

SIGN LANGUAGE IN COURT HEARINGS: RESEARCH OF THE COMPARATIVE ANALYSIS HISTORICALLY FORMED NATIONAL AND EUROPEAN COURT PRACTICES' ON HUMAN RIGHTS PROTECTION

Klietsova Nataliia Volodymyrivna,

Volchenlo Nataliia Vasylivna

PhD, associate professors

Kravchenko Darya Vasylivna

Student

Sumy National Agrarian University

Sumy, Ukraine

klietsovanatliia@gmail.com.

Introductions. Every day we make billions of gestures, but we do not think thoroughly about their meaning, although they can tell us a great deal not only about the person himself but also about his inner world. Court hearings are no exception, because gestures can indicate the emotional state of a person. Foreign scientists and professional on practice Haug T. [1], Humphries T. [2], Kushalnagar R. [2], Mathur G. [2], Meulder M [3], Napier J. [1] proved that movements convey feelings, indifference, and neglect of a person that could help with a court judgment. At the current stage of Ukraine's development as a candidate country for the status of a member of the European Union, the issues of the sign language at the hearing are worth to research. This will help to hold court hearings and make judgments more objectively. Unfortunately, in the stages of judicial reform, our country is a few steps behind the European countries in the world. That's why, taking into account the experience of foreign countries, the creation of an unified model of key gestures that judges can use during court hearings is becoming more relevant today in Ukraine.

Aim. The article is devoted to a study on the comparative analysis of historically formed national and European jurisprudence on the protection of human rights concerning the usage of sign language in court hearings.

Materials and methods. The authors conducted their own research on the impact of sign language on court judgments in different countries of the world, using the case law of the European Court of Human Rights and national courts. In order to achieve the goal of the article it was used the method of comparative analysis of historically formed national and European jurisprudence, as well as the method of expert evaluation at the international and national levels. Experts were psychologists specializing in sign language, experienced judges, practicing attorneys, academics, and others. In order to obtain certain results, it was conducted a thorough analysis of the sign language of the participants of the hearing when considering cases in the European Court of Human Rights, in particular: “Navalny v. Russia” No. 2 (ECHR 127, 2019) and “Kuric and others v. Slovenia” (No. 26828/06).

Results and discussion. Scientific studies of determining the influence of sign language on judicial decision-making have their roots long ago. The famous philosopher was the founder of German philosophy, whose teachings are still popularized in Germany, I. Kant said that: “The hand is the visible part of the brain”. And indeed, besides verbal speech, we also have a body language – one of the individual languages, which is interesting enough and important for people who want to succeed in life and maybe even protect themselves from lies and negative emotions. Because knowing this language, you can “read” your interlocutor. Already in 1971, American psychologist Albert Meyerabian formulated the rule of effective oral communication – “the rule of 7% - 38% - 55%”. According to this theory, the effectiveness of oral communication only 7% depends on words, the rest – on intonation and rhythm, as well as facial expressions and gestures. So, in court hearings, your intonation, posture and gestures play an extremely important role in expressing your opinion to the audience. The language trusts when it can be elevated or protected, which transmits key moments, and it can be understood. Protesting the question: “Are domestic and international courts relevant to the same litigants when they are in court?” In order to answer all these questions, we have conducted our own research during 2018-2020 years.

Thus, by analysing the scientific and practical studies that were conducted by the British Council, we made the conclusions that today gestures play a significant, though indirect, role during court hearings. Students of the Faculty of Sumy National Agrarian University, during their institutional visit to the European Court of Human Rights in 2018, were fortunate to communicate and interview representatives of the Secretariat. Respondents were 15 people from different countries who were surprised by the question the urgency of sign language in decision-making during court hearings. After all, the vast majority of cases are dealt with in writing, and there is not always enough time to analyze the gestures, language and behavior of both the claimant and the defendant. However, the opinion of the respondents made us think that when considering extremely important cases, such as torture, deciphering sign language is not binding but is deciphered by a psychologist who is also involved in a judicial process of this nature. The opinion expressed by one of the Secretariat's representatives confirmed the scientific studies of Will Rogers that communication at the interstate level is impossible without diplomacy. Diplomatic communication has a long history, which is still evident in international relations, and the language of diplomacy is a reflection of long social interaction and communication between peoples. The result of the termination of such communication has always been conflict. Special organization of linguistic means helped to build bridges, cement relationships, avoid conflicts [4]. For modern diplomacy, words continue to be a major tool, but sometimes sign language helps resolve conflicts peacefully.

The Deputy Secretary's Office emphasized that the first impression in court sessions also influences the further development of the stages in communication. And very well, if the first impression contributed to the further effective consideration of the claim, but in most cases it is precisely because of the ignorance of the plaintiffs and defendants in the lawsuit that it establishes some sort of barriers to the merits of the case. The respondent especially drew attention to the facial expressions and gestures of the claimants of certain countries of the world. The ability to read a person through gestures is a whole science, even a whole art. Representatives of the country who possess such gesture art sometimes bring a smile to their lips. However,

in this case, the dilemma arises: it is very difficult to decipher the sign language of an overly aware litigant, because reality and desire do not always coincide. In these circumstances, the view was expressed that sign language could serve as an additional factor when considering cases on the merits, but not materially.

Special attention was paid to Google questionnaire among representatives of the teaching staff specializing in the psychology of sign language, human rights protection, practice in the national courts of their countries. Respondents were from five countries: Germany, Italy, Poland, Bulgaria, Greece. Summarizing the opinions expressed by this group of respondents, we found that each person perceives information based on the following ratio: 7% of information comes to us with words, and the rest – 93% are perceived by gestures. In their view, this position should be taken into account during the court hearings.

A separate sample of respondents were from cross-border residents of different cities of Ukraine aged 30-50 years. Thus, in the course of the study, the first thing we emphasized was whether ordinary residents of Ukrainian cities pay attention to gestures and facial expressions. Thus, of the 256 respondents, only 53% pay attention to the gestures of the interlocutors. The majority of the interviewed persons pay attention to their hands and eyes. Therefore, we conclude that during the court hearings, the parties involved in the case are in fact likely to use visual contact and the language of hand gestures.

We were also asked a thorough study on the interpretation of identical gestures by professionals in court hearings in different countries. For example, everyone knows the gesture when a man raises his finger to his temple. In Holland, contrary to the strong Slavic habit, the finger at the temple has become a compliment to the sharp mind. In Britain, they will not be offended, because the interpretation of this gesture is neutral – “live your mind”. While in France, in the Eastern Slavic regions, this gesture may be a hint of short-sightedness.

The next sample of respondents were experienced people who work in the field of litigation on a daily basis and their work is closely related to non-verbal language. Thus, in the course of interviewing the respondents, we were asked to introduce in

the practice of national courts a separate position, which will be occupied by a specially trained person to interpret the sign language of the participants of the trial, which will accordingly influence the court's decision. Analyzing the results of the responses of the interviewed people, we also came to the conclusion that the representatives of the judiciary, the lawyers are too knowledgeable specialists, because they are well-understood in sign languages not only in Ukraine as well as the various developed countries of the world. 87% of the respondents said that in Ukraine today the interpretation of sign language during the court hearing is at an early stage of development. However, if you consider other developed countries, each segment has its pros and cons. It was interesting to find that 69% of the sample of the respondents spoke about court hearings and court rulings in ancient times. It turned out that even then, they were paying attention to gestures, and even announced judgments using gestures. For example, in ancient Egypt, a judge silently applied to the forehead of the party in whose favour the case was decided, the image of truth he wore around his neck. Or the interrogation of the defendants in ancient Babylon and India was by oath. In particular, if the defendant uttered the oath without stopping, it did not dry up in his throat, he did not go astray, he did not look at the floor, sideways, but at the judge – it meant that the person did not commit any illegal act.

A separate group of respondents was composed of a panel of judges. Thus, according to the results of their interrogations, we found that 99% of the judges of the national courts of Ukraine do not pay attention to sign language at all, emphasizing the evidence during the hearing.

In the context of the rapid development of scientific and technological progress, surveillance cameras have been set up in the courts today to record the process of court hearings. In common law countries, a judge makes a judgement based on precedent, but that does not mean that they make judgements as in ancient times. Judges can pay more attention to defendants' gestures because, as our research has shown, for example, in Ukraine, during a court hearing, a judge pays more attention to evidence than to gestures. And while the defendant goes to court, he should overcome several instances, including lawyers, investigators, who, in our

opinion, should pay close attention to the gestures. These investigations about decision-making in ancient times have given us impetus for new research and improvement of the results of our priority tasks. We have heard and analyzed the hearings of the European Court of Human Rights, but of different Member States. It was also analyzed the gestures guided by the litigants.

So, we have thoroughly studied the case of “Navalny v. Russia” No. 2 (ECHR 127, 2019) [5] for violation of the Article 5 and the Article 10, and for the first time in the history of Russia’s existence of violation of the Article 18 of the European Convention on Human Rights. We also heard the case of “Kuric and others v. Slovenia” (No. 26828/06) [6] concerning the breach of the Article 8 and the Article 46 of the European Convention on Human Rights. The first that is really different – it’s the principles of behavior, voice, the way of presenting the information. During the hearing of Navalny’s case, there was a clear concern, as the persons who represented him in court constantly swayed from one leg to the other. Instead, representatives of the “Kuric and others v. Slovenia” case acted calmly and confidently, trying to avoid any gestures. In particular, it was immediately apparent in this case that his representatives often kept their hands in their fists and leaned on the table. After analyzing these gestures, we came to the conclusion that these were striking signs of the speaker’s defensive reaction. In addition, there was a gesture of crossing hands with the Kuric’s representative, meaning that the person is closed to cooperate, communicate, not disclosing complete information. We would like to point out that even the participants in the hearings at the European Court of Human Rights are following their own gestures. Noticing the false gesture, after 2 seconds, they removed their hands from the closed state. Representatives of the case “Navalny v. Russia” constantly clasped hands, which again indicates the uncertainty of their actions.

Conclusions. Summerising the results of our research, we found that it is the sign language that can sometimes provide us with a huge list of additional information during a court hearing. This will make the court’s decision less flawed, since not only the evidence will be taken into account, but also the truthfulness of that

evidence. We proposed to introduce a new position in litigation, which will be occupied by an experienced psychologist – specially trained person for interpreting the sign language of participants in litigation of different world's countries. The introduction of this position will contribute to the influence of sign language on court judgments, which will accordingly reinforce community sentencing. We have also proposed the identification of a universal list of key gestures for the hearings, which would help judges and participants in the process to be not distracted and keep calm during the hearing of the case. We are also advised that every qualified practitioner, judge, investigator should have a basic understanding and attend a weekly course on “interpreting sign language in litigation” once per year. After all, going back to the ancient times, we must not forget the language of our bodies, which could sometimes tell us much more than we even imagine.

Literature. 1. Napier J. M., Haug T. Justisigns: A European overview of sign language interpreting provision in legal settings. January 2016. URL: https://www.researchgate.net/publication/312590628_Justisigns_A_European_overview_of_sign_language_interpreting_provision_in_legal_settings (Last accessed: 07.01.2020)

2. Humphries T., Kushalnagar R., Mathur G. The Right to Language. *J Law Med Ethics*. 2013. # 41(4).

3. Maartje de Meulder. The Legal Recognition of Sign Languages. *Gallaudet University Press*. Special Issue: Language Planning and Sign Language Rights, Summer 2015. Vol. 15. No. 4. P. 498-506.

4. Rogers Will. Diplomacy is the art of saying “Nice doggie” until you can find a rock. 07.08.2017. URL: <https://everest-center.com/osoblivosti-diplomatichnoyi-movi-istoriya-i-sogodennya/> (Last accessed: 13.06.2019)

5. «Навальний проти Росії»: Європейський суд з прав людини. 2019. № 2 ЄСПЛ 127. URL: <https://www.echr.com.ua/translation/sprava-navalnij-proti-rosi%D1%97-2-pres-reliz/> (дата звернення: 30.03.2020).

6. “Kuric and others v. Slovenia”: European Court of Human Rights. 13 July 2010. № 26828/06. URL: <http://open-court.org/video/foreign/9979/> (Last accessed: 13.03.2020)