ИЗВОРНИ НАУЧНИ ЧЛАНЦИ
ORIGINAL SCIENTIFIC PAPERS

DOI 10.7251/GOD1840011S UDK 343.126.1:343.143/.144(73)

ORIGINAL SCIENTIFIC PAPER

THE CONCEPT AND THE CONTENT OF THE INTERROGATION OF THE SUSPECT IN CUSTODY IN CRIMINAL PROCEDURE IN THE UNITED STATES

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Abstract:*The paper analyses some relevant issues related to the treatment of law enforcement officers in the United States after a person has been taken into custody or otherwise deprived of liberty, which requires informing that person of his/her constitutional rights. In the landmark decision Miranda v. Arizona (1966), the Supreme Court of the United States set standards for law enforcement officers to follow when interrogating suspects held in custody.*

Suspects who are subject to custodial interrogation must be warned of their right to remain silent; that any statements they make may be used as evidence against them; that they have a right to an attorney; and if they cannot afford an attorney, the State will assign them one prior to any questioning, if they so wish. According to Miranda, unless those rights are not read, any evidence obtained during the interrogation may not be used against the defendant.

Ever since Miranda was decided, state and federal courts have struggled with a number of issues with regard to its application, including the suspect's being in custody, which entitles the suspect to being readMiranda rights, the suspect's waiving the right to have an attorney present during questioning. Some decisions by the U.S. Supreme Court have attempted to answer these difficult questions.

Key words: *police, suspect, defendant, interrogation, Miranda rights.*

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INTRODUCTORY REMARKS

Judgment of the Supreme Court of the USA[3] in case *Miranda v. Arizona*[4] is applied only to „custodial" issues. The Supreme Court stated that „custodial interrogation" refers to questioning initiated by law enforcement officer who is questioning a person who has been deprived of his freedom or is taken into custody or otherwise deprived of his freedom of action in any significant way. There have been many difficulties in decision making process on „custodial" issues in cases after adopting *Miranda*.

In case the custody interrogation can be observed through Miranda rights prism, a prior warning is necessary. The reason for insisting on Miranda warning is that the suspect might feel compelled to speak when in a situation domineered by the police.

When the suspect is taken into custody and in a situation to talk freely to a person he believes is his fellow prisoner, and not a police officer, he does not feel compelled. The use of undercover agents, although it will never result in a violation of Miranda rights, could lead to a violation of the suspect's right to a defence attorney under the Sixth Amendment to the U.S. Constitution. When an indictment is filed against a suspect or he is indicted on any other ground, the use of undercover investigators to collect incriminating statements from that person in the absence of a defense attorney and pass them to the prosecutor would be considered a violation of the rights to a defense attorney. On the other hand, there was no problem with the violation of the right to the defense attorney in the case of the accused if his statements were not related to the criminal offense he was charged with, but for another one for which he was not charged with or arrested at that moment: the fact that he was under another charges of unrelated criminal offense - was legally irrelevant.

OBJECTIVE „REASONABLE SUSPECT"

Whether the suspect is „detained" at a given moment can be determined by an objective „reasonable suspect" test. In other words, the answer is to be asked whether a reasonable person in the suspect's position would understand (or not) that he was taken in custody at a particular moment. Thus, the „unexpressed intent" of a police officer to detain or not detain the suspect against his will - he considers irrelevant. Similarly, the subjective conviction of a suspect as to

3 Hereinafter: the Supreme Court.
4 284 U.S. 436 (1966).

whether or not he is free to leave, if that is in disagreement with what a reasonable person would consider in a similar situation - is also irrelevant.

Whenever both are possible - objective rule can be interpreted in two ways. First, if the law enforcement officer decides not to hold the suspect. Suppose the officer has decided not to hold the suspect in a subjective way, but did not indicate it to him directly or indirectly. Here the suspect was taken into custody in the sense of Miranda, if a reasonable person in the suspect's place thought he had no right to leave freely. The same is applicable if the investigator did not decide whether the person being interrogated is a „serious" suspect and whether he would hold him – what is important is what someone in the suspect's place would think, and not what the investigator thinks.

Therefore, the opinion of the law enforcement officer on the nature of interrogation or his belief regarding the possible guilt of a person being interrogated - may be for a suspect one of the many factors affecting the assessment of whether a person is taken into custody. In addition, it is also required that the officer has expressed his opinions and beliefs to the person being interrogated and that they would influence the manner in which a reasonable person in such situation would perceive whether he was free[5]. If the law enforcement officer intends to hold the suspect, then the „unspoken intent" will be irrelevant if a reasonable person in the suspect's position would think he has the right to leave after the interrogation, and the suspect was not taken into custody.

LOCATION OF INTERROGATION

The location of interrogation is often important for determining the existence of „custody" of the suspect. It always starts from the fact whether a reasonable person (in this suspect's place) would believe he was free to leave, which partly depends on the location of the interrogation.

(1) Station-house interrogations will more often be considered as „custody"in relation to those taking place in the house of the suspect. If the suspect was told he was arrested and brought to the police station, it is quite clear that he was „in custody" - because he was not free to leave. Similarly, if a suspect was taken by a patrol car under circumstances suggesting he was arrested, it is clear that he was „in custody". The suspect who voluntarily arrives at the police station at the request of the police is not considered to be in „custody" in normal circumstances and, therefore, has no right to a Miranda warning[6].

5 See *Stansbury v. California*, 511 U.S 318 (1994).

6 In *Mathiason* (*Oregon v. Mathiason*, 429 U.S. 492 (1977)), the police suspected that a theft was executed by parolee who came to the station at the call of the officer to "discuss something with him". The suspect was told he was not under arrest, that the police believed he was involved in the burglary, and that his

However, the very fact that formal arrest did not precede the interrogation in the police station does not mean that the interrogation at the station cannot be considered as leading to detention. If a reasonable person in this situation were to understand that he was not entitled to leave the station, then the interrogation would be "custodial", no matter how much the suspect initially volunteered to come to the station (Emanuel, 2001: 203).

(2) It is also disputable whether the suspect is „in custody"in cases where a meeting with the police takes place on the street. There is no general rule here. If a person in the position of the suspect understands that the police are taking him for a serious suspect, then the suspect is likely to be taken „in custody". On the other hand, if he does not appear to be under serious suspicion of the police or if an offence for which he is interrogated is of such a nature that it is unlikely the arrest will follow, then the suspect is probably not „in custody".

It is clear that the police can begin a general interrogation of persons near the crime scene without introducing them with Miranda rights. The Miranda court decision itself states that „it is not intended to hamper the traditional function of police officers in investigations ... this decision does not affect a general on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact finding process". However, if a police officer captures a suspect when escaping from the scene, the rule applied to „a general on-the-scene questioning"which does not prescribe mandatory reading of Miranda rule, ceases to be valid.

The police may sometimes keep a person who does not fall under a „scene of the crime"related to a particular criminal offense, but acts suspiciously. „Stop and frisk"is typical for such types of retention. Such encounters probably do not imply „custody"even when a suspect is searched due to police safety[7].

In addition, if the circumstances of a particular meeting in the street create the atmosphere of coercion, Miranda warnings might still be necessary. The Supreme Court pointed out this possibility in the case of *Berkemer v. McCarty*, emphasizing that the suspect would be taken into „custody" as soon as „his freedom of action is curtailed to a degree associated with formal arrest".

(3) Stopping a driver for a minor traffic offense is usually not considered a „detention"procedure. Here, similar to other situations, the intention is to assess whether a person on the driver's seat considered being free to leave

fingerprints were found at the crime scene. The suspect admitted to have committed a theft, then he was warned of his Miranda rights, and afterwards took a taped confession. The Supreme Court, in its opinion per curiam (Latin for „by the court", an opinion of the Appellate Court which does not identify a particular judge who can write his opinion) finds that the accused was not „under arrest" at the time when he initially confessed the offense, and, therefore, he had no right to be read Miranda rights..

7 *Berkemer v. McCarty*, 468 U.S. 420 (1984).

after stopping. Usually, the driver would reasonably believe in such a situation that he would be free to leave after he was punished. In the case of Berkemer, the Supreme Court replied that a normal reasonable person considers not to be arrested: a traffic stop is considered as „temporary and brief"and the driver knows that „in the end, he most likely will be allowed to continue on his way"(in distinction from the classical interrogation at the station).

Another factor is pointed out in public, where it is less likely that a traffic stop would be considered as „custody": the fact is that such stops occur in public and involve from one to two policemen. This again means that the situtation is „considerably less police dominated", unlike the classic situation of stationhouse interrrogation.

Of course, if a police officer informs a driver of his arrest, it is immediatelly considered that he is „in custody". Thus the accused in case Berkemer was considered to be in custody „at least from the moment he was formally arrested and when he was told to enter the police car".

If the meeting happens at the suspect's house, before he is arrested, the suspect is most likely not detained[8]. In cases of interrogation of a suspect at home or at work, the courts emphasized the intimate atmosphere in which the interrogation was conducted, that is, the lack of isolation from the outside world and the absence of atmosphere of police domination that Miranda rights create.

(4) The arrest of a suspect smuggler at an airport may, in a given situation, be the situation preceding custody. This type of stop contains aspects of interrogation of a person at the place of commission of a criminal offense, which is usually not the one that precedes detention. But, if it is clear that the suspect is not free to leave, if there is a large number of policemen present in the way that a sense of coercion is created –we can say it is custody[9]. If a suspect is being searched for smuggling, there is even greater chance that the court will consider it to be custody[10].

Miranda also refers to cases in which the purpose of detention is not connected with the purpose of interrogation. If the interrrogation is considered as a procedure preceding custody, the suspect has a right to Miranda warnings[11].

8 See *Beckwith v. U.S.,* 425 U.S**.** 341 (1976).
9 See *Florida v. Royer*, 460 U.S. 491 (1983).
10 See *U.S. v. McCain*, 556 F2d (Peti Cir. 1977).
11 *Mathis v. U.S.*, 391 U.S. 1 (1968).

MINOR CRIMES

„Minor crimes“are no exception when it comes to the right of a detained person to be read his Miranda rights. If the interrogation meets all the standard requirements for Miranda rights (especially if the suspect is „in custody“), they must be read, regardless of the minority of the crime, without imposing custody on the suspect.

The most important application of this rule provides that a suspect for minor traffic violations must be warned of his Miranda rights before questioning, which precedes his detention. In the case of *Berkemer*, the suspect was arrested for driving under the influence of alcohol. Although the offense was treated as an offense under the local law, there was a need for Miranda warnings.

Refusing to confirm the exemption from Miranda in cases of minor crimes, the Supreme Court in the *Berkemer* decision basically offered an explanation that such exemption would significantly undermine the clarity of Miranda rule. The Court emphasized that police are often unaware at the time of arrest whether the suspect committed an offense or criminal offense and that „it would be unreasonable to expect the police to speculate on the nature of a criminal behavior - before deciding how to interrogate the suspect“. Further, „investigations of seemingly milder offenses or offenses that sometimes gradually escalate into investigations into more serious matters“, and the deviation from Miranda rule would force the police and the courts to face difficulties in making decisions about at what point of investigation that escalation had actually happened; therefore, it would be necessary to read Miranda warnings. On the other hand, the danger for which Miranda rule has fundamentally passed (the police will force the suspects to incriminate themselves) may surely be present even in investigations of „minor“offences.

CONTENT OF INTERROGATION

In Miranda case the Supreme Court emphasized that „volunteered statements of any kind are not barred by the Fifth Amendment, and their admissibility is not affected by our holding today“.

(1) Statements not given during detention: it is clear that Miranda warning is not necessary when a person simply approaches a policeman on the street or comes to the police station and gives an incriminating statement.

(2) Voluntary statements during detention procedure: although Miranda decision prohibits interrogation in custody if Miranda warnings are not previously read, this does not mean that all statements of detained persons are forbidden.

A suspect who is detained could, for example, voluntarily make a statement without being asked any questions. But, due to the possible situation of coercion because of the police station environment, the courts will be skeptical of the Prosecution's allegation that it was not necessary to warn the suspect who was detained, since he was asked no questions.

(3) Indirect questioning: it is common that the questioning is conducted in the form of direct questioning of the suspect. However, there are other techniques for obtaining information, using indirect means. In the *Rhode Island v. Innis*[12] case, the Supreme Court held that the interrogation was conducted in the sense of Miranda „whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term 'interrogation' ... refers not only to explicit questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody), that the police should know are reasonably likely to elicit an incriminating response from the suspect".

In Innis case, the Supreme Court ruled that there was no questioning in this particular case. Here, the suspect was arrested for the murder committed with sawed-off shotgun. The suspect was driven in a police car in the company of three police officers. During the trip, one officer said to the other that there was a school for disabled children near the place of murder and „God forbid one of them might find a weapon with shells and they might hurt themselves." The suspect then interrupted their conversation and said to turn the car around to show them where the gun was located.

The suspect later claimed that police officers „questioned"him and thus violated his Miranda right to suspend the interview until the attorney was present. However, the Supreme Court ruled that there was no questioning because the officials were not necessarily supposed to know or could assume that their conversation was reasonably likely to elicit an incriminating response from respondent. The court relied on the fact that there was nothing in the record to suggest that the police officers were aware that respondent was „peculiarly susceptible to an appeal to his conscience concerning the safety of handicapped children", or that „he was unusually disoriented or upset". Therefore, they did not have a reason to expect their conversation would result in incriminating response.

The facts of the *Innis* case are reminiscent of the *Brewer v. Williams*[13] case in which a police officer told a suspect to murder that the victim had the right to „Christian burial", and thereby led a suspect to take the police to the body

12 446 U.S. 291 (1980).
13 430 U.S. 387 (1977).

of the murdered person. In *Brewer*, the Supreme Court concluded that the right of a suspect to an attorney had been violated by this conversation. But, in the *Innis* case, the Supreme Court ruled that *Brewer* case was not relevant to *Innis*, since *Brewer* case referred to the right to an attorney and not the right under the Fifth Amendment privilege against self-incrimination (as Miranda says). The Supreme Court found that the definitions of „questioning"from the Fifth and Sixth Amendment „are not necessarily identical because the principles of these two types of constitutional protection are quite different".

In *Innis* case the intention of the police was not obvious. If the police intend to elicit an incriminating response from the suspect, but it is unlikely that it will succeed, according to the *Innis* case interpretation, it would not be qualified as an interrogation. On the other hand, obtaining an incriminating response was not intentional, but police officers out of ignorance failed to understand that such a response would follow as a result of their behaviour, such set of circumstances would be considered as an interrogation[14].

(4) A police „set-up" with a spouse: if police conduct does not consist of statements or putting questions to a suspect, but rather creating a situation where the police believe that the suspect could „voluntarily pronounce an incriminating statement"- is this also „interrogation"? For example, the police "set up" a meeting of the suspect and his wife in circumstances he reasonably believes will cause the suspect to make before her a self-incriminating statement. In one case, faced with such facts, the Supreme Court ruled with five to four votes that there was no interrogation because „the police do not interrogate a suspect simply by hoping he will accuse himself"[15].

In the case of *Mauro*, the suspect had previously told the police he would not speak to them without the presence of an attorney. His wife came to the station and the police decided to allow her to talk to her husband, but only in the presence of the police officer and with tape recorder turned on. Not notifying the suspect of the presence of his wife, who wanted to talk to him, one of the police officers brought the wife into the room, sat at the desk and placed the tape recorder on a plane sight. During a brief conversation with his wife, the suspect gave incriminating statements. The Supreme Court ruled by majority of votes that there was no questioning. The truth is that the police behavior in *Innis* case, which was functional equivalent to interrogation (including „any

14 The Judge of the Supreme Court, *Marshall* (to whom joined Judge *Brennan*) filed a dissenting opinion in *Innis* case claiming that even though the assesment of the Court was in place, it should have decided that it could have been „reasonably expected the statements of police officers would elicit an incriminating response of the suspect". Judge *Stevens* dissented his opinion under these circumstances, but also on the basis of the fact that any saying or doing by which „any response" can be elicit (not only incriminating one) – should be treated as interrogation..

15 *Arizona v. Mauro,* 481 US 520 (1987).

words or actions on the part of the police.... that the police should know are reasonably likely to elicit an incriminating response from the suspect"), was in accordance with Miranda.

However, this cannot be associated with the *Mauro* case. First of all, there was no evidence that the wife of the suspect was sent with the intent to „extract" the statement - the conversation was solely on her request, and the police officers first tried to discourage her and convince not to talk with her husband. Likewise, police behavior in this case was much less interrogation in relation to the police behavior in *Innis* case (which the Supreme Court held was not questioning)[16].

The *Mauro* case did not serve as a basis for passing a new law. The *Innis* case test (according to which the police conduct an„interrogation" in all cases where it is justified to believe that their conduct would lead to an incriminating answer) remains as legal provision after the *Mauro* case. However, this case shows that the majority of Supreme Court judges reiterated the *Innis* case and found that in the *Mauro* case they could not find the same satisfactory elements as identified in *Innis* case. Likewise, *Mauro* may mean that police intention is more important than before. It seems that *Mauro* case means that if the police do not intend to elicit incriminating statements, their behavior is not an„interrogation", even though a reasonable person would think that their behavior is likely to lead to such statement. This is a change in relation to the *Innis* case in which the Supreme Court ruled that its assessment „primarily focuses on the perceptions of the suspect, and not the intention of the police".

(5) Clarifying Questions: a statement may be voluntarily given and not a product of interrogation, even if the police put clarifying questions. But, these questions really have to serve as clarification, and not be designed to induce the suspect to talk about the facts he did not originally want to present to the police. So in the case *People v. Savage*[17], a man entered the police station and admitted, „I did this, I did that, arrest me, arrest me". The police officer asked him what he did, and he replied that he had killed his wife. The policeman then asked him how he did it, and he replied: „With an axe". The statements were admissible, although no Miranda warnings had been given.

16 Four Judges of the Supreme Court did not agree in essence with the opinion of majority about factual background. They believed the police intended to try to elicit incriminating response from the suspect. They pointed out the police has in no way warned the suspect his wife was about to come to talk to him, that she will be escorted by police officers, nor that the conversation would be taped. So the police „set-up" the situation in which the suspect would be subject to a surprise to a maximal extent. This is a „firm, strong psychological act" by which the police intentionally „set-up confrontation between the suspect and his wife" in a moment he clearly showed he wanted to defend himself by silence. Since the police knew or should have known it was „justified to expect that this meeting would lead to incrimnating response", it was equal to questioning, even though the response of the suspect did not follow from anything said to him by the police.

17 242 NE2d 446 (III App.Ct.1968).

1. Identifying questions[18]

Given that the privilege of a person against self-incrimination does not apply to physical identification procedures[19] (such as process of recognition[20] and fingerprints), routine questions that serve solely for identification purposes - should not contain warning.

Unsolicited response: when asking a routine question or a question for purpose of identification and statements, i.e. the response is to be considered voluntary, implying that it is not given under impression that the suspect must incriminate himself. It is commonly considered that routine questions are related to identification, and can be asked when completing booking, without having to read the Miranda rights to the suspect before that[21].

2. Questions in emergency cases[22]

Questions asked by the police in some emergency circumstances, such as taking care of or rescuing a victim or for the purpose of protecting a police officer, are generally not considered as interrogation. In addition, a new exception as to the „public safety", adopted by the Supreme Court in case *New York v. Quarles*[23] - means that Miranda will not apply in emergency situations, regardless of whether the questions put at that occassion could be qualified as an interrogation.

3. Questions that were not posted by police officers

In Miranda, the Supreme Court restricted its position to „interrogation initiated by 'law enforcement officials'[24]". Many courts have used this term to acknowledge incriminating statements given in response to questions not posed by the police, but, for example, a private investigators and victims.

(1) A probation officer: the courts disagree as to the opinion whether this exemption also includes officers who are in charge of supervision and probation officers (for juvenile delinquents, etc.), given that they are usually considered to be law enforcement officials.

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18 *Identification questions*.
19 *Physical identification.*
20 *Line up*.
21 See, for example, *Pennsylvania v. Muniz*, 496 U.S. 582 (1990). Majority of Judges of the Supreme Court considered the questions posed to the suspect, referring to the name, address, heights, weight, etc. were such that they needed no previuos Miranda warning, regardless of the fact that the video recording of the questioning process and answers of the suspect, was used at trial - to demonstrate that the suspect was drunk.
22 *Emergency questions*.
23 467 U.S. 649 (1984).
24 *Enforcement officials*

(2) IRS (The Internal Revenue Service) officials: the Supreme Court implied that the IRS, or tax officials, while conducting tax investigations, have to be treated as law enforcement officers[25]. In any case, most of the interview (s) with tax agents will be held in a situation of a non-custodial nature (e.g. a voluntary interview at the office or at home, as it was the case in the *Beckwith* case), in which case there is no need for Miranda warning.

(3) Psychiatric examination: when a court orders a psychiatric examination to determine the competency of the accused to stand trial, it may also withdraw the right to Miranda warning, depending on how the Prosecution intends to use the results of the review in the course of the trial.

a) Results used to determine the punishment: if the results of a psychiatric examination are used to determine the punishment for criminal offenses for which a capital case is threatened, Miranda warning must be given. Thus, in the case of *Estelle v. Smith*, the accused was convicted of the first degree murder, for which criminal offense a death sentence could be imposed. The Court ordered the accused to undergo a psychiatric examination to determine his competence to stand trial; the accused himself did not seek such an examination, and although he was appointed an *ex officio* defence attorney, he was not informed he would undergo an examination. The accused did not receive any kind of Miranda warning in any form before talking to a psychiatrist[26].

b) Holding: the Supreme Court held that the Prosecution was not authorized to use a psychiatric finding in the stage of determining his sentence, because the accused was not advised that he had a right to remain silent during the interview with the psychiatrist) and that any statement he made could be used against him at a capital sentencing proceeding. The Supreme Court had no reason to decide on the difference between the stages of guilty plea and the determination of the sentence during the trial.

(c) Results used to assess the competency to follow the trial or sanity: the Supreme Court held that Miranda warning (at least as far as the rights from the Fifth, rather than the Sixth Amendment to the US Constitution) would not be required if examination results were used only for the purpose of determining the competency to stand the trial. Likewise, these warnings would not be necessary if the accused called for insanity in his defense.

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25 See *Beckwith v. U.S.* 425 US 341 (1976).

26 The psychiatrist testified he considered the suspect was competent to stand trial. But, the most significant part of the psychiatrist's expertise, relying on the examination – was the one used in the stage following after the accused's conviction for a murder. Namely, in a separate phase determining the sentence, when deciding on the possibility of pronouncing a death sentence, the psychiatrist testified the accused was a persistently dangerous person expressing no regret for his actions. Given that the qualification of persistently dangerous person is considered as one of mandatory elements when rendering death sentence, the psychiatric examination played a crucial role in the final decision to pronouce a death sentence to the accused.

EXCEPTION OF „PUBLIC SAFETY“

Suppose that, while the suspect is in the interrogation process and the police believe that loaded gun is near, that the victim is captured and the bomb may explode, or that there may be some recent threat to public safety. The police want to interrogate the suspect about a gun, a victim, a bomb, etc. Until 1984, the police had to choose between two options in this situation.

One option was that the police try to maximize the chances that the suspect would answer without being warned by Miranda before the interrogation. If so, the answer could not be accepted as evidence against him. The second option, alternatively, would be the ability to present Miranda warning to the suspect and, thereby, reduce the chances he would answer.

But in 1984, the Supreme Court dispersed these dilemmas holding that in these cases Miranda warnings were simply unnecessary before the interrogation, which was „reasonably prompted by a concern for the public safety“. Furthermore, the existence of such reasonable concern for the public safety will be conditioned objectively, without considering the subjective motivation of the official involved[27]. These two claims, viewed together, mean that in a very large part of the interrogation that was held soon after the suspect's arrest (including those taking place at the crime scene), Miranda warnings will not be needed.

The scope and practical impact of this conclusion are presented in the facts in *Quarles* case. Four armed police officers arrested a suspected rapist in the supermarket. When the suspect saw the cops, he ran toward the rear of the store where he was arrested and handcuffed, but the search showed that he was wearing an empty shoulder holster for the gun. One policeman, without giving (reading) Miranda warning to the suspect, asked him where the gun was. The suspect responded that „the gun is over there“, nodding towards some empty cartons. The loaded gun was found amongst cartons, and the statement of the suspect as well as the gun were accepted as evidence by the Prosecution.

The decision of the Supreme Court in *Quarles* has created a new departure from Miranda requirements for situations where „the most important thing is concern for public safety“. This deviation was considered to be applicable to these facts. The Court began to observe Miranda requirements as barely „preventive“ measures, which, by themselves, „are not rightly protected by the US Constitution, but (are) instead measures to insure that the right against compulsory self-incrimination“. Since Miranda warnings (according to the opinion of most judges of the Supreme Court) were not directly required by the Fifth Amendment, the Court has been free to engage in „cost-benefit analysis“.

27 *NewYork v. Quarles*, 467 U.S. 649 (1984).

The Court noted that in the context of a typical detention interrogation, protection of public was the only „cost" of giving Miranda warning. Accordingly, most judges have ruled that „the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment privilege against self-incrimination".

The Court also found that the existence of a threat to public safety should be measured in an objective, rather than subjective manner. This means that disputable subjective opinion of the police officer that there is a significant threat to public safety or not - should be irrelevant. The test is whether a reasonable police officer could conclude that there is such a danger. The police officer with common sense would have believed that the suspect took the gun out of the holster and concealed it somewhere in the supermarket, where „accomplice, (or) the customer or an employee may later come upon it".

Most judges of the Supreme Court have admitted that their decision „to a certain extent ... reduces the desired clarity of Miranda rules". Previously, Miranda rules were simply mandatory in each detention trial. Now, in many if not in most situations, there is a reasonable claim that „public safety"would require some of the questions. The former „bright line", represented by the traditional Miranda rule, became blurry (Emanuel, 2001: 212).

In addition to that, most judges of the Supreme Court have also been careful to consider that their verdict does not prevent the suspect from showing that his answers were actually elicit; if he can prove it, he will have the right to request the exclusion of these answers. Does such „actual compulsion"exists - it will be determined by „due process standards". For example, in the case of *Quarles*, the suspect could be able to prove that, while he was handcuffed and surrounded by four armed policemen, his answer to the question "Where is the gun?" - was not voluntary.

Four Judges of the Supreme Court did not agree with at least one exception to „public safety". They saw the new rule as a sharp disagreement with Miranda constitutional assumption, which violates the Fifth Amendment. The fact that public safety can be endangered in a particular case does not make it any less likely that the suspect's response was elicited. Miranda was the way to make elicit confessions unacceptable.

It is no surprise that Miranda warnings are given less often than before *Quarles* case, especially when the suspect was interrogated at the same place he was arrested. Also, it would not be surprising that the following questions appear – were the facts in particular cases sufficient to determine a threat to „public safety"(especially when the police do not have to show it was motivated by such danger). Where there is a support for the claim of the governmenton

public safety, there will be a new and complex investigation of whether there was a „real coercion“in accordance with traditional standards of „procedural guarantees“.

INSTEAD OF CONCLUSION

Confession is the accused's statement accepting some personal facts referring to the criminal offense he would rather have kept hidden. The term often assumes connection with the confession of moral and legal guilt. In a certain sense, it is an acknowledgment that the accused has done something forbidden, intentionally or unintentionally, and which was previously, as a rule, inaccessible. It confirms what the accused did.

In criminal proceedings, the United States „custodial interrogation“is a situation where the suspect's freedom of movement is limited, even if he is not arrested. Interrogationis initiated by law enforcement officials after a person has been taken into custody or otherwise deprived of his freedom.

In *Miranda v. Arizona* custodial interrogation initiated appropriate enforcement of the law by the state organs after the persons had been in custody or otherwise deprived of their freedom of action in any significant way. The Supreme Court clarified that a person is a subject of custodial interrogation if „reasonably feeling that he or she was not at liberty to terminate the interrogation and leave“[28]. This test is objective and does not depend on subjective opinion, age or previous experience of some suspects with police[29]. Instead, the final question is whether a common, reasonable man would feel free until the end of the interview with law enforcement officials, and could leave the „scene“. However, in case *J.D.B. v. North Carolina*[30] the Supreme Court explained that even the age of a child correctly explains analysis of Miranda.

LITERATURE

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ПОЈАМ И САДРЖИНА ИСПИТИВАЊА ОСУМЊИЧЕНОГ У ПРИТВОРУ У КРИВИЧНОМ ПОСТУПКУ У СЈЕДИЊЕНИМ АМЕРИЧКИМ ДРЖАВАМА

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Сажетак: *У раду се анализирају нека релевантна питања везана за поступање службеника за провођење закона у САД након што је особа одведена у притвор или на други начин лишена слободе која захтијевају да се та особа упозори на примјењива уставна права. У водећој одлуци Миранда против Аризоне (1966) амерички Врховни суд је поставио стандарде за права службеника за провођење закона која треба слиједити приликом испитивања осумњиченог који се налази у притвору.*

Осумњичени који подлијежу притворском испитивању морају бити упозорени да имају право на шутњу; да изјаве које дају могу бити коришћене као доказ против њих; да имају право на адвоката и да ако не могу обезбиједити адвоката, биће им он додијељен прије испитивања, ако то желе. Према Миранди, ако се не дају та упозорења, докази добијени током испитивања не могу се користити против осумњичених.

Послије доношења одлуке у предмету Миранда, државни и савезни судови суочили су се са бројним питањима у погледу његове примјене, укључујући: када се сматра да је осумњичени у притвору и тиме стиче право на упозорења из захтјева Миранда, те у ком тренутку се узима да се осумњичени одрекао права на адвоката током испитивања. Неке одлуке Врховног суда САД су покушале одговорити на ова тешка питања.

Кључне ријечи: *полиција, осумњичени, бранилац, испитивање, правило Миранда.*

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