

# Preventing False Criminal Confessions in Poland and Russia – Legal and Forensic Aspects

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False criminal confessions are currently receiving a great deal of attention from legal scholars and law enforcement practitioners. There have been numerous publications, articles and in-depth case reviews concerning the psychological aspects of false confessions providing many useful insights. In this paper, it is assumed that the issue should be addressed at all possible levels, starting with the legal and forensic levels. Legal provisions that would prevent the use of physical coercion and manipulative interrogation techniques designed to extract criminal confessions should be adopted. Each criminal confession needs to be thoroughly analysed and cross-checked before a decision is made to use it as evidence. This paper describes pertinent legal provisions adopted by two countries – Poland and Russia. Both apply the inquisitorial model of criminal procedure. However, there are noteworthy differences regarding the interrogation procedure, suspect's testimonies and their evidentiary value. Existing legal safeguards aimed at preventing involuntary criminal confessions are discussed and compared. A summary of pertinent forensic recommendations is also provided. Moreover, the authors selected and described a case, in which a suspect falsely confessed to raping a minor, to highlight current legal shortcomings and some common forensic challenges regarding suspect interrogation.

**Keywords:** suspect interrogation, involuntary confession, confession contamination, internalised confession, verification of testimony

UDC: 343.144(438)(470)

## 1 Introduction

The phenomenon of criminal confessions has been at the centre of legal debates for years. There are numerous publications, articles and case studies concerning this topic – a strong indication of its importance and, at the same time, overall complexity. Criminal confessions evoke strong emotions not only among legal practitioners and scholars, but also among laypeople. The question of whether the arrested confessed their guilt arises in media reports whenever the information about a crime is published. Admission of guilt usually panders to a very strong prejudice against the suspect. Even though the idea of a criminal confession being the king of evidence was irrevocably discarded long ago, an intuitive, strong-held belief that innocent people do not confess to the crimes they did not commit remains rather deep-seated, even within the legal community. Studies show that law enforcement practitioners believe in the high evidentiary value of criminal confessions regardless of whether the confessors are trustworthy and provide verifiable details (Hebda, 2020).

This should not be surprising: in many cases, the suspect's confession constitutes a significant "turning point" (Luparia, 2006: 8–9). A criminal confession could be a kind of a "frame", which holds together other evidence providing a logical explanation to the loose mixture of facts that criminal investigators may have in hand. In some cases, it is difficult or even impossible to establish a defendant's guilt beyond a reasonable doubt without their confession. Arsons and no-body murder cases (DiBiase, 2015: 9) are a classic example. That partly explains why, in the era of sophisticated and advanced forensic technology, law enforcement practitioners seem to favour manipulative, confession-oriented interrogation techniques. Studies show that the majority of law enforcement practitioners in Poland are of the opinion that a confession, once obtained, is one of the most important elements of evidence (Hebda, 2020). Therefore, one could ask whether we would ever see the fall of the "confession era" (Biltz, 2005).

There is no doubt that an unrecognised false confession could cause intractable problems. It could easily derail the investigation by steering the police in the wrong direction. As a result, precious time may be lost and crucial evidence might be left uncovered. A study conducted by Kassin, Dror and Kukucka (2013) shows that a confession, combined with other contextual clues, is capable of biasing forensic judgments. False confessions are one of the major risk factors for the miscarriages of justice regardless of the model of criminal pro-

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cedure being applied (Brants, 2013: 1079; Maver, 2013: 234–234). Apart from inevitable legal and forensic complications, the mere fact that the police were going down the wrong path could inflict serious damage to its public image. Therefore, it is extremely important to recognise false confessions in good time or, even better, prevent such cases from occurring in the first place. According to Kassir (2007: 175), “confessions are proven false when it is later discovered that no crime was committed (e.g. the presumed murder victim is found alive); when extrinsic evidence shows that the confessor could not have committed the crime (e.g. they was demonstrably elsewhere at the time or too young to have produced the semen found on the victim); when the real perpetrator, having no connection to the defendant, is apprehended and inculpated in the crime (e.g. due to guilty knowledge, ballistics or physical evidence); or when scientific evidence affirmatively establishes the confessor’s innocence (e.g. he or she is excluded by DNA test results on semen, blood, hair or saliva)”.

This paper discusses existing legal safeguards against involuntary and false confessions in Poland and Russia. Both countries use the same inquisitorial model of criminal procedure, thus allowing for a comparison between the two legal systems. There are, however, noteworthy differences between them concerning the content and extent of suspects’ rights, the evidentiary value of defendants’ testimonies and legal frameworks for the interrogation of suspects. For the analysis to be more practically oriented, pertinent forensic recommendations are also proposed. Finally, a case in which a suspect falsely confessed to raping a minor, is also discussed. Unlike any other known cases of police-elicited false confessions, where DNA or other forensic evidence exonerated false confessors in the aftermath, the case presented herein shows that, under certain circumstances, it is possible to identify and discard false criminal confessions much earlier by following pertinent forensic recommendations. The case is also a good example of how legal safeguards against coerced and false criminal confessions do not work as intended without following such recommendations.

## **2 Legal Safeguards against Involuntary and False Confessions in the Polish Criminal Procedure**

In the Polish criminal procedure, special legal provisions target the issue of coerced and false criminal confessions. Firstly, as defined in Article 171 of the Code of Criminal Procedure of the Republic of Poland (hereinafter: Polish CCP) (Kodeks postępowania karnego Rzeczypospolitej Polski, 1997), it is illegal to influence the statement given by the person under investigation through coercion or unlawful threat.

Coerced testimony shall not be used as evidence regardless of its content. The problem is that the courts are not bound by the poisonous tree doctrine deterring the use of illegal means to obtain incriminating evidence. Therefore, evidence derived from information gained through a coercive interrogation is deemed admissible. Even if there are indications that the police used physical or psychological coercion, the courts can legally exclude only one piece of evidence – the defendant’s confession testimony. Moreover, the way in which defendants’ claims regarding the use of violence and harsh interrogation techniques are being processed in Poland leaves considerable room for doubt. In response to the allegations of police coercion, the courts usually interrogate everyone present during the incident, including the person allegedly responsible for the prohibited conduct. If the issue is not resolved, it may be referred to the public prosecutor, who then conducts an internal investigation and draws up an official report regarding the legality of police actions. Thus, the burden of proof in such situations may lie with the defendant. So far, only a few cases where the courts were faced with such claims have been made public (II Aka 310/17). Nevertheless, since this questionable procedure has never been criticised by higher-tier tribunals, it seems that this way of handling such claims is known and silently approved.

In 2016, new rules governing the admissibility of evidence were introduced. Under Article 168a of the Polish CCP, a piece of evidence cannot be considered inadmissible solely on the ground of being obtained in breach of the rules governing the criminal procedure or through a criminal offence, unless the evidence in question was obtained by a public official as a result of a murder, intentional infliction of bodily harm or unlawful deprivation of liberty. It is quite plain that this rule relates to the fruit of the poisonous tree doctrine (Kodeks postępowania karnego Rzeczypospolitej Polski, 1997). However, its wording makes it difficult to implement. It is uncertain whether there should be some kind of judicial decision concerning one of those crimes for the evidence to be rejected as inadmissible or could it be done at any time given there is a possibility of one of those crimes being committed. Unsurprisingly, there have been no such cases so far. These legal loopholes also represent a significant risk factor for police-induced false confessions. Recent studies show that police officers in Poland often apply psychological intimidation to secure a confession (Rojek-Socha, 2020).

Secondly, as defined in Article 174 of the Polish CCP, the evidence obtained through the explanations provided by the accused or the testimonies made by witnesses shall not be replaced by the contents of documents and notes (Kodeks postępowania karnego Rzeczypospolitej Polski, 1997). This is an important guarantee of the defendant’s right to remain silent

and the safeguard against the substitution of the defendant's direct confession testimony. Nonetheless, as in the case of coerced testimonies, those substitutes could be used as a source of information about previously undiscovered evidence.

In some circumstances, suspects confess to friends or family members. In Poland, their testimonies could be used as evidence against the defendant. There have also been cases where the court admitted the testimony of police officers, who executed the arrest warrant, regarding the defendant's alleged admissions. Cellmates are allowed to testify against the defendant and provide information about their incriminating revelations. Nonetheless, serious concerns have been raised recently over the conditions that a jailhouse informant testimony should meet (Rusinek, 2019: 2301).

Thirdly, under Article 157 of the Polish CCP, the defence counsel should be familiarised with the defendant's previous testimonies (Kodeks postępowania karnego Rzeczypospolitej Polski, 1997). The problem is that not all the suspects are entitled to receive legal aid. Legally, every detained person has the right to legal counsel, who is either appointed by the investigative officer or privately paid. However, there are organisational impediments which affect the exercising of this right. No information on the local criminal lawyers and their contact phone numbers is provided. It is also allowed to proceed with the interrogation of detainees without the defence counsel of their choice (Statement of the Polish Ombudsman on the Detention of a Man Suspected of Murder in Mrowiny, 2020). Sometimes, a criminal lawyer meets their client for the first time after official charges have already been pressed. Thus, it is often too late for the attorney to intervene and prevent the use of questionable interrogation tactics.

Fourthly, under Article 87 of the Polish CCP, a witness can be represented by a lawyer of their choice during an interview (Kodeks postępowania karnego Rzeczypospolitej Polski, 1997). The presence of a lawyer significantly reduces the likelihood of the abuse of authority. Nonetheless, the investigative officer can deny access to a lawyer during questioning.

### **3 Legal Safeguards against Involuntary and False Confessions in the Russian Criminal Procedure**

The provisions related to the issue of involuntary and false confessions reflect years of judicial battles concerning the use of manipulative and harsh interrogation techniques both before domestic courts as well as before the European Court of Human Rights. The Code of Criminal Procedure of

the Russian Federation (hereinafter: CCP RF) (Ugolowno-processualny kodeks Rossijskoj Federacii, 2001) contains several legal provisions applicable to this issue. Firstly, there is a rule that proof obtained by a violation of the requirements laid down in the Code shall be qualified as inadmissible. It is deprived of legal force and cannot serve as a basis for an accusation. Inadmissible proof shall be the evidence given by the suspect and by the accused in the course of pretrial proceedings in a criminal case in the absence of a defence counsel, including in the event of refusal from the defence counsel, and not confirmed by the suspect and by the accused before a court (Article 75 of the CCP RF) (Ugolowno-processualny kodeks Rossijskoj Federacii, 2001). The reasons for such a behaviour are irrelevant (Guidelines of the Plenum of the Supreme Court of the Russian Federation Concerning Court Judgements of 29 November 2016, No. 55, 2016). Inadmissible testimony cannot be referred to either in the final judgement or in any other judicial decision, such as, for example, a court decision on the matter of pretrial detention (Solodov, 2015: 109). Therefore, it is in the best interests of investigative officers to ensure the presence of a defence counsel during the suspect's first interrogation. It does not matter whether the defence counsel is provided by the State or privately paid. In Russia, every detainee is provided with free legal aid. However, it is not uncommon to see ineffective and inadequate criminal defence in such cases (Solodov, 2018) due to a very low payment, an overload of cases or an unethical collaboration between some legal aid lawyers and investigative officers (Kurchenko, 2019; Serednev, 2019).

In 2012, the Supreme Court held that a testimony given by investigative officers about a defendant's alleged confession should be considered inadmissible pursuant to Article 75 of the CCP RF (70-O12-3). Nonetheless, the courts are accepting jailhouse informants' testimonies, thus substituting a defendant's direct testimony with one of the most controversial pieces of hearsay evidence.

Secondly, a person suspected of committing a crime has the right to legal assistance (Article 56 of the CCP RF) (Ugolowno-processualny kodeks Rossijskoj Federacii, 2001). This means that every individual the police and investigative officers wish to interview may bring a criminal lawyer of their choice. The lawyer has the right to be present throughout the interview, to ask questions and object to the questions being asked, to advise the client at any time during the interview, as well as to add remarks and objections to the protocol. In Russia, police officials and investigative officers cannot deny access to a lawyer during the witness's questioning. The presence of a criminal lawyer may be of particular importance in the so-called white-collar crime cases, where a person suspected of committing a crime is often treated as a witness dur-

ing the initial stage of the investigation. The downside is that not every witness, i.e. potential suspect, can afford legal representation. The State does not provide legal aid in such cases.

Thirdly, the length of interrogation is subject to legal restrictions. Under Article 187 of the CCP RF, an interrogation shall not be conducted for more than four hours without a break and more than eight hours a day regardless of the value of the matter in question. In the event of a minor, the law provides even shorter timeframes for their interrogation – a child under the age of seven can be questioned for no more than thirty minutes without a break and for no more than one hour daily, while a child under the age of fourteen can be questioned for no more than two hours without a break and for no more than four hours a day (Ugolovno-processualny kodeks Rossijskoj Federaczi, 2001). Since lengthy interrogations are a well-known factor contributing to false confessions (Drizin & Leo, 2008), the aforementioned legal restrictions may resolve the problem.

It is worth noting that under Article 191 of the CCP RF, a child under sixteen years of age shall be interviewed in the presence of their parent or guardian, unless it is against the best interests of the child (Ugolovno-processualny kodeks Rossijskoj Federaczi, 2001). The fact that adolescent suspects must be interrogated in the presence of an allied adult is very important.

Fourthly, under Article 173 of the CCP RF, a repeated interrogation of the accused on the same charge, if they had previously refused to give testimony during the first interrogation, may be conducted only at the request of the accused himself (Ugolovno-processualny kodeks Rossijskoj Federaczi, 2001). This rule relates to the general principle that no one shall be compelled to be a witness against themselves (Dzhabirov, 2016).

Fifthly, Article 194 of the CCP RF provides for a special procedure called “the verification of evidence on the spot”. The evidence, given at an earlier date by a suspect or by an accused, as well as by a victim or by a witness, may be verified or specified at the place related to the investigated event in order “to establish any new circumstances of importance for the criminal case” (Ugolovno-processualny kodeks Rossijskoj Federaczi, 2001). The aforementioned Article provides a number of important safeguards based on well-known forensic best-practices. It stipulates that the verification on the spot shall amount to a procedure during which a suspect shall reproduce the situation and the circumstances of the investigated event, point out objects, documents and traces relevant to the criminal case, and demonstrate certain actions. Any outside interference with the process of verification or

any leading questions, as well as a simultaneous verification of the testimonies of several persons would be inadmissible. The verification of the evidence shall start with a suggestion that the person shows the place where their evidence is going to be verified. After the person, whose evidence is being verified, freely recounts the story and demonstrates individual actions, they may be asked questions.

Finally, according to Article 77 of the CCP RF, the admission of guilt by the accused in committing the crime may serve as a foundation for the charge only if their guilt is confirmed by the aggregate of proof existing in a criminal case (Ugolovno-processualny kodeks Rossijskoj Federaczi, 2001). This principle reflects the idea that every piece of evidence shall be cross-checked with other known facts (Solovieva & Perekrestov, 2008). However, the practical importance of this rule is rather limited. It is very unlikely that anyone would be convicted solely on the basis of their uncorroborated admissions.

Apart from these limitations and guarantees, it is worth mentioning that public prosecutors in Russia, unlike in Poland, do not participate in criminal investigations. Instead, they exercise control over the investigation in its final stage by checking and approving the act of indictment. Such a division of power serves as an additional guarantee against coerced and false criminal confessions.

#### 4 Pertinent Forensic Recommendations

One of the founders of modern criminalistics, Austrian professor and investigative judge Hans Gross, emphasised the complexity of suspect interrogations and called for an ever-greater caution about confession statements (Gross, 1908: 147–148). In his time, the use of violence and manipulative interrogation techniques was already considered as one of the main reasons behind false criminal confessions. French criminalist Edmond Locard wrote (1920: 14) that the police officials, “imbued with the idea that a prosecution can be properly commenced only with a confession, or reduced to seeking by this kind of proof a method for justifying an arrest made with the aid of an informer, which cannot be admitted, forget that torture has been abolished for more than a century and seek to acquire by the brutality that which their gross ignorance of all psychology prevents their seeking by insinuation”. During his lifetime, pertinent legal procedures were introduced to address the problem of police-elicited confessions in many European countries. Nevertheless, these reforms relied on little, if any, scientific data. In fact, until the 1980s, little was known about the psychology of false confessions, including how they were elicited, the mechanism and processes they involved, and how they could be identified, re-

searched and prevented (Gudjonsson, 2018: 63). Gudjonsson was the first scholar who highlighted a phenomenon of the so-called internalised false confessions and applied a specially designed psychological test that measures suggestibility of a person who confesses (Gudjonsson, 1983: 35–37). Since then, numerous studies have been conducted on the subject proving its usefulness in the forensic context (Gudjonsson, 2017; Kassin, 2007; Mastroberardino & Marucci, 2013). According to Kassin (2007: 171), coerced-internalised false confessions are statements made by an innocent, but vulnerable, person who, as a result of exposure to highly suggestive and misleading interrogation tactics, comes to believe that they may have committed a crime – a belief that is sometimes supplemented by false memories. The confession internalisation process is facilitated by several factors:

1. a suspect is susceptible to manipulation because of their age, inexperience, low IQ, suggestibility or other circumstances, such as isolation, stress and sleep deprivation;
2. the police confront the suspect with false evidence of their involvement in the crime;
3. the suspect begins to believe that they had blacked out the memory of the crime
4. the suspect makes an admission of guilt, using specific formulations, such as ‘I must have done it’ or ‘I had probably done it’;
5. the suspect produces a detailed confession using second-hand sources of information, such as suggestions from the interrogators and crime scene photos (Gudjonsson, 2018: 73).

In Poland and Russia, no cases in which the suggestibility scales designed by Gudjonsson would be applied have been published so far. In Poland, forensic psychologists are sometimes invited to conduct testimony evaluations. However, this only concerns victims or witnesses (Wojciechowski, 2012). In Russia, psychological examinations are being conducted to evaluate the reliability of witness testimonies by applying universal psychological toolkits. Usually, it is the defence that initiates such examinations hoping to undermine incriminating evidence (Arpentieva, 2016).

It is worth mentioning that apart from specialised expert examinations there are other simple, but functional tools enabling investigative officers to correctly identify and prevent false criminal confessions. Firstly, it is important to establish the reasons behind a suspect’s decision to officially admit their guilt. Aside from the fact that such knowledge may help in identifying other previously unknown sources of evidentiary information (friends, family members, medical personnel to whom a defendant had confessed before interrogation), it also helps to understand the choices a defendant made before, during and after the crime in question. The interviewer

has to be able to empathise with the suspect on some level, to understand what they did from their perspective, to probe deeper into their actions and motivations (Rinek & Strong, 2018). An innocent suspect may begin to distrust their memory as a result of a highly aggressive, lengthy interrogation, disinformation and isolation, manipulation and, in some cases, also due to their low IQ, suggestibility or inexperience. It is important to note that internalised false confessions may appear authentic, since a person who confesses truly believes they committed the crime in question. Moreover, they might provide details about the crime known only to the eyewitness or the actual perpetrator. Such “special knowledge” could be the result of the so-called confession contamination (Garrett, 2010; Leo, 2013; Solodov, 2018).

Secondly, interrogators should concentrate on the facts that are objectively verifiable, i.e. through forensic expertise or additional crime scene examination. In addition, other evidence may help interrogators to correctly assess the confessor’s credibility. However, criminal confessions are often made during the initial investigation stage when only partial information is available to the investigators.

When dealing with a criminal confession, interrogators should establish a complete chain of events. Relevant details in the suspect’s testimony should thoroughly be checked and rechecked. The possibility of an alibi defence should also be considered, even if the suspect shows their willingness to cooperate.

Additional recommendations concerning the recording of testimonies should also be considered. Firstly, all custodial interrogations should be videotaped from the beginning to the end. Video recordings could deter improper conduct, as well as protect investigative officers from accusations regarding the use of harsh and manipulative interrogation techniques. Video recording also promotes police professionalism and can serve as a reviewable record for attorneys and judges in assessing the reliability of the confession (Ivanović, Urošević, & Uljanov, 2013: 277; Skerker, 2010). It should be noted that the recording of custodial interrogations in Poland and Russia is not considered mandatory.

Thirdly, after the interrogation, a thorough examination of the confessor’s body should be conducted by an appropriately qualified doctor. The whole procedure must be videotaped and photographs must be taken to illustrate the findings. By doing so, two goals could be achieved: the defence will not be able to invoke illegal coercion as the reason behind a suspect’s confession and there will be an additional neutral witness.

## 5 A Case Study

Thirty-year-old S was arrested on suspicion of sexual assault of a minor, i.e. a crime under Article 131 of the Russian Criminal Code punishable by up to 20 years of imprisonment (Ugolovnyj kodeks Rossijskoj Federacii, 1996). During his first custodial interrogation conducted in the presence of a legal aid lawyer, S confessed to statutory rape but denied the use of force. The interrogation was documented in a written report, which was signed by S and his lawyer. Immediately after the interrogation, S was examined by a doctor. The resulting medical report stated that the suspect denied being coerced into confessing to the crime in question and that there were no visible signs of torture or other ill-treatment. However, no photographs of S's body were taken.

According to the written report, S obtained a SIM card registered to another person and used it to create an account on the native Russian social network called VKontakte. In his profile, he claimed to be a sixteen-year-old boy. One day, thirteen-year-old M contacted S via the online chat tool. As it turned out later, M posted her real age, name and surname in her profile. They started texting each other talking mainly about their sexual experiences. After a while, M offered to meet S in the real world. Before the first date, S revealed his real age to M, who reassured him that she had always preferred older men. They exchanged phone numbers (S gave her the phone number registered under his real name, which later allowed the police to quickly identify him). They had met several times before she offered to meet near her house. When they met, M asked S whether he would like to go to her apartment, which happened to be empty. S agreed. Once inside, S took off his jacket and hung it on the clothes rack at the entrance. At that moment, M told him that she had had her first sexual intercourse a few days ago and he would not be her first man. Feeling insulted, S put on his jacket and was about to leave when M embraced him and started kissing him. According to the written interrogation report, S then completely lost control of the situation. He took a nearby chair, pulled M close and undressed her. They had penetrative sex. He testified that he ejaculated on his hands and then went to a bathroom where he washed and dried his hands using a towel. Afterwards, he dressed up and left the apartment. Since then, they did not see each other. A month passed before S was arrested for aggravated rape. He was taken to the police station in handcuffs where he spent about seven hours before the official interrogation. He voluntarily provided the police with access to his online account, unblocked and gave up his smartphone. An official arrest report was produced and S was advised of his procedural rights. He was then provided with a legal aid lawyer. However, he was not given any legal advice, except that he should confess to a statutory rape charge. His

first interrogation lasted for two and a half hours. Afterwards, he was taken to the court to attend his pretrial detention hearing. There was no video or audio recording during the hearing, only a short-of-content written report stating that he once again confessed to statutory rape. After a few days, S was formally charged with aggravated rape and other sexual activities against an underage victim and then interrogated for the second time. The same lawyer advised S to stick to the previous testimonies. It turned out later that M testified that S had raped her using "an invincible force" (the key element of the crime of rape in Russia), namely that he had covered her face with a pillow and threatened to kill her. It was her mother who pursued M to report rape after she had accidentally found out about her daughter's online contacts with a much older S. During the investigation, M was examined by a forensic gynaecologist. A month later, the expert delivered the opinion that M was a virgin. According to the forensic report, there were no physical traces indicating that M had been involved in the alleged sexual activity. A few days later, another forensic expert, this time in the field of urology, found S unable to attain and maintain a penile erection and, consequently, to have sexual intercourse. The two opinions called into question the reliability of the defendant's and the victim's prior testimonies. Other forensic examinations, i.e. biological, which focused on the presence of S's sperm on the victim's underwear and genitals, as well as on whether S was in fact its source, also turned out to be negative. Nevertheless, S spent more than a year in a pre-trial detention centre before all charges were officially dropped. During this time, he developed long-lasting medical problems and lost his job. Because of her age, no charges were brought against M.

This case begs a question whether it would be possible to detect the suspect's false confession in good time. Based on the written interrogation report, one could confidently claim that there was at least one reliable indicator of a possible deception. In his testimony, S provided no details proving that he had been at the victim's apartment and committed alleged acts. There was no evidence that S had been engaged in any sexual relations with M. Naturally, it is easier to reason about the mistakes made by the interrogator now that we are familiar with the results of forensic examinations, however, there were a few obvious oversights. It is safe to assume that during the suspect's first interrogation, no questions were asked about any verifiable details of the crime, such as the layout of the victim's apartment, the position of the furniture and the whereabouts of the bathroom, M's clothes, etc. Instead, the interrogator focused on the elements required by law for a crime to be classified as rape, namely penetration, force, resistance and nonconsent. The suspect's confession was documented in a written report compiled by the interrogator. Even though the interrogator had enough time to prepare the necessary

equipment, the interrogation was not videotaped. Although a medical examination of the suspect's body was performed – a measure strongly recommended in such situations, the findings were not documented properly by using photographs or video recording. As a result, it was impossible to verify the information contained in the medical report.

The infringement of the defendant's right to legal counsel (the one appointed to this task remained passive throughout both interrogations) is also apparent. The artificiality of the suspect's initial testimony should have been evident to any qualified criminal lawyer. If there had not been any contradictory expert reports, the defence could have tried to exclude this piece of evidence on the ground of Article 75 of the CCP RF (Ugolowno-processualny kodeks Rossijskoj Federacii, 2001). The prosecutor's case, if based solely on the confession and the victim's testimony, would have collapsed.

If the case occurred in Poland, the outcome would have been different. The lack of legal assistance in the earliest stages of criminal proceedings makes it difficult to detect and prevent police-coerced false confessions in a timely manner. Nonetheless, there has been a clear tendency recently to exalt the restrictions of the right to legal assistance in order to create better conditions for law enforcement agencies (Ciliksoy, 2019; Eechaudt, Claeys, Beken, Ciuffoletti, de Suremain, & Ranalli, 2019; Hodgson, 2019). Therefore, it is very unlikely that the Polish provisions concerning legal assistance would change in the foreseeable future.

## 6 Discussion

Criminal confessions are probably the most convincing piece of evidence that the prosecution can present against a defendant. Some crimes, such as no-body homicides or wildland arson ignitions, are difficult to prove without the suspect's confession and cooperation. On the other hand, such an admission of guilt may bias criminal investigators' evaluations, overwhelm the evidence of innocence or disguise the lack of other incriminating evidence.

Numerous cases, in which false confessions led to wrongful arrests, prosecutions and convictions, have been documented so far. Yet, there is still a rather limited understanding of the reasons behind them. The media tend to overestimate the role of the police in generating false confessions. Practice, however, proves that false confessions could be voluntary and occur for reasons not necessarily related to certain types of physical coercion or the use of manipulative interrogation techniques. A person might provide a false confession to accomplish unusual personal benefits, such as to gain promo-

tion to the next rank within a criminal organisation, to protect their relatives, to provide an alibi for a different crime, to expiate guilt over imagined or real acts, and to satisfy a pathological need for acceptance or self-punishment (Leo, 2013). It is, therefore, important to establish the motivation of a confessor and the type of a criminal confession to determine whether it is authentic and voluntary.

The new-born science of false confessions tells us that there are also individuals who may, under certain circumstances, such as forceful and blatant interrogation techniques, low IQ, young age, the lack of life experience and high suggestibility, develop the so-called memory distrust syndrome and internalise a false confession. Sometimes, it is a combination of manipulative interrogation tactics, contextual factors and individual vulnerabilities that facilitates such confessions. It is important to remember, however, that, in rare cases, false confessions show the characteristics of two different types of criminal confessions – voluntary and coerced-internalised. This makes it even more difficult to recognise a false confession. If, in addition to the admission of guilt, a confessor demonstrates the so-called "special knowledge", i.e. provides a detailed description of the crime as a result of confession contamination, that evidence could not be more appealing. To recognise a false confession, interrogators need to look for hidden clues, i.e. the lack of previously undisclosed details in the confessor's testimony, unexplained time gaps, the lack of expected emotional reactions, contradictions between the suspect's testimony and other known evidence, the definitive inability of the confessor to commit the crime in question in the described manner, the location or time of the crime, etc. There are, however, no reliable indications of the suspects' untrustworthiness.

It is also important to be aware of the psychology underlying the decision-making process in the context of interrogation, namely, to understand the phenomenon known as confirmation bias. In this context, the interrogator is biased when they conduct the interrogation while believing in the suspect's guilt and when such a belief affects both the line of questioning and the way the interrogator assesses the information provided by the suspect. When biased, interrogators tend to search for and favour information that supports their version of events. As mentioned above, it is possible and legal in both Poland and Russia for investigative officers to only document a suspect's interrogation in a written report. In some cases, such as the one mentioned above, a written report is the only source of information about what happened during the interrogation and what statements were made by the suspect. Nevertheless, it is always a mediated account of the interrogation, which does not preserve the substance of those statements. As a secondary source, it is as good as useless

when it comes to identifying internalised false confessions and interrogators' bias. The alternative is to use a video recording. It can make invisible things visible: an inappropriate line of questioning, unjustified and constant interruptions of the suspect's narrative, unlawful threats and suggestive promises, the deprivation of food, water and rest, the lack of legal assistance or its inadequacy in cases where such assistance is mandatory. Our experience shows, however, that despite numerous benefits, the analysis of the resulting recording can be a demanding and time-consuming task. It is not unusual for interrogations to last several hours and there is rarely, if ever, only one interrogation. In our opinion, written records should be maintained alongside videotapes to provide a brief overview of the suspect's testimony.

Another way to reduce confirmation bias is to change the attitude towards criminal confessions. Investigative officers should think critically and consider the possibility of false admissions. The rationale for admitting confession evidence should be that it may represent the source of new evidence. This means that the suspect's interrogation must be more fact-oriented than confession-oriented.

## 7 Conclusions

The issue of false confessions needs to be addressed at both legal and forensic levels. On the legal level, coerced false confessions may be effectively curbed by adopting simple legal measures, such as videotaping interrogations, limiting their length and ensuring the presence of a qualified legal counsel. As for now, these conditions are not met by either Poland or Russia. In Poland, the existing legal guarantees are insufficiently effective in preventing coerced confessions. Even though police-elicited testimonies are not allowed to be used as evidence under Article 171 of the Polish CCP (Kodeks postępowania karnego Rzeczypospolitej Polski, 1997), their content could be used as a source of court-admissible evidence. The same applies to the prohibition of substituting the testimony of the accused with the contents of documents or notes. There are no effective procedures for dealing with such cases. It is unacceptable that the allegations of unlawful coercion made in court are only examined formally, without sufficient thoroughness. The lack of access to a defence counsel during the initial stage of the investigation is also an important issue. The situations, in which defendants only meet their lawyers at the end of the investigation, are highly questionable.

In Russia, there are several legal provisions concerning the issue of police coercion and harsh, manipulative interrogation techniques. Nonetheless, these provisions contain many loopholes allowing for the use of information obtained

through illegal actions. Suspects, at least in theory, have better access to legal assistance. However, the quality of the legal aid representation is often unsatisfactory, as could be observed in the abovementioned case. On the plus side, there are legal restrictions regarding the length of the interrogation (Article 187 of the CCP RF) and the requirement to ensure the presence of a minor's parents or guardians during interrogations (Article 191 of the CCP RF). A new investigative procedure called "the verification of evidence on the spot", described in Article 194 of the CCP RF (Ugolowno-processualny kodeks Rossijskoj Federacii, 2001), deserves special attention. This procedure addresses the issue of involuntary and false criminal confessions directly by providing detailed guidance. The Russian experience in incorporating pertinent forensic recommendations into criminal procedural laws also merits further reflection.

From the forensic perspective, investigative officers should be familiarised with the signs of voluntary and internalised false confessions, and be aware of pertinent forensic recommendations and procedures. Special training courses and seminars for law enforcement practitioners and criminal lawyers covering this issue would be beneficial. During such training, different sources of bias affecting interrogators' evaluations should be addressed to help them recognise and mitigate such bias.

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## **Preprečevanje lažnih priznanj v kazenskih zadevah na Poljskem in v Rusiji – pravni in forenzični vidiki**

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Lažna priznanja v kazenskih zadevah so deležna velike pozornosti pravnih strokovnjakov in organov pregona. Številne publikacije, članki in poglobljene študije primerov, ki se osredotočajo na psihološke vidike lažnih priznanj, ponujajo koristne vpoglede v tovrstno problematiko. V prispevku se osredotočamo na vprašanje lažnih priznanj s pravnega in forenzičnega vidika. Sprejeti bi bilo treba zakonske določbe, ki preprečujejo uporabo fizične prisile in tehnike manipulativnega zasliševanja, ki so namenjene pridobitvi priznanja kaznivega dejanja. Vsako priznanje v kazenskih zadevah je treba analizirati in navzkrižno preveriti, preden se sprejme odločitev, da se le-ta uporabi kot dokaz. V prispevku smo opisali ustrezne zakonske določbe, ki so bile sprejete v dveh državah – Poljski in Rusiji. Obe državi uporabljata inkvizitorni model kazenskega postopka, vendar pa med njima obstajajo pomembne razlike v postopku zasliševanja in pričanja osumljenca ter njune dokazne vrednosti. Razpravljali in primerjali smo obstoječe pravne ukrepe, namenjene preprečevanju neprostovoljnih priznanj v kazenskih zadevah. Povzeta so tudi ustrezna forenzična priporočila. Predstavljen je primer, v katerem je osumljenec lažno priznal posilstvo mladoletnice, da bi poudaril trenutne pravne pomanjkljivosti in nekatere pogoste forenzične izzive v zvezi z zasliševanjem osumljenцев.

**Ključne besede:** zasliševanje osumljenцев, neprostovoljno priznanje, kontaminacija priznanja, ponotranjeno priznanje, preverjanje pričanja

**UDK:** 343.144(438)(470)