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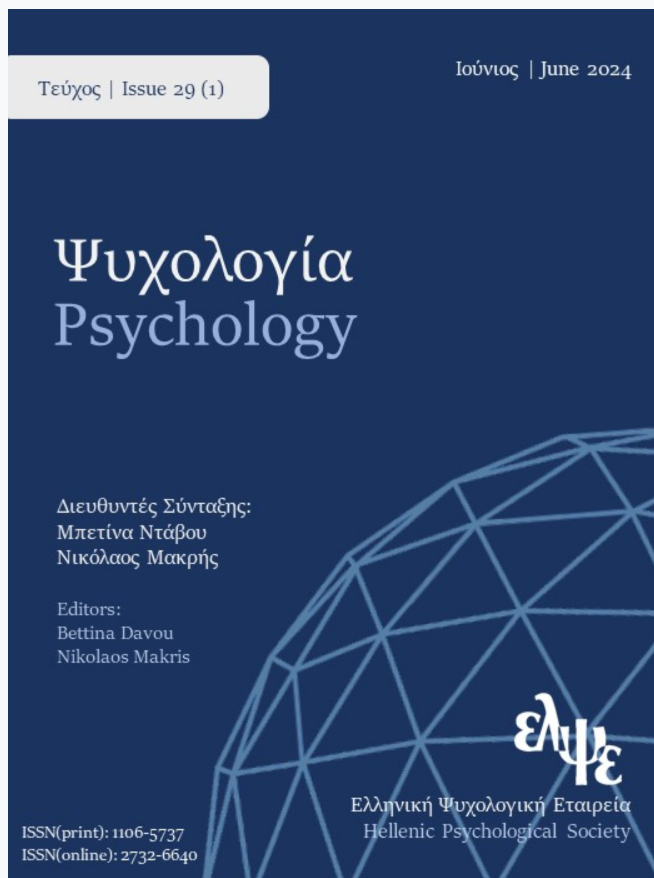

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ΕΜΠΕΙΡΙΚΗ ΕΡΓΑΣΙΑ | RESEARCH PAPER

Depictions of "mental illness" in Greek criminal court rulings: A discourse analysis

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KEYWORDS

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ABSTRACT

The present study investigates the constructions of people diagnosed with "mental illness" in Greek criminal court rulings. A Foucauldian discourse analysis approach was applied to criminal court rulings published from 2009 to 2018 to identify dominant discursive resources used to construct "mental illness", as well as the functions performed by judicial discourse through the specific depictions of perpetrators and their crimes. Two main constructs emerged from the analysis. When constructing the unimputable "dangerous mental patient", an intersection of biomedical and dangerousness discourses depicts the person as unpredictable, incapable of self-awareness, self-determination, and moral judgment. In the imputable "criminal personality" construction, the impact of "mental illness" on the committed crimes is relativized, since the criminal act is attributed to psychological characteristics of the individual, who is portrayed as deliberately violating the rules of socially acceptable behavior despite being capable of rational thinking and moral reasoning. The central issues that emerged include the pre-constructed categorization of the perpetrators into imputable or non-imputable, according to the determined degree of moral agency, and the selective utilization of biomedical discourse by the court, whereby it evaluates psychiatric expertise sometimes as objective evidence and others as unreliable opinion.

Introduction

In this paper we present a discourse analytic study of criminal court rulings regarding individuals with mental disorders who have committed crimes, that investigates the constructions of "mental illness" in them, the discursive resources mobilized for these constructions, and most importantly the functions performed by judicial discourse through the specific depictions of perpetrators and their crimes and the consequences for the persons concerned. The court rulings are located within a sociohistorical context of the medicalization of the dangerousness of persons with mental disorders, that we present first. They draw upon medical and legal expertise but they are grounded to a large extent on lay perceptions of the dangerousness of persons with "mental illness" that are perpetuated through the mass media and public texts, to which we draw our attention next.

Medicalization of dangerousness of "mental illness"

Since the 19th century "madness" was associated with dangerousness to such an extent that its nature was identified with irrational crime (Foucault, 1978). According to Scull (2004), western societies attempted to

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manage the threat of disruptive behavior of persons with mental health problems through institutional constraint and risk-management in the community (Pilgrim & Rogers, 2020). In the last centuries, dangerousness was medicalized, as the medical model was called upon to deal with those alleged to be "deviant patients" (Conrad & Schneider, 1992). Viewing individuals in severe mental distress as "patients" led to attributing culpability for dangerous acts to the "illness" (Meynen, 2010). In this way, social conditions became irrelevant to defining "mental illness" (Conrad, 2013), while psychiatric diagnosis sidelined the empirical understanding of a person's experience (Georgaca, 2013; Mooney, 2016).

A characteristic example of the medicalization of dangerousness is the diagnostic category of "antisocial personality disorder" (Pilgrim & Rogers, 2003). Individuals attributed to this diagnostic label are depicted as dangerous personalities, who deviate from social norms and violate other people's rights due to their inherent adverse traits and especially their criminal way of thinking (Blackburn, 1988; Glenn et al., 2013; Hiday & Wales, 2013). In this case, psychiatric treatment operates as a means of social control, since a social matter is treated as an issue of medical concern (Moncrieff, 2010), with medicine assuming the expertise to define the criteria for classifying people into normal or abnormal, legitimizing, thus, their social marginalization (Conrad, 2013).

Furthermore, defining people as "patients" and/or as dangerous to themselves or others is associated with public stigmatization (Parcesepe & Cabassa, 2013). The medicalization of mental distress, through attributing the label of "mentally ill" to a person, is associated with lay beliefs that the person is dangerous and a stronger desire for social distance (Angermeyer et al., 2003; Lampropoulos & Apostolidis, 2018; Read et al., 2006). Hence, the perception that "mental illness" should be managed by the medical system inhibits the ability of people with psychiatric diagnoses to have an independent life in the community, resulting in the imposition of discriminatory measures, including restrictive institutional treatment (Corrigan & Bink, 2016).

Thus, the de-normalization of mental distress alongside the stigma of dangerousness of "mental illness" inhibit the formation of interpersonal relationships and the acquisition of social power (Gjesfjeld, 2019). Such a depiction of people with mental health problems, in conjunction with its legislative fortification, seems to affect public perceptions regarding the dangerousness of "mental illness" (Pilgrim & Rogers, 2003).

Medicalization and dangerousness, as two entwined characteristics of "mental illness", permeate discourses of "mental illness" both in scientific and lay domains. In fact, it has been argued (Cromby et al., 2013; Parker et al., 1995) that there is a mutual relation between scientific and lay perceptions of "mental illness", whereby they influence and are influenced by one another. Seen from a social constructionist perspective, discourses of "mental illness" circulate in scientific texts, the media, public documents, etc., shaping everyday talk and legal texts (Georgaca, 2014). For this reason, after addressing the dominant scientific depiction of "mental illness" in this section, we will describe below research on depictions of "mental illness" in media texts and legal and public documents respectively.

Biomedical and dangerousness discourses in mass media

Discourse analytic studies on the link between "mental illness" and criminality argue that the journalistic discourse draws upon a pre-existing set of cultural meanings, where the discourses of "madness" and dangerousness are prevalent (Van Beveren et al., 2020). The narrative of the "criminally insane" depicts a bipolar construction of "mentally healthy" vs "mentally ill" people, presenting mental distress as a negative personal characteristic that should be treated, so that the individual returns to a normal state of life and the danger of social upheaval is prevented (Federman et al., 2009; Olstead, 2002). This distinction serves an ideological dichotomy between socially integrated individuals, who endorse the values of justice and safety, and "mental patients", who are placed in the margins of the community, as they are seen to deviate from norms of socially acceptable behavior (Olstead, 2002).

The inclusion of disparate kinds of deviance from normality into a homogeneous category which confuses violence with "mental disorder" constructs a contradictory narrative for persons with mental health problems (Van Beveren et al, 2020). In cases of unexplained crimes that lack a clear motive, individuals are placed on the one hand in the position of the "passive sufferer", who acts under the state of "illness", and on the other hand in the position of the morally and legally responsible person, who plans their action in advance, being motivated by perverted moral sentiments (Federman et al., 2009; Olstead, 2002; Rapley et al., 2003). According to Federman et al. (2009), this paradoxical socio-medical construction seems to underlie the rhetoric of "psychopathy", depicting the perpetrator as a symbol of dangerousness and moral decay and placing them on the borderline between sanity and insanity. In addition, the frequent distinction between innocent victim and guilty perpetrator magnifies the negative portrayal of the "insane criminal", placing them in a position of radical difference from "us", who identify with the vulnerable victim and try to defend ourselves against the "enemy who pursues us" (Olstead, 2002).

Conversely, the "passive patient" construction constitutes a positive portrayal of the person who suffers and tries to comply with medical instructions (Olstead, 2002). Moreover, Van Beveren et al. (2020) note that in anti-stigma campaigns the call for an empathetic understanding of mental distress is a normalization strategy, which is based on the rhetoric of equating "mental illness" with physical illnesses (Bilić & Georgaca, 2007; Hansen et al., 2019). This construction performs a double function, since it invalidates the individual's capacity for an autonomous life, placing them in an inferior position, while it provides an oversimplified view of mental health problems (Van Beveren et al., 2020).

In conclusion, journalistic narratives perpetuate negative stereotypes and stigmatize persons with mental health problems (Georgaca, 2014). Also, by arousing feelings of fear and terror, the necessity for protecting the social order becomes a matter of urgency (Bilić & Georgaca, 2007). Furthermore, rhetorical practices that classify individuals into categories often perform contradictory functions, producing ambiguous social identities (Van Beveren et al., 2020).

Discourse analysis of legal and public documents

Research has documented a shift in the depiction of mental distress in legislative documents from a psychosocial to a biomedical discourse (Handerer et al., 2021). Kent et al.'s (2022) critical discourse analysis of parliamentary consultations on mental health highlighted the biomedical rhetorical strategies that distinguish "experts" from "patients". Specifically, psychiatrists are depicted as possessing knowledge concerning the definition and treatment of "mental illness", while people with mental health problems are portrayed as having to comply with medical instructions. If they do not, coercive medical measures may be applied to maintain social order, due to their depiction as public danger and their presumed limited decision-making capacity (Kent et al., 2022).

Askheim et al. (2017) observed a very recent emergence in policy documents of the discourse of rights of people with mental health problems to autonomy and equality, whereas up until then they were presented as incapable of social participation. However, the most common rhetorical utilization of the civil rights discourse is in conjunction with the biomedical narrative of the "patient" who is entitled to appropriate medical services, aiming to ensure social control of persons with mental health problems, as they are depicted as posing a constant risk to themselves and others (Hui & Stickley, 2007; Pilgrim, 2007).

The utilization of the combination of the biomedical discourse and the discourse of dangerousness in legal documents to define treatment and liability legitimizes the use of repressive medical methods as an appropriate strategy to deal with those considered to be "dangerous mental patients" (Buckland, 2016). Similarly, Moon (2000) argued that the shift to a policy of risk-managing "mental illness", because of the rhetoric of the failure of community care, may lead to the adoption of coercive measures in cases presumed to pose high risk of dangerousness.

While analyzing police reports addressing the rise in mental health problems, Boyd and Kerr (2016) concluded that the predominance of the biomedical and dangerousness discourses sidesteps the social causes of mental distress. Individuals in distress are depicted as public danger that can only be controlled through monitoring and confined to institutional care (Boyd & Kerr, 2016). As Harper (2004) states, emphasizing the threat to public safety shifts the responsibility of managing mental health problems to medical and legal institutions, leading to social discrimination of those deemed as "mentally ill" individuals. An individualistic depiction of "mental patients" is typical in criminal court trials, whereby the psychiatric risk-assessment of criminal recidivism lays the liability for committing the criminal act on them (Allely et al., 2019). Moreover, Marchese and Celerier (2017), when analyzing civil proceedings, found a polarized classification of people with psychiatric diagnoses as mentally competent or incompetent depending on their social adequacy, such as the ability to socialize and manage money. They also concluded that the marginalization of persons with psychiatric diagnoses in judicial discourse is maintained due to the prevalence of the medical model (Marchese & Celerier, 2017).

To conclude, it seems that through the combination of biomedical and dangerousness discourses employed in public and legal texts people in severe mental distress are disempowered, since when compared with "normal" others they are portrayed as incompetent to lead an autonomous life and in need of institutional control (Harding, 2012; Harrington et al., 2019), which may be imposed on them through court rulings.

The present study

Considering the literature, it becomes apparent that discourses function as forces of social control, have ideological implications, and legitimize the power of institutions to make decisions that empower or disempower their subjects (Parker, 1990). Particularly in cases where "mental illness" intersects with committing a crime, judicial texts, through linking biomedical discourses to discourses of dangerousness, define the measures to be implemented and legitimize certain institutions as responsible for managing mental health problems, with implications for the rights, lives, and identities of those subjected to them. For these reasons, this study focused on the analysis of Greek criminal court decisions that adjudicate perpetrators with a psychiatric diagnosis, to illustrate the dominant discursive resources through which these persons are constructed and the effects of these constructions on the court rulings regarding their management.

In Greek criminal procedure, an expert psychiatric report is mandated by the court when a perpetrator claims that they "suffer from a mental illness". In most of such cases, criminal offenders invoke a pre-existing psychiatric diagnosis, which is evaluated by the court alongside the expert psychiatric report. The court is called upon to determine whether the perpetrator was suffering from the claimed "mental illness" at the time of the criminal act. If the link between a "mental illness" and a crime is confirmed by the evidence, the court decides acquittal of the perpetrator on grounds of lack of imputation and orders their custody in a public treatment facility as a therapeutic measure. If the perpetrator is deemed to be fully or partially imputable, they are convicted of their crime and incarcerated. Only in cases of diminished imputation, therapeutic measures might be applied instead of incarceration. The court rulings selectively draw upon and refer to the evidence presented during the trial that justifies the decision but do not include verbatim the trial records or the statements of the parties involved.

Despite the specificity of each criminal justice system, there are a lot of commonalities between the western legal orders, when the courts address the issue of imputation due to a "mental illness" diagnosis. Among them, Greece is a typical example of a biomedically oriented legal paradigm.

Method

Data collection

The analysis was carried out on 49 Greek criminal court rulings published in three databases, in an anonymized form. The time frame for data inclusion was 2009-2018, the period of economic crisis in Greece, based on the assumption that a large sample size of verdicts on perpetrators with psychiatric diagnoses might be drawn, due to the increased rate of mental health problems in the general population (Efthimiou et al., 2013). Keyword search was conducted in the legal database "NOMOS" of Intrasoft International A.E. and in the scientific journal "Criminal Justice", which are electronically accessible to subscribers. The key terms used were Articles 34, 36, and 69 of the Greek Criminal Code (P.D. 283/1985), as they form the legal basis for attributing lack of imputation or diminished imputation and for applying therapeutic measures respectively. From the list of rulings retrieved, only those that called upon a psychiatric expert opinion were selected. The third data extraction source was the appendix of the book written by Symeonidou-Kastanidou et al. (2020), which includes criminal court rulings regarding the removal, substitution, or continuation of the imposed therapeutic measures, according to the most recent legislation (Law 4509/2017, articles 1-3).

Sample

Of the total sample, 76.6% of the crimes were committed against human life and bodily integrity and 36.6% were domestic. 59.1% of psychiatric diagnoses referred to psychosis. The sample and imputation types are listed in the table below (Table 1). The rulings are written in their initial form with Greek abbreviations.

Table 1. *Imputation types, sample and number of court rulings*

Imputation	Court Ruling	Number
Lack of imputation	ΤρΠλημΑθ 307/2018, ΤρΠλημΑθ 757/2018, ΤρΠλημΑθ 1502/2018, ΤρΠλημΑθ 1563/2018, ΤρΠλημΑθ 2122/2018, ΤρΠλημΑθ 2123/2018, ΤρΠλημΑθ 2121/2018, ΤρΠλημΑθ 940/2018, ΤρΠλημΑθ 793/2018, ΤρΠλημΑθ 2154/2018, ΣυμβΠλημΘεσ 332/2018, ΣυμβΠλημΒερ 20/2014, ΣυμβΠλημΠατρ 213/2014, ΣυμβΠλημΒολ 7/2014, ΜΟΔΧαν 63-64/2013, ΣυμβΠλημΑιγ 18/2012, ΣυμβΠλημΡοδ 60/2012, ΤρΠλημΑθ 1753/2012, ΣυμβΠλημΡοδ 36/2011, ΜΟΔΠειρ 89/2011, ΣυμβΠλημΜυτιλ 21/2011, ΣυμβΠλημΑθ 664/2010, ΣυμβΠλημΡοδ 121/2009, ΤρΕφΘεσ 1009/2009	24
Full imputation	ΑΠ 522/2018, ΑΠ 1368/2017, ΑΠ 993/2017, ΑΠ 909/2016, ΑΠ 1690/2016, ΑΠ 811/2015, ΜΟΔΝαυπλ 47/2015, ΑΠ 554/2014, ΑΠ 1033/2014, ΑΠ 1034/2014, ΑΠ 768/2013, ΑΠ 789/2013, ΑΠ 1339/2013, ΜΟΔΚοζ 6/2012, ΣυμβΕφΘεσ 187/2011, ΑΠ 909/2010, ΑΠ 1563/2010, ΠεντΕφΑθ 225/2009, ΔΣΤΡΑθ 1385/2009	19
Diminished imputation	ΜονΕφΑιγ 27/2018, ΜΟΕφΙωαν 12/2018, ΑΠ 862/2014, ΑΠ 1031/2011, ΜΟΕφΘεσ 55-56/2010, ΣυμβΠλημΞανθ 22/2009	6

Data analysis

The data were analyzed from a social constructionist perspective, using Foucauldian discourse analysis (Willig, 2021). It was assumed that judicial discourse constructs knowledge about mental health problems by drawing upon wider sociocultural systems of meaning. Emphasis was placed on discourses, as historically and culturally defined available resources, especially on inconsistencies and contradictions within and between them, in order to highlight the functions performed and the relationship between knowledge and power (Parker, 1997).

We followed the six analytical stages of Foucauldian discourse analysis, as defined by Willig (2021). Firstly, we examined how the objects under consideration, namely, "mental illness", the perpetrator, and the crime, are

constructed in judicial discourse. In the second stage, we explored the discursive resources upon which different constructions draw when attempting to justify the verdict. In the third stage, while considering the question "what do the constructions do within the text?", we examined the functions performed by these constructions. The fourth stage entailed examination of the positioning of perpetrators, judges, and psychiatrists within dominant discourses, based on available rights and obligations. In the fifth stage, the broader institutional practices and potential for action permitted and enabled by these positions were explored. The sixth stage centered on exploring the consequences that arise from the constructed identities. Through constant questioning of taken-for-granted meanings, moving back and forth while reviewing each ruling and alternating between a focus on the texts and a consideration of the wider socio-cultural systems of meanings, patterns of homogeneous constructions emerged. The analysis was carried out collaboratively between the two main researchers and first authors of the paper, with guidance and continuous feedback from the third author, who supervised the study.

It is acknowledged by the researchers that the corpus was not approached from a stance of neutrality and that the mode of data analysis was clearly influenced by sympathy towards people with psychiatric diagnoses, who are subject to dehumanizing and stigmatizing practices. Is also noted that the term "mental illness", as well as homonyms and synonyms, are referred to in quotation marks in order to demonstrate the problematic nature of the medicalized definition of mental distress (Rapley et al., 2011).

Analysis

In this section, we briefly describe the legal framework of criminal court rulings and the two dominant constructions of the non-imputable "dangerous mental patient" and the imputable "criminal personality", accompanied by representative extracts. The extracts were translated from Greek, staying as close as possible to the original text, with its grammatical and syntactical features, hence the apparent flaws. The extracts have been condensed for reasons of brevity; text removed is indicated by [...].

Legal framework of court rulings: Imputation, lack of imputation and diminished imputation

The court rulings are preceded by a stereotypical interpretative analysis of the Greek Penal Code (P.D. 283/1985) articles on imputation. The judicial interpretation of legal concepts distinguishes perpetrators between those who are non-imputable and those who are fully or partially imputable, in accordance with the biological impact of "mental illness" on their cognition, the intentional control of their actions, and their sociomoral judgement.

The following extracts illustrate the constructions of imputable and non-imputable criminal offenders in turn.

> Extract 1.1
> "*Imputation is the "reproach" that the legal order attributes to the perpetrator [...], because he subjectively acted "wrongly" whereas he could have behaved correctly because he opted in favor of wrongfulness [...]. The Penal Code uses a mixed method for determining the incapacity to impute [...] starting from the evaluative incapacity of conscience that is linked [...] to biological incapacity. The term [...] is legal and broader than the medical term "mental illness".*" (ΣυμβΠλημΡοδ 60/2012)
> Extract 1.2
> "*The term "morbid disruption of mental functions" includes all forms of insanity or phrenoblabia or oligophrenia [...] due to the above biological causes he is unable either to understand the wrongfulness of his action or to act in accordance with his understanding of that wrongfulness.*" (ΜΟΔΧαν 63-64/2013)

Imputation is constructed as a "*reproach*" that is attributed to the perpetrator. It is presented as an ethical judgment concerning the person's ability to exercise rational reasoning in order to "*behave correctly*". More specifically, the offender's cognitive functioning is causally linked to their internal motivation, the control over

their actions, and the capacity to choose based on sociomoral criteria, since they "*opted in favor of wrongfulness*". Psychological discourse portrays imputability as an intrapsychic quality of the person who "*subjectively acted "wrongly"*. On the other hand, the evaluation of reprehensible conduct is delegated to the judicial institution, which represents the "*legal order*".

The court's decision also applies in the case of absence of imputation due to "*morbid disruption of mental functions*". This mental state is depicted as the offender's cognitive inability to exercise moral judgment ("*evaluative incapacity of conscience*"), because of the effect of a pre-existing "*biological incapacity*". Technical language is used to describe the biological disability ("*morbid disruption*") and it is defined that these terms can be interpreted solely by legal experts since they are "*legal and broader than the medical term "mental illness"*. The appropriation of anachronistic medical terminology ("*insanity*", "*phrenoblabia*", "*oligophrenia*") by the legal text fortifies the authority of the court to decide on biomedical issues and to use its own legal "*mixed method for determining*" the interrelation between crime and "mental illness".

Perpetrators are classified in the judicial text into two distinctive categories. They are portrayed either as sane moral agents or as insane individuals, who are incapable of rational and moral reasoning, given that the "*evaluative incapacity of conscience*" is linked to their biology (see Gjesfjeld, 2019). Specifically, the construction of the imputable person is of one who is cognitively healthy, who can consciously choose their social actions, while maintaining their self-control (see Mylonopoulos, 2007). On the contrary, the alleged unimputable perpetrator is depicted as a patient, cognitively incapable of evaluating their actions on the basis of sociomoral criteria ("*unable either to understand the wrongfulness of his action*"), lacking behavioral control and the ability to choose what is right ("*or to act in accordance with his understanding of that wrongfulness*"), due to "*biological causes*". Therefore, this bipolar biopsychological rhetoric legitimizes the court's selective invocation of biomedical and psychological discourses, while positioning the imputation judgment as a predominantly legal issue.

Similar functions are performed in cases where the impact of "mental illness" on the imputation of the criminal offender is adjudged to be partial. In these cases, the biopsychological discourse invests the person with the stigma of mental impulsiveness and sociomoral deviance. However, the narrative of the perpetrator's ability to control their actions prevails over that of psychological determinism, establishing thus their moral responsibility, leading to a court ruling of diminished imputability.

In fact, when the biomedical narrative is reinforced by the discourse of dangerousness, confinement in a public treatment facility is the recommended action. The following extract exemplifies how this discursive function is achieved.

> Extract 2
> "*[...] if someone due to morbid disruption [...] or deaf-muteness [...] was exonerated, [...] the court orders his detention in a public treatment facility if it judges that he is [...] dangerous for public safety [...], when it is ascertained on grounds of [...] the circumstances of the crime, the reasons for the crime and his personality in general that it is likely that he will repeat his criminal activity in the future and the anticipated crimes are of such gravity that entail significant disruption of the legal order, indefinite confinement is justified [...].*" (ΜΟΔΧαν 63-64/2013)

The establishment of the absence of imputation results in the acquittal ("*exonerated*") of the criminal offender. The reason for acquittal, "*morbid disruption*", is presented in conjunction with the congenital condition of "*deaf-muteness*"; it is thus represented as a biological condition of the individual perpetrator.

Nevertheless, psychiatric confinement is imposed when the alleged non-imputable individual with "mental illness" is deemed to be "*dangerous for public safety*". The need for "*detention*" is, thus, prioritized over the need for therapeutic treatment. The criteria of confinement refer to the likelihood of recurrence and the severity of the crime, which are established on grounds of the context of the act ("*circumstances*") and the perpetrator's internal motives ("*the reasons for the crime*"). Moreover, dangerousness is estimated on the grounds of the

perpetrator's "*personality in general*", being portrayed as an intrinsic and relatively stable characteristic of the disturbed individual.

People are constructed both as "patients" and "dangerous perpetrators", resulting in the biomedicalization of their dangerousness. The enforced medical treatment of their "condition" is ensured by their confinement in a "*public treatment facility*", aiming explicitly to socially isolate them, to prevent the "*disruption of the legal order*" caused by their actions (see Scull, 2004). In cases of non-imputable mentally ill offenders, "*indefinite confinement is justified*" without a therapeutic intent, reproducing in this way the practice of institutional confinement in order to address the "social threat" by exercising control over individual subjects (see Boyd & Kerr, 2016)

The most recent law, put in effect in 2017 (Law 4509/2017, Articles 1-3), attempted a reversal, by placing emphasis on safeguarding the individual's rights as a "patient". However, through the narrative of primary prevention, the discourse of civil rights is compromised and the emphasis shifts to predicting the risk of committing new crimes, with the doctor's testimony playing a dominant role. This medicalized risk-management of criminal recidivism focuses on addressing the individual's dangerousness, which is portrayed as decreasing as their "mental illness" is treated (see Hui & Stickley, 2007; Pilgrim, 2007).

In summary, the threefold categorization of imputation is determined by assessing the perpetrators' moral agency. Through biomedical discourse, a causal link is established between the biological background of "mental illness" and the individual's psychological and sociomoral characteristics. These affect, in turn, the evaluation of the person's dangerousness, which is also depicted as an intrapersonal characteristic. The combination of these evaluations determines the placement of individual perpetrators in each of the three categories.

Portrayed as "dangerous mental patients" or "criminal personalities"

In this section, we analyse criminal cases of adjudicated offenders with psychiatric diagnoses. The analysis revealed two patterns of construction, which can be matched to the threefold distinction of imputation. The central axis is the categorization of perpetrators in terms of their capacity for agency.

Constructing the "dangerous mental patient". According to Bilić & Georgaca (2007), the association between biomedical discourse and dangerousness in public texts is one of the most central findings in the literature on mental health problems. The construction of perpetrators as patients who lack agency, in conjunction with a causal link between "mental illness" and crime, appears in almost half of the analyzed cases.

The following extract exemplifies the most representative functions performed within the motif of the "dangerous mental patient", who is adjudged to be lacking imputability. In this case, the crimes consist of one completed and two attempted murders.

> Extract 3
> "*The accused showed the first symptoms of mental illness at the age of 19 with visual hallucinations [...]. Since then he was being monitored by a psychiatrist and was under continuous medication. [...] he suddenly started crying for no reason [...] he laid down to sleep he couldn't he got up he sat down in the living room with his wife he smoked a cigarette and then suddenly he ran to the kitchen and got a knife [...]. In a furious state the accused entered the house [...] where his wife his other sister and his mother had taken refuge and tried to attack them again [...]. The accused had made three suicide attempts in the past [...]. According to [...] psychiatric expert reports [...] he committed the above acts under the influence of delusional ideas. He suffers from chronic schizophrenic psychosis and is in need of permanent medication and psychiatric monitoring*." (ΣυμβΠλημΡοδ 121/2009)

Mental distress is depicted through biomedical discourse as a set of "*symptoms of mental illness*", with "*visual hallucinations*" as the main feature. Their remission is presented as directly dependent on "*continuous*

medication", while psychiatric monitoring is outlined as necessary for the person to carry on with his life ("*Since then he was being monitored by a psychiatrist*").

The mental health problem is presented as appearing unexpectedly, resulting in an interruption of the normal course of his life ("*showed the first symptoms of mental illness at the age of 19*"). Moreover, even the crime is depicted as an unpredictable individual act of violence, caused by the sudden aggravation of the "disorder"; the individual begins to cry "*for no reason*", is unable to "*sleep*" and finally commits the crime ("*then suddenly he ran to the kitchen and got a knife*").

Additionally, the "*accused*" is constructed as an active perpetrator who repeatedly chases and attacks his victims ("*where his wife his other sister and his mother had taken refuge and tried to attack them again*"). The family narrative portrays the individual as a social threat since his actions are opposed to the very essence of human relationships, such as those between spouses, parent-child, and siblings. Therefore, through familial discourse, the criminal act is presented as inhumanly violent (see Foucault, 1978).

The causal link between "mental disorder", as a biological condition, with unpredictable and violent behavior magnifies not only the dangerousness of the individual (see Olstead, 2002) but also his incapacity for self-control. In the extract, the inability to control his behavior is underlined, according to Kent et al. (2022), by reference to repeated suicide attempts in the past ("*he had made three suicide attempts*"). Consequently, the person is naively depicted as being at the mercy of the symptoms of his "illness" (see Bilić & Georgaca, 2007), lying beyond reality and "*under the influence of delusional ideas*".

Therefore, the responsibility for the act is attributed to the person judged as "mentally ill", who as an active perpetrator commits murder, an intentional crime. However, the intention is located within that part of the person for which he has no legal responsibility, i.e., his "mental disorder", to the extent that he cannot control it (see Meynen, 2010; Van Beveren et. al., 2020).

Moreover, by linking causally the pre-existing diagnosis of "mental illness" to the uncontrollable criminal outbreaks and the repeated suicide attempts, the plausibility of a biomedical explanation of violent behavior is fostered. The medical institution provides the scientific explanation of committing the crime and assigns to the person the label of "mental illness" ("*suffers from chronic schizophrenic psychosis*"), while the judicial institution labels him as non-imputable. In this way, the authority of both the medical and the judicial system is strengthened, as they assume the expertise not only to make decisions in the absence of the alleged "dangerous mental patient" but also to control him throughout his life, since it is judged that he needs constant "*psychiatric monitoring*" (see Kent et al., 2022).

In this case, since the offender's socio-moral responsibility and reformation have been deemed impossible due to non-imputability, he is faced not with punishment but with control measures, through medication and involuntary hospitalization (see Conrad & Schneider, 1992; Hiday & Wales, 2013). Nevertheless, even if his potential for change and rehabilitation is deemed as possible, the need to undergo permanent institutional control is justified due to his lack of agency.

Indicative of this discursive practice is the following extract, which refers to the removal of custody measures in accordance with the recently amended legislation (Law 4509/2017, articles 1-3).

Extract 4

"*[...] the reasons that necessitated the applicant's custody in a treatment facility, [...] are no longer present, since the applicant, during his treatment, received the proper medication and his mental health state has improved. In addition, there exists an appropriate supportive environment which can ensure that the applicant will continue to receive the required treatment and will be monitored by a physician.*" (ΤρΠλημΑθ 757/2018)

"*Custody*" in the treatment facility is outlined as unnecessary, as the person's mental health is improved. The narrative of compliance with medical instructions, given that the person had "*received the proper*

medication", is presented as the only prerequisite for restoring his health (see Hansen et al., 2019). At the same time, a necessary criterion for his dismissal is that the medical mechanisms of controlling the "mental illness" are maintained outside the treatment facility, i.e., receiving medication and being under medical observance.

According to the extract, the "*appropriate supportive environment*" is the one that will "*ensure that the applicant will continue to receive the required treatment*". It turns out that what functions as supportive for the person with mental health problems by their family environment equals supervising them over keeping in contact with the medical system ("*will be monitored by a physician*").

The aforementioned biomedical account of prevention assigns a certain usefulness to the social conditions of the individual's life; namely, that they exercise constant social control over their actions and constrain their self-determination and freedom (see Conrad, 2013). The biomedical discourse, by disregarding the wider importance of psychosocial factors in improving the person's life, establishes the specialized medical knowledge as necessary and places, according to Parker (2002), the management of mental health within the realm of the "psy-complex". The person is placed in a position of being incapable of assuming responsibility for their treatment adherence and is presented as dependent on "others", to prevent the risk of a possible relapse (see Harper, 2004).

To sum up, the "dangerous mental patient" motif portrays the non-imputable offenders as unpredictably dangerous, because of their inability to control violent behaviors that are provoked by the aggravation of their "mental disorder". The dominant biomedical discourse attributes an inescapable character to the individuals' incapacity for autonomy, social participation, and change, legitimizing thus the demand for their passive compliance with medical prescriptions as well as their constant institutional surveillance.

Constructing the "criminal personality". The construction of the imputable "criminal personality" appears in 24 cases; there, the crime is attributed to psychological characteristics of the person who chooses the criminal act with free will. Notably, heterogeneous elements have been traced in the depictions of perpetrators who appear as rational, but are, however, placed in a homogeneous category of socially deviant individuals with perverted dispositions (see Federman et al., 2009; Olstead, 2002; Rapley et al., 2003).

In most of these cases, the court treats the psychiatric expert report as evidence of the perpetrators' criminal personality by presenting it as a rhetorical tool purposefully deployed by them to disclaim their responsibility. Even though the psychiatric report is not central to the court ruling process, the court draws upon "psy-descriptions" and portrays the accused as a person with characteristics of "antisocial personality disorder", such as deceitfulness, aggression, deception and parasitic manner of life at the expense of others (see Hare et al., 1991). Below is an example of the judicial discourse employing the diagnosis of this disorder as testimonial evidence of the perpetrator's guilt for murdering his partner.

Extract 5

"*[...] the ascertained by the expert psychiatrist personality disorder was not such as to prevent him from reality control, on the contrary, according to the above expert, there is absolute awareness of moral rules, but he does not care whether what he does is right or wrong and there is absence of guilt. In addition, the expert psychiatrist diagnosed that the homicide, as well as the violent way in which it was committed, are directly related to this kind of personality, since the impaired tolerance to rejection, the lack of boundaries, impulsiveness, aggression, and indifference to others' safety forces him to follow its violent tendencies [...].*" (ΜΟΔΚοζ 6/2012)

In the above passage, the court relies on psychiatric expertise which classifies the specific person's "mental disorder" amongst those that do not distort perception and "*reality control*". The psychiatrist is presented as the expert on assessing the extent to which the disorder distorts the individual's moral judgment. The person, on the one hand, is depicted as normal, not deviating from the norm of average ordinary citizen, as "*there is absolute*

awareness of moral rules"; on the other hand, he is constructed as deviant, without feelings of shame and guilt as well as indifferent to the moral consequences of his actions ("*he does not care whether what he does is right or wrong and there is absence of guilt*").

In the second part of the passage, the listing of personality traits of "*this kind*", is used by the court to provide information about the specific nature of that personality, which is characterized by "*impaired tolerance to rejection, lack of boundaries, impulsiveness, aggression and indifference to others' safety*". The above stand for "symptoms" of the traditional definition of "psychopathy" (Glenn et al., 2013; Hare et al., 1991; Parker et al., 1995) and "sociopathy" (Allen et al., 1971), which came under the generalizing and simplifying term of the currently official psychodiagnostic category of antisocial personality disorder (Hare et al., 1991).

The judicial and the psychiatric discourses consensually affirm the causal link of this disorder to criminality, while the perpetrator is constructed as the personification of moral-psychosocial deviance ("*the expert psychiatrist diagnosed that the homicide, as well as the violent way in which it was committed, are directly related to this kind of personality*"). In this way, the perpetrator is included in a diagnostic category of having an inherently immoral personality, which is distinct from the purely psychopathological categories that cause cognitive dysfunction.

Furthermore, whilst the crime is linked to the perpetrator's personality, this personality is depicted as distorted by the disorder to such an extent that it "*forces him to follow its violent tendencies*". An ambiguous and contradictory conclusion follows, whereby the act both is and is not a consequence of the "disorder"; likewise, the perpetrator both is and is not guilty. This finding is also encountered in the relevant literature as the most paradoxical narrative constructed by the rhetoric of psychopathy (see Federman et al., 2009; Olstead, 2002; Rapley et al., 2003).

A hybrid situation ensues, whereby the individual is socially and morally deviant, yet intellectually and cognitively sound. The psychopathy narrative places the individual in a position of responsibility not only for their deviant personality and their immoral act but also for the impact that the disorder has on their behavior. They are subsumed into the legal category of the incurable "autonomous psychopath" (Parker et al., 1995), who voluntarily and consciously choose the crime and perpetuate the destructive effect of the disorder, since they surrender to moral deviance, despite being able to control their behavior.

Thereby, a person who is inherently incapable of conforming to societal norms does not need psychiatric intervention but social exclusion. As mentioned by Federman et al. (2009), "the only 'cure' for the psychopath is the prison" (p. 38). Since the individual has no other possibility for action but to continue committing criminal acts, the need for disciplinary control and suppression of their action is legitimized as inescapable.

In contrast to the construction of the "psychopathic" criminal, the cases of diminished imputation reproduce a peculiar construction of "guilty but mentally ill" (see Roberts & Golding, 1991). Six such cases were found in the corpus. Here, the functions of relativizing the authority of the psychiatric report become apparent, as can be seen in the following extract.

Extract 6

"*[...] there was no repeated clinical examination [...] in order to ascertain the continuous presence of those elements that cause the morbid phenomena, [...] without prior necessary laboratory tests, [...] the conclusion of the expert psychiatrist [...] was grounded on documents prior to the criminal acts. Besides, it is not confirmed upon which evidence the conclusion is drawn that [...] he was unable to perceive their wrongfulness, [...] does not correspond to the proven facts at the time the criminal acts took place [...] the Court judges that [...] he committed the above criminal acts while being in a state of diminished imputation, due to the above psychosis of paranoid type [...] being in a crisis of the above psychosis [...].*" (ΜΟΕΠειρ 157-162/2013, as found in ΑΠ 862/2014)

In this case, the expert psychiatrist's conclusion that the perpetrator was "*unable to perceive the wrongfulness*" of his actions is rejected. Initially, the court highlights the time gap between the clinical examination and the contested period, to refute the conclusion of the report as invalid, since it "*was grounded on documents prior to the criminal acts*". Also, the argument that "*there was no repeated clinical examination [...] in order to ascertain the continuous presence*" of the causes of "mental illness" breaks down the psychiatric record into concrete periods of time and presents a fragmented picture of the perpetrator's mental state.

What is more, the argument about the lack of "hard" and non-negotiable data resulting from "*necessary laboratory tests*" reinforces the courts' statement that "*it is not confirmed upon which evidence the conclusion is drawn*". By insisting on a preference for positivist-type methods, that would be able to provide technical language to assist the decision-making process on an "objective" basis (see Gotsi, 2019), the judicial judgment presents the psychiatric report as unfounded.

Portraying a fragmentary picture of the offender's mental state and attributing unreliability to the psychiatric report allow the court rhetorical flexibility (see Georgaca, 2013) to negotiate the link of "mental illness" to crimes. Against the psychiatrist's vague conclusion, the court states "*the proven facts*", through extensive descriptions of the active role of the perpetrator during his multiple criminal acts. This relativizes the effect of "mental illness" on the offender's capacity for rational thought and volitional action and is used as evidence of his awareness of his wrongdoing.

Nonetheless, the court invokes that part of the expert opinion that makes use of disability discourse (see Georgaca & Avdi, 2011) regarding the chronicity and severity of "*the above psychosis of paranoid type*". The court invokes the legal framework and alternates between the disability discourse and lay beliefs, constructing the crime as an act committed under "*a crisis of the above psychosis*". Thus, "mental illness" is defined as a mitigating circumstance which reduces, though does not negate, the offender's culpability.

To conclude, in the motif of the imputable "criminal personality", the psychological discourse and the discourse of dangerousness construct the perpetrators as antisocial individuals, who intentionally violate the norms of socially acceptable behavior, due to lack of moral barriers. At the same time, the selective use of biomedical discourse by the judicial institution produces confounded narratives with differing moral and legal consequences.

Discussion

The analysis of penal court rulings highlighted that the judicial interpretation of the legal background of criminal cases pre-constructs a division of perpetrators diagnosed with "mental illness" into two moral categories. This finding is in line with relevant literature on the influence of legal regulations in shaping constructions of identity, capabilities, and treatment of persons with mental health problems (Harper, 2004; Harrington et al., 2019). Criminal offenders are portrayed either as "dangerous mental patients" or as "criminal personalities" depending on the presumed biological impact of the "disorder" on their cognitive functions and moral agency.

Specifically, through the rhetorical investment of subjects as "dangerous mental patients" crime is causally linked to biologically grounded lack of self-control. This reinforces their individualistic representation of persons with mental health problems, since the social parameters of mental distress are overlooked (Conrad, 2013) and biologically deterministic explanations are imposed (Georgaca, 2013). The biomedicalization of dangerousness results in dismissing alternative psychosocial interventions as inefficient and inappropriate. Instead, the dominant response to the risk of mental illness is the application of repressive medical measures, such as mechanical or chemical restraint (Buckland, 2016). Even with the amendment of the law in 2017 (Law 4509/2017, articles 1-3), which replaced the asylum practice of confinement with that of risk-management of mental health problems in the community, the medical professional competence has been fortified due to the dominance of biomedical discourse.

According to Moncrieff (2010), judicial and medical institutions undertake the management of the social threat posed by "mental disorder" in the form of cooperative guardianship. By linking the label of "mental illness" to the discourse of dangerousness, the court takes on the role of protector of social security and family structure, acting in the interests of social order by isolating the stigmatized persons (Pilgrim & Rogers, 2020). Moreover, the construction of the biological incapability of those judged as "unaccountable mental patients" to possess a sociomoral value system positions them as biologically and morally inferior and distinguishes them from normal superior "others" (Olstead, 2002). Therefore, non-imputability is linked to their social ostracism, since they are judged as irresponsible and antisocial, because of their imputed inherent inability to distinguish between right and wrong (de Vel-Palumbo et al., 2021; Harding, 2012; Marchese & Celerier, 2017). Judicial discourse strips the person of their social traits, transforming them, as Margaritis (2015) argues, from a subject to an object of the law. In contrast to the adjudicated as sane and imputable perpetrators, who retain their social identity and related rights, the unimputable perpetrators, until the year 2017, were deprived of their constitutional rights, such as free personality development, protection of health by receiving adequate treatment, right to a full hearing and specified duration of incarceration in the Greek criminal procedure (Margaritis, 2015). As Georgaca (2014) states, people are disempowered, as they are forced to comply with the labels imposed on them and their implications, without considering their experience in understanding their mental health problems and deciding on the appropriateness of therapeutic measures.

On the contrary, in the construction of the imputable "criminal personality", the court refutes the biomedical narrative through the rhetorical use of psychological assessments and lay notions of normality, attributing thus the crime to individual intrapsychic traits. Hence, a distinction is established between "illness", which is biologically grounded, and "moral illness", which is located at the level of will and emotions (Federman et al., 2009; Rapley et al., 2003). Within this motif, lurks the rhetoric of "psychopathy", which echoes common representations of human monstrosity (Federman et al., 2009). We also identified semantic gaps and recurring rhetorical contradictions in the arguments regarding the specificity of the "psychopathic personality". This finding is in line with Olstead's (2002) argument that the "psychopathy" narrative is grounded on the triptych of agency, responsibility and guilt, constructing the perpetrators as both normal, in cognitive terms, and deviant, since they do not abide by the rules of reason and the codes of socially acceptable behaviour. Furthermore, through the discourse of political economy, they are invested with irresponsibility and counterproductivity (Lazzarato, 2009). This legitimizes the institutional practice of disciplinary power to punish the offenders since they are portrayed as incorrigible subjects (Foucault, 2010), who do not hesitate to invoke psychiatric diagnoses to disclaim their culpability. It seems that in the absence of an organic aetiology (Blackburn, 1988), the narrative of "psychopathy" operates as a socio-cultural formation that defines the psychopathic criminal not as an ill person but rather as a cultural fact (Foucault, 1978).

The court resorts to a combination of lay psychological and biomedical discourses in the cases of diminished imputation. With "mental disorder" seen as partially affecting the criminal act, there is some acknowledgment of agency and personal responsibility for the perpetrator, albeit reduced by the "mental illness"; this has both stigmatizing and de-stigmatizing effects, placing the person and their actions somewhere between sanity and insanity (Van Beveren et al., 2020). Moreover, categorizing criminal offenders as both normal and abnormal constructs a fragmented identity, that they must assimilate, while conforming to the institutional authority of the law that condemns them and psychiatry that stigmatizes them (Rapley et al., 2003).

In conclusion, the motifs of "criminal personality" and "dangerous mental patient" portray the selective modes of employing biomedical discourse by the courts, shifting the emphasis from the criminal act to understanding the perpetrator's nature. As Foucault (1978) argues, the more the criminal act is explained by invoking the perpetrator's biopsychological and sociomoral characteristics, the more responsibility is attributed to the person. Conversely, the more this relationship is seen as vague, automatic, or even instinctive, the less

responsible is the person considered (Foucault, 1978). This study constitutes an attempt to highlight this constructive and performative function of the Greek judicial discourse, in delineating people judged as "mentally disordered criminal offenders". The analysis indicated that judicial discourse selectively draws upon the biomedical and lay discourses regarding mental disorder and its connection to crime. Sometimes the biomedical discourse is used as a scientific explanation of criminality, legitimizing the dangerousness of the organically justified mental disorder and placing the person into clinical categories in terms of biological disability. At other times the combination of psy- and lay discourses is the dominant way of explaining the individual's delinquent behavior by reducing it to their intrinsically disordered personality in terms of biopsychosocial deviance. In both cases, an essentialist narrative of criminality is produced by reference to the nature of the individual, rendering physical interventions and restraint as the only option for managing it.

However, the case-by-case selective mobilization of scientific and lay discourses, the frequent disagreements between judges regarding imputation, and the multiple or contradictory psychiatric diagnoses indicate that judicial decisions are partly based on subjective interpretations. They also highlight the contingency of scientific reason, negate its claim to objectivity, and manifest that arbitrary classifications do not represent innate and immutable personal characteristics of the individual (Pilgrim & Rogers, 2020; Rapley, 2003).

Alternatively, anti-reductionist and anti-essentialist approaches that take into account the familial, socio-cultural, and politico-economic context within which crime takes place may provide judicial discourse with a pluralistic and comprehensive view of mental health problems and the multifaceted phenomenon of criminality. Multidisciplinary collaboration between health professionals could enrich discursive resources with a holistic, ecological and systemic approach that considers the individual as a part of a wider system. Including a de-pathologising language in decision-making processes would bring about changes in institutional practices, such as the right to choose psychosocial instead of exclusively medical interventions, programs for recovery, empowerment and rehabilitation instead of marginalization, and preventive instead of repressive measures (Parker et al., 1995).

Regarding the methodological limitations, the fragmentary nature of the research data collection, due to the absence of a single database of criminal court rulings on cases regarding imputation and "mental illness" hampers the generalizability of the results. However, a future investigation of this sample across different time periods could provide a broader perspective of the discourses through which the alleged criminal offenders with psychiatric diagnoses are constructed. In addition, qualitative analysis of legal and judicial texts is crucial, in order to map the legal and judicial constructions of people with mental health problems and to highlight their role in the wider social processes of understanding and dealing with mental distress.

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ΕΜΠΕΙΡΙΚΗ ΕΡΓΑΣΙΑ | RESEARCH PAPER

Απεικονίσεις «ψυχικής ασθένειας» σε αποφάσεις ελληνικών ποινικών δικαστηρίων: Μια ανάλυση λόγου

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ΛΕΞΕΙΣ ΚΛΕΙΔΙΑ

Ανάλυση λόγου
Επικινδυνότητα
Ποινικά δικαστήρια
«Ψυχική ασθένεια»

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ΠΕΡΙΛΗΨΗ

Η παρούσα μελέτη διερευνά τις κατασκευές των ατόμων με διάγνωση «ψυχικής ασθένειας» στις αποφάσεις ελληνικών ποινικών δικαστηρίων. Εφαρμόστηκε η προσέγγιση της φουκωικής ανάλυσης λόγου στις αποφάσεις ελληνικών ποινικών δικαστηρίων που δημοσιεύθηκαν τα έτη 2009 έως 2018, για να εντοπιστούν τα κυρίαρχα αποθέματα λόγου που χρησιμοποιούνται για την κατασκευή της «ψυχικής ασθένειας», καθώς και οι λειτουργίες που επιτελούνται μέσα από τις συγκεκριμένες απεικονίσεις των δραστών και των εγκλημάτων τους στο δικαστικό λόγο. Από την ανάλυση προέκυψαν δύο βασικές κατασκευές. Στην κατασκευή του ακαταλόγιστου «επικίνδυνου ψυχασθενούς», η διασταύρωση του βιοϊατρικού λόγου με το λόγο της επικινδυνότητας σκιαγραφεί το άτομο ως απρόβλεπτο, χωρίς ικανότητα για αυτεπίγνωση, αυτοκαθορισμό και ηθική κρίση. Κατασκευάζοντας την καταλογιστή «εγκληματική προσωπικότητα», η επίδραση της «ψυχικής ασθένειας» στα τετελεσμένα εγκλήματα σχετικοποιείται, καθώς η εγκληματική πράξη ανάγεται στα ψυχολογικά χαρακτηριστικά του ατόμου, που παραβιάζει εσκεμμένα τους κανόνες της κοινωνικά αποδεκτής συμπεριφοράς, παρότι απεικονίζεται ως ικανό για ορθολογικό και ηθικό συλλογισμό. Στα κεντρικά ζητήματα που αναδείχθηκαν συγκαταλέγονται αφενός οι προκατασκευασμένες κατηγοριοποιήσεις των δραστών σε καταλογιστούς ή ακαταλόγιστους, ανάλογα με τον προσδιορισμένο βαθμό αυτενέργειας βάσει ηθικών κριτηρίων, και αφετέρου η επιλεκτική αξιοποίηση του βιοϊατρικού λόγου από το δικαστήριο, που αξιολογεί την ψυχιατρική πραγματογνωμοσύνη άλλοτε ως αντικειμενικό αποδεικτικό στοιχείο και άλλοτε ως αναξιόπιστη γνωμοδότηση.

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