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BRIEF REPORT

Personality disorders in the Spanish jurisprudence[☆]



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Abstract Personality disorders may affect intelligence and free will and therefore imply a criminal imputability alteration. However, Spanish jurisprudence does not follow a general rule when assessing personality disorders' influence on criminal liability. By reviewing 77 Spanish Supreme Court decisions, we present in this paper a descriptive and retrospective study on how jurisprudence understands and assesses personality disorders. Paranoid, borderline, unspecified and antisocial personality disorders are in practice the more often applied constructs, but they do not imply full exculpation. In comorbidity cases courts usually recognise partial exculpatory defenses or attenuate punishment in reasoning by similarity and analogy to mental disorder. In personality disorder cases sentences, disorders of that kind have a relative influence on measuring penalties – courts impose, if so, a minimum sentence at its lower half or, at most, at only one grade under the minimum grade. Imposing security measures for diminished capacity cases related to personality disorders is exceptional.

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PALABRAS CLAVE

Psiquiatría forense;
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Trastornos de la personalidad en la jurisprudencia española

Resumen Los trastornos de la personalidad (TP) pueden suponer una afectación de las capacidades cognitivas y/o volitivas y, en consecuencia, implicar una modificación de la responsabilidad criminal. Sin embargo, la jurisprudencia, al valorar la incidencia de los TP sobre la imputabilidad, no responde a una regla general. Se presenta un estudio descriptivo retrospectivo

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del tratamiento jurisprudencial que reciben los TP mediante la revisión de 77 sentencias condenatorias del Tribunal Supremo entre febrero de 1998 y noviembre del 2010. Los TP que más se tienen en cuenta en la valoración de la imputabilidad son el paranoide, límite, no especificado y antisocial, pero sin considerarse eximente de la responsabilidad criminal. En los supuestos de comorbilidad generalmente se aprecia una eximente incompleta o atenuante análoga de anomalía o alteración psíquica. En la condena por delitos cometidos por sujetos afectados por TP, el reconocimiento de dicho trastorno tiene una incidencia relativa en la pena, imponiéndose esta en su mitad inferior o, a lo sumo, rebajándose a la pena inferior en un solo grado. La adopción de medidas de seguridad para los semiimputables en caso de TP es excepcional.

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Introduction

According to current criminal legislation in Spain, personality disorders (PDs) can be presently considered an aetiological basis for various psychopathological manifestations that may affect intelligence and/or free will and consequently reduce criminal responsibility. However, this was not always the case. The Penal Code¹ enacted in 1995¹ substantially improved the attitude towards this reality, as it replaced the criminal responsibility exemption clause that used the term “deranged” (Article 8.1 of the 1973 Penal Code²) with “psychological abnormality or alteration” (Article 20.1), thus allowing for both pathological abnormalities and psychological alterations, such that current case law now considers “that PDs meet the requirements of biopathological presupposition” (Spanish Supreme Court Ruling [Sentencia del Tribunal Supremo, STS] 24 November 1997; Legal Resolution [Resolución Jurídica, RJ].1997/8357).

Although PDs are currently accepted, however, case law does not follow a general rule when assessing the influence of PDs on criminal capacity. This has been stated by the Supreme Court in several rulings (STS of 22 October 2003; RJ.1363/2003), leading to a vacillating and sometimes contradictory case law on the concept of mental illness and PDs. The reason for this inconsistency, apart from the difference in psychopathological influence that each specific disorder entails, is the occasional confusion between PDs and psychopathy, due to the historic conceptual and terminological controversy involved in the topic.³ A current risk described by some authors is that criminality can be confused with PDs,⁴ and consensus on the matter is also further complicated by a lack of clarification and controversy regarding the use in legal medicine of the various international clinical diagnostic and statistical manuals.⁵

Nevertheless, the clinical and judicial-criminal relevance of PDs in serious violent behaviours is indisputable.⁶ From the psychiatric-forensic standpoint, criminal capacity is not usually considered to be influenced by psychopathies or PDs, although such conditions may occasionally exert some influence on criminal capacity in certain serious cases.⁷

Despite considerable interest in the topic, only a few studies have investigated the approach of case law towards these disorders.⁸ The aim of this article is to describe the approach of Spanish case law to PDs.

Material and methods

We conducted a retrospective descriptive study that reviewed Spanish Supreme Court (Chamber 2) rulings in petitions for cassation which had been handed down by the Supreme Court with sentencing after the 1995 Penal Code had taken effect, which applied the code currently in effect (sentences within the study period were excluded if the 1973 Penal Code had been used) and which had been published in case law compilations, La Ley, EDJ (El Derecho-Base de Datos de Jurisprudencia y Legislación [“The Law-Case law Databases and Legislation”] and RJ (Westlaw, Aranzadi)). In particular, the compilations were searched using the keywords “personality disorder”, “abnormality” and “abnormalities” for the period from February 1998 to November 2010, the time point at which this study began. All data were processed using Microsoft® Excel® 2011 (version 14.2.3).

The analysis of the court’s sentencing included the following variables: (1) identification of the sentence; (2) legal agency originating the procedure; (3) year of the sentence; (4) crimes included in the sentence being appealed; (5) diagnoses that the sentence considered to be proven; (6) influence on intelligence and free will acknowledged by the sentence; (7) influence on criminal responsibility acknowledged by the sentence; (8) sentence, including possible reduction of the sentence, and (9) security measures.

Results

The study analysed a total of 77 rulings handed down by Chamber 2 of the Supreme Court in petitions for cassation; 70 of these rulings were petitions regarding rulings handed down by Provincial Courts and 7 were petitions regarding rulings handed down by the Civil and Criminal Court of Superior Courts of Justice in autonomous communities, for a total of 77 cases of PDs.

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