

The Development of Forensic Social Work in Spain

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Abstract: The focus of this article is to explain the state of research work with regard to the specialty of forensic social work in Spain. The study was carried out as part of the activities developed by Research Team 940102 'Observatory for Social Intervention in Organizations' from the University Complutense of Madrid and funded by this university.

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1. FORENSIC SOCIAL WORK

This paper will cover the state of affairs in Spain, and will give a brief comparison with the state of affairs of this professional specialty in Great Britain, the United States and Argentina.

In Spain, Law 7/81, 7th of July, which was modified by the Civil Code, contained the provisional and circumstantial terms about the lives of couples and the terms which marriages should be subject to in order to agree on a divorce. The legal possibility of a marital breakdown caused the formation of the first Family Courts (by Royal Decree 1322-81 on the 3rd of July) in different Spanish cities, and in 1983 they were equipped with psychosocial teams.

In 1983, the professional career in the field of administration of justice for social workers began in the family courts when a social worker and a psychologist formed and set up two expert teams.

The role of the social worker in the administration of justice was consolidated after the call for official selective examinations of public personnel by the Ministry of Justice on the 30th of June 1987. Ruiz (2004:14) placed it on the record:

“In 1987, by an administrative decision of the Vice-Secretary of the Ministry of Justice and published in the Official Bulletin of the State on the 30th of June 1987, public entrance examinations to cover 25 vacancies for Social Workers to be placed in Magistrates' Family Courts, Juvenile Courts and medical forensic clinics were called.”

From this moment on, the different administrations have gone on to create forensic social worker positions as public

servants of the Ministry of Justice or for the autonomous communities with the competencies to administer justice in their territory (Gomez & Soto 2015b). The professionals would be subject to the authority of these institutions and the relevant judges in the family proceedings. These social workers have the role of assisting the judges in any family law proceedings by providing recommendations through a report which follows the format of expert evidence, also called a specialist's report. Therefore, we can talk about professionals who are civil servants (Gómez & Herrador, 2009) who depend on the public administrations, either from the central or regional governments, but who respond to the judges' request for advice in family law proceedings.

This is the situation of this profession and specialty in Spain, but it is worth comparing this reality with the way forensic social work is organized in other countries as well.

In Great Britain, legal proceedings are regulated by the Children Act of 1989 in

England and Wales; in Northern Ireland, the law (Children NI Order 1995) is narrowly based on the Children Act of 1989.

All the cases in relation to the custody and access to children are dealt with by adhering to the legislation mentioned above. Parents can appeal to the courts in an effort to resolve an issue of dispute. Initially, the court together with the legal team will work to resolve any difficulties as much as possible and/or aim to negotiate an agreement. If this is impossible, the court will send a social worker to mediate, evaluate and recommend a possible resolution.

In England and Wales, the tribunal refers the case to an independent organization called Children and Family Court

Advisory and Support Service (CAFCASS) to complete a report with the assistance of a social worker.

In Northern Ireland, the social worker who is assigned to this task is employed by the local authority and deals with cases of child protection as part of his or her job. To resolve this issue, social workers have been appointed to work for the Courts of Justice in Belfast and other areas in Northern Ireland.

Davis (2007:17) expresses how the knowledge and expertise of social workers can help judges in the civil courts in the United Kingdom:

“The judges or magistrates do not meet the child. It is up to you to convey all the relevant information: if you do not tell the court something, the court will know nothing about it. Remembering this will help you decide what information to include in your evidence. Also bear in mind that the judge is not a social worker and does not have the same skills as you do. Interpreting family dynamics is an example of this. Therefore, as well as giving the court information, at times, you also need to bring to the court the benefit of your expertise.”

In Argentina the situation is very similar to that of Spain. The need to evaluate family conflicts is acknowledged when there is no agreement between the parties involved and the judges must decide on cases relating to underage children. The Argentinian social workers Alday, Ramljak & Nicolini describe this need and how it was met in the city of Buenos Aires

“In Civil Justice this was translated as a tendency to face the information which was presented to the authorities who were trying to avoid a law suit. This demanded some creativity from judges and other parties involved, in order to contribute to the acknowledgment that this conflict was the result of a family unit going through a crisis. This led us to search for a way to overcome the problem through the valuation and focus of the affective bonds of those involved (2001:17).”

These authors also recall when the Competent Courts were created to resolve these issues and how they incorporated social workers into them as the appropriate professional to explain the family situation of each proceeding with their knowledge.

“In this context, in which different levels of resistance and advancement took place, the city of Buenos Aires came to the conclusion that family matters were specifically different within all civil proceedings. The inception of the first eight Civil Courts with jurisdiction over family affairs and legal capacity (Law 23.647) followed shortly afterwards by another four at the end of 1989. At this point, a social worker was appointed to each one of these courts as an addition to some personnel who had already some experience in the judicial institutions. This was the first instance of a professional, different from a solicitor, being appointed to a Civil Court (Alday, M.A., Ramljak, N.L. & Nicolini, G.M., 2001, 17, 18).”

As a following step, we are interested in knowing how the Argentinians assign and place these professionals, and the norm applied to these professionals who carry out their duties. Claudio Torres (2004:58,59) explains:

“In Buenos Aires province, the expert activity is part of the functional structure of the Judicial Power as part of the creation of the Expert Departmental Consultancies, whose purpose is to provide advice to all the magistrates and judicial public servants who may require advice. Nevertheless, there are also assistant appointments (commonly known as a “list of experts”); this is the term used for those appointments that each tribunal carries out on its own initiative. On the national level, there is not an official department which incorporates forensic social workers, and for that reason, the appointments that take place are the decision of the departments (we must emphasize that those social workers who work for Civil Courts with competencies in family affairs, marital status and legal capacity, also perform forensic functions when this is required by their own courts, although they are not known as “experts”). The forensic social worker is designated as an agreement between the parties; on the request of one or both, or by request of the judge making use of his/her authority under article 36 of the Code of Civil and Commercial Procedure of the nation or the Code of Civil and Commercial Procedure of the city of Buenos Aires.”

In the United States the situation varies as the forensic social workers develop a wide range of interventions. The term “forensic social work” includes the intervention work in the fields of justice, the support for the clients with regard to the itinerary for their legal proceedings, the expert tasks and an active political participation in the promotion of rules in favor of the groups in which they work.

In a reference manual from the United States we see the wide range of roles explained:

“The integrated role of collaborative forensic social workers allows us to assume multiple professional roles, functions and activities. This strategy is designed to improve clients’ social functioning and environmental conditions through collaboration with the clients, the professionals, and other stakeholders within and across different systems of care. The “forensic” or “legal” aspect of the work situates social workers in a position to honor their professional commitment to social justice through the use of their legal knowledge and skills, which includes advocacy and policy practice (Maschi, T. & Killian, M.L., 2009: chapter 1).”

The social worker in the United States must understand that there are many rules, laws and norms which they have to work within and that these rules, laws and norms must be well-known in order to help their citizens. The variety and disparity of norms refer to the way in which divorces are agreed upon, and to the participation of the experts who contribute to these cases and to the qualifications that these experts must have for their work to be considered as evidence.

Heer (2009: chapter 4) recalls how the variety of legal references force the social worker to maintain a wide knowledge within their legal framework:

“The law can be a complicated mix of statutes, rules, case-law and constitutional law. It changes frequently, and the forensic social worker must keep abreast of those changes. The social worker must also remember that each state has different laws and the federal system is different from the state system.”

2. RESEARCH WORK AND METHODOLOGY

The object of this research is to expound and to reveal the place of the professional expert social worker in the psychosocial teams of the administration of justice in Spain (Gomez & Soto 2015a).

The social workers have an important role in the psychosocial teams in the administration of justice in Spain; the judges are at the receiving end of the social reports, the families are the object of this report and other professionals in the judicial system such as the psychologists, play their role in this team. Each professional group mentioned above requires a different type of task and a different assessment method:

- Social workers are the qualified professionals, the families are the object of the investigation, as they are the focus of the investigation. The opinion of the social worker is important and so is the perception of the situation of their professional group, in which they have the main role. It might be a passionate perception, but the group debate is going to allow the meaningful to be extracted, thereby enabling us to value to variables cited above.

- The psychologists are the other professional group who serve the families and the courts during the investigation. Their perception of the judicial social work is valued as privileged witnesses. It is also interesting to note the significance of their contribution within this psychosocial collaboration.

- The judges are the professionals who are at the receiving end of the expert social reports. Their responsibility is that they decide on custody and visitation arrangements of the parents and their children. Their position as a single Judge, and their decisions in the first court or the lower court, and the difficulty of achieving a group indicates the methodological suitability to interview several judges in order to gain their perception about the focus of study.

- The families are the objects of the study. The contact with the social worker is one-on-one and usually takes place at a time when the person is in a crisis. Therefore, the collection of quantitative data may aid to help their perception of what has happened and this may be achieved through the use of a questionnaire. This is a more realistic method and can serve as a response to the variable that measures the impact of expert social work for the family.

The techniques to be implemented can be defined as follows:

- Group discussion: the format is open; the components must be homogeneous and heterogeneous at the same time. The researcher suggests the topic of discussion and does not intervene any more except to guide the meeting or to control aspects of the meeting. The recorded information is then analyzed and the group then proposes a discourse referred to as the popular social perception.

- The in-depth interview is a technique of the qualitative dimension and does not require excessive intervention from the researcher; the aim of the in-depth interview is to draw a life history.

- The survey is a research method that is applied over a sample of subjects representing a wide group and which uses previously standardized questioning techniques.

3. CONCLUSIONS

The research has finished in its qualitative phase and it evaluates the questionnaires that constitute the quantitative side. In the qualitative phase we can advance the following conclusions:

- The research compares the professional realities of forensic social workers in Madrid and Barcelona from the view of judges, psychologists and the social workers themselves. Although, there seems to be a stronger belief in the professional value that social workers have in Barcelona than in Madrid. It is observed that in general, judges from Barcelona and Madrid understand the psychosocial team as a single undifferentiated unit, although when the social-familial work is described by the forensic social workers, they show success and appreciation in the research.

Psychologists are respected professionals of the social work, but they have important differences of opinion about the role they should play in the administration of justice and their relationships with the judges.

- Coordination is a reality that is assumed differently among the professionals in Madrid and Barcelona. In Barcelona they are more accustomed to a mono-disciplinary development of their job while the ones in Madrid have different methods of sharing the expert tasks.

- The forensic social workers look at the future with optimism and value their intervention in support of the judges; they feel that they should promote a more professional line of action within the lexica and techniques of social work playing a more important role in their activities.

- Psychologists and forensic social workers understand that there is a lack of psychosocial discourse and a greater involvement is required in the production of research and documented work within the psychosocial discourse. In particular, when the contributions of social workers are evaluated, this reality is lacking.

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