

Communication in the Administration of Justice – Some Thoughts Through the Perspective of Children

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ABSTRACT

In the practice, communication competencies are typically not among the most important expected competencies in terms of the relevant areas of children's rights. This is particularly true for institutions such as the (criminal) justice system. However, meeting with a judge, lawyer, child protection expert, or even a representative of the investigating authority can have a long-term impact on the child involved.

The aim of this chapter is to provide an insight from the perspective of minors into the range of relevant soft skills that appear alongside hard skills (i.e. expertise in the narrow sense); although in the workdays of institutions these have not yet received the recognition they deserve based on their importance.

In addition to communication, these skills include the ability to cooperate, solve problems, be creative, and have emotional intelligence; the 21st century justice and child welfare system, the professional knowledge alone is no longer enough.

On the expectations related to the communication method of judiciary (as an institutional system) and to the communication skills of its members (e.g. judges) the following chapters report deeply.

KEYWORDS

soft-skills, communication competence, map of competences, professional knowledge, training of experts

A common problem in the assessment of the communication competences of public authorities is, inter alia, the lower level or lack of intercultural communication ability and conflict management skills. The latter is also based on the communication, and its role in preventing and managing conflicts and tensions inside and outside the courtroom is therefore also prominent.

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1. Competences of Criminal Justice Actors

The importance and role of communication competences, as opposed to the professional knowledge, is still neglected by the criminal justice actors today – *compared to its importance and impact*.

This is true despite the fact that, for example, according to Annex 5 to Act CLXII of 2011 on the Status of Judges (“Competences to be examined during the application procedure and the evaluation of judges”), both the application procedure and the evaluation of judges must examine a number of competences of the person concerned, such as: 1. decision-making ability, 2. cooperation (and interoperability), 3. analytical thinking, 4. foresight, 5. discipline, 6. a sense of responsibility, 7. decisiveness, 8. demandingness, 9. integrity, 10. communication, 11. conflict management, 12. creativity, 13. confidence, determination (determination), 14. autonomy (independence), 15. problem and situation analysis, 16. problem solving, 17. application of professional knowledge, 18. organisation and planning skills, 19. oral and written communication skills, 20. objectivity.

The competences referred to include communication (10) and oral and written communication skills (19), while several other skills – such as cooperation (2) and conflict management (11) – are also required, which also presuppose good expression and clear communication.

Professionals in the action are therefore expected to have both the ability to express themselves appropriately and the ability to perceive, receive and interpret messages from others adequately. In the practice, this requires not only a conscious (sender’s) attitude in connection with the verbal and non-verbal communication practice, but also on the receiver’s side. Thus, the use of plain language, a rich vocabulary and authentic use of professional language are just as important as the correct perception and interpretation of the gestures, facial expressions, posture, intonation, etc. of other procedural actors, in particular the witnesses (both the accused and the aggrieved party).

At the centre of the expectations is the professional, and their (professional) human attitude and commitment to the holistic approach significantly determines how much they want to identify with these expectations.

According to a study in Miskolc, “the judges who participated in the research really strive to be clear, unambiguous and sensitive to the individual circumstances of the layperson when communicating warnings and information”¹. However, this is by no means universal and typical professional’s attitude. Even though this is important in connection with the aims of criminal law and criminal procedure, which is also embodied in the Penal Code (e.g., individualization) and Criminal Procedural Act. From a crime prevention perspective, it is also important, that the offender concerned

1 Vinnai, 2018, p. 295.

understands the reason for the procedure, the offence's framework and the seriousness of their law.

2. Professional at the Centre of the Expectations

On the side of the senders, the ability to communicate comes to the fore when asking questions, while on the receiving side it also comes to the witness hearing process, especially when listening to the vulnerable.

In any interpersonal communication, there are typical identifiable errors², which in fact serve as a means of communicating *non-acceptance*, blocking, sometimes even shutting down, the other party's urge to share his/her opinions, feelings, information, and facts relevant to a criminal procedure with professionals.

These communication difficulties are not specific to those working in the justice system, who do not interesting in every form of communication. This attitude can effect serious inefficiency consequences in many of the activities³ involved in the specialised fields (for example, dealing with alcohol or drug addicts, perpetrators of school bullying, etc.).

The triumvirate of judgement (when approving or disapproving of the other person's statements), the communication of solutions (when suggesting solutions to others), or the avoidance of the other person's concerns is a common feature of the triumvirate, reflecting both the intention of the questioner to change – rather than accept – their communication “partner”, and the desire (often coercion) to make the other person think, feel or behave differently.

These negative effects are further reinforced, for example, in the case of lawyers and defenders by the lack of Eric Bern's ‘metacommunication of listening and listening’⁴ – especially in case when interact with the child.

The latter leads to the importance of the conscious use of non-verbal tools in the area of competences, which are particularly important messengers for under 18s. Although the potential for smiling is limited by the nature of a criminal case, it has a role to play in building trust and helping to create a sense of a protected environment⁵. Research clearly demonstrates that smiling can increase the perception of warmth, which has a clear positive effect on perceptions of competence of experts. (This is true even if smiling has a stronger effect in the so-called hedonic service industries (e.g. restaurants) than in the so-called utilitarian service industries (e.g. lawyers).)

The other important factor of expert's communication expectation is to share messages which is adequate to the receiver operation.

2 Csákvári, Cs. Ferenczi and Horváth, 2017, p. 21.

3 Rollnick and Allison, 2004, pp. 105-116.

4 Csákvári, Cs. Ferenczi and Horváth, 2017, pp. 21-22; Berne, 1984.

5 Hyounae and Hu, 2022, pp. 8-9.

Given that this is a decisive factor in a litigation procedure, a factor determining the quality of the evidence in a criminal procedure, on which the credibility of the entire procedure and the lawful functioning of the authority may depend, it places great weight on the competences of professionals involved.

Research findings suggest⁶ that the judges' method of hearing, which can be considered as professionally optimal, is highly task-oriented, and their professional competence is primarily "exhausted" by the tension in the relationship between the party being listened to and the other communication partners, such as the other actors present (defence counsel, prosecutor), and by role-based conflicts of interest.

This burden is only increased if the communication situation becomes difficult in some respect – for example, because of the specific characteristics of the other party. In such cases, basic communication competence is not sufficient support, and specific knowledge will be needed. Thus, a feature of many procedures is that they cannot do without the testimony of a child victim.⁷ However, an important issue in assessing these is the veracity of their statements.

However, when the interview is repeated (regardless of the professional affiliation of the professional involved), it is common experience that repetition has a clear impact on the reliability of their claims. It can be demonstrated that, although the linguistic content of children's true and false statements differs, the linguistic markers become increasingly confused as a result of repeated repetition.

On the expectations related to the communication of the judiciary as an institutional system and its members (e.g. judges) the following chapters report deeply.

Judges, prosecutors, and police officers, who represent the authorities, represent the entire adult world for young people, who are much more vulnerable than adults for a number of reasons. Their previous experiences of victimization—which are often part of the life history of even young offenders—reinforce the impact of their first encounter with the authorities. These experiences are decisive even in the absence of previous victimization, as will be discussed in other chapters. The psychological effects of the crises associated with adolescence or other changes are equally evident in young people's behaviour.

A serious question arises as to what form and methods a professional can use to create an atmosphere of trust with a minor during proceedings involving children. In the chapters dealing with child-friendly justice and communication, we point out that in the absence of this, children often remain passive during formal proceedings (for a number of reasons). As a result, children's rights guaranteed by law in relation to official proceedings will not be enforced or will only be enforced to a limited extent.

Can professionals use so-called *compassionate communication* to enforce children's rights? What does this concept actually mean? Where and in what procedures or stages of proceedings can it be justified? In the absence of a criminal offense, a minor involved in an "ugly" divorce cannot be considered a victim. However, the divorce

6 Sanna and Isotalus, 2015, p. 133.

7 Evans et al., 2011, pp. 1-13.

of their parents can be a huge tragedy in their lives. In addition to the fact that the family is falling apart, the arguments between the parents, the loud quarrels, the frequent verbal abuse, the accompanying (emotional) neglect (because there is no energy left to pay attention to them; the parties focus on their own grievances and their fight), the fact that they themselves become a tool of blackmail between their parents, countless events and processes that devastate them emotionally. In addition, there is also self-blame and guilt, which are typical childhood reactions: if he had behaved better, if he had been a better student, if he had helped more at home, this would not have happened.

In such emotionally difficult times for a child – for example, during child custody proceedings – is there a place for practicing compassionate communication? The child longs for someone to finally listen to them; someone to understand their fears and pain; someone to hear their voice and help them.

To what extent can we expect those involved in the administration of justice to meet these needs of the child?

The term ‘compassionate communication’ focuses on compassion. “The feeling of compassion stands out from related concepts like sympathy and empathy as it involves an additional active motivation to do something that alleviates another person’s distress”.⁸

Although there are different conceptual approaches, it is a ‘benevolent’ communication style based on the principles of positive psychology, which has three distinctive elements⁹: recognizing the need for empathy, establishing contact in line with this (e.g., in questioning and communication techniques), authentic and congruent communication that responds to the psychological needs identified as a result, including both verbal and nonverbal channels.

In this sense, compassionate communication is a process in which individual activities require broader communication skills. For example, recognition means more than just interpreting what the other person says. This is a particularly important stage, especially in the case of children, as for a number of reasons, even without other language difficulties, they are unable or find it difficult to express themselves and open up to a stranger in an environment that already makes them feel anxious. Therefore, professionals must be able to perceive and interpret the psychological state and non-verbal messages behind the child’s behaviour.

This is also a serious challenge for professionals working in other fields. Relevant research¹⁰ to date has also pointed to a lack of empathy in other areas (e.g. teachers). This is partly due to the fact that traditional communication training or education does not address this topic and the specific competencies required here. Even research focusing on this topic highlights different points of focus in relation to compassionate

8 Julia et al., 2024.

9 Way and Tracy, 2012, p. 307.

10 Julia et al., 2024, p. 2.

communication (e.g. cognitive or behavioural aspects, self-compassion, individual-specific traits or values).

An interesting aspect of the desire for compassion and understanding arises when it comes from a child who has come into conflict with the law and who has a *collective victim consciousness*.

The essence of this psychological phenomenon¹¹ is the internal shared conviction of the members of one group that the behaviour directed toward them by another group is deliberate and undeservedly abusive and offensive. The behaviour of the other group is not necessarily violent. The group that feels victimized may see this manifested in nonviolent conflicts or in other behaviours that are not negative or targeted (e.g., official measures, legal proceedings).¹²

An important element of the phenomenon is that the belief in the victim role is strong and unshakeable, and over time it becomes part of the group's self-identity. As a result, cohesion within the group may strengthen, while the group's external relations are generally characterized by distrust of the outside world, hostility, and a refusal to cooperate. Examples include discrimination and oppression.

This phenomenon can even be observed among juvenile offenders, typically those from a given subcultural environment, as indicated by several studies by Ágnes Solt¹³, for example.

One important consequence of this psychological state is the moral justification and exoneration of the group's aggressive actions¹⁴.

The question is important in terms of the legitimacy of compassionate communication because it is based on the psychological needs and demands of the child, and the relationship of trust that develops as a result ultimately strengthens the child in their right to both information (because they dare to ask if they do not understand something) and expression of opinion (because they dare to say what they think and what they want); at the same time, compassionate communication presupposes a special interpersonal process, the prerequisite for which is compassion, while its success is measured by the relational (psychological) satisfaction of the other party (e.g., the child).

An important question is how these elements can become part of an institutional system and formal procedures that operate according to strict regulatory and ethical standards. At the same time, the demand for trauma-informed practice has also become an increasingly strong expectation in the justice system in recent years.

11 Mészáros, Vámos and Szabó, 2017.

12 Jasini, Delvaux and Mesquita, 2017, pp. 99–101.

13 Solt, 2009; Solt, 2012.

14 Mészáros, Vámos and Szabó, 2017, p. 356.

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