
**DEVELOPMENT OF THE MAGISTRATE'S INTIME CONVICTION IN THE
CONTEXT OF NON-VERBAL COMMUNICATION**

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Abstract: The author of this paper tackles the concept of intime conviction of the magistrate (judge, prosecutor) and relevant aspects of the etiology and practical importance of its content, as a subjective basis for establishing judicial questioning tactics that help the magistrate in his/her decision-making. By approaching the process of intime conviction development as part of an interpersonal communication system, the author analyses the contribution of interpreting nonverbal, extra-semantic clues given by the person being questioned and by all participants in courtroom debates, to the detection of feigned behaviors and the subsequent adjustment of questioning, paving the way for the development of an intime conviction. Consequently, improving hearing and questioning practices for the accused, the investigated, and witnesses involves professional control and self-control in terms of eye contact, facial expression, gestures, stance, paralanguage, touching, proximity and dress, in order to masterfully achieve specific goals in delivering justice.

In addition to subjective, intrinsic, personality-specific factors, the development of intime conviction also entails extrinsic factors, among which are the magistrate's ethical values and deontological code. The author analyzes how fundamental ethical values of the judiciary – Independence, Impartiality and Integrity – can stimulate the completion of intime conviction, whereas if magistrates stray from ethical norms, this might generate distortions of intime conviction, resulting in judicial errors. The magistrate's moral duplicity may be expressed outwardly through specific nonverbal and paraverbal clues, which might be interpreted correctly by an expert psychologist.

Keywords: intime conviction, questioning, feigned behavior, nonverbal clues, judicial decision.

1. Introduction

Convictions are superior components of motivation, with a cognitive, affective and value content, embodied in ideas that are deeply rooted into the structure of personality. An idea becomes a conviction only when an individual sees it as a value, a subjective certainty that can be justified with arguments believed to be unshakeable / uncontestable.

Convictions, according to the classification of an American psychologist (Abraham H. Maslow, 1954), are placed in the superior category of motivation, and are related to spiritual, ethical, knowledge or self-awareness needs. Convictions operate as *force ideas*, as *value ideas*, and are equivalent to a person's needs, professional and personal ideals, worldview, and religious faith; they are actualized as motives in action, especially when the person is in the position to make certain decisions or is engaged in a conflict of values. Under such circumstances, the stronger, more unshakeable convictions shall act, to a greater extent, in orienting decisions and choices, and justifying options. A conviction is constantly promoted by a person, and when it is contradicted or attacked by others, this person will go to great lengths to defend it.

The *intime conviction* of an investigator or magistrate is a force idea, value idea, correlated to good faith, which develops gradually during criminal prosecution and judicial investigation, as new direct and indirect evidence is gathered to ensure the ascertainment of truth and a correct judicial decision. In this context, we may agree to the following definition given to the *intime conviction* of a magistrate / investigator:

In law, *intime conviction* is the psychological state of persons who are responsible for applying laws, based upon good faith, who are reconciled to their own moral conscience, which has guided them in ascertaining the truth, by using legal means, and in taking legal measures required by the established state of affairs.”¹

A favorable social and institutional framework for the development / consolidation of the magistrate’s *intime conviction* is one in which human and civil rights are guaranteed, in which the constitutional principle of separation of powers is consistently applied and in which the principle of magistrate independence, impartiality and integrity is respected – as magistrates shall only be subject to laws.

The *intime conviction* of an investigator or judge is a cognitive/value-related motivational formation, based on good faith and constituting the source of opinions, evaluations, circumscriptions and personal options for each member of the panel during deliberation, motivating judicial decision. Deliberation carried out by the judge after the conclusion of debates is centered, first and foremost, on matters of fact (i.e. those closely related to evidence) and then on matters of law, regarding the classification of the crime and the application of the due sentence. Complete sufficiency and coherence of evidence is the objective basis for reconciling the magistrate to his/her own moral conscience, for shaping an *intime conviction* that the solution to the case is just and equitable.

In judicial practice, the process of developing the *intime conviction* of the investigator or judge is not a straightforward and uniform process. Several obstacles may prevent the shaping and development of a conviction regarding juridical truth, such as the absence of direct evidence, the intelligent and creative duplicitous behaviors of certain defendants during the process of judicial investigation, the pressure of public opinion, the contrary or contradictory character of the *intime convictions* of the two protagonists in a legal battle (the prosecutor and the defense lawyer) in terms of how the case should be solved, the prosecutor or lawyer’s attempts at taking advantage of the sensibilities and weak points of magistrates etc. If the magistrate did not develop a definitive *intime conviction*, the case must be reprised or re-docketed. The legislator foresaw the event of re-docketing cases in which magistrates did not succeed in developing an *intime conviction* after the debates had ended, the final pleas had been delivered on both sides, and the defendant’s last word had been heard – as a subjective and moral basis for reaching a legal decision.

As a conclusion that may be drawn from the above-stated, we might suggest that G. F. W. Hegel – a great classic German philosopher of law –, expressed an historical truth by

¹ Tudorel Butoi. (2004), *Interogatoriul. Psihologia confruntării în procesul judiciar (Questioning. The Psychology of Confrontation in Judicial Trials)*, București: Editura Pinguin Book, p. 152.

writing that the duty of deciding must fall to subjective conviction and conscience (*animi sententia*), and when the evidence rests on depositions and statements, the oath, though a subjective confirmation, is ultimate.²

Therefore, the basis for the *intime conviction* underlying the judicial solution, from a psychological perspective, is the thorough knowledge, by law enforcers, of the principles and laws governing the psychology of personality and small groups, the use of specific psychological techniques, their own morality and good faith, as marked by professional honesty (*honeste vivere*), rightful intention, diligence, legitimacy and abstention from producing damage to others. *Intime conviction* is a result of gathering and interpreting evidence, testing the truth of testimonies and statements by the parties involved, evaluating and cross-examining the various reports of participants in the criminal trial.

The management of communication occurring among participants in the judicial process, by magistrates, is an essential component of factors that may influence the development of *intime conviction*. This study will now turn to the analysis of aspects influencing the development of the magistrate's *intime conviction*, which are due to nonverbal communication and the magistrate's struggle with himself/herself on a subjective, psychological plane, in order to preserve his/her independence and integrity.

2. Interpreting nonverbal clues, feigned behavior and the *intime conviction*

The interpersonal relationship between the investigator and the investigated essentially presupposes communication. Practically, the act of justice is achieved through the agency of communication, which is ubiquitous in pre- and post-criminal phases, in criminal prosecution, in courtroom debate sessions, in judicial investigation, in deliberation, in a prison environment or in the work of reeducating reinserting criminals onto the labor market. For these reasons, elements of communication psychology shall condition the transition from the science of law to the mastery and art of organizing judicial investigation, hearing witnesses, managing the confrontation between the two lawyers, communicating in the courtroom etc., in the sense of increasing the efficiency and quality of the act of justice.

Communication, as transmission of information from one person to another, has a verbal component (due to the use of language) and a nonverbal, extralinguistic one (beyond the use of words), or, in other words, it has a semantic and an extrasemantic component. In verbal (oral or written) communication, importance is attached to the choice of words, to how sentences are build, these resulting in great differences among individuals in terms of ability to verbalize, styles of verbal communication, capacity for subtle, nuanced expression. Concomitantly to verbal communication, we involuntarily and, most of the times, unconsciously use a variety of signals (termed clues), which pertain to nonverbal / extralinguistic communication. The scope of nonverbal clues is composed of expressions of eye contact between the interlocutors, facial expressions, gestures, poise, paralanguage,

² Hegel, G.F.W. (1963), *Principiile filosofiei dreptului (Elements of the Philosophy of Right)*, București: E.A.R., p.256.

touching, proximity, dress, body contact, head movements, the person's physical appearance, the odor emitted by the communicator.

Nonverbal communication codes are limited to face-to-face communication, having two functions (John Fiske, 1990):

The first, as we have seen, is to convey indexical information. This is information about the speaker and his or her situation through which the listener learns about her or his identity, emotions, attitudes, social position, and so on. The second function is interaction management. The codes are used to manage the sort of relationship the encoder wants with the other. By using certain gestures, posture, and tone of voice, I can attempt to dominate my fellows, be conciliatory towards them or shut myself off from them.³

Nonverbal expressions are perceived, may be observed and, to a certain extent, ascertained by the interlocutor, whether s/he is a magistrate, an investigator, a lawyer, a defendant, a victim, a witness or an expert. Messages and information transmitted through nonverbal clues may be consistent with what is expressed in words; they may strengthen and nuance certain meanings of verbal communication. There are, however, frequent instances in the process of judicial investigation, in the wording of a witness's testimony, in the contradictoriness of the judicial trial, where inconsistencies, incongruities, oppositions occur between the two types of communication. These may appear in the case of feigned, duplicitous behaviors and lies. Yet, an investigator or magistrate endowed with flair, professional tact and intuition may observe and interpret the deceptive nature of the expressive manifestations of the defendant's affectivity / personality, may adopt changes of tactics during the process of questioning or hearing, or new procedures in conducting investigation, thus enhancing his/her opportunity to perform well in achieving his/her professional mission.

In their turn, the defendant or any of the litigating parties, provided they have psychological training, experience in the field of communication, a certain amount of "practice in nonverbal communication", may certainly draw meanings from the nonverbal or paraverbal communication of the prosecutor who runs the judicial investigation, of the judge or president of the court. In some cases, the persons investigated as parties in the litigation, attempted to take advantage of such manifestations of the magistrate's nonverbal conduct; as such, they changed their attitude and tactics, and they invoked evidence of infringement of the principles of impartiality and integrity on the part of those magistrates. Examples of such nonverbal manifestations are frequent in judicial communication: the investigator raising his/her voice, the use of subtle irony, the use of a deceptive question; repeated approval (as shown by the judge nodding his head) of the reports of one witness; threatening glances in communication with one of the parties; gestures and facial expressions of the investigator, implying that he is under the influence; the alternation of proximity (distance) between the parties (for example, a judge allows the prosecutor to approach and enter his private space, while the defense lawyer is required to keep the official distance); certain facial expressions

³ Fiske, John. (1990), *Introduction to Communication Studies*, Londra – New York: Routledge, Cap. IV, p. 92.

and smiles with approving significations, in communication relations with a defendant who is a minister etc.

The interpretation of such nonverbal displays by a neutral observer, by an expert psychologist, or by journalists, raises doubts as to the objectiveness, independence, impartiality and integrity of some magistrates. Yet, in cases where the ethics and deontology of magistrates are adulterated by certain perturbing factors in communication, the magistrate's process of developing his/her *intime conviction* will certainly escape the regulating control of his/her good faith. This serves to show how important it is for the magistrate to have some knowledge of communication theory and judicial psychology, in order for his/her professional activity to attain the level of professional mastery, effectiveness, efficiency and desirability, as social expectation.

We shall rest, as follows, upon a few components of nonverbal communication in the conduct of judicial investigation and courtroom debates:

- **eye contact** between the interlocutors (police officer – suspect, judge – witness, prosecutor – defendant, lawyer – expert, criminal – victim etc.) is one of the most powerful nonverbal clues, and an indicator of emotions, interests and intentions. The length, orientation and type of eye contact, the object of an interlocutor's visual focus while s/he speaks have an informative value for the investigator / magistrate. Likewise, the avoidance direct eye contact, switching one's focus from one object to another, long glances, striking gazes, the barring of eye contact may have play important parts in communication that is specific to interpersonal relations of opposition and confrontation. The most relevant functions of eye contact (according to Argyle - 1975) are the following:

- a) it expresses emotions and other affective processes;
- b) it regulates the flow of conversation;
- c) it provides feedback to the speaker on what s/he has communicated,
- d) it reciprocally informs participants in a dialogue on the nature of their relations.

Interpreting the clues derived from eye contact is a matter of probability. Thus, it is believed that closely watching an object or a movement is a sign of interest / attention, while eye contact would respond to the interlocutor's need for approval, the frequency of eye-blinking and eyebrow-shifting might express certain feelings, relaxed eye muscles when eyes are not wide open would express sympathy for the interlocutor, pupil dilatation would express pleasure caused by the interlocutor's presence, fixed and vacant stares would be indicative of withdrawal from reality, downcast eyes might show humility, guilt or shyness etc. Such clues appear to the background of verbal communication and can be interpreted by any of the participants in the dialog. For this reason, eye control must be cultivated, educated and censored by all those who work in the judiciary, so as to not allow themselves to be approached, „read” and interpret by the accused, false witnesses etc. Awareness of the meanings attached to clues resulting from eye contact and their use in the magistrate's professional dealings might have higher pragmatic valences.

A magistrate's promotion of the 'supremacy of the law' principle, of neutrality and equidistance from the parties involved in a trial, of good faith, is externalized in natural, neutral, distributive glances, according to the correct application of the procedure, which

requires communication to be subordinated to it; a magistrate's eye contact with another party to the trial must not leave room for possible interpretations of partiality in favor or against that party. A neutral observer, the defendant in the case or the press might immediately start to doubt the independence and impartiality of the magistrate, if s/he avoids to look in the direction of one party and instead insistently and repeatedly gives "positive", "admiring" glances to the other party, or absently looks out the window while the lawyer of one of the parties pleads, or looks frowningly and defiantly at the defendant when his lawyer demonstrates the existence of extenuating circumstances, or admiringly focuses on the prosecutor involved in the case (who is known to be a friend of the judge's), or if the first time that he lifts his eyes from the file, since the very beginning of the trial, is when the high dignitary accused of corruption is brought before the court etc. Such expressions of "eye-to-eye" communication may become suspicious to one of the parties in the courtroom or to an independent observer, and are often taken as premises for attacks on the magistrate's professional integrity. The press or hostile pressure groups know how to make use of such nonverbal expressions of the magistrate in order to attain their purposes.

- **facial expressions** can take a large number of possible forms, which carry specific messages. There are certain facial expressions which bear the same meaning everywhere in the world; in other cases, the facial expressions of affective processes (emotions, feelings, passions) are culturally determined (by habits, traditions, collective mindsets). The range of possibilities for expressing feelings, emotions or moods through facial expressions is extremely wide. In this respect, there are well-known, typical facial expressions for fear, anger, threat, curiosity, sadness, astonishment, surprise, happiness, contempt, pessimism etc. Facial indicators provide feedback in the interpersonal contact taking place in a judicial investigation office or during courtroom debates, and they can reciprocally adjust the conduct of those involved in criminal prosecution / criminal trials, adapting communication according to the signals received from the sender (prosecutors, judges).

For the investigator or judge, facial expressions displayed by the accused, by a false witness, by persons that are very close to the accused, have interpretable, decodable meanings. This is even truer if the magistrate has thorough psychological knowledge and experience. Common people have natural, genuine facial expressions, while suspects and false witnesses, under the pressure of virtual punishment, shall frequently attempt to play the part of a common person, that is, to convert psychological states, emotions and other primary affects that unconditionally accompany immoral and illicit behaviors, into contrary expressions. But for this to happen, the accused has to be a very good actor. Even with talent for acting, it is impossible for contrary signals, evidently artificial and compromising, to be muffled completely. The duplicitous attitude of the criminal may be relatively easily identified by an experienced investigator, who has benefited from sound psychological training, by analyzing the meanings of facial expressions that appear when he has to respond to questions that trigger certain emotions.

Criminals may also harness communication skills, especially as regards nonverbal communication, resulting either from the nature of their profession (in the case of physicians, sociologists, psychologists, journalists, priests etc.), or from thorough knowledge of this field.

As such, magistrates must have, in their professional dealings, a fair amount of self-control over their conduct as interlocutors, so as to avoid the emergence of nonverbal communication breaches, which might then be interpreted by the investigated to their advantage, and followed by changes in their tactics. This might hinder the attainment of performance in judicial or criminal investigation.

- **poise** – the position of the body, reactions in which the entire human participate, positional echo, gait, gestures, are all indicators and ways of communicating information that is auxiliary to what is transmitted verbally, and which may be intentional but which, most often, are unconscious, unconditioned forms of communication. The position of the body (standing, slanting, sitting etc.) may indicate tiredness, drowsiness, hyperactivity, increased attention, empathy towards the speaker, assumption of the master role in communication, defiant attitude etc. Poise, combined with gestures made by the participants in communication, transmits the most subtle of signals, such as attitudes of approval / disapproval, reactions of affirmation / negation, feelings of apprehension / expectation, trust / distrust, hatred / desperation, offensive / defensive attitudes, joy / sadness etc.

Stance and gestures are dependent on the interlocutors' status. Generally, listeners (the accused, the suspect) have the tendency to make less gestures than speakers; this also applies to those who hold an inferior status in the communication, with respect to those who have a superior status, or to those who have no authority, with respect to those who are officially vested with authority by the state (magistrates).

Gait, in connection to gesticulation and the reaction speed of the subject who communicates and receives information, emotions and feelings, provides clues on certain psychological particularities of the person at that moment. Speed of movement, pace changes, elasticity and ampleness of gestures, firmness of steps, alternation of forms of movement, are clues to the neuropsychological mobility, to the temperamental profile, to the person's level of energy and affective configuration. For example, a firm, fast gait, with ample and lively steps indicates a good mood, self-confidence and optimism. On the other hand, a slow gait, with small steps, might signify a lack of energy, old age, depression, sadness. In many cases, affective shock can trigger gait dysfunctions.

- **touching and proximity** give relevant clues to the nature of affective relations, to the presence of attitudes, interests, feelings in those who communicate. The reflex of touching the interlocutor expresses a certain emotion or affective mood which might take the form of a greeting, a kiss on the hand, a caress, spontaneous and unconditioned touch etc. In social gatherings, touching, as a part of communication, and also as a part of communication between the sexes, is regulated by moral norms. It may be remarked that touching might signal not only gender and age, but also social status. The most frequent situation is when people with a higher social status are those who initiate touching (by stretching out their hand, by amicably patting the interlocutor on the back, by wrapping their arm around the person's shoulder etc.), while people with a lower social status allow themselves to be touched, but will not initiate acts of touching. In interpersonal relations occurring as part of a judicial investigation, in communication taking place throughout a criminal trial, touching transmits

complex signals in a criminal – victim relation. A defendant's initiative of touching the prosecutor, or a police officer touched by a suspect, are rarities. Instead, settling on a range of touching techniques practicable by investigators is crucial for attaining the goals of questioning, for creating, in the investigation office, a socio-human ambient that favors communication and, especially, trust. In this area, as well as in public spaces pertaining to law enforcers, touching is rationalized, stylized, subject to voluntary self-control, and targeting the accomplishment of professional goals.

In general, reciprocal touching expresses affective relations, of closeness, solidarity, friendship, affective attraction of varying degrees. In relations of conflict, emotionally triggered touches are absent; the tendencies of persons and groups are centrifugal and tend towards separation. In the case of communication in the investigation office or in the courtroom, communication is oppositional and expresses the magistrate's authority over the other interlocutors. Inasmuch as touching occurs, it is rationally and professionally regulated, and it is normally initiated by the person in authority.

Proximity, i.e. closeness allowed between the prosecutor and the defendant, between the judge and the defense lawyer, between the police officer and the witness etc., is another form of extraverbal communication that provides information about social relations among the participants, their affective states, reciprocal attitudes etc. According to habits and mindsets, in any society, there is an outlook on private space, which the individual strives to protect, and this includes the optimal distance between participants in a dialogue. The degree of relatedness and friendship seems to influence interpersonal distance. The more intimate, familiar or friendly a relationship is, the more distance and private space decrease. In the case of court-specific communication, private space and proximity, albeit not legally regulated, are traditionally managed by a respect induced by the prevalently institutional character of relations and by the specific authority of a state institution.

In judicial communication, several forms of expression by touching and adjusting proximity have raised questions from neutral observers, the press or litigants, with regard to the impartiality and deontology of magistrates. Thus, for example: the judge involved in solving a case of corruption had her hand kissed by the accused within the premises of the court; the prosecutor and the defendant had a tête-à-tête during the intermission of an opera show; the judge and the defense lawyer communicate, in the courtroom, by sitting on chairs at a distance of 30-40 cm (while the official distance between them should be approximately 10 times longer, and the lawyer must not sit unless invited to do so by the magistrate); the young judge was caressed by an unmarried doctor, charged with bribery; the judge and the lawyer of one party to the trial had been seen, during the evening before the trial sessions, dining in an expensive restaurant; the judge and the father of the young men charged with involuntary manslaughter had been seen hunting together; the prosecutor and the defendant had been seen playing tennis on a weekly basis etc.

Such elements of communication come to incite public feelings of distrust in the act of justice and become subjects of tabloid reports.

- **paralanguage**, i.e. speech particularities that refer to verbal flow, tone, rhythm, pauses, reprisals, speech modulations, transmits additional information to what sentences

convey. Certain strong emotions – such as anger, hatred, terror, anxiety, elation etc., are externalized in specific intonations, and may cause stammering, incorrect use of language or repetition. When the speaker is hesitant about the reaction his collocutor will have, this may result in pauses or space fillers such as “err...”, „umm...”, „or maybe not, err, or umm, uh...”. The emotional state of the communicator unconsciously leaves its mark on the actual timbre of the voice: positive emotions are reflected by a warm and resonant timbre, whereas a negative emotion, such as anger, is marked by a strident, loud timbre.

The rate of speech or verbal flow is a way of communicating information. Slow speech may be indicative of insecurity, prudence, tiredness etc., whereas fast speech might mean that the magistrate is worried and anxious. “Precipitous” speech, pauses in verbal flow, pronunciation, fluency offer clues as to cognitive processes, temperamental profile, the dynamics of affective life, demonstrating how useful paralinguistics is in inter-human communication. The importance of paralinguistics for the judicial and criminal investigation and the criminal trial as a whole clearly results from the analysis of the hypothesis that these might be conducted only on the telephone or only in writing. In such situations, no meanings could be drawn from nonverbal communication clues, with their entire wealth of virtual interpretations.

In some cases, paralinguistics that occurs in the communication of magistrates may provide elements that infirm good faith or their efforts of finding sufficient evidence and support leading to the development of *intime conviction*, based on the re-establishment of the truth resulting from the sufficiency of necessary evidence. Such judicial trials take place in times of social revolutions, in the case of judging political leaders, highly reputed personalities in culture, science, religion, economics etc. (for example: a high priest of the Catholic Church, charged with child abuse; the president of a world bank, charged with rape; a great director, a world champion in sports, charged with robbery or assault; a politician – senator, president of the state, minister – charged with involuntary manslaughter; a president of a state or high dignitary, charged with corruption etc.). Trials focused on solving such cases involve communication between participants in the courtroom, among which are two authorities: the functional authority of magistrates and the informal, specific authority of a prestigious personality, accompanied by the authority of his/her official position (or a “shadow” that is left of it). The extraverbal conduct and especially the paralinguistics of magistrates throughout criminal investigation and courtroom debates may undergo certain deviations from standard procedure. A good example in this respect is the trial of Nicolae Ceaușescu and other historical personalities of the same type (Saddam Hussein, H. Mubarak etc.). From the perspective of the panel and the rioting crowds, that trial was legitimate, whereas the accused considered it not only illegitimate, but also illegal. Such instances of communication, including paraverbal, are an example of how criminal investigations and judicial debates must not be conducted. Even though the trial was started under political pressure and on command, the magistrates and the other “judges” involved should have demonstrated, in a manner that included nonverbal and paraverbal expressions, that they were independent, impartial, integrous, and bearers of the dignity of their position. However, expressions such as: raising one’s voice, timbre, trembling speech, pauses, stammering,

reprisals, phrasing, alternations of speech rate, menacing facial expressions etc. can be interpreted as signs of professional insecurity, noncompliance with standard procedures, bad faith arising from hatred, vengeance and anxiety, caused by the presence of a historical character, deemed evil by the magistrates.

The communicator's personality is also expressed in **dress, jewelry, hairstyle, tattoos, hygiene habits, physical appearance**. The following text contains self-evident truths:

Another way that we can communicate with one another, without the use of words, is through dress. We are all familiar with the various uniforms which are used to signal that someone is occupying a particular role in society: a policeman, nurse or traffic warden for example. But other forms of dress may also communicate information about the person/ someone in a professional job, for instance, like a solicitor, will tend to dress neatly and in a particular kind of style, while someone who has a more physical job is unlikely to be seen wearing a suit except on very special occasions. So by "reading" the ways that people dress, we make judgments about them which give us a rough guide on how to interact with them.⁴

Elements of dress, such as cut, blending of colors, neatness, adherence to fashion trends, accessories etc., provide various clues about an individual's material and professional status, about how they wish to be perceived by others, enabling one to extract from it psychological meanings that are useful to the exercise of law enforcers' professional roles.

A magistrate's status is institutionally recognized, a judge or prosecutor's profession being identified by signs, symbols, dress, color (the goddess of justice, the balance, the robe, the logo, the stamp etc.). Standardization, to a certain extent, of a magistrate's role has continuity up to the level of options for dress to be worn within the premises of the institution, including hairstyle and jewelry. All these must be contained within the limits of decency, common-sense esthetics and hygiene. In practice, some exceptions were found, such as: a judge who returned to the court from a mystical-religious session of the so-called mission for the spirit's integration into the absolute (MISA), negligently dressed and with an unusual hairstyle; the prosecutor who came to work after a night of playing poker, shabbily dressed, reeking of cigarette smoke and wearing an earring; a judge wearing an excess of head, neck, hand and leg jewelry, exuding an intoxicating perfume odor; the negligent dress (no tie, shirt hanging partially from the trousers, dusty shoes etc.) of an inebriated magistrate, combined with specific, inappropriate poise and gestures etc. All these expressions of nonverbal communication may be interpreted in the sense that the main concern of the magistrate is not to accomplish a qualitative act of justice but, rather, their addiction to certain hobbies or even vices. Receiving such interpretations, the public will again question the credibility of the act of justice, the transparency of communication in the judiciary and the fairness of some judicial decisions whose actors are persons such as those exemplified above. One must, however, emphasize the fact that, in

⁴ Hayes N., Orrell, Sue. (1997), *Introducere în psihologie (Psychology: An Introduction)*, București: Editura All Educational, p. 294.

order to optimally accomplish an act of justice, greater importance must be attached to the interpretation, by magistrates, of nonverbal expressions manifested by defendants and false witnesses, of the extraverbal conduct of parties confronting one another in a trial. The identification of duplicitous expressions and feigning is a form of talent and professional mastery in magistrates and investigators.

Consequently, the complex knowledge of the interlocutor's personality, implicitly during the process of judicial and criminal investigation, the observation and interpretation of nonverbal clues in the scope of communication will favor the development of psychological abilities and skills, as obligatory parts of professional mastery for prosecutors, judges, police officers, and lawyers. Such activities will condition the obtainment of superior performance, through creative use of the entire set of knowledge, techniques, procedures that define the professional competence of law enforcers in solving a case; at the same time, they will pave the way to the shaping of the magistrate's *intime conviction* and to reaching the right judicial solution.

3. Ethical values and the deontological code – a system of reference in the development of the magistrate's *intime conviction*

A magistrate's mastery of information in the field of legal sciences and of the procedures required for accomplishing an act of justice is not sufficient for ensuring the professional success expected by other institutions of the state and by the general public, as this kind of knowledge has a prevalently instrumental role and is not a purpose in itself. Ever since justice has existed, the conduct of a magistrate has been perceived and evaluated by institutions, organizations, litigants, public opinion, independent observers, as being the most important factor in accomplishing justice and in securing the credibility, efficiency and effectiveness of the judiciary. For these very reasons, a magistrate's profession is much more than the application of legal sciences, while observing official procedures; it depends essentially on extrascientific factors that are part of the magistrate's moral and professional personality structure: belief system, general orientation of his/her personality, ethical values underlying his/her personality and guiding his/her entire professional conduct, creed and view on society, life and the world at large.

A magistrate's efforts to research and analyze, in good faith, the pieces in a file, with the intent of discovering the truth, resulting from evidence and reasoning, the corollary of which is the completion of *intime conviction* – as a necessary support for making a decision to solve the case, can only produce the desired effects in interaction with ethical and deontological values. Among the main ethical values that guide and coordinate the professional conduct of the magistrate, as results from the most important deontological codes⁵, national and international magistrate statutes⁶, universal declarations of principles for

⁵ See the *Deontological Code of judges and prosecutors*, The Official Gazette of Romania, Part I, no. 815 of 8 September 2005 and *Codul deontologic al magistraților. Ghid de aplicare (The Deontological Code of Magistrates. Application Guide)*, coord. magistrate Florin Costiniu, Editura Hamangiu, București, 2007.

⁶ See the *Universal Statute of the Judge*, adopted by the International Association of Judges, Taipei, 1999.

the conduct of judges and prosecutors⁷, Constitutions of democratic states⁸, conventions and charters on magistrate ethics⁹, are: independence, impartiality, integrity, decency, equality, competence and diligence (*The Bangalore Principles*, 2001). Many of the moral values and virtues, as illustrious philosopher of law (H.L.A. Hart, 1961) highlighted, are qualities consisting of the ability and disposition to carry forward beyond the limited extent which duty demands the kind of concern for other's interest or sacrifice the personal interest which it does demand. Benevolence and charity are examples of this. Other moral virtues, like temperance, patience, courage or conscientiousness are in a sense ancillary – they are qualities of character shown in exceptional devotion to duty or in the pursuit of substantive moral ideals in the face of special temptation or danger.¹⁰

Ethical values make up the essential part of the moral and professional culture of magistrates, with the special mention that the two components of magistrate culture are complementary, so that together they make an indivisible whole. The gaps that might appear in this whole are a certain source of straying from the right way of taking judicial decisions. Not at all coincidentally, before starting to practice their profession, judges and prosecutors take an oath that is charged with ethical significance: “I do solemnly swear that I will respect the Constitution and the laws of the country, that I will defend the fundamental rights and freedoms of each and every person, that I will fulfill my duties with honor, conscience and without partiality. So help me God!”. The basis of the deontological obligations assumed by the oath taker is the cardinal ethical value, which may be God for Christians, supreme good or absolute justice for others.

The decision of a young graduate of Law, who has completed all phases of post-university training that are required for acceding to a magistrate position, and who decides to take the specific oath, means that s/he has understood the Constitution and the laws of the country, that s/he masters not only the letter, but also the spirit of laws, that s/he is convinced of their legitimacy and value for the development of society. Likewise, it means that s/he consciously and assuredly adheres to a constitutional/legal system, as a necessary element for him/her to serve fundamental human rights and freedoms. In other words, from a secular point of view, the supreme value of justice is the human being; and on a practical plane – it is actual people, equal before the law, and holders of fundamental rights and freedoms. The magistrate is someone who has sworn to fulfill his/her duties with honor and without partiality, in the service of people. The essence of the conscience assumed by the magistrate is represented by ethical values, materialized in the morality and deontology that are specific to the magistrate career. Consequently, a magistrate who abides by this oath will have to consider ethical issues, arising from his/her good faith, in the efforts of developing an *intime conviction* –

⁷ See the *Bangalore Principles of Judicial Conduct*, 2001 and the *Guidelines on the role of prosecutors*, adopted by the 7th Congress – UN, Havana, 1990.

⁸ See the *Constitution of Romania*, 29 October 2003, the Official Gazette of Romania, Part I, no. 758.

⁹ See the *Convention for the protection of human rights and fundamental freedoms*, Rome, 4 November 1950 and the *European Charter on the Statute for Judges*, adopted by the Council of Europe, Strasbourg, 8-10 July, 1998.

¹⁰ See Hart, H.L.A. (1999), *Conceptul de drept (The Concept of Law)*, Chișinău: Editura Sigma, p. 179.

necessary for making a decision, for establishing a professional sentence, thus contributing to the consolidation of trust in the justice system among the general public.

On the other hand, numerous situations appear when the deontological norms of magistrates, be they prosecutors or judges, are violated, which public opinion debates present as deviations from the moral principles of independence, impartiality and integrity, followed by the diminution of the citizens' confidence in a fundamental institution of a state subject to the rule of law, which is the judiciary. Such deviations from deontological norms by some magistrates raise doubts about their good faith and indicate an adulteration in the development of *intime conviction*, which might constitute, in some cases, a source of suffering, detriment and infringement on the freedom of one of the litigating parties.

The perennial ethical values of magistrates (Independence, Impartiality, Integrity) have the duty of coordinating and regulating conduct in the relations occurring between one magistrate and another; between magistrates, on the one hand, and litigants, witnesses, lawyers, experts, interpreters and diverse observers interested in the quality of the judicial process, on the other hand; between magistrates and public servants in other institutions of the state; between magistrates and mass-media representatives; between magistrates and representatives from various NGOs, organizations of civil society.

The independence of the magistrate – as a fundamental ethical value – from a psychological point of view – is a durable state of mind, a professional attitude, functionally correlated to his/her good faith, which paves the way to the development of *intime convictions*, as a subjective basis for making judicial decision. The magistrate's attitude and spirit of independence must be manifested, without exception, in any kind of intervention, influence or pressure coming from the outside. A magistrate's responsibility is to apply the law, to make decisions on the basis of law, his/her own conscience, facts, evidence and truth, without allowing himself/herself to be subordinated or influenced by superiors or colleagues in the judiciary, by civil servants, dignitaries, journalists, friends, relatives or one of the litigating parties. The *Constitution of Romania* consecrates the independence of judges: judges are independent and shall only obey the law [Art. 124 par. (3)]. Hence, the independence of a magistrate is a fundamental personality characteristic which is externalized in relations with any natural or artificial person, with any institution of the state or civil society, with any litigating party, and, temporally, throughout the entire jurisdictional activity, including activities that are prior and posterior to public procedure.

The independence of a magistrate has a personal side and a functional one, it has a subjective component and an institutional one, being correlated to the independence of the panel and with the independence of judicial power, which is specific to the rule of law – the certain guarantee for fair judgment. International documents of the highest importance stipulate, as ethical rules of conduct for magistrates:

- 1.1. A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements,

pressures, threats or interference, direct or indirect, from any quarter or for any reason.¹¹

Observance of the *Bangalore Principles*, the *Basic Principles on the Independence of the Judiciary* (approved by the General Assembly of the UN on 29 November, 1985) or the *Deontological Code of Judges and Prosecutors – 2005*, should naturally be reflected in the exemplarity and quality of the act of justice, in a stronger public trust in the judiciary, without which the independence of judicial power cannot be maintained. Yet, in reality, various cases of infringement have occurred, signaled both by magistrates, and by the mass-media, which have acted as factors that might prejudice the independence of either the magistrate, or a judicial institution, or even the judiciary as a system. Such phenomena have been and might be: the existence of deficiencies in selecting magistrates, which allow the entrance of pseudo-jurists into the system; blasé magistrates and their failure to adapt their professional culture to the new requirements brought about by the renewal of legislation, the judiciary or the expectations of society; adherence of some magistrates to mystical communities or political orientations; comments and disclosures in the mass-media; interference by the president of the court or the main prosecutor in the criminal investigation or in courtroom debates; interference by a fellow magistrate; threats received from a pressure group; interference by a parliamentary group, minister or on behalf of the government; the message of a political leader; introduction of material liability for malpractice in the professional conduct of magistrates; proposal of money or other undue advantages (payment of a trip for the judge's family; the magistrate is invited to hunting parties abroad; payment of tuition fees for the magistrate's son, who is studying abroad etc.); the magistrate's adherence to certain vices (drug use, alcoholism, gambling etc.); belief in the inferiority or superiority of a human race or ethnic group; attendance of circles of politicians, masons, racketeers; friendly or interest-based relations with one of the litigating parties; the judge's friendship with the prosecutor – as indicated by them entering the courtroom together; tolerance of racism, xenophobia, religious discrimination etc. in court. All these phenomena have extra- and paraverbal components, interpretable by an expert psychologist; they may be perceived by the “public eye” or by an informed and independent observer, and create the appearance of influences, raising doubts about the magistrate's good faith and acting as inhibiting, perturbing factors in the development of his/her *intime conviction*.

On the other hand, impartiality, as an overarching ethical value of conduct, unless it becomes a durable state of mind and a vectorial attitude in the conscience and professional behavior of the magistrate, may have the undesired effect of deceptiveness, accompanied by nonverbal expressions, characteristic of persons infringing on moral and disciplinary norms.

In definitions provided by dictionaries, impartiality is equivalent to a person's quality of being objective, impartial and equidistant in thought and judgment. This logical meaning of the notion is also true in the judiciary: impartiality is a durable state of mind and attitude of the magistrate that categorically demands him/her to have no prejudice or bias, to favor or

¹¹ See the *Bangalore Principles of Judicial Conduct*, 2001.

disfavor no one, to be objective, honest, correct, and impartial. The content of the concept of magistrate's impartiality is complementary to the notion of independence.

Impartiality, as a fundamental ethical value of magistrates' conduct, is defined and theorized in some of the most important international and national documents in the field. Thus, as an indispensable principle to the exercise of the judicial function, both throughout the stages leading to judicial decision, and in the justification of this decision, impartiality is thus presented:

2.1. A judge shall perform his or her judicial duties without favor, bias or prejudice.

2.2. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.¹²

Likewise, the *Deontological Code of judges and prosecutors in Romania*, reiterates, in full accordance with juridical documents and the jurisprudence of international courts, that magistrates must be impartial in exercising their professional duties, that they shall "abstain from any behavior, action or manifestation likely to negatively affect confidence in their impartiality" [Art. 9, alin. (2)].

Regulated by the perennial ethical values of justice, by the specific deontological code, the conduct of magistrates shall not fail, shall produce justice, shall ensure the effectiveness and efficiency of judicial acts; the good faith of magistrates shall function unadulterated, shall not give rise to doubts, shall be open to transparency, but, in judicial practice, there are also factors that might adulterate or undermine impartiality. Numerous magistrates, as well as other categories of jurists, journalists, professors of law, various informed and neutral observers have raised awareness about aspects pertaining to the conduct of some magistrates which raised doubts about their impartiality, for instance: the magistrate has an interest in the case; the judge is active in listening only when communicating with one of the parties; the judge has one of the parties as a tenant in one of his apartments; the judge has intimate relations with the lawyer of one of the parties; the judge and the defense lawyer are friends and frequently spend their free time together; the judge and the defendant are members of the same homosexual community; the judge was sponsored by the defendant for publishing a book; the judge pronounces the sentence since the very beginning of debates; the judge is related to one of the parties; the judge has published his opinion and convictions regarding the inferiority of a race or ethnic group; the judge does not analyze some of the pieces of evidence in the file of one party, claiming that they are not relevant; the judge participates in solving a case where one of the parties is the son of a colleague; the judge (former rape victim) has a rapist as a litigant in the trial she presides over; the judge's wife is in the same parliamentary Commission as the accused, who is charged with involuntary manslaughter; a party to the trial is a colleague and childhood friend of the judge etc. However, the magistrate's good faith, as an attitude and system of ethical convictions, generates the capacity to reject such distorting

¹² *Ibidem*.

factors of impartiality, favoring the development of an intimate conviction based exclusively on truth, evidence, support and logical reasoning.

Another fundamental ethical value in coordinating the work of magistrates is integrity. In dictionary definitions, integrity is understood as the quality of being honest, moral, incorruptible, and having a personality guided by moral values. A magistrate's integrity, as a state of mind, as a durable and prevalent attitude in his relations with himself/herself, with others and with the society in which s/he lives, is reflected in the consistency between his/her words and his/her deeds, between his/her verbal, professional and extraprofessional behavior – as a consequence of being guided by ethical values, both professionally and personally.

The main international ethical and legal documents emphasize integrity as a *sine qua non* component in the exercise of the judicial function:

3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2. The behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.¹³

The magistrate's integrity is an obligatory moral and personality trait and a prerequisite for the exercise of the judicial function. This also results from other international and national documents, such as: the *Basic Principles on the Independence of the Judiciary* (UN Principles) – 1985; the *Constitution of Romania* – 2003; the *Deontological Code of judges and prosecutors* – 2005. Integrity is part of a unitary system of moral values, of an axiological paradigm that regulates the magistrate's verbal and behavioral conduct, which includes, in addition to independence and impartiality, other correlative ethical values, such as decency, honesty, correctness, loyalty, solidarity with one's fellow humans etc. The application of this paradigm of value by a judge or prosecutor, by the judiciary at country level and by each of the institutions composing it, is a gauge for the quality and efficiency of judicial activity, for the degree of public trust, and for an informed and objective observer's confidence in the judicial power.

Yet, both professionally and extraprofessionally, there have been prosecutors and judges who demonstrated inconsistencies between their words and their deeds, between their professional status and how they responded to the requirements of this status, feigned behaviors and moral duplicity. Such were the cases of magistrates who were caught practicing group intercourse; who frequented Masonic societies, or clubs owned by racketeers and infamously harboring prostitution and drug use; who repeatedly initiated quarrels with their family and neighbors; who maintained friendly relations with a rich racketeer, charged with human trafficking; who requested and received "small gifts" from persons of dubious character; who behaved in ways that contravened to common mores; who were known for

¹³ *Ibidem*.

their frequent quarreling with fellow magistrates; who participated, as spectators, in striptease shows; who, by repeated *ad hominem* attacks, undermined the professional dignity of their colleagues; who dressed inappropriately to their position while inside the institution; who participated in pyramid games etc. Such behaviors, manifested until the sentence is pronounced, and implicitly throughout the phases that are preliminary to the public procedure of the trial, may contribute to the distortion of judicial decision. They may result in omissions, substitutions of information, shallow analysis of files, incoherence, and inadequacy in logical reasoning and analysis and in justifying judicial decision. All these are negatively reflected in the process of development and completion of the magistrate's *intime conviction* and, in some cases, have generated regrettable judicial errors, thus contributing to a public lack of confidence in the performance of the judiciary and to a failure to meet society's expectations with regard to the function of judicial power.

Conclusions

The efforts of prosecutors and judges, in collaboration with other persons (police officers, lawyers, witnesses, experts, interpreters etc.), for ascertaining the deeds of the accused, the relations between criminals and their victims, between the two litigating parties, as accurately and objectively as possible, for correctly evaluating the damage incurred by the victim, are regulated by good faith, by ethical values, by the deontological norms of the jurist profession – as internal factors of the magistrate's personality. The conviction and attitudes of magistrates, as dominant traits of character, as vectors of value for their personalities and as intrinsic, axiologically oriented motives, should be durable states of mind, based on superior feelings, oriented by an ideal of life, by their view on human condition, society and the world, which guides all professional dealings of magistrates. A case is solved in the process of recreating facts and gathering evidence, the final product of which is the *intime conviction* of the magistrate – the subjective support for adopting a judicial decision.

Relations between one magistrate and another, between a magistrate and the accused, between a magistrate and participants in the trial involve verbal, nonverbal and paraverbal communication. All throughout the trial, any communicator and any recipient, be they magistrates or litigants, lawyers or witnesses, transmit and receive verbal and extraverbal messages. The more experienced an interlocutor is in communication, the more specialized, skilled or interested s/he is, the more able s/he will be to decode and interpret the nonverbal expressions of glances, gestures, poise, touching, proximity, stance, or dress. The defendant may express, through his nonverbal conduct, during the judicial investigation, certain manifestations that betray his sincerity; a skilled investigator may identify a duplicitous attitude or a feigned behavior. Sometimes, the reverse situation may also occur: the defendant, endowed with presence of mind and a rich culture of communication, may interpret certain nonverbal clues as “gaucheries” in the behavior of investigators or magistrates, and change his/her tactic accordingly. Representatives of investigational press, as well as informed and objective observers, are capable of decoding certain nonverbal expressions of magistrates,

which betray their good faith, or to highlight an opposition between what some magistrates do and the fundamental ethical values they have adhered to by oath.

The magistrate's good faith, correlated to the accumulation of sufficient evidence for justly solving the case, the existence of evidence-based logical argumentation, are prerequisites for the development and completion of the magistrate's *intime conviction*. In this cumulative process, the magistrate's system of ethical values (Independence, Impartiality and Integrity) has the role of guiding and orienting his/her professional activity. Any deviation from ethical values and deontological principles, by committing acts such as those exemplified in this study, may adulterate not only the *intime conviction*, but also the judicial decision. In rarer cases, detachment from or underestimation of the ethical-axiological system may result in grave and regrettable judicial errors or in a narrow juridical technicism, entirely dependant on the "letter of law", lacking perspective and, as such, likely to be materialized in "mechanical" sentences, mostly controversial and, sometimes, unfair from the viewpoint of the "spirit of law".

Finally, another practical conclusion can be drawn, namely: the professional training of jurists in general, and magistrates in particular, should include, in terms of undergraduate and postgraduate education, the assimilation and application of knowledge on judicial psychology, sociology of law, logic, ethics and professional deontology, philosophy of law. Just as physicians are responsible for the health of the population, magistrates are responsible for the "health of society" or for remedying anomic states existing in society. Their profession needs to be permanently updated to new realities, which requires continuous learning and improvement, knowledge of the novelties having emerged in juridical culture and of its complementarities with perennial ethical values, with the principles of professional deontology and with the new expectations of the public as regards the quality of juridical services.

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