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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.

Table 1 Levels of declared criminal responsibility according to PD (with or without comorbidity).

PD	Exemption No.	Partial exemption No.	Diminished by analogy No.	No influence on CL No.
Paranoid	0	3	2	0
Schizoid	0	0	1	1
Antisocial	0	0	4	4
Narcissistic	0	0	0	1
Borderline	0	0	5	2
Obsessive–compulsive	0	0	0	2
Mixed	0	1	5	4
Unspecified	0	1	2	3
PD + substance abuse disorder	0	16	14	2
PD + borderline IQ	0	2	0	0
PD + severe mental disorder	0	0	2	0
Total: 77 (100%)	0 (0%)	23 (30%)	35 (45%)	19 (25%)

CL, criminal responsibility; IQ, intelligence quotient; PD, personality disorder.

Chronologically, the sentences reviewed were distributed as follows: 5 in 1998, 7 in 1999, 7 in 2000, 9 in 2001, 2 in 2002, 5 in 2003, 9 in 2004, 9 in 2005, 3 in 2006, 5 in 2007, 3 in 2008, 8 in 2009, and 5 in 2010.

The frequency of the various PDs (and PD groups) in the 77 rulings analysed was as follows: group A (paranoid in 7 cases, 9%; schizoid in 3 cases, 4%; schizotypal in 0 cases, 0%) for a total of 10 cases or 13% of the total; group B (antisocial in 20 cases, 26%; narcissist in 1 case, 1%; borderline in 14 cases, 18%) for a total of 35 cases or 45% of the total; and group C (obsessive–compulsive in 2 cases; 3%) for a total of 2 cases or 3% of the total; unspecified in 16 cases, 21%, and mixed in 14 cases, 18%.

The types of crimes associated with the PDs in the rulings analysed (28 of the 77 rulings handed down sentencing for more than 1 crime, for a total of 127 crimes) were as follows: 41 (32.3%) assassinations/homicides, 11 (8.7%) injuries, 14 (11.0%) sexual assaults, 23 (18.1%) thefts, 13 (10.2%) crimes against public health, and 25 (19.7%) classified as other.

Table 1 lists the degree of criminal responsibility stated in the Supreme Court ruling according to the types of PDs taken into account in the ruling, with or without associated comorbidity.

Regarding security measures or additional sentences, only 5 cases received a favourable ruling on security measures for those with reduced responsibility, with this imposed in 2 decisions: in 1 case of paranoid PD associated with toxic substance use (admission to psychiatric centre) and in 1 case of borderline PD associated with alcohol and toxic substance use (domestic restraining order). In 3 of these decisions, the adoption of security measures was delayed until the sentencing phase, in view of the dangerousness of the convicted party: in 2 cases of paranoid PD and in 1 of unspecified PD associated with heavy dependence on toxic substances.

Discussion

An analysis of Supreme Court case law reveals confusion regarding the use of *sui generis* terminology when referring

to PDs. As a general rule, there is considerable terminological and conceptual confusion regarding psychopathy. Various expressions were identified, among them “psychopathic disorder” (STS 20 December 2005; EDJ 2005/244428), “personality disorder (psychopathy)” (STS 18 April 2000; EDJ 2000/5731), “personality disorder of a psychopathic nature” (STS 3 April 2001; EDJ 2001/7736; STS 14 October 2002; EDJ 2002/42723), “emotionally unstable borderline personality disorder (psychopathy)” (STS 19 October 2001; EDJ 2001/43533), “personality disorder or psychopathy” (STS of 02 April 2004; *La Ley* 11911/2004), “chronic psychopathy or behaviour disorder of minimal significance” (STS of 19 July 2004; *La Ley* 13924/2004), “borderline conduct disorder” (STS 13 December 2005; EDJ 2005/237375), and “antisocial personality disorder with psychopathic traits” (STS 25 January 2006; EDJ 2006/29224).

The PDs mentioned most often in the rulings analysed were as follows (in order of frequency): antisocial, unspecified, borderline, and mixed. According to other studies,⁸ a very high percentage present in association with other comorbid disorders, particularly substance abuse, with the latter cases having the most influence on criminal responsibility. It is worth noting that all PDs, except for obsessive–compulsive disorder, had a mitigating effect on responsibility to some extent or another.

In 58 (75%) of the decisions, PDs had a mitigating effect on the sentence. In addition, in cases involving partial exemption of criminal responsibility, the sentence was reduced by one degree and never by 2, even though the Court can choose to lower it by two degrees under Article 68 of the Penal Code. In cases in which diminished responsibility by analogy was observed, the lower half of the sentencing range was used as the basis. In contrast, in 19 (25%) of rulings, the PD was not relevant for the purposes of reducing criminal responsibility.

Regarding the influence of drug dependence as a comorbidity associated with PDs, legal doctrine has indicated that it can lead to partial exemption or the use of diminished responsibility by analogy (STS 10 March 2009; *La Ley* 8780/2009; STS 19 October 2001; EDJ 2001/43533 and STS 4 December 2001; EDJ 2001/53392). However, this is not

always the case (STS 20/02/1998; *La Ley* 4379/1998). In 2 of the rulings analysed, PD comorbidity with substance abuse did not influence criminal responsibility in any way (STS 10 June 2009; *La Ley* 104415/2009, and STS 25/03/2004; RJ 439/2004).

Lastly, on other occasions, the Supreme Court acknowledged diminished responsibility by analogy or mental disorder, assessing the influence of the disorder on criminal capacity due to "uninhibited behaviour, disregard for prohibitive laws, without considering the illegality of the means" (STS 16 October 2000; EDJ 2000/35460), or due to a "diminished capacity for intellectual and volitional reflection" (STS 23/05/2005; EDJ 2005/38345), imposing the lower half of the sentencing range.

To conclude, it is relevant to mention PDs when seen in association with borderline IQ or severe mental disorder. It is general doctrine that only in particularly serious cases, generally associated with other pathologies, have they been considered to imply partial exemption (STS of 22 October 2003; RJ 1363/2003). Among the rulings analysed, only 4 decisions involved these diagnoses. One was a mixed PD (STS 5/06/1998; EDJ 1998/4297) and another was an unspecified PD (STS 09 February 2001; EDJ 2001/2985), both associated with borderline IQ and admitting partial exemption due to a mental disorder. In the other 2 decisions, the Supreme Court admitted diminished responsibility by analogy in the mental disorder: 1 was a diagnosis of paranoid PD associated with psychotic symptoms and recurrent depressive disorder that affected criminal capacity due to "an insignificant decrease in capacity of self-determination" (STS 19 January 2000; EDJ 2000/460) and 1 had a diagnosis of antisocial PD associated with paranoid schizophrenia (stabilised) that affected criminal capacity due to "mildly affected cognitive and freewill capacities" (STS 29 May 2003; EDJ 778/2003).

Further evidence of the disparity in legal criteria is that some rulings emphasise the emotional and freewill aspects affected by the PD in which intelligence was preserved (STS 04 November 2002; RJ 1825/2002; STS 18 June 2001; RJ 1164/2001), whereas others confirmed the presence of an influence on cognition (STS 07 May 2001; RJ 753/2001). Although most rulings stated that the disorder affected the subject's freewill capacity, cognitive capacity remained unimpaired.

In addition, there are decisions in which the subject was declared to be affected by the PD, but this did not affect criminal responsibility because the court did not acknowledge the required relationship of intention with the crime committed (STS 22 November 2005; *La Ley* 377/2005, STS 25 April 2005; EDJ 2005/71541, and STS 10 June 2009; *La Ley* 104415/2009).

Our results are consistent with the findings reported by Esbec and Echeburúa⁶ who report that, apart from psychopathies, recent case law has mentioned the complexity and difficulty of establishing general doctrine on the influence of PDs on the capacity for culpability and stress that each case should be analysed individually. Generally speaking, the Supreme Court understands that PDs are assessed criminally as diminished responsibility by analogy, that simple maladaptive personality traits do not affect criminal capacity, and that partial exemption is rare and reserved for very serious cases or for cases associated

with drug dependence or other mental disorders: a PD in and of itself is insufficient to consider partial exemption.

Limitations

The study consisted of a review of criminal rulings by Chamber 2 of the Supreme Court which provides information, in our opinion, on the judgement of the most serious (sentenced) cases and also on the inherent bias of these cases and omits all rulings not handed down by the Superior Court or that have no sentences and that could contain relevant information on the case law approach towards PDs. Because the study methodology consisted of a case law review, it was not systematic and did not cover recent years. Nevertheless, case law was assumed to be stable because the Penal Code had been in force for 12 years. Lastly, no information was collected on the degree of execution (attempt, completed) or the types of perpetration or participation.

Conclusions

Despite the limitations of this research, our analysis of the sample of rulings we examined indicates that case law assessing the influence of PDs on criminal capacity does not exhibit any general rule. At present, the PDs most usually taken into account when assessing criminal capacity are paranoid, borderline, unspecified and antisocial PDs but these do not fully exempt from criminal responsibility.

In general, partial exemption or diminished responsibility by analogy of mental disorder was observed in the most common cases of comorbidity (PD associated with drug abuse).

When sentences are handed down for crimes committed by persons affected by PDs and considered by case law to have full or partial criminal capacity, acknowledgement of this disorder has only relative influence on the sentence, affecting the lower range or, at most, reducing a lower sentence by one degree.

In the case of PDs, the adoption of security measures for individuals judged to be of reduced responsibility is rare.

Conflicts of interest

The authors declare that they have no conflicts of interest.

References

1. Código Penal de 1995. Art.20.1. Madrid: Ed. Ministerio de Justicia y BOE; 2010.
2. Código Penal de 1973. 6.ª ed. Madrid: Ed. Colex; 1991.
3. Torrubia Beltri R, Cuquerella Fuentes A. Psicopatía: una entidad clínica controvertida pero necesaria en psiquiatría forense. *Rev Esp Med Legal*. 2008;34:25–35.
4. Hare RD, Neumann CS. The role of antisociality in the psychopathy construct: comment on skeem and cooke. *Psychol Assess*. 2010;22:446–54.
5. Tyrer P. The classification of personality disorders in ICD-11: implications for forensic psychiatry. *Crim Behav Ment Health*. 2013;23:1–5.
6. Esbec E, Echeburúa E. Violence and personality disorders: clinical and forensic implications. *Actas Esp Psiquiatr*. 2010;38:249–61.

7. Ortega-Monasterio L, Gómez-Durán EL. Psiquiatría jurídica y forense. In: Vallejo Ruiloba J, editor. Introducción a la psicopatología y la psiquiatría. Barcelona, España: Elsevier; 2011. p. 619–35.
8. Mohíno S, Pujol A, Idiáquez I. Personality disorders and criminal responsibility in the Spanish Supreme Court. *J Forensic Sci.* 2011;56:150–4.