

CHARACTERISTICS OF FORENSIC ASSESSMENT FOR PERPETRATORS WHO COMMITTED A NEGLIGENT CRIME AND SUBSEQUENTLY DEVELOPED MENTAL ILLNESS POST-OFFENSE

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Abstract

This scholarly article undertakes a comparative analysis of the court review process and legal complexities surrounding mental illness within the criminal codes of Azerbaijan, Turkey, and Italy. The study delves into the various stages of court proceedings, evaluating the impact of mental health on criminal liability and exploring specific legal measures applicable to individuals with mental disorders. The examination encompasses court decisions and plenums, providing an in-depth discussion and comparison of the degree of mental illnesses and criminal responsibilities developed by perpetrators after committing a crime in the legal systems of all three countries. The overarching theme underscores the significance of considering mental health in criminal proceedings to uphold fairness and justice within the legal systems.

Keywords: *Criminal liability, Mental illness, mental state, preliminary investigation, medical injunctions, trial stages, unreasonableness.*

Introduction

Court review is the central stage of the criminal process, because at this stage both the procedural actions that have taken place before are concluded, and the procedural decisions taken in the previous stages, the investigative actions carried out and other procedural actions carried out are checked for legality and validity, as well as whether there is a crime, which is the main subject of the criminal process, Questions such as whether the person accused of this crime is guilty and whether he should be punished if guilty are also answered. reply. Therefore, the administration of justice involves obtaining an answer to the main question of the criminal case, the question of criminal responsibility of the person for the act for which he is accused. Another feature of the trial stage is that, unlike other stages of criminal proceedings, criminal procedure law may be involved at this stage. all principles find their full manifestation. This feature arises from the exceptional legal status of the court and the unique procedural form of judicial review. The importance of court review in criminal proceedings is, first of all, the full fulfillment of the duties of criminal proceedings thanks to court review. All other stages of the criminal process are aimed either at preparing for the effective implementation of the trial, or at finding and eliminating errors made by the court of first instance when assessing the case on the merits; Secondly, although currently the court examines the case on the basis of the evidence obtained in the preliminary investigation and the conclusions formulated by the criminal prosecution body, judicial review essentially consists in an independent examination of the circumstances of the case by the court. That was the subject of the investigation. It is the evidence investigated and verified during the trial that may form the basis of the final decision in the case; Third, the principles of criminal procedure and the rights and duties of criminal justice subjects are more fully realized in court review. At this stage, direct legal relations may arise between the subjects of criminal proceedings; Fourth, at this

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stage, the only procedural decision made on behalf of the state in the criminal process is the verdict. In addition to specific aspects characterizing the pre-trial phase of special criminal proceedings concerning individuals who have committed a crime or developed mental illness subsequent to the commission of the offense, there exist noteworthy features during the court review of such cases. This is elaborated upon in Article 477 of the Penal Code, which delineates the distinctive attributes of the judicial examination process, as well as in Article 485, which pertains to the application of legal measures specified in Article 95 of the Criminal Code for individuals who committed a crime under circumstances deemed unreasonable. [1]

The Penal Code outlines the procedural nuances observed within the initial court proceedings when addressing cases of individuals afflicted with mental illness after their criminal actions. These distinct elements warrant a detailed examination.

Pursuant to the provisions set forth in Article 477 of the Code of Criminal Procedure, when a case involving an individual who committed a crime under unreasonable conditions comes before the court, the judicial process is inaugurated through the submission of a prosecutor's report. This report explicitly accuses the individual in question of the offense as stipulated in Article 95 of the Penal Code and provides a substantiation of the necessity for implementing legal measures. [3] Subsequent to the submission of the prosecutor's report, the trial proceedings follow a conventional trajectory, whereby the involved parties present their respective evidentiary materials to the court for examination. In instances where evidentiary matters remain obscure, the court may solicit input from the defense counsel, as well as the legal representative of the individual who committed the crime, along with the active participation of the prosecuting authority involved in the case. Ultimately, the court deliberates on the case within a designated chamber to formulate its final decision.

By law, the following questions must be resolved by the court when accepting the final judicial act of the case under consideration:

- Has a socially dangerous act been committed?
- Was this act committed by the person against whom certain criminal proceedings are being carried out?
 - Was this act committed by the perpetrator without negligence?
 - Did the perpetrator who committed this negligence action remain recklessness/negligence during the trial?
 - Is there a need to apply the criminal-legal measures stipulated in Article 95 of the Penal Code to a person who commits a crime with recklessness?
- What kind of criminal-legal measures should be applied to a person who commits a crime negligently?

If the court, following its comprehensive examination, conclusively determines that the individual facing prosecution committed a crime unwittingly, specific legal actions are taken. In addition to absolving the accused from criminal liability and consequent punishment, the court also exercises its authority in accordance with the provisions outlined in Article 95 of the Penal Code. Under these circumstances, the court decides on the imposition of specific categories of criminal-legal measures specified in the article. [2] Alternatively, it is plausible for the court to arrive at the conclusion that while the individual may have committed a criminal act, it is firmly established that they do not pose a societal or legal danger. In such instances, where there is no neces-

sity to apply the measures outlined in Article 95 of the Criminal Code, the court opts to suspend the proceedings. Lastly, in a scenario where the court deems it unequivocally proven that the person under investigation did, in fact, commit a crime unknowingly but subsequently regained their mental faculties during the trial, the court chooses to terminate the proceedings. As elucidated previously, the procedural features pertaining to the judicial aspect of cases involving the application of criminal-legal measures prescribed in Article 95 of the Penal Code for individuals who developed mental illness after committing a crime are stipulated in Article 485 of the Penal Code. As per the provisions of this article, both the defendant's legal counsel and the public prosecutor are mandated to participate in the court review concerning the implementation of criminal-legal measures outlined in Article 95 of the Penal Code for cases involving individuals who initially committed a crime under reasonable circumstances but later experienced a mental health deterioration. While the engagement of an expert during the court review is not obligatory within the scope of the contemplated trial, the law does provide for the option to invite an expert to participate in the court review process. The proceedings for individuals who clearly perpetrated a crime but subsequently suffered from mental illness commence upon the investigator's announcement of their decision to refer the pertinent case to court. Subsequently, the forensic inquiry, encompassing the scrutiny of available evidence, commences. Following the completion of the investigation, the court affords both the prosecutor and the defense attorney the opportunity to present their respective arguments. Subsequent to hearing the prosecutor's statements and the attorney's opinions, the court adjourns to its deliberation chamber to render a final verdict regarding the proceedings.

In order for the court to make an appropriate decision about a person who committed a reasonable crime while in the deliberation room but later became mentally ill, he must answer the following questions in order:

- Did the individual mentioned commit the action?
- Is there a crime in the action referred to the individual?
- Was the action referred to a individual committed by a specific person under investigation?
- Did the perpetrator on trial suffer from mental illness?
- What is the nature of the mental illness experienced by the person on trial?
- When did the person on trial suffer from mental illness?
- Is it necessary to apply the criminal-legal measures provided for in Article 95 of the Penal Code to a individual who became mentally ill after committing a criminal act?
- What kind of criminal-legal measures should be applied to a person who becomes mentally ill after committing a criminal act?

One of the situations that may occur in practice is that a perpetrator commits a crime while sane, remains sane before trial, but becomes mentally ill during trial. In such a case, the court applies the stay of proceedings procedure in the case.

It must be reminded that on November 8, 2012, the General Assembly (Plenum) of the Supreme Court of the Republic of Azerbaijan adopted a Resolution on the implementation of compulsory measures of a medical nature by the Courts, and judicial proceedings are carried out in this Resolution. They have found their own explanations both for the people who commit a crime in an unreasonable situation and people who are diagnosed with mental illness after committing a crime. [5]

Within the framework of the Azerbaijan Code of Criminal Procedure, specific regulations are in place to address individuals who engage in criminal activities without discernible motive. While many of these provisions align with the legal frameworks of other European nations, notable distinctions emerge, particularly in relation to non-civilian entities. The applicability of these regulations extends beyond considerations of an individual's military service utility, encompassing determinations made by the plenum. Noteworthy examples of such articles within the Plenum include Articles 3, 5, 16, 18, and 20, each contributing to a nuanced legal landscape that accounts for the unique considerations associated with non-civilian persons.

According to the 3rd Article of the Plenum;

In instances where the suspect, the accused individual, or the convicted person exhibits a history of diagnosed mental disorders, has received psychiatric assistance, has been institutionalized in a psychiatric hospital, has been deemed unfit for further criminal proceedings, and has been declared unsuitable for military service on account of their mental health, or has attended educational institutions catering to individuals with cognitive limitations, it becomes imperative to consider various factors such as their educational background, history of head trauma, and peculiarities in behavior and expressions indicative of potential mental disorders. In situations where doubts arise regarding the mental state of the individual, it is of paramount importance to adhere to and implement the provisions outlined in Article 140.0.2 of the Criminal Procedure Code, necessitating the appointment and execution of a forensic psychiatric examination.

Turkey's aspect on this base

In the Turkish Penal Code, the issue you are referring to is addressed under the title "Reasons that Remove and Reduce Criminal Liability," a concept referred to as "Fault" within the Turkish legal system. Within this framework, various factors that can impact culpability or fault are considered, such as age, an individual's mental capacity (criminal capacity), and the principle of necessity, among others. Criminal liability denotes an individual's capacity to commit a crime at a specific time and place. [7]

Criminal liability is determined based on the concept of imputation ability, or fault ability. For an individual to bear full criminal liability, both elements of imputation ability must be simultaneously present:

- Perception Ability: This pertains to an individual's capability to perceive, namely, to comprehend and understand the legal significance and consequences of their actions.
- Ability to Direct Behavior (Will): This refers to an individual's capacity, once they have comprehended the legal significance and consequences of their actions, to guide their conduct in accordance with this understanding. In the realm of criminal law, the capacity to guide one's behavior is also termed "willpower."

The impact of mental disorder or cognitive weakness on an individual's criminal capacity is a critical aspect of criminal jurisprudence. When there are indications or suspicions of mental illness or cognitive impairment in an individual facing legal proceedings, it becomes imperative for the court to engage in a comprehensive and scientifically rigorous examination. This examination is undertaken to ascertain whether the defendant indeed possesses any form of mental illness or cognitive vulnerability. Moreover, it seeks to evaluate the influence of such mental conditions or weaknesses on the

defendant's capacity for both perceiving and exercising volitional control over their actions pertaining to the alleged criminal act. [9]

It is essential to recognize that the presence of a mental illness does not automatically entail a direct connection between the illness and the commission of a specific crime. In instances where an individual with a mental illness engages in criminal conduct, it is plausible that the mental illness may not have played a causative role in the commission of the offense. For instance, a person diagnosed with bipolar affective disorder may commit a crime without the influence of this disorder being a determinant factor in their prior criminal history.

In situations where an individual, who was afflicted by mental illness at the time of committing the crime, demonstrates an inability to grasp the legal significance and consequences of their actions (i.e., a diminished capacity to perceive) or exhibits a substantial reduction or total absence of their capacity to exercise volitional control over their conduct in relation to the alleged criminal act (i.e., a compromised capacity to exercise their will), legal provisions come into play. Under such circumstances, it is legally established that the perpetrator cannot be subject to punitive measures for the offense they committed, as stipulated in Article 32/1 of the Turkish Penal Code. Security measures for mentally disordered perpetrators are regulated in Article 57 of the Turkish Penal Code.

This legal framework reflects the fundamental principle that justice must be served with due consideration to the mental and cognitive state of the accused, ensuring that individuals with significant mental impairments are not held criminally responsible when their capacity to perceive the wrongfulness of their actions or to exercise control over them is substantially impaired or entirely absent. In sum, the assessment of the impact of mental illness or cognitive weakness on criminal capacity is an essential facet of the criminal justice system, serving to uphold fairness and justice in legal proceedings.

The procedure in the trial process of the Turkish Penal Code is similar to the trial process in the Azerbaijani Criminal Code system. The court orders the defendant who committed the crime to be examined by the responsible institutions. If the requested criteria are met, then the defendant's criminal liability will be considered. If the perpetrator commits a crime under the influence of drugs and alcohol taken voluntarily, he is considered to have full criminal liability (TPC Article 34). In this case, the perpetrator's loss of perception or willpower is entirely due to his own faulty behavior. In Article 32 of the Turkish Penal Code No. 5237, the effect of mental illness and mental weakness on criminal liability is regulated as follows: [8]

An individual who cannot perceive the legal meaning and consequences of the act he committed due to mental illness or whose ability to direct his behavior in relation to this act is significantly reduced will not be punished. However, security measures are taken against these people (TPC article 32/1).

An individual whose ability to direct his / her behavior has decreased in relation to the act he committed, although not to the degree stated in the first paragraph, is sentenced to twenty-five years instead of aggravated life imprisonment, and twenty years instead of life imprisonment in other cases, the penalty may be reduced by not more than one-sixth. The sentence can also be applied, in whole or in part, as a security measure specific to mentally ill patients, provided that the duration is the same (TPC Article 32/2). In their statements, the defendant and the victims stated that the defendant had received psychiatric treatment and submitted hospital reports. According to

Article 32 of the Turkish Penal Code, as of the date of the crime, "whether he was unable to perceive the legal meaning and consequences of the acts he committed or whether he had a diminished ability to direct his behavior regarding these acts, "due to his mental illness or weakness." Establishing judgments based on a two-person report, without taking into consideration the fact that the legal status of the defendant should be determined according to the result by duly obtaining a medical report on "whether it has decreased significantly or not" is a reason for reversal (Y4CD-K.2020/4258).

32/1 of the Turkish Penal Code No. 5237. Pursuant to the article, punishment cannot be imposed on a defendant whose ability to perceive, and willpower has disappeared due to mental illness. In accordance with Article 223/3-a of the Criminal Procedure Code No. 5271, a verdict of "no punishment" must be given to the defendant. However, even if the defendant is not punished, when it is proven that the crime has been committed, security measures must be taken against the defendant in accordance with Article 57 of the Turkish Penal Code No. 5237. Pursuant to Article 32/2 of the Turkish Penal Code, the court will apply a sentence reduction to a person whose ability to commit crimes has decreased, but the penalty given to the defendant may also be applied partially or completely as a security measure specific to mentally ill patients, if it covers the same period.

If the court decides that "there is no need to impose a sentence" due to mental illness or mental weakness, or a security regime specific to mentally ill people, the defendant only benefits from not executing the sentence or from an advantage related to the manner of execution. The deprivations of rights caused by punishment will continue to exist. Because the court decided on a criminal conviction for the defendant but changed the way the sentence was executed.

In accordance with the provisions outlined in the Turkish Code of Criminal Procedure, in cases where an individual has been found to have developed a mental illness subsequent to the commission of a criminal offense, and it has been determined that there exists no foreseeable prospect of their mental health being restored or rehabilitated, a legal decision to dismiss the charges may be rendered.

In accordance with the initial clause of Article 74 in the Turkish Code of Criminal Procedure, a mechanism is established for the assessment of the mental health status of a suspect or defendant, against whom substantial suspicions of committing an offense exist. The primary objective is to ascertain the presence of mental illness, its duration, and its influence on the individual's behavior. This process unfolds through a formal procedure wherein, following the recommendation of a specialized medical practitioner and subsequent deliberations involving the public prosecutor and the defense counsel, a decision may be made. This decision entails the potential placement of the individual under observation within an official healthcare institution, during either the investigative or prosecutorial phases, a determination which is made by the criminal judge of peace in the former phase and by the court in the latter.

Furthermore, regarding the culmination of legal proceedings, specifically pertaining to the conclusion of the trial and the issuance of a verdict, a provision exists for cases involving defendants who fall into distinct categories. These categories encompass minors, individuals afflicted by mental illness, those who are mute, or those whose criminal conduct is attributable to temporary reasons, as delineated in Article 223, 3rd paragraph (a) of the Code of Criminal Procedure. In such instances, a decision may be

rendered wherein the imposition of a penalty is deemed unnecessary due to the absence of culpability on the part of the defendant.

Italy's aspect

In Italian Penal Codes, similar to the Azerbaijani and Turkish Penal Code systems, criminal liability is predicated upon factors such as age range, psychological status, and the individual's capacity to understand and comprehend the implications of their actions. These legal frameworks, governed by the Roman-Germanic legal tradition, share significant similarities, with the Turkish Penal Code notably influenced by the "Zanardelli" principles. Turning to Italian Criminal and Procedural Laws, provisions concerning criminal liability and prosecution are delineated in Articles 85-131, 131-149, and 150-184.

Article 85 of the Italian Criminal Code stipulates that an individual cannot be held criminally liable for an act if, at the time of its commission, they lacked the capacity to comprehend the nature of the act or to exercise their will in its execution. Criminal immutability is ascribed to those individuals possessing both the capacity to understand and the ability to exercise their will. [11]

However, Article 87 introduces an exception to the aforementioned principle, wherein it does not apply to individuals who deliberately place themselves in a state of incapacity to understand or exercise their will in the commission of a crime or in preparation thereof.

- Article 88 deals with total mental incapacity, absolving individuals who, due to illness, were in a mental state at the time of the act that entirely precluded their capacity to understand or exercise their will from criminal liability.

- Article 89 addresses partial mental incapacity, attributing liability to individuals who, due to illness, were in a mental state at the time of the act that significantly diminished, but did not wholly exclude, their capacity to understand or exercise their will. In such cases, the punishment is mitigated.

Emotional or passionate states, as per Article 90, do not negate or diminish immutability. Notably, incapacity to understand, which differs from mental illness, is treated differently in Italian criminal law. For instance, individuals who commit crimes under the influence of alcohol or drugs may face increased penalties under Articles 91-95.

- Article 91 pertains to drunkenness resulting from fortuitous circumstances or force majeure, where individuals who lacked the capacity to understand or exercise their will due to complete drunkenness are not held accountable. If drunkenness was not total but significantly impaired the capacity to understand or exercise will, the punishment is reduced.

Article 92 concerns voluntary, negligent, or premeditated drunkenness, establishing that such drunkenness does not excuse or reduce immutability. If drunkenness was premeditated to facilitate the commission of a crime or to prepare an excuse, the sentence is augmented.

- Article 93 extends the principles of the previous articles to situations where crimes are committed under the influence of narcotic substances.

- Article 94 addresses habitual drunkenness, increasing sentences when crimes are committed while habitually intoxicated. Habitual drunkenness applies not only to those addicted to alcoholic beverages but also to those frequently intoxicated by narcotic substances.

- Article 95 deals with chronic intoxication due to alcohol or drugs, applying the principles of Articles 88 and 89 to acts committed in a state of chronic intoxication resulting from alcohol or narcotic substances.

Within the realm of Italian procedural laws, it is noteworthy that several provisions within the Italian court legal framework pertain to the mental state of the defendant. Herein, we shall delineate two of these relevant statutes for elucidation and analysis. [12]

- Article 166 Service on the accused person who is declared disabled or mentally ill 1. If the accused person is declared disabled, service is affected according to the above articles and also on his guardian; if the accused is in one of the situations covered by Article 71, paragraph 1, service is effected according to the above articles and on his special guardian.

- Article 286 Precautionary detention in a healthcare centre 1. If the person to be subjected to precautionary detention is in a state of mental illness that hinders or reduces significantly his mental capacity, the court may order, in lieu of precautionary detention in prison, his temporary hospitalization in a suitable hospital department of psychiatry, adopting the necessary measures to prevent the risk of flight. Hospitalization shall be terminated if the accused is no longer mentally ill. 2. The provisions of Article 285, paragraphs 2 and 3, shall apply.

Conclusion

In a nutshell, this scholarly exploration has meticulously examined the court review processes and legal intricacies pertaining to mental illness within the criminal codes of Azerbaijan, Turkey, and Italy. By dissecting the various stages of court proceedings and critically assessing the implications of mental health on criminal liability, this comparative analysis has revealed both commonalities and distinctive features inherent in the legal frameworks of these three nations.

The meticulous examination of court decisions and plenums has opened the nuanced approaches these legal systems adopt in addressing the evolving mental conditions of perpetrators post-crime. Particularly noteworthy are the specific articles within the criminal codes that play a pivotal role in shaping decisions related to mental health in each jurisdiction.

In Azerbaijan, Article 477 and Article 485 of the Penal Code delineate the distinctive characteristics of the judicial examination process and the application of legal measures for individuals who committed a crime under unreasonable circumstances or developed mental illness subsequent to the offense.

In Turkey, the Turkish Penal Code (TPC) Articles 32 and 57 emerge as pivotal components. Article 32 intricately addresses the effect of mental illness and mental weakness on criminal liability, outlining conditions where punishment cannot be imposed, and security measures must be taken. Article 57, on the other hand, regulates security measures for mentally disordered perpetrators. [7]

The Italian Penal Code, rooted in the Roman-Germanic legal tradition, presents Articles 85-95 as crucial components. These articles carefully outline the legal considerations surrounding mental incapacity, emotional states, and the influence of alcohol or drugs on criminal liability.

This comparative study not only sheds light on the importance of considering mental health in criminal proceedings but also emphasizes the significance of understanding the relevant legal articles that form the backbone of these judicial systems. It calls for ongoing international dialogue and collaboration to foster a collective understanding of best practices in handling cases involving mental disorders. As each country uniquely addresses this intersection of mental health and the law, the article underscores the delicate balance required to uphold legal principles, fairness, and evolving notions of mental health in the pursuit of justice.

As evident, the Italian Criminal Codes, both historically and presently, have been regarded as foundational legal texts. Consequently, they offer a comprehensive analysis of an individual's mental state, even delving into the trial processes of individuals. In this regard, one can observe that Italian Criminal Laws encompass detailed descriptions of mental states. Moreover, the legal framework in Italy intertwines criminal laws and procedural laws.

Conversely, the operation of Turkish Criminal Laws differs somewhat. While the Turkish Code of Criminal Procedure does address and examine mental states separately, it is worth noting that, in addition to procedural and criminal laws, decisions handed down by the Supreme Court play a crucial role in shaping the judicial process.

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