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PSYCHOLOGY OF CONFLICT AND SECURING AN INDIVIDUAL IN COURT PROCEEDINGS

This article is dedicated to psycho-linguo-communicative means of identifying the level and style of conflict behaviour displayed by lawyers, which should be overcome for the sake of securing an individual not just at the stage of listening to litigants, but after completion of the court proceedings. The skills of trial participants to discern psychological intentions by verbal indicators are important. This has been noticed at such problems in the society as social pathology, legal compulsion, anomic, invective remarks in communicative acts. Special features of the mechanisms of aggression manifestation and the markers of its recognition in practice as well as groups (types) of non-aggressive communication have been identified.

Keywords: *psychology of litigants, psycho-diagnostics, conflict communication, invective content, securing an individual, markers, conflict psycho-argumentation/reasoning, conflict-free psycho-argumentation/reasoning.*

Introduction

Psychological problems in relations usually are based on the divergences in perception of views, standpoints, values, temperaments of individuals and their mentality. Psychological component in each such case comes as a translator of anger, dissatisfaction, compromise or, vice versa, cooperation. Since in the psychology of conflict there are at least two sides of opposition, the reactions of non-correspondence mainly appear spontaneously, while mental responses to them largely cannot be foreseen. The consequences of reception may be qualified, on the one hand, as positive ones (clarification of the essence of the conflict and its resolving for at least one of the parties), and, on the other hand, escalation and deepening of disagreement with unknown consequences. Psychological components become particularly complicated in specific branch relations which, in fact, arise already at the dead-end stage – when the conflict can be resolved only at the legal level, in court. Of importance is the approach of interactive solving of an often violent conflict and application of scientific practice of reinforcement of psychological conflict resolution principles (Kelman, 2010).

We should notice that the complexity of court consideration is largely related not just to psycho-emotional characteristics of trial participants, but to legal qualifications of the judge as far as his/her skills and abilities to apply the methods of psycho-diagnostics to prevent unexpected reactions from the injured party and the prosecution are concerned.

At the current stage the disputes among researchers as to the correlation between human thinking and being have not yet been regulated and unified. In the cognitive process a conclusion is drawn in the following way: the above categories which are characteristic of an individual (person) constitute an 'indefinite variety' of features. Researchers see 'binary oppositions' in human manifestations of behaviour: being and conscience, physical and mental thinking and conscience. As a concise working modus there comes a conclusion that in the tandem of 'being and conscience' being dominates, being realized 'via interaction with conscience' reflecting it (Laponov, Komissarov, 2015).

The traditions of German, British, French and American schools of psychology have proven the need to study physiological human psychology (and not its history), laying an emphasis on the national specificity, society-oriented psychology – collective and cultural. The fact that being and conscience are in integral and complex interaction relations may a priori be represented via the scheme of their organic unity. The behavioural direction of human behaviour study (Carneiro,1981) is based on the methodological principle developed by H. Spencer – the 'inner shows itself and changes via outer activity' we have.

At the stage of functioning of the evolutionary associative psychology there appeared experimental psychology. In this context British researchers with the associativism paradigm stand out, while the German paradigm dealt with physiological psychology (I. Müller, H. von Helmholtz, W. Wundt). The theory of unconscious inference belongs to G. Leibnitz, H. von Helmholtz, J.Fr. Herbart; mental activity (spontaneous soul activity) and apperception – to I. Kant, H. Wolf, G. Leibnitz, J.Fr. Herbart, W. Wundt). There also existed the 'psychology of peoples'. At the stage of its development, in the dimension of social, collective, cultural psychology. This idea belongs to J.G. Herder, G.E. Lessing and W. Humboldt. The German theory of psychology preserves special achievements in the methodology of wording of 'two psychologies'. For example, for W. Wundt that is individual and collective psychology, for E. Spranger – comprehension and explanatory one, and with H. Wolf – empirical and rational, with W. Dilthey – descriptive and explanatory psychology.

As we know for the French tradition social model of mind development, as well as analysis of the phenomena of suggestion and application of clinical experience in psychology, within the connection of psychology with medicine, sociology and history, has been a success from the methodological point of view.

However, particular attention should also be paid to the conflict sectoral behaviour (in the situation with illegal actions). Though there are plenty of such researches, but one can talk about sufficient development of the psychology of conflict only in some fragments.

The problems of conflict in court are generally topical in the discussions of American lawyers (Mittelstaedt, Brian, 2012). They claim that argument becomes an extremely important means of conflict resolution. But the listener must be the person who best understands the argument and the issue. Though American Bar Association keeps to the standpoint that 'there is no universal recipe' for such problem settlement.

American researchers Paul M. Collins, Lisa A. Solowiej, while developing analysis of pluralistic, competitive and conflict members of *amicus curiae* groups in the US Supreme Court, have traced that 'Court is open to a wide range of interests', 'strict competition models' are available, however decisions of the Supreme Court are crucial for a wide range of interests, though are not considered to be the ones competing with one another. However, in case arguments expressed by one of the parties are acknowledged invalid 'in the expressive form of contention' (Collins, Solowiej, 2007).

E. Paunio from Finland interprets conflict in the context of court consideration, which is on the surface: court judgment, in fact, consists in fighting for the sense of the law since the parties in court present their interpretations of a certain real situation and application of legal norms. On the basis of this dialectic situation courts (for example Court of justice of the European Union) might create law by way of making judgments (Paunio E., 2010).

Classically, court proceedings are perceived as a certain 'battle field' where everybody has got his or her own law. Though E. Paunio makes a reasonable remark saying that 'in the hermeneutic sense each interpretation copy contains elements of a conflict (Paunio E., 2010). In this sense 'law is not static', it keeps developing on the basis of new interpretations that make it up.

Michal Alberstein (Alberstein M., 2015) assesses the role of judges in regulating the parties' claims, their striving to achieve consensus or apply general methods of conflict regulation – negotiations, mediation, arbitration, dialogue facilitation, problem decision, restorative justice and 'dispute design'.

Here appears a logic question: can a conflict of interest be resolved via ethical principles of judicial activity? Alexander G. Fessas, advisor to the International Court of Arbitration of the International Chamber of Commerce (Alexander G. Fessas, 2016) translates the ideas of 'ethics regulation' via communication, permission to adding an attorney, use of 'delicate' instruments of law.

British researcher Carmen E. Pavel (2009) elaborates the idea of non-competitiveness of moral values, but competition 'between two ways of their sense implementation'. While certain moral values are enshrined in the law, 'one may establish the connection between the legal conflict, on the one hand, and the regulatory conflict, on the other hand – 'a conflict between values' can be established. American legal theorist Joseph W. Singer comes to the same opinion in his layout (Singer J.W., 2014), suggesting 'explaining complicated cases' where value conflicts come to the surface.

The **aim** of the article is to establish the lawyer's skill of evaluating the psychology of conflict as a psycho-communicative problem, discerning negative consequences for the legal proceedings for the sake of securing individuals, taking into account psycho-verbal content of arguments and appearance of divergences as well as preventing their use by the subjects of law.

Tasks are the followings:

1) to characterize the essence of the notion 'psychology of conflict' with subjective content of expressions, complexity of recognition of the style of interaction between the parties to the conflict, their striving to justice, change of arguments, etc.;

2) to identify peculiarities of lawyer's practical skills to trace the causes of aggression in a conflict;

3) to develop means of securing a person in a conflict at the level of differentiation of psycho-linguistic arguments of conflict and conflict-free communication with markers of psycho-argumentation; discernment of the psychology of behaviour of subjects of law;

4) to make psycho-linguistic diagnostics of (judicial) conduct with projection onto establishing the style of communication and analyzing their results.

The hypothesis underlying the research consists in the fact that efficiency of conflict prevention and securing of individuals who act as parties to them is determined by the availability of skills and means of communicative

competence helping to diagnose the degree of opposition between the subjects of law, their psychological peculiarities of manifestation of the level of aggression in a conflict and ability of compulsory prevention of such consequences.

Research Methods

To achieve efficiency in the tasks set theoretical methods of analyzing scientific sources in the covered range of topics, scientific and methodological literature have been used in order to contrast the views of home and foreign scholars represented in them; to synthesize the core notions of the research and systematize theoretical achievements of scholars for the sake of establishing problems of the psychology of conflict recognition not yet settled either in theory, or in practice and means of securing litigants in a conflict.

Empirical methods of evaluating psychology of behaviour of lawyers and subjects of the legal proceedings involve: methods of psycho-diagnostics, judge interviewing (97 persons), talk, questionnaires, complex diagnostics of communicative competence of judicial staff; methods of mathematical statistics: quantitative approach to the wording of items embracing meaningful characteristics of communicative activity of judges; generalization of questionnaire materials and their interpretation for the sake of establishing reliability of the research results.

Psycho-diagnostics of the state of development of communicative skills and abilities of judicial staff as to the degree of aggression manifestation on the part of subjects of law, their competence in overcoming propensity to conflict and balancing the interests of litigants has been made under a specially developed methodology of tracing propensity to conflict, authored by such scholars as K.W. Thomas, R.H. Kilman, who envisaged questionnaire survey in conflict situations. This technique was somewhat creatively elaborated in a more profound way in the interpretation of judicial practice in the Commercial Court of Lviv region over the period of 2015-2018.

The schematic model of comparing psycho-verbal means of conflict-free and conflict psycho-argumentation manifestation with an indication to communicative discernment markers available in it has been developed on the basis of papers written by T. F. Volkova (Volkova T. F., 2017). To check reliability of behaviour style differentiation for the sake of securing a person during (and after) a conflict numerical values of psycho-conflict styles, taken from the assessment developed by R. Blake and J. Mouton (Blake R. R., Mouton J. S., 1964), have been used.

Research Results

Democratic conditions of state functioning aim to translate securing of an individual as an ideal which designs the effect of legal as well as moral and psychological principles securing application of constitutional norms and applicable legislative norms. The security of an individual is based on his/her confidence and internal psychological stability towards the guarantees provided by all state institutions as to such psycho-emotional status and order in the state. So far the statistics of the consequences of securing an individual in court proceedings unfortunately is full of negative cases of psychological breakdown of citizens who failed to achieve justice via the judiciary. The conditions of securing an individual cannot be guaranteed by pure legislation. They are hidden within juridical and psychological legal activity and objective securing of keeping to individuals' rights by lawyers. Even the slightest lack of psychological balance in favour of one of litigants leads not just to violation of law, but to it being impossible to secure another party against dangerous consequences (here murders of attorneys, human rights activists are meant).

E. Cahna's concept of the psychological theory of law gives grounds to creatively build the model of securing individuals against the consequences of the conflict or its prevention, with due account of the following specific features:

– measures taken within the culture of overcoming 'the sense of injustice' using legal tools should be a systematic and systematic process in the legal society;

– lawyers must consider 'the sense of injustice' from the biological-anthropological-psychological standpoint, with due account of the person's individual response;

– human dignity, equality, rights and individual status should be a priority in professional activity (Dyrda, Ghazal, Nowak, Pogorzelski, Samonek, 2011).

Psychology of conflict

Within the notion of 'psychology of conflict' at the level of different fields of activity there can be distinguished the following critical features: subjective nature of statements, unambiguous interaction with the subject, the striving to achieve the goal set by each of the subjects; directing one's arguments in the manner beneficial for oneself; the striving to establish justice; change of arguments; change in the subject's emotional status under the influence of irrefutable arguments; attempts of one party not to deviate from its beliefs. In case these elements can be traced, observability of only several distinguishing features as sufficient arguments cannot serve as a fact in proof. For well-grounded proving of a statement or a fact the whole spectrum of behavioural features of subjects is necessary.

To develop 'internal court conviction', on the other hand, in the course of hearing of the parties to the court proceedings it is insufficient to prove lack of reasoning or ungrounded, untrue nature of at least one of the features in the conflicting parties' behaviour, in order to put in question the untraced/provided arguments and not to lose all the other authentic arguments (Karakhanian, 2013).

Each subject of law has conscience. Human conscience appears as a screen reflection of human activity. Thanks to natural intellectual abilities it influences being. In this activity an individual and his/her conscience-containing component accumulates additional 'vectors of movement' in thinking, manifestation of certain degrees of freedom or aggression.

M. Laponov and V. Komissarov prove the justification of their statement 'conscience is thinking' via recognition of it (conscience) as internal, subjectively real activity which liquidates the controversy between the specific sense and conceptual levels due to correlation between their structural components'. Dually shaped model 'conscience is thinking' acquires the following methodological schematization: 'thinking is conscience'. 'It is intertwined into the canvas of objectively real being as one of its own essential parametres' (Laponov, Komissarov, 2015).

On such principles the researchers logically and consistently drive us to the statement that 'conscience determines social being' but the latter determines social (real) conscience.

Judicial culture is undergoing changes. That has become particularly noticeable over the last twenty years. Kaijus Ervasti, Finnish expert, stresses such situation in the courts of Finland. To achieve consistency in court hearings, legal guarantees and independence of the judiciary new alternative models of conflict resolution have become popular. The researcher has developed description of mediation, new non-legal norms. To regulate a dispute between the parties two ways can be deployed: one is to promote settlement in civil legal proceedings, while the other one is mediation in court. Hence, the author stresses the consequences of those methods for the judicial culture, since courts strive for 'amicable results for the conflict between the parties to be resolved in an integral and final way'. Judge cannot 'hide behind abstract legal notions', (s)he must undertake the moral responsibility of ruling' (Ervasti, 2007). Here the author manages to find almost the most important component of justice administration: possession of adequate (for the conflict) tools and skills (interaction, communication skills). Well-grounded becomes 'a clear need for developing incentives for the consumers to participate in the discourse of professionals, developing tools for understanding the way of conflict appearance' to promote conflict resolution in the judiciary. The importance of alternative conflict resolution emphasized by the researcher becomes even more serious in connection with legal pluralism, growth of transboundary legal relations, postmodernist law (Ervasti, 2007).

One more efficient explanatory model is added up to problematic hearings of conflicts in courts, authored by the American scholar C. Menkel-Meadow. Strict assessment of the modern Western adversarial judiciary, which is by far not the best way to settle disputes in the current post-modern multi-cultural world, where 'truth is illusory, incomplete, ambiguous and dependant on those who know it and on knowledge'. Since 'in the complicated and multicultural world individuals perceive 'reality' in different ways'. The author sees several logical instructions applicable to conflict unblocking (Menkel-Meadow, 1996).

Obviously, the role of judge as the listener and the key figure in the psychological conflict has not been studied yet. The methods of securing individuals still remain unknown. One may only assume that it is on him/her that the security of an individual who is a party to the conflict, public order and, finally, political as well as moral and legal situation in the state depends.

However, we have (in the opinion of methodologists) not just to substantiate the ordered nature of basic knowledge, but to explicate structural criteria and the nature of the subject, for instance, evolution of the method to the general theory of law.

Without leaving aside the communicative nature of law, let us add one more characteristic detail inherent in psychology of conflict. It (law) is an object and means of a conflict. And, on the other hand, it is conflict in the interaction of communicators and law that are linked through communicative intentions. Law – functioning on the basis of the rule of law principle, conflict – on the basis of the effect of emotional and expressive feeling of authenticity. Psychology of conflict, the same as the nature of law is unavoidably caused by manifestations of human conscience, sense of conscience and fairness.

Conscience is understanding and assessment of reality, one's actions and feelings, that is internal human comprehension of intelligence, intellect in the perception of the surrounding reality.

Sense of conscience acts as a spiritual and moral category which makes justice possible via internal feelings, evaluations, inner state, harmony of feelings, assimilated values and their understanding as well as observance of moral norms.

Fairness is the individual's attitude to his/her activity. Fairness is built on conscience with perfect or imperfect individual's mind. On these grounds, from ontological point of view, law belongs to the field of mental phenomena, it exists in human mind as emotional imperative and attributive emotion. Law is perceived as a factor of adaptation and socializing for the needs and compromises. It is human spontaneity and selfishness that must be restrained by punishment and warnings. A famous lawyer, social scientist, philosopher L. Petrazhytskyi has built his theory on such grounds (Kojder, Cyiwiński, 2016).

Identification of the reasons for aggression in a conflict

For many reasons less described in psychology of conflict are social pathology, legal nihilism, legal compulsion, anomic, deployment of invectives, etc. It is those reasons that in their considerable accumulation cause escalation of the judicial communicative conflict act, which, besides violation of legal order, influences mental status of all litigants.

Social pathology (Eng. *social pathology*, Fr. *pathologie sociale*, Ger. *sociale Pathologie*) is a borrowing from the field of medicine, which denotes social deformation (E. Durkheim). Each living creature may stay in different ailing pathological conditions. That is pathology that may be individual or group one, guided primarily at breaking (destroying) of legal norms: fight, terrorism, human trafficking, robbery, pressure at work, commercial crimes,

corruption, despotism against other harmful phenomena like alcoholism, drug-addiction, prostitution or other person's addictions (Kojder, Cyiwiński, 2016).

We include to the phenomena producing conflicts legal nihilism (Eng. *legal nihilism*, Fr. *nihilisme juridique*, Ger. *Rechtsnihilismus*) manifested in the weakened eligibility of law, low level of prestige of law, deligitimization of law, weakening of the importance of social functions of law, contempt for stable values in the society, weakening of the role of law in the conditions of political ideology growth.

Legal compulsion (Eng. *legal compulsion*, Fr. *contrainte juridique*, Ger. *rechtlicher Zwang*) is characterized by its nature and methods of affecting conflicts. Means of compulsion are influence of public order service representatives on individuals, which lies in means allowed by law (application of handcuffs, a ban on smoking, use of security means in the form of physical force, repressive sanctions, imprisonment) (Kojder, Cyiwiński, 2016).

One more reason causing a conflict between subjects of law is anomic (Eng. *anomic*, Fr. *anomic*, Ger. *anomic*) – a state in which a person does not feel stability in the system of values, while the society and culture do not produce such system of values. According to Plato's conclusion, anomic does not contribute to the adequate degree of action evaluation in the system of law.

Verbal and non-verbal means of psycho-emotional communication are often involved in all conflict manifestations. Invectives (insults) constitute a psycho-sociolinguistic phenomenon which is wide-spread in colloquial style and has been unfortunately transferred on to the practice of official and working relations. However, for the judicial practice the problem of invective discernment (in case transferred meanings of words are used) has not yet been settled.

Traditionally, the usage of any common words in a certain context (thanks to intonation, gestures, mimicry) can emotionally saturate the text or the statement. Unfortunately, so far the peculiarities of qualifying such lexemes in the judicial practice have not been generalized.

The degree of invective's effect can easily be identified through additional observation of non-verbal (signalling) evidence (posture, gestures, mimicry, etc.), conveying much more information that the written text. The same result can be achieved via the skill of perceiving a complex syntactic whole (discourse in this case) with the correspondents of emotionally expressive figurative meaning. One means here any lexeme with neutral meaning which, in a certain context with a certain psychological connotation, transforms its meaning from a neutral into a negative one. However, the ability to hide the deep essence behind the seemingly calm appearance may be accompanied by the use of words in their figurative sense. For instance, 'actor', 'brigade', 'team', 'maidan', 'movie', 'roof', 'wind', 'ear', 'weathercock', 'shill', 'duck', etc.

The complexity of assessing the psychological condition of the individual through usage of lexemes in their figurative sense (for instance, 'oak', 'roof', 'tiger', 'narcissus', 'Euro plate', 'mister', etc.) is related to psycho-emotional tension in the conflict environment. Unrestraint in words is manifested, as shown above, in external non-verbal signals.

Some lexemes have unambiguous semantics. In this case invectives are assessed by their direct meaning. Let us show it at a contrastive seme. Thus, 'adventurous neglect of law', according to Spanish scholar Jose Luis Alonso Hernandez (Lexico del marginalismo del siglo de Oro, 1977), corresponds to the meaning of the nominalized adjective desenganado – 'villain, swindler'. That is a person, including hollow hearted, a thief, aware of all possible ways of deceit (engano). That is the variant of meaning of the notions called 'violation of the law'.

Desengano is the word, the semantics of which means reproaching somebody for a mistake made. Lexeme with this meaning is also available in the figurative sense (senselessness, absurd, bad). Francisco de Quevedo used this word to create a figurative meaning.

It became a bookish truth which opposes lies and untruth. 'Spleen and fury', 'which make up the self-portrait of Alkiviad (Thomas Aquinas) is the type of offence that 'fatally releases revenge', while 'the fury of hatred is outrageous', it cannot stop its awful rage'. Such Baudelaire's assessment of spleen (tragic mood) is available in the society and unfortunately constitutes its 'ailment'. One means here a collection of poems and prose by Charles Baudelaire 'Le Spleen de Paris', published in 1869. However, the most important peculiarity was proven by Shakespeare – 'in ascribing spleen with social and moral status: that is 'the source of power over others' (Cassin, Sigova, 2013).

Hence, the inner 'ego' in communication, that may 'strive' for the future (a dialogue of reconciliation) enables to perceive the 'outer'. According to J.G. Fichte, 'ego' urges to leave the limits of oneself; the outer world is opened via it – positively assessed or negatively imperceptible for the Otherness. In psychology of conflict all means – both verbal, and non-verbal (in particular) are important for making assessment of the behaviour style of the court dialogue participants, since the latter carry about 70% of information, and figurative meaning is not characteristic of them.

The means of securing an individual in a conflict

To secure an individual in any conflict (legal one) legal and moral responsibility for emotional and psychological individual's status become more and more important.

Conflict type of behaviour beyond legal communication may lead to the development of affective communicative effect: psycho-emotional condition in this case resulting from overexcitement acquires an unexpected nature and is directed at those protecting their rights or the rights of their defendants (in order to be a winner, to gain sympathy or support) through a mentally subconscious stress-caused non-ordinary problem situation) (Tokarska, 2005).

Usually, mental traumas caused by conflict-generating communication through verbal offences with subtext or invectives affect the physical condition of the criminal.

'Psychological criterion' inherent in trial courts gets its meaning on the basis of rule of law only in case justice (civil, commercial, or criminal) is administered on the basis of adversariality of the parties. Adversariality reflects the conflict of interest that is not deprived of any emotional realizations of fight between arguments and standpoints of the parties to the court proceedings via psycho-lingual-communicative means. Psychological and emotional communication in trial courts illustrates 'hard cases' in the best way possible. However, observations made by the third party – judge – make the situation less tense and may take it away from the psycho-conflict plane via a well-managed perception process (ability to hear, to assess and to analyze the arguments provided by the parties to court proceedings).

Judicial reasoning takes an important place throughout the whole conflict. It is via means, methods, devices that trial participants bring their standpoint to court's notice for the sake of advocating their point of view as opposed to the opponent's point of view.

The main goal of reasoning is to resolve a conflict between litigants. Thus, it envisages the stages of confrontation, initial stage, reasoning, and conclusion. Each of the parties aims to gain psychological advantage in the conflict communication and to achieve its goal. However, of critical importance here is the force of arguments made for the sake of establishing legal truth and making a fair court judgment (judge does not establish the truth, but judges its establishment or non-establishment by court).

Currently, two approaches are available in the reasoning/argumentation theory development: the first one is connected to communicative reasoning (even without any analysis of logical components); while the other one treats reasoning as an attempt to change the audience's opinion. Here appeared pragma-dialectics, or pragma-dialectical theory developed by Dutch scholars Rob Grootendorst, Frans H. van Eemeren, A. F. Henkemans in 1980-s at the University of Amsterdam.

Being in a conflict, trial participants apply various means of persuasion, resorting also to methods of psychological impact. They are differentiated by the following criteria. Let us distinguish between methods of psychological impact using the system developed in legal psychology by M. Rudenko. The first criterion of psychological impact is based on legitimacy, non-legitimacy (use of evidence base, force of persuasion, arguments, mental violence, threats, blackmail, deceit, etc.); while the second criterion are the ways of exerting psychological impact by means of verbal or non-verbal realization; the third one – realization of psychological impact in the talk style (urging, cooperation, confrontation); the fourth criterion – manifestation of the degree of propensity to conflict – conflict or conflict-free; the fifth criterion lies in the tasks to be solved via warning, crime detection; the sixth criterion is developed by the mental manifestation influencing the motivational, cognitive and intelligence, emotional and will personality aspects; the seventh one is established as an event by the methods and means of influencing a person: persuasion, suggestion, reflection, evidence provision, statement and change of thinking tasks, clarification, use of psychological peculiarities of the interrogated person's personality, application of the effect of unexpectedness, 'free talk', use of internal divergences in testimony for the sake of disclosing inauthentic information, combined accelerated and slowed-down pace of interrogation, means of providing assistance to informers in order to restore the forgotten details and specific event circumstances in their memory and for the sake of correct reproduction of the things perceived; the eighth criterion is developed at the level of information and cognitive sense – that is direction of behaviour and activity, regulation and correction (Shulha, 2012).

However, in the provided transformed classification one cannot but pay attention to some groups of relative division of the methods of psychological impact (for example, the first and the second criteria, the second and all the other ones). One may speak about certain relative nature of such differentiation since communication (positive and negative, aggressive and friendly, true and false, legal and illegal, etc.) is a means of exerting psychological impact on the opponent. That is everything that is developed in the process of incentive-response, thinking, is implemented via means of verbal and non-verbal communication. Thus, from the first to the eighth criterion – the whole psychological process is built on the psycho-lingual component. Only sometimes there appear non-verbal (physical) actions caused by thinking processes.

Let us make an attempt to develop a comparative table of psycho-linguistic arguments of conflict-free and conflict communication for the sake of making the inspection (psycho-diagnostics) of the ways of securing subjects of law applied by judges.

Table 1.

Comparative Table of Psycho-Linguistic Arguments of Conflict-Free and Conflict Communication

Conflict-free psycho-argumentation	**Conflict psycho-argumentation**
1. Facts and their use for reasoning. *Markers:* a tolerant indication of the time, venue, event, phenomenon.	1. Facts distortion of which needs to be proven or refuted by one of the parties. *Markers:* communication manifestations of untruth, lack of knowledge of actual data distorted by the other party.
2. Statistics. *Markers:* generalizations, figures, official evidence, published and unpublished	2. Biased statistics. *Markers:* use of unconfirmed data.
3. Use of words with neutral shades of meaning. *Markers:* use of official and business vocabulary deprived of emotional and expressive shades in its semantics.	3. Use of emotional and expressive communicative meanings of words which, depending on the context, may acquire invective (offensive) meaning. *Markers:* words of figurative meaning (lighthouse, tree, duster …), words with a transferred meaning (actor, juggler, roof …).
4. Reference to laws and other documents. *Markers:* use of the Constitution of Ukraine 1996, codes, documents of institutions and organizations.	4. Biased use and interpretation of the norms of law. *Markers:* own interpretation of the articles of the Constitution of Ukraine, other regulatory legal acts from the variant reading and own benefit standpoints.
5. Psychological reasoning based on moral and ethical topos. *Markers:* contraposition of positive facts, features, phenomena and negative manifestations of their existence.	5. Psychological and expressive evidence with negative evaluation. *Markers:* expressive means and evaluation of actions, facts, phenomena with elements of aggression.
6. Figurative collocations. *Markers:* phraseology (mainly of Latin or Ukrainian origin).	6. Figurative definitions with clear expression of shades of condemnation, criticism, pressure. *Markers:* expression of negativism and criticism, aggressive reasoning, metaphoric devices.
7. Reference to authorities. *Markers:* citation of important documents and outstanding figures, confirming authenticity of evidence.	7. Reference to highly-reputable people. *Markers:* 'beneficial' citation of highly-reputable people of the world or of Ukraine; finding analogies that serve as false analogues used to confirm subjective beliefs.
8. Evaluation of real phenomena. *Markers:* availability of standard real assessment using neutral linguistic means.	8. Subjective assessment of facts and phenomena. *Markers:* adding elements of aggressive criticism and expression into statements.

* The table has been developed by analogy to T. F. Volkova's textual layout (2017).

The styles of communicative behaviour and its psycho-diagnostics

Let us try to analyze the styles of behaviour of trial participants and the degree of their psycho-emotional tension which is given to the judge as a 'problem game' aimed at reduction or avoidance of psycho-conflict aggravation of communicative interaction between litigants. Let us check the degree of substantiation of the methodology of managing action aimed at conflict prevention, developed by K. W. Thomas and R. H. Kilmann (Thomas K.W., Kilmann R.H., 2010). Classification of the styles of behaviour in a conflict is based on the analysis of the person's actions, however we will segment only the special features that are inherent in the field of legal psycho-conflict. Out of five styles of behaviour in a conflict two are most frequently characteristic of the judicial field of activity (in 87%) – 'rivalry and search of compromise'. One may not leave out, though, conflict-free forms: 'compliance', 'evasion' or 'cooperation'. The mastery of court consideration lies in psychologically balanced application of these forms in assessing both conflicting parties to the court proceedings. For psycho-diagnostic purposes a questionnaire has been developed (30 items) and given to 97 practicing staff members of the Lviv Regional Commercial Court. Each item had two answer options.

Discussion

In the first type – rivalry – there prevail emotions of getting an imaginary or real victory over the opponent. That raises psychological tension to the maximum and minimizes attention to the response of the other party. There appear dangerous psycho-emotions in the form of pressure and threat, breach of dignity of the opponent, his/her behaviour or knowledge, distrust in and criticism of the communicant's reasoning.

Usually, communicative and legal commissives (CLC) act as judicial psycho-correctives. CLC are commitments (in this case – lawyer's commitments) to regulate the level of psycho-emotional tension through legal means in the course of the conflict discourse as well as

the judge's responsibility presupposing realization of the commitment to keep to the rule of law principles, democracy values and judicial tasks, reduce the level of psycho-emotional tension and prevent it from reaching the level of excessive demands expressed by one of the parties, as well as to prevent illegal application of sanctions against them by the judge. As psycho-diagnostics made shows, intentions of 93% of judges correspond to this style of behaviour (table 1).

The style of behaviour 'cooperation' does not mean 'satisfaction of the interests of all the trial participants'. In fact, the court's judgment is fair if as the result of it both parties are not satisfied to the full. Inconsistencies become an object of discussion, while communication between subjects of legal relations must be guided by the judge into a compromise or joint discussion aimed at conflict resolution. Such behaviour modeling is characteristic of 72% of judges, thus requiring improvement of the society's legal culture.

The three following judicial behaviour styles – reaction to conflict containment and looking for ways to resolve it – constitute only general directions of regulating psychological reactions of litigants.

The first one style is 'smoothing' – compliance – guiding emotions towards calm case consideration. Objectivity in case consideration can be achieved only in a calm atmosphere (on condition of high legal culture of trial participants) – and that must be the main reasoning for a judge in keeping to the rules of CLC application in communication between all trial participants. Such methodology is not attended by judges in 58% of cases, which, respectively, influences the image of the judiciary and dissatisfaction with it.

As far as 'evasion' (distancing) is concerned, which in its mental state is not allowed in court at all, it may be just pretended, seeming, tactic (3.5%). This deepens negativism in the society and impedes changes in the judiciary.

In the style of compromise (understanding) the judge faces the task of bringing the interests of both litigants to a (more or less) fair satisfaction of the parties' interests. In such a 'compromise situation' one manages to gradually reduce psychological tension and make a well-balanced fair decision in a court case.

Acceptability of such style of psycho-behaviour is the highest (97.3%), however, the opportunities for its application equal 5.5%.

Thus, let us transfer our survey results to the scale of orientation at improved relations between the parties to the conflict (K.W. Thomas, R.H. Kilmann) on the basis of numerical values of the styles developed by R. Blake and J. Mouton (Blake, R. R., Mouton J. S., 1964):

Orientation at the result of 'securing an individual' during a conflict gets the following confirmation:

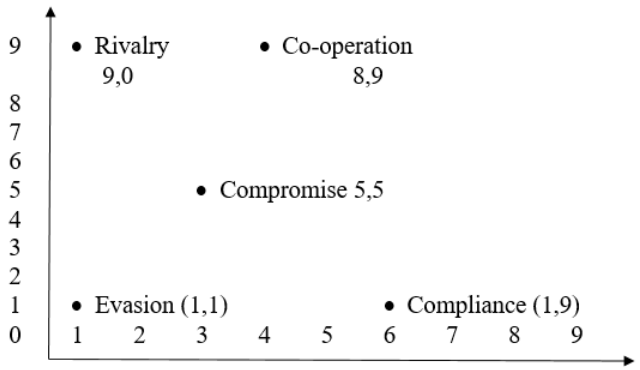

Figure 1. Behaviour Modeling in Litigation Between Parties of Court Process

Thus, the research made, on the one hand, confirms availability of communication styles (K.W. Thomas, R.H. Kilmann), and, on the other hand, refutes efficiency according to R. Blake and J. Mouton in judicial practice: rivalry value (9. 1), and with us – 9.0; cooperation 9. 9, and with us – 8.9.

Conclusions

On the basis of conceptualized evaluation of psychological conflict status by judges for the sake of securing an individual prior to, during and after the court session, the following has been traced: 1) drawing no attention to the issues that cause mass dissatisfaction with court decisions in the society, suspicion of high level of corruption among judges, unwillingness to go deep into the conflict, etc.

The reasons for such situation include non-described phenomena in psychology of conflict like social pathology, legal nihilism, legal compulsion, anomic, invective remarks against an individual based on poor legal culture, destructiveness of the society.

Attention in this survey has been paid to differentiation of conflict-free psycho-argumentation and conflict psycho-argumentation with their psycho-linguistic-communicative markers, on the basis of which psychological criteria (eight) have been identified. In the style of rivalry 93% of the surveyed judges are prone to use

means of legal commissives (CLC); while 72% of judges strive to guide in the 'cooperation' behaviour style.

However, almost 53% of the surveyed judges do not ensure regulation of emotional communication between litigants. The style of 'evasion' (distancing) from the mental condition, though, may be pretended (3.5%), the same as compromises (5.7%). In numerical values (according to R. Blake and J. Mouton), this acquires the following form: 'rivalry' reaches almost 9.0; 'cooperation' – 8.9; compromise – 5.5; evasion – 1.1; compliance – 1.9.

As the result of professional choice of behaviour style the judge legalizes and directs a dialogue (polilogue) into the legal field.

The following is a priority for achieving a positive result of regulation of psycho-emotional condition of trial participants by a judge: compliance with the rule of law principle; observance of democracy values and tasks; alleviation of psychological opposition (stress, tension); alleviation of conflict and disturbance situation in the courtroom; drawing the public's attention to the need to raise legal culture in the society.

Negativism of psycho-emotional conflict state in the courtroom lies in:

- raising and development of illegal actions (pressure, threats) both by trial participants, and their overgrowing beyond the courtroom;
- destruction of the image of justice and development of mass dissatisfaction of the public with judicial practice;
- appearance or deepening of negative processes that are psycho-traumatic for the public;
- impeding of the implementation of state development program, its change for the better, giving birth to psychological disappointment of the citizens with the judiciary.

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ПСИХОЛОГІЯ КОНФЛІКТУ ТА УБЕЗПЕЧЕННЯ ОСОБИ У СУДОВОМУ ПРОЦЕСІ

Психологія конфлікту постає як маловивчене явище, особливо, якщо взяти до уваги інтерактивне вирішення проблеми на завершальному етапі – у процесі судового розгляду. У зв'язку з цим актуалізується практика наукового визначення психокомунікативних принципів урегулювання конфліктів суддями. Йдеться про необхідність привнесення змін в оцінку юридичної кваліфікації суддів щодо вмінь та навичок застосування стилів та методів психодіагностики реакцій учасників судового процесу та способів їхнього убезпечення. Метою дослідження є визначення вміння оцінки правником психології конфлікту як психокомунікативної проблеми, розпізнавання негативних наслідків для судового процесу з метою убезпечення осіб, урахування психовербального змісту аргументації і появи суперечностей та недопущення їхнього розгортання суб'єктами права. Методами аналізу матеріалу стали: теоретичні методи аналізу наукових джерел; синтезу та систематизації; методи психодіагностики, інтерв'ювання суддів (97 чол.), бесіда, анкетування, комплексна діагностика; методи математичної статистики; методики вияву конфліктності за авторством К.У Томаса, Р.Х Кілмена та модель порівняння психовербальних засобів прояву неконфліктної та конфліктної психоаргументації, що вироблена на основі праці Т.В. Волкової та методики, розробленої Р. Блейком і Дж. Моутоном. Відтак проведене дослідження, з одного боку, підтверджує наявність стилів комунікації (К.У. Томас і Р.Х Кілмен), а з іншого – спростовує результативність за Р. Блейком і Дж. Моутоном у судовій практиці. Результатом дослідження є підтвердження наявності у психокомунікативній практиці юристів (суддів) п'яти різновидів стилів комунікації, а також спростування показників суперництва та співробітництва в галузевій комунікації.

Ключові слова: психологія сторін судового процесу, психодіагностика, конфліктна комунікація, інвективний зміст, убезпечення особи, маркери, конфліктна психоаргументація, неконфліктна психоаргументація.

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