

Criminal and Legal Responsibilities in Tourette's Syndrome

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Abstract: Tourette's Syndrome (TS) is a neuropsychological disorder characterized by the presence of multiple involuntary motor tics accompanied by one or more vocal tics. Articles about TS and criminal responsibility and the restriction of civil rights are limited. A person with TS was evaluated to consider his criminal responsibility after swearing at a referee during a football game. He was also evaluated as to whether or not he was capable of professionally driving a service bus. Additionally, medico-legal situations regarding military service, obtaining a shotgun license and marriages of patients with TS were considered.

Introduction

Tourette's syndrome (TS) is a neuropsychological disorder related to alterations in dopamine metabolism and neurotransmission involving frontal-subcortical neuronal circuits(1–4). TS is a form of tic disorder that develops during childhood and usually worsens during adolescence and tends to persist into adult life (4–7). TS is found in all cultures, countries and racial groups, and it is three to four times more common in males (8). Although the generally accepted prevalence figure of TS is 0.5 per 1000, this may well be an underestimate as indicated by a prevalence of 2%–3% and 0.15%–1.1% for youngsters between the ages of 5 and 18 years in recent epidemiological studies (9).

TS is characterized by the presence of multiple involuntary motor tics accompanied by one or more vocal tics (1–5). These tics need not have occurred concurrently but need to be present with tics occurring many times a day, almost every day, intermittently for over a period of more than one year (there cannot be a period free longer than three months) (1, 2). The motor tics are repetitive and involuntary contractions of functionally

related muscles and can be simple (e.g., eye blinking, head nodding) or complex (e.g., nail biting) (1). The vocal tics are often multiple with explosive repetitive vocalizations (echolalia, echopraxia and palilalia), uttering strings of words, barking, throat-clearing, and grunting, and there may be the use of obscene words or phrases. Sometimes there is associated gestural echopraxia, which may also be of an obscene nature (copropraxia) (5). Coprolalia (involuntary swearing) is uncommon, occurring in only 10–15% of patients, usually beginning at around 15 years (3). TS's disturbance is not due to direct physiological effects of a substance or a general medical condition. TS can cause marked distress or impairment in social, occupational, or other areas of functioning (4). TS is often associated with other neurobehavioral conditions such as attention deficit-hyperactivity disorder, obsessive compulsive disorder, disinhibition of aggression and emotions, mood disorders, self-injurious behaviors and poor impulse control (1, 3, 6, 7). Comings and Comings (10) observed that there were significant discipline problems and/or problems with anger and violence in 61%, attention-deficit disorder with hyperactivity in 54%, some degree

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of exhibitionism in 15.9% of males and in 6.1% of females, obsessive-compulsive behavior in 32% of their case series with TS. Robertson et al. (11) described that 30 (33%) of 90 patients with TS exhibited self-injurious behavior. Jankovic et al. (12) reported that TS patients were at higher risk for conduct problems than those with ADD only or normal controls. In severe TS cases, patients who hit, choke or throw objects uncontrollably with extreme emotions of anger and frustration are common testimonies of TS parents, coworkers and peers.

There are few presentations on TS and criminal responsibility and restriction of civil rights. We present here an evaluation of a patient's criminal responsibility for swearing at a referee during a football game. He was also evaluated as to whether or not he had the ability to professionally drive a service bus.

Case

A 52-year-old man was referred to the Department of Forensic Medicine, Medical Faculty of Celal Bayar University by the court in April 2007 for a medico-legal report on whether he was criminally responsible for swearing and whether he was suited to continue working as a professional driver. He was married with two children. He reported that his father scratched his foot as a tic when he was confronted with stimulation and his grandfather had swearing tics.

According to statements by our patient, he had lived in a village until the age of 20. It was only when he was called up for military service at that age that he first became aware of his tics. There is no medical record of his condition before this time.

He reported that he involuntarily screams and swears when someone shouts or swears at him. He also reported cursing, screaming or hitting someone when there is an unexpected action against him. He stated that when he sees a person taking off his/her clothes, he feels a compulsion to undress himself. He complained about involuntary and compulsive actions mimicking players while watching a football match. He couldn't prevent or delay his behaviors against sudden actions or high volume sound. He avoided attending noisy

meetings such as wedding ceremonies. His wife also confirmed these difficulties. He noted that his friends make fun of his interesting behaviors. These behaviors result in difficulties in his life. He did not describe fussiness or symptoms of attention deficit but he experienced occasional frustration. He was hyperactive but had not been aware of tics during childhood. He was not a successful student in primary school and did not complete primary education. He started to work as a driver's assistant. He had never sought treatment before, as he had not considered his tics as a disease.

He has worked as a professional bus driver for 25 years and transported a football team to a stadium five months earlier. While he was watching the football match near the boundary of the football pitch, he repeated swear words of the spectators to the referee. He claimed he never wanted to swear and he regretted this behavior. He had never previously been charged as a result of his involuntary behaviors.

Physical examination revealed normal findings. During the interview, when he experienced unexpected actions or heard sounds at high volume he stood up and cursed. He also repeated sudden actions and highly vocal stimulation by the physician. He did not demonstrate any compulsive behavior. He had vocal and motor tics, and echolalia and echopraxia were observed. These tics occurred if there were more stimuli than in his usual environment. Psychiatric examination was otherwise normal.

In the medico-legal report, it was reported that he had TS with onset aged 20, characterized by vocal and motor tics. The behavior at the football match was a reflexive echolalia and coprolalia in which there was no criminal intent. Consequently, he had no criminal responsibility for swearing at the referee during a football match. Additionally, it was recommended that the disorder prevents him working as a professional driver that would be risky for him and the public.

Discussion

The contribution of mental disorders to criminal actions and its handling by the criminal justice system are complex and sensitive issues (12). In many

Western countries, standards for determination of criminal responsibility are rooted in the Aristotelian foundation (13). Based on this foundation, criminal responsibility is defined by the existence of two components: criminal act (*actus reus*) and criminal intent or intent to cause harm (*mens rea*). In order to prove the criminal responsibility of an offender in a criminal case the prosecution has to show that both components exist (13, 14). For the existence of *mens rea*, the action must be done intentionally or recklessly, or willfully or knowingly, or negligently (13, 14). The present standard for the defense of mental illness in most Anglo-American jurisdictions is based on the M'Naughten rules (15). The rules were subsequently adopted by many other common law jurisdictions and were summarized in this 1990 decision of Canada's Supreme Court, *Chaulk v the Queen* as "the central proposition in the M'Naughten Rules was that the defense would be available to someone who, because of a defect of reason resulting from disease of the mind, did not know the nature and quality of his actions; or if he did know it, he did not know 'he was doing what was wrong'" (16, 17).

According to the Turkish penal code, children under the age of 12 years at the time of the deed cannot be penalized. There can be no criminal prosecution, although safety measures specific to children can be applied (Article 31/1). If above the age of 12 but under the age of 15 and if not perceiving the legal meaning and consequences of his act or not having a sufficient capacity of self-determination, there is no criminal liability. However, safety measures specific to children can be taken. If able to understand his deed and having self-determination regarding this deed, the penalty will be reduced (Article 31/2). If at the time of performing the deed a person has already reached the age of 15 years but not the age of 18, his penalty will be relatively reduced when compared with adults (Article 31/2). A person will not be penalized if he did not perceive the legal meaning and consequences of his action or if his capacity of self-determination was substantially decreased because of mental illness. However, safety precautions will be taken regarding these persons (Article 32/1). Not being to the degree as mentioned in the Article 32/1, if one's capacity for self-determination

were substantially decreased, the penalty would be reduced. The penalty, on the condition that the duration remains identical, may be executed as a safety precaution for mental illness patients (Article 32/2) (18).

Jankovic et al. (12) emphasized the importance of expert testimony in the trial of a person suffering from TS and reported that, most of the time, the jury would be able to assess the circumstances without the need for expert testimony, since foul language is unfortunately part of everyday life. The present case is unusual in that he was referred for expert opinion. In this case, swearing when it is a sign of echolalia and coprolalia is often seen in patients with TS. This is a tic due to involuntary actions of patient. Thus, the patient was considered not criminally responsible for swearing despite not suffering from a mental illness. Katz and Zemishlany (15) recently described a similar evaluation of criminally responsibility in patients with Asperger's Syndrome.

The case described had qualified for a professional driver's license at the age of 27; however, he had not undergone a psychiatric evaluation during the licensing process. His motor tics, including the repetition of the sudden actions were first noted during his military service when he was 20 years old. TS, therefore, had been overlooked in his medical examination during the licensing process. However, Jankovic claims that TS continues to be frequently unrecognized and poorly understood by health care professionals (19).

If any adult is dangerous to himself, his family or society and he/she has mental incompetence or diminished mental capacity due to a mental illness, the restriction of civil rights and legal protection of him/her are evaluated according to Turkish civil code (20). We decided that he did not have the ability to go on working as a professional driver due to the risk to himself and the public. We reasoned that his reflexive, uncontrollable and sudden behaviors, following stimulation applied by a person or situation in the bus, could result in an accident at any moment.

The court accepted the expert opinion and did not sentence him and decided that he would not be penalized. The court revoked his professional driver's license, but not his private driving license. We learned

from the patient at a subsequent meeting that he had applied for a new staff position. He was pleased with his new position, and was expecting to retire in 2008. He is being treated in a psychiatric clinic.

Military service, obtaining a shotgun license or marriage of patients with TS can present other medico-legal problems even though it was not a medico-legal problem in this case.

The TS point prevalence in the Israel Defense Force was found as 4.3 +/- 1.2 per 10,000 and 1.6% in two different studies (21, 22). According to "The Regulations of Health Abilities of Turkish Military Forces," people with simple tic disorders are deemed appropriate for military service, while persons with serious tic disorders are not recruited for military service (23).

A circular of the Turkish Health Ministry reported "persons cannot get a license for a shotgun if they have a psychiatric disorder, personality disorder, addiction to alcohol or drug, disturbance in controlling impulse" (24). TS is accepted as a disturbance of impulse control mechanism according to the criteria of ICD 9 (4). In this case, obtaining a license to carry a shotgun could be prevented according to clinical findings for a patient with TS.

A person who is impaired by reason of mental illness or mental retardation to the extent that he lacks sufficient understanding or capacity to make, communicate or implement responsible decisions concerning his property or person is not capable of contracting marriage (25, 26). In some states of the United States, if one of the partners is not capable of understanding the commitments of marriage, the sufferer has the right to sue to legally nullify the relationship (27). In an evaluation of articles related to marriage in Turkish Civil Codes, it is deemed that marriage of persons who have contagious venereal diseases and mental disorders is prohibited until healed of the particular diseases. Further, mental disorders occurring during marriage can be a reason for divorce (20). TS is not a mental disease, but it can cause conflicts during marriage due to uncontrolled behaviors. In this situation, the annulment of the marriage may be considered according to civil codes.

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