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LEGAL NORMS REGARDING THE ASSESSMENT OF THE ABILITY TO DRIVE MOTOR VEHICLES

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Abstract: The forensic expertise regarding the assessment of the ability to drive a motor vehicle on public roads is a necessity for both the person in question [driver] and for the authorities that request it. This type of examination raises the issue of a legislative void in that the current laws fail to provide for the plethora of situations/diagnoses encountered in practice. This paper aims to draw attention on the major differences between the legislative provisions on amateur drivers in comparison with professional drivers, given the potential for similar social danger between both categories, and also on the difficulty of establishing this quality in psychiatric patients.

For this purpose, we have compared the judicial requirements for both categories of drivers to better understand their shortcomings and we have analyzed 70 cases of this type of examination to determine the most common diagnoses we encounter.

Keywords: forensic expertise, driving, legislative norms.

INTRODUCTION

The forensic expertise on the assessment of the ability to drive a motor vehicle on public roads is a necessity both for the person in question [driver] and for the authorities that request it. In order to ensure the accuracy of the conclusions of the forensic expert's report, it must be carried out by a committee [1], as its outcome may result in the impairment of a person's rights. This type of examination raises the issue of a legislative void in the sense that the current laws fail to provide for the plethora of diagnoses encountered in current practice.

LEGAL PROVISIONS

In order to complete such an examination, in the case of amateur drivers, it is necessary to consult the legislative provisions relating to the Minimum standards of physical and mental fitness for driving a motor vehicle of 31 August 2010. These refer to a series of 10 generic diagnostic categories, not covering the variety of situations encountered in forensic practice, which may give rise to subjective interpretations of the case.

In contrast, in the case of transport safety personnel, Orders No 1.257 of 10 October 2013 and No 1.151/1.752/2021 may be consulted when drawing up the forensic expert report. They set clear standards for each position, from professional pilots to taxi drivers, placing each position in a group of health requirements. Thus, the official expert can use the 143 diagnostic categories available in these legislative provisions, each with clinical peculiarities and sub-entities, to determine whether the patient is fit/unfit to drive a motor vehicle on public roads. There are 4 standards used, with increasing requirements from I to IV, so that for standard I an almost perfect state of health is required and for standards II, III and IV slight or medium dysfunctions related to the affected organ or apparatus are allowed [2].

Thus, in the hypothetical case of a patient working as a taxi driver, diagnosed with inactive tuberculosis, he would fall under the first and second

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standards (Table 1).

Consulting the list of medical conditions and contraindications corresponding to the scales for the preparation of medical opinions for transport safety personnel [3], this case falls under fit/unfit with re-examination every 6 months, depending on the particular circumstances (Table 2).

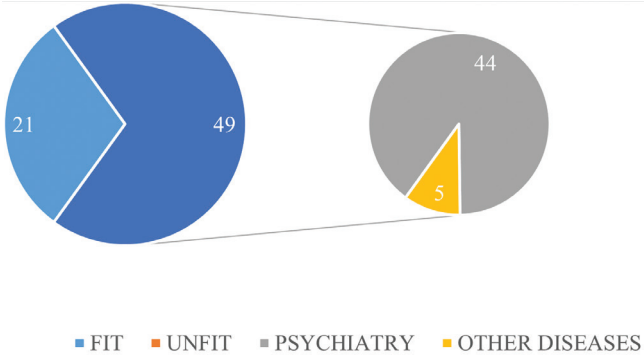

Figure 1. Fit/unfit ratio and distribution of psychiatric pathology in unfit cases.

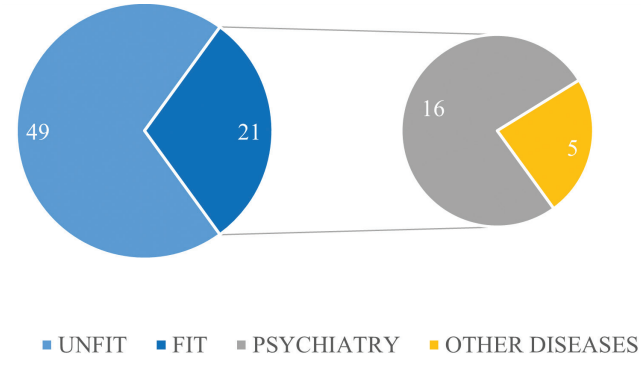

Figure 2. Fit/unfit ratio and distribution of psychiatric pathology in fit cases.

OBJECTIVES

The objectives of our study were: to identify the current legal shortcomings regarding the medico-legal assessment of patients in reference to their ability to drive motor vehicles on public roads, to determine the leading type of disease that led to the withdrawal of the driving license as well as issues regarding those particular instances.

MATERIALS AND METHODS

A retrospective study was carried out in order to obtain an outlook on the outcome of the medico-legal expertise in patients assessed in the County Clinical Service of Forensic Medicine of Constanta. Therefore, between 2017-2021, 70 forensic medical examinations were carried out to determine their the ability to drive a motor vehicle on public roads.

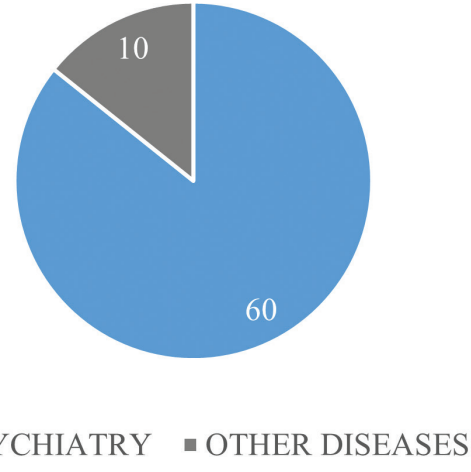

Figure 3. Distribution of psychiatric cases/other diseases.

Table 1. Standards for the chosen position [2]

Nr. crt.	Position in road safety	Standards used after graduation and debut in the position		Standards used for regular health checks, rehiring and changes in position	
		Medical	Psychological	Medical	Psychological
3.	Taxi driver/rental regime/alternative	I	I	II	I

Table 2. List of medical conditions [3]

Nr. crt.	Diseases and physical-psychological deficiencies	Standards used for medical approval			
		Standard i 1 Admission for training and debut in the position	Hiring	Standard ii 2 Regular health checks, rehiring and changes in position	Standard iii 3 Regular health checks	Standard iv 4 Regular health checks
I.	General diseases					
1.	Pulmonary or extrapulmonary tuberculosis					
	A]active	Unfit	Withdrawn with evaluation after discharge			
	B]without functional disturbances	Fit with examination every 6 months			Fit	
	C]with functional disturbances	Unfit	Fit with examination every 6 months			

RESULTS

A total number of 70 cases were analyzed from the County Clinical Service of Forensic Medicine of Constanta archives. A number of 21 medico-legal expertise reports concluded that the patient is "fit to drive a motor vehicle on public roads", the remaining 49 were classified as "unfit".

Out of the 49 cases of "unfit", a majority of 44 cases were in relation to a psychiatric disease.

Similarly, out of the 21 cases of "fit" a majority of 16 cases were also in relation to a psychiatric disease.

We notice that in both cases, those as "fit" and "unfit", the proportion of cases of psychiatric pathology is in the majority (Fig. 3).

DISCUSSION

Using these legislative rules, the official expert can effectively determine the fitness/unfitness to drive on public roads, as well as setting clear intervals for retesting where appropriate. These standards and rules apply only to those in transport safety positions and are not applicable to forensic examinations of amateur drivers. Thus, the conclusions of the expert reports may be of an empirical nature in the case of the latter, as the expert does not have such standardized tools at his/her disposal.

Although the legislative norms in any field represent the source of law and the legal framework according to which an activity is carried out, in forensic practice, especially in the context of the expert reports to determine the ability of a person to drive a motor vehicle after his license has been suspended for medical reasons, here referring in particular to patients with psychiatric pathology, there are some situations that often create difficulties in the objective examination in this type of expert report.

In the case of amateur drivers who, for various medical reasons [mental illness at the beginning or even chronic but undiagnosed], end up in the medico-legal institution to be forensically examined, the main objective being the lifting of the suspension of the driving license, the Road Service requests such an expertise in order to determine the patient's health status.

Most often than not, patients with mental illness will hide their pathology, not owning to it, precisely because they want to reclaim their license, not considering the social danger they represent for themselves and for others. At this stage, the system and the forensic medicine is hampered by the lack of a nationwide database to search these patients in order to check their history and psychiatric medical status and treatment, leaving it up to the forensic doctor how he or she chooses to "discover"/"hunt" these possible diseases. Although according to the legislation in force, the expert can request any examination he/she considers necessary to carry out the expertise, the results of a single consultation [psychological, psychiatric] is not sufficient. Psychiatric diseases can be in different stages of evolution and the patient can be compensated under treatment, and this does not mean that he is fit to drive. On the other hand, the treatment followed by the patient is also very important as there are many drugs that prohibit driving.

CONCLUSIONS

Through this paper we wish, first of all, to draw attention to the discrepancy between the legislative requirements applied to professional drivers and amateur drivers, which should generate legislative changes, given the similar potential social danger between the two categories. Secondly, we mention that the majority of psychiatric pathology in such cases hints for a change in the manner we approach this type of forensic expertise.

By its nature, the forensic expertise is the pillar of objectivity which should not be affected by the lack of regulatory acts in a society whose purpose is to protect the rights of its members.

Conflict of interest

The authors declare that they have no conflict of interest.

References

1. Rules of Procedure of 25 May 2000 on the conduct of expert examinations, findings and other forensic work, art. 27.
2. Order No 1.151/1.752/2021 approving the general framework for the medical and psychological examination of transport security staff.
3. Order No 1.257 of 10 October 2013 approving the health scales for transport safety functions and the way in which proof of compliance with these conditions is provided, as well as the list of medical conditions and contraindications corresponding to the scales for drawing up medical opinions for transport safety personnel.