A decade of interdiction and disqualification: Comparison of interdiction/disqualification action proceedings between two triennia

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Abstract

Introduction: In light of a changing society, from a judicial/legal standpoint, there is an increase of interdiction/disqualification actions which, despite their greater intention to protect unable adults, unequivocally condition individual freedom. As a result, attention to the psychiatric-forensic evolutionary trajectory of interdiction/disqualification is a practice that must compromise any society, as it is very useful for the clinical-forensic system. Objective: To assess and compare the sociodemographic and psychiatric-forensic characteristics of interdiction/disqualification proceedings within the scope of Civil Law, between the data of the triennia (T.) from 2014-2016 and of the T. 2005-2007, conducted in the Clinical Forensics Functional Unit of the Center Delegation of the National Institute of Legal Medicine and Forensic Sciences (INMLCF). Material and methods: Comparative statistical analysis of data, on a total of 536 cases. Results: The universe of the population under study for the T. 2014-16 (N= 410), when compared to that of the previous triennium (N=126), evidences a very steep increase in the number of cases. Discussion: The estimated data highlight an effective consistency of the comparative assessment between the triennia, with regard to the majority of sociodemographic categories and psychiatric-forensic variables. There is, however, a percentage expansion regarding the number of proceedings within this scope which, as expected by the authors, seems to be the result of an increase of neurodegenerative pathologies. Conclusions: The audit conducted and the high prevalence of these kinds of proceedings reflect a demanding and concerned society, but also require a judicial/medical-forensic reflection on the challenges of an evolving society.

Keywords: interdiction, disqualification, forensic psychiatry

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The demographic changes of the last century, manifested in the modification and sometimes inversion of the age pyramid, reflect an ageing population, which, in turn, reflects an ageing society, imbued with social, medical and legal issues. Moreover, the weight of longevity, as well as the increase of neuropsychiatric disorders and/or other types of disorders, are associated with issues regarding the reduction of psychical and intellectual abilities, which demand active intervention from civil society in the provision of care (Sampaio, 2016). In Portugal, according to published studies, namely from 2002, over 60 thousand citizens are in a situation of inability to manage their person and their property, of which more than 80% do not have a curator who is responsible for these functions (Borges, Colón, Marques, & Vieira, 2008; Cargaleiro & Vieira, 2017; Social Development Institute [IDS], 2002).

In the Portuguese legal system, the Civil Code regulates actions regarding the institutes of adult inability, particularly interdiction and disqualification, entrusted in articles 138 to 151 and articles 152 to 156, respectively. Civil psychiatric-forensic expert examinations, specifically in the field of interdiction-disqualification special actions, increased in the last years, totaling a very significant part of the psychiatric-forensic work of the National Institute of Legal Medicine and Forensic Sciences (INMLCF) (Conde, Trancas, & Vieira, 2016).

In other words, and in light of a changing society, from a judicial/legal standpoint, there is an increase of interdiction/disqualification actions which, despite their greater intention to protect unable adults, unequivocally condition individual freedom, confining the fundamental rights consecrated within a society of solidarity.

This demands, in this context, a permanent adaptation of the law (Costa, 2010; Law n.º 41/2013 – Civil Procedure Code [CPC] of June 26, of the Assembly of the Republic, 2013).

Though the final decision is of a judicial nature, the role of expert psychiatric evaluations in interdiction/disqualification proceedings is of paramount importance, constituting fundamental and determining expert evidence. As a result, attention to the psychiatric-forensic evolutionary trajectory of interdiction/disqualification is a practice that must compromise any society, as it is very useful for the clinical-forensic system.

The focus of the present study is to assess the sociodemographic and psychiatric-forensic characteristics of the expert psychiatric evaluations related to interdiction/disqualification proceedings within the scope of Civil Law, conducted in the Clinical Forensics Functional Unit of the Center Delegation of the INMLCF, with respect to the triennium of 2014-2016 (T.2), and conduct a comparison with the data from the triennium of 2005-2007 (T.1).

Method

The present research is based on a retrospective and descriptive study of the expert evaluations conducted within the scope of Civil Law, regarding the interdiction/disqualification proceedings with respect to T.2 and, subsequently, a comparative analysis was conducted with the data obtained in T.1. In sum, this study included a total of 536 cases of psychiatric-forensic expert evaluations regarding interdiction/disqualification proceedings within the scope of Civil Law with respect to the aforementioned triennia, belonging to the geographical area of the district of Coimbra.

The sociodemographic characteristics include sex, age, date of birth, marital status, residence, place of birth and employment status. From the psychiatric-forensic data, the following variants were assessed: the type of action, the defendant, the diagnosis and the psychiatric-forensic opinion. The diagnostic classification was based on the 10th International Classification of Diseases of the World Health Organization, ICD-10 (WHO, 2000).

Data analysis was conducted using R, version 3.2.5 (R Development Core Team, 2011).

Results

Sociodemographic Data

The universe of the population under study, for the T. 2 ($N = 410$), when compared to the previous triennium ($N = 126$), exhibited a very marked increase in the number of cases, as may be easily observed in graph [Graph 1 – *n* Cases/Triennium]. In this last triennium, there was a difference of almost 60% with regard to the number of individuals who underwent expert evaluation in 2015, when compared to the previous year, with that value remaining practically unchanged in the following year.

As for the gender of the individuals evaluated, while in the first triennium the distribution was uniform, (*n* females = 64; *n* males = 62), in the last triennium the population was mostly female (*n* females = 253; *n* males = 153), with approximately two thirds of those evaluated being women [Gender/Triennium]. In the analysis of these results, it was possible to observe that in the year 2015 the loss of uniformity surges, and is maintained in 2016.

With regard to age distribution, there were no significant differences between the two triennia, though both experienced a slight increase, from 52.8 years to 56.3 years of age.

Concerning marital status, there were no significant differences between the triennia under consideration, with the vast majority (72.2%) of evaluated individuals remaining single (T. 1 = 69.0%). The employment status category remains practically unchanged between the triennia.

Psychiatric-forensic data

In the last triennium considered, petitions within the context of interdiction/disqualification proceedings were mostly (98.5%) practiced by the Court, which contrasts with the data from T.1 (58.7%).

Regarding diagnosis, in T.2, there was relative consistency with the first triennium, with an increase in the category F00-F09 (Organic, Including Symptomatic, Mental Disorders) and a slight decrease in the categories F20-F29 (Schizophrenia, Schizotypal Disorders and Delusional Disorders) and F70-79 (Intellectual Disability).

Considering the category of diagnosis by age group, in T.2, Intellectual Disability (F70-F79) was the most prevalent in all age groups considered, with the exception of the group over 60 years of age. Indeed, in this latter age group, the diagnosis F00-F09 predominates, with 58.6%. For comparative purposes between the two triennia, the data revealed no major changes in each age group regarding the type of diagnosis.

From the last triennium resulted 381 interdiction proceedings (92.9%), 10 of disqualification (2.4%), 9 (2.2%) without favorable opinion for interdiction/disqualification, and 10 cases (2.4%) for which the outcome is yet to be

known. Compared to the data of the previous triennium, the most expressive results were in terms of the proportion of interdicted individuals (n T.1 = 105), whereas those who did not meet psychiatric-forensic criteria for interdiction or disqualification decreased (n T.1 = 12).

In the case of the 381 diagnoses favoring interdiction in the last triennium, the most common were mild (74 cases) and severe intellectual disability (66 cases), which, taken together, make up 36.7% of interdiction cases. Concerning the 9 diagnoses in which there was no mental disorder that incapacitated the individual, 3 did not suffer from a psychiatric disorder, and the remaining exhibited various diagnoses (F07.0 Organic personality disorder, F20.0 Paranoid schizophrenia, F22 Persistent delusional disorder, F31.7 Bipolar affective disorder, currently in remission, F71 Intellectual disability and G20 Parkinson's disease). In the diagnoses where the result was disqualification, the most common pathology was F70 with 5 individuals and, with one individual each, F03, F10, F20.0, F20.5 and F25. Comparing this last triennium with the previous one, the distribution of the ICD-10 diagnostic categories did not reveal significant variations, for both disqualification and interdiction. There was, indeed, an increase of almost 50 percentage points in the category of Others ICD-10 with regard to interdiction, however, the number of individuals in the first triennium was reduced (n=30) [Graph 2 - Interdiction/Diagnosis (ICD-10); Graph 3 – Disqualification/Diagnosis (ICD-10)].

Discussion

From the rigorous analysis of the results, it is possible to observe a decade-long course (between the triennia considered) of the silhouette of special actions of

interdiction/disqualification in the Center Delegation of the INMLCF. The estimated data emphasize an effective consistency of the comparative assessment between the triennia, with respect to most sociodemographic categories (except for gender) and psychiatric-forensic variables evaluated. Therefore, as predicted by the authors and consistent with the consulted literature (Borges et al., 2008), the proceedings continue to be mostly based on petitions for interdiction, where the majority of examinees are single, suffer from a mental disorder, particularly intellectual disability or dementia syndromes, and belong to the age group between 50 and 60 years of age. From the petitions results interdiction as the most frequent psychiatric-forensic opinion, followed by disqualification, with a notable difference, and, lastly, those in which expert opinion does not favor interdiction or disqualification.

Nevertheless, the inequalities between the results over a decade deserve careful and rigorous reflection from the authors. Worth noting is the increase in the number of women who underwent expert evaluation and the increase in the number of cases in the year 2015, which persisted in the year 2016. Regarding this exposition, it may be related to the fact that, in the year 2014, the number of proceedings filed and terminated in the Portuguese Judicial System was abnormally high, as a consequence of internal transfers following the application of Law n.º 62/2013, of August 28 (Law of the Organization of the Judiciary System) (DGPJ, 2016). This situation allowed for the greater number of proceedings accessed within this scope to more precisely reflect, possibly in 2015, the Portuguese sociodemographic proportion (PORDATA, 2017).

Psychiatric forensic data highlight an increase in petitions conducted in first instance by the Court and a growing proportion of individuals with expert opinion for interdiction, and a reduction of those in which individuals are not considered susceptible

of being interdicted of disqualified. Thus, regarding the first disparity between the triennia, it is worth noting that, in the past, practically all petitions originated from Public Prosecution, which may justify this discrepancy. However, they were petitioned in the context of mere administrative proceedings of preparatory nature, to analyze the possible need for a later instalment of true proceedings. The results also depend on various factors, if, on the one hand, they seem to reflect an increase in the signaling of neurodegenerative pathologies, associated with an increase of the average life expectancy (in the study, an increase in the category F00-09, where dementia syndromes are included); on the other hand, other protection needs of interdicted individuals were added, since 2012, for example, the elderly must formalize a written contract with senior homes and institutions were they will be residing, which highlighted the need to adapt legal capacity to real capacity (see article 10 of Administrative Rule n.º 67/2012, of March 21) (Conde et al., 2016). Accordingly, a possible change in the petition initiative may be pondered, providing answers to increasingly rigorous social demands, which envisions a more attentive and informed civil society. Progressively, instead of Public Prosecution petitioning the action, and with the indelible intention of confronting the difficulties that hinder the care of individuals, the parents, spouse, tutor or curator, or another successive relative would be able to legitimately initiate and petition for the special action of interdiction or disqualification before the Court, without prior intervention of Public Prosecution. However, other factors not discussed in this study, such as the increase in this type of proceedings and inherent conditions of the Portuguese judicial system and Public Prosecution, may constitute another adequate justification for the result obtained.

The impact of mental pathologies that influence intellectual and cognitive abilities, that affect functioning and self-determination, have led to an increasing number of interdiction/disqualification proceedings, propelled by a contemporary society focused on prioritizing the rights of unable individuals. Consistent with the results found, it is evident, from all the work conducted, that there is a clear increase in the number of proceedings between the triennia, surpassing 300%. An undeniable contributor to this percentage increase, as expected by the authors, is the increase of neurodegenerative pathologies in an aging population, which includes dementia syndromes (F00-09 Organic, including symptomatic, mental disorders) – as evidenced by the results – as well as social demands that invoke normative disposition to the legal order.

The analysis reflects the statistic published by the General Directorate for Justice Policy (DGPJ) (Conde et al., 2016; DGPJ, 2016), which reveals a significant increase of special actions of interdiction and disqualification and exposes society to the problem of protecting those considered unable, with inherent biological, clinical and legal compromise, due to the evident impossibility of causal attribution between the mental disorder and inability.

Conclusion

This retrospective study and the high prevalence of this type of proceedings reflect a demanding and concerned society, but also require a judicial/medical-forensic reflection on the challenges of a society under reconstruction, paraphrasing Counselor TOMÉ GOMES: "*The adequacy of the inability regime would be the greatest gratitude of present generation to the longevity which was given to us by past generations"* (Sampaio, 2016). Accordingly, new European propensities essentially point toward:

maximum protection of (the still existing) ability; better adequacy between the measures applied and the degree of inability; flexibility of procedural mechanisms; qualification of legal representatives (Conde et.al., 2016; Paz & Vieira, 2014).

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