

Marta Kowalczyk-Ludzia*

Evaluating Emotional Factors in the Criminal Procedure

The minor role of emotional factors in the criminal procedure is wrongly taken for granted. Emotional behaviour, usually perceived as a manifestation of weakness, is juxtaposed with the rational behaviour desired in the criminal procedure. Meanwhile, non-verbal communication often provides a lot of important information that supplements the evidence collected in a given case. The impulse for the following deliberations was an analysis of court files of cases in which proper evaluation of the level of emotional engagement of the parties helped the judges make the right decisions. The object and purpose of this paper is to find an answer to the question of the actual value of emotional cognitive processes and their impact on proceedings.

1. INTRODUCTION

The analysis of the evidence gathered is determined by the statutory directives (Article 7 of the Code of Criminal Procedure), which indicate the scope and manner of conducting the verification. It is also correctly emphasized in the jurisprudence that “the court’s conviction of the reliability of some evidence and the unreliability of others is protected by Article 7 of the Code of Criminal Procedure if: it is preceded by the disclosure of the entirety of circumstances of the case during the main trial (Article 410 of the Code of Criminal Procedure), in a manner dictated by the obligation to investigate the truth (Article 2(2) of the Code of Criminal Procedure), is an expression of consideration of all these circumstances that speak in favour of and against the defendant (Article 4 of the Code of Criminal Procedure), is exhaustive and logical – taking into account the indications of personal knowledge and experience – supported in the justification of the judgment (Article 424, item 1 of the Code of Criminal Procedure)”¹. Taking into account those guidelines, it is also difficult to deny that the emotional reactions of the parties to the proceedings during the taking of evidence are not irrelevant to the final decision of the court. In conclusion, emotionality is an integral part of the scope of evidentiary activities conducted in relation to the parties.

Moreover, it is worth mentioning that external observers of the course of the criminal trial cannot be spared the emotional factors, either. Therefore, it is rightly

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¹ Judgment of the Court of Appeal in Wrocław of 27 April 2017, II AKa 78/17, LEX No. 2317700.

emphasised in jurisprudence that the social sense of justice expressed in sociological terms is usually characterised by an emotional attitude, which often influences the premature social perception of guilt/innocence at a criminal trial².

Mutual emotional reactions of the parties in the proceedings as well as those focused on the circumstances of the incident are factors integral to the course of every criminal trial. Furthermore, it should be noted that emotional reactions of the participants in the proceedings often shape the course of proceedings even at an early stage (e.g. shaping a sense of trust when choosing a defence counsel /proxy of choice – Article 83 para 1 of the Code of Criminal Procedure).

Against the background of the presented considerations, a difficult attempt has been made to demonstrate the importance of evaluation of emotional factors in the criminal trial and their influence on the course of the proceedings. The subject of this paper is to demonstrate also the importance of emotional cognitive processes in relation to the effectively conducted evidentiary proceedings. Emotions manifested by the parties to the proceedings and demonstrated in the course of evidentiary proceedings often make it possible to accurately assess many of the components of an event significant for the assessment of a prohibited act (Article 53 of the Polish Penal Code), including the motivation of the perpetrator, the manner in which he acted, the sincerity of showing active regret, the emotional attitude of the victim towards the perpetrator, etc. The analysis of selected criminal files has become an impulse to formulate the observations included in this paper.

2. THE ROLE OF COMMUNICATION IN TAKING OF EVIDENCE IN CRIMINAL PROCEEDINGS

The evaluation of the emotional behaviour of the parties to proceedings plays a minor role. Very specific legal regulations have a priority in interpreting certain factual states, and determine the orientation of proceedings. The principle of objectivity (Article 4 of the Polish Code of Criminal Procedure) imposes certain conduct on the judges reviewing a given case, thus eliminating the subjective factor of the evaluation of the factual state presented.

However, in practice, an emotionless attitude to real criminal cases seems highly doubtful. Moreover, it should be emphasised that by determining the emotional state of a party involved in proceedings, representatives of criminal authorities acquire important, though expressed non-verbally, information on the criminal incident concerned, and are able to fully evaluate, in terms of the criminal law, the perpetrator's conduct and the prohibited act committed (Article 53 para 2 and Article 54 of the Polish Criminal Code).

According to the definitions acknowledged in the literature on the subject, "Emotions are complex processes of coping in the world that enable reaction to challenges that the world creates. Quick recognition, assessment and preparation to act in a way that is adequate to the significance of an event is the basic role of emotions strengthened by evolution"³.

² Cf. Judgment of the Court of Appeals in Katowice of 20 March 2008, II AKa 61/08, LEX No. 410425.

³ J.K. Gierowski, T. Jaśkiewicz-Obydzińska, M. Najda, *Psychologia w postępowaniu karnym*, Warszawa 2008, p. 37.

Also, the importance of non-verbal gestures accompanying the expression of emotions is worth noting.

Anna Suchańska observes that “gestures and mimicry have communicative functions. An example of this concerns gestures that have a popular cultural meaning, so-called emblems. [...] Intended or unintended gestures serve as a commentary on and illustration of the words said. These gestures are called illustrators, and they accompany accounting an event or communicating emotional states: joy, grief or uncertainty”⁴.

Even though non-verbal communication is not reflected in legal standards, it seems to play an indispensable role. The literature on the subject emphasises the fact that in the course of procedural activities (e.g. interrogation), attention is paid, among other things, to the perpetrator’s appearance, his or her attitude to the persons performing the activity, mimicry, gestures made when speaking, way of looking (keeping eye contact), proxemics (physical distance), paralanguage (the way of speaking, e.g. how utterances are made, are there any lapses of speech, is the form of speaking correct etc.), self-presentation, clothing, etc.⁵

The role of cognitive emotional factors is increasingly often accentuated in the literature on the subject. It is emphasised that “[...] there exist two forms of communication: verbal and non-verbal. The first uses words and constitutes, according to different sources, between 7% and 35% of the entire communication process. Albert Mehrabian, the non-verbal communication psychologist, concluded that 93% of the emotional impact of communication comes from non-verbal sources and only 7% from verbal sources. On the other hand, Ray Birdwhistell claims that the ratio between words and the accompanying behaviour is 35–65%”⁶.

In view of the above, the functions of emotions in cognitive processes may be classified into:

- Indicative – providing information about events, persons and objects, which makes it possible to determine the most important issues concerning the needs and goals of an individual;
- Activating – emotions supply the energy required to activate cognitive processes;
- Modulating – energy supplied via emotions is necessary for proper functioning of cognitive processes;
- Meta cognitive – associated with such behaviour of an individual that seems the most proper in a given moment⁷.

By properly naming the emotions of a witness or defendant and correctly defining the role of emotional factors, it is possible to determine both the relations between parties to proceedings and their attitude to the criminal case concerned.

⁴ A. Suchańska, *Rozmowa i obserwacja w diagnozie psychologicznej*, Warszawa 2007, p. 223. See also: E. Radomska, *Przesłuchanie jako szczególny rodzaj poznania społecznego* [in:] *Psychologia i Prawo. Między teorią a praktyką*, E. Habzda-Siwiek, J. Kabzińska (eds.), Sopot 2014, pp. 243–262.

⁵ A.K. Cecot, *Wybrane zagadnienia komunikacji niewerbalnej w procesie karnym i kryminalistyce. Komunikacja niewerbalna w opinii policjantów* [in:] *Prawo. Kryminalistyka, Policja. Księga pamiątkowa ofiarowana Profesorowi Bronisławowi Młodziejowskiemu*, J. Kasprzak, J. Bryk (eds.), Szczytno 2008, pp. 169–177.

⁶ A.K. Cecot, *Wybrane...*, p. 170, quotation after: R.B. Adler, L.B. Rosenfeld, R.F. Proctor, II, *Relacje interpersonalne. Proces porozumiewania się*, Poznań 2007, p. 143.

⁷ See: E. Gruz, *Psychologia sądowa dla prawników*, Warszawa 2009, p. 74, quotation after: T. Maruszewski, *Psychologia poznania*, Gdańsk 2002, p. 393.

3. EVALUATION OF EMOTIONAL FACTORS IN THE LIGHT OF THE APPLICATION OF THE PROCEDURAL RULES

Assessing the facts of a case favours the implementation of the principle of direct examination of evidence by the judge. The scope of this principle is defined in terms of “[...] order (directive) for the judicial authority to have personal contact with the source and means of evidence and to draw conclusions on the basis of the original means of evidence (primary evidence)”⁸. The implication of the proper application of the said principle is the proper verification of the facts of a case (Article 2 of the Code of Criminal Procedure in conjunction with Article 424 para 1 of the Code of Criminal Procedure), which ultimately results in a fair ruling. In order to make an accurate assessment of the statements of a participant in the proceedings, it is necessary to verify not only the verbally expressed messages, but also the manner in which they are presented. It is therefore rightly postulated in the case law that “The use of primary sources of evidence by a court directly at a trial gives the parties the opportunity to actively participate in the taking of evidence by questioning the persons interviewed in their presence, raising objections and comments as to the evidence or other activities carried out. Allowing each party to be involved in taking evidence and to take part in evidentiary activities shapes a situation in which it becomes possible to make true factual findings”⁹. Therefore, careful observation of the participants’ behaviour enables a better understanding of the situational context and allows for defining mutual relations, thus providing additional, although non-verbal, information that allows for a more accurate interpretation of the actual situation in the ongoing trials. Therefore it seems appropriate to postulate that “the outcome of the application of the principle of direct examination of evidence by the judge is of paramount importance here. Observation of the witness’s reaction constitutes significant information for the court, assisting in choosing one of the versions. In this sense, the court of first instance is the leading beneficiary of this procedural rule”¹⁰.

The witness’s emotional reactions provide the court with a lot of additional information. The criminal cases presented below illustrate the role of the factors discussed. Statements of reason in convicting judgements, as well as assessment of situations taking place during a trial, may both refer to the emotional state of the parties to proceedings, and try to correlate the collected evidence with additional information based on the evaluation of emotional behaviour.

In order to show the practical aspects of the problems discussed in the paper, the file examination method was used¹¹. Due to the limited size of the paper, it presents seven cases relevant to the problem concerned. File examination was conducted at the 2nd Division of the Criminal Regional Court in Olsztyn in the period from 2015 to 2016. All the cases ended in a conviction.

The research problem was formulated as follows: “To what extent do emotional factors in a criminal procedure contribute to making the right judgement?”

⁸ P. Hofmański (ed.), P. Wiliński, *Zasady procesu karnego* [in:] *System prawa karnego procesowego*, Warszawa 2014, Vol. III, pp. 2, 1012.

⁹ Judgment of the Court of Appeal in Warsaw of 14 December 2012, II AKa 360/12, LEX No. 1254538.

¹⁰ Judgment of the Court of Appeal in Łódź of 24 April 2014, II AKa 19/14, LEX No. 1474378.

¹¹ See: J. Kasprzak, *Wybrane problemy metodologiczne badań w zakresie procesu karnego i kryminalistyki* [in:] *Wybrane problemy procesu karnego i kryminalistyki*, J. Kasprzak, B. Młodziejowski (eds.), Olsztyn 2010, p. 13.

Also, it was assumed that: The cognitive value of emotional factors in correlation with other evidence helps make the right judgement in a procedure.

Cases from court files:

Case no. 1

The first case concerned the offence of abuse and making realistic threats by the defendant to his family (Article 207 para 1 and Article 190 para 1 of the Polish Criminal Code). During the trial, the Court repeatedly asked the defendant not to laugh at his wife's and son's testimony.

Case no. 2

Case under Articles 197 para 2 and 157 para 2 of the Polish Criminal Code. The defendant did not admit to committing the acts he was accused of, either in pre-trial proceedings or during the trial. He claimed that his sister-in-law had persuaded his daughter to testify against him; he believed that she wanted to adopt her so as to have access to her money, because the defendant's daughter received disability allowance. The aggrieved party attended a Rehabilitation and Education Centre. During therapy, the personnel noticed that she showed signs of harassment. During a conversation, the woman claimed that she had been touched by her intoxicated father in intimate body parts. The aggrieved party was a person of age, moderately intellectually disabled, and had been hard of sight and hearing from birth.

In the statement of reason, the Court stated, among other things, that:

- The defendant's guilt is beyond any doubt;
- The intoxicated father came to her room at night, woke her up with jerks, pulled the top of her pyjamas off, touched her intimate body parts, abused her verbally, beat her with a belt and clenched her wrist;
- The aggrieved party's emotions observed by the expert were commensurate with the events she recounted;
- The Court took into consideration the behaviour of the aggrieved party when she was testifying, and her characteristic way of speaking, which led to the conclusion that her testimony was honest, spontaneous and not affected by persuasion, and followed a certain pattern.

Case no. 3

The defendant conducted economic activity that involved agency in executing loan agreements. He was accused of an offence under Articles 286 para 1 and 270 para 1 of the Polish Criminal Code.

The statement of reason in the judgement stated, among other things, that:

- The Court does not believe the defendant's explanations;
- According to witness testimony, the defendant was not only present when the witness' wife's signature was being forged, but it was also his idea to do so;
- The expert's opinion on the examination of the documentation is duly justified and credible;
- It was not in the witness' interest to falsely testify about the defendant's participation in the event, "since she was not in conflict with him and would not profit from his conviction";

- “Of no little significance, especially during witness testimony, were probably the emotions associated with the situation, a feeling of injustice, and the person’s temperament, which she could not control at the hearing, even when she was only watching the case”.

Case no. 4

One of the defendants admitted that he wanted “only” to beat up the aggrieved party, but he did not order him to give money for abusing a girl verbally (Article 280 para 1 of the Polish Criminal Code).

The statement of reason in the judgment stated that:

- The explanations of the defendants are credible in the part where they admit to being at the site of the event and to kicking and hitting the aggrieved party, and taking his mobile phone;
- The testimony of the aggrieved party is fully credible;
- The Court did not believe the defendants’ explanations concerning their joint role in the offence. “The argument of the defendants that there was no understanding between them cannot be sustained in the light of the principles of logic and life experience”;
- “The fact that the witness raises this cause (mental abuse by the aggrieved party) may be, in the Court’s judgement, the effect of emotional attitude to the event and a desire to help the defendants, whom the witness knows very well”.

Case no. 5

After the judgment had been announcement, the defendant threw a 1.5 litre bottle of natural water, 1/5th drunk, at a news photographer, probably damaging the camera, and he used offensive words addressed to the audience.

Case no. 6

According to the indictment, on 17 March 2014, [...] jointly and in communication, using violence that involved repeatedly punching the aggrieved party with fists over her whole body, pulling and twisting her leg, they forced her against her will into sexual intercourse that involved vaginal intercourse, threatening to kill her by drowning in a lake in order to force her to remain silent while the defendants were asleep, and they forced the aggrieved party to refrain from requesting them to return her mobile phone, which they had misappropriated, and prevented her from leaving the room in the uninhabited house by removing the door handle (Articles 197 § 3, 197 § 1, 191 §1, 158 § 1 of the Polish Criminal Code)”.

The statement of reason in the convicting judgement emphasised, among other things, the credible opinion of the expert psychologist, who stated that “the emotional reactions of the aggrieved party revealed large psycho-motor agitation and post-incident trauma: she spoke fast, tried to provide details, gesticulated with her hands (often with her fist), especially when speaking about being punched by the defendants”.

Considering the review of the above criminal cases, it should be noted that the evaluation of the emotions of the parties to proceedings enabled the Court to properly evaluate: the behaviour of the defendants (cases 1 and 5), the behaviour

of the aggrieved parties (cases 2 and 6), additional confirmation of the perpetration by the defendant (cases 2 and 6), and the behaviour of witnesses and their emotional engagement in the trial (cases 3 and 4). Thus, it can be concluded that the emotional engagement of parties to proceedings helps determine the level of credibility of the representations made (testimony or explanations). It is rightly claimed in the literature on the subject that “Whether a testimony is true and whether it corresponds to an actual experience of the testifying party is often revealed by the emotional engagement of the witness. If a testimony is based on experiences, then their reproduction may often reveal the emotional sensitivity of the witness, which is a strong argument for his or her credibility”¹².

On the other hand, evaluation of non-verbal behaviour requires prudent interpretation on the part of the criminal authorities, especially because when qualifying the emotional behaviour of the parties to proceedings (in particular defendants) their statutory rights must not be violated (especially the principles of the presumption of innocence (Article 5 para 1 of the Polish Code of Criminal Procedure) and *in dubio pro reo* (Article 5 para 2 of the Polish Code of Criminal Procedure), and the right of defence (Article 6 of the Polish Code of Criminal Procedure)). Interesting arguments on this issue are raised, among others, by Zdzisław Muras, who observes that: “The doctrine also takes notice of problems associated with non-verbal form of suggestion. Assuming that all forms of prompting the interrogated person are inadmissible, then the provision in question should be interpreted in such a way that prompting questions must not be asked, not only in the verbal dimension but also in the manner of asking. However, since it is only possible to dismiss a question expressed verbally, how should the interrogating authority behave if the verbal dimension of the question is not prompting, but the gesture accompanying the question is (e.g. a nod)?”¹³.

Nonetheless, despite numerous uncertainties associated with the issue, it should be noted that reading and interpreting emotional behaviour in adults helps judges make the right decisions in proceedings. It is similar in the case of interpreting the testimonies of juvenile witnesses. When interrogating such persons it is necessary to apply special prescribed measures (Articles 185a and 185b of the Polish Code of Criminal Procedure), because compliance with statutory guidelines (such as the presence of an expert psychologist) may indicate the effectiveness of interrogation. It should be noted here that a child’s behaviour is often an imitation of the behaviour of the adults who are close to the child, so careful observation in this area may provide a lot of extra information about relationships in the family where the child is raised. The literature on the subject rightly emphasises the fact that “a child is prompted by the behaviour he or she observes in adults, and feels and experiences what they experience”¹⁴.

Also, it is justly claimed that “a child’s poor criticism and his or her conviction of the superiority of older persons make children strongly susceptible to adults’ persuasion. Things can be easily persuaded into a child, whether intentionally or not, to such a degree that the child will not be able to recognise the truth”¹⁵.

¹² F. Arntzen, *Psychologia zeznań świadków*, Warszawa 1989, p. 146.

¹³ Z. Muras, *Wyjaśnienia oskarżonego w procesie karnym i prawie karnym materialnym*, Warszawa 2005, p. 200.

¹⁴ V. Kwiatkowska-Darul, *Przesłuchanie małoletniego świadka w polskim procesie karnym*, Toruń 2007, p. 99.

¹⁵ B. Holyt, *Psychologiczne i społeczne determinanty zeznań świadków*, Warszawa 1989, p. 194, quotation after: M. Debesse (ed.), *Psychologia dziecka*, Warszawa 1963, p. 21.

A thorough and correct analysis of the behaviour of a juvenile witness also makes it possible to judge the guilt (or lack of it) of the defendant. The following case is an illustration of such a situation:

Case no. 7

Case under Articles 197 para 2, 200 para 1 and 197 para 3 of the Polish Criminal Code. The defendant performed sexual acts on a juvenile girl below 15 years of age (9 years). The girl has mild mental retardation.

A notice of the offence was submitted by the girl's grandmother.

The statement of reason in the judgment stated that:

- The Court fully agreed with the aggrieved party's grandmother: "The aggrieved party's grandmother testified that after the event she noticed, when watching her granddaughter, that she was drawing worrying pictures and 'piercing' the defendant's image with a pen. The girl told her grandmother that she had nightmares with the defendant holding a knife".

When analysing the above, it was concluded that, assuming that the emotions of the parties to proceedings, e.g. witnesses giving their testimonies, are in a way a measure of the reliability of statements (e.g., testimonies), then the hypothesis is right in that the correct interpretation of emotional behaviour helps make the right judgement.

A contrario, it should be noted that the irrelevance of emotions to the events described puts into question the truthfulness of the statements made. The literature on the topic highlights the fact that "the irrelevance of emotions' [...] relates to whether or not the emotions shown by a witness (usually by non-verbal behaviour) are probable, given his or her experience and the circumstances of the interview. For example, if a girl describes in detail how she was abused without showing any emotions whatsoever, her account is less probable than if she strongly expresses her emotions"¹⁶.

The emotional factor is also usually used when interrogating a suspect (defendant). It should be noted that the emotional states of a suspect may be stimulated and used in order to "induce his positive sensations (feelings), which can be caused, for example, by showing him a picture of the victim, taking him to the scene of the crime, or his wife or children visiting him, if he is in temporary detention"¹⁷.

This method, if used expertly, may help determine numerous additional motives when reconstructing the events of an offence. Thus, the literature on the subject highlights that "By demonstrating sympathy to the suspect, the interrogator may obtain many precious details"¹⁸.

Emotional factors are an inherent element of all criminal proceedings. Although the fundamental role of criminal authorities is to judge facts and reconstruct the probable events, to verify evidence and judge on its basis, undoubtedly proper

¹⁶ A. Memon, A. Vrij, R. Bull, *Prawo i Psychologia. Wiarygodność zeznań i materiału dowodowego*, Gdańsk 2003, p. 22.

¹⁷ K. Otlowski, *Podjezany w postępowaniu karnym. Studium kryminalistyczne*, Warszawa 1979, p. 89.

¹⁸ K. Otlowski, *Podjezany...*, p. 88.

interpretation of non-verbal signals is usually helpful both in procedural activities (such as, for example, interrogation) and in making the right decisions affecting defendants.

Thus, it is right to claim that “when formulating questions, one should remember that they are means of communication dependent on the content of experience and the attitude of both the interrogator and the interrogated, and that the answer is an intellectual and emotional resonance of the question. Sensing and discovering the psychological experiences of the respondent and his or her feelings, moods, passions and affects is a necessary element of the interrogation method and the question-making technique”¹⁹.

The effectiveness of the assessment of credibility of statements made by parties to proceedings depends to a large extent on the manner in which evidentiary proceedings are conducted during the trial. It can therefore be concluded that the emotions displayed by the parties in the course of carrying out statutory procedures (e.g. during a hearing) often have a direct impact on the perception of their statements. One should bear in mind that “the verdict usually follows the conclusion of open session, as the information obtained by the judges during the evidentiary proceedings will be usually memorized and they will constitute the basis for decisions taken by the court (as opposed to imperfect records in the minutes)”²⁰. It is difficult to argue with this reasonable remark.

4. SUMMARY

To sum up the above deliberations, it should be concluded that the evaluation of emotional factors in criminal procedures, although it requires prudent consideration by judges, should not be omitted when assessing the facts, the more so that defining the motivations of the perpetrator to commit the prohibited act is important, especially in terms of imposing an adequate punishment (Article 53 of the Polish Criminal Code). Thus, it is emphasised that “what is commonly called human conscience, and is in fact a set of principles and ethical senses, is, in every individual, the supreme intention that resounds when certain inclinations (emotions) drive one in a direction that is contrary to one’s legal and moral standards”²¹.

Actions contrary to specific standards should be adequately sanctioned, but the identification and proper verification of the emotional states of the parties to proceedings make each criminal procedure different. For example, identifying the emotional factors that drive a perpetrator into a prohibited act helps understand the reasons why criminal intentions are carried out. It is rightly emphasised, also in the case law, that “in order to verify whether the defendant’s accusations against another individual are sufficient evidence in the case, not only is what the accuser says important, but also his character, intellectual and emotional level, and emotional state at the moment of perception, and the ability to perceive, remember and recreate”²².

¹⁹ M. Lipczyńska, Z. Czeszejko-Sochacki, *Technika i taktyka zadawania pytań w procesie a rola adwokata*, Warszawa 1980, pp. 75–76.

²⁰ A. Murzynowski, *Istota i zasady procesu karnego*, Warszawa 1994, p. 312.

²¹ S. Batawia, *Wstęp do nauki o przestępcy, Zagadnienie skłonności przestępczych*, Wrocław–Warszawa–Kraków–Gdańsk–Łódź 1984, p. 107.

²² Judgement of the Supreme Court of 15 April 2004, WA 6/04, OSNwSK 2004, No. 1, Item 715.

To conclude, it is emphasised that the evaluation of emotional aspects in criminal proceedings obliges representatives of criminal authorities to prudently formulate the conclusions of their evaluation. Premature interpretation of non-verbal behaviour may prove wrong and contrary to the principle of material truth (Article 2 para 2 of the Polish Code of Criminal Procedure). The relationships that a defendant creates with the other parties to proceedings may lead to unjust interpretation of the personal attitude of witnesses to the defendant and distort the content of testimonies on the basis of which the court reconstructs the events. It should be remembered that “[...] relations like relationship by blood or affinity, friendship, being neighbours or coming from the same environment, like class at school or the same area, may cause a certain, although not true attitude to one of the parties to proceedings”²³. Thus, emotional factors should be considered, but at the same time they should be evaluated in a prudent and careful way.

Abstract

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The minor role of emotional factors in the criminal procedure is wrongly taken for granted. Emotional behaviour, usually perceived as a manifestation of weakness, is juxtaposed with the rational behaviour desired in the criminal procedure. Meanwhile, non-verbal communication often provides a lot of important information that supplements the evidence collected in a given case. The impulse for the deliberations was an analysis of court files of cases in which proper evaluation of the level of emotional engagement of the parties helped the judges make the right decisions. The object and purpose of this paper is to find an answer to the question of the actual value of emotional cognitive processes and their impact on proceedings.

Keywords: *emotions, cognitive processes, non-verbal communication, stimulating and using the emotional states of a suspect, procedural rules*

Streszczenie

Marta Kowalczyk-Ludzia, *Ocena czynnika emocji w procesie karnym*

Drugoplanowa rola emocji w procesach karnych mylnie zdaje się być oczywista. Działania emocjonalne, pojmowane zwykle jako przejaw słabości, przeciwstawiane są działaniom racjonalnym, których obecność w procesie karnym jest pożądana. Tymczasem, komunikacja pozawerbalna dostarcza często wielu istotnych informacji, które uzupełniają zgromadzony w sprawie materiał dowodowy. Asumpt do rozważań dała analiza akt spraw sądowych, w których poprawne określenie stopnia emocjonalnego zaangażowania uczestników, pozwoliło sędziom podjąć trafne decyzje procesowe. Przedmiotem i celem niniejszego opracowania jest próba znalezienia odpowiedzi na pytanie o rzeczywistą wartość emocjonalnych procesów poznawczych i ich wpływie na przebieg postępowania.

Słowa kluczowe: *emocje, procesy poznawcze, komunikacja pozawerbalna, metoda stymulowania i wykorzystywania stanów emocjonalnych podejrzanego, zasady procesowe*

²³ M. Lipczyńska, Z. Czeszejko-Sochacki, *Technika...*, p. 74.