

Decreasing the Number of Judicial Errors from the Perspective of Synergological Expertise in Romania

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ABSTRACT: The administration of justice in any state in the world is done by people and is therefore not perfect. Judicial errors can occur for various reasons, most often the subjective human factor that leads to final court decisions that can affect the entire existence of a suspect. There have been countless cases in which those sentenced by final and irrevocable sentences to years of imprisonment have been acquitted before serving their sentences, as it has been shown that the criminal act allegedly committed by them was in fact committed by another perpetrator. At other times, the acquittal decision was taken after the convict had fully completed the sentence, which produced its legal effect only for the rehabilitation institution. The article aims to analyze some of these judicial errors, the causes that determine them and their effects on the life course of the individual suspected of committing an illegal act, for different branches of law, from the perspective of synergological science. Some conclusions drawn at the end of the paper will aim to strengthen the arguments presented regarding the benefit of a forensic synergological expertise.

KEYWORDS: civil law, psychology, criminal law, body language, criminal act, guilt, micro-expression, judicial errors, psychological expertise

Non-verbal language science and judicial sinergologia

In its early development, the human being experienced many life-threatening dangers such as predators, natural phenomena, but also aggression from members of the same species, which led them to develop certain neuro-motor structures capable of enabling them. in rescue and emergency conditions (Marr 2012, 24).

With the establishment, organization and development of human societies, the physical and psychological mechanisms developed by man to provide security, although no longer so important, have been preserved and perpetuated generatively (Zlate 2000, 132).

These skills acquired following the evolution of the species have been preserved and in the era of cognitive development of humanity, certain psychomotor aspects have migrated from the sphere of elementary physical skills to the sphere of sentimental knowledge. This transfer allowed many researchers to establish certain patterns of physiognomy and non-verbal language (Popoviciu 2013, 117).

In this way it was possible the emergence and development of the science of identifying and interpreting different types of stature, gestures and facial expressions in interpersonal relationships. The term from French, also used in Romanian for this new science of human body language is synergology, which brings together in its subject both the elements of gesticulation and facial micro-expressions (Philippe 2015, 15).

The importance of synergology is also given by recent studies in the field of communication which have shown that in the transmission of a verbal message only 7 percent represents the message itself, non-verbal language occupying the largest proportion of 58 percent, 35 percent being held by the para-verbal (Corniță 2006, 38).

The founder of synergological science is Philippe Turchet, an internationally renowned expert in the field of non-verbal language. In the elaboration of his work, he makes a special separation between the signals that the human body displays during a conversation and those that are highlighted by facial micro-expressions (Philippe 2015, 17).

The expert in the study of the signals emitted by the muscles engaged in facial communication, Paul Ekman, claims that there are 6 universal emotions that have distinct features such as sadness, anger, surprise, disgust, contempt and happiness. Any other human feelings or sensations that are visibly expressed with the help of the face represent various combinations of them (Ekman 2011, 100).

Thus, the forensic expert in the analysis and interpretation of non-verbal messages is the person who knows all the ways of manifestation of the human physique and issues an expertise in order to establish the guilt of a suspect alleged to have committed a criminal act.

He uses in the exercise of his duties, both the knowledge in the field and the advanced technology that allows him to identify exactly the type of stimulus that contributed to the manifestation of a certain set of unconscious physical reactions of the analyzed subject.

It is absolutely necessary that the software used in such a process contain all the information necessary for the correct provision of data, and in this regard, many authors in the field have developed a series of illustrated scientific papers that can be the basis for designing such applications (Messinger 2018, 21).

Specifically, the expertise of the judicial synergist represents a sustainable alternative to the method of identifying the truth using the polygraph test (Butoi T., Butoi I., Butoi A. and Put C. 2019, 132).

Criminal Law in the perspective of synergological analysis

The role of Criminal Law is to protect the social values ensured and protected by the state for the proper functioning and organization of society, by protecting all citizens from the dangers of others, which is materialized by criminalizing certain acts that affect life, patrimony, physical and psychological integrity of the individual (Hotca 2020, 121).

Not all deeds are sanctioned by criminal law, this indicates that not all human actions are subject to Criminal Law. For the commission of an action to be considered criminally incriminating, it is necessary for that act to be regulated by criminal law, to be done under the will of the perpetrator, to have no doubt as to the unfair nature of its commission and not in lastly, it may be imputable to the subject of law who committed it (Mitrache Ctin. and Mitrache C. 2019, 245).

In terms of the unfair nature of the act committed by a person, it follows from the content of the law criminalizing the action, depending on its specificity and the injured persons, as it is provided by the legislator (Neagu 2020, 134).

Regarding the volitional nature of the execution of such an action, there are several forms of guilt. Depending on the possibility of predicting and following the final result, the perpetrator is either in the situation of intention that may be direct or indirect as the effect of the committed act was pursued or not, or of guilt, depending on the possibility of predicting or not the result of the action (Nour 2020, 125).

The imputability of an action provided and incriminated by the criminal law refers to its perception and awareness by the perpetrator. Thus, minors under the age of 14 are not criminally liable for their deeds, because they do not fully represent the reality of the effects of committing such an act (Cioclei 2020, 141).

In the same way, minors between 14 and 18 years of age are not criminally liable, except for half of the penalty limit provided by law and only if it is clearly and unequivocally proven that they had the representation of the result of their action at the time of its commission (Boroi 2019, 216).

The last category of persons excluded in the matter of criminal liability is judicial prohibitions which, for absolutely objective reasons, have no discernment and cannot predict the outcome of the acts committed (Butoi T. 2019, 136).

A special case of persons who cannot answer from a criminal point of view is represented by those subjects who, although they had the discernment intact until the moment of committing the deed, shortly before committing the crime for which they are investigated, lost their reason even temporarily and remediable, either permanently and definitively (Duțu 2013, 78).

Synergological expertise is useful in establishing the guilt and motivation that determined it. The expression of guilt appears, both at the level of the face and at the level of the body as a combination between the universal indicators of sadness and fear. Sadness comes from the feeling of remorse over the result of the action committed and the subject's fear of not being identified as the perpetrator (Messinger 2018, 30).

Any other universal trait that could appear in the form of happiness, pleasure, amusement in connection with the criminal act committed, if the subject is the perpetrator, denotes an altered discernment and lack of representation of reality.

The expert in the analysis of non-verbal language may issue a specialized forensic examination at the request of the courts or of the persons concerned to prove once again the guilt of the suspect or, on the contrary, to prove his innocence or lack of discernment, or may be called in hearing time to support criminal investigation (Grigore and Chiș 2020, 654).

Civil Law in the perspective of synergological analysis

The role of Civil Law in society is to protect the patrimonial and non-patrimonial values of citizens, as they are ensured and guaranteed by the Romanian Constitution, in the spirit of achieving justice and freedom of all citizens (Trușcă P. and Trușcă A. 2016, 22).

Thus, this branch of law regulates social relations between individuals that aim at collaboration and good social organization, through which they increase or decrease their personal wealth or create other legal relationships designed to ensure their good existence (Ungureanu 2013, 64).

These types of relationships can be concluded between subjects of law, be they natural or legal persons, respecting the legal forms established by law in the form of contracts or by expressing will by consensus by concluding civil legal acts (Boroi and Anghelescu 2012, 48).

In Civil Law, persons who participate in the formation of patrimonial or non-patrimonial social relations are presumed to have good faith in their generation. A very important and essential element in the creation of such reports is the manifestation of consent that must be freely expressed, obvious in the sense of forming the relationship and given knowledge (Durac 2021, 113).

Regarding the expression of informed consent, there are situations in which one of the parties uses certain maneuvers or means by which it determines the other party to consent at the conclusion of the legal act. Sometimes there is a situation in which both parties, for one reason or another, have a misrepresentation of the nature of what they are about to consent to. These situations are found under the name of consent vices (Barbu-Ciochină and Jora 2020, 130).

One of these vices is the error which consists in the fact that the subject under its empire does not correctly represent the object on which he gives his consent. It may be used with the intent to compel the party to consent to the conclusion of the act or it may exist independently of the knowledge of the parties, in which case, although both subjects are in good faith, the legal act cannot be concluded valid (Trușcă P. and Trușcă A. 2016, 151).

Another such vice is represented by violence, which in Civil Law is reduced to the simple threat of an evil of a physical or moral nature capable of inducing the party on whom a fear is used that determines it to consent to the conclusion of the legal relationship (Boroi and Anghelescu 2012, 153).

Deceit and injury are also vices of consent by which one party determines the other party to form the legal relationship either by exercising cunning maneuvers or by deliberately diminishing the party's assets (Trușcă P. and Trușcă A. 2016, 162).

The need for a synergological expertise in the field of Civil Law arises in the matter of defects of consent where the party claiming to be the victim of one or more such practices is required to provide clear evidence to prove that the legal act thus concluded can be achieved. of nullity, whether relative or absolute (Durac 2021, 223).

Conclusions

Throughout its legal history, the judiciary has produced many errors, condemning, in some cases, innocent people, which has caused radical changes in their normal lives.

The science of studying non-verbal language which consists in the analysis and interpretation of universal physical and physiognomic signals, recognized, in Romanian, with the term synergology, can contribute to reducing these errors, being an effective alternative to the polygraph test. Thus, the synergist expert can issue a specialized expertise whenever it is requested, either by the courts or by the criminal investigation bodies, in situations where such an informed opinion is needed, or by the persons directly interested in the lawsuits.

An additional feature that highlights the usefulness of this method instead of the polygraph test is that it requires a double analysis in the decision-making and expertise process. On the one hand the analysis made with the help of a specialized software and designed in order to identify the universal signals of non-verbal language, and on the other hand the human analysis made by the expert based on the data collected by the computer and establishing the factors that determined those physical reactions.

Synergology has a practical utility, both in the field of Criminal Law, in establishing guilt and imputability of an act incriminated by criminal law, and in the field of Civil Law, in establishing the degree of good faith of the subjects of legal relations.

The implementation of the science of studying non-verbal language in the judiciary could, in the future, contribute to a significant reduction in the number of judicial errors, so that the quality of life of law-abiding citizens in the spirit and purpose for which it was adopted no longer has detrimental implications caused by these errors.

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