

УДК 343.9

DOI 10.36919/3041-1149(Print).2.2024.121-126

O. V. Kuzmenko,
Ph. D., Associate Professor,
Associate Professor of the Department of
Criminal Law and Procedure,
University of Law of National Academy
of Sciences of Ukraine
email: el.v.linnik@gmail.com
ORCID ID 0000-0002-6117-523X

FORENSIC PSYCHIATRIC EXAMINATION: FEATURES OF APPOINTMENT AND CONDUCT

The article is devoted to the specifics of the appointment and conduct of a forensic psychiatric examination. It has been established that sanity, as well as a person's age, are prerequisites for criminal responsibility, which is preceded by one's own conscious volitional choice, which also includes understanding the social significance of criminal actions or inaction and predicting their consequences. Sanity, along with guilt and responsibility, is the central methodological category of criminal law from the point of view of its fundamental importance for the observance of human rights and freedoms. That is why it is really important for the investigator, prosecutor and judge to understand the concepts of sanity, lack of sanity and limited sanity in order to accurately resolve the issue of finding a person guilty.

It is noted that the legislation of Ukraine does not establish the concept of a person's mental state, nor does it contain even an approximate list of criteria that are necessary to assess their significance. And therefore, in the absence of a single definition of the concept of mental state and its criteria, the investigator and prosecutor decides on the issue of the sanity / lack of sanity of a person, as well as the further procedure for carrying out criminal proceedings, based on the conclusion of a psychiatric examination, which is appointed after establishing the fact of the commission of a criminal offense by this or that person.

It was concluded that taking into account the norms of criminal and criminal procedural legislation, court practice in relevant proceedings and analysis of legal literature, it is possible to distinguish the following categories of factual grounds and circumstances that indicate the expediency of conducting a forensic psychiatric examination, namely: 1) information, which indicate that the person was previously or is currently under the supervision of a psychiatrist; the person was hospitalized and treated in a psychiatric hospital, was recognized as unfit for military service due to a mental illness; the person was previously found to be insane or was being treated in a relevant institution; 2) information that testifies to certain features of a person's behavior and may indicate the presence of a mental illness or disorder of mental activity; 3) information obtained from the requests submitted by the participants in the proceedings, about the need for a forensic psychiatric examination; 4) information that proves the motiveless nature of the offense committed or its commission with particular brutality, which is not characteristic of a person with a "healthy" psyche.

Keywords: *psychiatric examination, psychological research, coercive measures of a medical nature, state of insanity / limited sanity of the person.*

Statement of the problem and its relevance. Under the conditions of the development of the Ukrainian legal state, its responsibility to society and to each individual increases significantly. Among its responsibilities is the protection of citizens lives, health, property, honor and dignity, as well as other rights and legitimate interests protected by law from socially dangerous encroachments, including those committed by mentally ill persons. Regarding the latter, criminal liability cannot be used as a tool to influence their behavior, therefore, in this regard, the institution of compulsory measures of a medical nature is provided for in the criminal legislation.

However, the application of appropriate measures is preceded by the establishment of the fact of the presence or absence of a person's mental illness or disorder of mental activity. However, a

corresponding conclusion requires special knowledge in the fields of medicine, psychiatry and psychology. In this case, a forensic psychiatric examination is prescribed. At the same time, it is especially important to clearly observe the norms of the legislation regulating the procedure for the appointment and conduct of a forensic psychiatric examination, as well as the proper procedural registration of the relevant results. In this regard, there is a need for a detailed analysis of the order of appointment of the relevant procedural action and the specifics of its implementation in order to form appropriate conclusions.

Analysis of recent research and publications. Features of the appointment and conduct of forensic psychiatric examination, certain aspects of the process of researching the mental state of a person, and the appropriate preparation of examination results were reflected in the works of O. I. Gerasimenko, M. N. Holodnyuk, V. O. Glushkov, A. S. Koblikov, A. A. Muziki, G. V. Nazarenko, N. A. Orlovskaya, V. L. Ortynskyi, S. L. Sharenka and others.

The purpose of the article. The purpose of the article is to establish and research the specifics of the appointment and conduct of a forensic psychiatric examination.

Presentation of the main research material. As already mentioned, Ukraine, based on the provisions of the Constitution, is primarily a social and legal state [1]. And this, in turn, obliges the entire law enforcement system of our country to act exclusively in compliance with the principles of the rule of law and strict adherence to the requirements of the law. This statement is especially relevant when deciding the issue of establishing a person's sanity / lack of sanity, since neglecting the established requirements of the law can lead to serious procedural consequences not only for such a person, but also for other participants in the proceedings.

That is why it is advisable to pay appropriate attention to the procedure for establishing the fact of the presence or absence of a person's ability to control his actions and to be aware of them during the commission of a criminal offense when deciding on the application / non-application of compulsory measures of a medical nature.

It is worth noting that sanity, as well as a person's age, are prerequisites for criminal responsibility, which is preceded by one's own conscious volitional choice, which also includes understanding the social significance of criminal actions or inaction and predicting their consequences [2]. The choice of a behavior option is the result of the interaction of the external situation with the characteristics of a person, in particular with his mental state. At the same time, the mental state of a person affects the entire complex of criminal and legal manifestations of the subject: the very fact of the criminal offense, its nature, and its circumstances. Sanity, along with guilt and responsibility, is the central methodological category of criminal law from the point of view of its fundamental importance for the observance of human rights and freedoms. That is why it is really important for the investigator, prosecutor and judge to understand the concepts of sanity, lack of sanity and limited sanity in order to accurately resolve the issue of finding a person guilty.

O. M. Gerasimenko, for example, emphasizes that the need for psychiatric examinations of a person is related to the establishment of sanity and readiness to serve a criminal sentence, as well as the use of certain medical measures for unsane persons [3, p. 332].

In Part 2 of Art. 19 of the Criminal Code (hereinafter - the Criminal Code) of Ukraine regulates the legislative definition of the concept of insanity, from which it follows that "insanity is recognized as a person who, during the commission of a socially dangerous act, provided for by the Criminal Code of Ukraine, could not be aware of his actions (inaction) or control them due to chronic mental illness, a temporary disorder of mental activity, mental retardation or other morbid state of mind" [2].

But, unfortunately, the legislation of Ukraine does not establish the concept of a person's mental state, nor does it contain even an approximate list of criteria that are necessary to assess their significance. And therefore, in the absence of a single definition of the concept of mental state and its criteria, the investigator, the prosecutor decides on the issue of sanity / lack of sanity of a person, as well as the further procedure for carrying out criminal proceedings, based on the conclusion of a psychiatric examination, which is appointed after establishing the fact of the commission of a criminal offense by this or that person. As V. L. Ortynsky notes, that is when the need arises to use special knowledge regarding the examination of the suspect (accused) [4, p. 5].

Therefore, taking into account the specifics of the "object" of the study, the question of the presence of mental disorders in a person is resolved exclusively by appropriate expert research in each individual case.

According to Clause 3, Part 2 of Art. 242 of the Criminal Procedure Code (hereinafter - the Criminal Procedure Code) of Ukraine, in the presence of information that raises doubts about sanity or limited sanity, the investigator, prosecutor has the obligation to involve a forensic psychiatric expert to determine the mental state of the suspect" [5].

At the same time, Part 1 of Art. 509 of the Criminal Procedure Code of Ukraine stipulates that the investigator and the prosecutor are obliged to involve an expert (experts) to carry out a psychiatric examination in the event that during the criminal proceedings circumstances are established that give grounds to believe that the person was in a state of insanity at the time of committing a socially dangerous act, but after committing it, he fell ill with a mental illness, which deprives him of the ability to be aware of his actions or to control them [5]. Appointment of this type of examinations, in accordance with the provisions provided for in clause 3, part 2, p. 242 of the Criminal Procedure Code of Ukraine is mandatory.

The relevant medical literature, for example, notes that psychiatric examinations are carried out exclusively by psychiatrists, in the process of which the mental state of the patient is determined in order to resolve issues of sanity, legal capacity and work capacity [6, p. 332].

Unfortunately, the current legislation does not contain a clearly defined and comprehensive list of grounds for the appointment of the appropriate procedural action. However, taking into account the norms of criminal and criminal procedural legislation, court practice in relevant proceedings, and analysis of legal literature, it is possible to single out the following categories of factual grounds and circumstances that indicate the expediency of conducting a forensic psychiatric examination, namely:

1) information indicating that the person was previously or is currently under the supervision of a psychiatrist; the person was hospitalized and treated in a psychiatric hospital, was recognized as unfit for military service due to a mental illness; the person was previously found to be insane or was being treated in a relevant institution;

2) information that testifies to certain features of a person's behavior and may indicate the presence of a mental illness or disorder of mental activity;

3) information obtained from the requests submitted by the participants in the proceedings, about the need for a forensic psychiatric examination;

4) information that proves the motiveless nature of the offense committed or its commission with particular brutality, which is not characteristic of a person with a "healthy" psyche [7; 8].

In turn, when carrying out the relevant research, it is necessary to clearly understand its purpose, subject and tasks facing the expert or commission.

Forensic psychiatric examination is a special type of professional activity of a psychologist, which is carried out by a specialist in the field of forensic psychiatry, and is provided by the materials of criminal proceedings [9, p. 245–246].

The purpose of the forensic psychiatric examination is to obtain information and data that testify to the presence or absence of the person who committed the offense, the ability to control his actions and to be fully or partially aware of them [10]. That is, we are talking about the presence or absence of mental abnormalities in a person at the time of committing the act.

The subject of such studies is the psychological state of a person in order to establish his involvement in the committed offense and the ability to realize his actions and manage them, which, in turn, affects the individual determination of the degree of punishment.

Most often, a psychiatric examination of a suspect can be a component of a complex expert examination, if the answers to the questions arising from the investigation or the court require the synthesis of special knowledge from various areas of medical sciences in a general expert opinion. In this case, the investigator or prosecutor makes a decision to send the petition to the investigating judge for the purpose of conducting expert examinations and placing the suspect in a psychiatric hospital. At the same time, the investigator / prosecutor necessarily selects the necessary materials for the proceedings and substantiates the need for a psychiatric examination, specifying the relevant state expert institution, as well as a list of questions to be asked for clarification by an expert psychiatrist or a commission of experts.

Inpatient psychiatric examination, in accordance with the requirements of the legislation, is carried out in psychiatric hospitals, where psychiatric expert commissions are organized for this purpose, consisting of at least three psychiatrists, namely: the chairman of the commission, one more member of the commission and the speaker, who conducts the direct observation of the subject. In the event of

the appointment of such an inpatient forensic psychiatric examination, the investigator or the court is also obliged to provide the expert commission with case materials, which contain data not only about the circumstances of the committed criminal offense, but also about the personality of the person for whom the examination is being conducted, his temperament, peculiarities of activity, character traits (willlessness, greed, cruelty, etc.). And the more detailed they are reflected in the proceedings, the more reliable and complete the conclusions of the forensic psychiatric examination will be.

To conduct an examination, it is extremely important to have a description of a person at all stages of his life: in early childhood, school years and the period of independent work. It is also worth finding out whether there was a lag in physical and mental development when a person began to walk and talk; whether he had any convulsive attacks or head injuries, whether he suffered serious infectious diseases; how did he study at school, did he fall behind in his studies, what was his behavior during military service, in everyday life, at home and at work; were there any oddities observed, if so, what were they manifested in; whether the person often changed profession, place of work; did not abuse alcohol [11].

It is necessary to find out whether the person was previously ill with any mental illness, whether he was under the supervision of a psychiatrist in a dispensary or in inpatient treatment. In such cases, it is necessary to establish when the disease began, what and how it manifested itself, in which medical institution the treatment was carried out, the duration of the person's stay, the diagnosis, which treatment was carried out and its results.

In our opinion, it should be noted that its completeness and objectivity, the accuracy of the expert opinion depend on the thoroughness of the preparation of materials and information for conducting such an examination. Only the body that appointed the examination has the right to carry out a number of actions, it is forbidden to transfer them to an expert (expert commission). First of all, it concerns the collection of materials to be researched. The investigator must collect all information important for judging the mental state of a person not only by questioning him, but also by questioning his relatives, friends, acquaintances and other persons.

When conducting a forensic psychological examination and psychiatric examinations of a person, the expert (experts) must answer questions about the nature and degree of the person's mental illness. Based on the results of the research, the expert (commission) draws up an expert opinion, which must indicate: by whom (surname, education, specialty, academic degree and title, position of the expert), when, where and on what basis the examination was conducted, persons who were present during the research, questions posed to the expert, what materials were used and motivated answers to the questions.

Based on the results of the conducted research, an appropriate conclusion is drawn up, of the appropriate content and form, and is entitled "Act of Forensic Psychiatric Examination". The act is signed directly by the expert or all members of the commission who bear personal responsibility for its content [11].

It is appropriate to note that psychiatric experts give a conclusion regarding the actual circumstances that reveal the mental state of a person from the standpoint of the presence or absence of a painful mental disorder in certain periods, its depth of severity, which makes it possible for him to realize the actual side of socially dangerous behavior and the ability to manage it both for the time of committing a socially dangerous act and conducting research, and for the future. Such a conclusion essentially reveals a clinical and psychiatric assessment of a person's mental state, in relation to which compulsory measures of a medical nature may be applied by the court.

Concluding the review of the appointment and implementation of the forensic psychiatric examination and the study of its content and purpose, it should be noted that the presence of a state of sanity or limited sanity, as well as the possibility of applying punishment to the guilty person for the committed criminal offense, is determined by the court on the basis of a full study of the materials of the criminal proceedings and within its legal competence. And such a study can be complete only when the mentioned procedural action was carried out not only in accordance with the requirements of the current legislation, but also all important aspects of its subject were investigated.

Conclusions. So, we can conclude that the order of appointment of a forensic psychiatric examination is currently quite clearly reflected in the relevant norms of Ukrainian legislation. Questions arise in the process of the psychiatric examination of a person's sanity / insanity, despite the appropriate procedural regulation of the main points of the examination, the conclusion on its results

(forensic psychiatric examination report) is formed by the appropriate person – a psychiatrist (medical commission). Here the question of the appropriate qualification of the responsible person (doctor) regarding knowledge of all aspects of the conducted research arises, since it is from its result that significant procedural consequences arise for the person in respect of whom the specified research was conducted.

REFERENCES

1. Konstytutsiya Ukrainy [Constitution of Ukraine] : Zakon Ukrainy vid 28.06.1996 № 254k/96-VR. URL : <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (data zvernennia: 18.01.2024) [in Ukrainian].
2. Kryminalnyy kodeks Ukrainy [Criminal Code of Ukraine] : Zakon Ukrainy vid 05.04.2001 № 2341-III. URL : <https://zakon.rada.gov.ua/laws/show/2341-14> (data zvernennia: 18.01.2024) [in Ukrainian].
3. Sudova medytsyna [Forensic Medicine] : pidruchnyk dlya VNZ / Herasymenko O. I., Antonov A. H., Herasymenko K. O., Komissarova N. O., Komissarov M. L. ; za zah. red. O. I. Herasymenka. Vyd. tretye, pererobl. dopovn. K. : KNT, 2016. 630 s. [in Ukrainian].
4. Ortyns'kyi V. L., Hula L. F. Osoblyvosti sudovo-psykhiatrychnoyi ekspertyzy pidozryvanoho u vchynenni vbyvstva [Peculiarities of forensic psychiatric examination of a suspect in the commission of murder]. *Visnyk Natsional'noho universytetu «L'viv'ska politekhnika». Yurydychni nauky.* 2019. Vyp. 21 [in Ukrainian].
5. Kryminalnyy protsesualnyy kodeks Ukrainy [Criminal Procedure Code of Ukraine] : Zakon Ukrainy vid 13.04.2012 № 4651-VI. URL : <https://zakon.rada.gov.ua/laws/show/4651-17> (data zvernennia: 18.01.2024) [in Ukrainian].
6. Cherv'yak P. I. Medychna entsyklopediya [Medical encyclopedia]. Vydannya tretye, dopovn. K. : Vyd. tsentr «Prosvita», 2012. 1504 s. [in Ukrainian].
7. Pro psykhiatrychnu dopomohu [About psychiatric assistance] : Zakon Ukrainy vid 22.02.2000 № 1489-III. URL : <https://zakon.rada.gov.ua/laws/show/1489-14> (data zvernennia: 18.01.2024) [in Ukrainian].
8. Pro zatverdzhennya Instruktsiyi pro pryznachennya ta provedennya sudovykh ekspertyz ta ekspertnykh doslidzhen ta Naukovo-metodychnykh rekomendatsiy z pytan pidhotovky ta ekspertnykh doslidzhen [On the approval of the Instructions on the appointment and conduct of forensic examinations and expert studies and Scientific and methodological recommendations on preparation and expert studies] : nakaz Ministerstva yustytseyi Ukrainy vid 08.10.1998 № 53/5. URL : <https://zakon.rada.gov.ua/laws/show/z0705-98> (data zvernennia: 18.01.2024) [in Ukrainian].
9. Naukovo-praktychnyy komentar Kryminal'noho kodeksu Ukrainy [Scientific and practical commentary on the Criminal Code of Ukraine] / za zah. red. O. M. Dzhuzhi, A. V. Savchenka, V. V. Chernyeya ; Nats. akad. vnutr. sprav. 2-he vyd., pererobl. i dopovn. Kyiv : Yurinkom Inter, 2018. 1101 s. [in Ukrainian].
10. Stepanov O. M. Psykholohichna entsyklopediya [Psychological encyclopedia]. K. : Akademvydav, 2006. 424 s. [in Ukrainian].
11. Pro zatverdzhennya Poryadku provedennya sudovo-psykhiatrychnoyi ekspertyzy [On the approval of the Procedure for conducting a forensic psychiatric examination] : nakaz MOZ vid 08.05.2018 № 865. URL : <https://zakon.rada.gov.ua/laws/show/z0719-18> (data zvernennia: 18.01.2024) [in Ukrainian].

О. В. Кузьменко. СУДОВО-ПСИХІАТРИЧНА ЕКСПЕРТИЗА: ОСОБЛИВОСТІ ПРИЗНАЧЕННЯ ТА ПРОВЕДЕННЯ

Статтю присвячено особливостям призначення та проведення судово-психіатричної експертизи. Встановлено, що осудність, а також вік особи є передумовами кримінальної відповідальності, якій передує власний свідомий вольовий вибір, що включає також розуміння соціального значення злочинних дій чи бездіяльності й передбачення їх наслідків. Осудність нарівні з виною та відповідальністю є центральною методологічною категорією кримінального права з погляду її фундаментального значення для додержання прав і свобод людини. Тому для точного розв'язання питання про визнання особи винною для слідчого, прокурора та судді справді важливо розуміти поняття осудності, неосудності й обмеженої осудності.

Зазначено, що законодавство України не встановлює поняття психічного стану особи, а також не містить навіть приблизного переліку критеріїв, які необхідні для оцінки їх значимості. А тому за відсутності єдиного визначення поняття психічного стану та його критеріїв питання щодо осудності / неосудності особи, а також подальшого порядку здійснення кримінального провадження слідчий, прокурор вирішує на підставі висновку психіатричної експертизи, яка призначається після встановлення факту вчинення кримінального правопорушення певною особою.

Зроблено висновок, що, беручи до уваги норми кримінального та кримінального процесуального законодавства, судову практику у відповідних провадженнях та аналіз юридичної літератури, можна виділити такі категорії фактичних підстав і обставин, що вказують на доцільність проведення судово-психіатричної експертизи, а саме: 1) відомості, які свідчать про те, що особа була раніше або наразі перебуває під наглядом психіатра; особа госпіталізувалася й лікувалася у психіатричній лікарні, визнавалася у зв'язку із психічним захворюванням непридатною до проходження військової служби; особа раніше визнавалася неосудною чи перебувала на лікуванні у відповідному закладі; 2) відомості, які свідчать про певні особливості поведінки особи та можуть вказувати на наявність у неї душевної хвороби чи розладу психічної діяльності; 3) інформація, отримана із клопотань, які заявлені учасниками провадження, про потребу в проведенні судово-психіатричної експертизи; 4) відомості, які засвідчують безмотивний характер вчиненого правопорушення чи вчинення його з особливою жорстокістю, що не є характерним для особи зі «здоровою» психікою.

Ключові слова: психіатрична експертиза, психологічні дослідження, примусові заходи медичного характеру, стан неосудності / обмеженої осудності особи.

Стаття надійшла до редакції 5 березня 2024 року