

Hamis tanúzás

Szerző: Elek Balázs

Elek Balázs^[1]: Hamis tanúzás

A tanulmány a hamis tanúzást jogi, pszichológiai és szociológiai aspektusból vizsgálja. Kiemelt figyelmet szentel azon tényezők felkutatásának, melyek közrejátszanak a tárgyalóteremben a hamis tanú kiszűrésében, valamint vizsgálja azokat a motívumokat, melyek a hamis tanúzás elkövetésére vezetnek. Magyarország és az Amerikai Egyesült Államok joggyakorlatát és a jogirodalom vitáit elemzi. Bemutatásra kerül a híres Miranda ügy, annak hazai és amerikai konzekvenciái egyaránt.

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Balázs Elek^[1]: False Confessions

The practice of dragging innocent people through the mire, summoning them to court to face conviction, and sentencing them to prison or to death is coeval with the process of jurisdiction. The confession, which is by far the most effective way to convince judges about someone being guilty, is often considered as the most reliable form of evidence. That is why authorities often make extreme efforts to obtain a confession.

Confession counts as a very serious evidence, the reason for which is that many people consider confessions as a result of the internal feelings of the suspect, whereas they tend to forget about certain external factors, e.g. the possibility of coercion. Social psychology calls this a „fundamental attribution error”: the liability to originate the behaviour of others from constitutional (internal) causes, while underestimating the importance of the potential (external) factors. Certain authors discussing confessions in connection with the practice of Hungarian and non-Hungarian courts with an inquisitorial policy reported experiences about authorities in jurisdiction lead by a certain „presumption of hidden guilt.” This can be captured at courts where the judges usually endeavor to reproduce the material of the investigation, and if the defendant’s confession is different from that (due to the defendant’s withdrawal or alteration of the previous confession made by him or her during the investigation), the court does not accept it and refers to the previous confession as being decisive in the course of verification. ^[2]

The problem of false confessions is a recurrent one, even in the most serious criminal cases. The Hungarian criminology is not without cases where the suspect, who confessed a murder for the police but took it back and denied it at the court, had been already imprisoned when the original culprit was found. As a judge hearing the cases of serial weekend house-breakings or car break-ins, I sometimes listened to defendants who confessed to certain crimes without being absolutely sure about committing those crimes at all. It turned out that the defendant had such a long list of felonies that at the time of the confession he simply could not dispense with the possibility of him being related to the crime set before him. Adjusting the suspect’s confession to the exaggerating notice of the aggrieved party is also an existing problem. In

one case, for example, the affronted reported the loss of 150 litres of wine, while the suspect confessing to this crime owned only a ten-litre can, and the survey excluded the possible use of any kind of car or vehicle.

Prohibition of torture

The voluntary nature of confessions had been gradually necessitated both by the courts of Europe and the U.S.A. Coercive confessions obtained by chastisement and physical violence go against the Fourth Amendment in the U.S.A., and violate not only the national constitutions, but also the third clause of the Charter for the Protection of Human Rights and Fundamental Freedoms in Europe, the prohibition of torture, according to which no one can be submitted to torture or to inhuman, degrading treatment or punishment.

While determining the validity of the confessions the courts may consider not only the physical chastisement and the threats but also the psychological abuse. According to the Supreme Court of the U.S.A. in the *Chambers vs. Florida* case, the elongated, five-day interrogation and other factors sailing close to physical violence may very well be the reason to doubt the validity of the confession of the suspect.^[3] The circumstances in which the confession had been obtained can be submitted to an all-inclusive inspection, like in the *Haynes vs. Washington* case.^[4] The culprit was not allowed to call either the family or the advocate, and the police said that the fulfillment of the requests depended on the culprit's confession. The Supreme Court of the U.S.A. decided that the confession of the culprit had been coerced by the fact that the culprit's „volition” had been defeated „in a fundamentally coercive and oppressing milieu created by the claims and acts of state authorities”.

In the *Ireland vs. United Kingdom* case, dealt with at the European Court of Human Rights, the verdict brought about on January 18th, 1978. points it out that the Charter is being violated even with the usage of such methods that, although not causing proper injury, inflict serious physical and psychic pain on those concerned, and may lead to severe mental disturbance during the interrogation. Such methods – like the hindrance of sleep, the use of loud and constant beeping sound, and elongated interrogation – are by nature fit to generate a feeling of fear, despair and inferiority in the victim of the method, and also to short out his or her physical or mental resistance^[5]. Münsterberg was the first psychologist who touched upon the issue in his classic book *On the Witness Stand*, published almost a century ago, in which book he dedicates a whole chapter to false confessions. He had many observations concerning this topic and in some cases, the people confessing really believed themselves guilty^[6].

Types of false confessions

What may be the reason for false confessions? Why do innocent people confess to such crimes that they are not guilty of? How do police interrogations coerce innocent people to confess against themselves? From a psychological point of view, we can essentially distinguish between many types of false confessions, but these groups are far from being homogeneous. Voluntary false confession is a self-reproaching statement that happens without pressure from the police, deliberately. In that case the accused making a voluntary confession clearly sees what happens, and he or she is aware of the consequences of his or her decision. There can be many reasons for someone to make a false confession voluntarily. There is the possibility of a pathologic need for fame and acclaim, but the false confessions are often made for the sake of a friend or a relative. According to previous research, a number

of innocently-made confessions happen spontaneously, without any coercive action, their goal being possibly to raise interest, but there is also a chance of mental disorder lurking in the background. Another possible reason for voluntary false confession can be „an unconscious need to punish themselves for a previous offence”.[\[7\]](#) Finally, in my own experience, many people who committed a crime that entails severe punishment rather confess to a minor offence, to avoid being punished for the original one.

Coercive-obligatory false confessions

The false confession is coercive-obligatory when the suspect makes a confession, in spite of being aware of his or her innocence, as a result of the extreme methods of police interrogation. Many false confessions, obtained by promises, threats and torture, belong to this type, for example the confessions made at the European witch-trials of the 17th century. A better-known example for this type of false confessions is the Brown vs. Mississippi case from the U.S.A.

“Brainwash,” a technique often used on POWs, belongs to this category as well. Almost forty years ago, during the Korean War, North-Koreans reported that many American soldiers who became prisoners confessed to treason and other disloyalty committed against the U.S.A. The communist brainwash techniques during the Korean War included a four-hour hammering of communist principles into the prisoners at least once a day. At these presentations the prisoners were forced to confess and to express the communist principles with their own words. The logic of coercing the confession was that it had to become a “secondary attitude” for the prisoners as it had to be planted mentally into them.[\[8\]](#)

This category may also include the confessions made at the show trials of the East-European communist countries of the fifties, but this type cannot be considered a homogeneous unit. One of the elements of the theatricality of the show trials is the self-reproaching (and abnormal) “penitent confession” of the suspects. In the show trials of the fifties (like the infamous Rajk-trial) the basic psychological factors slipped into a political cover were direct determinants in the assertion of the superior political and psychological order. When the representatives of a certain political viewpoint feel themselves authorized to crush the constitutional state, they deploy the most vulgar psychological mechanisms: the feeling of inferiority, fear and jealousy, and offensive prejudice.

The length of the interrogation may very well have an effect on the result. In many cases, just like in the Chambers vs. Florida case, the culprit was exposed to a five-day interrogation before his or her confession. This technique is known by the public as the “exhausting” process, the point of which is to hinder a person long enough for him or her to think of nothing except short-term satisfaction (e.g. escaping the current situation) and not to be able to comprehend the long-term consequences (e.g. the possibility of being convicted). The person thus does not concentrate on the questions, but on escaping from the unfamiliar and threatening circumstances. In a certain case, the police held an innocent husband and wife in custody, and the husband confessed falsely to have his wife released who could go home and take care of the children.

The individual experiences such feelings of inaptitude that only increases his or her helplessness and lack of control over the situation, and in the end he or she just “gives in” for anything. While explaining her confession made under police investigation, one of the culprits gave an account of such an extreme method: after many hours of interrogation and well into

the night, one of the policemen slammed down a pair of handcuffs loudly on the table saying that she could decide whether she confessed to the crime in which she was “naturally” guilty or not. According to the young woman’s plea, her small child was waiting for her, so she did not care what was taken down on record.

Coercive-acquired false confessions

The third type of false confessions is the coercive-acquired false confession, when the worried, exhausted, pressurized or confused innocent culprits are even exposed to highly influencing police interrogation methods, and they themselves believe that they committed the crime. The terrifying thing is that the memory of the innocent suspect about his or her actions could be transformed in full measure, distorting “the original content to irreversibility”.[\[9\]](#)

What makes innocent people to confess against themselves during police interrogations? From a psychological point of view, coercive-acquired false confessions, for example, are caused by the desire of the innocent suspects to free themselves from a repugnant situation and to secure agreeable short-term consequences. But what about the examples of the even more incredible acquired false confession? The interrogation of the culprits is a task of many phases, requiring complicated knowledge of criminal psychology, thus the understanding of the means of evidence used in a criminal case requires the analysis of those disciplines which can stand as a background for them. The characteristics of the means of evidence appearing in the form of communication of psychic nature can be evaluated appropriately only by comparing them to the propositions of physiology, psychology and psychiatry. The effectiveness of the interrogation also depends on the personality of the culprit and the interrogator, so the most perfect interrogation tactics cannot be defined at all. There are various theories trying to answer the question.

A certain amount of stress may help in obtaining the truth from a normal person; but in the case of a psychologically unfit person, the exaggeration of stress can easily lead to false confession. The culprit is usually vulnerable and has an easily reshapeable memory owing to young age, personal confidence, naivety, impressionability, lack of intelligence, or when being stressed, tired, drunk or drugged. The culprit can be convinced about his or her own guilt with such false evidence as an edited photograph or the result of another analysis, e.g. of blood, semen, hair, fingerprints, statements made by alleged accomplices, a pre-arranged scene of eyewitness-identification or a false claim about the culprit failing the lie detector examination.

Related questions concerning police interrogation

After coming to a decision in the landmark case of *Miranda vs. Arizona* in 1966, the Supreme Court of the U.S.A. quoted from the then most praised books of police training to prove: the police deployed deception and psychologically coercive methods when interrogating the suspects of the case.[\[10\]](#) In the end the court claimed that police interrogations are rather psychologically-, than physically-centered. In the *Miranda vs. Arizona* case, the Supreme Court claimed that a confession obtained from a suspect being in custody during police interrogation can only be valid when it was given voluntarily, without coercion, and only when the police took every appropriate action to protect the rights of the culprit. The police are bound to call the attention of suspects taken into custody to their constitutional rights: the right to remain silent and the right to retain a lawyer. Many people started to protest against this, saying that this decision tied the hands of the police when obtaining confessions. Jurists soon revealed that the decision of the Supreme Court did not have such an effect. In fact,

research found that many juvenile delinquents did not even understand the rights they were given.

The preventive Miranda warnings, if it were not for a voluntary, conscious and intelligent giving up of rights, exclude every confession as an evidence during the later course of litigation. Besides demanding the delivery of rights, the court claimed that it should be provable that the suspect gave up these rights “voluntarily, with full consciousness and after being informed about them.” According to the Miranda decision of the Supreme Court of the U.S.A., police interrogation is coercive, which induces the danger of the suspect not being able to give rational information freely. The Court went as follows: “custodial interrogation violates personal freedom and exploits the weakness of the individual.” What makes the modern interrogation coercive according to the Court is police custody, where they put psychological pressure on the suspects to make them confess. After a wide-ranged scrutiny of many police handbooks, the Court claimed that even the “most enlightened and effective” interrogation techniques are manipulative, intimidating and use different tricks for the sake of effect, which threatens to overcome the will of the suspect and violate dignity and freedom, those principles that the constitutional rights trying to protect.

According to the pre-Miranda practice of the American police, the increase of the probability of the suspect’s making a confession depended on many conditions. During interrogation, the police had to create an atmosphere in which sense stimulation was reduced to the minimum, the suspect was made completely vulnerable, and full control and power were provided for the interrogator. Therefore full isolation is required with the suspect, since this is the single most important psychological factor on behalf of the success of the interrogation. Many authors claim that the scene should be unknown for the suspect. The interrogation room should be fully sound-proof, without windows, and empty, except for a table and a pair of chairs: one for the suspect and one for the interrogator. It is the task of the interrogator to maintain an apparent friendship with and show unexpected kindness towards the suspect. The interrogator should also feign his or her feelings about the seriousness of the crime, finding an excuse for it.

The Supreme Court of the U.S.A. observed that the shifting of responsibility and the diminution of the crime’s seriousness is a recurring element, along with the intimidation of the individual by exaggerating the consequences or the evidence available, the interrogator definitely claiming that he or she is sure the suspect is guilty, making emotive advance towards the suspect with sympathy, compliments and respect, and claiming that all this happens for the suspect’s own sake. These are the methods (along with some others) that the Supreme Court of the U.S.A. found coercive by nature.

The police methods worked out to obtain confessions can definitely undermine the notion of voluntary confessions. This means that police forces use pure fabrications and other, more sophisticated means of deception, including psychological manipulations to obtain confessions during interrogation. According to one of the police handbooks, police officers should tell the suspect that there is incriminating evidence against him or her, even when such evidence does not exist, and it is advisable to trivialize the crime, “and saying that in a similar situation anyone else would have acted the same way”. This basically means that police officers are encouraged to make false confessions for the sake of obtaining a confession”. Nevertheless, people protesting against Miranda assume that today restrictions preventing police to obtain true confessions threaten innocents to a greater extent than the lack of additional protection against the relatively smaller risk of false confessions. They believe that

the decision of the Supreme Court in the Miranda-case had an exasperating effect on the innocents. This decision suppressed the number of true confessions, and at the same time did nothing against the risk of false confessions, in fact, increased it with diverting the focus of the courts' attention from the essentially truthful content of the confessions to the procedural issues related to the process of obtaining a confession. They believe that more and more harmful effects of the Miranda surface. Like the sudden decrease in the rate of solved crimes immediately following the coming into effect of the Miranda, from which they conclude that Miranda hinders the effectiveness of the police proceedings. The negative effect the Miranda had on the rates of case-solving has a basic significance as far as the innocent are concerned, since a decreased rate means that in certain cases the detectives were not able to obtain the confessions of the real perpetrators of the crime, which would have otherwise enabled them to "solve" the case. These failed solvings happen mostly when police arrests a suspect for committing a certain crime but Miranda prevents them to question this suspect about other crimes committed by him or her. When the police arrests an armed robber at the scene of the crime, for example, this robber, using the rights given to him or her by Miranda, can prevent the police to learn of five other, similar robberies. When an innocent person is accused, or even convicted of committing one of these robberies, Miranda may prevent this person's acquittal.

There are more and more proposals to replace Miranda with videotaped interrogations, because this would further the cause of the innocent, since Miranda decreases the number of true confessions, and thus reduces the chance of clearing innocent people from under false conviction, and at the same time, Miranda does nothing against false confessions. Replacing Miranda with videotapes offers a definitely real chance to identify the rare cases of false police interrogations, and at the same time it does not hinder officers in obtaining the confessions, although common sense dictates that Hungarian practice will not have a chance to use it yet in most cases, nevertheless, in one or two prominent cases it would be really suitable to record the interrogation, which in some cases does happen.

A Hungarian Book of Criminal Proceedings

In recent decades jurists invested a lot of energy into defining the significance of Miranda. Authors claim that most people were not able to comprehend the importance of the Miranda rights, and so the Miranda had a small effect on the suspect's readiness to cooperate with the police.[\[11\]](#)

Analysing the Hungarian situation, Sándor Kardos discusses similar problems related to the new law about Criminal Procedure when he mentions the practice developed by the police authorities during the so called "Robocop" program, which indicates all relative and absolute witness obstacles and confession-denying right surfacing during interrogation, pointing out all the exceptions at the beginning of the police records. The confessor begins his or her confession with signing a multi-page warning which is difficult for any unprofessional not even to comprehend and to interpret, but even to read. This appears so artificially perfect that it becomes doubtful right away. The process of burdening the witness (who might very well become a suspect later on, based right on his or her statement as a witness) with questions concerning the capacity of the priest or the advocate, or the secrets of state and office is itself questionable. Kardos misses especially the suitable answer given to instructions, and would think it justified to demand more from police authorities.[\[12\]](#)

The warning given during investigation is often so formal that it is as if it had not been delivered at all. It can be observed that police authorities pay attention to warnings only when it seems that the crime can be proved by other evidence, and the culprits' denial of confession does not threaten the provability of the crime.

Conclusion

Judges must be aware of any possible incorrect approaches to the coercion of a suspect into confession, regardless of how often or not this happens. The chance of acquiring false judgements can be reduced when the aim of the interrogations is the pursuit of the truth and not the obtaining of the confession. Interrogators, when examining a possible suspect, should adopt a method to gather information, not to manipulate. Not a directly coercive method, where success measures on confessions obtained. Of course, there can be cases where coercive interrogation is needed and legal, but in these cases the police must be able to prove that they omitted oppression and psychic pressure.^[13] Protection against the use of illegal means in obtaining a confession comes not from the theoretical denial of the significance of the confession, and the representation of this denial through statutory law; but authentic guarantee can prevent authorities from the endeavour to obtain confession by all means.

In the case of having a confession, inquiries must be made about evidence casting doubt on the confession. Confession is also an evidence, the accuracy of which must be considered judicially. In order to be able to do this, the judge must be aware of all the possible circumstances questioning the acceptance of the confession, since in addition to coercion used by the authorities, many other factors can lead to false confession.

The number of possible interpretations of what counts as psychic abuse during an interrogation is almost endless. Something may be considered violent or coercive by a psychologist, and regarded as different by the lawyer participating in the interrogation, or by the officer who does the interrogation. Declarations such as this cannot be made impartially, because this will not, and possibly cannot be made into a subject of consensus. It depends entirely on the approach. The interrogator may regard something successful and effective, while the very same thing can be questioned by an attorney, civil rights researcher or a judge.

If we want to minimize the risk of subsequent judicial miscarriages, then tactics using psychic oppression must be excluded from everyday interrogation practice.

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^[2] Farkas Ákos – Róth Erika: Előadások a büntetőeljárás jog köréből, Miskolc, 1999. p. 39.

^[3] Chambers v. Florida, 309 U.S. 227 (1940) <http://home.earthlink.net/~ynot/chambers.html>

^[4] Haynes v. Washington, 373 U.S. 503 (1963) <http://caselaw.lp.findlaw.com>

[5] Vincent Berger: Az Emberi Jogok Európai Bíróságának Joggyakorlata Bp. 1999. pp. 13-18.

[6] Hugo Munsterberg: On the Witness Stand: Essays on Psychology and Crime
<http://psychclassics.yorku.ca/Munster/Witness/memory.htm>

[7] Richard P. Conti: The Psychology of False Confessions, The Journal of Credibility Assessment and Witness Psychology 1999, Vol. 2, No. 1, pp. 14-36.

[8] cf. Conti. im.

[9] cf. Conti. im.

[10] <http://www.landmarkcases.org/miranda/home.html>

[11] Leo, Richard A.: The Impact of Miranda revisited The Journal of Criminal Law and Criminology 0091-4169/96/8603. 1996 by Northwestern University, School of Law Vol. 86, No. 3. pp. 621.-631.

[12] Kardos Sándor: A büntetőeljárás törvény módosításáról In.: Miskolci Jogtudományi Műhely 4 A büntetőeljárásról szóló 1998. évi XIX. törvény tervezett módosítása Miskolc, 2005. pp. 23-31.

[13] Stephen Moston, Geoffrey M. Stephenson és Thomas M. Williamson: The effects of case characteristics on suspect behaviour during police questioning Brit. J. Criminol. Vol. 32 No. 1. Winter 1992. pp. 23-39.