

Tomasz Cyrol

Techniki wywierania wpływu w pracy prawnika
(Techniques of influence exertion in the lawyer's work)

Streszczenie rozprawy doktorskiej
(Summary of doctoral dissertation)

In Poland, for about twenty years, and in Western Europe and the United States much earlier an increased interest in all kinds of activities, which leads to convincing someone, to change of his views or to performing tasks expected by the person convincing has been noticed. Such actions are used in every field of life including legal business. Those activities are based on the knowledge of, among others, psychology and sociology and are defined as techniques of influence exertion.

It should be noted that the use of techniques of influence exertion (manipulation) may occasionally produce effects that are contrary to the moral rules and even law.

Therefore, it will be important to answer the question of whether a lawyer in his work may use the techniques of influence exertion. The fact is that sometimes lawyer, to achieve the desired effect has to emphasize some information and facts, some silent, in many cases he has to answer the question in such a way as not to bring harm to his client. Of course, all these activities should be carried out in accordance with the law and moral principles, both those generally accepted and designated by formal codes of ethics of professional.

This treatise may be to, some extent, treated as a "manual of manipulation" by some readers. However, the primary intention is not to facilitate the controversial actions, but to show examples of behavior which may be questionable in terms of ethics and law. This has two main objectives: it will constitute a contribution to the discussion on the possibility and advisability of boundaries of influence and, by identifying the behavior based on the manipulation will facilitate their identification and allow the defense against the negative effects of manipulation.

Among the basic terms used in the treatise, which are needed to be clarified are terms which are unclear. These include:

- Techniques of influence exertion - in simple terms, all the techniques and tricks that are used in order to convince the other side or achieve other similar purpose;

- Manipulation - the act of applying any of the techniques of influence exertion to achieve the desired reaction of the entity to which such techniques are applied as efficiently as possible, by minimized cost and without taking into account the moral and / or legal consequences of such actions;

- Lawyer - advocate and legal advisor – the treatise relates primarily to those legal profession as judges, as a rule, do not manipulate (can optionally be a party to passive manipulation), and in justified cases, prosecutors manipulate in the way which is similar to advocates.

Negotiation and mediation are discussed in detail in the treatise because of three reasons. The first is the fact that the institution of negotiations does not have a legal definition and regulation of mediation is relatively new. The second reason is a greater participation and involvement of lawyers in the business negotiation and mediation noticeable in recent years. The third and most important reason is the fact that during the negotiations and mediation, in connection with their informalisation it is possible to use manipulation to the greatest extent.

Negotiations are a process of interpersonal communication aimed at achieving agreement between the parties in terms of connecting them in any way and any condition, however, that the parties of the future agreement are free to present their views, change them, and the agreement must ultimately obtain such content to parties were able to agree with such agreement.

Mediation is a voluntary, confidential and devoid of "unnecessary" formalism way to resolve the dispute through direct communication, during which the parties are assisted by an impartial and neutral person properly prepared and jointly seek a mutually satisfactory agreement in order to achieve a mutually acceptable settlement.

The issues considered in the treatise are recognized and evaluated from the point of view of morality and ethics. Morality should be understood as a set of beliefs of a specific person or group of persons as to expected behavior, to assess whether the behavior was "good" or "bad."

Ethics is the science of morality or a specified area of philosophy. It is a collection of judgments, opinions and beliefs about why and what is moral. Such a set can be in the form of act adopted by the relevant authorities, for example the Advocates' Code of Ethics, but it can also be a not formalized and dematerialized set of standards and guidelines.

It is a very difficult task to determine what specific moral principles should include a set of ethics applicable to lawyers. It seems that it should apply the same moral principles

which are recognized by the vast majority of the members of our cultural community. It involves, among other things, honesty, refraining from lying, respect for others. Violation of these standards, often protected by law does not mean the automatic application of legal sanctions, often because little material breach of ethical principles will not meet with any response. Sometimes, for example, it may cause infamy, but not necessarily will entail legal consequences. In the case of serious breaches the issue of determining the effects of abnormal behavior will look different. You have to pay attention to the fact that moral standards existing in a society are often the basis for legal regulations.

In addition to the generally accepted moral norms lawyers are also obliged to comply in their work with ethical principles that are clearly defined in the relevant, internal acts created by professional associations. Failure to which is threatened in Poland by sanctions regulated in primary legislation - Law on the Bar and the Law on legal advisers.

Lawyers are required to comply strictly with the law, internal professional standards, as well as maintain consistent even with the most stringent social standards within the profession and in private life. Such expectation is apparent inter alia from the fact that legal professions are among the occupations of public trust and are connected with the protection of the most important human rights and property and of persons to whom the public entrusts the care of these rights need to be required more than the others.

The most important standards that are related to exertion of influence in the lawyers' work are norms which prohibit lies, threats, use of forced positions, abuse of rights, and those contained in the codes of ethics of lawyers.

The lie can be defined as any verbal and non-verbal (through body language) intentional act of intentional introduction of the error information to the recipient.

It should be assumed that lie in the negotiations (as well as in mediation) can, depending on the context, lead to liability both in tort or to contractual responsibility or based on a different grounds right to withdraw from the negotiations or the annulment of a negotiated settlement. However it should be emphasized, that this is not tantamount to a total ban for using lies in the negotiations.

Threat will be the announcement of causing someone some evil, in case he would not made the required legal action. A person threatened is therefore faced with the alternative: either to carry out the action or expose to the realization of the state of affairs referred to in the threat.

Forced position is a negative situation in which a person must, due to circumstances to perform or to agree to certain things in the name of saving the endangered right either or to return as quickly as possible to an acceptable state of affairs.

The abuse of law is every situation when vested right is done in an exaggerated manner, futile, malicious or inconsistent with the intended purpose.

The actions based on a lie, threat, use of forced positions or misuse of the law depending on the circumstances and intensity can be considered as a tort and, in extreme cases, even a crime.

Lawyers are also required to act in a manner consistent with the rules set out in the codes of professional ethics.

In order to determine whether lawyers can use in their business activities the techniques of influence exertion this treatise describes and analyzes the ten most commonly used techniques. Eight experts helped in their analysis.

The Contrast Technique – it allows to strength the message by presenting contrasting elements. By submitting two messages to the recipient – a bad one and then the good one it comes to a situation in which a recipient will not only be able to assess the information objectively as better, but in addition, will be subjectively seemed even better than it actually is, since it will be compared with the bad news.

In the legal work the rule of contrast as a tool of influence can often be used. First of all, it will be used on the presentation of the facts, among others, during the trial, in the pleadings or during the negotiation or mediation. Information that, in the opinion of the manipulating person will not meet with the acceptance of the recipient should be presented, as it has been referred to in the first place. Thanks to this, a “good” information, which will be presented in the second place, would seem to be even better and would cover the negative message of the first information.

Analyzing the opinions of experts, it is clear that it is nothing abnormal in modification of order of presentation of arguments. It is unacceptable to use such technique when it is based on false information and threats. In this case, the responsibility is not for applying the technique itself but for a lie or a threat.

The "Refusal - withdrawal" Technique is based on the fact that persuader who has a specific request proceeds it by requesting more. If his request would be refused he will have another request which is less demanding, which is what he indeed expected, or still higher than expected. The manipulated person will interpret this behavior, often subconsciously, as a

concession, and will feel obliged also to concessions. In addition, a new request, on the basis of the principles already described as technique of contrast will seem to be lower than it actually is, because it will be compared to the previous request.

It seems that from the point of view of both the civil law and the criminal it can not be concluded that the presented technique will violate any standards.

The Immunization Technique is based on a deliberate presentation in a subtle way a light objection to a particular belief or several features of the presented person to the recipient. It is very likely that a small amount of negative information will not affect adversely the recipient's view, on the contrary, adding some of the negative elements of the message will seem more credible to the recipient. Later, when more negative information for an applying person will be revealed it can be expected that the recipient will already be "vaccinated", "accustomed" to the bad news and they wouldn't have on him such a strong impact that would occur without the use of techniques of immunization.

Reflecting on the admissibility of the application of the immunization technique it must be noted that the only prerequisite potential liability would be for use of false information in the application of this technique, although it should be noted here that it is difficult to punish somebody for "talking about himself badly" and the potential liability would arise only in the case of obvious, blatantly false statement.

The "Preacher" Technique describes a number of elements to which attention of the speaker should be paid so that his speech would meet the interest and acceptance of audience. It involves, among other things, body language, tone of voice, appearance, clothing.

The conclusion drawn from the opinion of experts, as well as the own observations of the author is clear - the use of the "Preacher" Technique in the activities of a lawyer not only does not contradict the principles of the profession, but also is necessary and can be used up to the limit of ridicule, which, however, as the limit out of focus, based on a subjective feeling of observers can not be considered, in principle, abroad which, if exceeded will trigger a formal effects. Only in extreme cases responsibility for a breach of professional ethics rules involving careless moderation and tact or violation of the hearing may be considered. It does not seem, however, that use of the "Preacher" Technique violates the norms of civil or criminal law.

The "Verbal Manipulation" Technique describes how the arguments, the choice of words or the introduction of lies into expression so that listeners would interpret the content of message in a manner expected by the speaker. The conclusion from the analysis of the use of the "Verbal Manipulation" Technique should be such that as long as it is not based on a

serious lie it is acceptable. It is worth remembering that a lawyer must not knowingly give false information to the court. Violation of this rule may be, in the case of the art "verbal manipulation" based on lies the basis for disciplinary responsibility. In extreme cases criminal and civil liability of the manipulating person should be considered.

The "Scapegoat" Technique is that it makes the responsibility for the consequences of the occurrence to the other party or a third person. If it is based on real or probable grounds is fully admissible in legal work, and should be prohibited to use it when applying is aware of the inaccuracy of the presented arguments.

Techniques for prolonging litigation by using the vested rights. They are permitted activity, provided that it does not contain a component that may be recognized as a crime. It is the role of the legislature to create laws that there was little scope of application of the technique, and the courts have all kinds of means to discipline lawyers in such cases.

Technique of depreciating the enemy - in the description an attempt to determine whether depreciating the enemy is permissible and beneficial for depreciating was taken. The conclusion is that the depreciating enemy unlike most of the already discussed techniques can cause a wide range of consequences ranging from informal, through a breach of professional ethics, alleging infringement of norms of civil law, and ending on the charge of committing a crime.

The "Nailing" Technique consists of putting pressure by reminding of earlier statement. It seems that the use of such kind of pressure is generally acceptable, provided that reminded the statement actually was made.

The threat described both as an element of other techniques of influence exertion and a sole technique. The analysis of this problem leads to the clear conclusion that the threat is unacceptable and unethical behavior and is violation of law.

For the effectiveness the lawyer in his work must use the techniques of influence exertion. It may be assumed that in principle, it is allowed, even in some cases required to use such techniques, except the use of techniques that are based on the threat or lie.

There is no way to create and specify clear criteria for the evaluation of techniques of influence exertion. This is why each of these techniques in a particular case must be assessed not only individually, but also according to the principles of assessment tailored to specific cases. It should be assessed, among others, by such elements as who used the technique, to whom it was applied, for what purpose did this happen and what specifically elements this behavior consisted of. This treatise may be helpful in such assessment. By describing the most

common techniques and the most probable violations of the law, ethical standards and rules of professional conduct associated with their use indicated the examples of criteria that must be taken into account in the assessment of cases.

