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THE CONFRONTATION FROM CRIMINAL-PSYCHOLOGICAL ASPECT

Abstract: *This Article represent an analysis of the Confrontation as a proofing method in criminal procedural law from apart from criminalistical and also a psychological aspect. Article observes the psychological foundation of confrontation and The process of the formation of fact-based knowledge. Article pretends to review The forms and shapes of how the truth and lies appear on those who testify and finally The psychological foundation of the confrontational conflict.*

Key words: *Confrontation, criminal procedure, evidence*

1. The psychological foundation of confrontation

Confrontation as a truth seeking (testimony-checking) institution in the proofing method, apart from having a legal and criminalistical aspect also has a psychological one, which merits particular attention. The psychological aspect is the first to be examined, even if not in full detail, because this aspect provides the foundation of the institution that renders its introduction, maintenance, and development worthwhile.

It already appeared in my empiric research /in 2005-2007/ as a question: wether or not the law enforcement agencies and the suspect/accused believe the institution is theoretically established. The answers ranged from the self-ironical 38% of the suspects to the 70% of the prosecutors'. In average, 54% of those questioned feel that the institution is academically/theoretically established.

What is confrontation based upon? What is the source of the effect that confrontation has?

To answer the questions, one should depend on the psychology of confrontation because the confrontation is a special form of interrogation that takes place in the presence of not one person, but two.

Criminal-psychology, applicable in interrogations, is a highly elaborated subject; it is widely renowned, both in Hungary and abroad, (e.g in Serbia as well¹) and has a rich literature. However, research on the behavioural reactions in the confrontational situations is more seldom.²

In this study, I will display and analyse the related ideas, scientific results and finally, to conclude, I will express my mostly juristic point of view which of course, in terms of depth, may not be on the standard of a criminal-psychologist's one.

2. The process of the formation of fact-based knowledge

In a basic confrontational situation, we generally presume that one of the participants is telling the truth, while the other is not; this participant is intentionally trying to deceive (the authorities) by providing false statements. The truth-value, the reliability of the facts, evolves as a result of a complex process within the participant (the witness, the victim, and the accused). The parts of the process are the following: observation, recollection, and reproduction.

2.1. Observation

According to a French proverb, „a crime makes a witness the witness“. I must be precise: witnessing, recognising and observing make a witness, witness. The perceptual ability has, for long been separated into two categories by the relevant professional literature: an objective one and a subjective one.³

The objective one may be evaluated based on the external circumstances, conditions that were decisive when the observer observed/or could have observed the events that took place. These conditions are case and situation sensitive, and are independent from the observer's person and personality. Most common examples: the observed event's velocity, time (even duration, sequence), the light-colour-sound and weather conditions, the observed objects' characteristics, quality and traits, the observers distance from the event and the place of the observation.

When judging the subjective perceptual ability, however, the personal, inner, and physical-physiological-conscious-psychological elements are dominant. Perception is most importantly determined by one's senses, mainly sight

¹ See e.g.: Aleksić-Škulić: *Kriminalistika*. Beograd, 2004; Fejős, Istvan.: *Savremeni kriminalitet id dokazno pravo*. Novi Sad, 2002; Krivokapic, Vladimir: *Kriminalistika taktika*. Policijska akademija, Beograd, 2005.

² This partly may be due to the fact that anglo-saxon countries do not have the institution or even if they do have it, then it functions in a different form. In the relevant Hungarian professional literature one may scarcely find a few sentences regarding the psychology of confrontation.

³ Gross, H.-Geerds, F.: *Handbuch der Kriminalistik*. Band II. 10. Aufl. Berlin, 1978. p. 148.

and hearing, however, not alone, since one's mental condition, the rate at which the event affects one personally (spectator or participant of the event), one's concentration, occupation, qualifications, intelligence, age, sex, possible psychological and/or physical disorder, motivation, the event's interest and focus level in one's mind, one's recognition of illegality, one's emotional/moral judgement of the events also play a part.

It is a fact, based on research, that the more serious the crime, the worse the perceptual ability. It may be a feasible explanation that a mind of a victim, in face of a violent crime, will not or only limitedly comprehend any information that has not do to with the victim's personal safety/well-being.

However, besides the above stated, it must also be highlighted that, to all observed, a judgement is attached. The judgement, the recollection and the explanation of the events may be mislead by certain expectations, the reason of this is that all that took place is interpreted by the observer according to a previously set and often unconscious expectation (of the observer).⁴ To guarantee the justness of the observation and the accuracy of the judgement, this expectation has to be unveiled by the interrogator upon the first preliminary hearing, that is on the hearing before the confrontation.

2.2. Recollection

Between observation (the first phase) and the reproduction of the events (the third phase) time always elapses. Due to this, it is always necessary for the observer to recall the events and to peer into the past. This, however, is most often not free of influence. There are certain distorting factors that may taint or influence one's memory of the observed objects, events, and people. Making the events public, media reports, and the consultation about the events with others, mainly with those who have influence on the observer, may prove to be distorting factors.

The most damaging factor, one must bear in mind, is time. Although there is no definite evidence of how time affects the accuracy of one's memory, it is obvious that by time the pictures of memory get fainter (see the well-known Ebbinghaus diagram).

It is also a fact that the loss of accuracy of one's memory does not happen proportionately with time. The biggest loss of information is suffered right after the event took place, and in the next few following days; while all information stored in the long-term memory will be relatively safe even after a long time.

⁴ Hans Jörg Odenthal: *Die Gegenüberstellung im Strafverfahren*. Richard Boorberg Verlag, Stuttgart-München-Hannover-Berlin-Weimar, 1992. p. 22; In the Hungarian relevant literature Nagy Lajos, Kertész Imre, and Vargha László studied and methodized the objective and subjective influencing factors.

One's subjective judgement of the events definitely affects the memory, that is, an important, intriguing event is stored longer in the memory, than a less interesting, only superficially observed event.

The memory is continuously processing information it stores. The observation, even if not consciously, is altered by new personal experience, the processing of different opinions/point of views and the personal creation of possible versions.⁵

Especially, those actions influence and falsify the memories that are taken by the observer (who is most often the victim), in order to identify the person, who committed the crime. All those who become a witness or a victim of a crime and later on testify in the related court case, have it in their best own interests to gain any relevant information regarding their own case. All these subsequently sought and gained information very much affect the pictures of memory one has. The memory of the original experience and the subsequent information blend together and thus form a whole which means that, later upon in a testimony, it is difficult or even impossible to make a difference between what the witness originally observed and what information the witness has subsequently acquired from a third person. Thus, it is highly dangerous to allow the witnesses to discuss the events because during the discussion certain details of the events may get mixed up and also because they may influence one-another. It may happen that the witness attains the misleading accounts of other witnesses and blends it with his/her original accounts of memory.⁶ Later on, it is impossible to make a distinction between the remembrance itself and its description. In a possible confrontation with the accused, the witness will not be able to remember those observed by him/her; he/she will only remember his/her previous testimony. This means that the witness will not recall his/her true memories, which also reduces the chances of a successful confrontation.

2.3. Reproduction

The last phase in the process includes the reanimation of the accounts of memory, its uncovering and reproduction, converting it into reality, making it public in the criminal procedure, registering it in the records, and facing the other participant(s) face to face.

Reproducing what happened, based on the observation and memory, takes place partly in course of the main (first) hearings, and later on in the confrontational procedure itself.

The quality, the authenticity, the value of reality and the success of the reproduction (whether at the first hearing or during the confrontation) depends on

⁵ Friedrich Arntzen: *Vernemungspsychologie, Psychologie der Zeugenvernehmung*. 2. Aufl. München, 1989. p. 73.

⁶ Hans Jörg Odenthal: *Die Gegenüberstellung im Strafverfahren*. Richard Boorberg Verlag, Stuttgart-München-Hannover-Berlin-Weimar, 1992. p. 24.

both the interrogator's and the interrogated person's physical and psychological abilities and knowledge, however those details belong to criminal tactics.⁷

3. The forms and shapes of how the truth and lies appear on those who testify

After gaining a testimony of the victim/witness/accused in the trichotomous process (observation, recollection, reproduction), the next in line is to determine if the testimony is truthful or false. It seems that delivering the truth comes natural, while lying (where by definition we mean a deliberate false statement) does not come natural: lies have to be created, constructed, and pondered, which means that it is more complex and difficult to lie. When one is telling the truth, his/her gestures are spontaneous, while the person lying makes deliberate efforts in withholding the truth and has a body language that is trying to serve as a cover up for the distortion of the facts.

The next questions to be answered are whether or not these signs are identifiable? Are they applicable in assessing the testimonies and the confrontational testimonies? Can they serve as a guideline in determining the truth?

Criminal psychology has been long searching for these answers. Its presumption is, that if a person tries to conceal information, his/her subconscious body language may reveal the truth. The contradiction between what is spoken and the actual body language may be considered as a signal of an attempt to deceive.⁸

The non-verbal communication (body language, physiognomy) and self-control, however, varies from person to person. We may only generally state

⁷ Psychologists have worked hard to understand the limits the witness' testimonies have, however, they have only made a minimal effort to deliver help to much-in-need witnesses. Recently, Geiselman and Fisher have developed a new interrogational-questioning method they call „cognitive interview“. This method has been founded on the time-tested principles of cognitive psychology which proved that it is possible to improve a witness' recollection. Based on numerous experiments and research, studies have found that the cognitive interview is 20-35 percent more effective than that of the original police interrogations, even if the latter are conducted by experienced specialised police officers. If we presume that the purpose of the police examination is to acquire comprehensive and precise information, then the cognitive interview has a potentially decisive advantage over traditional methods. If we compare the cognitive method with the other memory recall enhancing techniques applied by the police force, hypnosis above all, the revised cognitive interview's advantage is that it is much more effective, and the revised system is even more effective than the original cognitive interview, which itself has proved to be as effective as hypnosis. Apart from this fact, the revised cognitive interview is more reliable, easier to master and easier to apply. Fisher, R.P.- Geiselman, E. - Raymond, D. S. - Lynn, M.- Jurkevich, L.M.- Warhaftig, M.L.: Enhancing Enhanced Eyewitness Memory: Refining the Cognitive Interview. *Journal of Police Science and Administration*, 1987/4. p. 291.

⁸ For details see: Robert Edelman: Non Verbal Behavior and Deception. In: Canter, D.V.- Alison L.J. (eds.): *Interviewing and Deception*. Dartmote Aldershot, Brookfield, Singapore, Sidney, 1997. pp. 159-178.

that certain forms of body language are more likely to be a veil for deception as they are related to lying (for example twisting one's feet, crossing one's feet, hiding one's eyes, flicking non-existent floss off one's cloths, hawking, sweating, crying, etc.).⁹

According to criminal-psychological research, the following special signs of body language may signal a potential lie or false statement.¹⁰ In my opinion, these may be observed during confrontational interrogations and in the course of the participants' confrontations:

A) Those who lie tend to smile somewhat less. (Ekman-Friesen-O'Sullivan 1988)¹¹ A smile that occurs during a lie differs from a smile that occurs when one is in an emotionally disturbed status. This latter is to be classed in the categories of sad/happy smiling. (Ekman 1985, 1988)¹²

B) Regarding visual contact, its frequency tends to increase. (DePaulo-Stone-Lassiter 1985)¹³

⁹ In the relevant literature there are certain professional groupings for physiognomical signs. For instance a trichotomical one:

- a) Expressions
- b) Gestures
- c) Body language.

Expressions include: smiling, disapproval, complacence, smirking, laughing, mockery, breaking off eye contact, glancing sideways, staring, gazing, raising one's eyebrows, dilating pupils, closing one's eyes, quick blinking, uproar, anxiety, turning pale, leaving one's mouth wide open, tightening one's lips, biting one's lips, biting the inner part of one's mouth.

Gestures include: nodding one's head, shaking one's head, touching, waving, wringing one's hands, motionless hands, hiding one's eyes or mouth, showing one's palms up, clenching one's fists, pointing, scratching one's head, rubbing one's face, snapping one's fingers, flicking floss off one's cloths, flapping flies, towering hand position, tapping one's fingers, playing with one's fingers.

Body language: bowing with one's head, turning one's head, taking big gulps, speedy breathing, dry coughing, nervous facial twitching, shrugging one's shoulders, crossing of one's arms, stretching one's arms, crossing one's wrists, constant opening and closing of the palm, shrinking, restlessness, recoiling posture, leaning back and leaning forward, crossing one's legs and then setting them down again on the floor, the direction one's legs are pointing to, tapping of one's legs. Majeski, W.J.-Butler, R.: *Hazugságvizsgáló könyvecske*. Bagolyvár Könyvkiadó, Budapest, 1996. pp. 21-23.

¹⁰ Based on Edelman's comprehensive study. For details see: Robert Edelman: *Non Verbal Behavior and Deception*. In: Canter, D.V.-Alison L.J. (eds.): *Interviewing and Deception*. Dartmonte Aldershot, Brookfield, Singapore, Sidney, 1997. pp. 159-178.

¹¹ Ekman, P.-Friesen, W.V.-O'Sullivan, M.: *Smiling when lying*. *Journal of Personality and Social Psychology*. 1988/54. pp. 414-420.

¹² Ekman, P.: *Telling lies: Clues to deceit in the marketplace, politics and marriage*. W.W. Norton, New York, 1985.; Ekman, P.: *Why lies fail and what behaviors betray a lie*. In: Yuille, J. (ed): *Credibility Assessment*. Kluwer Academic Publishing, Dordrecht, The Netherlands, 1988.

¹³ DePaulo, B.M.-Stone, J.I.-Lassatier, G.D.: *Deceiving and detecting deceit*. In: Schlenker, B.R. (ed.): *The Self and Social Life*. McGraw-Hill, New York, 1985.

If the deception is related to a crime, then the culprits often tend to set a distance or withdraw, for instance by avoiding visual eye-to-eye contact in order to conceal their crime. There are certain circumstances that give the semblance to lay believe that anyone who is lying will try to avoid eye-to-eye contact. On the contrary, after reviewing 18 empiric studies, DePaulo-Stone-Lassiter found that regarding visual contact, it is a tendency that its frequency increases. It is highly likely that those who intend to deceive presume that if they look the other way they will be caught, so to avoid and counter this they rather peer. Presumably, those who lie tend to blink more and their pupils dilate more.¹⁴

C) On the contrary to everyday believes, liars do not make restless, nervous (hand, leg and head) movements or have a sly posture; because they intentionally try to control themselves and try to keep their body under control. They do know that they desperately need to do so. (Ekman-Friesen 1969, 1974)¹⁵

It is also proven, that when in deception, less demonstrative hand movements are made. (Mostly the motions and gestures accompanying speech, the accentuation, and the sentence propitiation become less frequent). (DePaulo-Stone-Lassiter 1985, Ekman 1988)¹⁶ This may be related to the fact that a lie is, in a cognitive sense, complex, thus the liar's attention is focused on the verbal and not on the non-verbal communication. However, it may also be related to the fact that those who lie have excessive control over their actions.

D) Those who give false statements and lie send para-lingual signals: they appear to speak in ragged sentences, hesitate, their parlance is over-elaborate and lacks spontaneity. (DePaulo-Stone-Lassiter 1985; Zuckerman-Driver 1985; Köhnken-Thürer-Zoberbier 1990)¹⁷

¹⁴ De Paulo, B.M.-Stone, J.I.-Lassiter, G.D.: Telling ingratiating lies: Effects of target sex and target attractiveness on verbal and non verbal deceptive success. *Journal of Personality and Social Psychology* 1985/48. pp. 1191-1203.

¹⁵ Ekman, P.-Friesen, W.V.: Non verbal leakage and clues to deception. *Psychiatry*, 1969/32. pp. 88-106.

Ekman, P.-Friesen, W.V.: Detecting deception from the body of face. *Journal of Personality and Social Psychology*, 1974/29. pp. 288-298.

¹⁶ De Paulo, B.M.-Stone, J.I.-Lassiter, G.D.: Telling ingratiating lies: Effects of target sex and target attractiveness on verbal and non verbal deceptive success. *Journal of Personality and Social Psychology*, 1985/48. pp. 1191-1203.; Ekman, P.: Why lies fail and what behaviors betray a lie. In: Yuille, J. (ed): *Credibility Assessment*. Kluwer Academic Publishing, Dordrecht. The Netherlands, 1988.

¹⁷ De Paulo, B.M.-Stone, J.I.-Lassiter, G.D.: Telling ingratiating lies: Effects of target sex and target attractiveness on verbal and non verbal deceptive success. *Journal of Personality and Social Psychology* 1985/48. 1191-1203. o.; Zuckerman, M-Driver, R.E.: Telling lies: Verbal and non verbal correlates of deception. In: Siegman, A.W.-Feldstein, S. (eds.): *Multichannel Integration of Non verbal Behavior*. Hillsdale, NJ, Erlbaum, 1985.; Köhnken, G.-Thürer, C.-Zoberbier, D.: The cognitive interview: Are the interviewer's memories enhanced, too? *Applied Cognitive Psychology*, 1190/8. (1) pp. 13-24.

Some experiments indicate that these para-lingual signals (the quality and nature of the sounds of speech, and of the other sounds related to speech) reveal information that otherwise would not be strikingly apparent from verbal communication or facial expressions. (Bugental-Henker-Whalen 1976; Zuckerman-Amidon- Bishop-Pomerantz 1982)¹⁸ Those who lie tend to speak with a rather shrilling voice, hesitate, give delayed answers that most often have flaws, constantly repeated elements, and tongue slips. (DePaulo-Stone-Lassiter 1985; Zuckerman-Driver 1985)¹⁹ Some experiments indicate that a person's voice gets a more shrilling tone when lying (Ekman-Friese-Scherer 1979)²⁰, although this is person and case sensitive, since some voices change tone in a different direction. Those observations, that the flaws of speech and hesitations become more frequent, blend in well with the concept that lying sparks emotional reactions.

Thus, some people may seem to be sincere even when they are lying (Bond-Kahler-Paolicelli 1985; Zuckerman-DeFrank-Hall- Larrance-Rosenthal 1979)²¹, whilst others may seem dishonest even when they are telling the truth. (Riggio-Tucker-Throckmorton 1987)²² This is called the distortion of the behaviour.

People have misbeliefs regarding the behaviour of liars: they credit deception to those who do this stereotypically, even if and when they are telling the truth. (Bond-Kahler-Paolicelli 1985)²³

E) Those who are more strongly motivated in lying give answers more slowly, more shortly and with a sharper voice opposed to those who are less strongly motivated. They establish less eye contact, blink less, move their heads

¹⁸ Bugental, D.B.-Henker, B.-Whalen, C.K.: Attributional antecedents of verbal and vocal assertiveness. *Journal of Personality and Social Psychology*, 1976/34. pp. 405-411.

Zuckerman, M.-Amidon, M.D.-Bishop, S.E.-Pomerantz, S.D.: Face and tone of voice in the communication of deception. *Journal of Personality and Social Psychology*. 1982/43. pp. 347-357.

¹⁹ DePaulo, B.M.-Stone, J.I.-Lassiter, G.D.: Deceiving and detecting deceit. In: Schlenker, B.R. (ed.): *The Self and Social Life*. New York, McGraw-Hill, 1985.

Zuckerman, M.-Driver, R.E.: Telling lies: Verbal and non verbal correlates of deception. In: Siegman, A.W.-Feldstein, S. (eds.): *Multichannel Integration of Non verbal Behavior*. Hillsdale, NJ, Erlbaum, 1985.

²⁰ Ekman, P.-Friesen, W.V.-Scherer, K.: Body movement and voice pitch deceptive interaction. *Semiotica*, 1979/16. pp. 23-27.

²¹ Bond, C.F.-Kahler, K.N.-Paolicelli, L.M.: The miscommunication of deception: An adaptive perspective. *Journal of Experimental Social Psychology*, 1985/21. 331-345. o.; Zuckerman, M.-DeFrank, R.S.-Hall, J.A.-Larrance, D.T.-Rosenthal, R.: Facial and vocal clues of deception and honesty. *Journal of Experimental Social Psychology*, 1979/15. pp. 378-396.

²² Riggio, R.E.-Tucker, J.-Throckmorton, B.: Social skills and deception ability. *Personality and Social Psychology Bulletin*, 1987/13. pp. 568-577.

²³ Bond, C.F.-Kahler, K.N.-Paolicelli, L.M.: The miscommunication of deception: An adaptive perspective. *Journal of Experimental Social Psychology*, 1985/21. pp. 331-345.

less, do not change their posture as often and gesticulate less. (DePaulo-Stone-Lassiter 1985; Zuckerman-Driver 1985; Walters 1996)²⁴

Although strongly motivated liars may pre-plan their possible answers, they have more experience and trust more in their ability to deceive. According to DePaulo-Kirkendol, some are less responsive to the motivational impairment effect in „the communication of deception“²⁵ than others. Probably, the experienced and self-confident liars form the group of the less responsive.

F) So it seems that non-verbal behaviour may be improved by practice. (DePaulo 1992)²⁶

In fact, the differences between personal communicational skills are strongly related to one's ability to deceive, and one's confidence in his/her personal ability to deceive also plays an important role.

G) There is some evidence that those, who are able to express their emotional reactions more by their posture, are better at deceiving. (Riggio-Friedman 1983)²⁷ This is why those, who in situations of social intercourse express themselves better and are more discreet, are more successful in deceiving, while those who are restrained are less successful. (Riggio-Tucker-Throckmorton 1987)²⁸

All non-verbal behaviour that may be traced back to the lack of self-confidence, reflect the behaviour that is aimed at deceiving. Namely, it causes restless movements, gestures, stammering, long pauses in speech, and delayed answers. False statements, on the contrary to true ones, may especially be exposed when it is vital for the liar to succeed in making others believe the false statement is true, however, at the same time, the liar does not believe in his/her personal success. (DePaulo-LeMay-Epstein 1991)²⁹ It seems, that certain people

²⁴ DePaulo, B.M.-Stone, J.I.-Lassatier, G.D.: Deceiving and detecting deceit. In: Schlenker, B.R. (ed.): *The Self and Social Life*. McGraw-Hill, New York, 1985.; Zuckerman, M-Driver, R.E.: *Telling lies: Verbal and non verbal correlates of deception*. In: Siegman, A.W.-Feldstein, S. (eds.): *Multichannel Integration of Non verbal Behavior*. Hillsdale, NJ, Erlbaum, 1985.

Walters, S.B.: *Principles of Kinestic Interview and Interrogation*. CRC Press, New York, 1996.

²⁵ DePaulo, B.M.-Kirkendol, S.E.: The motivational impairment effect in the communication of deception. In: Yullie, J. (ed.): *Credibility Assesment*. Kluwer Academic, Norwell, MA, 1988.

²⁶ DePaulo, B.M.: Non verbal behaviour and self-presentation. *Psychological Bulletin*, 1992/11. pp. 203-243.

²⁷ Riggio, R.E.-Friedman, H.S.: Individual differences and clues to deception. *Journal of Personality and Social Psychology*. 1983/45. pp. 899-915.

²⁸ Riggio, R.E.-Tucker, J.-Throckmorton, B.: Social skills and deception ability. *Personality and Social Psychology Bulletin*, 1987/13. pp. 568-577.

²⁹ DePaulo, B.M.-LeMay, C.S.-Epstein, J.A.: Effects of importance of success and expectations for success on effectiveness at deceiving. *Personality and Social Psychology Bulletin*, 1991/17. pp. 14-24.

under certain circumstances instil that they are lying to others, when it is obvious that they, in fact, are not, while others give no or minimal signs of lying even when they, in fact, are lying.

H) In case an opportunity occurs to plan and rehearse false statements, it makes it more difficult to expose them. (Cody-Marston-Foster 1984; Miller-deTurck- Kalbfleisch 1983; Littlepage-Pineault 1985)³⁰

I) Experienced liars are probably much better at deceiving. (DePaulo, P.J.-DePaulo, B.M. 1989)³¹

J) For the observer to make a difference between an innocent being afraid of others not believing him and culprit being afraid of being caught is a difficulty. One may draw a conclusion from this that those who are experienced in exposing deceptions are more able to make correct, precise distinctions in cases like the above mentioned. (Ekman 1985)³²

K) Some professional 'lie-exposers' are capable of detecting and exposing deceptions at a higher rate. (Ekman-O'Sullivan 1991)³³

In an experiment 500 people, some of whom were members of the US secret service, others included federal lie examiners, judges, police officers, psychiatrists, working grown ups and students, had to determine whether or not the 10 presented people were lying or were telling the truth. Only the members of the secret service achieved better than random results; they were the group that showed, compared to the other groups, significantly higher accuracy. Those who had better results reported different, varied and diverse forms of behaviour and put more emphasis on non-verbal signs rather than on verbal ones.³⁴

Is it possible at all, after knowing the results of this experience, to determine whether or not the person in question is lying or is telling the truth, based on their non-verbal signs?

³⁰ Cody, M.J.-Marston, P.J.-Foster, M.: Deception: Paralinguistic and verbal leakage. In: Bostrom, R. N. (ed.): Communication Yearbook 8., Newbury Park, CA, 1984.; Miller, G.R.-deTruck, M.A.-Kalbfleisch, P.J.: Self-monitoring, rehearsal, and deceptive communication. Human Communication Research, 1988/10. pp. 97-117. Littlepage, G.E.-Pineault, M.A.: Detection of deception of planned and spontaneous communications. Journal of Social Psychology, 1985/125. pp. 195-201.

³¹ DePaulo, P.J.-DePaulo, B.M.: Can attempted deception by salespersons and customers be detected through non verbal behavioral cues? Journal of Applied Social Psychology, 1989/19. pp. 1552-1557.

³² Ekman, P.: Telling lies: Clues to deceit in the marketplace, politics and marriage. W.W. Norton, New York, 1985.

³³ Ekman, P.-O'Sullivan, M.: Who can catch a liar? American Psychologist, 1991/46. pp. 913-920.

³⁴ Ekman, P.-O'Sullivan, M.: Who can catch the liar? American Psychologist, 1991/46. pp. 913-920.

To give a reasonable answer to the question raised, it would be necessary to have knowledge of how the behaviour of the person in question differs when accused of lying or when stressful conditions and circumstances occur, from their usual behaviour, which, of course, the examiners/experts do not have reliable knowledge of. Unfortunately this means that in general, one can not accurately determine whether or not someone is lying or is telling the truth.³⁵ The experiments indicate, that an experienced, self-confident and a proficient socialiser, who has the opportunity to pre-plan his/her false statements, may falsely make others believe that he/she is telling the truth.

According to Ekman-O'Sullivan (1989)³⁶, none of the signs or signals, indicating deception, are to be considered as perfect evidence. After all, there are major differences in personal non-verbal behaviour. For instance, someone who, by his/her nature, often pauses while speaking and sometimes hesitates or has so called manipulative gestures of the hands when gesticulating, cannot be judged on these grounds as a liar.

We may state that the correspondence between certain forms of non-verbal behaviour and the exposure of the deception that follows, lacks sufficient evidence. (Miller-Stiff 1992)³⁷

To summarise, I may also say, regarding confrontation, that based only on meta-communicational³⁸ signs and signals observed by any officer of law taking part in the confrontational process, investigatory phase or judicial phase, it is impossible to gain any relevant, reliable, and accurate information or have a notion regarding the truth value of the testimony.

The real information and thus the very result is if the person lying, due to the confrontation, alters his/her statements, and this time the testimony verifiably includes the truth.

³⁵ A practical example is detailed by Dominic Streatfeild. In the 1960's many CIA agents were engaged -by the means of all available (and even beyond!) criminaltactical methods, which up to today have not grown in number- to determine whether or not the alleged Soviet spy, Jurij Nosenko was telling the truth; but even after three and a half years of investigation, they still could not. Dominic Streatfeild: *Agymosás. HVG-ORAC*, Budapest, 2007. p. 308.

³⁶ Ekman, P.-O'Sullivan, M.: *Hazards in detecting deceit*. In: Raskin, D.C. (ed): *Psychological Methods in Criminal Investigation*. Springer Publishing Co., New York, 1989.

³⁷ Miller, G.R.-Stiff, J.B.: *Applied issues in studying deceptive communication*. In: Feldman, R.S. (ed): *Applications of Non verbal Behavioral Theories and Research*. Hillsdale, NJ. Erlbaum, 1992.

³⁸ „The misinterpretation of the external signs was humorously pilloried by a French psychologist. If the accused seems restless, and disturbed, then it is -according to the examiner- the sign of guilt; if the accused behaves indifferently, then the accused is vicious; if the accused does not remember some detail, then the accused is obstinately in denial, and if the accused gives all details, then the accused is cleverly acting in accordance with a carefully designed plan. Ridegh Rajmond-Olchváry-Milvius Attila: *Bűnügyi nyomozástan*. I. kötet. Hornyánszky Viktor R.-T., M. Kir. Udv. Könyvnyomda, Budapest, 1936. p. 308.

4. The psychological foundation of the confrontational conflict

Thus the next question is: what makes someone, who previously gave a false statement, to alter his/her statement in the course of a confrontation? How does psychology relate to this?

Numerous experiments prove that it is easier to expose a potential attempt of deception if the person, suspected of having a potentially false statement, is further examined.³⁹ Further examinations may include confrontation, which deliberately involves a forced tension. The authorities taking part in the confrontation seat someone face-to-face with the alleged liar, who was present when the events took place, saw, heard or otherwise perceived them. After this, it has become more difficult and tense to state a false statement, knowing that the person opposite knows the truth, and also knows that the confronted has a knowledge of his/her knowledge.

Thus, the liar will face a weight growing on his/her conscience, has to witness the person sitting opposite having full self-confidence, based on assured knowledge and also has to manage his/her growing inner sense of shame. I personally think that the damaging, harmful effects of stress and tension (based on the research of János Selye) should be emphasised as they have a vital role in breaking off one's control over the conscious. The process, the atmosphere of the confrontation and the situation of saying the facts into the face of the accused (eye-to-eye)⁴⁰ have to cause such pressure, tension and stress that is capable of (at least at an experimental level) bending or even breaking one's will and deterring one's intentions.

Only the impact of the stress, affecting the soul, could bring change in the conscious, which can be supported by the application of the act in a surprising and raiding manner. That is when the mendacious participant does not know, what will happen next, what evidence and knowledge the authorities and the other participants of the confrontation have. The more one has to bear such surprising and strong impulses, the bigger impact it will have, thus meaning a greater chance to bend one's will.

Vinczéné Karpeta Verka's experiment also indicates the positive effects of stress. According to her findings based on psychological examination:

³⁹ For details see: O'Sullivan, M.-Ekman, P.-Freisen, W.V.: The effect of behavioral comparison in detecting deception. *Journal of Non verbal Behavior*. 1988/12. pp. 203-215.

⁴⁰ It is said that the eye is the mirror to one's soul; not only is it a mirror, it also is the gate of one's soul. The soul appears and expresses itself through the eyes and thus makes, pushes its way. The power coming from one's eyes actually originates from one's soul, so it may be said, that confrontation is a battle of the souls. The deviation of the souls collide, struggle for a clear, clean conscience.

„The participants of confrontation only answered the so-called two profile based test differently, when they had to incur tension and suspense“ – which also means that they had given false statements.

„Deviation from the first psychological draw up (before the confrontation) was registered with half of the 11 people examined, compared to the second psychological draw up (after the confrontation), however, in one case clearly it was merely due to the extensive tension caused by the confrontation. In the other cases, the pre-assumed, i.e. the false statement, was also possible, but, to my knowledge, there is only evidence in two cases,

The problem with the two-staged system (assessing the situation before and after the confrontation) is that we do not have information regarding the source of the tension. Even if we detect a lie, we do not know its reason, furthermore, we do not know why we did not achieve the desired goal, the true turn in the testimony.

From the psychological point of view, in case of the interrogation of the accused, and only the accused, not the witness or the victim, the investigator solely emphasises the manipulation of the accused one's sense of fear. The investigator tries to inspire extensive fear in the accused in case he/she would mislead him/her, while at the same time, parallel the investigator tries to negate the accused one's fear of the possible consequences a confession may have, by moderating the guilt burdening the accused' ones conscience, by „sympathising, understanding, and belittling“. Investigators try to achieve the same effect in confrontation by the usage of a third person, however, in this case, the tactic is to increase the consciousness of guilt and the tension. (After the first attempt, that is the one that aims at decreasing the guilt felt by the accused one's conscience, failed. This is why confrontation is necessary.⁴¹) Based on the above mentioned, confrontation may be regarded as an „assisted interrogation“.

The tension and overwhelming effect caused by confrontation may appear on the grounds of empathy as well, as in the general model the suffers, the sad-

⁴¹ In the interrogation of the accused, even the words used to question, the tone, and the expressions and terms have a psychologic significance. For instance, when interrogating, communicating and talking to a person who is presumably lying or who does not cooperate (in most cases the accused) it is recommended to use more gentle, refined words when relating or referring to the crime committed. Instead of asking „Why did you kill the victim?“ we should ask „Why did you shoot at the victim?“. „Shooting“ is a somewhat more gentle word, than „killing“, and the words serve the same purpose. It is most likely, that by avoiding coarse, crude words, our chances of not getting angry answers, or dull rejection increases. In case we are dealing with someone who is accused of some kind of theft: „taking away“ is more gentle, compared to the harsh word: „stealing“.

The „gentler“ words lead to conversations. While, the harsh words block them. A psychological process of „tenderising“ takes place, when one uses more gentle words. This is because of the presence of sympathy, anxiety, and pity for those testifying. By this way, the interrogator will be able to come close to the accused and achieve cooperation. The gentler words are more successfully applied in confession and in testimonies. Their aim then, is to temporarily avoid criminal expressions' social branding and callousness.

ness, the occasional cry for justice and the apprehension in the eyes of the victim telling the truth also increases tension and, in the same time, touches the human soul of the liar/witness under other legal procedure. Two major group of emotions struggle within the mendacious confronted person, on one side:

hiding,
concealing,
secrecy,
denial,
escaping from responsibility,
casting down one' eyes,
turning away,
repression,
belying,
another humiliation,
another deception,
another injury, suffering,
secondary victimisation,
detachment,
indifference,
defiance,
occasional verbal attacks, foulness,
fear,
shame,

while on the other side:

open mindedness,
taking responsibility,
revelation,
looking eye to eye,
having a long talk,
testifying,
absolution,
confession,
change for the better, the route to recovery,
the chance of repent,
the beginning of reparation,
pain,
offendedness,
sadness,
depression,
passion,
vehemence,

outcry,
disappointment,
shock,
weariness,
surprise, etc.

It is not by chance, that -after the enumeration and the witnessing of the elements, of tension creating mechanisms -it appears that confrontation is still a confession-oriented „anguish of the soul“. It is not by chance, because the confrontation in fact developed from torture.

Psychologically, confrontation is based upon overloading one's senses. In the course of such, the liar may get isolated, may get left alone, and his/her sense of shame, loneliness, reprobation, numbness, inner pain, fear and humiliation, the shock caused by getting caught, occasional pity, empathy, weariness, exhaustion, „brain washing“ may lead to the „reprogramming“ of the accused's brain, thought and will (aim). All of these force a change, and may result in the mending of one's ways, may lead to living a righteous and upright life and even to facing the truth. It even may lead to taking responsibility for the crime, admittance, „confession“, and repent; which, in turn, provide the basic ground for the victim's forgiveness.

In my research I found, that confrontation is based on a presumption, on a hypothesis. Namely, that a person due to tension and psychological pressure will confess the truth to a person, of whom he/she knows that has full knowledge of the truth, knows that his/her statements were false because, the latter personally witnessed (saw and/or heard) the events. We may presume this and regard this as a fact, which by practice, has been proven to be rebuttable, since there are much more fruitless confrontations than successful ones, that is the proof of the thesis. People have false statements even when they know, that others know the reason and content of their lies. Thus, confrontation remains an experiment, a chance -on every occasion- to prove the theoretical thesis, which may and should be attempted.

Experimental criminal psychology could not -so far- to strengthen the „enforcing“ theses, because -unlike, for instance examinations searching for the truth- it is impossible to set up an accurate model for experimental criminal confrontation. For example university students often participate in experiments; however they are inept (others as well) to model crime related confrontational situations, because, in order to do so, most often they would have to commit crimes (and serious ones). Their level of tension and the scale of truth could only be examined afterwards. In the case of real criminals and crimes however, the procedure itself prevents any modelling and experimenting.

This fact however does not defy our hypothesis, knowledge and belief regarding the psychological foundation of confrontation, and its appliance.

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Suočenje iz kriminalno-psihološkog aspekta

Sažetak

Izučavajući institut suočenja kao dokaznog sredstva u krivičnom procesnom pravu, u ovom radu analizirao sam njegov kriminalno-psihološki aspekt. Prikazan je psihološki osnov suočenja kao i proces formiranja saznanja zasnovanog na činjenicama. U radu se analiziraju takođe i forme i oblici u kojima se istina i neistina iskazuju kod svedoka i naposletku psihološki osnovi konflikta u suočenju.

Ključne reči: Suočenje, krivični postupak, dokazno sredstvo