meet certain minimum conditions (Romanian citizenship, practice capacity, professional degree, etc.), but also certain specific conditions, such as having the “professional competence necessary for the activity of psychological expertise”. The same decision stipulates that, in order to acquire the status of psychologist expert, the criteria of competence and the way of their verification will be determined by the specialized commissions, which within 6 months from 24.11.2017 should have elaborated “guidelines for good practice in the field of judicial and extrajudicial psychological expertise”. At present, these guides still do not exist, and the courts are still addressing free practice psychologists from the list posted on the internet for the purpose of drawing up psychological expertise.

There are several situations in which psychologists can receive requests to perform specialized expertise:

¹ <https://lege5.ro/Gratuit/ge3dgmrvha2q/legea-nr-132-2017-privind-asigurarea-obligatorie-de-raspundere-civila-auto-pentru-prejudicii-produse-tertilor-prin-accidente-de-vehicule-si-tramvaie>.

² <https://psihologiejudiciara.ro/tabloul-expertilor-psihologi/>.

³ <https://www.alegericpr.ro/index.php?view=article&id=3898:hotarare-privind-reglementarea-activitatii-de-expertiza-psihologica-judiciara-si-extrajudiciara-nr-4-din-24-noiembrie-2017&catid=163>.

⁴ <https://www.alegericpr.ro/index.php?view=article&id=3898:hotarare-privind-reglementarea-activitatii-de-expertiza-psihologica-judiciara-si-extrajudiciara-nr-4-din-24-noiembrie-2017&catid=163>.

1. Extrajudicial expertise - is conducted at the direct request of the party involved. The person who considers himself/herself to be prejudiced presents himself/herself to the psychologist for evaluation and obtains a document called "Psychological Expertise", which will be presented directly to the court, or will be presented to the forensic physician, together with the medical documents attesting to the trauma suffered and its consequences. The forensic physician may include this document in the text of the expertise he may do or not, if interpreting "stricto sensu" the Law 459/2001, which states that when drawing up the forensic papers it has the obligation to take into account "the certificates, medical reports and clinical observation sheets issued by the health units of the Ministry of Health and Family or accredited by it".¹
2. Judicial expertise, conducted at the request of the court, which is sent directly to the court and will be interpreted by the judge.

In both situations, the injured person has the right to choose his or her psychologist to whom he or she will address, and this may be from the private or the state system.

The problems encountered in judicial and forensic practice lie in the fact that there are no indicative scales for assessing the injury resulting from the psychiatric trauma.

In legal medicine there are objective criteria that measure the severity of traumatic injuries, among them the criterion of days of health care, life-threatening, post-traumatic abortion, infirmity, or serious and permanent esthetic damage. Based on these criteria, the severity of the lesions is evaluated according to certain tables and standard definitions. The purpose of assessing the severity of these injuries on the basis of these criteria lies in the correct legal classification, the individualization of penalties and the assessment of the amount of civil damages. Between criminal terminology and forensic terminology there is a harmonization in the sense that the above-mentioned terms are common to both the Penal Code articles and to the theory and forensic practice. Indeed, there is no real quantification of the amounts awarded as damages, although Law 342/2017 of the RCA has tried this, in Article 22, which speaks of "traumatic points" that should be assessed on the basis of on a scale elaborated by the National Mina Minovici Institute of Forensic Medicine in Bucharest, and "the value of a traumatic point is equal to twice the minimum gross basic salary in the country", according to the same law. This scale, on 15.04.2019, had not yet been requested or elaborated by anyone.

Moreover, the psychological expert evaluation, beyond its quasi-exhaustive character, does not have a scale of quantitative appreciation of the damage generated by the physical trauma suffered or by the psychic trauma that is emerging as an event with lesion consequences.

In order to evaluate the phenomenon, we took into account 12 forensic examinations carried out within the Bristrita-Nasaud County Forensic Service during 2018, which had also among other objectives the assessment of the injury related to the psychological trauma generated by the vulnerable event. The 12 experiments were carried out by three legislators, each expert having as author only one forensic doctor. In all the selected expertise there was a psychological evaluation, the amplitude of which is of at least 2 pages, and maximum 8 pages. Out of the total psychological expertise performed, 10 were drawn up in private psychological offices - 4 being out-of-court, and 6 - judicial, and 2 in the state health system, one of them being judiciary, the other being extrajudicial. In 4 out of the total of 12 forensic expertise, the psychological evaluation was quoted, in the remaining 8 it was not even quoted, not taken into account, based on the Order for the Approval of the Procedural Norms on the Examination, the Findings and Other medical-legal works no. 1.134/C/25 05.2000 of the Ministry of Justice and no. 255/04.04.2000

¹ <https://www.medlegtm.ro/organizare.pdf>.

of the Ministry of Health and Family, which, at art. 10 provides for documents that forensic physicians can take into account when drawing up forensic papers: “certificates, medical reports and observation sheets”.¹ Of the 12 sets of conclusions of the 12 forensic expertise reports, all were based on medical and forensic data, and no set of conclusions were based on any examination report or psychological expertise.

The courts also asked questions that referred to the possibility of an injury, the forensic conclusions stating that it may exist, but that there are no scientific ways to assess its gravity.

Research boundaries: The batch of doctors evaluated was far too small to allow a pertinent statistical analysis.

Conclusions

1. Psychological expertise is currently under-regulated, and there are even contradictory practices in the field of accreditation of psychological experts that may be requested by the courts or whose out-of-court expertise directly requested by the parties could be considered by the courts of judgment. The practice of courts resides in the request to the College of Psychologists in Romania;
2. The way of conducting psychological experiments, respectively the procedure for their realization and the components of such an expertise, are not specified either in the existing legislation or in the recommendations of a professional control body - in particular, the College of Psychologists in Romania;
3. Psychological assessments are not currently integrated into forensic expertise whose purpose is to evaluate the resulting injury of a traumatic event in contrast to the assessments resulting from the examinations corresponding to the various medical and surgical specialties that have a common language forensic medicine and are integrated into these expertises;
4. Judicial psychological expertise, unlike forensic expertise, is not articulated on Romanian criminal or civil legislation, despite the fact that it offers extensive evaluations, sometimes by cutting the exhaustiveness;
5. The courts have difficulty in assessing the significance of psychological expertise, given that they do not have quantitative evaluation criteria for injury caused by physical trauma.

Proposals:

1. In order for the psychological expertise to acquire the value it deserves in the criminal or civil judicial process it is necessary that the validation of the psychological experts be made on specific criteria formulated by the College of Psychologists from Romania;
2. The way psychological expertise is conducted and the circumstances in which it may be required should be regulated by the professional control body;
3. When the psychological expertise on damages caused by imputable acts is requested by the court, its integration into the judicial assessment of the damage is very difficult due to the lack of a correlation between the psychological and legal notions. To remedy this situation, the notion of psychological expertise should be reorganized on pre-existing legal bases - the Penal Code,

¹ <https://www.medlegtm.ro/organizare.pdf>.

the Penal Procedure Code, Law no. 132/2017 on compulsory motor third party liability insurance, as well as on other normative acts.

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