

THE WORK OF THE PROFESSIONAL PSYCHOLOGIST IN RELATION TO THE JUDICIAL SYSTEM IN CATALONIA

Miguel Ángel Soria Verde¹, Inmaculada Armadans Tremolosa¹ and Saray Herrera Siruela²

¹University of Barcelona. ²Forensic Psychologist

This article analyzes the participation of psychologists in the Judicial System over the last five years. The sample studied comprised 105 psychologists from the Autonomous Region of Catalonia (Spain), chosen at random from all those registered with the regional Psychological Association. On the basis of a questionnaire drawn up specifically for this research, we analyzed 169 variables divided in 10 blocks. These blocks covered a range of aspects, from professional performance and experience and area of specialization to the influence of psychologists' reports in judicial sentences, as well ethical and deontological issues. Apart from presenting the results obtained and comparing them with those of previous studies, we also consider important information obtained through the study that might help clarify the current situation of psychological practice in relation to the Judicial System, which in turn could serve as the basis for improving the relationship between psychological and legal professionals.

Key words: Legal psychology, Professional practice, Judicial reports, Deontology, Forensic psychology.

Se analiza la situación de la participación de los psicólogos en el Sistema de Justicia en los últimos 5 años. Se entrevistó mediante un cuestionario a una muestra de 105 psicólogos de la Comunidad Autónoma de Cataluña, tomada aleatoriamente del conjunto total de psicólogos colegiados en la misma. En base al cuestionario confeccionado para la investigación se analizaron 169 variables, divididas en 10 bloques. Éstos abarcan desde el desempeño y experiencia profesional y ámbito de especialización hasta la influencia del informe en las sentencias judiciales, pasando por cuestiones éticas y deontológicas. Además de presentar los resultados obtenidos y contrastarlos con estudios anteriores, se ha obtenido información que puede ayudar a clarificar la situación actual de la práctica psicológica ligada al Sistema Judicial, pudiendo así servir de base para la mejora de la relación entre los entornos profesionales de la Psicología y el Derecho.

Palabras clave: Psicología jurídica, Práctica profesional, Informes judiciales, Deontología, Psicología forense.

Forensic Psychology, in the Spanish context, emerges in the late 1970s as a branch of Legal Psychology, aimed at providing assistance to the procedures of the judicial system. Today, Forensic Psychology has become firmly established in the judicial system both in Spain and in many other countries in Europe and the Americas, and has given rise to a substantial body of literature.

It is from the 1980s onwards that Legal Psychology begins a period of steady growth. Thus, 1987 sees the publication of a special issue on Legal Psychology in the Spanish Psychological Association's own journal *Papeles del Psicólogo*. By 1990 the journal has a section devoted to Legal Psychology, and the following year a second special issue on Legal Psychology is published.

From the 1990s, at both national and international levels, numerous associations, journals and professional sections related to Legal Psychology are created, reflecting not only the enormous interest in this branch of

Psychology, but also the growing demand from the legal sector for the involvement of psychology professionals in this area (Urra & Romero, 2006).

In parallel, from the early 1980s we see a preoccupation with the profession of the psychologist in general, and also more particularly with the work of the psychologist within the legal field (Hernández, 1982 a, b, c, 1984; Santolaya, Berdullas & Fernández, 2002); by the 1990s, more specific analysis of the legal-forensic sphere is under way (Hernández & Vázquez, 1990; Hernández, 1993; Romero, 1991).

The gradual introduction of psychology into the world of law and justice has brought with it a series of difficulties arising from the characteristics of the different disciplines involved. Sources of such problems include the distinction between clinical psychological reports and forensic reports, the ethical and deontological dilemmas arising in forensic practice, the pertinence of the psychologist-therapist or expert assessor-psychologist and the type of relationship established with the individual under assessment, among others (Soria, 2005; Urra, 2007).

To concentrate on some of the difficulties mentioned

Correspondence: Miguel Angel Soria Verde. Dep. de Psicologia Social. Universitat de Barcelona. Facultat de Psicologia. Campus Mundet. España. E-mail: msoria@ub.edu



previously, in the drawing up of a psychological report in response to a request from the courts, for example, we encounter several problematic issues. Thus, a distinction must be made between the objectives of a clinical report and an expert report. The expert report is issued as an aid to judges, and in response to certain questions asked (relevant to the case). Sutil (1999) and Urta (2007) offer a series of recommendations for the issuing of an expert report, with a view to minimizing adverse effects, and especially payments for civil responsibility:

- ✓ Clear data should be provided on the person preparing the report, the person requesting it, the reason for that request and the assessment techniques used.
- ✓ The language used should be as clear as possible, "without prejudicing the technical content."
- ✓ The content of the report should be confined to the relevant aspects of the case, and should provide precise responses to the questions asked.
- ✓ The report should avoid the inclusion of elements not based on criteria that are objective and validated by the specialist literature. In accordance with Vázquez and Hernández (1993, in Urta 2007): the report should follow the principle of "maximum observation, medium description and minimum inference".
- ✓ The conclusions of the report should be the expert psychologist's reasoned arguments in response to the questions asked.

Bembibre-Serrano and Higuera (2005) consider that there are two basic difficulties involved in making an expert psychological assessment, in relation to the person assessed: "the impossibility of a psychological assessment independent of the judicial case in question, and the confusion between the ideas of "subject" held by the two different types of professional involved."

In 2003, Aguilera and Zaldívar carried out a study on judges working the contexts of Criminal and Family Law toward the forensic psychologist's report. Although that study, which took place in the Autonomous Region of Andalucía, was of a descriptive nature, it gives us some idea of judges' view on the work of forensic psychologists. The results reflect favourable opinions about the psychologist's input in the legal/judicial context and in relation to the validity and justification of forensic reports. As regards the information to be included, respondents considered that it should cover aspects related to the intelligence and personality of the individuals assessed. There were discrepancies over whether experts should include their opinion in the report, but there was a high degree of agreement on the need to include predictions about how dangerous an individual could be. There was also a good deal of consensus on the importance of

including psychological tests in expert assessments, and on the need for their conclusions to be based on the results of such tests.

With regard to the ethical dilemmas and deontological conflicts forensic psychologists may experience in practice, Urta (2007), in the results of a study on these aspects, suggests some situations that may generate ethical-deontological dilemmas, including: coaching a client prior to his or her making a statement in court, making an assessment about child custody without seeing both parents, receiving the parent without custody of a child to make an assessment without the knowledge of the parent with custody, drawing up a second report in response to a report previously issued by a professional colleague, and denouncing the professional association for failing to defend the interests of its members.

Another important aspect to bear in mind is the risk of a malpractice charge for those psychology professionals working in the forensic context, in either a public or a private capacity. Indeed, in Catalonia they constitute the professional group most commonly accused of malpractice (Soria, 2005). Examples of situations that could lead to this type of accusation would be: violation of professional confidentiality due to taking on an inappropriate role, acceptance of incompatible cases, transgressing the code of professional secrecy, allowing a conflict of interests to affect one's professional conduct, making biased assessments, taking on the role of both expert assessor and therapist, or the diagnosis of minors without parental consent.

As regards the role the forensic psychologist should adopt in the legal context, there are some potential areas of conflict. Within the legal/judicial context the psychologist can adopt four basic roles: witness, expert assessor, expert witness and consultant. The importance of knowing how to assume the appropriate role is crucial for avoiding problematic situations. The two types of role conflict most commonly found are, first, the expert assessment of a client who has already been assessed and/or treated prior to the issuing of the judicial report; in such cases the psychologist's impartiality is reduced. And second, a situation in which compliance with the demands of the court leads to a loss of psychologist-client confidentiality; hence, the importance of keeping the assessed individual adequately informed (Soria, 2005).

With a view to exploring the relevance of the legal context in the professional practice of psychologists, interviews were carried out with 105 professionals using a questionnaire based on those previously drawn up by Gudjonsson (1985, 1996; Sigurdsson & Gudjonsson, 2004) for research in professional associations in the



United Kingdom and Iceland. All participants had been members of the Catalonian Psychological Association for at least the previous 5 years, whether they had been in professional contact with the legal system or not.

The following findings emerged from this survey:

a) Professional performance and area of specialization

The majority of respondents worked in the public sector (52.4%), with 34.3% working in the private sector and 13.3% dividing their time between the two. The professional activity of the majority was carried out in the area of Clinical Psychology (64.8%), followed by Legal Psychology (11.4%). Forty-three percent of this latter group had no training in the legal area.

b) Quantity and type of judicial reports

In total, 25.7% of the psychologists interviewed had had some kind of professional contact with the legal system. However, as regards the number of reports issued, 50% of these had never filed a judicial report. Nevertheless, it should be pointed out that 2.7% had made more than 50 legal assessments. In this regard it is interesting to note that 18.1% of those who had filed judicial reports had done so as witnesses, and just 11.4% as expert assessors.

c) Applicant for the report

Most of the requests for reports and consultations from the legal system came from the parties involved in the judicial process, and "very often" from the counsel for the prosecution or for the defence. On the other hand, applications from the judge/court only occurred "sometimes," and they "never" came from public prosecutors.

The majority of the reports issued by psychologists were for civil cases, being found more occasionally in criminal cases. Their use in Children's Courts, Provincial Courts and the Supreme Court was minimal.

d) Subjects of the reports and the nature of the assessments

In the criminal law context, reports dealt primarily with matters related to property, personal freedom and public health, but they were few in number. In the civil law context, the majority of the reports were related to the care/custody of children and separations or exclusion orders, and rarely to adoption, guardianship or annulment of marriage. On the whole, the types of psychological assessment most frequently requested by the legal system are those related to psychological harm, while the least commonly requested are reports on levels of competence.

e) Techniques used and the importance given to them

The techniques most widely used in the judicial reports were psychometric techniques, the psychopathological interview and the reading of court orders.

The intelligence tests most commonly employed in the preparation of reports were the WAIS, the Human Figure, the Raven, and the Bender.

The personality tests most widely used were the 16PF, the HTP, the MMPI, and the MCMI.

The most relevant tests in the study of emotional state were the STAI, the ISRA, the BDI, and the STAXI.

As regards the reliability attributed to the techniques employed, interviews with the client and with auxiliary informants were considered "absolutely reliable", whilst those considered as "highly reliable" were clinical scales (44%), behavioural assessment (42.9%), psychometric tests (37.5%), projective tests (34.8%), analysis of testimonial credibility (37.5%) and interviews with the other party in the judicial proceedings (28.6%).

f) Requests for alterations and/or omissions

Thirty-five percent of the psychologists who had issued judicial reports had been asked to change them or omit some part of them prior to their presentation within the judicial system. These modifications essentially affected the results and conclusions sections.

g) Statements in court

A total of 20.6% of the psychologists had made statements in court, the majority as expert assessors, rather than as witnesses.

h) Influence of reports on judicial sentences

In the opinion of these professionals, the reports issued had more than a 50% influence on the sentences associated with civil proceedings, and 30-50% in the case of criminal and labour-related proceedings.

i) Ethics, deontology and recusals

Requests for psychological reports for judicial proceedings were almost always accepted, rarely being rejected by the courts.

Only one respondent claimed to have experienced a recusal, while another had been accused of a deontological or judicial transgression, subsequently being sued for this.

j) Need for specific training

In total, 72.8% of those interviewed thought there was a need for specific training in the area of Legal Psychology.



The results obtained point to Clinical Psychology as the most common professional background, confirming the findings of previous studies in the Spanish context (Hernández, 1982a, 1982b, 1982c; Santolaya, Berdullas & Fernández, 2002), but at the same time reveal that Legal Psychology is in second place, ahead of Educational Psychology, which in some studies, indeed, had been found to be the principal professional context (Díaz & Quintanilla, 1992).

Moreover, the results highlight the increasing participation of psychologists in the judicial system, bearing in mind that the percentage working primarily in Legal Psychology found by previous studies (Santolaya, Berdullas & Fernández, 2002; Díaz & Quintanilla, 1992) was between 1.15% and 1.2%, while the current figure is 11.4%.

We should also highlight the shortcomings with regard to training in legal matters, since just 39% of the psychologists had some form of training or knowledge in this area, mostly gained through conferences and seminars. This suggests the need to develop training programmes at the university and professional association levels.

As far as reports are concerned, half of the participating psychologists had never issued a report for judicial purposes, though 25.7% had indeed had some professional contact with the judicial system, and this represents an increase with respect to previous studies, which put this figure at 20.7% (Díaz & Quintanilla, 1992), even though this proportion is still way behind those for other European countries (Sigurdsson & Gudjonsson, 2004).

The results obtained on the application of psychological reports in the judicial context concur with those of previous studies (Granados, 1990a and b), no changes being observed in the profile, so that the majority are issued in the context of civil law, having been requested by one of the parties. This contradicts the results from Hernández and Vázquez (1990), who found that more were issued in criminal cases, though those findings may be attributable to the context in which the study was carried out (a Medical-Forensic Clinic).

Also confirmed is the preponderance of reports associated with the care/custody of children and separations in the civil context (Catalán, 1999; Granados, 1990b), and of those related to property and personal/sexual freedom in the criminal context (Hernández & Vázquez, 1990).

Our findings on the psychological techniques most widely used are also consistent with those of previous studies, with no significant changes observed. The

interview is the technique most commonly used in the preparation of judicial reports (Granados, 1990b; Hernández & Vázquez, 1990; Díaz & Quintanilla, 1992), together with psychometric tests and the reading of court orders. Moreover, of all the techniques employed, the interview was considered the most reliable.

With regard to psychometric tests, the WAIS was the most extensively used in the assessment of intelligence, and the 16 PF in the evaluation of personality, followed by the MMPI, which previous studies had found to be the most widely used (Hernández & Vázquez, 1990).

It is highly relevant to mention the requests by those commissioning the reports for changes to be made to them, since these occur in 35% of cases, and this has important implications for ethical-deontological issues (Catalán, 1999; Urra, 2007).

The proportion of respondents having made statements in court is smaller (20.6%) than those found elsewhere in Europe, where the mean is over 48% (Sigurdsson & Gudjonsson, 2004), suggesting a need for the relationship between psychological practice and the judicial system to continue to become closer.

There is an evident need for specific training in the area of Legal Psychology, as was found in previous studies (Hernández, 1982a, 1982b, 1982c; Hernández & Vázquez, 1990). This finding should be considered in the context of the lack of studies in this area, mentioned previously.

In sum, our findings reveal the steady growth of Legal Psychology as a professional specialization in our country over time. While it is true that the proportion of psychologists working exclusively in this field is still small, there is growing demand from the judicial system for the contributions of psychology professionals.

Even so, we should not overlook the small number of reports issued in the judicial context and the scarce participation of psychologists in court proceedings, especially in comparison to the situation in other European countries.

Given that the present study was carried out exclusively in Catalonia, it would be necessary to extend the research nationwide in order to gain a more comprehensive understanding of the situation of Legal Psychology and, in general, the relationship between professional psychologists working in the different fields of psychology and the Spanish judicial system.

Finally, we should stress the need for better specific training opportunities in Legal Psychology. Current levels of academic preparation and subsequent professional training are far from optimal, and for a thorough development of the discipline and increased participation



of psychologists in the legal sphere there is a need to create specialist curricula that would allow psychology to maximize its contributions to the judicial system in terms of knowledge and support.

ACKNOWLEDGEMENTS

This study was funded by the Psychological Association of Catalonia (*Col·legi Oficial de Psicòlegs de Catalunya*).

REFERENCES

- Aguilera G. & Zaldívar, F. (2003). Opinión de los jueces (derecho penal y de familia) sobre el informe psicológico forense [Judges' opinions (in criminal and family law) on the forensic psychological report]. *Anuario de psicología jurídica*, 13, 95-122.
- Bembibre-Serrano, J. & Higuera-Cortés, L. (2005). Informes psicológicos: el sujeto doble de la Psicología y el Derecho [Psychological reports: the dual subject of Psychology and Law]. *International Journal of Clinical and Health Psychology*, 6 (2), 469-480.
- Catalán, M. J. (1999). El informe psicológico en separaciones familiares: cuestiones éticas [The psychological report in family separations: ethical issues]. *Papeles del Psicólogo: Revista del Colegio Oficial de Psicólogos*, 73, 23-26.
- Díaz, R. & Quintanilla, I. (1992). La identidad del psicólogo en el Estado Español [The identity of the psychologist in the Spanish State]. *Papeles del Psicólogo: Revista del Colegio Oficial de Psicólogos*, 52, 22-74.
- Granados, F. (1990a). La ratificación, ¿momento devolutivo o de "ziskinización" [Ratification, moment of devolution or of "ziskinization"]? *Comunicación del II Congreso del Colegio Oficial de Psicólogos*.
- Granados, F. (1990b). El "setting" del psicólogo en los juzgados de familia. Algunos aspectos [The "setting" of the psychologist in family courts. Some aspects]. *Comunicación del II Congreso del Colegio Oficial de Psicólogos*.
- Gudjonsson, G. H. (1985). Psychological evidence in court: results from the BPS survey. *Bulletin of the British Psychological Society*, 38, 327-330.
- Gudjonsson, G. H. (1996). Psychological evidence in court. Results from the 1995 survey. *The Psychologist*, 5, 213-217.
- Hernández, A. (1982a). La situación laboral de los psicólogos [The professional situation of psychologists] (1). *Papeles del Psicólogo: Revista del Colegio Oficial de Psicólogos*, 2, 31-48.
- Hernández, A. (1982b). La situación laboral de los psicólogos [The professional situation of psychologists] (2). *Papeles del Psicólogo: Revista del Colegio Oficial de Psicólogos*, 6, 43-49.
- Hernández, A. (1982c). La situación laboral de los psicólogos [The professional situation of psychologists] (3). *Papeles del Psicólogo: Revista del Colegio Oficial de Psicólogos*, 2, 39-44.
- Hernández, A. (1984). La Psicología como profesión [Psychology as a profession]. *Papeles del Psicólogo: Revista del Colegio Oficial de Psicólogos*, 16-17, 61-63.
- Hernández, J. A. (1993). La víctima y el peritaje judicial [The victim and experts' reports]. In: Soria, M. A. (Comp.) *La víctima: entre la justicia y la delincuencia [The victim: between justice and crime. Psychological, social and legal aspects of victimization]* (pp. 89-100). Barcelona: PPU,
- Hernández, J. A. & Vázquez, B. (1990). Psicología Forense: situación y perspectivas [Forensic Psychology: situation and perspectives]. *Comunicación del II Congreso del Colegio Oficial de Psicólogos*.
- Romero, F.R. (1991). Comentarios a la práctica de un peritaje en lo penal. Sus fases y sus peculiaridades como acto jurídico [Comments on the practice of expert reporting in criminal cases. Its phases and peculiarities as a juridical act]. *Papeles del psicólogo*, 2, 48, 42-45.
- Santolaya, F.; Berdullas, M. & Fernández, J. R. (2002). La década 1989-1998 en la psicología española: análisis del desarrollo de la psicología profesional en España [1989-1999 in Spanish psychology: analysis of the development of professional psychology in Spain]. *Papeles del Psicólogo: Revista del Colegio Oficial de Psicólogos*, 82, 65-82.
- Sigurdsson, J. F. & Gudjonsson G. H. (2004). *Forensic psychology in Iceland: A survey of members of the Icelandic Psychological Society*. London: The Scandinavian Psychological Associations- Blackwell Publishing Ltd.
- Soria, M.A. (2005). *Manual de psicología jurídica e investigación criminal [Manual of legal psychology and criminal investigation]*. Madrid: Pirámide.
- Sutil, C (1999). Relación y diferencia entre el informe clínico y el informe forense [Relationships and differences between the clinical report and the forensic report]. *Papeles del Psicólogo*, 73.
- Urra, J. (2007). Dilemas éticos de los psicólogos jurídicos [Ethical dilemmas of legal psychologists]. *Anuario de psicología jurídica*, 17, 91-109.
- Urra, J. & Romero, J. (2006). La psicología jurídica en España [Legal psychology in Spain]. *Infocop*, 26.