



Criteria for limited sanity in persons who have committed criminal sexual offenses

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Abstract

The results of scientific research conducted within the framework of the doctoral thesis "Forensic psychiatric evaluation of persons who have committed sexual criminal offences." For the purpose of the study, the author analyzed 279 cases of forensic psychiatric examinations of persons who committed the sexual offence and were at the forensic psychiatric examination in Kiev Center for Forensic Psychiatric Examination during 2001-2015 (15 years). To determine the relationship between the degree of opportunities to realize their actions/manage them and expert's conclusion, from the group of *compos mentis* was derived a group of partially *compos mentis* patients; it was formed artificially, based on the national concept of "limited sanity". As a result, we have identified socio-demographical and clinical criteria for "limited *compos mentis*" in forensic psychiatric examinations of persons who have committed sexual offences.

Keywords: sexual offences, sanity, *compos mentis*, limited responsibility, forensic examination

1 Introduction

According to generalized world data, the number of recorded sex offences has doubled in recent decades [1],[2],[3]. The data of the Ministry of Interior of Ukraine in recent years confirm the steadily high level of this type of crime in our country. Thus, according to the Department of Information Technologies at the Ministry of Internal Affairs of Ukraine, an increase in the number of rapes (and attempts) is 0.2% per annum, and an increase in the number of persons recognized as victims of rape (and attempted) is 1.5% [4]. The relatively low percentage of sexual delinquencies in the total number of offences committed may be due to the high level of latency in this area. According to Z. Starovich, the ratio of registered and actual cases of sexual offences varies

from 1:15 to 1:85 [5], and according to other authors, the latency of rape exceeds 90% [6],[7].

Among the factors of the risk of committing crimes of a sexual nature, common to all categories of offenders, it is customary to allocate as:

1. Individual (socio-demographic - gender, age, socio-economic status, history of violence, the use of alcohol and drugs, the presence of mental illness, as well as traumatic child experience).
2. Common to the population (frequent manifestation of violence in this culture) [8].

As you know, sexual behavior is a consequence of the integration of social, psychological, socio-psychological, and

biological factors. Consequently, the sexual tort, as one of the types of behavioural disorder, also reflects different levels of interaction between personality and environment. According to A.S. Lukash (2007), the determinants of rape are found on the macro, micro, and individual levels. At the personal level, social factors prevailing with mandatory taking into account biological and psychological. They focus on a particular life situation of committing rape as an objective-subjective formation. Their species are unpredictable, domestic, family, artificial, criminogenically prolonged and victimological-criminogenic concrete life situation [9].

Until recently, no exist clear criteria for the forensic psychiatric evaluation of psychiatric disorders in persons who committed sexual offences, in particular, criteria of "limited sanity," have not been developed. It is not always taken into account the fact that sexual behaviour is the result of the integration of social, psychological, socio-psychological, and biological factors, while the sexual delict, which is one of the modes of behavioural violation, also reflects different levels of interaction between personality and environment.

Therefore, a comprehensive study of individuals united by a common feature - the presence of an element of aggression in the structure of sexual misconduct is relevant and timely to identify clear criteria for assessing their mental state. This may assist in the disclosure of the mechanisms of the socially dangerous act (SDA), as well as to clarify the ways of prevention of repeated SDA.

2 Methods

The study is based on the analysis of a solid sample from individuals that performed a criminal act on the sexual basis and underwent forensic psychiatric expertise at Kyiv State Center of Forensic Psychiatric Expertise between 2001 and 2015 years (during 15 years). In order to determine the relationship between the degree of impairment, the ability to realize their actions/manage them and expert conclusions, all observations were divided into 3 groups of comparison:

- Sub-expert group, recognized as "compos mentis" (n=270, 1st group).
- Sub-expert group recognized as "non compos mentis" (mentally incapable of managing one's affairs) (n=9, 2nd group).

- The group of limitedly compos mentis individuals (n=90, 3rd group). This group was formed artificially, based on the concept of "limited sanity."

The concept of limited sanity is based on the systematic approach to the idea of "limited compos mentis," which was developed in Ukrainian Institute of Forensic Psychiatry by V.B. Pervomaisky, and on the methodological position of "personality-activity" by F.V. Kondratiev. The domestic concept of limited sanity is based on the proven position of inseparable, genetic unity of consciousness and activity. Accordingly, any mental disorder is manifested through the person's social activities, where the corresponding imprints remain. The study of society, or the crime situation in our case, thus, becomes obligatory.

The degree of the mental disorders' severity, thus, is established through a reflection of it in certain elements of criminal action. In the absence of a mental disorder, a decision should be made on the person's full ability to realize and manage own actions during the period of committing a socially dangerous act, and a presence of a severe mental disorder for the period of criminal act, suggests about inability of the person to manage own affairs during this time frame.

3 Results and discussion

Among the investigators, gender proportion was 96.7% men and 3.3% women. The average age of the sample – 35.6 ± 2 y. Most of the sample (38.9) was in the age frame between 20-29 years old; 34.5% were at the age between 30-39 and 17.8% - 40-49 years.

Among the selected sub-experts, the number of persons with incomplete secondary education - 25.6%, secondary education - 22.2%, specialized secondary education was 33.3% and higher education – 13.3%. Among the investigated contingent, unmarried persons prevailed - 46.7%. In the group, 1 single individuals prevailed in comparison to another sample ($p < 0.05$).

According to the nature of the SDA, 50% were rapes, 45% - sexual contacts with an underaged, 5% - other sexual assaults.

According to the peculiarities of the SDA implementation, sub-experts were distributed as follows: in 74.4% of the cases accused for the period of committing the incriminated acts were in sober condition, in 25.6% of cases - in the state

of alcohol intoxication. In 93.3%, criminal acts were committed alone, while 6.7% - in the group.

The SDA as the situative solution was observed at 57.8%, while 42.2% individuals have planned SDA.

In the group 3 in comparison with the group 2, the sub-experts were significantly dominated by the psychopathological motivation of sexual desire in the form of paraphilias. They also often had an aggressive-forcible motivation that was combined with the satisfaction of a distorted sexual desire ($p < 0.002$). In the group 2 in comparison with group 3, the sub-experts with gainful ($p < 0.001$), aggressive ($p < 0.002$), and gainful -forcible ($p < 0.02$) motivation predominated.

In the 3rd group (limitedly compos mentis), 62.2% of the sample had residual-organ damage of the brain with emotional-volitional impairment associated with a distorted sexual drive (pedophilia, raptophilia, exhibitionism, sadism). Prevalence of these impairments was significantly higher in this than in a 2nd group ($p < 0.0001$). In 27.8% individuals from group 3 were diagnosed personality disorder (psychopathy), coupled with a distorted sexual drive (pedophilia, raptophilia, exhibitionism, sadism). The prevalence of these disorders was also significantly more prevalent in group 3 compared to group 2 ($p < 0.0001$) and group 1 ($p < 0.02$). 10% of patients from this group had mild oligophrenia with emotional and volition impairment, which was combined with a distorted sexual drive (pedophilia, raptophilia, gerontophilia, sadism).

Expert evaluation of nonpsychotic mental disorders depends on their severity in conjunction with the presence or absence of other clinical, social, situational factors, and requires taking into account a set of factors within the "actual mental state" of a person for a period of socially dangerous acts and for the period of forensic psychiatric expertise.

It should be noted that it is difficult to make an expert assessment of cases in which impairment of sexual desire arose in the presence of personality disorders (psychopathy) or a first axis (according to DSM) forms of mental illnesses. In these cases, it is necessary to have both a psychiatric assessment of a person's condition and an analysis of actual sexual disorders that require a comprehensive examination involving a psychiatrist and a sexologist. The main attention is paid to the syndromological picture of the disorders of sexual desire itself [10].

It has been established that 72% of persons who com-

mitted rape have been diagnosed with certain psychological anomalies [11], that is, in most cases sexual desire impairment arises on the background of other mental disorders: schizophrenia, personality disorders, mental retardation, organic brain lesions of various origins [12], [13], [14]. In this regard, the study of the causes and motivation of rape committed by persons with mental disorders, mechanisms for the formation of deviant sexual behaviour leading to rape, and improvement of diagnostic and correction methods are relevant issues. At the same time, it is necessary to identify the main, leading mental illness, assess its severity, the ability of the person suffering from the disease to understand the nature and public danger of their actions and to manage them. That is, it is a question of establishing sanity, a limited or non compos mentis [15].

Sexual perversions in persons with mental anomalies are formed under the influence of various factors - genetic, endocrine, neurogenic and psychophysiological. With mental anomalies hierarchical motives of sexual intercourse are impaired, there is a blocking of socially-determined motives (for example, communication). Sexual perversions are not developed in all people with mental disorders, which can be explained by the presence or absence of certain prerequisites [14].

Mental abnormalities starting from the first years of human life can hinder the emergence and development of adequate gender-role settings, the awareness of oneself as an equal participant in sexual relationships [15], [16]. Thus, personality disorders and the effects of craniocerebral trauma can form a sense of their sexual inferiority, insufficiency. For example, at an early age, in boys, foundations of subjectively-distorted perception of a woman as a threatening destructive force can be laid. As a result, in an adult's life, a man in relations with representatives of the opposite sex begins to occupy a defensive position, where the best way of protection is an attack. This explains the facts that many rapes that commit offenders with mental abnormalities are accompanied by brutal beatings and bullying [17].

As is known, paraphilias recognize changes in sexual desire if they include unusual objects or deeds and/or if an individual comes in accordance with these desires or experience significant distortion because of them [18]. The introduction of the term "paraphilia" in psychiatry was conditioned by the need to focus attention on the medical aspects of deviant sexual desire, in contrast to the moral assessment, which included the concept of "perversion", "deviation", etc.,

since any classification of paraphilias reflects the prevailing society perception of normal sexual and deviant sexual behavior [19]. In the Diagnostic and Statistical Manual on Mental Illness (DSM-IV, 1994), there are two criteria common to all paraphilia [20]:

1. The existence of intense sexually-stimulating fantasies, sexual harassment or periodic repetitive behavior for at least 6 months.
2. Fantasy, sexual desire or behavior causes clinically significant distress or disorder in social, professional or other important areas of functioning. In this definition, the importance of both clinical components of paraphilia - ideational and behavioural - is emphasized.

Uncertainty, controversy, non-recognition of scientific views on the concept of "paraphilia", "perversion", "deviation", etc., impossibility and subjectivity of separate consideration of manifestations of these phenomena separate from the existing mental disorder (or along with it), impossibility comparing these phenomena with the ability of a person to realize their actions and/or manage them, does not allow the possibility of scientifically substantiated separate allocation (in expert opinions) and the separate consideration of these concepts about the ability of a person to realize own actions and (or) manage them. For this reason, the psychological state of a person relevant to the moment of committing an unlawful act has essential value for the expert conclusion.

Direct implementation of high aggressiveness in persons with the sexual desire pathology runs at the level of a need - as the realization of the craving, which involves an aggressive way of satisfying the sexual need. The realization of the need is facilitated by the lack of personal structures capable of carrying out a barrier effect in relation to pathological craving. On the contrary, self-perception of a pathological craving causes a specific and valuable relation to the sexual aggression, which also contributes to the committing of criminal acts [21].

As is known, the characteristic feature of aggressive crimes committed by persons with mental health problems, in contrast to the mentally healthy, is the lack of regulatory influence on the behaviour of a system of values capable of overcoming dispositional, situational, and needful behavioural logic. This is also due to their other feature, including greater influence (comparing with healthy individuals) situational factors on the formation of motivation for crim-

inal aggression. For people with mental anomalies, direct forms of responding to minor situational influences are more typical. Even with their low personal aggressiveness, the lack of regulatory mechanisms is easily manifested in aggressive behaviour under the influence of various factors.

That is why the decision of the expert on the significant influence of the non-psychological mental disorders on individual's ability to realize and manage own actions during the crime (that is, the question of limited sanity) requires, firstly, hierarchically related distribution of the population criteria that are necessary for use, and, secondly, a certain algorithm of expert action to find, select, study, and generalize such criteria in the objects of research provided for examination, with the help of which it will be possible to substantiate the relevant expert conclusion.

The aforementioned criteria of "limited sanity" were developed by prof. V.B. Pervomaisky [22], the author of this article is the follower and student of the latter. The structure of these criteria is steady. However, the content below the described criteria differs from the previously described, which is a novelty of this study. The aggregate of expert criteria for the limited sanity of persons who have committed criminal sexual offences and their hierarchical distribution can be represented as follows:

1. General (normative legal) criteria

- (a) The presence of a psychological disorder of a non-psychotic level (such that does not reach the level of severe mental disorder in accordance with Article 1 of the Law of Ukraine "On Psychiatric Aid") for the period of committing a socially dangerous act.
- (b) The presence of a psychic disorder of a nonpsychotic level, in connection with which the person "during the commission of a crime ... was not able to fully realize own actions (inaction) and (or), manage them" (Article 20 of the Criminal Code of Ukraine).

2. Special (clinical and social) criteria

- (a) Clinical - static and dynamic characteristics of a mental disorder as a period of legally significant event (the period of committing a crime), and for the period preceding it; the assessment of the degree of severity of the mental disorder for the period of the crime, as well as the data (relevant objective and subjective information) regarding the

manifestations of mental disorder to commit the crime, especially during the period immediately preceding it. Important is the peculiarities of the emergence and the course of mental illness, the frequency of decompensation (as evidenced, including, access to medical institutions, specialists, etc.), the presence of complications, comorbid disorders - mental, neurological, and somatic. The presence of comorbid psychiatric disorders means the presence of additional psychopathological disturbances in a different mental field, in addition to the basic mental condition, for example, the presence of a person with an organic mental disorder or personality disorder, sexual perversions, syndromically defined emotional disorders, due to a long psychogenic and traumatic situation in the period the time preceding the period of the crime.

- (b) Social - characterize the level of social adaptation (relationship with relatives, acquaintances, professional achievements, personal characteristics, including interests, values, orientation, etc.).

The presence of addiction requires a separate assessment. The states of chemical dependence that are associated with the use of psychoactive substances (SAD) can complicate, obscure (by coming to the foreground), affect the manifestation (i.e., act as a pathological factor) of the underlying mental disorder; provoke, facilitate, and determine the commitment of a crime. Conditions of non-chemical dependence – pathological gambling, computer addiction, etc. - can affect the mental state of the offender, causing specific vegetative, emotional, behavioural changes and also affect the manifestations of the primary mental disorder; provoke and determine the motivation of unlawful actions to meet their needs. It should be remembered that according to the norms of the law, the commission of a crime by a person who is in a state of intoxication or in a state caused by the use of narcotic or other seductive means (Article 13, part 1, Article 67 of the Criminal Code of Ukraine) is a circumstance that aggravates the punishment (without taking into account the age of the person).

That is, the very fact of using the psychoactive drug (within the state of dependence or sporadically) and committing a crime in a state of intoxication associated with the use of psychoactive substances cannot be used by an expert to justify "limited sanity." Only the influence of the dependent

state on the manifestation of the basic mental disorder with the complication and the change in its course may be taken into account when substantiating the expert conclusions regarding "non compos mentis."

The third group of criteria meets the psychological criterion of "limited sanity" in terms of coverage and substantiation of the significance of an existing mental disorder impact on the individual's ability to realize own actions and/or to manage them within a certain time period for committing a socially dangerous act.

Thus, the presence of the first and second criteria group is a prerequisite for the possibility of expert opinion on "limited sanity," that is, a preconceived factor; and the availability of the third criteria group is a prerequisite for the realization of this opportunity and is a decisive factor.

4 Conclusions

The proposed hierarchical structure of the criteria of "limited compos mentis" will contribute to the expertise standardization of individuals with nonpsychotic mental disorders who have committed criminal offenses on a sexual basis.

5 Additional information

5.1 Competing interests

The author declares that no competing interests exist.

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