

The role of expert witness in child abuse cases in Greek Court

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Expert witness testimony is playing an ever increasingly important role in child abuse litigation. The acknowledgment that child sexual abuse is not that rare, but at the same time issues such as child suggestibility, child memory distortion and parental alienation syndrome can lead to false accusations, makes necessary for the court to ask appointed experts to answer specific technical questions.

The present paper aims to describe the current legislation framework, the common everyday practice and to make suggestions about future development.

Greek legislation

The Greek justice system is an inquisitorial one (as opposed to accusatorial), which primarily means that the court has an active duty to seek the truth. Thus the role of the court expert witness in Greek justice system is pivotal. The rules, which an expert witness in child abuse cases is subjected to are described in the Greek Code of Criminal Law, Chapter 3, Articles 183-208 (1985).

Court Appointed expert

A court appointed expert can be appointed either by the investigating judge and the court itself or following an application from the prosecutor or from either party (defendant and plaintiff). In simple cases one single court expert is nominated but in complicated cases there can be two experts or a group of them according to court discretion.

The court experts are usually chosen from an official list, which according to the Article 185 includes primarily child psychiatrists and secondarily adult psychiatrists and psycholo-

gists with specialisation in child abuse. In the absence of specialised expert witnesses from the official list, the court can appoint any child psychiatrist or adult psychiatrist or psychologist (Article 186).

The court nominated expert is obliged to accept his appointment unless he can state clear reasons why not (Article 189).

The court appointed expert has to take an oath that he will act in an unbiased and objective way in order to verify the truth. The oath is taken separately for each individual case the court expert has been appointed for.

The court or the investigating judge define the questions the expert must address and lays down a time limit within which the job must be completed. Usual types of questions have to do about the nature of trauma, whether the child exhibits the characteristics commonly found in child abuse cases, about the suggestibility and memory of children.

There is a separate procedure described in Article 226A, which has to do with the preparation of a minor as a court witness, during which the court expert's only duty is to assess and report the cognitive and mental state of the child before his testimony to the judge.

Once the court expert has handed over his forensic report, he is entitled to claim the fees prescribed by the Greek State.

Expert appointed by either party (defendant or plaintiff)

Only in case that an expert court witness has been appointed, each party has the right to appoint up to two expert witnesses ('technikos simvoulos'). The 'technikos simvoulos' has access to the same amount of information as the court expert and the right to be present during the examination conducted by the court expert. He can ask to conduct his own assessment only after a written application to the court. He has access to the court expert forensic report and can hand over his own report up to three days prior to the court hearing. The 'technikos simvoulos' is paid by the party who has appointed him.

What does it currently happen in greek every day practice

First it needs to be clarified that the criteria for someone to be included in the official court list are not at all strict, like in other countries such as France (J.R Spence 1992). It suffices to be just a child psychiatrist or psychologist, who is willing to apply for a membership in this list, even if he cannot produce any proven knowledge or training in forensic psychiatry.

Despite the loose inclusion criteria, currently there are no mental health specialists (either child psychiatrists, or psychologists) registered in the official court list for expert witnesses in child abuse cases. The reasons are clearly stated in an official correspondence between the Hellenic Society of Child and Adolescent Psychiatry (HSCAP) and the Ministry of Justice and Ministry of Health (Georgiadis D. and Kolaitis G. 2008). In this correspondence the following issues are underlined: a) insufficient training of child mental health professionals in forensic work related to child abuse, b) lack of multidisciplinary services specialised to assess forensic cases, c) lack of any motives for the specialist to undertake the difficult task of a complex forensic evaluation and report. With regards to the latter is worth mentioning that the current fee offered by the state to the court appointed expert witness is about 20 euros usually paid 2 to 3 years aftermaths.

Under the above circumstances, the very few child psychiatrists in Greece who are knowledgeable enough to carry out a forensic evaluation (either because they trained abroad or thanks to a strong self motivation and special interest in the topic) are unwilling to apply for the court official list.

Therefore, the court nominates (or even orders) a child psychiatrist usually from the National Health System, who is already overburden by the everyday clinical work, and probably insufficiently forensic trained to carry out the complex work. In the periphery of Greece where there is an overall lack of child specialists, it is not unusual for the nominated court expert to be also the therapist of the index child.

The above situation typically creates a number of problems affecting the child psychiatry discipline, the justice system and above all the families and individuals who have been involved in the case. There are often long delays in the completion of a child forensic assessment, which at times can take years after the initial accusation. Even then, the court expert forensic evaluation may be of poor medico-legal quality, thus failing to help the court to take a scientifically informed decision. However there is a court bias in favor of the court appointed expert whereas the expert witness appointed by a party is often seen as a "hired gun". The overall situation creates both a discreditation of child psychiatry discipline in court rooms and a demoralisation to the specialists.

Looking at the future

A number of things need to happen in Greece in order to improve the current state of court expert witness. We sum up these changes in four axes: a) training, b) code of practice, c) motives and d) development of specialised services.

a) The cornerstone of any future development lies in the appropriate training of child mental health specialists who want to develop a special interest in child forensic psychiatry and in child abuse cases. At a second stage a certified body of court expert witness may be created. The Psychiatric Department of the Medical School of the University of Athens is planning to launch a post-graduate degree in Forensic Psychiatry and this will definitely meet several needs in the future. At present, the gap is being filled up by a number of brief training events and congresses organised by the Forensic Branch of The Hellenic Psychiatric Association or allied Associations. There is still a long way to go before the development of a proper, official and certified training in Child Forensic Psychiatry.

b) There is an immediate need to create a Code of Practice and Guidelines for child forensic evaluations similar to the ones issued by other associations such as the American Psychological Association (APA 2009). The Hellenic Society of Child and Adolescent Psychiatry has recently published its Code of Ethics where in Article 5 there is a brief reference on Child Forensic Psychiatry (HSCAP 2009). We hope that the newly formed Hellenic Forensic Psychiatric Association will play a crucial role in expanding and developing the above initiative.

c) Motives need to come through simplification of procedures, institutional protection of expert witness and appropriate financial compensation. The fact that the court appointed expert is obliged to present to the court, only to take an extremely time consuming oath every single time he has been appointed, reflects to our opinion the urgent need of common sense reforms. The current fee of 20 euros is almost humiliating for a medical doctor taken into consideration the expert knowledge, the length of time and the amount of responsibility that this job requires.

d) The need of multidisciplinary specialised child forensic services has been outlined by Georgiadis and Kolaitis (2008). A forensic evaluation in child abuse cases is often complex by nature and requires a multi disciplinary contribution by psychologists, social workers, child

and adult psychiatrists. To our opinion the development of such specialised services will to some extent resolve issues like quality of evaluation, work ethics and job conditions. However, the current financial crisis in our country and the lack of resources makes this plan highly unrealistic for the foreseeable future.

Conclusion

The increasing demand for expert court witness in complex cases of child sexual abuse has revealed significant inadequacies of the

current system in appointed experts by the greek courts. Many of these inadequacies are not “world new” and have also been faced by other countries and other law systems (Spencer J R 2008 and APA 2009). It is encouraging that the above needs have been promptly recognized by the psychiatric community in Greece and over the last few years there has been a substantial initiative to improve their professional level of functioning. However this initiative in order to be sustained and further developed in a time of severe social and financial crisis needs to encompass many changes in the area of official training, code of practice, service provision and law institutions. ●

References

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