

The Medical Toxicologist in an Albanian Court: Ethical and Legal Issues

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Abstract: Recent developments in the field of forensic medicine and the judicial practice are both factors influencing considerably toward an increasing role of toxicologists in court hearings and litigation processes. The role of forensic toxicologist has been until a few decennia before a prerogative of the medico-legal specialists, but meanwhile a subspecialty of the general toxicology seems to have been created. *Vis-à-vis* the increasing presence of toxicologists in penal procedures of poisoning and intoxications, Albanian courts have created their own precedents and bylaws, regulating the presence, the opinion taking, and the relative importance such an expert opinion will have on the final sentence. Due to a multiplicity of factors, legal terminology with regard to drugs of abuse needs to be revised and parallel to such a revision a better defining of the role of expert toxicologist as a collector and interpreter of the scientific proofs seems necessary. Overlapping competencies with judicial bodies and confusing legislative measures will do nothing else but complicate issues that should be and can be easily resolved, through simple and appropriate interventions at different levels.

Keywords: Toxicology, expert role, court hearings, legal terminology, controlled substances, penal legislation.

INTRODUCTION

The role of expert in toxicology is a matter of controversy due to several factors. In fact, toxicology until recently has been almost a prerogative of military medicine, but gradually in the last decades civil litigation processes have increasingly required expert opinions. The co-existence of similar or almost identical professional roles has rendered the definition of such a role even more difficult: forensic pharmacist, pharmacologist, biochemistry specialist and toxicologist have seen their functions largely overlapping [1, 2].

Since inappropriate drug use has become a matter of considerable public health concern during the last decades, it is comprehensible that forensic toxicology would have an increasing role in judicial procedures. However, this discipline is not a completely new founded-one, although its role and weight has been changing. In fact, James S. Stringham started in 1804 a teaching program on forensic toxicology at the Columbia University (US), and meanwhile the European experience with judicial procedures on forensic toxicology was being created [3].

As in other cases, history is made from major events: first trials on poisoning, or on suspicion of poisoning of famous people, have already requested toxicological expertise. During the years 1844-1847 Spain was witnessing the Maria Bonamot trial, with the

first suspected case of poisoning going to court in the nation's history; almost at the same time (1850) the Count Visart de Bocarmé was accused of having killed his brother-in-law Fougny by poisoning him with nicotine [4, 5]. It was at the same period, when a trial related to a notorious murder case was registered in England, with William Palmer beheaded following his conviction for a strychnine poisoning [6].

During those remote years scientific discussions regarding the post-mortem value and reliability of forensic toxicology were formulated, although pioneering opinions were given, mostly at a lay level, even centuries before [7]. Shakespeare's genius describes in his masterpiece 'Hamlet' the story of the old King poisoned by his brother, through instillation of a '*juice of cursed hebona*' into the King's ear [8]. Hebona, a plant whose existence and toxicity have been questioned, might be quite well a production of writer's fantasy, however Shakespeare is meticulous in describing the way of acting of the toxic substance: '*it courses through / the natural gates and alleys of the body...*' [9]. The drama of an empoisoned king; the subsequent public trials related to unexpected deaths of famous people, and the irrefutable curiosity and horror that has ever since surrounded toxic deaths, granted the citizenship to the new discipline of forensic toxicology, almost two centuries from now.

DEFINITION OF THE ISSUE: FORENSIC TOXICOLOGIST IN COURT. WHAT FOR?

Due to obvious particularities, judicial setting and court hearings are unfamiliar for most of the medical

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specialists. This is the main reason why forensic toxicology has been till recently a competence of coroners or of medico-legal specialists, with clinicians being involved but rarely. However, multiple and frequent adverse health effects of several active principles, such as of alcohol, of numerous drugs (even over-the-counter) and of environmental polluting agents have all of them contributed to the increasing role of the toxicologist in general, in the forensic sciences and in the judicial procedures [10].

In an exhaustive report, Dubowski reassumes the role of forensic toxicologist as an expert in trial, through granting him four main functions, such as (a) presentation of drug-testing results; (b) interpretation of the latter; (c) support of other scientific evidence gathered during the process and at last; (d) review and eventually rebuttal of opposing evidence [11].

Obviously, interpreting the scientific evidence in the courts is different from lecturing in a University auditorium. The largest numbers of toxicological analysis requested in the penal system, and in the civil adversary system, are requested in relation to ethanol and other alcoholics' abuse, blamed as causative or intoxicating factor. Drugs of abuse, central nervous system depressants and stimulants, cannabinoids, heroin and other opiates, among panoply of active principles being studied and scrutinized, will fall within the scope of everyday work of a clinical toxicologist. Specialized expertise on intoxication cases with these drugs will eventually be requested from law-enforcement agencies, prosecuting bodies and courts.

Since the body of knowledge related to drugs of abuse and psycho-characteristics of the latter is considerably increasing, it is expected that even courts and judicial instances will enter into technicalities and medical details. Wide discussions, pertaining to the previous century, were made related to the forensic value of post-mortem serum and blood biochemical analysis, initially approached with certain skepticism. Nowadays verdicts and respective courts are entering into thorough biochemical and pharmacological details, with discussions specialized to the level of whether metabolites of a certain drug of abuse should be considered as for inclusion into the respective Legislatures. This has been, for example, the case of Marie Derror charged in Michigan, US (2004), for driving under marijuana influence, but with her blood analysis samples showing the presence only of carboxy-THC (tetrahydrocannabinol), a controversial

metabolite that probably has no pharmacological effect on the human body [12].

Classifying a certain principle within the group of controlled substances (i.e. regulated through appropriate laws and bylaws, and thus considering it a matter of law enforcements agencies) is a long process; separating those principles into different subgroups (schedule I to V according to US legislation, with schedule I being drugs of abuse, without any medical use) might be even more controversial, and toxicological expertise will be requested constantly [13].

ALBANIAN COURTS AND TOXICOLOGISTS: WHAT ABOUT TERMINOLOGY?

The first issue raised with regard to judicial procedures seems a very pristine one, but which stays behind serious miscomprehensions. General public and laymen hardly make a distinction between several classes of drugs of abuse, and that might be to some extent related to the ideologically-impregnated Albanian past, when during the last half century of communist regime all narcotics were considered as being the same, namely as synonyms of depravity, lechery, and of an abhorrent and lavishly-led life.

Yet drugs of abuse are clearly not the same, and this is valid for their intrinsic risk of dependence, respective side effects, and different over-dosage or withdrawal clinical syndromes. Therefore, drugs of abuse need to be differentially treated, as US legislation already has classified those in five different schedule compounds, according to their potential of abuse.

The terminological confusion in Albania actually is related not only to the inability to understand differences, but also to a Turkish-borrowed word which has entered the everyday Albanian dictionary. In fact, modern Turkish language makes a clear distinction between poppy (*opiates*) with the respective word *haşhaş*, which is used verbatim in Albanian as *hashash*, the local word for a plant-extracted product (*Papaver somniferum*), highly sedative [14]. Yet in Turkish there exist a highly similar word, *haşış*, (originating from Arabic, meaning 'grass') which has as well been borrowed into the colloquial Albanian as *hashish*, one of the world-known denominations for a form of *Cannabis* product.

These two terms that are quite evenly spelled and whose sounding seems identical (*hashash* – *hashish*) have entered into the everyday Albanian language as

synonyms, but rather completely erroneously. This reflects the inherited hardship in comprehending differences between the two groups of substances (*opiates* vs. *cannabis*), and the available Albanian dictionaries have run short of the second term, thus excluding the mentioning of *hashish* in the word data bases. The only reference for *cannabis* in an Albanian dictionary published in 2006 is in the form of *marijuana*, and the explanation is completely wrong, considering the *marijuana* a kind of *opium*, thus as an equivalent to hashish [15].

No need to say that these drugs of abuse, although both extremely addictive and dangerous, have quite different pharmacological profiles and mechanisms of action; these characteristics warrant their differential approach under all aspects, be those judicial, medical, psychological or social.

This confusion might explain, to some extent, the misconceptions and all technical issues that the (misused) terminology might raise, even inside Albanian courts, when it comes to charges or verdicts related to the drugs of abuse. The terminological question is still unresolved, and this is still happening, although the country actually is an important station of producing and trafficking *cannabis* in some of its varieties [16].

ALBANIAN COURTS AND TOXICOLOGISTS: WHAT ABOUT LEGISLATION?

The Law No. 7975 over the 'narcotics and psychotropic substances', regulating this issue in the territory of Albania, was promulgated in 1995, and has ever since amended several times [17]. In its original form, the Law classified substances in three Tables, with a very high degree of similarity to the separation in five schedules, as it is foreseen in the US law.

If the Law dated 1995 is specialized enough and the separation of medications with regard to their potential of addiction and toxicity is really scrupulous, the sentences that are given and charges that are raised against drug abusers and traffickers are otherwise based in the Penal Code. The latter makes no distinction in between different pharmacological families of drugs of abuse, thus implying merely the notion of 'narcotics'. Therefore the sentences foreseen are strictly the same, be it for opiates, and be it for cannabis, with a large range of verdicts' inconsistencies.

ALBANIAN COURTS AND TOXICOLOGISTS: WHAT ABOUT ROLE REVERSAL?

The role of expert in trial is another technicality that needs to be cautiously addressed. In an attempt to unify positions, the European Committee on Crime Problems has repeatedly formulated opinions and published documents on the role of expert in trials, on the value of scientific evidence and ways to collect such evidence [18].

The situation of scientific proof in criminal matters and the role of expert in the Albanian judicial system evolved considerably during the last two decades. Due to a consistent increase in disputes and charges following drug seizures, the opinion of a toxicological expert has become indispensable.

This has led to a role reversal, with experts unexpectedly granted the functions of a jury, and vice versa. According to a High Court Decision of Albania, in a unified session dating 2008 (that constitutionally is equivalent to a law whereby there is no legal measure in force regulating an issue), an expert toxicologist has the duty to define if a seized quantity of a drug of abuse is for personal use, be it the detainee a known drug abuser [19]. If not, the detainee will be considered a trafficker, and subject to lawful penalties. This distinction (drug abuser – drug trafficker) is obviously extremely important, since addicted persons are not subject to penal prosecution, if quantities seized are 'for personal use'. Granting to the doctor – a forensic toxicologist – the responsibility of separating drug abusers from drug traffickers in courtrooms is a hazardous step, restricting the ability of a jury to give an independent and free decision, which should be oriented primarily from the judicial criterion, and not from the medico-toxicological one.

CONCLUSIONS

Giving to Caesar what belongs to Caesar is a difficult task; however necessity is pushing forward Albanian judicial bodies and forensic experts into a closer collaboration. A redefining of terminology and a thorough revision of legal measures in force will obviously help both sides to better define their respective roles and thus to enhance the necessary collaboration.

Forensic toxicology is a relatively new discipline for Albania, but the increasing number of expertises requested and formulated will help boost the future of a subspecialty that is an indispensable tool in the judicial

processes of poisoning, litigation lawsuits in cases of accidental intoxications, as well as in the field of drug abuse and trafficking.

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