

The Role of Forensic Expert on the Albanian Juridical Processes Focused on Minor's Issues

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Abstract

Adapting the legal framework to social change highlighted the necessity of expert involvement in all stages of juridical proceedings. The expertise of the psychologist during the process constitutes an important guide for a fair and right court decision on cases focused on minors. This figure facilitates a lot the work of judges on a responsible decision for the minor's future.

The article highlights some of the duties, responsibilities, and functions of the psychologist during court proceedings, how they operate in the judicial system today, how this function can be improved to support the minor, and the institutions themselves. The article highlights some of the weaknesses of this role on its reposition as a concrete and substantial part of the judicial structure to produce maximum positive effects, as well as enhancing its opportunities and facilitating process services and the minor's future orientation in cooperation with other institutions in charge or social services.

Key words: *child rights, court decision, forensic expert, legal framework, psychologist*

Introduction

Post-communist political, economic, and social changes need improvements in legal spheres. The Family Code (Law No. 9062/2003) introduced a new actor in the family civil process, the psychologist. The psychologist's presence is linked with the involvement of minors in legal proceedings such as marriage dissolutions, custody, parental responsibility, as well as minors in conflict with the law on court proceedings, prosecution proceedings, or the police interrogation^{1, 2}.

The minor involvement in all levels of investigation and judicial proceedings, (Police, Prosecutor, Court) shows the necessity to protect and guarantee the minor's right to be heard in the presence of a professional (psychologist / social worker) or legal representative (parent/legal tutor)³.

Amendments to the Family Code emphasized the necessity to conduct a social/psychological assessment by a social worker or psychologist in divorce cases¹. The assessment of the expert is determinant but the law is unclear on cases where will be requested the evaluation of a psychologist or a social worker. According to the law, in other family matters, the psychologist has the legal responsibility to express his opinion on the case evaluation. The psychologist's opinion will perpetuate the will and desires of the minor according to his/her highest interest. The legislator aims to protect the minor's interest for a normal and dignified life².

In the case of minor participation in criminal proceedings, the psychologist is specifically designated by the provisions of the Code of Minor's Justice, (art.19) in a different context from the Family Code. The presence of the psychologist, as a legal standard, is mandatory during the interrogation of minors by Police or Prosecutors or in a court hearing. The expertise of a psychologist or a social worker offers a real and correct evaluation of the minor psychological health as well as her/his physical and social position⁴.

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Understanding the importance of the expert role in all stages of the investigation and judiciary process, both civil and criminal will increase their involvement in the judicial system structures. This will improve the quality of justice in Albania and will help NGOs operating in the field of free legal services to guarantee fair access to the judicial system^{3, 5-6}.

How Are Forensic Psychologists Selected?

In Albania, the courts of the first level are structured in two chambers: the civil, and penal one, organized in sections. On the top of the judicial administration, is the President of the court who directs and controls the organization, function, and operation of judicial administration. Among, other competencies the President of the Court published the list of licensed experts (Ministry of Justice expert lists), according to the expertise. According to the Instruction of the Council of Ministers No. 4/2012 "On determining the number of expenses and payments for Experts and Witnesses in Judicial Processes", is stated that "Every year, the judicial district publishes the list of licensed experts and update the list, in cases where the licensing authorities take administrative measures to suspend the license. The court is the authority in charge to call the licensed experts according to the list. If the requested expert is missing in this list or there is no one expert in this city, they can call another one from another region close to the court who is in the ministry list^{6"}.

In addition to the specific professional conditions and qualifications, the expert should be equipped with a specific license issued by the relevant Ministry (Education or Social Welfare or Justice).

For the first time in Albania was established the Order of Psychologists according to the law 40/2016. The Commission of Licensing starts its functioning on July 12, 2017. The licensed psychologists, with specific skills in the judicial field (after different training and exams), were part of a qualified experts list. This list is drafted by the Psychologist Order and provided to the court with the names of the experts who can attend during a juridical process and offers a qualified evaluation.

The President of the Court only publishes the list of psychologists, who are specifically selected by the

judges in charge of the case with minors, in compliance with the principle of independence of judges during their judgments⁷⁻⁸.

In the case of the Prosecution Office, even there is a centralized organization, in the case of selection and operation with psychologists it happens as in the Court, but this doesn't mean that the same psychologists provide their services in both institutions or vice versa, an action that can effects directly or indirectly the result of the case⁷.

In the case of selection of psychologists by the Police Authority, they can be from the lists provided by the Court and the Prosecution Office, but also can be accessed from other public and private bodies such as NGOs which provide psychological services or experts from the social service at the Municipality, under the jurisdiction of the court or the Social State Service or psychologists who are part of Probation Service in Albania. Psychologists trained in juvenile criminal justice are endowed with a certificate and a special identification card. If in a country there are no psychologists specially trained in juvenile criminal justice, then in this function the prosecutor or police officer, or judiciary police may call a psychologist from the nearest county. A psychologist who lacks the training in the field of juvenile criminal justice, cannot be assigned to this function, as it can bring invalidity to the whole proceeding^{4, 7-8}.

According to the expert tariffs, after the important law amendments on the psychologist status, the law on juridical financial help, Civil Code, Criminal Code and law on Domestic violence, if the expert service charges a fee to the parts, the psychologist is free to discuss them with the parent/custody of the minor or their lawyer^{5-6,8,10}. But in this case, these tariffs:

- should be in accordance with the law;
- should not be abusive, without an expenses bill;
- in cases of financial limitations, the expert should discuss them with the obliged part before delivering the service, but for any reason, they should not interfere with the quality of the provided service⁶⁻⁷.

THE SITUATION OF THE INVOLVEMENT OF PSYCHOLOGISTS

- Psychologists are called (elected) by judges (family / criminal section) in cases that are focused on the minor's situation and his best interest¹⁻²;
- The president of the court announces the list of licensed experts, according to the respective fields, with a special list for psychologists provided by the psychologist Order;
- Among 2 - 4 judges of the family section (the number that varies from one court to another) circulate only 1 or 2 psychologists responsible for the evaluation of cases⁹;
- Each one of them is selected according to the "preferences" of the judge, putting their professionalism, the quality, objectivity, and fairness of the process in jeopardy;
- As an external expert, the psychologist is paid by the plaintiff (in special cases, when it's assessed by the court, the fee can be paid by both parties or by the party found guilty in criminal processes)^{3, 10};
- The fees of psychologists are very high and various in different courts;
- There is any fixed tariff settled by the Ministry of Finance and the Ministry of Justice for the service of the psychologist;
- The payment in cash and in advance of the expert's fee reduces the objectivity, impartiality, and the quality of its expertise;
- The economic situation and the insolvency of the parties are not taken into account, even there is a specific law that creates the standards for economic support for vulnerable groups. This insolvency situation may be a restraining element on the fulfillment of the right for a fair and right process (which leads to the cessation of the juridical case);
- The psychologist meets the parties only for few minutes (the time of a coffee) and contacts the children in the corridors of the court or in some inappropriate environments to fulfill the goal, "interrogation and the assessment of the real situation of the minor".

- There is a lack of cooperation of forensic psychologists with those operating in the Social State Service or those who are part of the social service offices at the local government on providing data's on risk cases, on following the case since learning about the family/minor social problem carried, on monitoring by the relevant bodies the case development as well as the cooperation between the institutions on finding concrete solutions for the identified social problems;

- Also, there is a lack of collaboration among social worker and psychologist when they are called as an expert on the same case, effecting in this way the quality of the expertise;

- The Prosecution Office, the Court, and the Police have in their lists different psychologists to assess their cases^{3-5, 9}. They engage different psychologists even in cases that are focused on the same parties, thing which increase a lot the financial costs for the parties, but at the same time, this practice affects the quality of the expertise because the other body is not able to elaborate the professional opinion of the expert on the specific level of the judicial investigation. The psychologist, because of its frequent and constant contact with the minor, has the opportunity to understand better his/her feelings and the concrete situation, and offering correct solutions to the minor and of the case itself.

THE PSYCHOLOGIST AS AN INTERNAL PART OF THE COURT'S STRUCTURE

After reflecting on the situation of the psychologist's involvement during judiciary processes facing, in my opinion, it would be appropriate to create the possibility of integration or attachment of a limited structure of psychologists to the courts of the first instance. This group of 2-3 (according to needs) psychologists in the role of experts would be an integral part of the judicial administration, with a legal and hierarchical dependence related with two authorities, for example, appointed by the Social State Service, which monitors the work of the psychologist and exercised function by the competent President of the court. As a result of the work of the psychologist will be the number of cases appealed to the superior court for reasons related to the quality of service provided by the psychologist, which will directly affect the further performance of the service⁶⁻⁷.

The integration of the psychologist in the internal structure of the court carries with it a series of problems and advantages listed below as a concretized proposal.

Among the positive elements, can be listed:

- Less economic costs for Albanian families with serious legal problems, supporting directly the minors;
- Providing a quality and professional service on dealing the problematic cases and offering concrete assistance to them, through accessing to this position to qualified persons based on individual merits;
- Guaranteeing to the psychologist a comfortable position as an expert during the process of treatment, follow-up, and monitoring of each case,
- Protection of the psychologist position against “Judge’s Preferences and Influences”,
- Ensuring cooperation between the police - the prosecution office - the court on helping the minor,
- Reducing the corruption cases between the judge (prosecutor, police) and the psychologist by avoiding bribes because the psychologist was selected for this case;
- Achieving the coordination, cooperation, reporting, and monitoring of problematic cases in relevant institutions (health, education, Social State Service, local social service offices, public and private shelters)

Among the negative elements are⁷:

- Increasing the financial costs of the judiciary system or of the Ministry of Finance (according to the case and the concrete responsibilities of each ministry) in:
 - A. Salaries,
 - B. Special facilities and locations,
 - C. Relevant qualifications of forensic psychologists or any other expenses like these.
- It requires an improvement and adaptation of the legal framework on the role and functioning of the psychologist as an internal part of the justice system.
- It affects and undermines clientelistic interests and

benefits between actors in the judicial process and in all levels of legal proceedings.

Conclusions

Being aware of the role and importance that the position of psychologist carries for the judicial process and its progress, the impact of its assessment on the life and future of the juvenile, family, and society as a whole, the interest to provide a psychological service more efficient and correct is the maximum. The Albanian population is characterized by an average young age of 31.7 years where the age group from 0-19 occupies the largest number of this average. Demographic changes (migratory movements, emigration, urbanization processes) associated with economic factors such as unemployment, extreme poverty, have contributed to the deterioration of the social situation of Albanian families which have undergone a radical structural and functional transformation. The number of divorces has increased (from 8.7 to 9.6 per 100 marriages (INSTAT Albania), the number of cases of domestic violence, the causes of juvenile delinquency with a number still high of minor imprisonments, require a specific commitment of psychologists to deal with these cases as a mitigation effect of these phenomena. This difficult economic situation leads to the inhibition of this concrete target group which because of economic impossibility, wouldn’t take the court option and abandon its fundamental right for equal access to justice. The high economic cost of a juridical process (the payment of a lawsuit price, attorney’s fee, expert’s fees, legal notice fee during the process, and other administrative procedure costs) is charged and paid in advance and in most of the cases by the injured party, endangered or poorer, causing many times the renouncement of part by its legitimate right. In such conditions, considering a large number of divorce cases, domestic violence, or criminal offenses involving a minor and where the presence of a psychologist is essential, brings the necessity for alternative solutions on alleviating the social cost for the fulfillment of individual rights.

The integration of the psychologist in the court structures helps this target group which is impossible to fulfill the financial obligations of the judicial process, guarantees a qualified service, coordinates with other actors of social services on further monitoring of the

problem, on its solution and effects the social integration of the minor in the community.

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Conflict of Interest - NIL

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