False Confession as a Possible Cause of Wrongful Convictions

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Abstract

Overestimation of the confession of the accused is prohibited by Hungarian law and judicial practice. At the same time, however, confessions can play a key role, since the basic condition for some special procedures (arraignment, penalty order, plea bargaining) is the confession of the accused. In addition, the very important forensic role of the testimony and re-interrogation of the defendant cannot be questioned in general. Experience has shown that many factual issues are no longer in dispute if the defendant makes a confession in this respect, i.e. if the defendant provides evidence that is truly decisive ("conclusive") evidence in deciding the factual dispute, especially by making a detailed and revealing confession, not to mention if his confession contains "testimony of fact" (i.e. the defendant states a fact that only the defendant can know). To this extent, the confession is also today the "queen of evidence" (regina probationum). The layman's idea is that it is impossible for someone to admit to committing a crime he/she did not commit it, but practical examples show that there are many cases of false confessions in whole, in large part or at least in part that's why all statements made by the defendant, including confessions and denials, first and subsequent statements, and statements of co-defendants, must be examined in detail and their acceptance or rejection as evidence must be very carefully reasoned.

The paper reviews the forms of false confessions and their dangers through some practical examples.

Keywords: *confession, wrongful conviction, justizmord, significance of confession, simplified criminal procedure*

I. Introduction

In addition to the multiple disadvantages of the defendant, the regulation of the status of the defendant must take into account the fundamental duality that is evident in every statement of the defendant, whether it is a statement of will or knowledge, whether it is a statement of fact or of law, whether it is a confession or a denial. This fundamental dichotomy is that the defendant is not only the subject of the defence, but also the subject of (and contributor to) the evidence. Consequently, all statements

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made by the defendant are both a means of defence (*moyen de défense*) and a means of proof (*moyen d'instruction*)[1].

Overestimation of the confession of the accused is also prohibited by Hungarian judicial practice. Therefore, the judgment of the court of first instance will be set aside on the grounds of unfoundedness if the court grounds its verdict of guilt on the only confession of the accused made during the investigation (and later withdrawn), the contents of which are not sufficiently supported by the objective evidence found in the case, and the professional investigations which could have supported or refuted the confession of the accused have also failed[2].

At the same time, however, confessions can play a key role, since the basic condition for some special procedures (arraignment, penalty order, plea bargaining) is the confession of the accused. According to judicial practice, the disclosure of the accused's confession during the investigation (which the court made part of the trial material by reading it out) is a significant mitigating circumstance even if the accused refused to confess at the trial[3].

In addition, the very important forensic role of the testimony and re-interrogation of the defendant cannot be questioned in general: in fact, in the absence of a defendant testimony, the investigation is only at the stage of "cleaning up", while in the presence of a defendant testimony, it is already at the stage of "examining". Experience has shown that many factual issues are no longer in dispute if the defendant makes a confession in this respect, i.e. if the defendant provides evidence that is truly decisive ("conclusive") evidence in deciding the factual dispute, especially by making a detailed and revealing confession, not to mention if his confession contains "testimony of fact" (i.e. the defendant states a fact that only the defendant can know). To this extent, the confession is also today the "queen of evidence" (*regina probationum*)[4].

In conclusion, as a matter of principle, we wish to emphasise that all statements made by the defendant, including confessions and denials, first and subsequent statements, and statements of co-defendants, must be examined in detail and their acceptance or rejection as evidence must be very carefully reasoned.

II. The Importance of Confession in some European Countries

II.1. France

The source of French criminal procedural law is the *Code de procédure pénale* of 1958. The procedure is divided into three stages, the investigation is followed by the so-called instruction and the trial stage. In France, it is during the taking of evidence that the defendant is questioned as a procedural act[5].

In France, the confession is of particular importance in relation to plea bargain-like legal institutions. Two specific legal instruments can be highlighted:

a) the penal composition *("composition pénale"*) *and*

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[1] Herke Csongor, Fenyvesi Csaba, F. Tremmel, *A büntető eljárásjog elmélete [Theory of Criminal Procedure law]*, Dialóg Campus, Budapest-Pécs, 2012, p. 82.

[2] BH2001. 316. (Court Order)

[3] BH1993. 480. (Court Order)

[4] Cs. Herke Csongor, Cs. Fenyvesi Csaba, F. Tremmel, *cited*, p. 171.

[5] Cs. Herke, *A francia és az olasz büntetőeljárás alapintézményei [Basic institutions of French and Italian criminal procedure]*, PTE-ÁJK, Pécs, 2013. pp. 1-4. and 29.

b) the appearance based on prior admission *("comparison on reconnaissance préalable de culpabilité"*).

a) In the first case, during the penal composition, under certain conditions, the prosecutor offers a plea bargain to the defendant who has pleaded guilty to crime (threatened with a fine or to an imprisonment of not more than five years) or to any misdemeanour[6]. The penal composition is excluded in cases of press offences, political offences and intentional homicide (and only with certain restrictions in the case of juveniles over the age of 13). However, the law does not exclude repeat offenders from the proceedings.

Pradel highlights 3 conditions for a penal composition:[7]

- it can only take place before the indictment,
- only upon a confession, and
- never mandatory (always at the prosecutor's discretion).

The law offers the prosecutor 17 options in penal composition, according to Pápai-Tarr[8]. This may include the payment of a certain sum of money, the surrender of property, the surrender of a driving or hunting licence, participation in an alcohol dehydrator or rehabilitation programme, unpaid work for the public good, undertaking a course of study or training in a health or social institution, a ban on using a cheque or bank card, a ban on visiting certain places or having contact with certain persons, a ban on leaving the place of residence or even the country etc.

A penal composition is concluded by a court decision, i.e. it is on the same level as a court judgment.

b) In the case of the appearance based on prior admission, the prosecutor can effectively apply penalties, even recommending imprisonment for a term not exceeding one year[9]. That is why the participation of a defence lawyer is mandatory in this procedure, and it is actually a way to speed up the court procedure (not to avoid it). This procedure is not applicable to juveniles, and a confession is also a condition. This procedure is only available for offences punishable by a maximum of five years' imprisonment (not for felonies and misdemeanours), and is also excluded for press offences, political offences and intentional homicide.

In the case of a confession, the prosecutor can propose a sentence (the defence and the accused cannot). The term of imprisonment imposed in the proceedings may not exceed one year or half of the maximum penalty laid down by law[10]. During the procedure, the defendant and the defence lawyer appear before the prosecutor, who, after the confession, announces the specific sentence offer. If the defendant accepts the offer, it is approved by the President of the Court of First Instance (Président du Tribunal de Grande Instance) or by the judge designated by this President.

II.2. Italy

In Italy, a confession is an indispensable requirement for the immediate trial (*il giudizio immediatio*), where the preliminary hearing (*udienza preiminare*) is omitted after the

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[6] Á. Pápai-Tarr, *„Vádalku vagy amit Franciaországban annak neveznek" [Or a plea deal, as they call it in France]*, Miskolci Jogi Szemle 2011/2. pp. 17-18, 26.

[7] J. Pradel, *Procédure pénale*, 11e, Cujas, 2002. p. 211.

[8] Á. Pápai-Tarr, *A büntetőeljárás gyorsításának lehetőségei a francia és a magyar jogban [Possibilities of speeding up criminal proceedings in French and Hungarian law]*, Miskolc, 2021. pp. 241-243.

[9] F. Molins, *Comparution sur reconnaissance préalable de culpabilité*, Dalloz, 2004/5. p. 2.

[10] Á. Pápai-Tarr, *cited,* pp. 241-255.

investigative phase and the trial begins immediately. This procedure therefore requires the confession of the defendant during the interrogation[11]. During the Italian plea bargaining in the case of an offense punishable by up to three years' imprisonment, the prosecutor and the defendant enter into an agreement and jointly request the court to impose a specific sentence. However, the court has no discretion here as to the level of the sentence: the court either imposes the proposed sentence and thus closes the proceedings or continues the proceedings without accepting the plea bargaining.

III.3. Germany

In Germany, three types of agreement have emerged[12]. The waiver of charge and the penalty order show less plea-bargain (although in the latter case, the prosecutor may offer the penalty order during the bargain in exchange for the defence counsel's promise that the defence counsel will not request a trial). According to the third form, related to the confession of the defendant, there is a possibility to negotiate between the prosecutor and the defence counsel before the indictment (so-called German guilty plea). In return for the confession, the defendant can expect a shorter trial and be promised that for some crimes, the prosecution will refrain from indictment or propose a lesser sentence in court. In Germany, the plea-bargain appeared without legal regulation in the 1970s. At first it was used only in insignificant cases, in the 90s, according to Kertész, 20-30% of the procedures were conducted on a negotiated basis[13]. This so-called "*Verständigung"* is an institution similar to a plea bargain, which is nothing other than the possibility of a settlement. In the German legal system, this agreement can be made by the court, and the judge is not only a passive participant but also the coordinator of the agreement, since the judge can agree with the parties to the proceedings on the further course and outcome of the proceedings[14]. The subject matter of the settlement is well-defined and can only be a legal consequence, a procedural act or the procedural conduct of the participants. In all cases, the basis of the settlement is the confession of the accused[15].

II.4. Spain

In Spain, the procedure based on the recognition of guilt (*conformidad*) has been known since the end of the 19th century. In doing so, the prosecutor sends to the accused with the indictment the proposed sentence and its amount (up to 12 years' imprisonment since 1989). If the accused accepts this punishment or enters into a bargain and, as a result of the bargain, reaches an agreement with the prosecution, the court will order the punishment without conducting further evidentiary proceedings[16].

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[11] Cs. Herke, *cited,* pp. 3-6, 37, 68, 101-103.

[12] E. Fakó, *Vádalku a kontinentális jogrendszerben [Plea bargaining in the continental legal system],* Publ. Univ. Miskolc. Sect. jur. et pol. Tomus 20/1. 2002. pp. 255-257.

[13] I. Kertész, *Megállapodás az elkövetővel [Agreement with the offender]*, Rendészeti Szemle, 1993/10. p. 21.

[14] B. Elek, *Költség és időtartalékok a büntetőeljárásban [Cost and time reserves in criminal proceedings]*, Büntetőjogi Szemle, 2015/1-2, pp. 11-12.

[15] B. Miskolcziné Juhász, *A büntetőeljárás fejlődése [The development of the criminal procedure],* https://jak.ppke.hu/uploads/articles/12332/file/Juh%C3%A1sz%20Bogi%20PhD%20dolgozata%20teljes.pdf pp. 255-256.

[16] Á. Farkas, *Konszenzuális elemek a büntetőeljárásban* [Consensual elements in criminal proceedings], Magyar Jog, 1992/8. p. 512.

III. The Significance of Confession in Hungarian Law

The Hungarian law regulates four legal institutions belonging to the broader range of plea bargaining[17]:

a) cooperation with the suspect,

b) conclusion of an arrangement,

c) confession at the preparatory session,

d) agreements concluded under the Protection Program[18].

In addition, there are even more places to find a legal institution in the Hungarian criminal procedure, that bears the character of an agreement. Thus e.g. the "become effective" of a prosecution warning requires the tacit consent of the accused (since if he complains about it, the investigation must continue). The same is true of conditional prosecutorial suspension, where, in addition to tacit consent, there may be further consensus in the background (e. g. compensation, reparation etc. by the accused is difficult to imagine without prior consultation of the prosecution and defence, even with the victim involved). And in the same way, there is a tacit agreement in penalty order proceedings, and in many cases, it can only be arraignment only because, on the basis of a preliminary discussion and consensus, the accused sees that the criminal proceeding will be quicker (and the practices shows it's coming with a lenient sanction) in the case of confession. Thus, at the beginning of the proceedings, three more accelerating institutions are available (arraignment, penalty order, arrangement) and their number decreases over time, and no such separate simplification procedure is possible during a normal trial[19].

a) If a person with a reasonable suspicion of committing a criminal offense cooperates in the investigation and proof of the case (or other criminal case) to such an extent that the national security or law enforcement interest in the cooperation outweighs the criminally suspected as an interest in bringing a person reasonably suspected of having committed a criminal offense, depending on the stage of the proceedings, the prosecution rejects the application (§ 382 of CCP) or terminate the proceedings (§ 399 of CCP).

Cooperation shall be excluded if the subject of the suspicion is a criminal offense which involving the deliberate extinction of another's life, permanent disability or intentionally causing serious deterioration in health.

In the case of cooperation, the state reimburses the damage (damages) for which the defendant is obliged to compensate under civil law (if it has not been reimbursed in any other way).

If compensation (payment of damages) is to be decided in a civil lawsuit, the legal basis for the claim must be presumed and the state is represented by the Minister of Justice in the civil lawsuit. The statement of litigation may not cover any fact on the basis of which the person charged and the reasons for cooperation can be inferred.

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[17] Zs. T. Szabó, *A büntetőeljárásról szóló, 2017. évi XC. törvényről - az előkészítő ülés és az egyezség" [XC of 2017 on criminal proceedings. on the law - the preparatory session and the agreement]*, XIV. Jogász Doktoranduszok Országos Szakmai Találkozója. Budapest: Károli Gáspár Református Egyetem *Állam- és Jogtudományi Kar, 2018.* pp. 393-401.

[18] Cs. Herke, *The agreement as a form of the plea bargaining in Hungary*, Miškininkystė ir kraštotvarka, Kaunas, 2021/1. pp. 95-102.

[19] Zs. Fantoly, *Konszenzuális elemek az új büntetőeljárási törvényben [Consensual elements in the new criminal procedure law]*, Szakmaiság, szerénység, szorgalom. Budapest, Dialóg Campus, 2018. pp. 187-196.

b) Before the indictment, the public prosecutor's office and the defendant may reach an arrangement on the confession of the guilt of the crime committed by the defendant and the consequences thereof (§ 407 of CCP). The private prosecutor may not enter into an arrangement with the accused (§ 786 of CCP). The arrangement can be initiated by the defendant, the defence counsel and the prosecutor's office (even when the prosecutor's office interrogates the defendant). The participation of a defence council is obligatory in the procedure for concluding an arrangement.

In order to reach an arrangement, the prosecutor's office, the defendant and the defence counsel (with the consent of the accused only the prosecutor's office and the defence counsel) may negotiate the admission of guilt and the content of the arrangement (except for the findings of fact of the crime and its classification according to the Criminal Code). If the prosecution and the defendant have agreed on the content of the arrangement, the prosecution will warn the defendant of the consequences of the planned arrangement during the interrogation of the suspect and record the arrangement in the minutes of the interrogation of the suspect. The minutes shall be signed jointly by the prosecutor, the defendant and the defence counsel.

If the public prosecutor's office and the defendant have reached an arrangement, the public prosecutor's office will raise charge with the same facts and classification as the arrangement included in the minutes (§ 424 of CCP). In such a case, the prosecutor's office proposes in the indictment (to which the prosecutor's office attaches the minutes) that the court approve the arrangement, what penalty should be imposed (apply a measure) in line with the content of the arrangement, make any other provision corresponding to the content of the arrangement.

Before deciding on the approval of the settlement, the prosecutor and the defence counsel may speak. The court then decides the approval of the arrangement or its refusal:

Conditions for approval of the arrangement	**Cases of refusal to approve an arrangement**
1. the conclusion of the arrangement complied with the regulations **2.** the arrangement contains the legal supplies **3.** the accused understood the nature of the arrangement and the consequences of approving it **4.** there is no reasonable doubt as to the defendant's ability to set off and his admission on a voluntary basis **5.** the accused's confession is clear and is supported by the case file	**1.** the indictment or motions of the accuser deviate from the settlement **2.** the accused did not plead guilty in accordance with the arrangement at the preparatory session or did not waived the rights to a trial **3.** the conditions for approving the arrangement are not met **4.** the defendant has failed to fulfil the assumed obligations **5.** establishment of a classification departing from the charge seems to be established

c) If there are no obstacles to holding the preparatory session, the prosecutor may, at the request of the court

- describes the essence of the charge (this may be omitted for the accused's motion or consent),
- indicate the means of evidence in support of the charge and

- also make a motion on the amount (duration) of the penalty or measure in the event that the accused admits to committing the offense at the preparatory session.

If the accused pleads guilty and waives the right to a trial within the scope of the confession, the court decides in order on the basis of this fact, the case file and the interrogation of the accused whether to accept the accused's pleading guilty (§ 504 of CCP).

The conditions for accepting a declaration of guilt are as follows:

- the accused has understood the nature of this statement and the consequences of approving it,
- there is no reasonable doubt as to the defendant's ability to set off and to admit it voluntarily,
- the accused's statement of guilt is clear and is supported by the case file.

Once the declaration of acceptance has been accepted, there are two options:

- the court sees no obstacle to settling the case in a preparatory session: the accused is also questioned about the circumstances of the sentence, after which the prosecutor and then the defence counsel can speak and then the court can pass judgment;
- if the case cannot be dealt with at the preparatory session: the accused and the defence counsel may submit a motion for evidence and other procedural acts not to affect the merits of the indictment and the question of guilt, as well as the exclusion of evidence, stating the reason and to which the prosecutor may remark (and make the same motion).

d) According to § 2 of the PP Act (the Act LXXXV of 2001 about the Protection program for participants in criminal proceedings and assistants to Justice), the Protection Program (similar to personal protection) can be applied during the criminal proceedings or after the end of the criminal proceedings, if

- the person to be protected has testified or intends to testify to the essential circumstances of a serious crime,
- the testimony of the person to be protected has helped or may have helped to establish the facts and there is a reasonable presumption that obtaining evidence would otherwise be unforeseeable or disproportionately difficult,
- has been or is likely to be subjected to a criminal offense against the person to be protected as a result of the participation in criminal proceedings, rights or obligations, and such an offense is likely to be committed against the person to be protected, and
- the protection of the person in a threatened situation or the data subject cannot be ensured within the framework of personal protection.

The conclusion of the agreement may be initiated during the criminal proceedings with the consent of the prosecutor by the investigative body, the prosecutor or the chairman of the acting council which the criminal proceedings take place. After the conclusion of the criminal proceedings, the conclusion of the agreement may be initiated by the investigating body which the criminal proceedings took place (in the case of a prisoner in a prison, the conclusion of the agreement may be initiated by the penitentiary, the prosecutor or the enforcement judge).

The conclusion of the agreement must be initiated with the Witness Protection Service, which will be within 15 days.

- rejects the initiative if, on the basis of a preliminary psychological and security risk assessment, the person at risk is unfit for protection;
- if it agrees, it submits a reasoned proposal for the conclusion of the agreement to the national police chief for a resolution (§ 5 of the VP Act).

IV. The false confession

As the above summary shows, the importance of the confession of the defendant is paramount. The layman's idea is that it is impossible for someone to admit to committing a crime he did not commit, but practical examples show that there are many cases of false confessions in whole, in large part or at least in part.

The reasons for false confessions are quite trivial. For example, the defendant may make a quick confession at the start of the proceedings because the defendant wants to avoid criminal proceeding for a more serious offence by admitting to a minor offence (e.g. the police arrive at the defendant's home following a complaint of theft, and the defendant quickly admits to the offence, even though did not commit it, so that they do not search the house and find a large quantity of drugs). It is also typical when the accused makes a false confession in order to save another person (either because he wants to save a relative, or because it is the defendant's "duty" as a member of the criminal organisation to confess to the crime, or because the defendant confesses for financial gain). According to the literature, it is also possible that the defendant, because of a morbid desire to appear or a mental disorder, may wish to gain publicity and press coverage by taking the case in hand[20].

The literature distinguishes three main types of false confessions:

a) Voluntary false confession: in this case, there is no pressure from the authorities on the defendant, but the defendant makes a false confession of his own free will and admits to having committed the crime, even though did not commit it. Most often these false confessions are made in defence of a friend or family member. In many cases, an elderly parent, perhaps of a lower status, will make a confession in the interests of his or her child. But the other two cases mentioned above also belong to the same group, i.e. when someone falsely confesses to a crime for the sake of fame or to cover up a more serious crime. There is also the case of false confession for self-harm, when someone wants to punish himself or herself, either because of a previous undisclosed crime or because of guilt related to other acts of daily life. According to Elek, some innocent confessions are made spontaneously, without any official coercion, often to attract attention, but sometimes they are motivated by mental or psychological illness[21].

b) Coerced and compliant false confession: this is where the defendant makes a false confession because of extreme interrogation methods (physical or psychological

[20] G. Katona, *Valós vagy valótlan? Értékelés a büntetőperbeli bizonyításban*, Közgazdasági és Jogi Könyvkiadó, Budapest, 1990. pp. 204-205., 224-225., 237-241., 251-252.

[21] B. Elek, *A vallomás befolyásolása a büntetőeljárásban [Influence of testimony in criminal proceedings]*, Tóth Könyvkereskedés és Kiadó Kft., Debrecen, 2007. p. 104.

coercion), even though the defendant knows that is innocent. Such coercion may include physical violence, duress, threats, torture or promises. The latter in particular raises borderline issues as to which promises can still be considered lawful and what separates tactical bluffing from unlawful interrogation methods.

Tóth distinguishes between four types of outcomes of bluffing:

- the guilty suspect exposes himself,
- the defendant is innocent and does not react to the bluff,
- the innocent suspect gives the impression of being guilty,
- the suspect calls the bluff and provides false evidence or acts passively.

The first two are desirable forms of bluffing, but the latter two can result in serious mistakes[22].

A coerced confession already violates the Universal Declaration of Human Rights, as "no one shall be subjected to torture or to inhuman or degrading treatment or punishment"[23]. A judgment of the European Court of Human Rights in 1978 lists further abuses by the authorities which also fall within the definition of torture (e.g. prolonged, protracted interrogation, obstruction of sleep, or the continuous sound of a whistle during interrogation)[24]. But depriving the addict of cigarettes or drugs alone may be enough, as withdrawal symptoms can lead to physical suffering that can result in violence[25].

The prohibited methods of interrogation listed in § 136a Subsession 1 of German CCP include abuse, ill-treatment, exhaustion, physical interference, administration of medical substances, torture, deception and hypnosis. Threats or promises of unlawful advantage are also prohibited, as are measures that impair the suspect's memory or insight. Austria also prohibits the making of promises or the use of trickery, threats, coercion, ambiguity and vagueness[26].

c) Coerced and obtained false confession: in this case, the defendant under physical and/or psychological pressure already believes that his or her otherwise false confession is true. Researches have shown that even innocent people can be induced to confess guilt by certain methods. What is most striking in the cases described in the literature is that the innocent person's memory can be completely altered by certain interrogation methods. This is particularly true for juveniles, the tired, the naive and the low-intelligent, but stress can also easily lead to false confessions. This phenomenon was compared to hypnosis in the 1970s[27].

V. Specific cases of false confession

My previous scepticism about the existence of false confessions was completely removed by the following incident. In the early 2000s, a father appeared at my lawyer's

[22] M. Tóth, *A taktikai blöff alkalmazása [Using the tactical bluff]*, Belügyi Szemle, 1980/5, p. 18.

[23] The Convention was promulgated by Act XXXI of 1993. Act, and the § 3 of which contains this prohibition.

[24] B. Elek, *cited*.

[25] E. Bócz, *Kihallgatás, kényszervallatás [Interrogation, forced interrogation],* Belügyi Szemle, 2013/5, p. 18.

[26] § 164 Subsession 4 of the Austrian CCP.

[27] B. Elek, *A vallomás befolyásolása a büntetőeljárásban [Influence of testimony in criminal proceedings]*, Tóth Könyvkereskedés és Kiadó Kft., Debrecen, 2007.

office with his 15-year-old child. They said that the previous day, outside a local nightclub, the child had witnessed a robbery: two people he knew by sight and by nickname had forcibly taken a mobile phone from a young man standing outside the nightclub. The police told him this morning that he had to go in for questioning. They think he will be interviewed as a witness, but they want him to go because they do not trust the police.

At the time of the incident, there was no rule in the Hungarian Criminal Procedure Code that a minor could only be questioned in the presence of his/her legal representative (at least this was not a living provision at the police station of Pécs), so only the legal representative could be present with the minor during the questioning. Therefore, I accepted the order and went to the interrogation.

At the beginning of the interrogation, the police officers were visibly shocked that the minor did not come alone, they were not very happy about the presence of a legal representative, but they finally allowed my presence. We sat down in a larger room where there were objects covered with a black bag on the table next to us. The interrogating officer said that they knew everything, it was a pity to deny it. The client looked a little puzzled as to what was there to deny. The officer then outlined in a friendly manner that the person being questioned had two options. One was to say that he had robbed the victim and taken his mobile phone (the officer even helped by saying that the child had thrown it away somewhere in his fright, which was why they couldn't find it), in which case he would be allowed to go home on a factual confession, including guilty plea. The other option is that he denies it, in which case he will be arrested, a decision will have been made (at which point he will have been waving a typed paper, the contents of which we were not even allowed to know), the court will decision about the detention for months, the child will be expelled from school, and in prison the child will be mixed up with a society that will only lead him into further crimes. The story goes that the minor was an excellent student despite his minority (gypsy) background. The detective also said that it was pointless to deny it anyway, because many people saw the incident and the physical evidence (?) was covered up on the next table.

To my utter dismay, the minor then said, half crying, that OK, he would admit that he had done it, but he did not want to talk about the details. I have to say that his father was absolutely right to foresee what was going to happen, and it is a good thing that he had his legal representative with him. I asked the child, to his utter amazement, how he could admit it, when on the way here he even told me who the perpetrators were. He replied that they would never be caught anyway, and there was all that evidence on the covered table. Of course, I did not let him make the false confession, and (although he was afraid of the real perpetrators) he told for the record who had committed the crime.

The case ended with a happy ending, as the police knew the two suspects, arrested them within a short time and even found the stolen mobile phone on them. So my client became a witness in the case instead of a defendant, but it's hard to imagine what would have happened if he had gone to the hearing without a lawyer: the police would have suspected him with the crime, the prosecutor would have charged him and the court would have convicted him on the basis of a full, revealing confession, with witnesses who saw him (also) at the scene of the crime. The real perpetrators would have received a prison sentence of several years to be served, which is probably what would have awaited him. And since the case would have been successfully closed by the investigators, they would not have investigated the missing mobile phone, which could have been evidence of the defendant's innocence.

Usually, we only find out who the real perpetrator is, either on the basis of evidence from another case or for other reasons, because it is difficult to prove the innocence of a person who has made a false confession. An example of the latter was the famous case of Ulvi K. in Lichtenberg, who made a false confession in the murder of a nine-year-old girl, Peggy K[28]. As it turned out, Ulvi K. was at the mental level of an 8-10 year old boy and had previously committed sexual violence against a boy, for which he had been treated in a psychiatric institution, and that's why was suspected. Ulvi K. gave a confessional testimony, but his defence lawyer was convinced that the confession was the result of exhaustion and hours of interrogation and suggestive questions. In addition, the defendant claimed that the investigator had persuaded him to confess with chocolates and promised him that he would not go to prison if he only told the "truth". In addition, there was a witness, who had previously been Ulvi K.'s companion during her psychiatric treatment, who testified that Ulvi K. had told him about the circumstances of the victim's murder. The witness later retracted this statement because, according to him, he only made the incriminating statement because the police had promised him that if he testified against the suspect, his sentence would be reduced[29]. This case also ended well, as Ulvi K. was eventually acquitted in a retrial, but before that he had a final conviction.

VI. Conclusion

Julia Shaw and Stephen Porter conducted a very interesting study in the mid-2010s[30]. Their study involved 126 university students. They contacted the parents of the participants after obtaining their consent. The parents were asked about emotionally charged events in the students' childhood. The stories were used to filter out students who had witnessed abuse, assault with a weapon, theft, accidents, animal attacks or the loss of a large sum of money.

Of the students who were then filtered out, 60 were told that they had actually taken part in one of the six events mentioned above. They also provided details of real past events as confirmation, and these details were mixed into the description of the fictitious event. The researchers then used two methods to elicit false confessions from the students in three different interviews:

- they claimed that the parents had narrated the event,
- the students were told that all people can recall details from their memories that they thought they had lost.

The results were shocking: 24 students (40 per cent of students) thought the fictional events had actually happened. This proportion was roughly the same for those who made a false confession about a crime (21 out of 30) and for those who did so about other types of events (23 out of 30). However, the test was very strict: only those who claimed that the incident had taken place and who could recall at least ten different, specific details about the circumstances of the incident were considered to have confessed.

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[28] I. Jung, C. Lemmer, *Der Fall Peggy. Die Geschichte eines Skandals [The Peggy case. The story of a scandal],* Aktualisierte und überarbeitete Taschenbuchausgabe. Knaur, München, 2016. p. 16.

[29] https://www.bild.de/news/inland/prozess/mordfall-prozess-vater-zeigt-foto-so-koennte-peggy-heute-aussehen-35452420.bild.html (accessed on 15.08.2020).

[30] https://psmag.com/news/convince-someone-committed-crime-98442.

The conclusion is that false confessions are based on confabulations fuelled by details provided by investigators. The high proportion of people who give false confessions in trials warns against the use of procedures in investigation and interrogation that facilitate the formation of false memories.

We have seen that confessions are of particular importance not only in Hungary but also in all the European countries examined. For this reason, every confession must be examined to see whether it is consistent with all the circumstances of the case and the other evidence. A criminal tactical method of verifying confessions is the on-the-spot interrogation, since the defendant who makes a false confession will not be able to answer questions about the details of the crime accurately on the spot, or to show the specific facts of the crime[31]. The presence of a lawyer is also a guarantee factor, since in the presence of a lawyer, the investigator is less able to influence the suspect and is forced to refrain from using unlawful means. The presence of a defence lawyer can also reassure the defendant, making him less likely to make a false confession under pressure from the interrogator.

If these measures are not taken, false confessions can easily lead to wrongful convictions. This is very unlikely to come to light later, as confessions are less likely to give rise to suspicions that they are in fact a case of wrongful convictions.

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11. https://psmag.com/news/convince-someone-committed-crime-98442

[31] Cs. Fenyvesi, *A kriminalisztika tendenciái. A bűnügyi nyomozás múltja, jelene, jövője [Trends in criminology. The past, present and future of criminal investigation]*, Dialóg Campus Kiadó, Budapest, 2017. p. 185.

12. https://www.bild.de/news/inland/prozess/mordfall-prozess-vater-zeigt-foto-so-koennte-peggy-heute-aussehen-35452420.bild.html (2020.08.15.)

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