

The Ethical Problems in Forensic Psychological Expert Evaluation: A View from Modern Russia

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Background. The implementation of ethical principles in forensic psychology in Russia is facing serious challenges. Expert's evaluations have to be managed in accordance with the basic ethical principles of practical psychology in general. At the same time, the specific activities and role of a forensic psychologist differ from the professional activities and roles of a psychiatrist, psychologist-consultant, or psychotherapist.

Objective. This study focused on the identification of the main ethical problems of psychologists, who are obligated to conduct expert evaluations for the court.

Design. This study was conducted according to a qualitative paradigm, using a combination of the methods: content analysis of court materials and written expert opinion; analysis of court cases; interviews with experts; and analysis of international standards and guidelines for the professional activities of forensic experts.

Results. The ethical problems are determined by several factors: 1) the lack of a scientific basis for the regulations; 2) the complexity of the role structure of the expert's practice; 3) the lack of practically oriented studies devoted to ethics; and 4) the lack of a venue for systematic discussion and supervision. Ethical problems are often solved by specialists exclusively according to their personal attitudes which could be risky in terms of violations of professional ethics.

Conclusion. There is a lack of systematic studies on the ethical problems in forensic practice. The preliminary data show that the rapidly growing field of expert evaluation requires the closest attention to developing ethical standards and understanding of the expert's activity and role structure.

Keywords:
ethical
problems;
forensic
psychological
evaluation;
expert
opinion;
professional
competence.

Introduction

The field of psychology and law in modern Russia is actively developing in many areas: legal psychology; criminal psychology; investigative psychology; penitentiary psychology; preventive psychology; the psychology of professional work in legal practice; forensic psychology including juveniles; and forensic psychological evaluation and assessment. The practice of applying psychological knowledge in the field of law involves more than 15,000 psychological and psychiatric examinations and evaluations per year.

Leading universities in Russia, including the two oldest and biggest ones (Moscow State University and St. Petersburg State University), are engaged in professional training and research in the field of psychology and law (Vasiliev, 2009; Dmitrieva et al., 2016; Shaboltas, 2017). Educational programs in forensic psychology, and professional training for students planning to be engaged in the area of forensic psychological examinations, include several major components focused on methodological, technological, and ethical aspects of an expert's work (Engalychev et al., 2006; Moskovaya, 2019). The same approach to professional training for experts who should be capable of conducting psychological examinations is promoted in educational standards in other countries (Committee on Ethical Guidelines for Forensic Psychologists, 1991, APA, 2013).

The relevance of studying the ethical problems of forensic expert examination, particularly in the work of forensic expert-psychologists, is due to a shortage of theoretical and methodological work to determine appropriate strategic guidelines for further empirical research in this area, as well as to an increase in the need for independence and objectivity of the judicial process. (Ivanova, 2013; Penionzhok, 2017; Iudici et al, 2015).

Objectives and Methods

The aim of this study was to identify and analyze the main ethical problems in the professional activity of forensic psychologists who are obligated to conduct evaluations and assessments for the court. The research objectives included: 1) the comparative analysis of a current expert's experience in Russia and other countries, specifically focused on the issues of solving ethical dilemmas and problems in the forensic area; and 2) defining the perspectives for solving ethical problems in an expert psychologist's professional actions. The study was conducted according to a qualitative paradigm, using a combination of qualitative methods: *i.e.*, the content analysis of court materials and experts' written opinions; analysis of court cases; qualitative interviews with forensic psychologists; and analysis of international standards and guidelines for the professional activities of forensic experts.

Results

Nowadays the implementation of ethical principles and rules during forensic psychological examinations and expert evaluations by expert psychologists in modern Russia faces a number of challenges and problems. To a large extent, they are determined by the following factors:

- the lack of a scientific basis for the regulations governing the activities of forensic expert psychologists. This is partly because forensic evaluation, which utilizes psychological knowledge, in its modern form is a relatively young field of activity in Russia. It only appeared in the USSR in the late 1960s and the beginning of the 1970s, thanks to the efforts of M.M. Kochenov (Kochenov, 1977, 2010; Shabol'tas, 2017);
- the complexity of the role structure of an expert's professional practice, which assumes various modes of professional behavior – *i.e.*, counsellor, researcher, and forensic expert with a certain legal status;
- the lack of practically oriented studies devoted to the ethical problems of forensic psychological evaluation; and
- the lack of a forum for the systematic discussion, formulation, and solution of ethical problems in this sphere of professional activity.

In assessing the current general state of expert research, one of the most experienced and famous specialists in forensic evaluation and assessment, Professor Irina Mamaichuk, writes: “The ethical principles of an expert psychologist require further development and specification in accordance with the types of assessment, subjects of expert research (victim, suspect, witness) and their age, as well as specific expert tasks.” (Mamaichuk, 2011).

Currently the practice of professional expert psychologists is primarily guided by the “Code of ethical principles and rules for conducting forensic psychiatric assessment” adopted by the RSP (Russian Society of Psychiatrists) in 2002. It follows the basic ethical values and principles for practical psychology and human research accepted by professional organizations in other countries (Kim, 2004; Halpern, 2005). The ethical principles of the forensic expert-psychologist's professional activity can also be found in short and generalized form in textbooks, mainly in the works of F.S. Safuanov (Safuanov, 1997, 1998, 2014) and V.V. Nagaev (Nagaev, 1998, 2000).

At the same time, the activities of forensic psychologists conducting assessments for the courts are specialized and differ significantly from the activities of other professionals in the field, such as psychiatrists, psychologist-consultants, or psychotherapists (Strasburger et al., 1997). This is due, first of all, to the ambiguity of the expert's professional position, which has to take into account both the psychological component and legal aspects of the process. On the one hand, an expert psychologist has to work in accordance with the humanistic principles accepted in psychology. On the other hand, his forensic psychological evaluation, which is intended as a means of clarifying the truth in the judicial case at hand, imposes a number of restrictions on the expert. It creates some duality in his position regarding the need to follow the specific ethical principles accepted in professional psychological activity, such as respect, competency, integrity, “no harm,” beneficence, etc.

Moreover, the situation is paradoxical from the standpoint of the humanistic function of psychology, since the professional activity itself intrinsically lacks the most important aim of psychology – the orientation to help the client. To be specific: the “client,” or the person under assessment, is not considered as sick or in need of psychological help, but appears only as a source of necessary information. Thus,

in fact, in the process of the forensic psychologist's work, the subject-subject relationships which are specific to psychological work, turn into subject-object ones, which undoubtedly affects the quality of psychological rapport with the person under assessment (Wolfram, 2015). Therefore, the person under expert evaluation often doesn't understand the role of the psychologist in this process.

This fact is confirmed by statistical data. In particular, during the evaluation process, about 86% of the people under examination try to get answers to their personal questions from the psychologist. For example, there are a lot of cases where the people under evaluation asked a psychologist how to behave with their elderly relatives, with whom communication is difficult due to their age differences. They also asked questions about how to act during a job interview, and asked for advice on establishing relationships with teachers at the school where their child was studying, etc. The need to establish rapport with the person under appraisal by answering personal questions, which are very important to them and often are not directly related to the expert evaluation, takes about 30% of the time allotted to the procedure itself. At the same time, the absence of this psychological component of the assessment process can reduce not only the quality of psychological contact, but also the informational content of the evaluation.

Thus, on the one hand, the expert psychologist acts in the interests of the person under evaluation, which are usually understood very abstractly and broadly. But, on the other hand, the expert's activity is determined by the tasks of a specific forensic psychological evaluation— in the framework of a criminal or civil process, *i.e.*, he has, first of all, to act in the interests of the law or the Service that commissioned the evaluation. And sometimes, in the psychological sense, the interests of the individual and the law may not coincide.

So, for example, in the framework of a criminal process, the person under evaluation has to become a subject of a psychodiagnostic examination without consideration for his attitude toward this procedure, which most often proceeds under duress, as ordered by a court, investigator, or interrogator. And the data, although obtained legally and exclusively in a certain professional space, becomes public without the person's consent, and may become the reason for the loss of his rights (Melton et al., 2007).

The articulation of guidelines for a forensic psychologist's work seems to be better clarified internationally. Greenberg and Shuman in their work conclude that it is important to strictly delineate the roles of an expert psychologist and a psychotherapist, in their exercise of specific professional tasks. Moreover, the authors state that it is not possible to carry out professional activities in both areas simultaneously; the psychologist at the beginning of his/her career must clearly determine his/her professional specialization and area of the competency – forensic or psychotherapeutic (consulting) (Greenberg & Shuman, 2007).

However, this position is not shared by all psychologists. So, for example, Heltzel states that if a psychologist, in accordance with his competence and ethical principles, is able to combine both types of activity at the same time (therapeutic and forensic), there is no need to introduce appropriate prohibitions and restrictions (Heltzel, 2007).

Moreover, for a psychologist to refuse to release significant information which he/she has gained from a client facing a court in a particular procedural status,

means reducing the possibility of justice being done, and even, to some extent, can damage the psychologist's professional reputation. For example, the Ohio Psychology Council Guide (USA) states that "Prevailing standards basically require you to define and stay in one role with client." This paragraph can be interpreted as a prohibition against combining the roles of a psychotherapist and an expert psychologist with a client. The American Psychological Association Code in 2002 included standards applicable to the activities of an expert-psychologist on the possibility of dual activities (psychotherapeutic and forensic), etc. These standards are accepted by most U.S. state associations (APA, 2013).

The specific nature of the forensic expert psychologist's role becomes evident in the organization of the judicial process itself (Drogin & Barret, 2003; Bollingmo et al., 2009; Kosmowski, 2018; Barber-Rioja & Garcia-Mansilla, 2019). So, despite the fact that the expert bears great responsibility, both by his legal status and moral attitudes, the expert is not informed about the results of the court's decisions; that is not a mandatory component of the process. The mechanism of interaction between the judiciary and expert organizations nowadays does not work in practice. This is especially true in criminal cases. As shown by the experience of foreign expert psychologists, it is crucial not to cut off cooperation with lawyers and to actively study the court case in question. Moreover, if they notice professional mistakes by an investigator, interrogator, or criminalist, forensic psychologists should speak up and discuss these limitations and errors, either in informal conversation with them or in legally executed statements (DeClue, 2005; McAuliff & Bornstein, 2012).

Such practice is almost non-existent in Russia, or is extremely rare. Among forensic expert psychologists with more than five years of professional experience who were interviewed in this study (N=21), 80% experienced some discomfort in this regard. Moreover, this situation does not allow psychologists working in this field to conduct systematic research on, or empirical analysis of, not only the psychological, but also the legal aspects of the problem; to define the logic of the expert work as a whole; and to summarize their practical work in court.

Of no less importance in understanding the nature of ethical problems in forensic practice in modern Russia are the frequent cases of internal and external experts' struggles to maintain their independence in expressing their views on the subject and the case being examined. During the evaluation process, the expert often must be exposed to obvious or latent pressure. In particular, if the expert works in a governmental organization, he or she could be influenced by the system of expectations developed there regarding expert conclusions on certain types of evaluations, especially in criminal cases.

If the expert works in an independent organization, the commercial interests of that organization could be used as leverage against him/her. If the main professional activity of a psychologist is to conduct evaluations, and his/her conclusions and statements in court constitute the main or only source of his/her income, this can lead to him/her coming to false conclusions, in order to obtain approval and additional payments from one of the parties of the judicial process or their representative (lawyers). Such behavior damages the reputation of expert psychologists in general, and may lead to the establishment of an external oversight body (such as Board of experts) for psychological experts.

In turn, pressure can be exerted in the form of deliberately inappropriate questions being submitted to an expert, which are aimed at identifying only one particular side of the situation under study: one beneficial, for example, to the investigator, or which ignores questions about the circumstances of the crime, and thus can radically affect the judicial process. The questions posed may force the expert to go beyond his/her competence. An example of such a question, which contains a logical error, is the following: "Given the individual psychological characteristics of the parents and the child, the nature of their relationship, which parent should the minor child live with?"

An analysis of 30 cases aimed at determining where a child should live showed that in 83% of the cases, the expert's choice falls on the parent the child currently lives with, on the basis of the fact that the child is "already used to this situation." Moreover, the considerations of the child's gender, the individual psychological characteristics of the parents themselves, as well as clarification of the circumstances under which the child was taken to live with one or another parent, are often completely ignored.

An expert may experience obvious or latent pressure when working on cases affecting state interests or the interests of certain state authorities. For example, psychological evaluations in cases of Article 280 of the Criminal Code, or in cases causing a wide public resonance, and involving strong social stigmatization (for example, cases about pedophilia and the like), can often trigger internal restrictions, "prohibitions," and even internal censorship by the expert himself. Although statistical analysis in this area is very difficult, it can be assumed that the level of difficulty of these assessments is always very high; the costs in time spent exceeds those needed for conducting assessments in other types of cases; and the results of the assessments are repeatedly disputed, *i.e.*, in 62% of cases.

The most urgent ethical problems arise in conducting forensic psychological evaluations in civil processes, such as disputes between parents about the upbringing and domicile of their child. Here the legal and social role of the psychologist-expert increases significantly (Verstova & Verstov, 2019).

This type of expert evaluation has several specific features and differs from other types in the high intensity of the conflict between the people under evaluation, and the prognostic orientation of expert research. This increases the risk of emotional involvement by the expert in a legally significant situation of the persons under evaluation, and often the expert takes responsibility for the life and fate of the child. That situation often leads to an incorrect ethical position by the psychologist-expert, due to the combination of his therapeutic and expert role (Greenberg & Shuman, 2007). In turn, his transition to the role of psychologist-consultant inevitably leads to bias in the interpretation of the data he gathers as an expert.

Case Studies

The following cases, which we analyzed as part of this study, are good illustrations of the considerations mentioned above.

Case 1. The expert psychologist conducting the evaluation for the court has been working for a long time as a consultant with a mother and child from a disintegrating family. The psychologist has never met the child's father. His professional

focus in counselling was on the traumatic experiences of the child, which arose due to conflict between the parents, and its extension to the field of child rearing. Under the influence of an anxious mother, the emphasis of the psychologist's intervention was on dealing with the negative consequences of father's actions.

By order of the mother, the expert writes a specialist opinion in which the child's father was described in the most negative terms. The subsequent psychological and pedagogical evaluation completely refutes the conclusions made by the specialist. Thus, this case illustrates the incompetence of a psychologist acting both as an expert and a psychologist-consultant with one of the parties of the judicial process.

Such cases create the basis for concluding that, indeed, the combination of roles can lead to serious professional mistakes, and that Greenberg and Shuman's categorical position of prohibiting double roles has reasonable grounds. This approach is also supported by the ethical principle of keeping confidentiality in psychological work and relations with the client, which may be violated due to the need for public testimony in court.

Case 2. At the request of the father, and based on the examination of the father and his sons of 5 and 8 years old living with him, the expert prepared a written evaluation. The mother of the boys was never seen or examined by the expert. In the evaluation, the psychologist pointed out that the mother is a woman with low social responsibility and bad behavior, *i.e.*, she uses illegal drugs and leads an immoral lifestyle. The expert concluded that communication between the boys and their mother injures the children and negatively affects their future social well-being. Later objective case materials refute the expert's conclusions regarding the mother's personality and her behavior.

Detailed analysis of the evaluation and assessment practice shows that a significant number of the conclusions made at the request of one parent (in pre-trial evaluation) were carried out by psychological service organizations that had previously dealt with the traumatic experiences undergone by the child or one parent. The other parent, as a rule, never appears in these evaluations. Such assessments are found in the case files of 30% of cases in civil processes of divorce and determination of with which parent the children will live. And in 57% of cases, the results of subsequent expert evaluations, mandated by the court and including the study of both parents, completely refuted the previous conclusions reached by the specialist.

The prognostic nature of expert opinions very often creates serious ethical problems. Today's research methods do not allow the psychologist to predict a child's future with a high degree of confidence: in particular, the level of a child's psychological well-being when he/she lives with one of the parents, his social success, and harmonious development. However, the judicial system often requires such predictions, thus causing a kind of conflict or moral dilemma for the expert himself, which is solved by the experts according to their personal attitudes and beliefs.

Foreign standards, namely the APA Code, mention this problem and give certain recommendations. For example, the standard procedure requires psychologists to base their opinions on information and methods sufficient to substantiate their conclusions, and if they are asked to express opinions based on insufficient

information and data, they should point out the limitations of their findings and recommendations. If the situation becomes conflictual, the psychologist as an expert has the right to withdraw from the obligation to conduct an evaluation.

Thus, the following problem should be the first to be addressed. One of the basic values which determines the ethical principles of the forensic psychologist's and expert's activities is professional competence. By F.S. Safuanov's definition, it consists of special knowledge and the art of conducting forensic expert evaluations. The latter provides the expert with the opportunity to use the broadest range of methods and measures of psychological diagnostics available. However, this feature often increases the risk he/she will use popular, but scientifically poorly substantiated methods and tests during the research for his/her evaluation, methods that do not have clear evidence supporting their empirical viability and validity. This situation is resolved quite well in many countries. According to the Standards applicable to the activities of the expert-psychologist which are described in APA Code, professionals are obliged to follow an evidence-based approach and use only those diagnostic tools, the reliability and validity of which has been established for the tested category of people.

Currently, in Russia, the issue of which methods and techniques are permitted has not yet been resolved. There is no officially accepted and approved list of methods, which are recommended for conducting expert's evaluation procedures for the court. First of all, this applies to quality methods of psychological diagnostics, including projective techniques. According to our data, in investigating a child's individual prospects, about 98% of expert evaluations use this method; in evaluating adults, the percentage is 80%. In 18% of cases, we found that only projective research methods were used in the framework of a forensic psychological or pre-trial evaluation of a child. For adults, this trend is more successful and occurs in 4% of cases.

At the same time, projective drawings, which are so popular among many experts, require special attention, both from the standpoint of evaluating their validity and reliability, and from the standpoint of the reliability of interpreting their diagnostically significant content. Moreover, according to our observations of the evaluations done in disputes between parents about the upbringing and domicile of a child, we can often see children being trained to draw in a needed way by one of the disputing parent. This practice once again demonstrates the absolute inadmissibility of using only experimental projective methods to evaluate the psychological characteristics and prospects of a child. There is an urgent need for analyzing, systematizing, and testing the data obtained by using projective techniques by other methods, before relying on projective methods in forensic evaluation.

However, the most significant ethical requirement related to the work of any psychologist is the necessity to follow high professional standards in the professional activity itself. An analysis of 20 reviews of the results of a forensic psychological and pre-trial evaluation shows that in 60% of cases, the incorrectly selected methodological strategy for conducting the expert evaluation leads the psychologist-expert to incorrect interpretations of quality materials, which then forms the basis for court decisions.

Case 3. The review of an expert evaluation made by a private expert revealed that the expert used only one diagnostic method for examining a 9-year-old child –

various drawing techniques. The expert, without relying on any well-known system for interpreting drawings, describes the obtained results in a predominantly psychoanalytic manner, and solely on this basis comes to the conclusion that the mother is too much aggressive and has a negative effect on her child's development. We note especially that no objective data or references to negative behavior by the mother were mentioned by the child. To be specific, on the basis of the fact that the child drew his mother's legs with darker lines, the expert concludes that "the mother of the child is aggressive and can hit her daughter with her feet."

Case 4. The review of the conclusion by a child psychotherapist who, by order of the father, has been examining an should be 11-year-old girl on her relationship with her mother (whom the father has divorced), showed that the mother was absent at the time of the expert evaluation, and the child did not see her for more than a month. The specialist asks the child direct questions about how she relates to her mother and interprets the child's response as follows: "The expert asks 'how do you feel about your mother?' Lisa is silent for a long time and looks at the floor, which indicates that mother makes her fear." Subsequent complex expertise does not reveal a negative attitude of the child toward the mother.

In particular, studies have demonstrated that the main factors influencing the results of an expert psychological forensic evaluation, are the following: 1) the use of exclusively projective methods for examination and assessment of children (18%) and adults (4%); 2) the presence of totally subjective interpretations not described in the scientific literature and supported by empirical studies (24%); 3) the absence of references to scientific literature (52%); 4) the absence of one of the parents in the framework of the forensic evaluation (6%) and in the framework of pre-trial research (76%); 5) the posing of inappropriate questions to adults (32%) and to children (24%); and 6) the lack of an adequate methodological framework for the problems being researched (34%). Special attention should be paid to the problem of inappropriate or inadequate questions, which in some cases numbered in the tens.

Conclusion

It is quite obvious that there is a lack of systematic studies on the ethical problems in forensic psychological practice in modern Russia. However, the available data and preliminary results of investigations and observations show that the rapidly growing field of forensic psychological expert evaluation requires the closest attention in terms of developing not only specific ethical standards, but also a better understanding of the specific expert's activity and role structure. In fact, Russia can utilize the successful experience of professional psychological associations from other countries in regulating and managing ethical issues in forensic practice.

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