

THE CONCEALED BEHAVIOR REGARDING THE COMMUNICATION OF INFORMATION IN JUDICIAL AND SECURITY SYSTEM

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Abstract: Human behavior manifests in everyday life. In certain contexts, driven by fears or the need to conceal a certain attitude they have adopted, people are prone to distort reality. In this way, both the national security system and the legal system are subjected to risk.

The principle of seeking the truth is a cornerstone of both of these systems. In this regard, the article aims to present the ways in which we can prevent and avoid the emergence of such behavior that could threaten the optimal functioning of professionals within the system.

The concept of “dissimulation” is encountered in both systems, but it has different meanings. While dissimulation in the context of national security is used to protect the state’s interests, often employed in espionage, counter-espionage and military operations to hide critical information or real intentions from enemies, in the legal context, dissimulation can undermine the integrity of justice and public trust in the legal system. It is important to note that both domains analyze and counteract such tactics to ensure security and fairness.

Keywords: *communication; concealment; technical polygraph; security culture; behavior; interrogation; defendant; judicial system; national security system;*

Introduction

This article, structured in 4 (four) chapters, finds its applicability in our society, having as its theme “methods and techniques for detecting disguised human behaviors”, considered by us, an “axis mundi”, around which our arguments will “gravitate”. Thus, we understand to resort to intelligence analysis, which can be defined as “the process by which answers are given to formulated questions, to questions behind the questions, as well as to unformulated questions, which are shaped by the analytical process, as a result of the formulation of answers to primary and obvious questions.”¹

¹ Irena Chiru, *Analiza în intelligence: de la artă la știință*, Tritonic, București, 2019, p.34.

In an increasingly complex and interconnected world, the need to understand human behavior plays a decisive role in many areas, from national security and law enforcement to the legal field and psychology. Concealed behaviors, meaning those behaviors that are intentionally masked or hidden from observers, pose a significant challenge. For this reason, they have profound implications for the effectiveness of interpersonal communication and the establishment of trust. In order to detect them, it is important to have a multidisciplinary type of approach, combining practices and methods belonging to different fields of study, such as psychology, legal sciences, military sciences or even computer science.

“On a *raison*?” or “Why is it so important?”

The first argument is represented by the fact that, in the modern context, dissimulation is a complex and dynamic phenomenon. Consequently, detecting disguised human behaviors is a challenge that involves continuous adaptation to the rapid changes of modern society, where technology and virtual interactions play a significant role. The research on this subject allows us to analyze the mechanisms by which individuals adapt their behaviors to hide their true intentions in various contexts, from acts that could fall within the scope of criminal offense (such as concealment in the context of fraud, deception, false testimony, the crime of misleading the judicial bodies, the list of crimes can go on), acts that could hinder the procedure of solving a case (false statements during interrogation, manipulation of evidence), up to the point of threatening national security.

A second argument for choosing the theme is the social and public relevance of concealment in two different contexts. While concealment, within the framework of national security, is used to protect the interests of the state, and is often used in espionage, counterespionage, and military operations to conceal critical information or real intentions from enemies, in the legal context, concealment can undermine the integrity of justice and the public's trust in the legal system. What is very important to be made clear is that both fields analyze and counter such tactics to ensure security and equity.

A third argument is the essential feature for practical applicability. Studying methods and techniques for detecting concealment can highlight subtle traits and signals that need to be monitored by professionals involved in assessing human behavior. This aspect is eminently necessary in order to develop tools and strategies that facilitate the identification of inauthentic behaviors, thus preventing possible negative consequences in a professional or personal context.

Last but not least, the motivation related to preventing the negative consequences of concealment represented a new pretext for a deep understanding of concealed behaviors and how they can be detected. Research in this field can provide practical and effective solutions for managing situations in which concealment can lead to conflicts, manipulation or wrong decisions, ensuring a climate of trust and integrity in interpersonal relationships.

Therefore, in relation to the reasons presented above, I consider that they highlight the importance of research into disguised behaviour and its potential impact on various aspects of society.

In the following, we will approach the problem, mainly, from a psychological perspective and we will try to demonstrate how it corroborates with the judicial and national security perspectives.

Psychological perspective- the departure points of judicial and national security analysis

Human behavior is the fundamental pillar that provides reasonable clues to discover various forms of dissimulation. To define human behavior, we understand to start from the concept of “Behaviorism”. Behaviorism is a current of American psychology, emerged at the beginning of the twentieth century, inspired by pragmatist philosophy and pragmatically initiated by J. Watsou in 1913.² It appeared, as a reaction to introspection, which considered that, in order to study human behavior, we must consider a stimulus-response relationship, inspired by some data of neurophysiology. This current considered that for the knowledge, prevention and understanding of human behavior, it is enough to study the relationship between stimulus and response, without the need to appeal to consciousness.

Oriented towards an *objective psychology* – without consciousness – this current has totally ignored introspection as a basic method of structural psychology, trying, unsuccessfully, to reduce and explain human behavior starting exclusively from objective data such as *glandular, visceral, muscular reactions to various external stimuli*, ignoring the complex subjective character of the phenomena of consciousness and behavior, controlled by the conscience and personality of the individual.³

In our opinion, the study of human behavior is a vital component, implicitly in reducing criminal activity in Romania. I consider that, *de lege ferenda*, in judicial matters, there should be a psychologist specialized in developing the psychological profile of the perpetrator who would draw the attention of the judicial bodies to a type of normal behavior or a disguised one. We support this point of view, since the judicial bodies incur certain judicial expenses in administering the evidence. Or, when the suspect/defendant knowingly tries to mislead the competent bodies, the forensic psychologist can confirm/deny the existence of a potential concealed character. Similarly to the proposal made, we note that, within an admission process in an institution related to the field of national security, candidates are subjected to several psychological tests and interviews, as well as to the collection of information from human sources (Humint), which can contribute to the detection of behaviors contradictory to the psychological profile of an employee within such an institution.

² Paul Popescu Neveanu, *Dicționar de Psihologie*, Albastros, București, 1989, p.89.

³ Augustin Ungureanu, *Prelegeri de Criminologie*, Cugetarea, Iași, 1999.

In this regard, in order to justify the importance of such a proposal, we are of the opinion that the psychological profile of the author would constitute an advanced technique, taken from the practice of Western states, existing, for example, at the level of the FBI since 1950. Thus, a database could be created, in which deviant behaviors would be stored, with various features and characteristics arising from them, without violating the right to privacy, respectively the rights arising from the need to guarantee a fair trial, guaranteed by the European Convention on Human Rights. Simplifying a criminal investigation and conducting a trial would be simplified through such a database, implicitly giving magistrates and specialists in the field a better understanding. As a consequence, we understand to rally to the point of view belonging to an author, according to which, developing the psychological profile of the perpetrator of a crime is a useful method in criminal investigations. Although in Romania this type of expertise has no evidentiary value in criminal proceedings and is treated similarly to biodetection of simulated behavior, the use of criminal profiling has become essential in large-scale investigations. However, in national practice, the method is rarely used, applied without consistency and without the existence of clear criteria for the evaluation of specialists in this field, specialists who, for the most part, are missing. The process of outlining the psychological profile of the offender aims to analyze his personality traits and behavior, in order to identify a possible perpetrator or a type of person who could commit the crime. This approach provides support to the investigation, helping to focus the investigation on the appropriate suspects, eliminate those unrelated to the case and, subsequently, explain the motivations and behaviour of the identified perpetrators.⁴

In order for the study to follow a natural course, next, we will present the doctrinal opinion, by virtue of which the existence of two types of behavior is specified: natural human behavior and disguised human behavior.

In a broad sense, natural behavior “represents the specific way in which the human subject is determined to respond through a set of reactions to physical or social requests that come from the environment, seeking to adapt to new situations.”⁵

Regarding the distinction between ordinary and covert human behavior, we specify that a first solution that could draw a difference is, in fact, the sociological method of observing non-verbal behavior. But what is non-verbal behavior? In order to answer this question correctly, we must start from the presentation of the concept of non-verbal communication. In this sense, nonverbal communication is carried out through codes that involve the behavior, the physical presence of the person, but also the way in which space and time are perceived and used. Nonverbal messages can be conveyed both consciously and unconsciously, and their interpretation is not always guaranteed. In some cases, the sender does not intend to convey a nonverbal message, but the receiver can attribute an intention

⁴ Bogdan Tașu, *Amprenta psiho-comportamentală. Metodă modernă de luptă împotriva criminalității*, Mai, 2009, https://www.researchgate.net/publication/200536831_AMPRENTA_PSIHO-COMPORTAMENTALA_-_METODA_MODERNA_DE_LUPTA_IMPOTRIVA_INFRACTIONALITATII.

⁵ Oana Teodora Mateescu, *Psihologia judiciară*, Renaissance, București, 2010, p.126.

to the sender if he decodes and interprets what he has perceived. Unlike verbal communication, which mainly uses the visual and auditory channels, nonverbal communication involves all the senses, and messages can be conveyed through a single sensory channel or through several simultaneously.⁶

According to the same book to which we referred earlier, elements of non-verbal communication that we can analyze in order to detect a certain behavioral pattern are: appearance, head movement, facial expression, gestures, posture, eye movements and eye contact.

“The fact that nonverbal language cannot be disguised is due to transmission through psychic mechanisms that take place in the brain, more precisely in the right hemisphere, responsible for producing a person’s gestures. The human brain works under the impulse of two kinds of actions, the conscious and the subconscious, located in its two hemispheres. The left and the right, which have different attributions, but which cooperate with each other.”⁷

In view of the above, we consider that one goal of detecting such behavior is the use of the sociological method of observation. This method involves visible aspects, noticeable by a professional person and involved in the discovery of any key elements. Thus, in order to explain, in detail, the importance of the sociological method of observing non-verbal behavior, we turn to the following passage, which reveals that: In order to understand nonverbal behavior, observation plays an essential role. In real situations, the better the context in which this type of behavior occurs, the easier it is to interpret its meaning. For example, after a road accident, it is normal to notice people in shock, who seem disoriented, whose hands are shaking or who make reckless decisions, such as crossing in front of moving cars. (That it is why police ask people to stay in vehicles.) This happens because, after such an event, the limbic system of the brain takes control, “blocks” the rational part of the brain, and this process causes reactions such as trembling, disorientation or agitation. In this context, such reactions are normal and indicate post-accident stress. In contrast, in a job interview, it is common for participants to be nervous at first, but this state should decrease as the conversation progresses. If the nervousness suddenly reappears on certain questions, it may signal a problem and should be looked at more closely.⁸

Therefore, body language can suggest whether a person’s attitude falls within the scope of disguised behavior or not.

That is why we consider useful the point of view expressed, which states that “a person who applies the law on national security, must have a thorough level of

⁶ Adrian Lesenciuc, *Teorii ale comunicării*, Academiei Forțelor Aeriene ”H.Coandă», Brașov, 2017, p.35.

⁷ Leliana Valentina Părvulescu, *Eficientizarea comunicării în intelligence.Tehnici psiho-comunicaționale pentru humint*, 2022, p.15, can be accessed at the following address: <https://www.animv.ro/wp-content/uploads/2022/09/PARVULESCU-LELIANA-REZUMATUL-TEZEI-DE-DOCTORAT-RO.pdf>. (16.10.2024).

⁸ Joe Navarro, *What every BODY is saying. An EX-FBI Agent s Guide to Speed-Reading People*, 2021, p.20, can be accessed at the following address: https://archive.org/details/whatevery-bodyissaying_202105/page/n5/mode/2up. (17.10.2024).

knowledge regarding the methods and activities of national security.”⁹ In fact, the technique of concealment is often used in espionage/counterespionage, since “the power of dissimulation spies is very great, they are based on the knowledge of different types of human personalities and know how to use and identify nonverbal language.”¹⁰ Compared to the aspects presented above, we can conclude that, in itself, the use of a disguised behavioral pattern has different valences, depending on the targeted field. Analyzing the legal level, the concealed behavior is based on a lack of veracity, a lie, which determines the appearance of a specific way in which the subject responds to certain stimuli, attacking the integrity and impartiality of justice. If we bring up the national security plan, concealment is a necessity, in order to counteract certain risks. “From a psychophysiological point of view, the detection of simulation can be studied and is sometimes analyzed in its more serious, criminal aspects, as well as, especially, in the laboratory, without being interested in the dose of justification of those involved or in the somewhat artificial character in which the subjects of experience are induced.”¹¹

For a clear demarcation, we must formulate the following question: are there certain stages that an individual, who resorts to disguised arguments, goes through, either premeditated or suddenly? According to a study, in the process of dissimulation/deception, there would be four stages: Stage 1 is the planning phase, in which the person who intends to mislead defines the final objective of the action. During this stage, the individual collects information about the target and analyzes possible methods of action. Stage 2 is dedicated to identifying the methods and means used, while stage 3 focuses on achieving results. The purpose of misleading is usually twofold: to create surprise and/or manipulate perceptions. In order to produce the desired effect, the existence of an atmosphere of uncertainty is essential. Step 4 involves the analysis of reactions (feedback). The person involved may decide to modify or stop the misleading actions or, in the event of success, to continue or intensify these activities. However, not all forms of misleading are the result of a carefully crafted strategy; There are also situations of spontaneous deception, in which factors of coincidence and opportunism play a significant role.¹²

Acknowledging the demarcation between the four stages, it can be said that they follow exactly, surprisingly, the internal phase in terms of the act of executing a crime. “The internal phase is circumscribed to the set of psychological processes that culminate in the adoption of the decision to commit the crime and knows, in turn, three important moments: the appearance of the criminal idea, deliberation and, respectively, the taking of the decision.”¹³

⁹ Charles Dunlap JR, *Ethical Issues of the Practice of National Security Law: Some Observations*, 2012, p.1072, can be accessed at the following address: https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5374&context=faculty_scholarship. (03.11.2024).

¹⁰ Leliana Valentina Părvulescu, *op.cit*, p.9.

¹¹ Ioan Ciofu, *Comportamentul simulat*, Academiei Republicii Socialiste România, 1974, p.51.

¹² A.J.H. Bouwmeester, *The art of deception revisited (part 1): current insights*, 20.09.2021, can be accessed at the following address: <https://militairespectator.nl/artikelen/art-deception-revisited-part-1-current-insights>. (24.10.2024).

¹³ Florin Streteanu, Daniel Nițu, *Drept penal. Partea Generală*, Volumul I, Universul Juridic, București, 2014, p.464.

We believe that a distinction is necessary with regard to certain terms. Thus, both in English and in Romanian, the concept of “deception” is used. Deception is defined, within the meaning of the criminal law, as “misleading a person, by presenting a false deed as true or a true deed as a liar”, being conditional, by causing damage. Consequently, deception is the broader concept, to which dissimulation is subsumed. However, dissimulation does not always fall within the scope of criminal law. The Romanian legislator suggests “extremely strongly that, in order to have criminal significance, the conduct of the perpetrator must be an active one and not passive. The equivalence of the presentation of a false circumstance with the failure to present a true circumstance could be considered to exceed the limits of the interpretation imposed by the *lex stricta*, being, in fact, an analogy to the detriment of the accused.”¹⁴

“If an operation, technique, or measure is aimed at deliberately delivering untruths to someone else to support interests, we call it deception. This can take the form of hiding things, revealing things, or a combination of the two; For the purposes of this monograph, all this is considered deception. Thus, camouflage (which aims to hide) is related to diversion (which aims to reveal). Deception is an integral component of information operations, itself an essential component of the general operational art; It follows that the framework developed for the use of information operations also governs the use of deception.”¹⁵ Regarding the specification of the concept of “camouflage”, we believe that we must specify that, in a military context, concealment could implicitly mean camouflaging equipment, false deployment of troops or the use of techniques that make the enemy army believe that an attack will take place in an area other than the targeted one.

We consider it necessary to specify the fact that, in certain contexts, generated by fears, or by the need to hide a certain attitude that they have taken advantage of, people are prone to distort reality. In this manner, both the national security system and the legal system are at risk.

In the face of these threats, we believe that the concept of security culture must be defined. Our belief is that, in the absence of management and knowledge of concealment, national security can be affected, in a considerable manner. A first step in counteracting any potential threats is, precisely, educating citizens in order to acquire values in this regard. Consequently, in substantiating the opinion, we intend to resort to the presentation of the concept, as it has been defined doctrinally. This is a “resilient and sustainable mosaic of common beliefs and perceptions of threats. This standardization of beliefs ensures the ideal conditions for national security agencies to correctly apply the security agenda. (...) In order for them to be able to fully exercise their powers, citizens need to be fully aware, educated and involved in the process. (...) Security culture involves, above all, gaining a common perspective on the variety, intensity and duration of security threats.”¹⁶

¹⁴ Sergiu Bogdan, Doris Alina Șerban, *Drept penal. Partea specială*, Universul Juridic, București, 2020, p.133-134.

¹⁵ Scott Gerwehr, Russel Glenn, *The art of darkness. Deception and urban operations*, Rand Arroyo Center, 2000, p.19.

¹⁶ Adrian Lesenciuc, Corneliu Mugurel Cozmanciuc, *Security culture: the cure to voter depression in Romania*, în RISR, no.27, 2022, p.41-44.

Advancing the presentation of theoretical concepts on the strategic line and national security, we consider it useful to refer to the idea of American military specialists, expressed in JP 3.13-4 Military Deception, according to which, aiming at the concept of strategy and concealment, planning camouflage and misleading activities from the beginning of the military operation will create an erroneous perception of force for the adversary, positioning and capabilities of their own forces and allies. Thus, this kind of actions are executed not only at the strategic level, but also at the operational and tactical level.

At the strategic level, the aim is often to induce a false impression of true intentions through far-reaching statements made by political or military leaders, in order to determine the adversary's leaders to draw up erroneous assessments and plans, which would benefit their own forces and those of the allies. At the operational level, an attempt is made to influence the decisions of the commanders of the operational echelons, both in the preparation phase and during the conduct of military actions, in order to obtain an advantage for their own forces, up to the level of tactical structures. At the tactical level, the strategy consists of creating a wrong perception of the battlefield for opposing commanders, by presenting false targets and erroneous indications regarding the positioning of the forces, so that they misplace their own units, in favor of the allied forces. Thus, when the opponent discovers the reality of the situation, the time available for reaction and decision-making will be insufficient or even non-existent.¹⁷

Individuals with extensive expertise in the field, called upon to detect and pronounce on various behavioral acts, regardless of whether they were investigating attitudes of persons accused of violating the law or threatening national security, found that there are several reactions that betray traces of concealment: acceleration of the heart rate, increase in blood pressure, the appearance of vasodilator and vasoconstrictor phenomena (hyperemia or pallor), acceleration and jerking of breathing, dysregulation of phonation and sound emission, hyposalivation and sudden contraction of skeletal muscles. "These reactions are associated with a manifest behavior, with identification value for specialists in the judicial field, with a dissonance between the subject's statements and the degree of agreement on them. External behaviors related to neurophysiological changes result in changes in mimicry and pantomimics, sudden blocking of motor functions, trembling in the voice, change in the latency time between perceiving the question and providing the answer. The manifestations presented above are elements of the mental and behavioral life that any person experiences throughout his life, whether or not he has been the object of a forensic investigation".¹⁸

¹⁷ Daniel Pop, *MILDEC, Planul de inducere în eroare/mascare, parte componentă a planului de operații*, în Buletinul Universității Naționale de Apărare „Carol I”, 2014, p.84, can be accessed at the following address: <https://revista.unap.ro/index.php/revista/article/view/53/62> (22.10.2024).

¹⁸ Dan Gabor, Mihaela Baritz, Angela Repanovici, *Metode și tehnici de investigare a comportamentului simulat. Descrierea și utilizarea sistemului mecatronic de tip SB-MET V.1.0*, în Buletinul AGIR no.2/2015, April-June, p.90.(19.10.2024).

“Another more intimate form of simulation, no less widespread, is the refusal to confess and recognize a certain real attitude towards a certain person or the attempt to camouflage a certain desire towards oneself that one nevertheless feels.”¹⁹

I appreciate that through this denial, people are aware, in a significant percentage, of their actions and regret them, trying to convince their listeners of the position they express.

According to the opinion of Professor Tudorel Butoi, simulation is a mechanism by which the intention to mislead is masked by three procedures: the first involves a rationalizing attitude, in which the individual tries to provide plausible reasons to justify mistakes or behaviors that he is aware of are reprehensible. Another procedure involves the transfer of personal attitudes to others. The reverse of this approach is the identification process, in which the person consciously attributes characteristics or behaviors to other individuals. Coleman (influenced by Freud) proposes a scheme of these procedures to mask the real reasons, sources of anxiety. Similar to lying, any form of simulation involves a certain degree of intentionality, an essential element that differentiates an error from a deliberate falsification. Thus, simulation becomes an action with social significance. As social life becomes more complex, types of simulation – some justified, others less so – become more frequent and, broadly speaking, indispensable.²⁰

Therefore, “the complex structure of the attitude denotes that the attitude is not formed independently of the other phenomena of consciousness – representations and notions, beliefs, etc. – but in close correlation with them, they being an extension and crystallization of them in a unitary and specific structure. Attitudes thus appear as elements of welding, of continuity between consciousness and conduct.”²¹ So, „the stabilization and organization of the image system involves the stabilization and organization of their affective substrate.”²²

If we consider the criminal conduct and the desire of the participants in the commission of a crime to hide the illicit activity committed by them in the light of the acts of execution, in a criminal act (such as theft, robberies, embezzlement, murder, etc.), the person in question (the criminal) is fully involved, mobilizing his entire will and cognitive-affective potential to ensure the success of the crime. The process of making the decision to commit the act provided for by the criminal law is preceded by a series of analytical and synthetic processes, as well as a confrontation between motivations, deliberation and implementable actions, which deeply involve the entire personality of the individual. Thus, the criminal act does not become just an accident or a peripheral component of the criminal’s consciousness, but is incorporated into it in the form of a stable informational structure, with a specific affective-emotional content and a well-defined motivational charge. The

¹⁹ Ioan Ciofu, *op.cit.*, p.51.

²⁰ Ioana Teodora Butoi, Tudorel Butoi, *Tratat universitar de psihologie judiciară-teorie și practică*, Phobos, București, 2003, p.210-211.

²¹ Victor Opreșcu, *Aptitudini și Atitudini*, Științifică, București, 1991, p.79.

²² Costina Sfinteș, *The scientific basis of finding psychological stress*, in Annals of the ”Constantin Brâncuși” University of Târgu Jiu Letters and Social Science Series, nr.1/2020, p.16. (24.10.2024).

complete assimilation of the act takes place at the moment of its commission, within the process of perception and direct interaction with the objects and phenomena of the (criminal) environment in which it takes place, but also through the sedimentation of their meanings in the adaptive experience of the individual, in relation to the criminal situation.²³

For example, in support of the doctrinal statement, we consider, as useful, the way of citing a paragraph of a court decision pronounced by the Piatra-Neamț Court.

In this decision, the Court came to a conclusion which should be appreciated in the judicial practice of the courts in Romania.

„On 07.08.2018, at 22:00:54, it is found that that conversation (referring to the two defendants in the case), had a disguised and conspiratorial character and that. In fact, the first defendant communicates to the second the result of the crime committed, the stolen values and the fact that he was dissatisfied with the goods obtained compared to the expectations he had.”.²⁴

In reality, the occult nature of the discussion is fully demonstrated by the fact that defendant X shows interest in whether defendant Y discovered gold jewelry or goods related to the crime currently under investigation, using the phrase “red” in a clearly conspiratorial way. The use of this expression to designate gold jewelry and stolen goods is unequivocally confirmed by the defendant’s answer, who understands the question and gives an answer describing “round goods, made in pairs”, referring to sticks and rings (goods stolen from the house). The masked nature of this discussion, which refers directly to the crime committed on 07.08.2018, in the home of the said A, is also reinforced by the fact that the defendant details an activity of obtaining the goods – “I took them like this with... the criminal (laughs) and that’s it”, an aspect supported by the video recordings coming from the area where the deed was committed, which proves that, although the injured person has a large villa, the entire criminal activity – the actual entry, the robbery of the goods from the rooms, the identification of the valuables and their theft, followed by the escape from the scene of the crime – took place in a short period of time (about 20 minutes). Next, the defendant brings up the dissatisfaction with the fact that the stolen money and goods must be shared with two other individuals, although he spent a considerable amount to travel. From the answer “don’t bother with me” it can be deduced that the crime was committed on the basis of previously obtained information, which turned out to be incorrect in relation to the result obtained, the accomplice practically expressing his regrets. Thus, it is concluded that the defendant’s previous involvement in the commission of the crime, by providing information about the victims, including their financial situation, is beyond doubt, given the joint meetings and trips between the defendants. Obviously, it would be difficult to understand how these defendants, known for carrying out home burglaries in a “professional” way, would have chosen to commit a robbery in a house

²³ Ioana Teodora Butoi, Tudorel Butoi, *op.cit.*, p.218.

²⁴ Piatra-Neamț Court, Criminal Section, decision no. 659/2020, pronounced in the public hearing of 13.11.2020. It can be consulted at the following address, [https://www.rejust.ro/juris/349e89585\(18.10.2024\)](https://www.rejust.ro/juris/349e89585(18.10.2024)).

located on Zănești, where one of the defendants lived, at a distance of about 200 kilometers, without having obtained concrete information (“a tip”), the probability that this situation occurred randomly being extremely low.²⁵

We also consider it very important to make a distinction between the phenomenon of dissimulation and untrue statements, generated by irresponsibility resulting from a mental disorder.

Thus, the behavior, as a subjective manifestation of the conditions of existence, through the analysis of psychic functions, becomes a field of research intended to understand and explain human actions, and in this context, the concept of responsibility correlates with individual and concrete behaviors. In this sense, discernment, seen as a dynamic expression of consciousness, is defined as the ability to distinguish between facts and to understand their meaning. Therefore, discernment becomes an indicator of mental aptitudes, reflecting the dynamic and adequate adaptability of the individual to the conditions imposed by the social environment, thus having an essential role in the evaluation of behavior within the psychiatric-legal expertise. This approach has been consistently advocated in order to align the purposes of expertise as much as possible with the interests of justice.²⁶

Further, it is appreciated that “both the level of analysis of situations, of foresight (projection of consciousness into the future), and of mastery depend on and ultimately express the state of consciousness, therefore, through the medical criterion of responsibility, we value discernment in relation to the level of consciousness.”²⁷

Auxiliary theories in the detection of duplicitous behaviors

Taking into account the fact that the detection of duplicitous behaviors is a complex process, over time, various methods have been developed, such as the method of free association; the motor experience method; the technique of suppressing conscious censorship; the method of detecting emotional stress manifested in writing; the method of detecting stress manifested in voice and language; polygraph technique; evaluation of evoked potentials manifested in the brain.

Depending on the personality of the person who is subjected to such methods, the person conducting the research may consider one or more of the methods listed. For a more complex evaluation, according to studies, they are combined, so that the result is precise and correct.

In this research, referring to techniques for detecting covert behavior, we understood to present and relate, especially, to the techniques presented by the doctrine and which could find their applicability, both in the legal field and in the field of national security, namely: the method of free association (1), the judicial interrogation (2), the psychoanalytic interrogation (3), the polygraph technique “*lie detector*” (4), the method of detecting stress in the voice (5).

²⁵ *Idem.*

²⁶ Gheorghe Scripcaru, Mihaela Terbancea, *Patologie medico-legală*, Didactică și Pedagogică, București, 1978, p. 560.

²⁷ *Idem.*

1. *The method of free association*

As a method used to diagnose disguised behavior, free association is based on the activation of semantic networks through stimulus words, which influence the subject's emotional state and mental associations. This process is important in detecting simulated behavior because a different reaction to critical (emotional) words compared to neutral words may indicate an attempt at concealment. An essential element in this process is latency time analysis, which measures the interval between the presentation of the stimulus and the subject's reaction. "Latency time means the period that elapses from the emission of a stimulus to the production of the reaction."²⁸

If the subject responds more slowly or repeats responses to critical words, this can signal guilt. Also, the Abrahamsen-Rassanof-Yung technique uses word associations to assess the subject's emotional reactions in relation to the words that are significant to the case being investigated. In this method, words are carefully selected, and different reactions to "neutral" versus "affectionate" words can provide clues about the subject's intentions, such as a desire to hide information.²⁹

2. *Judicial interrogation*

As for the judicial interrogation, "The main purpose of the judicial interrogation is to obtain information on the basis of which to establish the relevant facts for the elucidation and resolution of the case. Getting a confession is an important part of it. (...) The most important reason why suspects confess is the perception of the evidence that the police have against them. The role of the lawyer is also relevant, his presence during the interrogation reducing the likelihood that the suspects will testify. Recent research shows that most suspects who do not make confessions are not prime suspects."³⁰

It should be noted that, under the influence of examples of good practice, certain states have developed a guide for interrogating suspects and victims, with the aim of improving the practice of interrogation. One of the states that have proposed this guide is the United Kingdom of Great Britain.

The recommended approach is based, in principle, on a non-confrontational process, emphasizing the gathering of information, and not on obtaining a confession itself. The suggested model involves a series of stages organized under the acronym PEACE: P - preparation and planning (pre-interrogation procedures); E - use and clarification (at the beginning of the interrogation, an attempt is made to establish a relationship with the interrogated person and the reasons for the interrogation are stated); A - contouring (the stage in which the interviewee remembers and reiterates the information, and the approach is adapted according to it); C - conclusion (the interrogated person is encouraged to ask questions, and the interrogation is completed gradually, avoiding an abrupt conclusion, with the

²⁸ Ioan Buș, *Psihologie judiciară*, p.80, can be accessed at the following address: <https://ro.scribd.com/document/96680340/Fileshare-ro-bus-Ioan-Carte-Psihologie-Judiciara>.

²⁹ *Ibidem*.

³⁰ Tudorel Butoi-Severin, Ioana Teodora Butoi, *Detecția comportamentelor duplicitare(simulate)*, Pro Universitaria, București, 2019, p.19.

information being made about the next meeting); E - evaluation (after each interrogation, the information collected is correlated with the context of the case and the relevant legal considerations).³¹

It should be emphasized that, by virtue of the principle of finding out the truth, regulated by the provisions of the Code of Criminal Procedure, as well as by virtue of the free assessment of evidence, the judicial body (in this case, the prosecutor or the judge), must verify whether the evidence of the interrogation was obtained legally, or the use of means of violence or torture was resorted to. Thus, based on Article 101 of the Code of Criminal Procedure, “it is forbidden to use violence, threats or other means of coercion, as well as promises or exhortations in order to obtain evidence.” Also, based on Article 102 paragraphs 1 and 2 of the Code of Criminal Procedure, “evidence obtained through torture, as well as evidence derived from it, may not be used in the criminal trial.” This important aspect was also stated in the case of Jalloh v. Germany, in the judgment of the European Court of Human Rights.³²

3. *Psychoanalytic interrogation*

The essence of psychoanalytic interrogation consists in identifying duplicitous behavior, defined as “the conscious effort, sustained with perseverance, of the interrogated subject during the interrogation process, with the purpose of masking or hiding certain psychological states, intentions, actions, facts, information and evidence, with the intention of misdirecting the judicial investigation”. However, during interrogations, the suspect makes slips in the conversation with the authorities, speaking names and information that he consciously does not want to divulge, but cannot help with. These unintentional leaks are, however, extremely significant and relevant. Referring to the methods of psychoanalysis, Sigmund Freud points out that certain dysfunctions of psychic functions, expressed through acts that seem unintentional, turn out to be, after a thorough analysis, perfectly justified and determined by reasons that remain inaccessible to consciousness.³³

The authors’ personal experience allowed them to observe that, during the interrogation, a person can develop a psychic imbalance, caused by the intense accumulation of energy caused by the inner conflicts generated by duality. The specific interest of this context subtly influences the person, under the cover of the presumption of innocence, to create an impression convenient for his own defense. During the interrogation, the tensions between the ego – which express the incriminating facts – and the emotionally charged subconscious structures are amplified. Over time, either through detention or exhaustion, the vigilance of the interrogated diminishes, and the conflict between the unconscious impulses and the conscious act, triggered by the I-Reality relationship (the act committed), gives rise to manifestations that escape conscious

³¹ *Ibidem*, p.11.

³² It can be consulted at the following address: <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-184257&filename=CASE%20OF%20JALLOH%20v.%20GERMANY%20-%20%5BRomanian%20translation%5D%20legal%20summary%20by%20the%20IER%20> (19.10.2024).

³³ Tudorel Butoi-Severin, Ioana Teodora Butoi, *op.cit.*, p.26.

control and are externalized at the preconscious level. Manifestations that escape conscious censorship give the authorities either reason to suspect that the person is hiding the truth, or indications that he is trying to misdirect the investigation, or, on the contrary, that he is confessing the truth. The anxiety and emotional tension during the interrogation exert pressure on the conscious mechanisms of expression, bringing to the attention of the consciousness events and goals that remain unresolved.³⁴

It should be noted that, although this technique is presented by various scholars, we know that its practical applicability is limited.

4. Polygraph technique

“The polygraph technique is one of the most advanced techniques used in the field of simulated behavior detection. The polygraph, empirically known as a “lie detector”, is a mechanical or electronic recorder that pneumatically takes over changes in blood pressure, pulse, respiration, supplemented with a system for recording electrodermal resistance and muscle micromovements (Anghelescu & Dan, 1984). The polygraph does not directly record the lie, but the physiological changes determined by the emotions that accompany the simulated behavior.”³⁵

However, it is important to note that even the result of the polygraph test could be erroneous in certain situations. For this reason, I understand to refer to the opinion of a foreign author, who states the following: “methodological controversies continue regarding the merits of the polygraph (Iacono, 2008) for detecting deception in employment environments. The emotions generated by attempts to cheat often include fear and anxiety, which can be difficult to distinguish from the emotions of a sincere person going through a stressful interrogation.”³⁶

In the situation where it is necessary to find out additional information about the person about whom certain information must be detected, the foreign authors found that in-depth investigations, behaviors designed to hide certain facts can reduce the effectiveness of external sources for discovering problems that have not yet been revealed by the subjects (Kramer et al., 2001). However, the information available is inferential in nature. For example, Carney (1996) found that collateral interviews with most relatives were not helpful in identifying previous problematic behaviors of subjects. In contrast, ex-spouses were 315% more likely to provide valuable information. While this considerable difference can be partly explained by legitimate circumstances (e.g. the divorced subject’s interpersonal conflicts) or by false statements (e.g. ‘revenge’), these data also suggest that certain collaborators (such as current spouses) may intentionally withhold highly harmful information.³⁷

³⁴ *Ibidem*, p.26-27.

³⁵ Ioan Buș, *op.cit*, p.83, can be accessed at the following address: <https://ro.scribd.com/document/96680340/Filesare-ro-bus-Ioan-Carte-Psihologie-Judiciara>.

³⁶ Richard Rogers, Adriel Boals, , Eric Drogin, *Applying cognitive models of deception to national security investigations: Considerations of psychological research, law, and ethical practice*, 2011 p.347, can be accessed at the following address: https://www.researchgate.net/publication/273490406_Applying_Cognitive_Models_of_Deception_to_National_Security_Investigations_Considerations_of_Psychological_Research_Law_and_Ethical_Practice (19.10.2024).

³⁷ *Ibidem*, p.346.

5. *Method of detecting stress in voice*

According to the data presented in the literature, among the most relevant indicators of emotions are: the features of the contour, speed, amplitude and frequency of the fundamental tone of the voice during a speech, as a result of physiological changes in the process of adduction and abduction of the vocal cords. The psychological stress assessor (PSE) is a specialized device that allows the detection of emotional stress in the voice, identifying subtle, inaudible and involuntary modulations of the average frequency (FM) in the range of 8-12 Hz (or 8-14 Hz, according to other authors). In forensic investigations, in order to obtain more accurate results in the analysis of vocally expressed emotions, a set of equipment is used, consisting of a professional tape recorder of high technical performance, which records the subject's response during the polygraph test, and a specialized device for detecting vocal stress, which transcribes the subject's responses into vocograms.³⁸. The same author considers that this device clearly records the answer given by the subject and highlights the vocal characteristics resulting from the interpellation.

Conclusions

This article aimed to expose the analysis of methods and techniques for detecting covert human behavior.

Throughout the paper, in the chapter entitled "Introduction", we have shown that disguised patterns of behaviors, i.e. those behaviors that are intentionally masked or hidden from observers, represent a significant challenge, having profound implications on the effectiveness of interpersonal communication and trust building. Detecting these behaviors is an essential task that requires a multidisciplinary approach, combining diverse methods.

In the next chapter, we have tried to demonstrate what is the rationale behind examining this concept and what is the relevance in relation to two proposed areas of interest, namely the legal field and the national security field.

In the chapter entitled "Psychological perspective - the departure points of judicial and national security analysis", I wanted to present the psychological component that is the pillar of the research of the differences in terms of the concept of concealment in the two mentioned branches. Also, within this chapter, proposals for a *ferenda law* were formulated.

In chapter IV, entitled "Auxiliary theories in the detection of concealed behaviors", I presented the theoretical component, with practical valences, which constitutes the foundation of this research. I have also tried to emphasize different conceptions, found in the specialized literature and which deal with this subject in a harmonious way.

In conclusion, through this paper, I wanted to achieve a more correct interpretation of the text of the law, of the fundamental concepts and of the investigation

³⁸ Ioan Buș, *op.cit.*, p.82-83, can be accessed at the following address: <https://ro.scribd.com/document/96680340/Fileshare-ro-bus-Ioan-Carte-Psihologie-Judiciara>.

techniques, which would aim to achieve the objectives mentioned in the article, having as a reference the dictum of Latin origin; “*verba intentioni, non e contra, debent inservire*” (the words must be interpreted according to the intention, not against it).

Bibliography:

Books:

Bogdan, Sergiu, Șerban, Doris Alina, *Drept penal. Partea Specială*, Editura Universul Juridic, București, 2020.

Butoi, Tudorel, Butoi, Ioana Teodora, *Tratat universitar de psihologie judiciară-teorie și practică*, Editura Phobos, București; 2003.

Butoi-Severin, Tudorel, , Ioana Teodora, *Detecția comportamentelor duplicitare(simulate)*, Editura Pro Universitaria, București; 2019.

Buș, Ioan, *Psihologie judiciară*, <https://ro.scribd.com/document/96680340/File-share-ro-bus-Ioan-Carte-Psihologie-Judiciara>.

Chiru, Irena, *Analiza în intelligence: de la artă la știință*, Editura Tritonic, București, 2019.

Ciofu, Ioan, *Comportamentul simulat*, Editura Academiei Republicii Socialiste România, 1974.

Chelcea, Septimiu, Zamfir, Cătălin, *Sociologie*, editura Economică Preuniversitară, București, 2006.

Gerwehr, Scott, Glenn, Russel, *The art of darkness. Deception and urban operations*, Editura Rand Arroyo Center, 2000.

Lesenciuc, Adrian, *Teorii ale comunicării*, Editura Academiei Forțelor Aeriene „H.Coandă” Brașov, 2017.

Mateescu, Oana Teodora, *Psihologia judiciară*, Editura Renaissance, București, 2010.

Oprescu, Victor, *Aptitudini și atitudini*, Editura Științifică, București, 1991.

Popescu Neveanu, Paul, *Dicționar de psihologie*, editura Albastros, București, 1989.

Scripcaru, Gheorghe, Terbancea, Mihaela, *Patologie medico-legală, Editura Didactică și Pedagogică, București*, 1978.

Tașu, Bogdan, *Amprenta psiho-comportamentală. Metodă modernă de luptă împotriva criminalității*, 2009; https://www.researchgate.net/publication/200536831_AMPRENTA_PSIHO-COMPORTAMENTALA_-_METODA_MODERNA_DE_LUPTA_IMPOTRIVA_INFRACTIONALITATII.

Ungurenu, Augustin, *Prelegeri de Criminologie*, Editura Cugetarea, Iași, 1999.

Studies and articles:

Bouwmeester, Ajh, *The art of deception revisited (part 1): current insights*; 2021, <https://militairespectator.nl/artikelen/art-deception-revisited-part-1-current-insights>.

Dunlap Jr, Charles, *Ethical Issues of the Practice of National Security Law: Some Observations*, 2012, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5374&context=faculty_scholarship.

Gabor, Dan, Baritz, Mihaela, Repanovici, Angela, *Metode și tehnici de investigație a comportamentului simulat. Descrierea și utilizarea sistemului mecatronic de tip SB-MET V.1.0*, în Buletinul AGIR nr.2/2015, aprilie-iunie.

Lesenciuc, Adrian, Cozmanciuc, Corneliu Mugurel, *Security culture: the cure to voter depression in Romania*, în RISR, no.27, 2022.

Navarro, Joe, *What every BODY is saying. An EX-FBI Agent's Guide to Speed-Reading People* 2021, ; https://archive.org/details/whateverybodyissaying_202105/page/n5/mode/2up.

Pârvolescu, Leliana Valentina, *Eficiențizarea comunicării în intelligence. Tehnici psiho-comunicaționale pentru humint*, 2022; <https://www.animv.ro/wp-content/uploads/2022/09/PARVULESCU-LELIANA-REZUMATUL-TEZEI-DE-DOCTORAT-RO.pdf>

Pop, Daniel, *MILDEC- Planul de inducere în eroare/mascare, parte componentă a planului de operații*, 2014; <https://revista.unap.ro/index.php/revista/article/view/53/62>.

Rogers, Richard, Boals, Adriel, Drogin, Eric, *Applying cognitive models of deception to national security investigations: Considerations of psychological research, law, and ethical practice*, 2011.

Sfințeș, Costina, *The scientific basis of finding psychological stress*, in Annals of the "Constantin Brâncuși" University of Târgu Jiu Letters and Social Science Series, nr. 1/2020.

Case-law documents:

European Court of Human Rights, *Jalloh v. Germany*, 2006.

Piatra-Neamț Court, Criminal judgment no.659/2020.

Webliography:

https://archive.org/details/whateverybodyissaying_202105/page/n5/mode/2up.

<https://militairespectator.nl/artikelen/art-deception-revisited-part-1-current-insights>.

<https://revista.unap.ro/index.php/revista/article/view/53/62>.

<https://www.rejust.ro/juris/349e89585>.

<https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001184257&filename=CASE%20OF%20JALLOH%20v.%20GERMANY%20%20%5BRomanian%20translation%20%20legal%20summary%20by%20the%20IER%20> ;

https://www.researchgate.net/publication/273490406_Applying_Cognitive_Models_of_Deception_to_National_Security_Investigations_Considerations_of_Psychological_Research_Law_and_Ethical_Practice.