

WHEN THINGS GO WRONG: ON MEDIATION, ARBITRATION, CORRECTIVE ACTION AND DISCIPLINARY SANCTION

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Faced with allegations of infringement of its ethical standards, national psychologists associations cannot stay passive. In the Preamble of its Meta-code, the European Federation of Psychologists Associations demands them to have procedures to investigate and decide upon complaints against their members. Taking into account the nature and seriousness of the complaint, this may lead to mediation, to corrective actions or a disciplinary sanction (see Koene, 2007; 2008). Looking into the future, it would be a good thing for the profession if the upholding of its ethical standards could be similar in all European psychologists associations. Some research findings suggest that such is not necessarily just a dreamscape.

Key words: *Ethics, Meta-code of ethics, Ethical principles, Mediation, Arbitration, Corrective action, Disciplinary sanction.*

Cuando las asociaciones nacionales de psicólogos se enfrentan con denuncias por infracciones éticas no pueden quedarse pasivos. En el preámbulo de su Meta-código, la Federación Europea de Asociaciones de Psicólogos (EFPA) les exigen disponer de procedimientos para la investigación y la toma de decisiones respecto a las denuncias a sus miembros. Dependiendo de la naturaleza y la gravedad de la denuncia, podría dar lugar a la mediación, a acciones correctivas o una sanción disciplinaria (véase Koene, 2007; 2008). Mirando al futuro, sería bueno para la profesión si la defensa de sus normas éticas fuera similar en todas las asociaciones de psicólogos de Europa. Algunos hallazgos de investigaciones sugieren que esto no es necesariamente solo un sueño irrealizable.

Palabras clave: *Ética, Meta-código de Ética, Principios éticos, Mediación, Arbitraje, Acciones correctivas, Sanciones disciplinarias*

Unfortunately, psychologists' professional actions do not always lead to satisfied customers and happy faces. Sometimes expectations about the psychologist's interventions are exaggerated, sometimes the outcome of an assessment is disappointing, sometimes some doubt has been cast upon the ethical level of the psychologist's behaviour, sometimes this action is experienced as bluntly crossing borders of decent professional behaviour.

If one of these conditions occurs, clients may want to talk

about their unhappy feelings, with the criticised psychologist him- or herself – if they didn't slam the door in definitively leaving the psychologist's office – or otherwise maybe with one of the psychologist's colleagues. Or they just want to raise a complaint to get the psychologist punished. In such a situation, psychologists are faced with possible infringements of their ethical standards: Obviously, the psychologist who is directly involved as the alleged trespasser.

It demands professional maturity and maybe some courage to critically look inside oneself and wonder if the person could be right, and not to slide too easily into defensive behaviour by deliberately wanting to find justifications and excuses, or blaming the other. The profit of such a critical self-reflection might not only be improving the ethical quality of one's work, but also leading towards the best condition to face honestly the other person and to show understanding for his or her objections.

However, other colleagues may also become involved, whether or not within a professional relationship with the offended person or as a representative of the psychologists association. In their respective roles, psychologists have the ethical duty to take signs of

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Note: In the 3rd EFPA Symposium on Professional Ethics for Psychologists, the author gave a lecture on the significance of mediation for the complainant, as well as for the psychologist and for the professional association as the upholder of professional standards. The text was published as a news item in the *European Psychologist* (2007) and is largely used with the same title as the present paper, in a book *Ethics for European psychologists* (Lindsay, Koene, Ovreide and Lang, published by Hogrefe)



possible infringements seriously. After all, to keep ethical standards upright is of great importance for the clients' as well as for the profession's interest.

Faced with allegations of infringement of its ethical standards, national psychologists associations cannot stay passive. In the Preamble of its Meta-code, the European Federation of Psychologists Associations demands them to have procedures to investigate and decide upon complaints against their members. Taking into account the nature and seriousness of the complaint, this may lead to mediation, to corrective actions or a disciplinary sanction.

Though this paper aims to provide support those engaged in the development of the profession, such as the *Colegio* in Spain, only marginal attention will be paid to the more legalistic framework, the EFPA *Recommendations on evaluative procedures and corrective actions in case of complaints about unethical conduct* and the *Guidelines on mediation in the context of complaints about unethical conduct*. After all, the present paper is mainly intended to facilitate individual psychologists in reflecting upon the ethical dimensions of the professional conduct. Nonetheless, the full texts of the mentioned documents are downloadable at www.efpa.eu (Reports: General Assembly 2005 and 2007, Standing Committee on Ethics).

However, to act adequately upon complaints is not just the profession's responsibility. First of all, individual psychologists need to be open to critique of their professional actions and to loyally co-operate with the evaluation of these actions, if these are questioned.

Although not explicitly stated in the Meta-code, this *moral* obligation of openness to *receive* critique can be seen as the logical counterpart of the obligation to *give* a reasonable critique of the professional actions of colleagues, as laid down in article 3.4.5. Deduced from such a moral requirement, one may understand the more legalistic demand as shown in the Appendix of the mentioned *Recommendations on evaluative procedures and corrective actions*, which states that "psychologists should be obliged by the National Association's statutes to co-operate in procedures concerning complaints about professional conduct during their membership" and that members' refusal to co-operate in evaluation procedures should be seen as an offence. Another way to implement this recommendation is to lay down such an obligation in the code of ethics itself, as for instance the Dutch and the Turkish associations did.

Example 1

Penny Houtkropper, industrial psychologist, terminated her membership of the psychologists association at the moment it became clear that a complaint would be raised against her. Nevertheless, the disciplinary board decided the complaint was admissible, because termination of membership only can be effected at the end of the year, which was not the case. Mrs. Houtkropper did not respond to any correspondence from the disciplinary board.

After hearing the complainant, the disciplinary board decided to expel Mrs. Houtkropper from membership, not only because of the nature of the primary infringement – which didn't happen for the first time – but also because of her immediate termination of her membership and not responding to any of the board's letters to her. This was regarded as an attempt to withdraw from the evaluation of her professional action.

Whether or not psychologists associations may follow the recommendation in the Guideline's Appendix, to "forbid by statutes its members terminating membership during a complaint procedure, to ensure the evaluation of their professional actions may occur with or without their co-operation" might not be of primary relevance for *individual* psychologists, reading this paper on professional ethics. However, the particular clause shows evidently the *collectives*, i.e. the psychologists associations, being the addressees of the Recommendations – as well as of the Meta-code – in their responsibilities to safeguard the ethical norms and standards, and the protection of clients by preventing their members from fleeing from the consequences of a misdemeanour, which could be seen as "disciplinary hit-and-run" (Koene 2004).

Openness to critique and loyal co-operation in having one's professional conduct evaluated can be seen as vital conditions for the upholding of ethical standards in the profession. Nevertheless, one may wonder if such an evaluation will give complainants – often clients – enough satisfaction.

Example 2

Carry Vermeulen had not worked for quite some time. She had even given up having small temporary jobs, because of the problems with her back. On her general practitioner's advice she applied eventually for a job in sheltered employment, where her impairment would be taken into consideration. But, to be admitted to this kind



of employment is not a simple matter. An assessment needs to be done to verify whether the person has physical, mental or intellectual disabilities to such an extent that working in a normal job is impossible.

When the authorities finally let Carry Vermeulen know the outcome of the assessment, it turned out that she was considered to belong to the target group for sheltered employment. However, Carry's joy was tempered, to put it mildly, because of the basis of this decision. Not only she was supposed to have physical impairments due to the back issues. During the examination some evidence was found that Carry had had special education and had suffered from severe test anxiety. The psychologist involved in the assessment procedure reported on the basis of these findings that Carry Vermeulen was intellectually and mentally impaired as well.

To be seen as a "cretin" and a "nut" was too much for Carry, and she raised a complaint against the psychologist. According to Carry, he should never have drawn such conclusions without his own psychological examination, and the report should never have been sent to the authorities without her permission.

It eventually did not become a disciplinary court case, since after further reflection Carry decided to withdraw her complaint.

What could have brought Carry to her last decision - was she afraid of repercussions? She had been put on the waiting list, but she didn't yet have a job in the sheltered workshop. Or, did she have a talk with the psychologist, who might have made clear to her that the probability of eventually getting a job in sheltered employment had increased by also being labelled as mentally impaired as well as intellectually handicapped? We do not know.

Furthermore, about the quality of the psychologist's judgment we may only guess. As we may guess about the procedure, in which the judgment was based purely upon documents. And we may wonder if Carry Vermeulen had been given the opportunity to read the report before it was sent.

However, Carry's reality at the time is not our issue at this moment. The point is what it would have meant if the psychologist involved really didn't act according to professional standards. Say, it was the true that his evaluation was below standard and say, that the procedure was unfit and say, that Carry didn't get the opportunity to read the advice, prior to it being reported. The main issue in this present chapter is: whose interests have been infringed in cases of unethical behaviour los

intereses Those of the client, who is primarily the injured party, or those of the psychologists' community, whose professional ethics rules are violated and whose reputation might be at stake? Which party's interest is mostly served by a disciplinary evaluation and an eventual sanction?

Evaluative and disciplinary procedures are to a certain extent comparable to criminal law procedures. In spite of the fact that complainants usually are the accusatorial party in front of the disciplinary tribunal - unlike criminal law cases, where the public prosecutor and not the complainant is the antagonist of the accused - the outcome of the evaluative and disciplinary procedures exclusively concerns the relationship between the censured psychologist and the professional collective. Be it a warning, a reproach, a suspension or an expulsion from membership, acquiring satisfaction from these sanctions is all that the complainant may get out of it. This is not always and not everywhere the case. In The Netherlands, the Health Inspector may act as prosecutor in legal disciplinary pursuit and in the British Psychological Society the individual complainant is not a party any more in front of the tribunal, after the preliminary investigation. Then, the BPS takes the role of public prosecutor.

There may be violations of norms, which justify a community to take action to protect others against being victimised. There also may be violations of norms which justify a community feeling deeply harmed and determined to impose punishment, even if this is not, or not any more in the victim's interest, nor in the interest of others in his or her direct environment: An example is the avenging of the murder of a lonely vagabond, because of the fundamental unacceptability of this crime. Upholding norms by the collective is meant to prevent individuals feeling outlawed. And this is even more important if it concerns individuals in a relatively weak and vulnerable position. The psychologists associations' disciplinary procedures may find their *raison d'être* especially in this last condition.

However, insofar as client vulnerability provides justification for a special complaint procedure in psychologists association one may wonder if the individual client is served in the best possible way by disciplinary procedures. If a sanction is imposed after a disciplinary procedure - which is often long and drawn out - in which discrepancies will rather be accentuated rather than diminished, will such a sanction bring the



satisfaction, which the complainant is waiting for? Sometimes it does, sometimes certainly not - far from it. Some complainants want to see blood, but not all of them. Some of these could feel more and better understood in their complaint if a well-meant apology was given. However, after a formal evaluative and disciplinary process an explanation and apology – if appropriate as such – will often be further away than ever. And how often could this count for the psychologist as well?

MEDIATION

As mentioned before, EFPA not only demands national associations to have investigative, corrective and disciplinary procedures to decide upon complaints against members and to determine necessary action. In the same paragraph the option of mediation is mentioned.

In mediation, the complaint can be seen as an expression of a problem or conflict between the complainant and the accused psychologist. Seen from that point of view, the interests of the psychologists association are not at stake. In an informal, semi-structured process an impartial mediator assists the disputing parties to work through and resolve problems or conflicts together. It is a non-judgmental, voluntary process that focuses on helping parties to find mutually satisfying resolutions to their problems, consistent with the interests of each party. Whether or not by one's own initiative, participation in mediation is on a voluntary basis. Each person, complainant and psychologist, is autonomous and able to determine his or her own actions. This requires that each party is free to close the mediation process at any moment, if they no longer consider the mediation as being helpful.

As conflicting parties are facilitated to come to a solution themselves and have the freedom to terminate this process at any time, mediation conditions are essentially different from binding oneself beforehand to a final decision of any authority, as in arbitration.

The involvement of a third party may be seen as a complicating factor. Such a person may have their own interests in the solution of the conflict and may interfere, or perhaps their approval of the outcome must be required. Therefore, possible juridical or complaint procedures, which had already been started, must be deferred in order to be able to start with mediation.

Solutions found in mediation may well be better – for the complainant and the accused – than a judicial judgment.

After all, both parties carry the outcome, which is certainly not the case if the disciplinary tribunal rules against one party. Therefore, it might be preferable to choose mediation instead of a formal complaint procedure for the client to be understood in his or her complaint by the psychologist involved and not by the disciplinary court on behalf of the profession.

In Carry Vermeulen's case for instance, the psychologist's recognition of *blame* and his *atonement* would give a better opening for paying off and reconciliation than a conviction for a "*crime*" and an imposed *punishment* would do. However, even if there is no violation of any professional ethics principle, mediation will probably give the psychologist a better opportunity to come to an understanding of the client's objections and to be able to show this, than standing in front of a tribunal.

Mediation – in the framework of an ethics complaint procedure – begins with the psychologists association's willingness to refrain from further investigation and evaluative procedures during the period of mediation and to recommend the opportunity for mediation to the complainant and the accused psychologist. This implies that the association should not interfere in the process or need to be asked for agreement on the mediation outcome. As a party of indirect interest, the association puts itself so to say on the "reserve bench".

In considering whether the opportunity for mediation should be offered or not, the fundamental question arises: how should the client's individual interest of atonement should be weighed against the interests of the psychologists association in upholding norms by evaluating the professional behaviour and eventually sanctioning trespassers.

A consideration in the decision whether to offer mediation or not, should have regard for the seriousness of the alleged infringement. Thereby, the nature of the complaint should be taken into account, as well as the potential for further risk to the public and the reputation of the profession. This means that in certain cases the profession – embodied in the psychologists association – may decide that its collective responsibility doesn't allow it to stay passive. This is the case when the possible infringement of the profession's ethical standards is such a serious offence that other clients' welfare or the profession's standing are seriously at stake. In that case the association will not abstain from formal evaluation of the alleged misconduct.



Not to take away the vital importance of what has just been stated, nor questioning its eventual impact, it is challenging to reflect upon another perspective. Seen from a moral point of view one may wonder if, in its ultimate consequence, the complainant and the accused shouldn't *always* be offered the opportunity to come to an agreement by themselves. In its ultimate consequence, it could be taken for granted that, for instance, even serious breaches could be compensated financially, and psychologists thus have a lucky escape from being sanctioned heavily. After all, it is not unthinkable that some complainants will choose such options. One may wonder which principle informs objections that may arise against such a solution. Doesn't a direct atonement for distress or compensation for harm outweigh formal sanctions? Isn't a direct paying off the debt superior to punishment for breaching norms? And why should the possibility of a more satisfactory settlement be given to someone who raises a minor complaint, and not to someone raising a serious one? One might argue that cases of serious harm in particular deserve the best possible atonement.

Until now, these reflections were mainly focused on the significance mediation could have for the complainant. However, for the psychologist involved the significance of mediation is probably as large as it is for the complainant. To explain one's point of view and to show understanding for the complainant's angle is more easily done if one is not being put in a defensive position. Thus, mediation gives opportunities, which are less likely in a formal exchange of documents or a hearing in front of a tribunal. This is especially so if the real motives to complain are hidden behind formal objections: the implosion of high expectations, the disappointment about the outcome of an examination, the confrontation with painful developments in life. Sometimes the client holds the psychologist, the messenger, responsible for these and seeks pretexts for a complaint.

The fact that in cases of mediation the profession steps back and doesn't have any influence on the outcome doesn't mean that the outcome of the mediation is not in the interest of the profession. After all, mediation could well contribute to restoring the complainant's confidence in the profession and, moreover, it is conceivable that more understanding for the complainant's point of view could bring the psychologist to an improved reflection on the ethical dimensions of their professional actions, maybe more than disciplinary sanctions will do.

Up to this point mediation seems to be the morally ideal means to bring conflicting parties together in order to find a solution, agreed by both of them. By its nature mediation could contribute to raise the psychologist's ethical awareness and the client's appreciation of the psychologist's profession's ethics. However, this is a wishful view. Realistically, expectations should unfortunately not be too high. Options for mediation, as offered in running complaint procedures, are generally chosen by only a minority of the complainants. The majority prefers a formal complaint procedure. Moreover, certainly not all mediations lead to an end which is acceptable for both parties. As mentioned before, parties are free to close the mediation process at any moment if they no longer consider the mediation as being helpful. Therefore, there will be instances where a mediation procedure is closed in an untimely manner and consequently a formal complaint procedure is opened or reopened.

ARBITRATION

This possibility to open or reopen formal complaint procedures will not be the case after arbitration, if an association has chosen to offer this instead of mediation. In arbitration too, the situation is seen as a conflict between the complainant and the accused psychologist. As in mediation, in arbitration also the position of the profession is formally marginalised and evidence of an infringement of ethical principles will not lead to disciplinary measures. The fundamental difference between mediation and arbitration is that the latter will give an outcome, whether or not parties find it agreeable, since both parties bind themselves beforehand to accept the arbiter's decision.

Example 3

Anna Fischler was referred by her family doctor to a psychologist for an exploratory psychological assessment. At her first appointment, Mrs. Fischler arrived 20 minutes late because of problems in finding the location of the practice. Since no previous agreements had been made, no fee for the time lost due to the delay was charged. Shortly before the set hour of the second appointment, Mrs. Fischler cancelled because her child was suffering from a headache. During this phone conversation, the psychologist told her that she would be charged the cost of this appointment, whether she would arrive or not. Then, she decided to come anyway, be it

with substantial delay. A few days later, Anna Fischler received the psychologist's invoice.

In her complaint Anna Fischler contended that she had been under the impression that the psychological diagnosis would be established under the national health insurance scheme and thus would not be payable by her. In the complaint investigation, the psychologist stated that the appointment with Mrs. Fischler for a clinical-psychological diagnostic assessment had been made by phone. A time period from 10 a.m. to noon was reserved for her and she had been requested to be punctual. In this very telephone call the psychologist had told to Mrs. Fischler that, if she were unable or unwilling to keep the appointment, to cancel the set appointment 48 hours in advance, otherwise the full fee of the session would be charged. After Mrs. Fischler arrived at her first appointment with a thirty-minute delay, he had again called her attention to the aforementioned cancellation conditions. To accommodate Mrs. Fischler, the psychologist did not charge any fee for this thirty-minute delay. Furthermore, the second appointment was cancelled by phone, 40 minutes before its scheduled beginning. Mrs. Fischler claimed that she could not attend because she had to appear in court. The psychologist had reminded her again that appointments should have been called off 48 hours before, underlining that appearances in court are not communicated only 30 minutes before the beginning of a hearing. Then, Mrs. Fischler decided to keep her appointment after all and arrived at 11.30 a.m. The psychologist charged her only for 90 instead of 120 minutes.

After several phone conversations with both parties, the arbitration board decided that Anna Fischler should pay the outstanding fee.

DISCIPLINARY PROCEDURES

Whether or not after the complainant's or the psychologist's refusal of mediation, an untimely closing a mediation or the association's decision not to offer mediation, complaint may lead to formal disciplinary procedures. Then, an investigation will take place through the formal complaint procedure, be it a separate stage in the process or not. The investigation will involve gathering evidence from the complainant, the psychologist who is the subject of the complaint, and any other source, which will provide assistance.

From the very beginning of a complaint procedure, the psychologist needs to be aware of the prevailing ethical

principles and code regulations that still pertain in such a challenging situation.

Example 4

Anton Berg, clinical psychologist, was not amused, when he got a letter from the Disciplinary Committee that Mrs. Groen had raised a complaint against him because of breaching confidentiality in his contact with her general practitioner. Berg was invited to give a first reply, in the context of the investigation.

Berg wrote an angry letter, stating that such a complaint by "someone with clear histrionic personality characteristics, which the Disciplinary Committee indubitably must have recognised, has to be seen evidently as a revengeful acting out of despair due to a collapse of her erotomaniac fantasies (see Mrs. Groen's enclosed record). Thereby Mrs. Groen's complaint should immediately be dismissed."

Justified by the principle of equal arms, psychologists may decide to breach confidentiality to be able properly to found the defence against allegations. However, psychologists aren't completely free in doing so. Ethical principles should still guide actions and psychologists are still subject to their code of conduct. Therefore, revealing data from the client's record should be done respectfully and restricted to those, which are relevant and necessary for the defence. However, using psychopathological labels in this context can only be seen as complainant bashing by attempting inappropriately to disqualify complainants and bluntly neglecting to pay appropriate respect. It does not only happen that psychologists try to disqualify complainants in such a blatant way. At least as serious are attempts to exclude more categorically certain people from raising complaints in the first place.

Example 5

Paula Hermanides, forensic psychologist and manager of a large forensic experts bureau, contacted her association, claiming immunity for the members of her team, since forensic expertise too easily leads to disciplinary complaints. Paula Hermanides argued that it happens all the time that unsatisfied parties, supported by their lawyers, try to seek ways to disqualify unfavourable forensic reports by misusing disciplinary procedures. These procedures bring along an excessive extra workload and a substantial strain for the psychologists involved. In her opinion, this should be an argument for the psychologists association no longer to burden the staff

members of this respectable expert bureau with disciplinary procedures.

The association's reply was not particularly welcomed. It said that the association's members are obliged to cooperate loyally if there is any reason to evaluate their professional conduct. This obligation is fully incompatible with any claim on immunity. As the association did acknowledge the higher complaint rates in forensic psychology, it recommended Mrs. Hermanides to set up special ethics courses for her staff members, in order to sensitise her colleagues to the special pitfalls in the practice of forensic psychology. In this way the ethical quality of their work could be improved and the prevention of complaints could be maximised. An additional recommendation contained initiating in corporate trainings to prepare her colleagues to appropriately defend their cases in front of the tribunal.

The second recommendation, given to Paula Hermanides, brings us to the point that many psychologists are ill-prepared, when faced with a complaint. Even in countries as for instance The Netherlands, where disciplinary cases are regularly publicised, the idea of having to show up for a hearing is rather disturbing for many colleagues. Arguments that disciplinary procedures could be seen as part of one's personal quality assurance system may be valid in theory, but in practice having one's conduct being scrutinised easily brings highly uncomfortable feelings, even in case of a good conscience. Standing in front of a tribunal is standing in front of a *tribunal*. This is a situation where one cannot count on just friendly fraternal understanding, since such a tribunal should be impartial, in every respect. However, psychologists should realise that they, as much as the plaintiffs, are protected by fair procedures as hearing both parties, by the tribunal's impartiality and by maxims as *actori incumbit probatio* and *affirmanti incumbit probatio* ("The burden of proof lies upon the plaintiff" and "the burden of proof lies upon him who affirms, not upon him who denies"), although the latter principle is not always fully applicable. After all, psychologists do have an obligation to implement proper record keeping, which may shift some of the onus of proof to the psychologist.

This does not take away that, as long as the tribunal is not convinced by the plaintiff's arguments and evidence, the complaint will be regarded as unproven. The standard of proof in a tribunal's operation may vary. In the UK, for example, the standard is the "balance of probabilities"

unlike in criminal cases in court where the standard is "beyond reasonable doubt". Also, there is a requirement that the implementation of this standard takes into account the seriousness of the case *for the psychologist*. So, if a guilty verdict will lead in all probability to the psychologist being struck off the register, the bar is set higher.

What does it actually mean, hearing about a colleague against whom a complaint was lodged? Do we have a tendency to avoid him or her, not to refer clients any more, or are we still open to give fraternal support? Though not mentioned in the Meta-code, being supportive to colleagues could be seen as a consequence of the general responsibility for the profession: not to protect colleagues unduly, but to contribute personally to the support system of the profession. From this perspective, it is not only to ostracise colleagues just because of complaints being raised against them. As the Turkish Association states in article 17 of its Ethics Code: "Psychologists do not discriminate against people who are being investigated nor jeopardize their employment. However, they take the necessary steps following the conclusion of the ethical investigation according to the requirements of the verdict." Unproven complaints may not be untrue. However, we must rely on the tribunal's verdict.

But even evidence doesn't necessarily mean that it was more than just an error. In its Recommended procedure for ethical decision-making, the Psychological Society of Ireland says: "professional bodies and the law accept that practitioners may make errors of judgment, and that such errors are distinct from malpractice." Furthermore, there is no justification to see minor infringements as capital sins. After all, a *warning* doesn't imply more than the word says. Let us have a look at a relevant paragraph in the explanatory memorandum on the Dutch Individual Health Care Professions Act (Wet BIG), which says that a warning is "an suitable reprimand, which posits the incorrectness of the conduct, without qualifying it as reprehensible".

JUDGING IN EUROPE

Just imagine the following story.

You are on holiday, travelling by car through a foreign European country. Suddenly a dog is crossing the road. Breaking doesn't sufficiently help and you hit the dog that is seriously wounded after the collision. While you are taking care of the dog, the police come and bring you to the police station. You are clearly in trouble. After



considerable delay and a substantial fine for lacking vigilance, you may continue your journey. Two weeks later, when you come home, your own dog, overjoyed crosses the street to welcome you and is hit by a car. While you are taking care of the dog, the police come and give you a fine for not keeping your dog under control and thus being responsible for the accident. Eventually you have to pay the damage to the car. End of holidays.

Apart from the sorrow for wounded dogs and additional nuisance, you might feel unjustly treated, by being held responsible for similar accidents twice, whether you were the victim or not.

To prevent comparable situations in professional psychology, the EFPA did not only conceive the Meta-code as common European ethical standard, but also laid down its previously mentioned *Recommendations on evaluative procedures and corrective actions in case of complaints about unethical conduct*, formulated by its Standing Committee on Ethics (EFPA, 2005). After all, in an opening European labour and consumer market, it would be good for the profession if similar complaints and similar facts would lead to similar actions, whether the psychologist's services are received in Estonia, France, Portugal or Austria, to name a few.

It is significant that the Recommendations not only refer to *disciplinary actions*, which involve sanctions as a reprimand or suspension from a register. As important are *corrective actions*, designed to improve future performance, for instance requiring specific additional training or re-training and supervised practice. Even taking all this taken into account, one may still wonder whether European psychologists associations really deal in similar ways with alleged infringements of these standards.

Unfortunately, recent comparative data about complaint procedures are not available. The only study on this subject (Koene, 1997) is over ten years old, and published in Dutch after being orally reported at the 5th European Psychology Congress, held in Dublin, July 1997. Though disciplinary procedures in several associations may have progressed since, especially after the mentioned EFPA recommendations were adopted, and though the response rate doesn't allow drawing firm conclusions, it might be worthwhile getting an impression of the results of this study.

A questionnaire was sent to all EFPPA member associations, the European Federation of Psychologists

Associations (EFPA) was previously called European Federation of Professional Psychologists Associations (EFPPA), and counted at that time 26 member associations, in order to get information about their disciplinary procedures and sanctions. In a second part of this inquiry statistical information was gathered. In the third part, eighteen short vignettes were presented, giving "facts" of possible violations of professional ethics. The associations were requested to give their opinion about the appropriate measurements to be taken in the given cases. Outcomes of the latter were compared with data from samples of Dutch psychologists and civil servants at the Dutch Ministry of Social Affairs, giving their opinion on the same vignettes.

Fourteen associations filled out the first part of the questionnaire. Already at that time, nearly all associations had a disciplinary committee to investigate and decide upon alleged infringements of their ethical codes. In a small number of associations it wasn't possible to have a hearing attended by both parties; their disciplinary committees only decided on the basis of circulated documents above.

Half of the responding associations formally forbade their members to terminate membership during a complaint procedure. A third of the associations, however, didn't even require their members to co-operate with the scrutiny their professional conduct. One out of seven associations did not have any power at all to impose a sanction on members for proven infringement of their ethical code, which contrasts with nearly half of the committees whose verdicts not only could lead to disciplinary sanctions, but could also play a role in civil court cases as well as in criminal court decisions. A minority, although non-marginal, of the associations did not have an appeal procedure, even though disciplinary actions may have such a substantial impact for psychologists, a reason why access to a review of the verdict is certainly recommended.

As such, one may wonder whether complaints are easily lodged or not. Publications about the Dutch legal healthcare disciplinary system suggest that the number of complaints is substantially smaller than the estimated number of medical errors made. It is not very likely that the dynamics would be considerably different in complaining about psychologists.

An experience of being incorrectly treated seems to be a necessary, but certainly not always sufficient condition to decide to complain. In our daily life we often take certain



misery for granted. The burden of writing a letter..., claiming a guarantee for something we bought somewhere far away.... After all, the expected retribution should be in reasonable balance with the invested effort, as is the case with the expected probability of retribution. Obviously the extent to which we are aggrieved or hurt plays a role too. On top of it, dependency and loyalty often plays a role in client-psychologist relationships, which may put up an extra barrier against complaining.

In the associations responding to the survey, whose combined membership totalled 96.740 members, only 360 complaints were raised in the year of the inquiry, i.e. about 0.4% of the membership.. One out of five of these complaints were judged as inadmissible and in nearly half of the cases no evidence for unethical behaviour was found. In five cases corrective measures were taken to improve professional procedures or skills. Three persons – out of 96.740 ! – were expelled from membership of their association.

Most of the verdicts concerned incompetence and irresponsibility, less frequently informed consent and confidentiality were at stake. One out of twenty judgements regarded dishonesty, as was also the case for harmful dual relationships and for sexual relations with clients. One out of four judgements concerned clinical psychologists, as was the case for forensic psychologists. One out of seven decisions was about work- and organisational psychologists. Both psychotherapists and child psychologists brought about a tenth of the verdicts, twice as many as assessment psychologists. The last ten percent (miscellaneous) included researchers.

In some professional contexts, psychologists seem more easily to slide into violating certain ethical rules than in other. Sexual relationships with clients more often occur in clinical or psychotherapeutic relationships, or are at least more clearly felt as boundary transgressing. In other niches, as in providing a report as an expert in forensic psychology, conflicting interests often are at stake and lawyers are already involved. These conditions may raise the probability for clients feeling unjustly treated and lower the threshold for lodging complaints.

Example 6

A psychologist consulting to a secondary school was asked to give counselling to a 15 years old girl. Before the start of the professional contact the girl insisted on absolute confidentiality as a condition sine qua non. Even her parents weren't allowed to get any information.

Rather soon the girl turned out to be suicidal. The psychologist consulted a colleague and a psychiatrist and found that the situation wasn't so dangerous that other interventions were necessary, nor did he find a reason to breach confidentiality by contacting the parents.

After a while, the guidance of the girl could be finished successfully. Later on, the parents found out what had happened. They furiously lodged a complaint to the disciplinary committee.

Please, give your opinion on this case and choose one option from the following tariff:

- ✓ *the psychologist's conduct should be regarded as being within the ethical standards;*
 - ✓ *the reason for the complaint should be acknowledged, but no sanction will be imposed;*
 - ✓ *the psychologist needs to be given some advice on professional ethics;*
 - ✓ *a warning should be given;*
 - ✓ *a reprimand should be given;*
 - ✓ *a reprimand should be given, as well as a conditional suspension of membership;*
 - ✓ *a fine should be given;*
 - ✓ *the psychologist should be expelled from his association's membership;*
- other*

In the third part of the questionnaire mentioned earlier, eighteen vignettes were presented to be evaluated by disciplinary committees of the national psychologists associations. The committees were asked to regard all the showed details as – the only – facts of the cases and to come to a “verdict” and to give a sentence, to be chosen out of a tariff, as in the above given example. For several reasons only six associations responded on this part of the questionnaire, reason why the results should be seen as highly tentative, not even taking into account the considerable time lag between the survey and writing this present chapter. Nevertheless the results may give some insight into how disciplinary board members think about ethics infringements.

The overall inter-rater agreement was very reasonable. Not surprisingly, the psychologists were more coherent in their opinions than the non-psychologists. As a group the latter were more lenient about some issues as sexual relationships with clients immediately after termination of therapy. Apart from a striking discordance on the case described in example 6, the inter-rater agreement between the international disciplinary board members was even higher than the Dutch psychologists',

notwithstanding that cultural differences easily could have interfered. Generally, the board members' opinions were somewhat milder than those of the Dutch psychologists.

The findings presented here are certainly not up-to-date. However, they may promise the likelihood of fairly equal treatment of complaints against psychologists, wherever they practise in Europe.

CONCLUSIONS

Things can go wrong. Errors are made. Infringements will occur. Psychologists need to face this and to take the consequences. Individual psychologists need to be open to look critically into their own behaviour and thus comply with the professional ethics requirement to be loyal in having their professional conduct scrutinised, if a complaint is raised. Or, sometimes better, to come to a settlement as a result of a mediation process.

The profession needs to take responsibility to maintain its high standards of professional ethics by having solid procedures to investigate and to decide upon complaints. In criticising the psychologist's professional conduct in retrospect, the imposition of sanctions may be unavoidable. However, to take corrective actions to ameliorate the ethical quality of future professional conduct, like requiring additional training, might be more constructive in promoting good ethical behaviour.

Looking into the future, it would be a good thing for the profession if the upholding of its ethical standards could be similar in all European psychologists associations.

Some research findings suggest that such is not necessarily just a dreamscape.

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