

Dementia: Psychiatric and legal issues

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Summary

Dementia is a syndrome caused by brain damage. Usually it is accompanied by progressive deterioration of main cognitive functions. Changes are frequently observed in the individual's personality and social behaviour, combined with a gradual withdrawal and difficulties in fulfilling daily activities.

The consequences of the disorder may involve both the Civil and the Criminal Law. The mental disability, from which the person with dementia suffers, may lead to his judicial submission under a regime of assistance or even of deprivation (partial or total) considering his legal competencies.

The terms, danger and dangerousness are used by the science of Law, by Criminology and Forensic Psychiatry, (especially, within the frame of mental expertise). The demented patients are a group of population with relatively low involvement in violent and criminal actions. Nevertheless, some demented patients may be cantankerous, irritable or even aggressive especially towards their caregivers. A small percentage may be involved in minor offenses (such as petty thefts, sexual annoyances). On the other hand, patients with dementia are particularly vulnerable and may become victims of abuse, assault, robbery, deception, family abuse or neglect.

Key words: dementia, judicial assistance, invalidity of will, dangerousness, delinquent behaviour, victimization

Dementia: definition and symptoms

Dementia is a syndrome caused by brain damage. Usually it is accompanied by progressive deterioration

of main cognitive functions such as memory, judgement, speech, thought, orientation, comprehension, execution of arithmetic operations, learning abilities [1,2].

Besides the cognitive deficits, changes are also frequently observed considering the individual's personality and social behaviour. The above are combined with a gradual withdrawal and difficulties in fulfilling daily activities. The demented patients depend on their caregivers and as the disease worsens their ability for self care decreases. Moreover, they may exhibit irritability, restlessness, violent behaviour, suspiciousness and paranoid ideation. A significant percentage of demented patients are depressed and present psychotic symptoms [3,4].

More than 100 types of dementias have been described. The most common are: Alzheimer's disease, vascular dementia, Korsakoff's syndrome, dementia with Lewy bodies, dementia due to other medical condition and unspecified dementia [5].

The diagnosis of dementia depends largely on whether or not its cause can be cured. Irreversible forms of dementia worsen, often rapidly. The medical treatment may inhibit its progression for several months. Many-sided care, supervision and emotional support maintain a satisfactory long-term quality of life for the patient. Those patients who do die because of an accident or another illness and reach the final stage of the disease are unable to communicate and they need continuous care and supervision [6,7,8].

Dementia and judicial assistance

The practicing of psychiatry is associated with legal, moral and ethical dilemmas that may concern the protection of the patient's freedom, health, dignity, property.

In Greece the ability of people with severe mental disorders to exercise their civil rights, is regulated by the law 2447/1996 which identifies the condition of sub-

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mission under judicial assistance. Modern judicial assistance has replaced the oldest legal institutions of judicial prohibition and judicial supervision, which was more rigid and less sensitive to issues considering the protection of patient autonomy [9].

Under judicial assistance may be placed every adult who presents: a) a psychological or a mental disorder or a physical disability that prevents him (totally or partly from taking care of his affairs himself, b) prodigality, drug addiction or alcoholism, creating a danger of deprivation for himself, his or the members of his family [10] (Article 1666).

The subjection of a person under judicial assistance, is decided by the court after an appropriate application: a) by the patient himself, b) by his wife, parents, or children, c) by the public prosecutor, ex officio. Social welfare and mental health services must notify the competent authorities about individuals who are in need of judicial assistance [10] (Art. 1667).

Psychiatrists, social workers, psychologists, members of the staff of a Mental Health Centre, Hospital or other mental health service are qualified for expressing an official opinion about the necessity of assistance and the suitability of any person proposed to be the guardian. Before deciding, the court has to order a psychiatric expertise and a social report. Regarding the psychiatric expertise for people with dementia, critical are the ability of the patient to make judgements (to reason, to make reasonable predictions, to evaluate, to estimate), the function of his memory, disorders of emotional and behavioural responsiveness (impassivity, senility, impulsiveness,), lack of volition, delusions (e.g. ideas of persecution).

The guardian may be: a) a person proposed by the assisted person himself, if deemed appropriate from the court, b) a person, institution or establishment designated by the court. Members of the staff of mental service attending the person under assistance can not be his guardian.

According to the circumstances, the court which subjects a person under judicial assistance, either: 1. declares him legally incapable for doing all or some lawful acts, (deprivative assistance, total or partial) or, 2. declares that the legal acts in which the assisted is engaged require the consensus of the guardian (subsidiary assistance, total or partial) or, 3. decides for some combination of the two previous forms of assistance. The court is not bound by the submitted applica-

tion, but must impose on the individual who is under judicial assistance the minimum constraints requiring the protection of his interests [10](Art. 1676).

When the court subjects an individual under judicial assistance (either deprivative or subsidiary), it expressly declares which acts are legally forbidden for the individual and which acts prerequisite the consensus of his guardian. The individual, who is under judicial assistance, is invited to express his opinions and to propose the person who wants to act as his guardian. The court takes into account his proposals [10,11,12] (Art 1679).

Dementia and invalidity of will

One of the conditions for the validity of legal acts such as marriage, parental care, making a will, contacting a financial agreement, is the legally impeccable statement of the free volition of a legally capable person. Thus, the acts performed by a person under deprivative assistance, as well those performed by a person under subsidiary assistance without the consensus of his guardian, are invalid.

An act may be also invalid, if the individual who performs it is hospitalized in a psychiatric institution, or is not aware of what he is doing, or has a mental disorder that affects his volition. The invalid performance of an action does not create any legal consequences. Among the causes that affect the validity of a legal act are the organic mental disorders, such as dementia [13, 14].

Dementia and dangerousness

The terms, danger and dangerousness are used by Science of Law, by Criminology and by Forensic Psychiatry, (especially, within the frame of a mental expertise) [9].

In Psychiatry, dangerousness consists in the propensity of committing a violent or self-destructive act ("dangerous, to others or to himself") by people who present a mental disorder, because of this disorder [9].

Within the frame of the Criminal Law, dangerousness is mainly associated with public safety. Usually an individual is considered to be dangerous if he tends to violate the criminal law provisions that protect the fundamental rights of the citizens. Usually, a main criterion is the prior behaviour of the offender. Dangerousness is also taken into account by the court in the sentencing

of a penalty or in deciding security measures.

Legal Psychiatry usually examines the danger of committing serious criminal offenses, committing a suicide, causing accidents, because of a mental disorder. The assessment is conducted either by an expert designated by a judicial authority, or by a distinct attorney within the framework of deciding of involuntary treatment, or other administrative measures [9].

The concept of dangerousness seems to be unclear and it is approached differently by different disciplines. The attribution of dangerousness on a person is based on a probabilistic determination. Since serious violent crimes and suicides have as perpetrators a very small percentage of the population per year, even if a person is more dangerous than would be expected considering his demographic characteristics, the prediction that the person will do some of these acts in the near future are often not verified.

Especially, people with dementia, as they are usually elderly, they belong to a group of people with very limited involvement in violent crimes. Thus they do not present any increased risk for doing such actions. Elderly people commit suicide more often than younger ones. The risk of suicide is increased for demented patients in the early stages of the disorder, before dementia affects seriously their volition or their ability to conceive and execute a suicidal plan [9].

Dementia and delinquent behaviour

Some demented patients can be cantankerous, irritable or aggressive especially towards their caregivers.

Despite the limited dangerousness of demented patients, in extreme cases, especially when dementia is complicated with psychotic manifestations, such as persecutory ideas and delusions of jealousy, the patient may become threatening or violent against his "persecutors" or against "unfaithful" wives and their imaginary "lover" [16,17].

A small percentage of patients may be involved in minor offenses (such as petty thefts, sexual annoyances). These offenses may be caused by the ... of judgement and the foolishness that accompany frontal dementia [18].

Victimization of demented patients

According to surveys, patients with dementia are particularly vulnerable. Quite often they become victims of robbery, tortures (e.g., to reveal where they hide their money), other forms of violence, even of sexual abuse [19, 20,21,22].

The demented patients may often become victims of fraud, insults, acts of discrimination. Domestic victimization includes the arbitrary appropriation of financial resources and assets of people with dementia, abuse, neglect (e.g. untreated health problems). Similar forms of victimization occur, considering patients living in institutions [19,20,21,22].

The prevention of the victimization of demented patients includes public sensitization, education and support of families and caregivers, welfare mechanisms to detect suspected cases and assistance to abandoned and destitute patients [23,24].

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