

# A COMPARATIVE STUDY ON PSYCHOLOGISTS' RECOMMENDATIONS IN CHILD CUSTODY EVALUATIONS

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## **Abstract**

There is considerable debate concerning psychologists' legitimacy and ability to adequately address the legal question in custody evaluations. Authors in favour of the ultimate opinion rule suggest that psychologists are acting beyond the scope of their scientific, professional and ethical expertise by providing ultimate issue recommendations. Authors against the ultimate opinion rule suggest that psychologists are acting within the scope of their abilities; that custody recommendations by psychologists in family law are a relevant necessity and the ultimate opinion rule places the court in a worse position to understand expert testimony. Some authors take a cautionary route, suggesting that only well-trained and experienced forensic evaluators should offer ultimate opinions, after taking into consideration all relevant data and scientific material. This study evaluated 20 psychologists' recommendations in child custody reports performed for the Court of Shkodra and Tirana District. The psychologists' recommendations were analysed to determine the frequency of ultimate issue recommendations and the extent to which these recommendations corresponded with the resulting court order. These psychologists followed the international trend and provided custody recommendations in the vast majority of the forensic reports, while there was 94% accordance between the psychologists' ultimate issue recommendations and the final court order in stand-alone reports. However, concerns are expressed about the quality of the reports and the judiciary's acceptance of such reports. A need for better training of psychologists performing custody evaluations and greater judicial vigilance is expressed. Indications for future research are given.

**Keywords:** *child custody evaluations, ultimate issue recommendations, ultimate opinion rule, recommendations in custody evaluations*

The presence of a psychologist as an expert in family and criminal matters in the Court has become a legal obligation in Albania for decades. Law No. 9062, dated 8.5.2003, more precisely the Family Code stipulates that a minor who is part of family matters such as divorce cases be very active in a process where it is discussed which of the parents is more suitable for him continued the upbringing and further education of the child. The role of the psychologist in such a procedure serves not only to give the child proper psychological support during a difficult process such as testimony in court but also protects the best interest of the child in the recommendations he gives to the Court at the end of the trial. The presence of the psychologist in such a process ensures that all the thoughts, feelings or concerns of the child are properly reflected thus helping the trial panel to have a clear picture of the case.

The role of the psychologist in processes such as divorce is provided for in the Family Code, respectively in Articles 6, 155 and 267. Respectively:

Article 6 "In any proceedings concerning a minor, he has the right to be heard, in accordance with his age and ability to understand, while retaining the right given to him by the special provisions guaranteeing his intervention and consent. his.

In cases when the juvenile wants to be heard, his request can not be rejected, except for serious reasons and with a highly motivated decision. The juvenile can be heard on his own, through a lawyer or a person of his choice. In any procedure that concerns the juvenile, the presence of a psychologist is mandatory to assess the statements of the juvenile, in accordance with the mental development and his social situation. " Article 155 further states that "Before the court makes a temporary or final decision on how to exercise parental responsibility, the right to visit or to entrust a child to an ex-spouse, it must call a psychologist or social worker, who, before giving his opinion, must obtain information on the material and moral condition of the family, the conditions in which they live and where it is most appropriate for the child to live. "If the court concludes that the child should be temporarily entrusted to a third person or foster family, it should obtain the opinion of the social assistance and services sector at the municipality of the place where the trial is taking place."

Whereas, Article 267 provides "In case no guardian has been appointed by the parent who has exercised parental responsibility, the court gives priority to the choice of guardian among the ancestors, relatives of the minor, a foster family and, as a last resort, public or private institution. Before appointing a guardian, the judge must hear the person chosen as such and obtain the opinion of the juvenile if he or she has reached the age of ten. The court, in any case, takes the opinion of the social assistance and services sector at the municipality or commune of the place where the trial takes place, which contains the examination of the child's personality development in the family educational and social context and the examination of the child's the prospective foster person, foster family or care institution.

The appointment of a guardian by the court is made considering the qualities of the guardian, the chosen guardian family or the care institution, according to the third paragraph of this article, as well as after hearing the opinion of a psychologist, who must be present during the trial. "

Family issues and mainly those of custody assignment or as it is known in the Albanian legislation "leaving for further upbringing and further education" constitute the most difficult issues to be assessed by psychologists. The difficulty in custody matters is mainly related to the wide field of assessment as the psychologist assesses in addition to the child and any members that have an impact on the child (parents, grandparents, relatives, teachers, etc.) as well as the environment where the child grows up. and educated. The evaluation process and the procedure followed also have their difficulties, as the expert must use very good testing methods to give accurate recommendations.

A clear approach to the expert's recommendations to the court has been extended by many authorities by promoting guidelines for custody, adoption or raising issues and further education of children. The most accurate guidance so far is the guidance of the American Psychological Association (APA, 1994,2010) and mainly guidance on estimating child custody. These guidelines stipulate that the psychologist profession has not reached a consensus on the psychologist's duty in court to submit recommendations to the court on the matter. However, if these recommendations are implemented, they should derive from the processing of data resulting from the use of standardized tests used by expert persons and which should be based on the best interest of the child. It is advisable for psychologists to be aware of the controversial arguments on the recent recommendations of psychologists and they should be able to reasonably explain their position and why the issue of recommendations has been referred to them.

Opponents of the importance of psychological assessment recommendations in court argue that legal issues such as child custody are moral definitions, rather than clinical trials, and since psychologists do not possess any specialized knowledge of applicable law and morality issues, they are unqualified to give recommendations to the court (Melton et al., 1997, 2007; Slobogin, 1989). Moreover, Tillbrook, Mumley, and Grisso (2003) argue under Common law that judges have exclusive social authority to decide on legal and moral matters, while the society qualifies mental health professionals to obtain scientific evidence based on their clinical and scientific testimony.

## **Methodology**

Against this background, the purpose of this research is to analyze the psychologist's recommendations in a series of psychological evaluation reports on leaving issues for raising and further education of one of the parents or both, and to compare these recommendations with the decisions issued by the court. The purpose of this research is to clarify current practice, to compare the practice of psychologists in Albania with the practice of psychologists as shown by international research, to pinpoint problems and to obtain suggestions for improvement.

This study consists of an analysis of the content of 20 reports of psychologists and court decisions that have been carried out over the past 5 years between 2008-2013 in the cities of Shkodra and

Tirana. Content analysis is an examination of qualitative information in terms of predefined categories. The content of these resources has been systematically examined to record the close incidence of topics (Henning, 2004).

Reports of psychologists as well as court decisions have been taken by expert psychologists themselves as well as by lawyer cases. The reports differed from each other in content but also in the purpose and involved cases of custody, adoption, instances of raising and further education of one of the parents etc. The registered sex of psychologists was 100% female. The registration categories were equally divided between psychologists with clinical master (13%), school-organizational (45), and counseling (42).

## **Procedure**

Each psychological report was analyzed to determine the type of recommendation being made. The type of recommendation and the frequency with which it has been shown through the assessment has been recorded. The court's decision is compared to the psychologist's recommendations in the psychological assessment. Only the information provided by reading the report and the court decision was included in the data.

## **Results and discussions**

The analysis showed that all psychologists at the end of the psychological evaluation act had submitted the recommendations. This high percentage is congruent with international literature. LaFortune and Carpenter (1998) found that 86% of mental health professionals (89% were psychologists) that they observed had given recommendations in their psychological reports, and Bow and Quinnell (2001) found that 96% of psychologists gave a form of recommendations. The latest recommendations on the matter were made in 92% of the reports. International literature on psychologist performance in psychological evaluations shows that there has been an increase in the recommendation from 66% of Ackerman & Ackerman's (1997) study to 94% in Bow and Quinnell's (2001) study; however, in a recent study by Ackerman and Brey Pritzl (2011) it is noted that giving recommendations had fallen to 59%. In a critical review of psychological reports, Bow and Quinnell (2002) found that custody recommendations were made in 92% of reports and 84% of psychologists provided recommendations about parenting time. In this critical review of assessors, Horvath, Logan and Walker (2002) found that 92% of evaluators (not exclusively psychologist) gave recommendations about custody and visits.

The high percentage of psychologists who give the recommendations at the end of the psychological evaluation act in the sampling of this study may be an indication of lack of knowledge of final opinion, pressure from the court, economic pressure or lack of training. In the recommendations that were given, there were noticed recommendations regarding child therapy

(29%) more than recommendations for parents (25%). Bow and Quinnell (2001) found that individual therapy was recommended more for parenting (41%) rather than for children (36%).

In examining the components of the recommendations, as well as the extent to which these recommendations were backed up and the decisions issued by the court are based on various subordinate measures and primary assessment request. In 71% of the reports, the court's decision was in full compliance with the recommendations of psychologists. 29% consisted of cases where decisions issued by the court were completely contrary to the recommendations of psychologists. In these cases, new data was discovered during the final talks of the litigants.

Ash and Guyer (1984) have found a consensus among the recommendations on visiting schedules and final court decisions. Paradoxically, from the literature research results, the courts are not properly prepared to identify psychological deficiencies in guardianship reports that may have implications in accepting against the psychological recommendations.

During this study, the data obtained was carefully calculated taking into account the small sample size available but also the limited geographic distribution. The limits of this study are to get an opinion directly on issues dealt with by the judge as well as by the psychologist.

It has been found that often there have been abuses in accepting recommendations by the psychologist or court decisions that are not entirely consistent with the psychologist's recommendations. However, it is worth noting that many of the psychological assessment acts have major shortcomings in meeting standards or abuses with the use of non-standardized tests for the Albanian context, elements that question the value of the recommendations as well as the value of court decisions in cases where they are taken into consideration.

In all evaluation acts, psychologists did not present the limitations of their assessment. This is because they do not want to have their work depreciated. A more alarming explanation may be the fact that psychologists are unaware of the limitations that the methods by which they have carried out the evaluations have, the psychological tests used, or the recommendations made. This highlights the need for better and continued training of psychologists working in this field. Pointing to limitations in psychological evaluations is imperative, as it reflects the true nature of social sciences and reflects the difficulties of realizing the psychological evaluation act. Showing the limitations of the report strengthens the position of the psychologist, hindering the "attack" of advocates against psychologists.

Moreover, the problem is not that psychologists offer final recommendations, but rather the time when psychologists offer these recommendations without the help or due consideration of the collected data. Inexperienced or untrained psychologists entering the field of legal psychology pose a threat to the psychologist profession in the field of legal psychology because it is not working with the required standards. In custody estimates, giving recommendations is an essential and necessary part of the process from a legal, psychological or practical point of view. The best

solution in conflict cases is the solution that carries the necessary power and the authority of the judiciary, combined with considerations of psychological significance gained by field experts.

It is important to understand that psychologists taking custody decisions have a very important task to determine the highest interest of children by referring to their future in cases where parents do not agree. Emry, Otto and O'Donohue (2005) make it simpler, "neither the smartest judge nor the psychologist with greater insight have good answers to impossible questions" (p.11). The persistent and complex difficulties in child custody estimates and the lack of training on the legal principles of psychologists usually produce poor-quality relationships, highlighting the need for better training for psychologists who carry out evaluations. Similarly, more research is necessary to determine the timely efficacy of psychologists dealing with issues of child welfare recommendations.

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