THE IMPORTANCE OF APPEARANCES: HOW SUSPECTS AND ACCUSED PERSONS ARE PRESENTED IN PUBLIC AND IN THE MEDIA

LEGAL FRAMEWORK AND PRACTICE IN CROATIA

HUMAN RIGHTS HOUSE
ZAGREB

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THIS REPORT HAS BEEN DEVELOPED IN THE CONTEXT OF THE PROJECT TITLED “SUSPECTS IN RESTRAINTS: THE IMPORTANCE OF APPEARANCES: HOW SUSPECTS AND ACCUSED PERSONS ARE PRESENTED IN THE COURTROOM, IN PUBLIC AND IN THE MEDIA — SIR”. THE SIR PROJECT IS CARRIED OUT IN FIVE MEMBER STATES OF THE EUROPEAN UNION (CROATIA, FRANCE, HUNGARY MALTA AND SPAIN), UNDER THE COORDINATION OF THE HUNGARIAN HELSINKI COMMITTEE BASED IN HUNGARY, IN PARTNERSHIP WITH ADITUS, FAIR TRIALS EUROPE, HUMAN RIGHTS HOUSE ZAGREB AND RIGHTS INTERNATIONAL SPAIN.

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TABLE OF CONTENTS

1. INTRODUCTION

This report[1] has been developed in the context of the project titled "Suspects in Restraints: the importance of appearances: how suspects and accused persons are presented in the courtroom, in public and in the media — SIR". The SIR project is a European research project carried out in five Member States of the European Union (Croatia, France, Hungary, Malta and Spain), under the coordination of the Hungarian Helsinki Committee based in Hungary, in partnership with Aditus, Fair Trials Europe, Human Rights House Zagreb and Rights International Spain.

The main objective of the SIR project is to contribute to the proper application of Directive 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (hereafter: the Directive), reducing the number of instances in which suspected and accused persons are presented to the courts and the public, including as through the media, in ways that create a perception of guilt.

By carrying out the project activities, the specific objectives are to: (i) provide a general overview of the application of restraining measures on suspected and accused persons in Member States and the extent to which public officials respect the presumption of innocence in their public communications; (ii) collect best practices and innovative ideas, and provide concrete guidance on how to apply physical restrictions to suspected and accused persons in court and in public and how to communicate with the media about ongoing investigations and prosecutions; (iii) to raise awareness among public authorities and the media regarding the importance of how a suspected or accused person is presented in court or in the media and highlight the ways in which different practices can increase or decrease perceptions of guilt; and (iv) strengthen the exchange and cooperation between judicial and media experts across the EU on the application of physical restraints and on communication between public authorities and the media.

The research is comprised of two pillars: one is the presentation of the suspected or accused persons before the courts, placing particular emphasis on the use of measures of physical restraint (legal research), and the other addresses the manner in which suspected and accused persons are presented to the public in general by the media (media research). This report addresses exclusively the presentation in court (legal research) and has been developed using a common research methodology used by all partner organizations.

In the SIR project a practical toolkit on the use of restraints for police and judicial officers was also developed, based on the examples and best practices compiled in the different countries during the research.

1.1. Problem statement and aim of the project

As the European Court of Human Rights (ECtHR) has repeatedly underlined in its case law on the presumption of innocence: the manner in which suspects and accused persons are presented by the authorities to the public or in the courts can have adverse consequences on the fairness of proceedings. The Directive provides two key safeguards how suspects and accused persons are presented in the courts and the public:

- Article 4 of the Directive obliges Member States to ensure that the **public statements** made by the public authorities do not refer to a person as being guilty; and,
- Article 5 of the Directive obliges Member States to ensure that suspected and accused persons are not presented as being guilty, before the courts or the public, by means of the use of **measures of physical coercion**.

[1] The report is a compilation of the work of the project partners with numerous quotations from the country reports and other documents produced in the project's framework. For the ease of reading these are not always indicated individually. The following persons worked on the documents providing the basis for the report. *Croatia*: Tea Dabic, Tina Daković and Ivan Novosel; *France*: Laure Baudrihaye-Gérard, Gianluca Cesaro and Karine Gilberg; *Hungary*:

The application of these two provisions, while simple in form, is not straightforward in practice. Effective communication with the public on public safety matters is of vital importance in building public trust and in conducting certain types of investigations. Meanwhile, the use of physical restraints can be necessary in certain circumstances. The need for a case-by-case assessment of the circumstances underlying each instance of communication with the media and each instance of use of physical restraints means that, with a few clear exceptions, there are no bright-line rules on issues of presentation of suspects and accused persons by public authorities in court and to the public.

The Directive on the Presumption of Innocence recognizes this tension. Recital 19 states that "Member States should inform public authorities of the importance of having due regard to the presumption of innocence when providing or divulging information to the media. This should be without prejudice to national law protecting the freedom of press and other media." According to Recital 20: "The competent authorities should abstain from presenting suspects or accused persons as being guilty, in court or in public, through the use of measures of physical restraint, such as handcuffs, glass boxes, cages and leg irons, unless the use of such measures is required for **case-specific reasons** (…)."

Therefore, the key issue of the study will be examining the application of Articles 4 and 5 of the Directive[2] in order to determine how Member States address the manner in which suspected and accused persons are presented before the courts and the public, placing special emphasis on the use of measures of restraint, with a view to solving the existing deficiencies and identifying best practices that can be applied EU-wide.

1.2. Methodology of the project

The research was carried out using a common methodology. First of all, there was extensive desk research covering the partner countries' procedural legislation, instructions, circulars and official documents on the use of restraining measures, national statistics and reports. This desk research was completed with a review of case law and legal scholars' opinions. Second, semi-structured interviews were carried out with practitioners involved in criminal proceedings, and online surveys were conducted.

The interviews were carried out on the basis of questionnaires prepared by the regional coordinator and provided to all the partner organizations.

The research was guided by the following ethical principles: (i) informed consent: all persons interviewed were informed of the content of the project and of the processing of the information obtained via the interviews, giving prior, written authorization for the same; (ii) protection of data: the data obtained in the course of the research was treated confidentially, stored securely and the anonymity of participants vis-à-vis third parties was guaranteed in relation to the statements given in the course of the interviews; (iii) use of data: the data obtained during the interviews for this research will only be used in the context of this project.

In Croatia, 19 stakeholders interviews were conducted: 3 attorneys, 2 deputies of the county state attorney, 2 professors from the Police Academy, 1 professor from the Faculty of Law, 1 representative of senior police officials, 1 police unit commander, 2 criminal police investigators, two prison directors, 2 Heads of Security Departments in a penitentiary or prison, 2 judicial police officers and 1 accused person.

1.2.1. Croatian criminal justice system

[2] On 18 April 2018, the term for completing the transposition of the Directive expired. By that date, Member States were to have transposed this Directive in their domestic judicial systems via the adoption of laws, regulations and administrative provisions in accordance with the standards set out in said instrument.

Croatia is organized according to the principle of separation of powers: legislative authority is exercised by the Croatian Parliament, executive authority by the Government of the Republic of Croatia, and judicial authority by the courts of Croatia. The task of the courts is to protect the legal order of Croatia as established by the Constitution, laws and international treaties, and ensure uniform application of the law and equality of persons before the law.

The criminal justice system comprises the Supreme Court, County courts, Municipal courts and the High Criminal Court (the establishment of the High Court has been postponed until 1 January 2020). Municipal courts are courts with first instance jurisdiction and are authorized to rule on cases of criminal offences punishable by imprisonment not exceeding 12 years.

County courts adjudicate in first instance criminal cases when the maximum legal penalty of imprisonment exceeds 12 years or in the criminal offences listed by the law (genocide, terrorism, rape, manslaughter, kidnapping, etc.). They carry out investigations and procedures of extradition of foreigners, and enforce foreign judgments and adjudicate in second instances in cases of appeals against the judgments of municipal courts.

The Supreme Court of the Republic of Croatia as the court of last instance conducts appellate proceedings on appeals against first instance judgments of county courts, decides in third instances on appeals against judgments rendered in second instances, decides on so-called extraordinary judicial remedies, and performs other tasks as prescribed by law. Judges must be independent and autonomous and enjoy immunity in accordance with the law.

The State Attorney's Office is an autonomous, independent judicial body authorized and obliged to proceed against perpetrators of criminal offences and other punishable offences, to undertake legal actions to protect the property of the Republic of Croatia, and apply legal remedies to protect the Constitution and the law.

Legal profession in Croatia is autonomous and independent. The Croatian Bar Association (*Hrvatska odvjetnička komora*) represents attorneys-at-law as part of the legal profession of the entire Republic of Croatia. All attorneys must be members of the Bar Association[3].

Criminal law in Croatia, in a broad sense, includes substantive criminal law, criminal procedural law and criminal enforcement law.

Substantive criminal law prescribes which kinds of conduct constitute a criminal offence and are therefore punishable, as well as the conditions under which it may be applied to perpetrators. In other words, it is the law contained in the *Kazneni zakon* or Criminal Code (OG 125/11, 144/12, 56/15, 61/15, 101/17, hereinafter: the CC). The CC is divided into two parts, the general and special part. The general part of the CC contains provisions applicable to all criminal offences. These provisions regulate the general preconditions of culpability and criminal sanctions. The special part of the CC contains descriptions of specific offences and applicable punishments, and includes criminal offences and punishable offences in other laws. Criminal procedural law prescribes a set of legally regulated activities that are executed by the authorities and other persons as determined by the law whenever there is suspicion that a criminal act has been committed. Criminal procedural law is contained in the Criminal Procedure Act (OG 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, hereinafter: CPA)

Criminal enforcement law is a set of legal regulations regulating the execution of sentences and other criminal sanctions. The execution of prison sentences, but also the execution of any other form of legally based deprivation of liberty (detention, prison as a substitute for unpaid pecuniary punishment, pre-trial detention) is regulated by the *Zakon o izvršavanju*

[3] The legal profession in Croatia, Croatian Bar Association, available on: http://www.hok-cba.hr/en/legal-profession-croatia

kazne zatvora or Act on the Enforcement of Prison Sentences (OG 128/99, 55/00, 59/00, 129/00, 59/01, 67/01, 11/02, 190/03, 76/07, 27/08, 83/09, 18/11, 48/11,125/11, 56/13, 150/13) and the "Zakon o probaciji" or Probation Act (OG 99/18).

A special law dealing with juvenile offenders is the Juvenile Courts Act (*Zakon o sudovima za mladež)* (OG 84/11, 143/12, 148/13, 56/15, hereinafter: the JCA). This law specifies the following: sanctions for minors, prison for juvenile offenders, security measures, organizational provisions matters concerning juvenile courts, provisions on procedures concerning juvenile offenders, execution of sanctions, application of the law concerning young adults, and protection of children and minors under criminal law (when they are victims of criminal offences).

1.2.2. Criminal procedure in Croatia

Criminal proceedings in Croatia are initiated by the State Attorney as the authorized prosecutor for criminal offences subject to public prosecution, and private plaintiffs for criminal offences subject to privately brought charges, including the injured party as plaintiff. The injured party may replace the State Attorney if the State Attorney establishes that there are no grounds to pursue criminal proceedings. Criminal procedure in Croatia can be divided into the pre-trial and trial phases.

Pre-trial phase

The pre-trial phase consists of two sub-phases: inquiries and the investigation. Inquiries (*izvidi kaznenih djela*) are considered to be informal stage of pre-trial proceedings and the investigation as formal stage thereof. Inquiries are led either by the state attorney or the police at the state attorney's order and under its supervision. During inquiries when there seem to exist grounds for suspicion that a prosecutable criminal offence has been committed, police authorities are bound to take necessary measures in discovering the perpetrator, preventing the perpetrator or accomplice from fleeing or going into hiding, discovering and securing traces of the offence and objects of evidentiary value, as well as gathering all information which could be useful for successfully conducting criminal proceedings. Police are obliged to inform the State Attorney of the undertaken investigations.

At this stage of the proceedings, police may conduct informational conversations with citizens, but citizens may not be questioned as witnesses or expert witnesses. This collected information represents an "official note" and does not have probative force. A novelty in Croatian legislation is that police may summon a suspect for questioning, and in that case it is mandatory that the interrogation be audio-visually recorded while adhering to all of the suspect's other procedural rights. Only this type of interrogation has probative force at a later stage of the proceedings.

On the other hand, the goal of investigation (*istraga*) is to collect evidence and information necessary for a decision on whether to file an indictment or to discontinue the criminal procedure. The State Attorney leads the investigation. The Police Investigator may be ordered by the State Attorney to conduct evidentiary actions. Investigation shall commence with a public prosecutor's decree when reasonable suspicion exists that the person has committed a criminal offence. "Investigation represents a formal phase of the pre-trial procedure in which the public prosecutor collects evidence in a formally prescribed manner so the results of investigation can be used as evidence before the court[4]."

The difference between the informal phase of police inquiries and formal investigation is followed up also by different definitions of suspect and defendant. The suspect is a person in relation to whom there are grounds for the suspicion of having committed a criminal offense

[4] Ante Novokmet, Zoran Vinković: "POLICE INTERROGATION OF THE SUSPECT IN CROATIA AFTER THE IMPLEMENTATION OF THE DIRECTIVE 2013/48/EU – STATE OF PLAY AND OPEN QUESTIONS ", page 433

and against which the police or the public prosecutor take actions to clarify this suspicion. During police inquiries, this person will be known as a suspect. On the other hand, during the formal phase of investigation, the suspect becomes the defendant. Legally speaking, the defendant is the person against whom the investigation is conducted, the person against whom a private charge is preferred, and the person against whom a penalty order was issued in a judgment [5].

The defendant must be questioned before ending an investigation or filing an indictment. Questioning may be conducted only by the State Attorney or the Police investigator if ordered to do so by the State Attorney. For criminal offences under the jurisdiction of the County Courts, the interrogation of a defendant may not be entrusted to the Police investigator (Article 219, Paragraph 3 of the CPA). Investigation of the defendant must be recorded with an audiovisual device and only such evidence has probative force in the further course of proceedings.

If there is risk for suspects or defendant from absconding or having contact with third persons, the Code of Criminal Procedure Act prescribes measures to ensure the presence of the defendant in order to ensure unambiguous conduct of the criminal proceedings. Measures for providing the presence of a defendant and other precautionary measures are: Summons, Compulsory Appearance, Precautionary Measures, Bail, Arrest, Detention, Investigative prison and Prison at Home[6].

Trial phase

The trial phase is divided into sub-phases: indictment, hearings, appeal, judgment and execution of judgment.

An indictment is an indicting act from the State Attorney or subordinate prosecutor. The indictment is submitted to the court. Immediately upon receiving the indictment, the president of the panel needs to determine whether the indictment is properly drawn up after which will be served without delay to a defendant. The defendant is entitled to submit an objection to an indictment within eight days from the day it is served. If the objection is rejected or not submitted, an indictment becomes official. The trial is the part of the criminal procedure that takes place before the court. Trials are held in open court. If necessary, the public may be excluded. Hearings are conducted orally – in cross-examination and direct examination.

A defendant may be pronounced guilty or not guilty only by a judgment. There are 3 types of judgments: a judgment rejecting the charge, judgment of acquittal and judgment of conviction. Pronouncement of the judgment consists of reading the judgment and a brief statement of reasons for the judgment. An appeal is the only ordinary remedy against the judgment.

The judgment is final after it may no longer be challenged by an appeal. Extraordinary judicial remedies may be issued only against a judgment that has become final. The Criminal Procedure Act specifies the following extraordinary judicial remedies:

- Reopening of criminal proceedings;
- Extraordinary mitigation of punishment;
- Request for the protection of legality;
- Request for extraordinary review of the final judgment and revision.

[5] Ante Novokmet, Zoran Vinković: "POLICE INTERROGATION OF THE SUSPECT IN CROATIA AFTER THE IMPLEMENTATION OF THE DIRECTIVE 2013/48/EU – STATE OF PLAY AND OPEN QUESTIONS ", page 435-436

[6] Article 95-145 of Criminal Procedure Act

2. LEGAL FRAMEWORK

The presumption of innocence is one of the fundamental principles of the modern human rights system, and plays a key role in ensuring the rights of persons facing criminal proceedings. It is a legal mechanism to ensure that each person is considered innocent until proven guilty.

In the Republic of Croatia, the substance covered by the Proposal of EU Directive 2016/343 is regulated by the Article 28 of the Constitution of the Republic of Croatia which stipulates that everyone is presumed innocent and may not be held guilty of a criminal offence until such guilt is proven by a final court judgment. Thus, the presumption of innocence is a constitutional category in the Republic of Croatia. Certain types of presumption are regulated by provisions of the Criminal Procedure Acts as well as by other legal acts.

Therefore, Croatia didn't formally transpose the Directive EU 2016/343 due to the fact that all the standards that directive proclaims already existed in Croatian national criminal legal system. The presumption of innocence is one of the highest guarantees of criminal law enshrined in the Constitution of the Republic of Croatia (hereinafter: the Constitution), the CPA, other penal and subordinate regulations and international treaties ratified by the Republic of Croatia, which are above the national law.

Both Article 28 of the Constitution and the Article 3 of the CPA stipulate that "everyone is presumed innocent and may not be held guilty of a criminal offence until such guilt is proven by a binding court judgment". A series of other provisions regulating the position and procedural rights of suspects regarding the rights of suspects and presumption of innocence are also prescribed in the Constitution and the CPA[7].

Having in mind that the subject-matter of this research is presentation of suspects and the accused in court, in the public and the media with regard to the implementation of the Directive (EU) 2016/343, this research focuses on the restraining measures enforcement agencies are entitled to use in public.

In accordance with Article 5 of the Directive, Member States need to take appropriate measures to ensure that suspects and accused persons are not presented as being guilty, in court or in public, through the use of measures of physical restraint. However, Member States can apply measures of physical restraint that are required for case-specific reasons, relating to security or to the prevention of suspects or accused persons from absconding or from having contact with third persons.

The provision of the Article 14 of the Act on Police Affairs and Powers - according to which when it comes to the exercise of police powers, police officer is obliged to act humanly and respect the dignity, reputation and honor of every person as well as other fundamental rights and freedoms - shall also be applied when reporting to the public about certain events and its participants. To this end, in accordance with the possibilities, it is necessary to ensure that the application of police powers (arrests, summon to police premises or before competent courts, searches, etc.) is performed without presence of the media or in such way that the media, by recording or photographing, does not reveal the identity of the person towards whom police powers are applied. It is thereby noted that this guideline does not refer to the prohibition of journalists' work in the area of police action, but on the obligation to organize

[7] The Constitution of Republic of Croatia (OG 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14), consolidated text available at http://www.sabor.hr/sites/default/files/uploads/inline-files/CONSTITUTION_CROATIA.pdf) regulates presumption of innocence in articles 16, 22, 24, 25 and 29.

police activities in a way that the identity of the person treated by the police is not disclosed to the public or journalists.[8]

Generally, in the Republic of Croatia, when defendant appears at the hearing he or she is free and is not handcuffed. Measures of restraint that can be used against defendants in court are handcuffs and police supervision, when considered necessary. Measures of physical restraint that can be applied against suspects in public are usually handcuffs, but in some cases a police officer can use a belt, rope or other means of binding. The hands are bound behind the back or in front (if under the supervision of at least two police officers). The legs can be bound only exceptionally. When using handcuffs, police officers must ensure that the handcuffs do not cause unnecessary bodily pain or injury to the person concerned[9].

The Act on Police Authorities refers to a vulnerable groups of suspects and stipulates that force (which includes handcuffs) used against minors, persons with disability, persons whose mobility is significantly hampered, pregnant women in a visible state of pregnancy and persons who are obviously ill needs to be used with special attention[10]. The same provisions are present in the Code of Practice for Police Officers in Article 133 paragraph 7, which directly refers to handcuffs – police officers will not handcuff minors, persons with disabilities, persons whose mobility is significantly hampered, pregnant women in a visible state of pregnancy and persons who arse obviously ill unless such a person directly endangers the life of a police officer, another person's life or their own life.

Regarding transportation of juveniles, the police officers accompanying them are usually wearing civilian clothes and juveniles are brought using an unmarked official vehicle, and may only exceptionally be brought in a marked vehicle[11].

Although the CPA does not define the term "vulnerable persons", this term refers to a vulnerable group of witnesses for whom the CPA provides for a special method of interrogation, taking into account their age, health status or disability due to which they cannot respond to subpoenas and can therefore be interrogated in their apartments or another area in which they reside[12]. All this having been said, measures of physical restraint applied against suspects and defendants in public can be divided into three situations.

The first situation is when a ruling for compulsory appearance is issued, the second is when arresting and escorting a person from the police station or detention unit to the State Attorney, and the third is while escorting the suspect to the court from pre-trial detention. So, the first and second situations fall under the jurisdiction of the police and the third under the jurisdiction of the judicial police. The difference between the police and the judicial police is that police officers are a public administrative service under the Ministry of Interior Affairs entrusted with keeping the public peace and order, while the judicial police is public administrative service under the Ministry of Justice of the Republic of Croatia entrusted with keeping order in the prison system. So, depending on the stage of the proceedings, the officers authorized to use restraining measures are: police officers (detention officers) and judicial officers.

2.1. Measures of restraint used by the police

The Act on Police Affairs and Authorities (*Zakon o policijskim poslovima i ovlastima*; OG 76/09, 92/14) prescribes the lawful use of force and stipulates what types of force police officers are entitled to use, while the Police Act (*Zakon o policiji*; OG 34/11, 130/12, 89/14,

[8] Ministry of Interior, "Guidelines for relations with the media", 2018, paragraph 25, available on: https://mup.gov.hr/UserDocsImages/smjernice/SMJERNICE%20MINISTARSTVA%20UNUTARNJIH%20POSLOVA%20U%20ODNOSIMA%20S%20MEDIJIMA%202018..pdf

[9] Croatia, Article 133 paragraph 1-4 of the Code of Practice for Police Officers

[10] Article 82 paragraph 2 of Law on Police Authorities

[11] Article 70 of the Code of Practice for Police Officers

[12] Article 292 paragraph 3 of Criminal Procedure Act

151/14, 33/15, 121/16), the Code of Practice for Police Officers (*Pravilnik o načinu postupanja policijskih službenika*; OG 89/10, 76/15) – and the Ordinance on the Reception and Treatment of Arrested Persons and Detainees, and on Keeping Custody Records of Detainees (*Pravilnik o prijamu i postupanju s uhićenikom i pritvorenikom te o evidenciji pritvorenika u pritvorskoj policijskoj jedinici;* OG 88/2009, 78/14 and 132/16) prescribes the conduct of law enforcement agents *vis-a-vis* restraining measures.

According to the above-mentioned provisions, police officers are empowered to use the following means of force: physical force, irritant spray, batons, restraining devices, devices for forcibly stopping a motor vehicle, official dogs, official horses, special motor vehicles, chemical means, firearms, explosives, and special weapons. Before using the means of force, the police are obliged to issue a warning beforehand, except in cases when such a warning would endanger the achievement of the police officer's aim.[13] Since the use of force also limits fundamental human rights, it is necessary to respect the principle of proportionality when using the force. That means that the police officers need to use the least coercive available means of achieving their goal.

So, generally, when arresting[14] or bringing a person to the police station, detention unit, pre-trial detention, before the investigating judge or State Attorney, police officers are not obliged to use measures of restraint if there is no risk of the person escaping, resisting or attacking the police officers, or self-injury or injuring another person[15]. If the above-mentioned risk exists, they are entitled to use measures of restraint or other means of force in order to prevent resistance or attack. In that case, using measures of restraint is one of the means of force the police is entitled to use. However, if the person is not providing any resistance but given the circumstances of the criminal offence, the physical constitution of the person and his or her earlier convictions, police officers can estimate that a person needs to be handcuffed for reasons of safety. This would then be a case of using measures of restraint preventively. Using handcuffs in those cases would be considered a use of force to which police officers are entitled to by law. Even though the Act on Police Officers and Authorities does not define the situations where measures of restraint can be used preventively, the Code of Practice for Police Officers does. This distinction is visible depending on what kind of report is being submitted and to whom it is submitted.

Every police officer is obliged to submit a written report to their superintendent on the police duties performed and the police powers applied[16]. A police officer who has used one of the means of force as well as a police officer who has commanded the use of force are obliged to notify the relevant Operative Communication Centre (a special organizational unit under the Ministry of the Interior of the Republic of Croatia that receives information about safety-related events and incidents) and the responsible head of the organizational unit[17]. Afterwards, the head of the unit immediately collects the necessary information about the circumstances of the use of the means of force and, together with a written report and opinion, submits it to the head of the Police Department. The head of the Police Department is obliged to deliver the decision on the assessment of the justification and legality of the use of means of force within 24 hours.

[13] Croatia, The Law on Police Affairs and Authorities, Article 81

[14] The most common measure of deprivation of liberty is arrest. An arrest is any measure or action that involves the compulsory detention of a person under suspicion of having committed an offence. The arrested person must be immediately informed of the reasons for their arrest unless, due to the circumstances of the arrest, this iwere not possible. Article 202 of the Criminal Procedure Act.

[15] Croatia, Article 133 paragraph 6 of the Code of Practice for Police Officers

[16] Croatia, Article 4, paragraph 1 of the Code of Practice for Police Officers

[17] Croatia, Article 152 of the Code of Practice for Police Officers. The written report must contain the following information: the time and place of the use of the means of force, type of force, the name and personal details of the person against whom the means of force were used, the legal basis for the use of force, the effects, the name and surname of the police officer who used or ordered the use of the means of force etc.

On the other hand, the police report will not be submitted to the head of organizational unit in situations where restraining devices were used preventively and the person concerned has no visible injuries. However, the use of restraining measures will be stated in the report on the police work performed and the police powers applied and submitted to the superintendent[18].

As said earlier, measures of physical restraint applied against suspects and defendants in public can be divided into three situations.
The first situation is when a ruling on compulsory appearance is issued, the second is during an arrest, or when escorting a person from a police station or detention unit to the State Attorney's office, and the third is escorting a suspect to the court from pre-trial custody.

2.1.1. Compulsory appearance

In those cases when a court decision on detention is issued or if a duly summoned defendant fails to appear and fails to justify their absence or if it is not possible to duly serve the summons and the circumstances clearly indicate that the defendant is avoiding being served the summons, a warrant for compulsory appearance may be issued by a court. A warrant for compulsory appearance will be executed by the police authorities, which do so by serving it to the defendant and inviting the defendant to accompany them. The warrant is executed in the manner defined by the Code of Practice for Police Officers. The court cannot prescribe the use of means of restraint because that decision is within the competences of the police.

If the suspect/defendant refuses to accompany the police officers, he/she shall be brought in by force[19]. In other words, if the person does not comply with the summons, he or she will be arrested and handcuffed. Hence, it is completely up to the officers whether to use means of restraint or other means of force. However, before bringing the person to the authority that issued a warrant for compulsory appearance, the police officer in charge of bringing the person will check whether there is any information that might indicate the possibility of flight, resistance or assault on the police officer. If the person had already been convicted or is known as being aggressive, having a track record of fleeing etc., the police officer in charge of bringing in such a person will apply a Plan for Compulsory Appearance. Such Plans are authorised by a superior police officer[20]. In such cases, the police officer will normally handcuff the person and bring them in an official vehicle, which has a separate space for apprehended persons. Compulsory Appearance Plans are carried out by at least two police officers[21]. Thus, in cases when suspects are transported in other vehicles, they are placed on the seat behind the passenger seat and secured with a safety belt, and the door is locked in such a way that it cannot be opened from the inside. The accompanying police officer is seated on the rear seat behind the driver in order to respond promptly in case of need.

When bringing in juveniles, police officers usually wear civilian clothes and the juveniles are brought in with an unmarked official vehicle, and may only exceptionally be brought in in a vehicle with official markings[22].

2.1.2. Arrest and detention

The most common measure of deprivation of liberty is arrest[23]. By elaborating the constitutional rules on arrest[24], the CPA specifies the powers of the police, including citizens

[18] Croatia, Code of Practice for Police Officers, Article 152 in conjunction with Article 4
[19] Article 97 of the Criminal Procedure Act
[20] Article 65 of the Code of Practice for Police Officers
[21] Article 64 of the Code of Practice for Police Officers
[22] Article 70 of the Code of Practice for Police Officers
[23] Article 202 paragraph 8 of the Criminal Procedure Act – "Arrest is every measure or action that includes the compulsory detention of a person under suspicion of having committed an offence".
[24] Article 24 the Constitution of the Republic of Croatia

themselves[25], to make arrests. When making an arrest, police officers are authorized to use force (means of force) as prescribed in the Law on Police Affairs and Authorities[26] if it is necessary to protect people's lives, overcome resistance, prevent escape, repel attacks and eliminate danger if it is probable that warnings and orders will not achieve the goal[27]. The most common measure of force is handcuffs.

Police authorities are entitled to arrest a person against whom they are executing a ruling for compulsory appearance or a ruling on detention or pre-trial detention, a person who is in the act of committing an offence subject to public prosecution, or a person who can reasonably be suspected of having committed an offence subject to public prosecution, if any grounds exist for ordering pre-trial detention.

Generally, a police officer will handcuff the arrested person if there is a risk of them escaping, resisting or attacking the police officers, or if there is a risk of self-injury or injuring another person. Instead of handcuffs, in some cases a police officer can use a belt, rope or other means of binding. The hands are bound behind the back or in front of them (if under the supervision of at least two police officers). The legs can be bound only exceptionally. When using handcuffs, police officers must ensure that the handcuffs do not cause unnecessary bodily pain or injury to the person concerned[28]. A police officer will not handcuff a minor, a pregnant woman, an older or disabled person unless such person directly endangers the life of a police officer, another person's life or their own life.

In cases where there are grounds for suspicion that the arrested person has committed a criminal offence, the state attorney may order **detention** if it is necessary to establish identities, check alibis and collect evidence. The detention may last for up to 48 hours from the moment of arrest, or 36 hours from the moment of arrest if it is a criminal offence punishable by at least one year of imprisonment. This is the period from the moment when the police have deprived the person of their liberty until the court decides on how to further proceed. The detainee is held in a detention unit. After the state attorney examines the detainee, they may order the police to bring the detainee to the investigating judge to decide on pre-trial detention[29]. If the detainee needs to be brought in front of investigating judge or state attorney, they will be escorted by at least two police officers applying safety measures prescribed by detention supervisor. The escort can be carried out on foot and by a special police vehicle. If the escort is not carried out by an official police vehicle, the detainee is placed in the rear seat behind the passenger seat, with the police officer – the accompanying officer – on the rear seat behind the driver.

In cases involving juvenile persons, the police officers bring the juvenile person directly to the investigating judge for juvenile offenders, wearing civilian clothes and in an unmarked official vehicle. Juveniles are handcuffed only exceptionally.[30]

While the detainee is being questioned before the State Attorney or Investigating judge, they are generally not handcuffed, but for safety reasons the questioning can be held under supervision of judicial police officers. The questioning before the State Attorney needs to be audio-visually recorded, so the presence of police officers is captured on the recording.

[25] Article 106 of the Criminal Procedure Act

[26] Article 108 paragraph 4 of the Criminal Procedure Act

[27] Article 82 paragraph 1 of the Law on Police Affairs and Authorities.
In article 81 – Police officers are empowered to use the following measures of coercion: physical force, irritant spray, batons, restraining devices, devices for forcibly stopping motor vehicles, official dogs, official horses, special motor vehicles, chemical agents, firearms, explosives and special weapons.

[28] Croatia, Article 133 paragraph 1-4 of the Code of Practice for Police Officers

[29] Croatia, Article 112 of the Criminal Procedure Act

[30] Article 47 of the Ordinance on the Reception and Treatment of Arrested Persons and Detainees, and on Keeping Custody Records of Detainees

If the defendant was handcuffed during transportation from a police station or place of detention to the court or state attorney's office, the investigating judge or the state attorney who conducts the questioning can decide to remove the handcuffs from the defendant. In those cases the defendant is usually not handcuffed but is under the supervision of police officers during questioning. If specific circumstances indicate that the defendant would injure him/herself or others or run away, the investigating judge or state attorney can decide for security reasons that the defendant be handcuffed and put under supervision by police officers. From the moment the defendant leaves the court or state attorney's office, they can be handcuffed again, subject to a discretionary decision by the police officers conducting the transportation.

All that has been said applies equally to the police's handling of misdemeanor cases. According to the Act on Police Affairs and Authorities, police authority includes, inter alia, prevention of criminal offences and misdemeanor offences[31]. Thus, police officers are entitled to arrest a person found committing a misdemeanor as defined by law, if there are reasons for detention[32], as well as to determine whether in case the defendant does not comply with the subpoena, they should be forcefully arraigned[33]. When bringing an arrestee to the judge, the police are not obliged to use measures of restraint if there is no risk of escaping, resisting or attacking the police officers, or self-injury or injuring another person[34]. If the above-mentioned risk exists, they are entitled to use measures of restraint or other means of force in order to prevent resistance or attack. Therefore, in misdemeanor cases the police have the same powers as they do in cases of criminal offences.

2.2. Measures of restraint used by judicial police

Under the provisions of the CPA, judicial police officers are authorized to use force in cases of execution of pre-trial detention orders only under conditions prescribed by the law and in the prescribed manner[35]. The sources of law governing the powers of the judicial police are: the CPA, the Act on the Enforcement of Prison Sentences (*Zakon o izvršavanju kazne zatvora*) the Ordinance on the Manner of Conducting the Affairs of Security Departments in Penitentiaries and Prisons (*Pravilnik o načinu obavljanja poslova odjela osiguranja u kaznionicama i zatvorima,* OG 43/02, 102/04), and the Ordinance on House Rules in Pre-Trial Detention (*Pravilnik o kućnom redu u zatvorima za izvršavanje istražnog zatvora*, OG 8/2010).

The means of force that the judicial police are empowered to use are the following: subject control and defense techniques; baton; aerosol spray; electric paralyzer; water jets; irritant chemicals and firearms[36]. On the other hand, judicial police are empowered to use special measures to maintain security and order, such as:

- Intensified supervision;
- Seizure and temporary retention of objects whose keeping is otherwise permitted;
- Separation from other inmates;
- Accommodation in a special secure room without dangerous objects;
- Accommodation in the intensified supervision section;
- **Handcuffs –** if necessary, legs can be bound with cuffs or straps; and solitary detention.

That being said, it is to be noted that the main difference between the use of force by the regular police and the judicial police is that handcuffs are one of the means of force used by the police, while the judicial police use handcuffs as a measure of maintaining order and

[31] Croatia, Article 3 paragraph 1(3) of the Misdemeanor Act
[32] Croatia, Article 134 of the Misdemeanor Act
[33] Croatia, Article 128 of the Misdemeanor Act
[34] Croatia, Article 133 paragraph 6 of the Code of Practice for Police Officers
[35] Croatia, Article 136 of the Criminal Procedure Act
[36] Croatia, Article 142 paragraph 1 of the Act on the Enforcement of Prison Sentences

security[37]. Therefore, handcuffing is not used as a punishment measure but solely as a restriction of movement[38].

Thus, whenever the prisoner needs to be transported to the court to attend the hearing or for taking evidence, it is assessed whether there is a need to apply special measures for maintaining security and order, including handcuffing[39]. The transport is carried out by judicial police officers on the basis of an execution order for transportation issued by the Head of the Security Department in a Penitentiary or Prison. The execution order contains information about the prisoner (name, surname, identification number), time and place of transportation, route of transportation, risk evaluation (risk of escaping, attacking a judicial officer or other person, risk of self-injury), the need for weapons and other equipment such as handcuffs for use on hands and legs if necessary, and the number of police officers who will conduct the transportation.[40] In other words, the Head of the Security Department in a Penitentiary or Prison decides which security measures will be taken and whether the prisoner will be handcuffed.

Generally, during transportation, prisoners are handcuffed, except in cases of some disabilities, or if the person's mobility is significantly hampered, or in cases of pregnant women in a visible state of pregnancy or if the person is obviously ill. Before being handcuffed, the prisoner is informed about using handcuffs or other means of maintaining security and order.

The defendant is not handcuffed at the hearings; however, the presiding judge can decide that for security reasons the defendant can be handcuffed, but under the supervision of the judicial police officers[41]. From the moment the defendant leaves the Court, the judicial police escorting them may handcuff them for safety reasons.

In cases involving a juvenile prisoner, juveniles are also handcuffed during transportation. The judicial police officers in civilian clothes and an unmarked vehicle carry out the escort, unless the juvenile person is guilty of a criminal offence that incurs a ten-year or longer prison sentence[42]. From the moment a juvenile person arrives outside the court, the handcuffs are removed.

2.3. Remedies

The assessment of the justification and legality of the means of force applied by police officers is carried out on two levels. The first level refers to the internal control of legality conducted by the governing structures within the police. The second level refers to external control, mostly carried out by state attorney's offices and courts[43]. In internal control of legality there are two possible situations. One is – if the police officer unlawfully used handcuffs as one of the means of force, they are obliged to notify the Operative Communication Centre (*Operativno komunikacijski centar*) and the responsible head of the organizational unit about it. The police officer is also obliged to provide medical assistance to persons against whom the means of force were used. On their arrival to the police station,

[37] Croatia, Article 135 paragraph 2 of the Act on the Enforcement of Prison Sentences

[38] Croatia, Article 138 paragraph of the Act on the Enforcement of Prison Sentences

As a measure of maintaining order and security, handcuffing can last for twelve hours at the longest, within twenty-four hours.

[39] Article 30 paragraph 1 of the Ordinance of House Rules in pre-trial detention

[40] Article 23-26 of the Ordinance on the Manner of Conducting the Affairs of Security Departments in Penitentiaries and Prisons

[41] Article 30 paragraph 2 of the Ordinance on House Rules in Pre-Trial Detention

[42] Article 30 paragraph 3 of the Ordinance on House Rules in Pre-Trial Detention

[43] Dražen Škrtić, Zakonita uporaba sredstva prisile, Zagreb, 2007 (Lawful use of Means of Coercion by the Police), page 164. Link:
https://www.researchgate.net/profile/Drazen_Skrtic/publication/286567939_Zakonita_uporaba_sredstava_prisile_policijskih_sluzbenika_Lawful_Use_of_Means_of_Coercion_by_the_Police/links/566dc24808ae62b05f0b454f/Zakonita-uporaba-sredstava-prisile-policijskih-sluzbenika-Lawful-Use-of-Means-of-Coercion-by-the-Police.pdf

the shift supervisor conducts a conversation with the person against whom the means of force have been used[44]. Then, the person against whom the means of force have been used confirms with their signature that they have no objection to their treatment by the police. If they have an objection, the head of the unit immediately collects the necessary information about the circumstances of the use of the means of force and, together with a written report and opinion, submits it to the head of the Police Department (*načelnik policijske uprave*). The head of the Police Department is obliged to issue a decision on the assessment of the justification and legality of use of means of force within 24 hours[45].

If the head of Police Department decides that the use of force was justified, the person against whom the means of force were used can file a criminal charge against the police officer (external control). If the State Attorney, for example, dismisses such a charge and establishes that there are no grounds to conduct criminal proceedings against the police officer, the injured party can take over the criminal prosecution.

The second possible situation of unlawful use of force would be in a situation where a person who considers that police officers have violated their rights has the right to submit a complaint to the Ministry of Interior within 30 days. The head of the organizational unit of the Interior, who is directly superior to the police officer using the unlawful force, considers the complaint. If the person is not satisfied with the established the facts, he or she may lodge a complaint within a further period of 15 days to the organizational unit of the Ministry responsible for internal control. If the person is dissatisfied with the response of the Ministry's internal control, the file shall be submitted without delay to the Commission responsible for handling complaints[46].

However, an effective system of civilian oversight over police work is not yet in place since the Committee for assessment of complaints as foreseen by the Act on Police has not yet been established within the Ministry of Interior. High importance of independent and competent civilian oversight manifests through the manner of handling citizens' complaints on the police conduct in accordance with Article 156 of the General Administrative Procedure Act[47], according to which the head of the body needs to bring a decision regarding the complaint. However, the police do not resolve the complaints based on the General Administrative Procedure Act and therefore no such decisions are being made. Such circumstances deny the possibility for the court to assess and decide on the conduct in question[48].

On the other hand, having in mind that restraining measures used by the judicial police stand for measures of physical restraint as means of maintaining order and security, the prisoner/defendant has no legal remedies against an order to apply measures of restraint. Thus, if a defendant or prisoner is escorted to the Court by the judicial police, he or she may be handcuffed for security reasons, but the presiding judge can decide that defendant should not be handcuffed at the hearing. In that case, the judge can overrule the assessment of the judicial police that the prisoner should be handcuffed. After the hearing, the prisoner can be handcuffed again for safety reasons because he is no longer under the jurisdiction of a court.

[44] Ombudsman PPT - Lawful use of force link: https://ombudsman.hr/attachments/article/1195/PU%20splitsko-dalmatinska%20-%20Uporaba%20sredstava%20prisile.pdf

[45] Article 152-155 of the Code of Practice for Police Officers

[46] Croatia, Article 5-5f of the Police Act - Zakon o policiji (OG 34/11, 130/12, 89/14, 151/14, 33/15, 121/16)

[47] Article 156 of the General Administrative Procedure Act: A person who considers that another action of the public law authority in the field of administrative law, on which the decision is not reached, violates its rights, obligations or legal interests may file an objection as long as this action or its consequences last.

[48] Annual Ombudsman Report for 2018, page 249, link: http://ombudsman.hr/hr/component/jdownloads/send/84-2018/1534-izvjesce-pucke-pravobraniteljice-za-2018-godinu

2.4. Appearance of accused at trial

In the courtroom, the defendant sits apart from his/her attorney, sitting behind the witnesses stand. Unless there is sufficient reason that usually involves aggressive behavior, violence or attempt to escape, a defendant ought not to be restrained by handcuffs.

The presiding judge maintains order during court sessions, and can take appropriate measures to ensure security and order at the trial. That means the defendant can be handcuffed at his/her trial or may appear under police supervision when considered necessary. In most cases, the defendant is not handcuffed but is under supervision by judicial police officers, usually seated either side of the defendant.

If the accused person, defense counsel, injured party, legal guardian, legal representative, witness, expert witness, interpreter or another person attending the session disturbs order or fails to comply with the directions of the presiding judge of the panel concerning the maintenance of order, the presiding judge shall warn or punish them with a fine of up to 50,000.00 Kuna. The panel may order the defendant to be removed from the courtroom. The panel may decide that the defendant be removed from the courtroom for a limited period of time, or, if she/he disturbs order repeatedly, for the duration of the presentation of evidence[49].

Photographic, film, television and other recordings using technical devices may not be made in the courtroom, except for the court's needs. In exceptional cases, when necessary for the public interest (e.g. high profile cases), the president of the higher court may permit film or television recording and the president of the lower court may permit photographic recording of a court hearing[50]. The picture below shows how courtrooms usually look in Croatia[51].

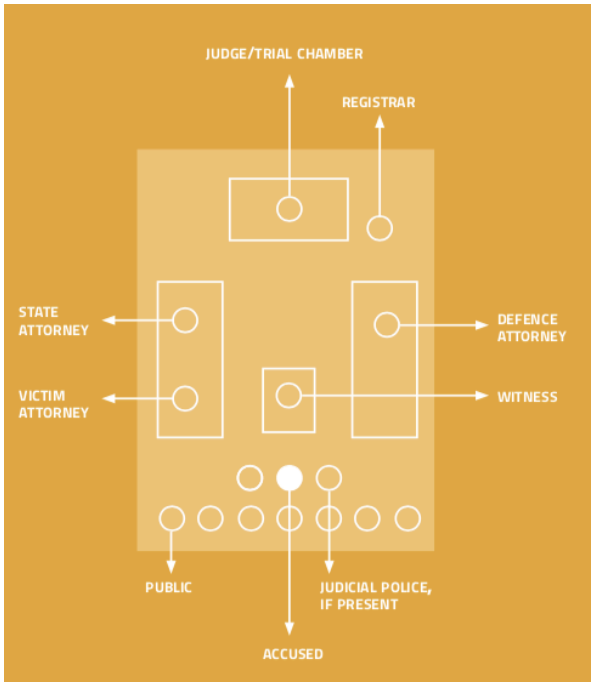

Image 1. Courtroom.

[49] Article 396 paragraph 1-2 of the Criminal Procedure Act
[50] Article 395 paragraph 3 of the Criminal Procedure Act
[51] The layout of the courtroom is taken from a brochure by the Ministry of Justice of the Republic of Croatia "Victim and Witness Support Section – are you a victim of a criminal offence or a misdemeanor?"

2.5. Presumption of innocence in media

Regulations regarding reporting on and representation by the media of suspects and accused persons are fragmented in provisions of several acts concerning court proceedings and rules regarding the media. It is to be noted that there are no criminal consequences for journalists who on a regular basis proclaim defendants guilty in the headlines.

The Ministry of Interior's Guidelines on relations with the media prescribe the obligation for police officers to perform actions such as arrest, bringing persons to police premises or before competent courts, search etc. without the presence of media or in such way that the media do not reveal, by recording or photographing, the identity of the person towards which the police use police powers. It is emphasized that this guideline does not refer to the prohibition of journalists' work in the area of the police action, but on the obligation to organize police activities in a way that the identity of the person treated by the police is not disclosed to the public or journalists. In other words, in public spaces journalists are authorized to capture arrests/bringing in of persons in handcuffs, but in these cases the police only have the obligation to protect the identity of the person concerned[52].

Journalists are informed about events of public interest through SMS messages via the so-called system of prompt reporting. Notifications are sent through the prompt reporting system on occasions such as: traffic accidents with fatalities, traffic accidents involving public transport vehicles, major traffic jams or redirections, technical-technological accidents, explosions, fires and destructions of bigger scales, ecological accidents that represent danger to life and health of people, criminal offences with elements of violence-murder, murder attempts in public places, specific robberies, severe thefts with damages of big proportions and the distortion of public order and peace in a larger scale. After notifying and agreeing with the spokesperson of the police administration unit, Operational-communication center sends the SMS messages at the same time to all the accredited media houses.

The SMS message contains information about the location and type of event. In the case of a criminal offense, SMS messages are sent only after the premises has been completely secured and after the arrival of the investigation team. Upon completion of criminal investigation, the police are authorized to inform the public thereof in an appropriate manner without sensationalism (whether or not the suspect was brought to the detention supervisor), in accordance with the Protocol on the joint work of the police and the state attorney's office during the previous and criminal proceedings.

In Croatia, the guidelines for journalists regarding reporting on suspects or accused persons can be found in the Journalists Code of Honor of Croatian Journalist Association[53] and in the Ethics Code for Journalists and Creative Staff of Croatian Radio Television[54].

The Journalists Code of Honor of Croatian Journalist Association[55] is a document that brings general definitions of the rights and duties of Croatian journalists. In Article 17, it highlights that "the constitutional principle of presumption of innocence of the accused is to be respected when reporting on court proceedings, as well as the dignity, integrity and feelings of all parties to the dispute. In criminal proceedings, journalists are obliged to respect the right to protect the identity of protected witnesses, dependents, whistleblowers, and injured parties, who must not be disclosed without their consent, except in cases of extreme public interest."

[52] Republic of Croatia, Ministry of Interior, Cabinet of the Minister, Public Relations Service, Guidelines of the Ministry of Interior on relations with the media, Zagreb, November 2018, page 5, link: https://mup.gov.hr/UserDocsImages/smjernice/SMJERNICE%20MINISTARSTVA%20UNUTARNJIH%20POSLOVA%20U%20ODNOSIMA%20S%20MEDIJIMA%202018..pdf

[53] Croatian Journalist Association, Journalists Code of Honor, available at: https://www.hnd.hr/dokumenti

[54] Croatian Radiotelevision, Ethics Code for Journalists and Creative Staff, available at https://www.hrt.hr/fileadmin/video/Eticki_kodeks_za_novinare_i_kreativno_osoblje_HRT_a.pdf

[55] Croatian Journalist Association, Journalists Code of Honor, available at: https://www.hnd.hr/dokumenti

Special emphasis is given to the protection of the identity of a child or a minor involved in cases of criminal offense, regardless of whether a child or a minor is a witness, victim, suspect or defendant, in a way that "the identity of the child or minor is allowed to be revealed only exceptionally, when it is in the public interest and does not endanger the welfare of a child or minor, and with the consent of the parent or guardian of a child or a minor, or when it for the benefit of a child seeking public bodies".[56]

The Ethics Code for Journalists and Creative Staff of Croatian Radio Television also in its Article 21 contains a provision on the duty to respect the presumption of innocence as follows: "In reporting on crimes and court proceedings, journalists and editors must respect the constitutional and legal presumption that a person is innocent until a valid court verdict has declared him guilty.

In cases of breaching of the Journalists Code of Honor, The Ethical Council (body of The Croatian Journalists' Association (CJA) and can give a warning, reprimand or exclusion from CJA. Among its decisions from 2015-2018, there are none of these sanctions concerning the presumption of innocence or presentation of accused or suspects[57].

The **Media Act**[58] prescribes media principles and obligations. Article 16 (1) regulate that the media shall be obliged to respect privacy, dignity, reputation and honor of citizens, especially of children, youth and family, irrespective of gender and sexual orientation. The publishing of information that discloses the identity of a child, if such information jeopardizes the wellbeing of a child, shall be prohibited.

The Media Act does not entail specific provisions relating to the presentation of suspects and violation of the presumption of innocence. However, according to its Article 55 every person mentioned in the media with regard to a criminal complaint, investigation request or the launching of investigation or penal proceedings shall have the right within three months after a decision has been made to dismiss the criminal complaint or to reject the investigation request, that is, after a legally valid decision has been made to halt the proceedings or a legally valid acquitting sentence has been made, to request from the publisher to publish information thereof. When it comes to compensation of damages, the Media Act as a specific piece of legislation refers to general regulations of the law on obligations prescribed by the Civil Obligations Act[59] regarding issues that are not regulated by the Media Act itself.

Even though the Media Act directs responsibility for compensation for damages at media publishers (exceptionally the editor-in-chief of the media), domestic legal practice has led to the fact that, apart from a lawsuit directed against a publisher, the injured party can press charges directly against the author of the information, meaning the journalist. The consequence of such practice is that the injured party can choose freely the law and the legal basis according to which the claim for compensation of damages caused by the publication of information in the media will be processed, thus choosing the person to be charged with alleged violation.[60]

[56] Croatian Journalist Association, Journalists Code of Honor, available at: https://www.hnd.hr/dokumenti
[57] Available at: https://hnd.hr/zakljucci-novinarskog-vijeca-casti
[58] Media Act (OG 59/04, 84/11, 81/13)
[59] Civil Obligations Act (OG 35/05, 41/08, 125/11, 78/15, 29/18)
[60] Jakovljević, D.: Non-material damage caused by the information published in the media, Pravnik : časopis za pravna i društvena pitanja, Vol.51 No.101, May 2017, available at: https://hrcak.srce.hr/index.php?show=clanak&id_clanak_jezik=276637

3. STATISTICAL INFORMATION

A freedom of information request was sent to the relevant authorities. The Ministry of the Interior responded with data on the means of force used by the police, while the Ministry of Justice presented data on the number of requests submitted to determine pre-trial detention and the number of proposals submitted to determine bail. The State Attorney's Office informed us about an extension of the deadline for submitting the information.

The table below shows the data on the means of force used by the police, disaggregated by year, from 2013 until 2018. As we can see, the most common means of force used by the police are restraining devices – handcuffs.

In 2013, the police used handcuffs 87 times, and 1862 times preventively; in 2014 they were used 1735 times, and 1808 times preventively; in 2015 – 1719 times, and 1557 times preventively; in 2016 – 1773 times, and 1451 times preventively; in 2017 – 1752 times, and 1507 times preventively; and finally in 2018 the police used handcuffs 1130 times, and 1071 times preventively.

Table 1. Measures of coercion used by the police

Arrested persons							
Year	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**TOTAL**
No; arrested persons	39487	32543	28798	27561	27202	16858	172449
Means of coercion							
Number of applied means of coercion	4320	8176	7798	7763	7714	4938	40709
Applied against ne person	3994	3036	2980	3097	3181	2056	18344
Applied against two persons	236	352	348	263	239	172	1610
Applied against three of more persons	75	82	88	74	64	42	425
Restraining devices (handcuffs, belt, rope or other means of binding)	87	1735	1719	1773	1752	1130	8196
Preventative restraining devices (handcuffs, belt, rope or other means of binding)	1862	1808	1557	1451	1507	1071	9256
Physical force	2328	4376	4334	4350	4263	2611	22265
Baton	30	53	43	34	51	30	241
Firearms	7	16	4	2	1	8	38
Firearm against animals	0	6	4	5	2	2	19
Irritant spray	6	182	137	148	138	86	697

In 2013 and 2014 the police more frequently used restraining devices preventively than from 2015 until 2018. The reason for this could be in the fact that the police were obliged to handcuff suspects from the moment they were brought to the detention supervisor, and from there to the investigating judge[61]. The total number of times restraining measures were used by the police from 2013-2018 is 8196, and 9256 times preventively, or 17,452 in total.

[61] Article 47 of the Ordinance on the Reception and Treatment of Arrested Persons and Detainees, and on Keeping Custody Records of Detainees (OG 88/2009)

Table 2. Requests for pre-trial detention and bail between 2015 and 2018

Year	Number of requests for determining pre-trial detention	Number of requests for determining bail
2015	2447	68
2016	2731	91
2017	3122	34
2018	2091	18

Regarding the number of occasions when measures for assuring the presence of a defendant and other precautionary measures were applied in the years 2013-2018, the Ministry of Justice stated that within the E-Register (electronic registry), the Ministry only keeps data on the number of submitted requests for pre-trial detention and the number of submitted proposals to determine bail. There is no data on the number of suspects placed in pre-trial detention because of the way data is kept and entered in the electronic registry. Also, the data refers only to the period from 2015 to 2018[62].

[62] FOI answers from the Ministry of Justice, Klasa: 008-02/18-01/116, URBROJ: 514-09-01-18-08 of 1 October, 2018.

4. PRACTICE

As mentioned, nineteen interviews were conducted with various stakeholders on the practice of the application of restraints in criminal proceedings. Interviews were conducted with three attorneys, two county state attorney deputies, two Police Academy professors, one Faculty of Law professor, one representative of senior police officials, one commander of the police unit, two criminal police investigators, two prison directors, two Heads of Security Departments in a Penitentiary or Prison, two judicial police officers and one accused person.

All law enforcement respondents stated that in the Republic of Croatia there is no obligation for suspects or defendants to be handcuffed during arrest or when attending trials. Restraining measures are only applicable in cases when the need for their application has been established. Suspects or defendants are bound if there is a risk of escaping, attacking a police officer or another person, or to prevent self-injury. In those cases, if the police need to arrest a person who is resisting, they will handcuff the person or even use physical force, a baton or other means of force against them. This would mean that police officers were using handcuffs as one of the means of force. In other words, handcuffs are applied in reaction to a person's behaviour (attempted escape, attack, self-injury, etc.). On the other hand, if there are no such circumstances, but it is determined that it is necessary, the police officers may handcuff the person for preventive reasons. This would then be the case of using measures of restraint preventively. Using handcuffs in those cases will not be treated as using force that police officers are not entitled to use by law . Usually, depending on the situation, it is explained to the person why he or she is being handcuffed. In some situations this is not possible.

PO 9 stated, "For example, if it's a soccer game where there are 30 recidivists, you can not explain why they were handcuffed and why they were arrested. They know why. Generally they would be told if the handcuffs are used preventively."

D 1 stated, "I was handcuffed during arrest and I was under-age then. The police didn't explain to me the reasons why I was handcuffed but I think it was due to the arrogant and hostile behavior from both sides."

P 1 stated that the power to use means of binding is legally defined as the right of a police officer to apply a certain authority under the Law on Police Affairs and Courts if the conditions for such action are met. Restraining devices such as handcuffs are the means of force and they can only be applied if physical resistance is encountered or if there is a threat of self-injury, or if there is a risk that a person will escape.

All interviewees from the police stated that handcuffs as one of the means of force are used in cases of disrupting public order, or if there is a risk of escaping, attacking a police officer or other person or to prevent self-injury. Using handcuffs preventively would be the case if someone has committed a serious criminal offence, or if the physical constitution of the person, or his or her earlier conviction indicates the person may represent a danger. In such cases, the police officers can estimate for safety reasons that the person should be handcuffed.

PO 1 stated that with the Ordinance on the Reception and Treatment of Arrested Persons and Detainees, and on Keeping Custody Records of Detainees (OG 88/2009) it was mandatory to handcuff a person while bringing them to the police station or to the state attorney or investigating judge. This was later changed because there is no need for each person to be handcuffed because while arresting, the police officer first has to check the person's identity, after which they check whether the person is already registered as dangerous or as a felon. After that, police officers assess whether they will handcuff the person or not.

However, even though the law gives police officers the right to use force in situations mentioned above, there are records of policemen using unjustifiable force in excess of their

powers. That was confirmed by PO 8, who stated that usually police officers use justifiable force, but sometimes they exceed their powers.

A 2 described a case where the police used unjustifiable force against his client in front of their child even though his client didn't provide any resistance. My client was arrested for selling drugs. The arrest was justified because he really was selling drugs (they found half a pound of heroin, scales and all that goes along with it in his apartment). However, the force the police used while arresting was unjustified. He was arrested in front of his 4 year old child in a violent way. The police arrested him when he was leaving the apartment to throw the garbage out, accompanied by his son. When he opened the door, the police hit him on the head. He fell down and while he was lying on the floor the police handcuffed him. The child experienced shock and trauma, and over the next six months, whenever he saw the police officers he would urinate in his clothes. So in this case, police officers treated him in a way that was completely unnecessary, because he didn't provide any resistance. He was also an addict, and later on he pleaded guilty. Also, my client voluntarily showed them where he was hiding everything (scales, drugs, etc.)

Regarding legal remedies against ordering restraining measures as a means of force, interviewees from the police stated that after the arrest, the arrestee could file a complaint against their treatment by the police. The final decision is made by the Police Department, upon assessment of the justification and legality of the use of means of force. However, even though there is legal remedy, A1 and 2, as well as D1 stated that those remedies are ineffective.

A 2 stated, these possibilities exist but in practice, they are completely unrealistic as something to be used by a suspect. There were a couple of situations when this was claimed in court, but nothing had happened. There were a couple of cases where I was defending police officers in disciplinary proceedings for overuse of force, but no one was convicted. The police officers would be dismissed from duties only for receiving bribes.

D 1 stated that in his case, measures of restraint were not justified. After the arrest I had visible injuries, for which I have medical documentation. We complained about police treatment but that was all useless because nothing has changed. I felt sad and helpless because I knew how our system works.

However, all interviewees unanimously stated that defendants are handcuffed during trial only in exceptional cases.

A 2 stated that his clients were never handcuffed during trial. When they had been, he would ask the judge to take the handcuffs off and the judge always allowed it. There was a case when I was defending a particularly dangerous person. He was charged with attempting a serious assassination and four violent robberies. His appearance and the circumstances of the case pointed to it being justified if his legs and hands had been handcuffed during trial. However, he was not handcuffed at all, but was under supervision of two judicial police officers sitting either side of him.

D 1 stated that he has never been handcuffed during trial or during questioning, but that he was handcuffed during transportation from prison to court.

Both State attorneys stated that the defendants are usually deprived of liberty in criminal offences under county court jurisdiction rather than in criminal offences under municipal court jurisdiction. The reason for that lies in the fact that serious criminal offences under county court jurisdiction often encompasses recidivists who tend to repeat criminal offence or due to the danger of influencing the witnesses and that's why pre-trial detention is ordered against them.

In cases of serious criminal offences with elements of violence, attacks on life and body, robberies and murders, the police usually bring in the person in handcuffs.

SA 2 stated that when she is interrogating the defendant, they are not handcuffed. If police officers were to warn us that it would be better for a person to be handcuffed, then they would be interrogated in handcuffs, but this is an extremely rare situation. As a rule, the suspects are not handcuffed during the interrogation.

In practice they usually only bind hands in front. The legs are tied only exceptionally. P1 stated that legs are tied only in extreme situations when it comes to overcoming the resistance of extremely strong people where 3-4 policemen are needed. There were also situations related to preventing mentally disordered persons from self-injuring. SA 1 stated that legs are bound only in cases of prisoners serving prison sentences and the offence they committed while serving the sentence so they were taken to the first interrogation in front of state attorney with both hands and legs handcuffed. PO 1 stated he remembered one case of a suspect who was into martial arts, so the police assessed the need for tying their legs.

In practice, during questioning by the police or by the state attorney or court, the suspects are not handcuffed, but they are often questioned in the presence of police or judicial police officers. SA 2 stated that if the police officers are present in the court, they sit behind the defendants, while SA 1 stated that police officers always sit either side of the defendant. If the suspects are brought to the court or state attorney handcuffed, they usually also remain handcuffed in the corridor. Before the beginning of the questioning or hearing, the state attorney or presiding judge would request that the handcuffs are removed from the defendant.

A 1 stated he only had one case when his client was handcuffed during questioning in front of the state attorney because it was necessary to conduct psychiatric examinations that had not been done previously, so they were not sure how dangerous the person was.

PO 3 and 7 stated that under their authority handcuffs are not considered a means of force but they are considered a measures of physical restraint, for maintaining order and security in prisons. That's why they always handcuff a person during transportation, and they do this for security reasons only.

PO 3 and PO 7 stated that if the prisoner needs to be transported between penitentiaries and courts, as well as in other cases of prisoner transportation, this would be carried out by judicial police officers on the grounds of an execution order issued by the Head of the Security Department in a Penitentiary or Prison. The execution order contains the basic information about the prisoner (name, surname, identification number, the length of sentence given or possible), time and place of transportation, route of transportation, risk evaluation (risk of escaping, attacking a judicial officer or other person, risk of self-injuring) and the need for weapons and other equipment such as using handcuffs on hands and legs if necessary. In 99% of cases the hands are handcuffed in front. Generally, prisoners are handcuffed during transportation except in cases of some disabilities, or if a person's mobility is significantly hampered, or in cases of pregnant women in a visible state of pregnancy or if the person is obviously ill. Before handcuffing, the prisoner is informed about the use of handcuffs or other means of maintaining security and order. The prisoner is transported in a special vehicle.

PO 3 states that when they arrive outside the court, they need to check whether the prisoner is still handcuffed. PO 3 stated, there were cases when the prisoners tried to remove the handcuffs during transportation.

After that, prisoners are brought to special rooms for prisoners at the courthouse, where police officers wait with them until the beginning of hearing. The rooms are used precisely to avoid any contact between the defendant and the victim, witnesses and others in the

corridor. During time spent in the specialized room, judicial police officers remove the handcuffs from the prisoners. After the judge's referral, they re-handcuff the defendant, and the handcuffs are removed when he or she comes into the courtroom.

PO 7 stated that some courts in Croatia do not have special rooms designed for accommodation of defendants transported from prison. In that case, they need to find some other suitable way to avoid contact between the defendant and others in the corridor.

PO 7 stated, sometimes we ask the courts judicial police officers to find us a room in which we can wait for the court's referral.

In cases involving a juvenile prisoner, PO 3 and PO 7 stated that the escort is carried out by judicial police officers in civilian clothes, with an unmarked vehicle. The juvenile is handcuffed during transportation but from the moment he or she arrives outside the court, the handcuffs are removed. PO 7 states that a juvenile can be handcuffed only exceptionally if he or she can be charged with an offence incurring a maximum sentence of lifetime imprisonment.

It can be concluded that Croatia has a good legislative framework that observes the presumption of innocence in criminal procedures since the suspects are usually handcuffed only when it is established that there is danger. In other words, handcuffs are only used as a preventative measure.

Image 2. Police handcuffs

Case study

When it comes to the content of the presumption of innocence, the Directive is closely related to the practice of the European Court for Human Rights. There are four important segments of the Directive approached from the aspect of the presumption of innocence. These are: public referrals to guilt before the conviction, the right of a person not to incriminate oneself and to refuse co-operation, and the right to silence. Article 4 regulates the issue of public referral to guilt prior to conviction. It emphasizes that Member States are obliged to ensure that, prior to conviction, public statements and official decisions of public bodies do not refer to suspects or accused persons as if they were convicted[63].

[63] doc.dr.sc. Ante Novokmet "Presumption of innocence and proposal of Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence in criminal procedure" (Pretpostavka okrivljenikove nedužnosti I prijedlog Direktive Europskog parlamenta I vijeća o jačanju određenih vidova te pretpostavke u kaznenom postupku), page 129, link: https://www.pravo.unizg.hr/_download/repository/Ante_Novokmet_Pretpostavka_okrivljenikove_neduznosti_i_prijedlog_Direktive_o_jacanju_odredjenih_vidova_te_pretpostavke_u_kaznenom_postupku.pdf

Even though it does not establish the responsibility of the media outlets, the best known case before the European Court for Human Rights concerning violation of the presumption of innocence through media statements was Peša case in which the Court determined the violation of the presumption of innocence according to Article 6, p.2 of the European Convention.

ECtHR, PEŠA v. CROATIA, Application No. 40523/08

Court found Violations of Article 5 §§ 3 and 4 and Violation of Article 6 § 2 (presumption of innocence).

The applicant was a vice-president of the Croatian Privatization Fund (*Hrvatski Fond za privatizaciju* – "the CPF"), a State-run agency in charge of privatization of all publicly owned property.
On 16 June 2007 the applicant was arrested and remanded in custody on suspicion of accepting bribes. Fol-lowing the applicant's arrest he statements from 4 high-ranking State official (Attorney General, Head of the Police, Prime Minister and the President) to the media ran counter to the presumption of his innocence.

In the media State Attorney stated: "The investigation [showed that] the suspects were ravenously greedy. Just for initiating any conversation about business they asked for 50,000 euros, for coffee, as they said." Head of the Police was quoted: "'To have a coffee with you and allow you into the game, into making deals for purchasing CFP property, a sum of 50,000 euros was required in payment,'; Prime Minister stated "There was organized crime in the Privatization Fund" and the President stated "The three tenors will be supplied with an orchestra".

The Court examined separately each of the statements by the persons concerned and concluded that those statements by public officials amounted to a declaration of the applicant's guilt and prejudged the assessment of the facts by the competent judicial authority. Given that the officials in question held high positions, they should have exercised particular caution in their choice of words for describing pending criminal proceedings against the applicant (§150). At the time of the alleged offence the highest State officials, including in particular the State Attorney and the Head of the Police, were required to keep the public informed of the alleged offence and the ensuing criminal proceedings. However, this duty to inform the public cannot justify all possible choices of words, but has to be carried out with a view to respecting the right of the suspects to be presumed innocent (§ 142).

Therefore, the Court stated that the freedom of expression, guaranteed by Article 10 of the Convention, includes the freedom to receive and impart information. Article 6 § 2 cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (§139).

It is to be concluded that Article 6 paragraph 2 of the Convention refers only to the statements from public officials. However, Article 6 paragraph 2 does not contain a positive obligation of the state in relation to statements made by private persons and the media regarding guilt, which means that statements made by private persons who are not public officials as well as media reporters do not impose a responsibility of the state for the violation of the presumption of innocence.[64] Harmonizing of the presumption innocence with the right of the public to be informed is a very sensitive matter. With regards to economic criminal offences which represent a special point of focus of the public of the Republic of Croatia, the European Court for Human Rights itself acknowledged the need to respect the right of public to be informed from the very beginning of the process. However, that can not justify allegations stating that a defendant has undoubtedly committed a criminal offense, especially when it comes to statements coming from the highest state officials like in Peša case. In relation to the allegations of journalists who on a regular basis proclaim defendants guilty in the headlines, according to the case law of the European Court for Human Rights no state responsibility for the violation of the presumption of innocence has been determined so far.[65]

As one of the general measures that has been undertaken in order to comply with findings of ECtHR in this case, The Ministry of Interior has adopted "Guidelines in relations with the media". Guidelines contains instructions for all police employees authorized to give information to the public on how to provide relevant information without jeopardizing the rights of those involved in an incident or investigation (both the suspect and the victim). Additionally, the Guidelines predict coordination between police authorities and the

[64] M. Pajčić, L. Valković: Judgments of the European Court for Human Rights Against the Republic of Croatia for Violation of the Right to a Fair Trial (Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms), Hrvatski ljetopis za kazneno pravo i praksu (Zagreb), vol. 19, No. 2/2012, p. 778-781, available at: https://hrcak.srce.hr/110889
[65] Ibid., page 792

prosecutors' office and/or USKOK (Office for the Prevention of Corruption and Organized Crime) in informing the public of investigations of public interest [66]."

According to the aforementioned guidelines, the police are authorized to independently report to the media on the initial knowledge that a criminal offense has been committed as well as on other events of public interest. Police is also authorized to report independently on the course or results of criminal investigation with regards to the so-called lighter offenses (punishable by imprisonment of up to 5 years).

When it comes to the so-called severe offences (punishable by imprisonment of 5 or more years) and so-called complex and significant cases, the police report to the media exclusively after the approval and authorization of the state attorney[67].

[66] Action Report of Government of the Republic of Croatia on individual and general measures undertaken in the execution of ECtHR judgment in the case of Peša v. Croatia, application No. 40523/08, judgment of April 8 2010, final on July 8 2010, available on: https://hudoc.exec.coe.int/eng

[67] Republic of Croatia, Ministry of Interior, Cabinet of the Minister, Public Relations Service, Guidelines of the Ministry of Interior on relations with the media, Zagreb, November 2018, link: https://mup.gov.hr/UserDocsImages/smjernice/SMJERNICE%20MINISTARSTVA%20UNUTARNJIH%20POSLOVA%20U%20ODNOSIMA%20S%20MEDIJIMA%202018..pdf

5. ATTITUDES OF RELEVANT STAKEHOLDERS

The attitudes of the various law enforcement stakeholders towards the use of restraining measures are essentially similar in that they see handcuffs as a measure necessary to protect them as officials, and to prevent escape or harm to others. Thus, for them there is no concern over violating a suspect's rights, because the person has anyway been deprived of liberty. For them, using handcuffs only means that there are circumstances that indicate that a person may be dangerous or may escape. Using handcuffs is perceived as being for a security reason.

Attorneys stated that restraining measures are almost never applied against suspects and defendants during trial and during questioning by state attorneys or the police. That was also confirmed by D1.

P 1 stated that using restraining measures, i.e. handcuffs, is acceptable in situations where they are used preventively. I personally believe that in most cases it would be better to handcuff the defendant because it is a matter of a criminal offence, not a misdemeanour. Personally I think it is always better to handcuff an aggressive person, a recidivist or a person with a record of a greater number of violent crimes. Moreover, in situations involving more complex criminal offences, where finding out what the punishment might be may drive a defendant to escape, attack police officers or hurt themselves. I believe that using handcuffs does not violate the suspect's rights. It is much easier for police officers when a person is handcuffed than when they are not.

In support of this statement, P 1 cited several cases when suspects who were not handcuffed attacked police officers or tried to escape. In one case, police officers did not handcuff the suspect while bringing him to the state attorney. The suspect attacked the police officer sitting next to him in the vehicle, and then the police officer that was driving. If the person had been handcuffed, this would not have happened. Another example was when the investigating judge did not let a police officer be present at the questioning of the defendant, and the defendant tried to escape through the window.

Hence, in those cases where an investigating judge or a state attorney does not allow police officers to attend the questioning, police officers organize themselves according to the situation. For example, if the window is set low enough for a suspect to escape through it, then one police officer stands outside by the window and the other one stands outside the door.

A 2 stated that he had a really bizarre case when the court issued an acquittal. Since the defendant was brought from pre-trial detention to the court, the administrative papers including his personal effects needed to be returned to my client. So the judicial police who escorted my client to the judge had to return him back to prison. Although the judge issued an acquittal and wrote a decision terminating the detention, the judicial police officers handcuffed my client again. I said to them, my client just got the verdict, he is a free man, could you please not handcuff him. The judicial police officers told me they understood, but unfortunately they had to handcuff him. And so they handcuffed him.

The Annual Ombudsman's Report[68] states that citizens' complaints concern the use of means of force during arrest. The Ombudsman notes that when assessing their use, it is important to determine whether it was necessary and proportionate, because when it is unjustified and excessive, according to ECHR practice, it can represent inhuman and degrading treatment. This was the case of a citizen who disturbed public order and peace. The use of means of force was carried out in a humiliating way because he had to walk through streets handcuffed. Although the use of handcuffs is subject to police authority that can be applied

[68] Annual Ombudsman's Report for 2017, pages 208 and 209, Link: http://ombudsman.hr/en/reports/send/66-ombudsman-s-reports/1468-annual-ombudsman-report-for-2017

when legal requirements are met, the Ombudsman reiterates that the dignity, reputation and honour of each person must be respected having in mind the 2015 ECHR decision in the case of M. and M. v. Croatia. The Ombudsman stressed that use of means of force must be legitimate and proportionate and that the police officers who use one of the means of force must report it to the head of their unit, because it was reported that unlawful force was used towards a citizen without being reported at all.

The Ombudsman gave a recommendation to the Ministry of the Interior that the means of force may only be applied to the extent necessary for the realization of the purpose of the police action. Also, the Ombudsman gave a recommendation to the Police Directorate to oversee the police officers' obligation to ensure that in all situations when means of force are used, a written report is sent to the head of the Police Department, who in turn is obliged to issue a decision on the assessment of the justification and legality of the use of means of force within 24 hours [69].

5.1. Presumption of innocence in media

Although respondents from law enforcement authorities almost unanimously stated that the fact that a person is handcuffed does not affect their perception of their guilt, they all agree that the perception of the public is definitely affected by whether the person is handcuffed or not.

SA 2 stated that the public immediately gets the impression that a person is being charged and is guilty. For them as prosecutors it only means there is a doubt that that person is guilty of something.

A2 stated that in high profile cases or in cases of public interest, a police officer sometimes gives a hint to the media about an arrest and then the media show up at that person's house. He stated, the police officers arrested my client at 5 a.m. She opened the door with her hair all messy, in her nightwear. When she opened the door, the press was behind the police. It has to be noted, she was an elderly lady and after the arrest, all newspapers and TV channels broadcast the picture of her and the video of the arrest. So, police officers sometimes deliberately show the person under arrest in handcuffs, sometimes they put a jacket over their hands so that the handcuffs are not visible, and sometimes they intentionally do not put them in handcuffs. They wouldn't do that if it didn't affect the perception of the public.

A 1 and A 2 stated that use of restraining measures influences the perception of the defendant by the judges, and most of all by the general public. A visual impression is created. Judges are human too. When people see someone deprived of liberty, they first assume that there is a reason why defendants have been deprived of their liberty, especially if they are handcuffed and surrounded by the judicial police. On that basis, the judge will surely have the impression that judicial police personnel have assessed that it is a particularly dangerous person, which certainly affects the perception of the defendant's guilt.

A2 stated that the media in general do not report well. It all depends on the manner of reporting. The media like to exaggerate things, to be sensationalistic. The question is how objectively they can report and how interesting such objective reporting would be to the public. Everybody loves a little sensationalism.

PO 8 stated that use of restraining measures influences the perception of a defendant's innocence, depending on who the viewer is and how much this event affects people. If for example we were arresting a person protesting on the street, fighting for some right, the public would not approve of the arrest even if we had a justified reason for the arrest. On the

[69] Annual Ombudsman's Report for 2017, page 233, Link: http://ombudsman.hr/en/reports/send/66-ombudsman-s-reports/1468-annual-ombudsman-report-for-2017

other hand, if we were arresting a murder suspect or a suspect in a traffic accident who was drunk and banned from driving, we would have the approval of the public. Especially when it comes to certain high level criminals, shootings and so on, then people are happy with the use of handcuffs. Then they think that we are doing a good job. The media has the biggest impact on the perception of guilt.

I had a case during the World Championship. A Croatian football fan was in Slovenia and kept a long wooden pole sticking out of the car while driving on the highway. He was directly jeopardizing himself and other traffic participants. A police officer in Slovenia stopped the vehicle and sanctioned him. Just what every police officer here would likewise do. However, journalists framed it differently to make it an interesting story. It was reported in the media that he had a pennant (implying those small flags that are displayed on a car) and that that was why he was stopped and punished. After such media reporting, some younger people, as revenge, destroyed a couple of Slovenian cars in Croatia at the time. If there had been no such media bias, this would simply not have happened. I believe that the media have a big influence on politics and us as they shape our thinking and our perception.

Academic reports state that there is a great responsibility on the mass media when it comes to direct reporting from court hearings. Namely, reporting should provide citizens with an objective image of the course of the hearing and the sentence brought, but at the same time it should not create an image of the defendant's guilt and violate the presumption of the defendant's innocence through sensationalism, pointing out negative value judgments about the identity of the defendant, or by false attributing of the accountability for the facts from the charges[70].

Namely, in the Croatian public it was not unusual to encounter presentation of defense of the suspect during the pre-trial proceedings, however the release of the recording of suspect interrogation done by the Bureau for Combating Corruption and Organized Crime (USKOK) in 2014 has caused a strong reaction of academic and general public. The lawyer of the suspect publicly stated that "making the investigation public violates human rights of his client, especially with regards to the presumption of innocence: 'The footage itself is not at all spectacular or important for the citizens, but it compromises my defendant and puts him in a difficult situation. In the eyes of the public he is guilty, even though we are not even close to bringing the charges and the investigation has only just started.'"[71]

On the other hand, legal expert Zlata Đurđević, PhD expressed a different standpoint and pointed out that conducting an investigation in front of the public leads to public confidence in the independence and impartiality of competent state bodies, and thus to the belief that there are no secret agreements or official tolerance of illegal acts. However, public scrutiny should not jeopardize the purpose of the investigation or the fundamental rights of parties, such as the prohibition of defamation and exposure to unjustified public conviction for the commission of a criminal offense, the presumption of innocence, the right to a fair trial and the right to privacy. The openness of the investigation should not endanger human rights of suspects as the European Convention for the Protection of Human Rights in its Article 10 states that the media has the right and duty to inform the public about matters of public interest, and that the public has the right to access information. 'Publishing investigation data does not violate the presumption of innocence if the media respects it while reporting to the public. They should never prejudge the guilt of the accused person or claim that he/she is the

[70] doc.dr.sc. Ante Novokmet "Presumption of innocence and proposal of Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence in criminal procedure" (Pretpostavka okrivljenikove nedužnosti I prijedlog Direktive Europskog parlamenta i vijeća o jačanju određenih vidova te pretpostavke u kaznenom postupku), page 128, link: https://www.pravo.unizg.hr/_download/repository/Ante_Novokmet_Pretpostavka_okrivljenikove_neduznosti_i_prijedlog_Direktive_o_jacanju_odredjenih_vidova_te_pretpostavke_u_kaznenom_postupku.pdf

[71] Odvjetnik Mate Matić, tportal.hr, https://www.tportal.hr/vijesti/clanak/zanima-li-nas-doista-istraga-ili-se-samo-nasladujemo-20141104, November 8th, 2014

perpetrator of the offence in question. They must always write in conditional form and respecting the defendant's dignity.[72]

On that occasion, another criminal lawyer said to the public: "The public has the right to know how the investigation is being conducted. At the moment, the journalists are content because no one can be prosecuted, and interested public is satisfied as well". With regards to the public perception of the suspect's guilt, he said: "Since the name of the defendant is anyhow mentioned in the media at the time when the proceedings are initiated, that person is already stigmatized to an extent that no court or acquittal can restore. Likewise, this stigma can be made worse by a footage from the Bureau for Combating Corruption and Organized Crime (USKOK). It is convenient to everyone that information from the investigation comes out public, except for the poor defendant. He is miserable regardless of everything. The largest number of people who referred to me for help following the arrest said that they did not fear either a judge or a prosecutor, but that their biggest fear was that everything will appear in the newspapers the following day."[73]

Following the above mentioned, it may be concluded that journalists, together with public authorities, should refrain from any prejudgment of the defendant's guilt when commenting or reporting on certain events. Only such objective reporting protects the defendant's innocence and at the same time preserves the independence of the judiciary. On the other hand, this does not mean that the public should be deprived of timely information on the course of criminal proceedings, given that this enables citizens to supervise the work of the court and other criminal prosecution bodies and ensures transparent and objective conduct of the proceedings and the decision-making.[74].

[72] Zlata Đurđević, tportal.hr, https://www.tportal.hr/vijesti/clanak/zanima-li-nas-doista-istraga-ili-se-samo-nasladujemo-20141104, Novembre 8th, 2014

[73] Attorney Rajko Mlinarić, tportal.hr, https://www.tportal.hr/vijesti/clanak/zanima-li-nas-doista-istraga-ili-se-samo-nasladujemo-20141104, Novembre 8th, 2014

[74] doc.dr.sc. Ante Novokmet "Presumption of innocence and proposal of Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence in criminal procedure" (Pretpostavka okrivljenikove nedužnosti I prijedlog Direktive Europskog parlamenta I vijeća o jačanju određenih vidova te pretpostavke u kaznenom postupku), page 129, link: https://www.pravo.unizg.hr/_download/repository/Ante_Novokmet_Pretpostavka_okrivljenikove_neduznosti_i_prijedlog_Direktive_o_jacanju_odredjenih_vidova_te_pretpostavke_u_kaznenom_postupku.pdf

6. RECOMMENDATIONS

- Although the presumption of innocence is well respected at Croatian courts, which is visible by the absence of use of handcuffs during hearings in most cases, the right of the defense could be better ensured if the defendants were seated alongside their attorneys. That way, the principles of equality and the right to legal defense would be respected, because if they sit next to their attorneys, they can freely communicate and consult with them.

- The media need to be wary not to represent the suspects as criminals before and/or during trial in order to ensure that the presumption of innocence prevails: the media need to be mindful when using pictures and words, and drawing conclusions. Amendments to the CPA need to be introduced in a way that the presumption of innocence would be considered to have been violated if public authorities, the media or public figures referred to a suspect or an accused person as guilty as long as that person has not been proven guilty according to the law.

- The state shall adopt necessary measures to protect the suspects from public statements on guilt before the convicting judgment by means of bringing and adopting ethical codes of conduct in cooperation with the media and the consequences of their violations.

- In cases of disclosure of information regarding investigations or searches that are declared by law as classified, the state should conduct independent investigations of each such case.

- The Police Directorate should ensure the effectiveness of remedies against ordering the application and use of measures of restraint.

- Ministry of Interior should propose amendments to the Police Act that will ensure independent and effective civil oversight of the police work.

7. APPENDICES

Measures of restraint that can be applied against defendants and other by law in Croatia

Measures of restraint	Applied against	Requirements for measure application
Handcuffs - hands are bound behind the back - hands are bound in front of the body - bound legs	Arrested person	- if there is a risk of escaping, resisting or attacking the police officers, or if there is a risk of self-injury or injuring another person. - if under the supervision of at least two police officers and if there are justified reasons for it - only exceptionally
Compulsory appearance in court or at the police station + handcuffs if necessary	The person for whom the warrant for compulsory appearance is issued	- carried out by two police officers - A Police Officer will handcuff the person: 1. if a Plan for compulsory appearance was drawn up in advance; 2. if there is a risk of resisting, threatening or attacking the police officer; - In an official vehicle that has a separate space for persons that have to appear in court or the police station[75]
Compulsory transfer from detention to the court or to the state attorney's office + handcuffs if necessary	Detainee	- carried out by at least two police officers applying prescribed safety measures (the route used to bring the detainee to the investigating judge or state attorney as well as the possibility of using means of force are determined in accordance with the security assessment) - The escort can be carried out on foot or using a police vehicle. - If the escort is not carried out using an official police vehicle, the detainee is placed behind the passenger

[75] If they are not carried in such a vehicle, the person is placed in the rear, behind the passenger seat, secured with a safety belt, and the door is locked in such a way that it cannot be opened from the inside. The other police officer is seated on the rear seat behind the driver in order to be able to promptly respond in case the need arises.

		seat and the police officer – the accompanying officer – sits on the rear seat behind the driver. - When escorting a juvenile detainee, police officers are usually engaged in civilian clothes, using an unmarked official vehicle;
Compulsory transfer from pre-trial detention to the court + handcuffs	Prisoners	- The escort is carried out by two judicial police officers; - the need to apply restraint measures is estimated every time a prisoner is brought to the court; - In cases involving a juvenile prisoner, the escort is carried out by judicial police officers in civilian clothes, using an unmarked vehicle, unless the juvenile is guilty of a criminal offence which incurs a ten-year or longer prison sentence
Handcuffs or other means of constraining with/or without supervision by judicial police officers	Defendants – prisoners at the hearing	The presiding judge can decide that for security reasons the defendant be handcuffed in the courtroom under supervision of judicial police officers who may be present at the hearing

Authorities that imposes restraining measures and whether the Court is entitled to overrule the decision of the official

Measure of restraint	**Imposed by**	**Can the decision be overruled by the Court**
Handcuffs (Arrest)	Police officers	No
Compulsory appearance in court or at the police station + handcuffs	Police officers + superior police officers	Yes
Compulsory transfer from detention to the court or to the state attorney's office + handcuffs if necessary	Detention supervisor	Yes
Compulsory transfer from pre-trial detention to the court + handcuffs	Head of Security Department in Penitentiary or Prison	Yes
Handcuffs or other means of constaining with or without supervision by judicial police officers at the hearing	Judge	Yes