

Editorial

Senator Siniscalchi has introduced a bill designed to authorize the performance of psychological expertise on the accused person, a practice currently proscribed under art. 220 11 par. c.p.p.(code of criminal procedure) which closely abides by the earlier prohibition in the repealed art.314 11 par. c.c.p. (see *News* in this number of the review). The justification for such a prohibition stems from the fact that if the use of psychological expertise were granted and subsequently performed prior to the guilt of the accused being ascertained, the prosecution might be in a position to show elements or inferences of guilt through details gleaned from the implementation of such a procedure. As I have already pointed out, if one is to take this kind of logic seriously, then it is reasonable to assume that psychiatric expertise should also have been disallowed. Psychiatric expertise sets out to determine the psychic condition of the accused at the instant of perpetrating the crime. Should the accused deny having committed the crime and/or the circumstantial evidence is not particularly forceful, then for what reason do they attempt to establish the guilt of the accused when perpetrating the crime? (Gulotta & co., 2000)

Press reports are revealing the somewhat paradoxical features of psychiatric expertise, a practice which is nonetheless admissible. As regards the Cogne homicide, a mother was accused of having murdered her three year old son by striking his head 17 times with an unidentified object. The mother denied her guilt and the magistrates issued conflicting decisions on whether to endorse her imprisonment or order a provisional release from confinement. Meantime, she was examined by psychiatric experts and the findings showed that she was in full possession of her mental faculties when the crime was committed. As is well known, mental capacity is assessed in strict relation to the act performed. But of what act are we speaking, if the accused denies its perpetration and the magistrates are at odds with one another as regards the significance of the circumstantial evidence?

At Padua a 53 year old man was sentenced to life imprisonment for the murder of a cabdriver and a real estate agent. The man has tenaciously denied his guilt before the magistrates; however, he did see fit to confess his guilt to a technical consultant, a psychiatrist, called by counsel for the defence. Subsequently the accused retracted his confession, claiming that the specialist had most probably given a personal "interpretation" to his words.

It is highly appropriate that the Siniscalchi bill recognizes that facts emerging from psychiatric and psychological expertise may not be used

to the detriment of the accused. Should this bill become law, alarming infringements of the of the accused rights for a defence would be avoided, and, in consequence, would limit the number of entreaties put forward by attorneys to be present at the psychiatric and future psychological expertise sessions – although such presence is quite feasible – mainly on account of the dangers that this might involve for defence counsel over and above the assessment of the psychological and psychopathological condition of the client (see Gulotta, re the facts emerging during the expertise session and the presence of defence counsel, at <http://www.psicologiagiuridica.com/>)

The situation of the accused sentenced to life imprisonment, however, reserves a special feature: the “confession” was not made to the psychiatrist appointed as an expert by the judge but rather to his own technical consultant. In this case, psychological expertise was not granted by the magistrates.

Gulotta G & collaborators, *Elements of psychological law and of civil, criminal and minority psychological law.*