

The European psychologist in forensic work and as expert witness

Recommendations for an ethical practice

1. *Introduction*

- 1.1 These recommendations are made to the EFPA member associations, advising that local guidelines should be formulated in line with the following recommendations, or that these recommendations are made valid for member psychologists practising within the domain of law and justice. The standards developed should be accord with the Meta Code, and the ethical code of the national Association and reflect the specific challenges for practising psychology within law and justice specified in these recommendations.
- 1.2 The work of EFPA's Task Force on Forensic Psychology (report presented to General Assembly, Dublin, July 1997) and accumulated information within Standing Committee on Ethics, shows that forensic tasks constitute an area of work for psychologists that accentuates ethical dilemmas, and is the area of practice that most frequently exposes negligent and unethical behaviour.
- 1.3 The European Convention on Human Rights is making an impact on legislation and legal procedures in Europe, thus also indirectly setting standards for the work of psychologists within legal systems. The WPA¹ Convention on Human Rights is also a relevant document for the professional standards of health providers and services given by psychologists within the forensic domain.
- 1.4 The accommodations within European law, and the fact that single cases assessed by the psychologist often have international and cross-cultural qualities and challenges, call for harmonising the role and practice of psychologists in forensic work across the European countries. It would therefore be of value if local ethical recommendations and guidelines for practice in this area were co-developed within the European context. These are the motives for formulating Recommendations for ethical practice.
- 1.5 In this text the terms *forensic psychologist* and *forensic work* refer to the psychologist active in any kind of professional function within legal decision-making and the enforcement of law both civil and criminal. The systems that psychologists serve in forensic work attempt to balance the interests of the individuals against collective

¹ World Psychiatric Association (WPA) Declaration of Hawaii, as amended at the 7th Congress (1983).

interests, or against the interests of other individuals. The term *expert witness* refers to psychologists who appear in the courts, for other law-enforcing bodies, and in cases where there may be possible legal implications (e.g. insurance claims for injuries) and make assessments and statements based on their professional standing. As such any psychologist can at times do forensic work or be called as an expert witness in a given case. Others may make it a special profession to undertake assessments or deliver other special services within areas such as child custody cases, child protection, police investigation, the psychology of witness testimony, mandatory therapy, assisting in situations with violent crimes, insurance and on other law-related subjects. Working within systems that enforce law and decide about and limits of personal freedom accentuates the ideal of upholding professional integrity for the psychologist, and basing work on sound scientifically accumulated information.

2. *Basic issues for recommendations*

2.1 The following basic issues in professional forensic work generate the need for specific ethical recommendations for practice, as these issues are important deviations from the settings within which most psychologists work:

2.2.1 Psychologists in forensic practice will be confronted with the most complex social and cultural issues

2.2.2 The questions asked by the legal system will often confront the limits of psychological knowledge and predictive possibility. The use of force and control, e.g. imprisonment, and deciding on the limits of interests, e.g. child custody, come close to violating basic human rights. The psychologist may work with persons identified as belonging to cultural, socially disadvantaged or psychiatric populations. Understanding these persons requires taking different cultural frames into consideration, as well as identifying prejudices within the local culture and that of the psychologist.

2.3 Psychologists in forensic work must practise psychology within frames where social conflicts, differences of interest and the use of power and social control are at the base of the processes.

2.3.1 The basic ethical formulations of the individual's rights to privacy, confidentiality, self-determination and autonomy are often limited in forensic work, which has direct implications for the work and assessments done by the psychologist. As such, ethical principles may be weighed against the benefit of other legitimate values or interests, but within a frame of discussions about which values shall have priority. The work of the psychologist may have consequences not wanted or sought by some of the individuals assessed. Also, the psychologist must relate to persons and groups with different and opposing roles and interests.

2.4 Psychologists in forensic work will practise psychology in an exposing and exposed arena.

- 2.4.1. The work, and specially the evaluations made by the psychologist, expose psychological information about individuals, as well as about the methodological and theoretical practice of the psychologist, to the public or to a group with differing interests, resources and competencies. The assessment made by the psychologist may be examined in a public discourse as part of the ideals of making fair decisions and judgements, thus often exposing and using sensitive personal information, labels and statements about mental states and conditions.
- 2.4.2 As part of power systems the psychologist must accept and expect to be scrutinised both on ethical and other professional dimensions. The work and statements of the psychologist may affect vital interests of persons and groups, and may lead to disputes and complaints against their work. The democratic principles of control of power for ensuring the best legal protection for those involved must also apply to the work of the psychologist, leaving it open to be scrutinised. This means that the psychologist must expect and be prepared to take criticisms or complaints from colleagues, clients and relevant third parties. The more openly honest and straight forward the work of the psychologist has been done, the easier it will be to handle both impartial and partial criticisms, without attacking or offending persons, when handling and responding to critics.
- 2.4.3 All this accentuates what is stated in the Meta Code of Ethics *“that resolving an ethical question or dilemma (for the professional psychologist) requires reflection and often dialogue with clients or colleagues, weighing different ethical principles. Making decisions and taking action is necessary even if there are still conflicting issues.”*

3. Recommendations

- 3.1 *Identification of relevant competencies and their limits.* Practising within a forensic setting requires psychologists to be able to specify if, under what conditions, and within what limits they have the competence to assess and give statements and service according to the questions asked by the legal system. Psychologists must be able to specify the limits of their own competence, which means also to be prepared to decline from giving statements when competence is limited or lacking. This will in most cases challenge the integrity of the psychologist. Personal strengths will often be a component of the psychologist's competence.

- 3.2 *Ethical awareness.* Ethical awareness and a respectful appearance is part of the professional competence of the psychologist. This means that the psychologist must be prepared to discuss ethical issues with all relevant parties, especially when ethical principles come in conflict with respect to the task at hand. When working in a forensic setting it is important to be aware of the distinction between legal and ethical obligations. Psychologists should have good knowledge of the legal limitations and proceedings that frame their work. Working in a context of social conflict and the enforcement of law means that differences of interests accentuate values, and elicit strong emotions and reactions. Psychologists must thus be able to focus on values and interests and how these will affect their work. This also requires respect and toleration of strong reactions and emotions from persons involved in, and affected by, the work of the psychologist.
- 3.3 *Evidence based information.* The psychologist works on evidence based information derived through science and documented practice. This means that the psychologist keeps up to date on the professional consensual information within the relevant area for assessment and statements, and that the documentation and observations are as correct as possible in all respects.
- 3.4 *Personal values of the psychologist.* The issues and questions handled within the frame of law are often connected to issues that may be provocative to basic human values and attitudes. This requires psychologists to be aware of how their own values and attitudes to the social issues at hand may affect their competence to act professionally. It is important for psychologists to analyse situations for their potential for biases and limitations as a result of their own personal, culturally shaped frames of reference, how these biases may affect the professional work, as well as to be aware of the cultural biases in the science and language of psychology.
- 3.5 *Identifying the weaker party.* Working as a forensic psychologist and as an expert witness often necessitates relating to persons with weak social or personal resources for asserting autonomy and self-determination. For psychologists this will be a challenge to their competence for making valid assessments and giving valid statements to a legitimate responsible body, as well as for holding a respectful relationship with the persons assessed. It may also call for psychologists to help weaker parties to express their interests, needs and autonomy in the ongoing legal process, so as to limit the use of power and repression to a minimum, but without taking the role of advocate of the client. When working with children “the best interests of the child” is an important goal to analyse and uphold both as a principle for caring in the assessment procedures, as well as in the recommendations given by the psychologist.
- 3.6 *Limitations to informed consent.* Owing to age, personal resources, legitimate restrictions set by law and other procedural circumstances, many persons will only have a limited or no possibility to consent to engaging in a relationship with the psychologist. When the work of the psychologist is commissioned by the legal and

law-enforcing systems, not engaging with the psychologist can also have negative effects for the interests of the persons involved. This is a situation that calls for the psychologist to carefully inform the persons of the circumstances for the professional relationship, for the methods used and statements that will be given, as well as the consequences of co-operating or not with the psychologist. Psychologists will have personal responsibility to provide information about their work and must not rely on the instructing body, solicitors or others to do this.

- 3.7 *Normative focussed issues.* The issues that the psychologist is to work on as forensic psychologist or expert witness are often normative and culturally embedded in frames that are not necessarily shared by the persons assessed or treated by the psychologist. Working with persons with different cultural and social frames of reference makes it important that the psychologist takes care to provide sufficient information about the goal. This includes information about the frameworks and methods of the psychologist's assessment, statements and proposals for treatment, and also those which may be made compulsory by actions of the court. This demands the psychologist to use language that is understandable for the instructive or law-enforcing body, and at the same time to use language and labels that give due respect to, and are informative for, the evaluated persons. When informing and gaining informed consent is difficult or unclear, the psychologist must consult with the person's legitimate representatives.
- 3.8 *Limitations to confidentiality.* Practising within forensic frames means that there will be no absolute borders for professional secrecy. The degree and limits for confidentiality will vary and must be clarified, and sometimes negotiated, for the task. Practising as expert witness and a forensic psychologist often necessitates passing on, and commenting on personal information to others in a situation that will not ensure confidentiality. The psychologist is often unable to guarantee that the information or statements given will not be used for other purposes, or will not be passed on to others with no relevant roles for the issue at hand. This calls for psychologists to be extremely careful not to expose more information than that which is necessary for communicating clearly about the task and evaluations done, and as far as they can control, not to pass information to persons without a legitimate need or right to this information. The persons that give information to the psychologist, or about whom the psychologist makes statements, must be well informed about the limitations to confidentiality.
- 3.9 *Reducing harm.* Persons under social control and with limitations to their freedom and autonomy will often experience this as harmful to their interests and integrity. This may also be the case with the work and statements of the psychologist. This requires the psychologist to be acutely aware of minimising harm, but still to provide the service asked for by the legitimate body. The avoidance of offensive labels for the persons and their traits assessed, and a focus on describing patterns of behaviour rather than personal traits, may be useful for reducing the potential impact for offence of the statements given by the psychologist. Careful specifications of circumstances for, and the extent of validity of the statements given, are also important for reducing harm.

- 3.10 *Avoiding misuse.* Working in a context of conflict and use of power heightens the possibility for misuse and deliberate misinterpretation by other agents in the system to which psychologists contribute with their work. This requires psychologists to be aware of the possibility that their work can be used in illegitimate ways to oppress, mislead or otherwise harm others. This demands that psychologists should do what they can, both pro-actively and re-actively, to reduce such misuse of their work and statements.
- 3.11 *Upholding integrity and neutrality in differences of interest.* With strong differences of interests there will be forces trying to influence the psychologist directly or indirectly both on a professional as well as a personal level. As a general recommendation the psychologist should aim to be given assignments by the legitimate instructive body, and not by any of the parties involved in the conflict, although it is recognised that the scope for this varies with the nature of the state's legal system. All kinds of dual relationships should be avoided. As far as possible the psychologist should seek to uphold the utmost neutrality and integrity in the conflict, and should work for the best solution or a just decision. Financial issues related to the task should be clearly negotiated before the work is undertaken, and at once if new matters should arise.
- 3.12 *Accepting criticisms and complaints.* As part of upholding the legal rights and security of the individual, the work of the psychologist must also be available to scrutiny, peer-evaluation in the case of criticism and complaints. Psychologists contributing in the forensic field must be prepared for this and should react to critics and complaints with the same integrity that otherwise is expected in their work.
- 3.13 *Responsibility to the Profession.* Working as a forensic psychologist or being an expert witness exposes the practice of professional psychologists, more than in many other areas. As such the image of, and confidence in professional psychology are strengthened by high ethical and otherwise high professional standards in the work of the individual psychologist.

Standing Committee on Ethics

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