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Psychological Assessment of Children by Forensic Experts

Several scientific articles address the interaction of psychology and law, including one of its most important areas, forensic expertise. This is a current topic since the new act on forensic experts has taken effect, aiming to ensure the transparency and competence of the activities of forensic experts.

In my study, I intend to answer the basic questions like who screens whom, when, how and why, and I would like to reveal the anomalies of the assessments done by forensic experts. My aim is to draw the attention to the underlying problems related to the professionalism of forensic expert opinions. I discuss the obligations, competences and activities of experts. By giving some illustrative examples, I present the areas which, in my opinion, cause problems during the forensic psychological assessment of children. These include the methodology guidelines, the incompatibility of the areas of expertise, the applicability of the psychological methods, the errors of expert opinions, the different terminologies of the various disciplines, the lack of definition for parenting capacity, as well as the specialties of ethnic issues.

I believe that breaking the taboos, facing the problems and exercising professional self-reflection could support the forensic experts in doing correct professional work.

Keywords: forensic expert, judicial expertise, psychological methods

Introduction

Nowadays, it is a completely accepted view to see the interaction of law and psychology as an interdisciplinary approach. The relevance of this is confirmed by the fact that the *American Psychological Association* (APA) considers forensic psychology as a special area, the main task of which being forensic expertise.¹ At first glance, the work of a

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¹ BARTOL, CURT R. – BARTOL, ANNE M.: *Psychology and Law: Research and Practice*. SAGE, L.A., 2015.

forensic physiological expert may seem to be an easy task. It only means the application of an expert's expertise for establishing a fact to be proven. However, if we examine the depths of the forensic expert's work more thoroughly, we find an especially complex area.

The psychologist works with scientifically accepted methodologies, but his or her subjectivity is also present in his/her work since the extent of the trauma cannot be measured in kilograms, the consequences of sexual abuse cannot be calculated exactly on the basis of equations, and the attitudes of children to their parents are not measurable in meters either. Actually, the subjective factor may be the explanation for the anomalies of the expert work, as detailed below.

1. Appointment of the expert and his obligations

The forensic psychologist expert performs his activity on the basis of assignment or mandate. He prepares his expert opinion independently or in cooperation with other experts. He intends to formulate an expert opinion that is professionally and ethically correct. The activities of forensic experts are guided by laws and methodology recommendations, the most important items of which are as follows:

1.1. Act XXIX of 2016 on Forensic Experts

The Parliament adopted Act XXIX of 2016 on the Forensic Expert Activity on 26 April 2016, repealing Act XLVII of 2005. The act unified the Hungarian Chamber of Forensic Experts, the members of which are experts recorded in the name list. The highest decision-making body of the chamber is the delegates' meeting consisting of the members. Compared to the previous act, it is a novelty that the list of names is kept by the Ministry of Justice, and that the chamber will regularly assess the procedures of the forensic experts. Based on this, the experts will be listed in categories like 'incompetent', 'competent' and 'excellently competent', which will be indicated in the list of names publicly. The regular statistic data supply has also become obligatory, the results of which are processed and forwarded to the ministry by the chamber. Sanctions will be imposed against the experts failing to supply data, to accept their mails, or to inform the authority about substantial circumstances.

IRM Decree No. 1.2. 31/2008 (XII.31) on the Operation of Forensic Experts

The decree specifies the criteria of the expert opinion in detail, as well as the rules concerning various screenings, including the examination of the diminished accountability and common sense of minors, and the clinical and mental hygiene psychological assessment of adults and children.

IM Decree No. I.3. 10/2006 (III. 7.) on the Legal Education and Examination Required for Pursuing Forensic Expert Activities

The forensic expert shall take part in legal education and take a legal examination. The decree sets out the detailed rules concerning the legal education and the examination, the curriculum of the training and the criteria of the certificate.

Methodology Guideline No. I.4. 20

The National Institute of Forensic Medicine formulates professional recommendations about the scopes of operation and activities of forensic psychologist experts in its Methodology Guideline No. 20. Actually it is only a draft.²

II. Competence of the expert

The expert work entails high levels of responsibility, and therefore, it requires particular attention and accuracy. The expert is aware of his own competence and he is obliged to indicate if he has no competence for replying the questions asked from him, or if the questions cannot be answered with the psychological methods applied by him. The tasks of the expert include:

- revealing the personality traits deviating from the healthy ones, required for performing special tasks (e.g. issue of parenting capacity);
- assessing the levels of intellectual abilities;
- revealing the psychological processes behind sharing experiences (e.g. the influencing effects of memory and emotions);
- mapping the psychic structures at the root of deviant behaviours;
- assessing the consequences of traumatic experiences suffered by children;
- assessing the parenting attitudes influencing the development of the child's personality;
- assessing the direct and indirect (e.g. conflicting parenting) impacts influencing the child's behaviour.

III. The information basis of the expert

In the majority of cases, documents supporting the formulation of his opinion are available to the expert, generally in the form of hearing minutes, documents of investigation, other expert

² ORSZÁGOS IGAZSÁGÜGYI ORVOSTANI INTÉZET: 20. számú módszertani levél az igazságügyi pszichológus szakértők működési köréről és tevékenységéről. IRM, Budapest, 1-18 pp.

opinions (e.g. pedagogical opinions, opinions of special needs teachers, child psychiatry opinions, etc.), or social inquiry reports. Important information may be obtained in relation to protection, primary care or family caring from the Guardianship and Child Protection Office, the Child Welfare Service or the Pedagogical or Psychological Counsel. He may also use the previous expert opinions, which may help him in developing the questioning strategy, but shall not influence his opinion.

IV. The major legal areas affecting the expert

IV.1. Civil law

In civil law cases, the expert is asked to provide his opinion mainly in the area of family law, typically in relation to the situation arising from divorce. In family lawsuits, his most frequent task is to map the parenting capacities of the parents, the potential influencing by a parent, attachments, relationship of siblings, the development level of the child, and the behaviour problems arising at the child.

IV.2. Criminal law

In criminal law cases, assessment by the expert may be required in any stage, since the child may be a victim, a suspect/accused person or a witness. It is a generally accepted practice that the assessment of the psychologist expert is performed jointly with the forensic child psychiatrist expert. This is required because the questions asked by the expert are different (e.g. accountability may only be assessed by a psychiatrist expert), related mainly to the probability of the crime and the experiences and truth of those shared by the person. Most often, the tasks of the expert are connected to abuse of minors and sexual crimes.³

IV.2.1. Abuse of minors

In the case of abusing minors, the expert generally assesses the psychical status of the child (e.g. mental damages, underdevelopment), personality, intellectual skills of the child, and the experiences of his/her account. It is his task to assess whether there is physical, intellectual or emotional underdevelopment, and if yes, then what are the characteristics thereof, and whether there is a causal link between the events shared and the underdeveloped functions.

³ KÓHALMI LÁSZLÓ: *A kóros elmeállapot és a beszámítási képesség büntetőjogi szabályozása*. Büntetőjogi Szemle, 2012/3. 29-37. pp.

IV.2.2. In case of sexual crimes, the following questions may arise:

In addition to the victim, the expert may also assess the suspect/accused person.

- In the case of victims, the truthfulness of the account, the child's psychosexual development, the trauma, the personality development of the child, the potential influence, and the child's emotional relationship with the perpetrator are the most often assessed factors.
- In the case of suspects/accused persons, the questions are mainly related to the personality structure, the psychosexual development and the special deviations of the sexual behaviour.

V. Assessment methodologies

References for the assessment – which is generally a one-on-one interaction – are provided in the methodology guidelines and the professional protocols. It consists of the exploration and the application of the psychological methods required for answering the questions⁴.

V.1. Exploration

The main goal of the interviewing is to reply the questions. During the thorough assessment, the expert applies proper questioning technique, with the basic task of revealing the potential contradictions, and of formulating these in the opinion. In addition to the open questions, the expert applies facilitating, clarifying, confronting, direct questions and applies other interviewing techniques as well (e.g. feedback, summarising, involving breaks, etc.). Besides the verbal signs, he also interprets the nonverbal signs when analysing the exploration conversation.

V.2. Performance tests

- Intelligence tests: *RAVEN Progressive Matrices, MAWGYI-R, HAWIK, Binet-test, Cattell B-test*, etc.
- Achievement tests: *Benton, Bender-test*, etc.
- Instruments: *Tachistoscope, Polygraph, Galvanic Skin Response*, etc.

⁴ LALLY, S. J.: *What tests are acceptable for use in forensic evaluations? A survey of experts*. Professional Psychology: Research and Practice, 2003/34 (5), 491-498. pp.

V.3. Personality tests

- Objective tests: *Child Behaviour Checklist*, *State-Trait Anxiety Inventory for Children*, *Multidimensional Anxiety Scale for Children*, etc.
- Projective tests: *Rorschach-test*, *C.A.T.*, *P.F.T.*, *Drawing tests*, *Sceno test*, etc. For assessing emotional selections, the *Three Wishes* and the *Boat Situation*, etc. are recommended.

The projective tests applied for children are especially important, because for children, the natural environment means expressive acts (e.g. drawing, playing). If the suitable settings are established for the child, then the emotionally burdening message becomes less frustrating.

VI. Anomalies

Indicating some of the problems arising during the forensic psychologist expert assessment of children, I would like to discuss the difficulties faced by those participating in forensic work.

Methodology Guideline No. VI.1. 10. vs. No. 20

The methodology guidelines formulate professional recommendations about the scope of operation and activities of forensic psychologist experts; however, their scope of application is not clear. Currently, Methodology Guideline No. 20 is in effect, but certain experts also consider Methodology Guideline No. 10 as applicable.⁵

The representatives of the profession have already expressed that a strict professional protocol is missing. The new act offers a solution for this deficiency, declaring the preparation of a methodology guideline, and offering the possibility to share up-to-date knowledge.

VI.2. Clinical psychologist vs. forensic psychologist expert

The APA already drew a strong distinction between the disciplines of clinical and forensic psychology in 1991, on the one hand because different professional attitudes are required from the representatives.⁶ The expert activity is not compatible with the counselling or the psychotherapist activity. In the psychotherapy situation, the therapist accepts the subjective

⁵ IGAZSÁGÜGYI MINISZTERIUM: *10. számú módszertani levél az igazságügyi pszichológus szakértők működési köréről és tevékenységéről*. Országos Igazságügyi Orvostani Intézet, Budapest, 1986. 187-198. pp.

⁶ APA: *Specialty Guidelines for Forensic Psychology* [<http://www.apa.org/practice/guidelincs/forensic-psychology.aspx> Letöltve: 2017.01.04.]

reality of the client, but the expert shall assess the experiences and authenticity of the account, and reveal the current psychical mechanisms.

It may happen that in addition to their expert activities, certain experts also perform clinical work for the same client, giving rise to serious ethical concerns. It is also a significant problem that labour and organisational psychologist experts provide opinions who do not work with children on a daily basis.

It would be necessary to clarify the competences, to detect such cases and to introduce⁷ sanctions.

VI.3. Application of the procedures

Since it is the expert's competence to select the applied methods, it may occur that the experts apply different methods. This is a cardinal question because during the procedure, when the expert opinions are exchanged, differences may arise in the expert opinions due to the application of different methods⁷. The questionnaires can be manipulated easily, the chances of simulation or dissimulation are high. However, in the case of projective tests, their reliability is questionable.

Other problems may also arise:

- The lower age limit of assessments is three years, but sometimes younger children are also assessed.
- The assessed persons obtain information about the tests on the internet, and their superficial knowledge influences the test results.
- The Rorschach test cannot be repeated within one year, but if several experts are appointed, this criterion cannot be fulfilled.
- As a result of the Hungarian developments, several new tests are issued (e.g. Wechsler test, MMPI-2), the application of which is not mentioned in the outdated methodology guidelines.

The experts shall be required to apply reliable methods with Hungarian standards. The international test repertoire contains several validated procedures that could be introduced in Hungary. One of them is the Conflict Tactics Scale developed by *Straus* (1996, 2004).⁸ The significance of the test is proven by the fact that until 2000, it was used for more than 70,000 empirical researches related to child abuse.⁹ Furthermore, the test developed by

⁷ SÓFI GYULA – FODOR MIKLÓS: *Igazságügyi gyermekpszichiátria*. Oriold és Társai Kft., Budapest, 2014.

⁸ STRAUS, MURRAY – DOUGLAS, EMILY: *A Short Form of the Revised Conflict Tactics Scales, and Typologies for Severity and Mutuality*. Violence and Victims. 2004/19:5, 507-520. pp.

⁹ STRAUS, MURRAY et al.: *The revised Conflict Tactics Scales (CTS2): development and preliminary psychometric data*. Journal of Family Issues. 1996/17:3, 283-316. pp.

Briere and his colleagues (2001) (Trauma Symptom Checklist for Young Children) applied in the wide-scale assessment of traumas affecting children would also be useful.¹⁰

VI.4. Problems related to the expert opinion

To list a few examples, the following cases occur most frequently:

- A question requiring legal competence is asked from the expert.
- He is expected to assess a fact (e.g. did the given crime occur?).
- He does not use voice recording during the assessment, and therefore, the report is not accurate, and the assessment cannot be checked later.
- The expert opinion contains false data and spelling errors.
- The expert assesses the child in the presence of the parent (risk of parent influence).
- One of the parties is not assessed (e.g. one of the parents takes the child to the expert without the knowledge of the other parent).
- The expert does not express his opinion clearly.
- The expert opinion contains contradictions.

VI.5. Different application of terminology

Basic problems arise not only in Hungary but also in the English-speaking countries in relation to the application of terminologies. According to *Smith* (1989), the improper interpretation of law by the expert may lead to errors.¹¹ The expert answers questions, and therefore, it is an important step to interpret it. Problems may be caused by the fact that the legal and psychological jargons are different, and the questions asked by the legal experts are not relevant in certain cases according to the psychologists.¹² For example, the definition of insanity formulated by the legal terminology does not comply with the terminology used by the psychologists. Generally, psychiatry does not use the category of mental illness, it rather talks about schizophrenia or psychotic disorders.¹³ Psychopathy is also discussed by the relevant literature as an „antisocial disorder”.¹⁴ Further problems are caused by the fact

¹⁰ BRIERE, JOHN et al.: *The Trauma Symptom Checklist for Young Children (TSCYC): reliability and association with abuse*. Child Abuse & Neglect, 2001/25:8, 1001-1014. pp.

¹¹ BARTOL, C. – BARTOL, A.: *Psychology and Law: Research and Practice*. im. 57. p.

¹² KULCSÁR GABRIELLA: *A kóros elmeállapot szabályozásával kapcsolatos egyes problémák*. Rendészeti Szemle, 2007/7-8, 159-164. pp.

¹³ NUSSBAUM, ABRAHAM: *A DSM-5 diagnosztikai vizsgálat zsebkönyve*. Oriold és Társai Könyvkiadó, Budapest, 2013.

¹⁴ KULCSÁR GABRIELLA: *A pszichopátia jellemzői és jogi aspektusai*. in: GÁL ISTVÁN LÁSZLÓ – HORNYÁK SZABOLCS (szerk.): *Tanulmányok Földvári József professzor 80. születésnapja tiszteletére*. PTE, Pécs, 2006. 201-211. pp.

that „the criteria introduced under the term of antisocial personality disorder only cover some parts of the symptoms of psychopathy, namely the characteristics of behaviour.”¹⁵

The different application of terminology could only be resolved by informing the concerned persons about the terminologies of the other discipline and the interpretation of the terms at trainings.

VI.6. Parenting capacity

Methodology guideline No. 10 defines the parenting capacity and incapacity, but it does not provide any benchmark for the average. Therefore, the expert cannot compare the deviation to anything, although Methodology Guideline No. 20 defines the levels of parenting capacity (average, better than average, weaker than average, unsuitable).

The average and deviant parenting capacities shall be defined, and the competences of the parenting capacity shall also be specified.

VI.7. Ethical issues

Bakóczy (2012) starts his article by saying „it would be nice to believe that all experts are prepared and conscientious people.” Unfortunately, due to certain experts, the general picture is that the experts are led by financial benefits, and they are willing to provide any expert opinion for money. Klára Kardos forensic expert publicly declares that „several forensic experts accept being paid for, which is an open secret in the professional circles. These people are known by name.”¹⁶ However, the role of the experts shall not be undervalued. According to the opinion of Kuszing (2009), „they play important roles in the cases of domestic and partnership violence. They contribute to assessing the trustworthiness of the victims... and sometimes they have a decisive role when there is no other witness than the victim.”¹⁷

Pursuant to the Statutes of the Hungarian Chamber of Judicial Experts, the disciplinary board and the ethical board are responsible for launching procedures, and sanctions are imposed in certain cases.

¹⁵ KULCSÁR G.: *A pszichopátia jellemzői és jogi aspektusai*. im. 201-202. p.

¹⁶ BAKÓCZY SZILVIA: *Hamis szakvélemények gyerek-elhelyezési perekben*. Magyar Narancs 2012/36. [http://magyarnarancs.hu/elclet_mod/sorsdointesck-81562 Letöltve: 2017.01.05.]

¹⁷ KUSZING GÁBOR: *Az igazságügyi pszichológus szakértők gyakorlata családon belüli erőszak eseteiben*. in: WIRTH JUDIT (szerk.): *Rendszerbe zárva*. Budapest, OSI, 2009. 59. p.

CLOSING CONSIDERATIONS

The forensic expert is not almighty and infallible. However, we shall not forget that the child is in the focus of the expert activity, and it is our responsibility to perform the assessment to the highest professional standards. Improper assessments qualify as child abuse, or rather as system abuse¹⁸. Due to inadequate expert opinions, the child may undergo psychic pressure or even trauma. If the forensic psychologist profession identifies its deficiencies and faces them, then substantive proposals may be made in relation to the changes in order to have an ethical, professional, consistent expert work as a result – that is satisfying both in terms of the principals and the child.

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GYERMEKEK IGAZSÁGÜGYI PSZICHOLÓGIAI
SZAKÉRTŐI VIZSGÁLATA

(Összefoglalás)

Számos tudományos cikk foglalkozik a pszichológia és a jog interakciójával, melynek egyik jelentős területe az igazságügyi szakértés. A téma aktualitását az új szakértői törvény hatályba lépése adja, mely az igazságügyi szakértői tevékenység átláthatóbbá és szakszerűbbé válását hivatott biztosítani.

Tanulmányomban olyan alapvető kérdésekre keresem a választ, hogy ki, kit, mikor, hogyan és miért vizsgál, illetve a szakértői vizsgálattal kapcsolatosan milyen anomáliák fordulhatnak elő. Azokra a mélyebb rétegekben megjelenő problémakörökre szeretném ráirányítani a figyelmet, melyek a szakértői vélemények szakmaiságához kapcsolódnak. Érintem a szakértők kötelezettségeit, kompetenciakörét és tevékenységét. Néhány kiragadott példán keresztül mutatom be azokat a területeket, melyek véleményem szerint problémát okoznak a gyermekek igazságügyi pszichológusi szakértése során. Nevezetesen a módszertani levelek, a szakterületek összeférhetlensége, a vizsgálati metodikák alkalmazhatósága, a szakértői vélemények hibái, a tudományterületek terminológiai különbségei, a nevelési alkalmasság meghatározatlansága, valamint az etikai kérdések sajátosságait mutatom be.

Vallom, hogy a tabuk kimondása, a problémákkal való szembesülés és a szakmai ön-reflexió hozzáegítheti az igazságügyi szakértőket a korrekt szakmai munkához.

¹⁸ FARKAS JOHANNA: *A gyermekek sérelmére elkövetett családon belüli erőszak*. ME, disszertáció, Miskolc, 271 p.