THE IMPORTANCE OF ADVOCACY IN HIGHLIGHTING THE ROLE OF PSYCHO-LEGAL EXPERTISE DURING CRIMINAL PROBATION OF PSYCHOLOGICAL HARM

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Abstract: *This article aims to attract attention, not for the simple sake of raising interest, but from the point of view of the need to re-evaluate and outline the role of psychiatry in the assessment of the participants involved in the criminal trial, in connection to the moral damage in the current context of reducing or even ignoring the importance of the specialist by undertaking his role by a judge.*

1. The concept of advocacy

The concept of advocacy has recently raised interest in almost all areas of activity, all of them having a common target - the idea of supporting the valuable maximization of efficiency of the field on which it operates and furthermost, to take as much profit as possible of human's need for an optimised answer to the efficiency and involvement standards asserted by that necessity itself.

The notion of advocacy itself comes from the English verb „to advocate", which means to support a cause. Actually, advocacy is an umbrella term, which defines the activism organized in certain areas. Advocacy aims to follow the influence of results - including the public policies and the decisions of resources distribution within political, economic and social systems and institutions.

The practical definition for advocacy could be: specific actions aiming to modify laws and regulations promoted and adopted by public authorities.(1)

Advocacy is a service designed for communities and it is also a process involving citizens into the attempt of influencing public policies and, inherently, of promoting the social change. This process has appeared as a result of the fact that citizens have rights to be defended. Advocacy is an information and assistance process for the decision-makers, as long as a good decision can only be taken if the correct information is provided.

The general objectives of the advocacy process are: influencing public policies; informing politicians; creating connections with other organizations involved in this procedure.

The specific objectives of the advocacy process are focused on legislation and on other normative acts; regulations are the most relevant measure of the success during an advocacy approach; if someone's actions are not aimed at promoting or removing specific laws or regulations, then that person is not truly involved in an advocacy campaign.(2)

Opinions or definitions of advocacy are multiple, the studies and dictionaries trying to give explanations for the phenomenon. Advocacy consists of organized actions through which "invisible" and neglected matters are taken into consideration, in an attempt to influence public attitude as well as the approach of the political players. („Advocacy for Social Justice", David Cohen / Rosa de Vega / Gabrielle Watson, 2001)

Advocacy is the conjugated effort to change laws, policies or governmental programs and / or beliefs, as well as attitudes or behaviours involved in the process of establishing the social justice („Advocacy and Networking Manual", St. Francis Xavier University)

Advocacy is an organized political process that involves coordinated efforts of people to change policies, practices, ideas or values that perpetuate inequality, intolerance and / or exclusion. Advocacy increases people's ability to participate in the decision-making process and institutional responsibility. („A new wave of power, people, and politics", Vene, Klasen and Miller)

2. Particularities of advocacy in the psychiatric field

Almost all studies show that psychiatry is the medical field that studies mental disorders, their etiology and their pathogenesis, which organizes the assistance and establishes the prophylactic, therapeutic and recovery measures for the patient with psychiatric disorders.(3)

The most important aspect is the etymology of the word, which finds its origins in two Greek terms: ψυχη (the soul) and ιατρος (the doctor), which influences, from the perspective of our thinking, the necessity of a advocacy framework based on general principles, presented although with special and indisputable particularities, in relation to other social manifestations, scientifically delimited as postulated in the rules for the other human and scientific fields of activity, involving political acts and judgments. From this perspective, we can say that advocacy in the field of psychiatry represents the totality of the approaches strictly based on the values of psychiatric medicine acquired as scientific wisdom over the time up to this point, which englobes the fundamental aspects of the manifestation of the mental health of the individual and the society as a whole, which are normative for the fields of activity that develop connections with the mental health of man.

The medical aspect and the ambulatory treatment are the „sine qua non" conditions of psychiatric treatment.(4) Advocacy aims at psychiatry and prevention of psychiatric diagnosis, mild forms of psychiatric imbalance, but also personal, family and group rehabilitation of the psychotic. At the same time, it takes into account the whole range of mental

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manifestations of the individual and the factors influenced by the present and the future.

From this perspective, a society that ignores the position of the specialist, the informed opinion, either generally or particularly speaking, when referring to institutions and specialized people, does not only interfere with a field which it cannot manage, but it might also harm the health of the individual by using a practice totally lacking of the principles of humanism, law and human rights.(5) What it is not only inefficient, but totally inadmissible. This aspect refers to the criminal procedural practice during which, the judge, in the light of his own wisdom, without any specialized expertise, pronounces himself on a distinctive fact belonging to another field.

3. The concept of moral damage and non-pecuniary damage

By injury we understand some harmful patrimonial or moral consequences of violation or harm to a person's legitimate rights and interests, according to art. 1349 par. (2) and art. 1357 from the New Civil Code.(6)

Technical classification shows that there are two types of damage: pecuniary and non-pecuniary or moral damages. Pecuniary damages are harmful consequences that have economic value and can be pecuniary assessed. Non-pecuniary damage or moral damages are the detrimental consequences suffered by a person, consequences that do not have economic value and therefore cannot be pecuniary assessed; they always consist of physical and psychological pain of the victim.

The new Code of Criminal Procedure establishes in Article 19 (5) moral damages in criminal proceedings, which are granted and judged by civil law. On the other hand, the Civil Code, by art. 1391, paragraph 1, assigns the term „non-courtly damage", without talking of moral damage or harm (7), which leads to the idea that between the Criminal Code and the Civil Code on the matter in question there is a discrepancy worth taking into consideration when assessing the need for intervention by psycho-legal medical advocacy. If material damage is quantifiable, then non-pecuniary damage is unquantifiable, that is, it can not be determined penultimately, which is a real mistake, according to which the extent of the damage is left to the discretionary judge of the field, which leads consequently to the conclusion that non-pecuniary damage will never be granted in the amount actually required. This is an understandable aspect, as long as the law itself does not clarify the notion of non-pecuniary damage and its aspects. In the specialized literature, we are provided with various definitions and classifications, which channel the problem to a labyrinth of an even wider uncertainty. This confusion comes from the misuse of the terms within the law framework, and this is due to the law itself, because at the moment when it was written, did not take into consideration the quantification of the non-pecuniary. More specifically, this should be asserted through specialized institutions and specialists, without leaving only in judge's hands the assessment of an act belonging to another specialty.

Therefore, without any possibility to deny it, the non-pecuniary term defines everything that does not come under the incidence of its own senses from a biological point of view. That is, it can not be perceived by external senses, which is why it comes the wrong assumption that this existing but internal injury cannot be experienced, except for its external aspects. In this respect, we propose an analysis of the law text, in order to make the specialist and his specialized expertise more efficient, in favour of a proper assessment of non-pecuniary damage. This fact certainly extrapolates from the exclusive legal science. In this sense, non-pecuniary damage can only be seen from three points of view, each of which may raise comments and various subclassifications. Non-pecuniary damage can be moral, psychic, physical, which should always be quantified by a specialist of the field. The act of interfering of a non-specialist in another specialty competes not only with a scientific interference, but also with a judgment that not only removes, but also defies the capabilities of the specialist in another field, aspects which in a fair and equitable judgment must not come about. Taking into consideration the orientation of this paper, we will define moral and physical damage by analysing particularly the mental one.

The moral injury is that specific injury caused to a person or to a group by an individual, a group of individuals, or even by a state, judging from the point of view of an ethical, social or religious behaviour.(8) The sphere of morality cannot penalize other aspects.

The physical injury is the direct or resultative injury caused to a person or a group by another person, a group or even by the state, obviously from a physical point of view.

No form of injury may be confused to the other one. It is precisely from this perspective that the pain caused today tomorrow to a person from a psychological point of view is evaluated within a specialist framework by a specialist able to identify the present and future effects, causes and risks of all pain psychically determined, which will always take into consideration the medical and not the legal aspect. From this perspective, when assessing the psychological damage, it is necessary to perform a specialized expertise, able to establish their causal relationship, their effects, their extent and their risks, accompanied by a recommendation of a medication scheme, the time for recovery or, on the contrary, the permanent decline to the highest risk, so that all these indexes of the psycho-legal expert could be quantified into an economic expertise. Legal psychological expertise must not be confused neither with the psychiatric expertise of establishing the rational judgement, not with the moral expertise.

4. Particular features of the psycho-legal expertise evaluated on a particular case

The behavioural picture we analyse expresses in an objective way:

- The traumatic reality permanently fixed within the cognitive / affective / emotional matrix as a reminder of the accident (including false reminders - residual memories on the sensorial presence of the already amputated arm);
- The permanently repetitive update of the irremediable and unsurpassable disability in the context of daily adaptation / insertion failures in the private and familial space and within the social habitat as a general acceptance;
- The inappropriate re-update of self-image (including the reflected image in the mirror of its own physiognomy as a serious aesthetic damage), capable of crashing its self-image, of introduction of the inferiority complex and anxiety / depression as the anticipation of the suicidal act;

The Lucher-Color Test:

I. - (+ 4 +1) = desired goals - hopes and asks for spiritual warmth / understanding; willingness to approve / accept; open to hopes, even if these are vague and illusory.

II. - (X3 X2) = behaviour adapted to the current situation: - wants to gain authority and control - the initiative to overcome obstacles.

III. - (= 6 = 0) = retained attitudes (inappropriate to the existing situation) - wants to participate emotionally (including sexual satisfaction), but wants to avoid conflicts

IV. - (- 5 - 7) = rejected attitudes (anxiety - repression) - perceives some restrictions and the fact that is prevented from progressing; is looking for solutions to remove these limitations.

V. - (+ 4 - 7) = the current trouble - the behavior is due to the stress pressure

In the Woodsworth-Mathews questionnaire, the interpretation is based on the general figures - if the figure obtained exceeds one third of the total of 360 points, that is to say 120 points, then the tendencies are obvious. When most of the figures for each item are greater than 120, this may be a strong evidence that the subject is "loaded" with various psycho-neurotic tendencies, thus requiring psychological / psychotherapeutic assistance as it follows:

I. The general figure for depressive-hypochondriac tendencies = 286 points, sad mood, deep depression, a reaction that paralyzes physical energy and will occur after a psychotrauma event. The depressed-hypocondriac tendency "loaded" at the 280 - point index in the context of the case draws attention to the suicidal potential.

II. The general figure for the emotional tendency = 280 points, with a sudden change of mood, increased affective excitement. Explanatory trend of explosive claim, emotional load feeding the potential of dissatisfaction with possibly bivalent aggressive hetero / homo orientation.

III. The general figure for schizoid tendencies = 240 points, easy to notice through the rapid change of the direction of thinking, the lack of unity between tendency and will, serious harm of affective / voluntary activity. The tendency to explain predictive uncertainty about the future post-traumatic behaviour of the subject.

IV. The general figure for impulsive tendencies = 228 points, manifested by destructive and pulsational actions, actions in which affection predominates - volitional actions that are not rationally inhibited by passing at the act; epileptic tendencies - instinctive impulses to brutal and criminal actions, etc.

The other tendencies remain within the „significantly-tensioned loading" area, obsessive - psychasthenic tendencies = 210 points, unstable tendencies = 208 points, antisocial tendencies = 160 points that recommend psychological counseling and therapeutic sessions in the future.

The victim's personality profile shows ample dysfunctional changes due to the loaded psycho-neurotic tendencies - see Woodsworth-Mathews = 280 points, depression-hypocondria (sudden illness change in the sense of polarization of physical energy and will, increased emotional lability), emotivity = 280 points, schizoid = 240 points (rapid change of the direction of thought), impulsivity = 228 points (pulsational distress actions, non-rational, non-inhibition);

The subject (the victim) presents symptomatic psychosomatic load specific to the Post Traumatic Stress Syndrom (SSPV - T): emotional affective exaltation, convulsive stroke, fatigue (energy breakdowns), mood disorder, anxious retrospective (see J.J. Scheraldi, „Post-traumatic Stress Disorder", Edit. Lowell House, Los Angeles, 2000 or "Perspectives Before and After the Traumatic Event", Ianoff - Bulman- Epstein, 1993).

Behavioural dysfunctions specific to posttraumatic stress syndrome may be the etiological source of some paradoxical Luucher behaviours (+4 +1) = require acceptance, approval in the context of the tendency to hold authority / control and initiative to overcome obstacles. Tendencies and targets rejected by the anxiety (-5-7) felt by the restrictions (consecutive to the pre-trauma) that prevent it from progressing.

A. The deterioration of the psychological profile of the personality of the victim is expressed in the attitudinal picture objectivized in:

- traumatic reality permanently fixed in the mental matrix of the accident recall
- permanent repetitive update of the consequences of disability on the mentality in the context of living daily adaptation failures, insertion into the intimate, familial environment and in society as a general acceptance.
- an irrefutable update of the self-image (including the mirror image of its own physiognomy as a serious aesthetic damage), the induction of inferiority complexes and the crash of self-image in the sense of permanence of anxiety / depression as the preamble of the suicidal gesture.

B. From the perspective of a prognosis, it is worrying to highlight a possible source of discontent (possibly disagreeable revenge), resulting from the disdainfully perceived attitude (data from the anamnesis) from those whom they consider responsible / guilty of the trauma he and his family are enduring - including the possibility of frustration due to the the dissatisfaction with the legal solution offered.

C. It is recommended to stimulate, to revitalize the self-esteem (by reduction of the inferiority complexes, by destressing the frustrating affective accumulations -, by attenuation of the heterosexual and homoaggressive explosive potential and by means of psychotherapies and supportive, specialized therapies in a reconstructive / plastic surgery / repair surgery algorithm and of reuptake motor / manual dexterity).

The psychological counselling and the specialized psychiatric observation are required throughout entire lifetime during periodical sessions.

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