

## Psychiatric examination of a person in criminal proceedings

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### ABSTRACT

**Aim:** The purpose of the article is to determine the legal and tactical features of conducting a psychiatric examination of persons suspected of committing crimes.

**Materials and Methods:** In order to achieve the stated objective, the study employed a set of general scientific and specialized methods of cognition, including the system-structural method, the method of generalization, etc.

A survey was also conducted of 18 forensic psychiatric experts working in regional branches of state-specialized institutions of the Ministry of Health of Ukraine to clarify the features of the methods they use and the techniques of conducting examinations that are implemented during forensic psychiatric examinations.

**Conclusions:** In the context of enhancing the efficiency of law enforcement agencies and psychiatric institutions, it is essential to create an electronic register of expert opinions based on the results of psychiatric examinations.

**KEY WORDS:** forensic medical examination, crime, medical knowledge, criminal process, psychiatric knowledge

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### INTRODUCTION

Situations in which individuals with mental illnesses and mental disorders commit criminal offenses are quite common in law enforcement practice [1-4]. This trend has emerged in many countries around the world because neurocognitive and mental disorders can lead to aggressive [5], inadequate [6], and sometimes even sadistic behavior in a person [7].

Various factors can contribute to the occurrence of behavioral and mental disorders. Recently, scientists have emphasized the need to study epilepsy as a phenomenon that may drive a person to commit socially dangerous acts [8, 9]. Scientists have also repeatedly highlighted the danger posed by elderly individuals, who often commit murders, attempted murders, and sexual crimes against children [10, 11].

At the same time, individuals with mental disorders often become victims of illegal actions. Scientists from Turkey note a relatively high rate of mental disorders among victims of sexual violence, which underscores the need for monitoring mental health in victims [12].

Thus, the presence of mental disorders is increasingly seen as a common characteristic of those involved in criminal proceedings. Our attention is drawn to the problem of crimes committed by individuals with mental disorders and illnesses, as these factors can

lead to legally significant consequences (depending on the person's procedural status). This issue will also influence the course of investigations and may shape certain aspects of the trial [13, 14]. Therefore, in this study, we will focus on the legal and tactical aspects of conducting psychiatric examinations of individuals who have committed crimes.

Achieving a balanced approach between the effectiveness of criminal procedural evidence and respect for human rights and freedoms requires clear guidelines, as our colleagues rightly point out. This should include considering the practices of the ECHR [15]. Consequently, to strengthen and modernize Ukraine's democratic legal system, it is important to deepen understanding of legislative shortcomings and practical approaches to appointing and conducting forensic psychiatric examinations in criminal cases. Given the topic of this study, the conclusions will be relevant for law enforcement practices in other countries.

### AIM

The purpose of the article is to determine the legal and tactical features of conducting a psychiatric examination of persons suspected of committing crimes.

## MATERIALS AND METHODS

The research methodology employs a systemic approach that aligns with the interdisciplinary nature of the phenomenon under investigation and facilitates the examination of the issue surrounding the use of psychiatric knowledge in criminal proceedings.

The historical method was applied to identify recent changes in mental health policy, the decline in the number of psychiatric beds, and the emergence of new trends in the regulation of criminal law.

The system-structural analysis was utilized to explore the connections between medical and psychiatric diagnoses of offenders and the forms of their procedural behavior. The logical method was employed to draw conclusions regarding the legal implications of failing to meet the criteria for appointing experts and to substantiate the need for legislative reforms.

The comparative legal method was used to examine forensic psychiatric practices across various countries (Ukraine, Iraq, Australia, Norway, France, the USA, and Bulgaria) to pinpoint shared issues and approaches concerning the assessment of offenders' sanity. An international comparison of practices related to registry maintenance, criteria for ordering expertise, and legal restrictions on methods such as hypnosis was conducted.

Content analysis of court decisions enabled the establishment of quantitative indicators for ordering psychiatric expertise and clarified problematic issues encountered during the stages of ordering and conducting such expertise.

Expert interviews with 18 forensic psychiatrists revealed issues in law enforcement, particularly the ordering of expertise without proper justification, the submission of incomplete materials, and legal inaccuracies in question formulation.

A statistical analysis was also performed using official data from the Ministry of Health of Ukraine regarding mental disorders in suspects who underwent expertise (including diagnoses such as alcoholism, post-traumatic stress disorder, emotionally unstable disorder, schizophrenia, etc.).

The dogmatic method was utilized to analyze the current criminal procedural legislation of Ukraine, specifically concerning the criteria for ordering expertise, the legal status of specialists and experts, and acceptable methods of evidence collection.

A survey conducted among specialists in the field of forensic psychiatry (through expert interviews) facilitated the identification of the actual reasons and challenges encountered during the appointment and execution of examinations and allowed for an evaluation of the practice of involving specialists in criminal proceedings.

The modeling and forecasting method was used to develop suggestions for enhancing current practices in conducting psychiatric examinations.

## ETHICS

All sources used in this literature review are publicly available.

## REVIEW AND DISCUSSION

International treaties guarantee the right of prosecutors, investigators, and judges to receive assistance from specialists in the fields of psychiatry and psychology to gather evidence [16]. At the same time, there are very different opportunities in the mental health field and psychiatric and psychological expertise throughout Europe [17]. Previous studies indicate an increase in criminal law measures and imprisonment in several Central and Eastern European countries [18]. Similar trends are observed in the Scandinavian countries [19]. At the same time, there has been a recent trend toward a decrease in the number of beds in psychiatric institutions; however, this is not due to a decline in the number of people with mental disorders and mental illnesses. Rather, it is a reorientation of mental health policies in European countries in connection with legal reforms, as indicated by 14 out of 18 psychiatrists we interviewed. However, it is unlikely that the number of socially dangerous acts committed by people with mental disorders and mental illnesses has significantly decreased.

In Australia, for example, 43 out of 435 people (9.9%) convicted between 1997 and 2005 in the state of Victoria were diagnosed with a mental illness. Scientists concluded that murderers with mental disorders were 3.19 times more likely to be motivated by revenge than offenders without disorders or those who did not have a diagnosis related to mental disorders. Scientists also found that the social danger of the latter lies in the fact that they were much more likely to kill members of their family and people they knew [20].

Researchers also indicate that 38.8% of people who committed murders showed a high level of problems with alcohol, and 30.8% had drug problems. At the same time, a large proportion of criminals who committed murders abused these substances during the year preceding the commission of the crime [21].

In Iraq, out of 70 cases of intentional murders analyzed, 38.6% of the murderers did not have mental illnesses, 17.1% had personality disorders, 32.9% had mental disorders, and 8.6% had neurotic disorders [22].

M. Bouthier and V. Mahé found that out of 79 French citizens who suffered from paranoia, which is a men-

tal disorder, and who were convicted of committing crimes, 30 people committed murders and attempted murders [23].

Lifetime psychotic symptoms were reported in 11% of US offenders, consistent with previous reports, including 18% of mass murderers who did not use firearms and 8% of those who did [24]. In Norwegian prisons, 60% of prisoners (2,857 prisoners as of 03.01.2024) had at least one form of mental disorder during the period from 2010 to 2019. There also appears to be an increase in the number of mentally ill offenders who commit serious crimes and are considered unaccountable. Similarly, in Bulgaria, the high number of people with severe mental disorders in prison is recognized as a challenge. Thus, cognitive disorders, mental illnesses, and signs of alcohol and substance abuse are typical characteristics of many individuals who commit violent crimes. The psychiatrists we interviewed also indicated such characteristics [25-28].

Therefore, the question arises regarding what problems occur during the conduct of psychiatric examinations of persons who have committed such crimes. According to our analysis, the following problems are the most legally significant:

1. The absence of a single, clearly defined criterion for the appointment of forensic psychiatric examinations, as indicated by 11 of the 18 psychiatrists we interviewed who are qualified as forensic experts. The criminal procedural legislation of Ukraine and many European countries provides that in cases where there is information raising doubts about a person's sanity or limited sanity, to determine their mental state, the investigator (or investigating judge) is obliged to order an examination. In Ukraine, such information is recognized as:

- 1) the presence of a mental disorder or mental illness in a person according to a medical document;

- 2) the person's behavior during or after the commission of a socially dangerous act was or is inadequate (clouding of consciousness, impaired perception, thinking, will, emotions, intelligence, memory, etc.) [29]. However, the psychiatrists we interviewed indicated that in 4 out of 10 cases, forensic psychiatric examinations are ordered by investigators for persons who do not have an officially established diagnosis related to mental illness or various types of addictions. This approach contradicts the norms of current legislation, as it violates the presumption of mental health. In addition, considering the first reason—the presence of a mental disorder or mental illness in a person according to a medical document—as a basis for ordering a forensic psychiatric examination, it should be noted that in Ukraine, there is no single register of mentally ill

patients, complicating the process of checking and obtaining data indicating that a person is registered with a psychiatrist. There are also no databases of forensic psychiatric examinations (registries), such as, for example, in Norway, which stores reports on almost all people accused of committing serious crimes in the country for whom psychiatric examinations have been conducted. Therefore, we believe that the practice mentioned above needs to be implemented in countries where it has not yet been initiated. This will allow the conclusions formulated to be used not only in scientific pursuits but also in law enforcement activities.

2. Failure to provide the psychiatrist with complete materials necessary for the examination. To simplify the process of establishing the presence of mental disorders or mental illnesses in a person, we analyzed the regulatory and directive documents of the Ministry of Health. We identified a list of those that may contain information raising doubts about the person's sanity. These include: a control card for the dispensary supervision of a patient with a mental disorder and a person who has mental disorders due to the use of psychoactive substances; a statistical coupon for a patient discharged from dispensary supervision of a psychoneurological/narcological institution; a statistical card for a patient who has left a psychiatric (narcological) hospital; a report of an inpatient, outpatient, in-person, and post-mortem forensic psychiatric examination; a report of a psychiatric examination of a convicted person; a registration journal of inpatient and outpatient forensic psychiatric examinations; a protocol of mandatory preliminary and periodic psychiatric examinations; a report of a psychiatric examination of a person who was in compulsory treatment; and a medical certificate for mandatory preliminary and periodic psychiatric examinations.

Particular attention should be paid to documents on the treatment of the suspect in connection with the suspect receiving head injuries, brain contusions, etc., as well as spinal injuries, and spinal cord lesions, which are currently being actively emphasized by scientists in their research [30]. This is explained by the fact that such injuries can subsequently provoke changes in anatomical and physiological processes in the human body and lead to disorders of mental activity or mental illness.

Another negative trend that has emerged relatively recently is the increase in the number of criminal offenses committed by individuals who use psychoactive substances. In 2022, 25,970 people were registered in dispensary groups for mental or behavioral disorders associated with the use of psychoactive substances. Of these, more than 75% (19,722 people) were treated on

an outpatient basis without hospitalization. From 2019 to 2022, there was a consistent trend toward an increase in the proportion of patients with opioid addiction among those undergoing treatment for disorders. In 2022, 74.4% of new patients in the dispensary group (i.e., those diagnosed with such a disorder for the first time) were addicted to opioids. This figure is the highest among all categories of psychoactive substances and shows a gradual increase from year to year. Meanwhile, the proportion of patients receiving assistance for polydrug addiction or cannabinoid use is gradually decreasing. This trend indicates a shift in the structure of drug addiction among psychiatric service patients. The data presented do not account for several regions currently under temporary occupation and pertain only to individuals who continue to permanently reside in the territory of Ukraine. These individuals are often referred for psychiatric examinations when they commit crimes. According to the Institute for Health Metrics and Evaluation at the University of Washington, Ukraine ranks 5th in the world for mortality from substance use disorders, 6th for disability from mental and behavioral disorders related to substance use, and 6th for disability from depressive disorders [31].

In addition, the methodological scheme of expert assessment of sources of information about the mental state of a person when conducting a forensic psychiatric examination should always be represented by the following documents:

1) Medical documentation: data from narcological, and psychiatric examinations, information about being on psychiatric/narcological registration; data from neurological examinations (signs of encephalopathy of intoxication, traumatic, vascular genesis, acute and chronic disorders of cerebral circulation, cerebral atherosclerosis with a description of intellectual-mnestic and emotional disorders, state of consciousness, contact; signs of intoxication polyneuropathy, the presence of pathological reflexes, instability in the Romberg position, inaccuracy of the finger-nose test, etc.); data from somatic examinations, objective laboratory, and instrumental examination methods; in post-mortem psychiatric examinations - the cause of death from the conclusions of forensic medical experts, a medical certificate of death, a record of the cause of death.

2) Materials of criminal proceedings, as well as characteristics: official, working, from the place of residence, education; workbook, and other documents characterizing the sub-expert, statements, certificates, etc.

3) Testimony of victims, witnesses, suspects, including medical professionals; and uninterested persons in the

case, as well as interested participants in the case.

4) Results of a psychiatric/psychological/neurological examination of a person.

However, investigators do not usually follow such recommendations, so the expert must initiate a request for additional examination materials.

3. Raising legal issues before the expert. Most often, this concerns issues of sanity or limited sanity of a person and others.
4. Lack of an established approach to the need to order forensic psychiatric examinations for suspects in murders, terrorist acts, animal cruelty, and other sadistic and violent crimes.

There are several problematic issues, the cause of which is precisely the mistakes of psychiatrists who conduct psychiatric examinations. Such errors, in particular, include:

1. Conducting experiments and tests not provided for by the methods of conducting forensic psychiatric examinations. For example, the legislation of Ukraine does not regulate the participation of a psychotherapist in collecting evidence by immersing a participant in the criminal process—a patient—into a hypnotic sleep; however, such a practice is quite often implemented in the activities of doctors. Such facts actualize the task of making some changes to the criminal procedural legislation not only of Ukraine but also of the countries of the European Union, such as Poland, Slovakia, Hungary, and the Czech Republic. These medical and legal «amendments» should be aimed at more clearly formulating the definitions of the basic concepts and terms involved in or prohibiting the participation of a hypnotist during examinations aimed at obtaining evidence. It is important that, for example, the legislation of Georgia enshrines a ban on the use of hypnosis as a method of collecting evidence in criminal proceedings. Thus, the field of criminal justice requires constant updating, taking into account modern achievements in medicine and psychiatry.
2. The archaic nature of certain provisions that determine the procedure for conducting psychiatric examinations. The methods of conducting examinations should reflect only scientifically sound practices, the reliability of which can be verified and the application of which is not limited by the norms of national and international legislative acts.
3. The lack of practice in treating persons who, although not recognized as insane according to the results of the court case, were found to have mental disorders and mental illnesses. The results of the survey of psychiatrists emphasize the importance of early identification and treatment of people with

mental disorders in the general population, as this can reduce the possibility of criminal behavior. That is, the outlined need is to prevent recidivism among such persons. Both our and other studies evidence the fact that it is present. For example, in Finland, the recidivism rate 2015 was per 100,000 person-years. A total of 48 patients (9.6%) committed a violent crime. The median time to violent recidivism was 4.2 years. Factors associated with higher recidivism rates were male gender, the presence of a comorbid substance use disorder, and younger age at discharge [32].

Empirical court practice analysis demonstrates the lack of a comprehensive understanding by investigative bodies regarding the importance of conducting psychiatric examinations and the significance of the conclusions formulated by experts. First, this relates to the importance of clarifying the need for treatment of a person to prevent relapse among such individuals.

The grounds for ordering forensic psychiatric examinations also need to be reviewed and unified, including in several separate categories of cases (regarding suspects in murders, terrorist acts, animal cruelty, and other sadistic and violent crimes). Improvement of the methodology and methods of conducting psychiatric research is required. After all, a person's refusal to answer an expert's questions today serves as a basis for compensating for the vast array of other expert methods used to determine whether an individual has a mental disorder. In expert practice, this refusal necessitates an inpatient forensic psychiatric examination. Given that Ukraine has only one facility for inpatient assessments and a limited number of beds, this situation negatively impacts the adherence to the principle of reasonableness regarding the timelines of pre-trial investigations. Moreover, it effectively acts as a compulsory isolation measure, which, by its legal nature, restricts an individual's right to freedom.

Going beyond the outlined subject of the study, we believe that this article has significant value for further research into legal gaps in the legal system of Ukraine and methods of criminal procedure. After all, as scholars rightly point out, comparative legal research is particularly interesting and can contribute to the improvement of both local and global legal frameworks and the achievement of justice in an increasingly

interconnected world [33, 34]. Such knowledge from legal and judicial practice will aid the current study aimed at helping Ukraine create a reliable legal system that functions according to human rights and European constitutional values.

## CONCLUSIONS

The high rate of crimes committed by persons with mental disorders, mental illnesses, and addictions to alcohol, drugs, and psychoactive substances indicates the importance of competent use of psychiatric knowledge during investigations. The effectiveness of the tasks solved by experts is determined by compliance with several legal principles and the correctness of the applied methods and techniques. At the same time, certain factors negatively affect the objectivity of the results obtained.

We have identified some problems that arise during psychiatric examinations: 1) due to legal gaps or shortcomings in current legislation; and 2) those allowed by experts conducting psychiatric examinations; 3) lack of approved research methods in conditions where the subject refuses to communicate and interact with the expert (committee of experts). Each of the identified problematic factors is thoroughly characterized. In the context of improving the quality of psychiatric examinations, it is important for the international community of practicing psychiatrists and lawyers to systematically review the methodology and methods of conducting psychiatric examinations, as well as the list of disorders and diseases that affect the human psyche.

In the context of enhancing the efficiency of law enforcement agencies and psychiatric institutions, it is essential to create an electronic register of expert opinions based on the results of psychiatric examinations. A proven practice that needs implementation is the introduction of a Unified Register of Persons with Mental Disorders. The system of institutions authorized to conduct inpatient psychiatric examinations in Ukraine must be expanded, along with the introduction of a procedure for the forced involvement of an individual in a psychiatric institution. Furthermore, it is vital to ensure the enforced treatment of such individuals, as well as those who commit criminal offenses while in a morbid mental state.

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## CONFLICT OF INTEREST

The Authors declare no conflict of interest

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