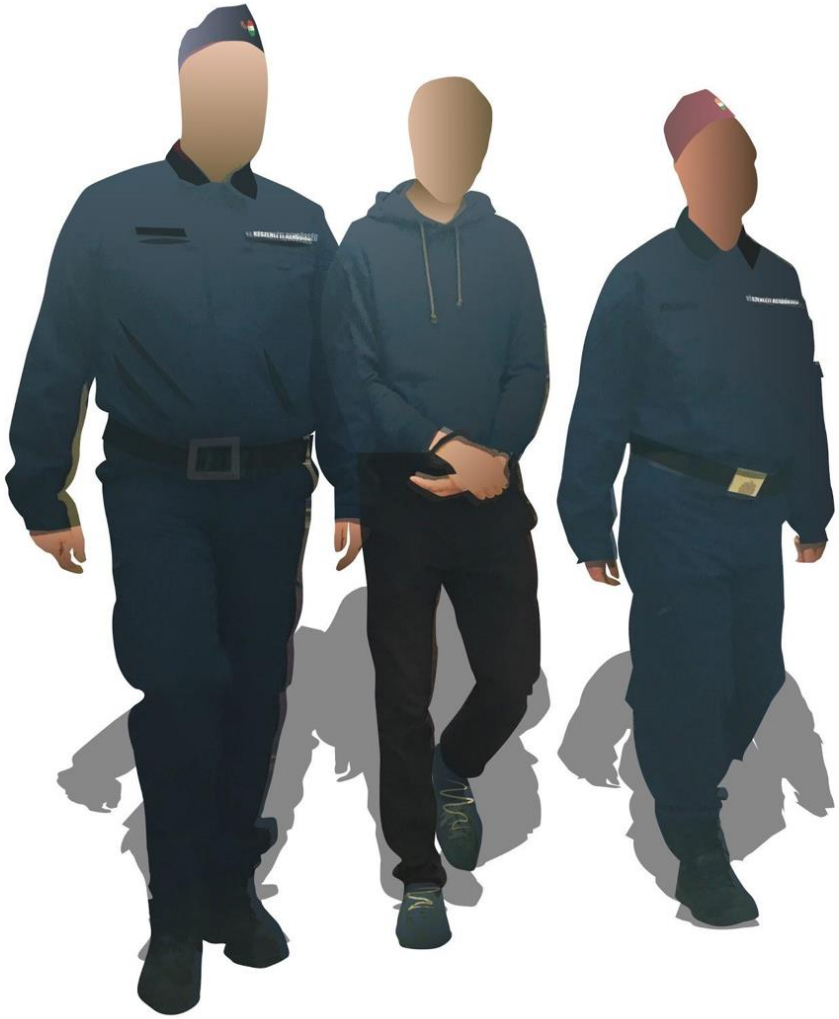
Suspects in Restraints

The importance of appearances: how suspects and accused persons are presented in the courtroom, in public and in the media



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Hungarian Helsinki Committee

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1. Introduction

1.1. About the project

This country 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 a European research project carried out in six Member States of the European Union (Austria, Croatia, France, Hungary, Malta and Spain), under the coordination of the Hungarian Helsinki Committee (HHC), in partnership with Aditus, Fair Trials Europe, Human Rights House Zagreb, Rights International Spain and the University of Vienna.

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, or the Directive on the Presumption of Innocence), 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 were to: (i) provide a general overview of the application of restraining measures on suspected and accused persons in EU 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 restraints 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 organisations.

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.

1.2. Problem statement and the provisions of the Directive

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 on the Presumption of Innocence provides two key safeguards on how suspects and accused persons are presented in the courts and the public:

(i) 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,

(ii) 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.

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 recognises 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 present study will be examining the application of Articles 4 and 5 of the Directive in order to determine how Hungary addresses 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.

1.3. 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 (e.g. judges, prosecutors, defence counsels and police officers) and with defendants affected by the use of restraints, and online surveys were conducted with defence counsels.

The interviews were carried out on the basis of questionnaires prepared by the HHC and provided to all the partner organisations.

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 authorisation 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 was only used in the context of this project.

In Hungary, 14 lawyers from different regions of the country responded to the HHC's online survey. Furthermore, interviews were conducted with 13 legal professionals, including two judges, nine attorneys, one officer from the Ombudsperson's Office (the Office of the Commissioner for Fundamental Rights, and one member of the Independent Police Complaints Board.

1.4. International standards

The defendant's right to be presumed innocent is an essential part of fair trials guarantees. This legal principle is contained by several international human right instruments, such as the Universal Declaration of Human Rights ("No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed"), the International Covenant on Civil and Political Rights ("Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law") and the European Convention of Human Rights (hereafter: ECHR) ("Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law").

In addition, it has also been incorporated into secondary EU law, namely into the EU Charter of Fundamental Rights and the Directive on the Presumption of Innocence.

The Directive was required to be transposed by all EU Member States by April 2018. The European Court of Human Rights (hereafter: ECtHR) had already a wealth of case law regarding standards on the presumption of innocence, and has crystallised several of the key standards relevant to our research that are now communicated in the Directive.

Media coverage: The ECtHR expressly provided that "a virulent press campaign can […] adversely affect the fairness of a trial by influencing public opinion and, consequently, jurors called upon to decide the guilt of an accused".[1] For non-adversarial systems, the ECtHR holds that "National courts which are entirely composed of professional judges generally possess, unlike members of a jury, appropriate experience and training enabling them to resist any outside influence." [2]

Presentation of the defendant: The ECtHR emphasises that while the presumption of innocence is one of the elements of a fair criminal trial, it is not limited to a procedural safeguard in criminal matters: its scope is broader, and requires that no representative of the State should say that a person is guilty of an offence before his or her guilt has been established by a court. "This is because the presumption of innocence, as a procedural right, serves mainly to guarantee the rights of the defence and at the same time helps to preserve the honour and dignity of the accused."[3]

Although the ECtHR thus acknowledges that the presumption of innocence has an important role in protecting the honour and dignity of the accused, it has addressed the presentation of the defendant at court in two different ways. The ECtHR has explicitly stated that it is a violation of Article 6(2) of the ECHR when defendants have been forced to wear prison garb specifically worn by convicts, however, complaints concerning security measures – such as the use of metal cages for defendants or handcuffing – have been treated under Article 3 of the ECHR, the ban on degrading treatment instead of the presumption of innocence.

The ECtHR has consistently "considered treatment to be 'inhuman' because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense

[1] European Court of Human Rights, *Guide on Article 6 of the European Convention on Human Rights (criminal limb)* (2013), p. 45. Available at: https://echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf.
[2] European Court of Human Rights, *Guide on Article 6 of the European Convention on Human Rights (criminal limb)* (2013), p. 45.
[3] *Konstas v. Greece* (Application no. 53466/07, Judgment of 24 May 2011), § 32

physical and mental suffering. It has also deemed treatment to be 'degrading' because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance (see *Ireland v. the United Kingdom*, [18 January 1978], § 167; *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 120, ECHR 1999-VI; and *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR2000-XI). In order for a punishment or treatment to be 'inhuman' or 'degrading', the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX)."[4]

In considering whether a punishment or treatment is "degrading" within the meaning of Article 3 of the ECHR, the ECtHR "will have regard to whether its object was to humiliate and debase the person concerned"[5] and whether it adversely affected the person concerned. "However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI). In this connection, the public nature of the punishment or treatment may be a relevant or aggravating factor (see *Raninen v. Finland*, 16 December 1997, § 55, Reports of Judgments and Decisions 1997-VIII). Moreover, it may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (see *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26, and *Smith and Grady*, [nos. 33985/96 and 33986/96], § 120)."[6]

These general standards were applied by the ECtHR in the following way in concrete cases.

The applicant in the *Erdogan Yagiz v. Turkey* case was a 54-year old police doctor, who worked for the police in Istanbul. In November 1999, a criminal report was filed against him on the basis that two people threatened someone by claiming that they were under the applicant's protection. In February 2000, he was arrested in the parking lot of the police station where he worked. He informed the police officers that he is a doctor employed by the police, claimed that there must have been a mistake, and asked the police officers not to handcuff him in front of the crowd in the parking lot. Nevertheless, he was handcuffed and was taken into police custody, and was taken in handcuffs to his home and to his workplace, where the police officers carried out searches. The applicant was released the same month. As a result of the psychiatric trauma caused by the incident, he had to undergo psychiatric treatment. He was suspended from his police job, and was also dismissed from his second job (he worked in a factory), the latter dismissal also citing that he was undergoing psychiatric treatment.

In March 2000, the authorities discontinued the case against the applicant, and reinstated him, but he suffered from severe psychological problems, and finally took a retirement on health grounds. In January 2001, he lodged a complaint against the five police officers arresting him on the basis that they handcuffed him and insulted him in front of his family and colleagues. However, the complaint was rejected.

The ECtHR concluded in the case that the prohibition on degrading treatment had been violated in the case on the following grounds.

The ECtHR noted that "the wearing of handcuffs in public, can affect a person's self-esteem and cause him or her psychological damage".[7] However, "handcuffing does not normally give rise to an issue" in relation to the prohibition of inhuman or degrading treatment "where the measure has been imposed in connection with lawful arrest or detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances", and if the use of handcuffs

[4] *Erdogan Yagiz v. Turkey*, Application no. 27473/02, § 36
[5] *Erdogan Yagiz v. Turkey*, Application no. 27473/02, § 37
[6] *Erdogan Yagiz v. Turkey*, Application no. 27473/02, § 37
[7] *Erdogan Yagiz v. Turkey*, Application no. 27473/02, § 45

is justified on the basis of all the circumstances of the case, i.e. "there is reason to believe that the person concerned would resist arrest, attempt to flee, cause injury or damage or suppress evidence".[8]

In the case at hand, the person handcuffed publicly was a police doctor, who had to show up in handcuffs at his workplace and in front of his family, and that "aroused in him a strong feeling of humiliation and shame, especially in view of his professional duties".[9] The ECtHR also emphasized that applicant's "mental state suffered irreversible damage as a result of the incident".[10]

Furthermore, the ECtHR was of the view that the applicant's conduct did not provide any reason for the handcuffing (there was "no evidence that he posed a danger to himself or to others or that he had previously committed criminal acts or acts of self-destruction or violence against others"[11]). Therefore, the ECtHR concluded that in the applicant's case the Turkish authorities violated Article 3 of the ECHR.

In the *Gorodnitchev v. Russia* case[12] the ECtHR concluded that it amounted to the violation of Article 3 of the ECHR that a person arrested on suspicion of a non-violent criminal offence was forced to appear in handcuffs at his trial hearing. The ECtHR concluded that nothing suggested in the case that had the applicant not worn handcuffs when appearing before the court there might have been a risk of his absconding, a risk of violence or damage, or a risk of hindering the proper administration of justice.

Therefore, the justices of the ECtHR found that the use of handcuffs had not been intended to exercise reasonable restraint and had been disproportionate as compared to the security requirements. In this case, the ECtHR also attached great importance to the fact that the handcuffs were used in public, and although it had not been shown that the use of the restraint had been aimed at humiliating the applicant, the ECtHR concluded that due to the circumstances of the concrete case the applicant's appearance in handcuffs at the public hearings violated the prohibition on degrading treatment.

1.5. The presumption of innocence and further general principles of the criminal procedure in the Hungarian constitution

The **presumption of innocence** is a fundamental guarantee, which is primarily provided for by the Fundamental Law, i.e. the constitution of Hungary in Article XXVIII (2) and by Act XC of 2017 on the Code of Criminal Procedure (hereafter: CCP), with both setting out that "no one shall be considered guilty until their criminal liability has been established by the final and binding decision of a court".

Beyond the presumption of innocence, the **Fundamental Law** guarantees the right to human dignity and to a fair trial, along with the right to liberty:

> *Article II*
> *Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception.*
>
> *Article IV*
> *(1) Everyone shall have the right to liberty and security of the person.*
> *(2) No one shall be deprived of liberty except for reasons specified in an Act of Parliament and in accordance with the procedure laid down in an Act of Parliament. Life imprisonment without parole may only be imposed for the commission of intentional and violent criminal offences.*

[8] *Erdogan Yagiz v. Turkey* (Application no. 27473/02, Judgment of 6 March 2007), § 42
[9] *Erdogan Yagiz v. Turkey* (Application no. 27473/02, Judgment of 6 March 2007), § 45
[10] *Erdogan Yagiz v. Turkey* (Application no. 27473/02, Judgment of 6 March 2007), § 45
[11] *Erdogan Yagiz v. Turkey* (Application no. 27473/02, Judgment of 6 March 2007), § 46
[12] *Gorodnitchev v. Russia* (Application no. 52058/99, Judgment of 24 May 2007)

(3) Any person suspected of having committed a criminal offence and taken into detention must, as soon as possible, be released or brought before a court. The court shall be obliged to hear the person brought before it and shall without delay make a decision with a written statement of reasons to release or to arrest that person.
(4) Everyone whose liberty has been restricted without a well-founded reason or unlawfully shall have the right to compensation.

Article XXIV
(1) Everyone shall have the right to have their affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to state the reasons for their decisions, as provided for by an Act of Parliament.
(2) Everyone shall have the right to compensation for any damage unlawfully caused to them by the authorities in the performance of their duties, as provided for by an Act of Parliament.

Article XXV
Everyone shall have the right to submit, either individually or jointly with others, written applications, complaints or proposals to any organ exercising public power.

Article XXVIII
(2) No one shall be considered guilty until their criminal liability has been established by the final and binding decision of a court.

Furthermore, the Fundamental Law sets out the following about when and how fundamental rights may be restricted:

Article I

(1) The inviolable and inalienable fundamental rights of MAN must be respected. It shall be the primary obligation of the State to protect these rights.

(2) Hungary shall recognise the fundamental individual and collective rights of man.

(3) The rules for fundamental rights and obligations shall be laid down in an Act of Parliament. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.

However, the Constitutional Court set out in relation to the provision on the restriction of fundamental rights and the presumption of innocence that in most cases, the fundamental constitutional principles of criminal law "cannot be relativized due to their nature, and so they [cannot be restricted in order to protect] another constitutional right or aim, since criminal law guarantees are already the result of a balancing exercise."[13] At the same time, restricting fundamental rights is possible in relation to the use of restraints (e.g. handcuffing) with a view to the principle of proportionality and provided that the necessary conditions are met. This means that protecting the presumption of innocence does not in itself exclude the use of restraints if that is justified for example by security considerations.

1.6. About the Hungarian criminal procedure

As far as criminal procedures are concerned, the Directives adopted in the framework of the European Union's Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings are implemented in Hungary by the CCP (which is an Act of Parliament) and its bylaws

[13] Decisions no. 11/1991. (III. 5.) AB and no. 6/1998. (III. 11.) AB of the Constitutional Court of Hungary

(governmental and ministerial decrees, etc.). It shall be noted that the provisions of the EU Directives also pertain to the petty offence proceedings if a case ends up before a court.

Under the **CCP,** a criminal procedure may be launched against a person if there is a well-founded suspicion that they have committed a criminal offence.

The criminal procedure is comprised of **the investigation and the court phase**. The procedure commences with the investigation, which, again, comprises of two phases: the investigative evaluation and the evidential evaluation. The investigative evaluation aims at collecting information needed to substantiate suspicion and at identifying the perpetrator, while during the evidential evaluation, the prosecutor, if necessary, collects further evidentiary means, and decides on concluding the investigation phase. The investigation is carried out by the investigating authority (in most cases by the police) or by the prosecutor. During the investigation the defendant is heard, who is identified as "suspect" in this phase of the proceedings. At the beginning of the first interrogation, suspects are informed about the charges against them (i.e. the criminal offence they are suspected of committing). This is the so-called "communication of the suspicion", when the concerned person formally becomes a suspect. Defendants have the right to be informed about their procedural rights, shall be granted access to a lawyer, and are entitled to submit a motion for the appointment of a defence counsel already before the communication of the suspicion.

Upon the completion of the investigation, the prosecutor – in the capacity of a public prosecutor – presses charges by submitting the bill of indictment to the court. Under the CCP, the possibility of a guilty plea is available before the filing of the indictment. A guilty plea can be initiated both by the defence and by the prosecutor. The participation of the defence counsel in the proceedings aimed at concluding a guilty plea is mandatory. The guilty plea cannot extend to the facts of the case or the qualification of the criminal offence under the Criminal Code, and is focused primarily on the sanction. The court reviews the legality of the guilty plea in the framework of a separate procedure, but cannot amend its content, and can only approve or refuse it based on the indictment.

The investigation phase is followed by the court phase, to which another new institution was introduced by the current CCP: the preliminary hearing, aimed at preparing for the trial in substance, which provides an opportunity for the defendant and the defence counsel to present their arguments about the indictment before the trial begins. Thereafter, the first instance court holds a hearing to which the person subject to the procedure (now identified as the "accused person") is summoned. The evidentiary procedure at trial starts with the hearing of the accused person, other evidentiary actions and their order are determined by the court. After the evidentiary procedure is completed, the prosecutor and the defence counsel present their closing arguments, and the accused person, the victim and the claimant of compensation may also address the court. Subsequently, the court delivers its judgment, in which it decides about innocence or guilt and the sanction to be applied. If the prosecution or the defence appeals the first instance judgment, it does not become final and binding: the case is referred to the court of second instance. Second instance decisions may be subject to further appeal only in certain cases identified by the CCP.

The person subjected to the criminal procedure is called "a person against whom a well-founded suspicion of having committed a criminal offence exists" before the communication of the suspicion, "suspect" from the communication of suspicion on, "accused" after the pressing of charges by the prosecutor, and becomes "convict" by the handing down of the legally binding judicial decision.

Coercive measures in the Hungarian criminal procedure system that involve the deprivation of the liberty of suspects and accused persons are the following: 72-hour detention and coercive measures requiring a judicial decision (no contact order, criminal surveillance, pre-trial detention, mandatory pre-trial psychiatric treatment). "Criminal surveillance", introduced as an overarching category by the current CCP, includes for example house arrest, geographical ban, ban on visits to certain public places or events, and the obligation to regularly check in with the respective police organ.

72-hour detention is the temporary deprivation of the suspect's liberty without a judicial decision, which can be ordered if there is a well-grounded suspicion that the concerned person has committed a criminal offence punishable with imprisonment, provided that a coercive measure requiring a judicial decision is likely, or if the perpetrator was caught in the act or their identity could not be established. This form of detention may last up to 72 hours, after which – unless the court orders a coercive measure requiring a judicial decision – the suspect shall be released. 72-hour detention is implemented in police jails.

Pre-trial detention is the judicial deprivation of the defendant's personal liberty prior to the delivery of the final decision on the merits of the case. It can be ordered in both the investigation and the court phase (until the submission of the bill of indictment, it is ordered by the so-called "investigation judge" upon the prosecutor's motion, after that, the decision is made by the trial court). Pre-trial detention ordered before the submission of the bill of indictment can be maintained by the trial court. Pre-trial detention ordered or upheld by the first instance court shall last until the promulgation of the first instance judgment. Thus, defendants may spend the whole period from the communication of the suspicion to the delivery of the first instance judgment in pre-trial detention (however, in most – though not all – cases, there is an absolute upper limit). Pre-trial detention as a main rule shall be implemented in a penitentiary institution.

The 72-hour detention may be preceded by **police custody** under Act XXXIV of 1994 on the Police (hereafter: Police Act). The police officer shall arrest and present to the competent authority (i.e. take into police custody) a person who is **caught in the act** of committing a criminal offence, and may take into police custody e.g. a person who is **suspected** of having committed an offence. (Thus, persons taken into police custody are not regarded as defendants – suspects – until the suspicion is formally communicated to them.) The police may maintain the deprivation of liberty until it is absolutely necessary, but for no longer than eight hours. If the objective of the detention has not been realised, this term may be prolonged by four hours on one occasion. The time spent in police custody shall be taken into account when the time spent in the 72-hour detention is calculated.

2. The legal framework and the practice

Regulating the use of restraints is problematic from many aspects. On the one hand, the area is characterised by extreme **overregulation**: in addition to the laws containing more and wider rules on the use of restraining measures than necessary, some internal regulatory instruments – which are not accessible to the public – also contain relevant provisions (e.g. the guideline on the measures applied in penitentiary institutions). This is partly the result of the fact that the scope of officials entitled to apply restraining measures (primarily handcuffing) is wide, and includes for example police officers, penitentiary staff members, excise officers and the law enforcement officers of the local government. It has to be noted that the high number of related laws hinders the individualization of the use of restraints, and overregulation causes several practical problems (see in more detail below).

Overregulation is clearly shown by the sheer list of the domestic legal provisions that contain provisions or guidelines on the use of means of restraint:

- the Fundamental Law;
- the CCP;
- the Police Act;
- Decree 30/2011. (IX. 22.) of the Minister of Interior on the Service Regulation of the Police (hereafter: Service Regulation of the Police);
- Decree 56/2014. (XII. 5.) of the Minister of Interior on the Order of Police Cells;
- Decree 32/2009. (VIII. 19.) of the Minister of Justice and Law Enforcement on the Types and Kinds of Restraints Regularly Used by the Police;
- Order no. 3/2015. (II. 20.) of the National Police Chief on Police Cells (hereafter: Police Cell Guidelines);
- Act CVII of 1995 on the Penitentiary System (hereafter: Act on the Penitentiary System);
- Decree 16/2014. (XII. 19.) of the Minister of Justice on the Detailed Rules of Executing Imprisonment, Confinement, Pre-Trial Detention and Confinement Replacing a Disciplinary Fine (hereafter: Decree 16/2014. of the Minister of Justice);
- Decree 9/2018. (VI. 11.) of the Minister of Justice on the Tasks of the Courts and Other Organs in the Course of Conducting the Criminal Procedure and Executing Decisions Reached in Criminal Cases in the Case of Persons Detained;
- Order no. 26/2018. (V. 15.) of the Director General of the Penitentiary System on Escorting Inmates Outside the Penitentiary Institution (hereafter: Prison Escort Guidelines);
- Act CXXII of 2010 on the National Tax and Customs Administration (hereafter: National Tax and Customs Administration Act);
- Decree 20/2018. (XII. 21.) of the Minister of Finances on Measures and Use of Restraints by the Excise Officers and on the Procedural Rules of Guarding and Escorting Arrested and Detained Persons (hereafter: Decree 20/2018. of the Minister of Finances);
- Act CXX of 2012 on the Activities of Certain Persons Carrying out Law Enforcement Tasks and on the Amendment of Certain Acts in order to Counter Truancy; and
- Decree 86/2012. (XII. 28.) of the Minister of Interior on Requesting, Receiving and Returning Means of Restraint Used by Persons Conducting Law Enforcement Tasks and Assisting Guards, on the Method of Reimbursement, and on the Detailed Rules on the Types, Kinds and Application of Means of Restraint, on Reporting, and on the Order of Investigating.

The most important rules on applying restraining measures are included in the CCP, the Police Act, the Service Regulation of the Police, and Decree 16/2014. of the Minister of Justice.

It shall be stressed that regulating the restriction of the right to liberty on the level of a decree (such as the Service Regulation of the Police) violates Article I(3) of the Fundamental Law, which sets out that the rules for fundamental rights and obligations shall be laid down in an Act of Parliament. As put by the Commissioner for Fundamental Rights (the Ombudsperson in Hungary) in case no. 6796/2010, it gives rise to concerns that the rules of using handcuffs "are scattered around in Acts of Parliament, law decrees, ministerial decrees, orders by the Director General, thus, in various sources on various legal levels**. The conditions of using restraints and its detailed rules should be regulated with due diligence and in a unified manner, in an Act of Parliament.** As long as this does not happen, the principle of the rule of law and the respective provision of the Constitution is violated, because rules for fundamental rights and obligations shall be laid down in an Act of Parliament." The Commissioner for Fundamental Rights submitted a recommendation for legislative action to the Minister of Interior along these lines, but the rules remained unchanged.

The CCP declares the **presumption of innocence** as a fundamental principle of the criminal procedure, and sets it out in Article 1 in a similar manner as the Fundamental Law. Article 2 of the CCP declares the protection of fundamental rights and acknowledges the right to human dignity of the participants of the criminal procedure, along with the right to liberty and security. It shall be highlighted here that the CCP includes the **requirement of proportionality**, i.e. that "someone's fundamental rights may only be restricted in criminal proceedings in line with the procedural rules included in this law, and for the reasons, in the manner and to the extent set out in this law, provided that the objective pursued cannot be achieved by any other, less restrictive act or measure."[14]

As described above, the scope of persons entitled to use restraints against defendants in criminal procedures and against persons suspected of committing a petty offence is wide. According to the laws currently in force, the following officials shall or may use restraints:

- police officers, in the course of police measures (typically when taking someone in police custody), or when escorting detainees outside the premises of the police;
- prison guards and other professionals within the penitentiary system, while fulfilling their duties lawfully (e.g. a person may be handcuffed if their conduct infringes or threatens the order or security of the prison facility[15]);
- excise officers (i.e. officers of the National Tax and Customs Administration who perform law enforcement tasks);[16]
- persons performing law enforcement tasks (e.g. nature reserve guards, fishing guards, law enforcement officers of the local government, etc.) and the so-called assisting guards (i.e. persons assisting the work of the persons performing law enforcement tasks.[17]

2.1. Arrest, police custody and escort

In the framework of the present research, two different types of measures shall be examined: **arrest and police custody, and escort**. These are the measures in the case of which there is a risk that the disproportionate use of physical restraints may convey the perception that the defendant is guilty, given that these are the measures during which the handcuffed defendant may encounter the public or may be seen by their relatives or neighbours in handcuffs. Obviously, arrest and the act of taking

[14] CCP, Article 2(3)
[15] Act on the Penitentiary System, Article 17(2)b)
[16] National Tax and Customs Administration Act, Article 35(1)
[17] Act CXX of 2012 on the Activities of Certain Persons Carrying out Law Enforcement Tasks and on the Amendment of Certain Acts in order to Counter Truancy, Article 4(1)

someone into police custody concern non-detained persons, while being in police custody and being escorted concern persons deprived of their liberty.

(It shall be noted here that arbitrary police custody could very well be the subject of another research, and it is obviously in close connection with the use of restraints, since in these cases, i.e. when the person should not be taken into police custody at all, obviously no restraining measure should be used against them either.)

2.1.1. Measures taken against non-detained persons

2.1.1.1. Arrest by the police and police custody

The **fundamental principles of law enforcement** in relation to the use of restraints are provided for by the Police Act. The Police Act, in accordance with the Fundamental Law and the CCP, sets out that police officers shall take into account the requirement of **proportionality**. The Police Act also provides for the fundamental principles of law enforcement in relation to the use of restraints when setting out that police officers may use restraints only if the conditions laid down by the Police Act are met; they must have due regard to the principle of proportionality and the measure taken cannot cause disproportionate harm to the person concerned; and **restraining measures shall not be applied if the resistance of the person concerned against the police measure has been broken and the goal of the police measure may be achieved without the use of restraints.**[18]

According to Article 48 of the **Police Act**, police officers may handcuff persons whose liberty they aim to restrict or whose liberty is already restricted **in order to prevent** the concerned person from **inflicting self-harm, attacking the police or absconding, or to break the concerned person's resistance. "**The precondition for restricting a fundamental right is that a constitutional aim is at risk, and **so the danger that the police measure will be unsuccessful shall be present and concrete**."[19] Accordingly, under the Police Act handcuffs may be used only if the risk of inflicting self-harm, attacking, or absconding is present and concrete, which should be established by the proceeding police officer in the case of an arrest.[20] With respect to using handcuffs in the course of police measures it shall be highlighted that police officers shall/can show discretion when handcuffing. If the aim is to break the concerned person's resistance, the proceeding police officer shall decide which means of restraint is necessary and proportionate to achieve that goal. When escorting a person, the officer responsible for establishing the circumstances of the escort shall decide on this issue on the basis of the information available to them.[21]

The **Service Regulation of the Police** refers back to the Police Act, and according to its Article 41, handcuffing may be used exclusively **in the instances established in Article 48 of the Police Act.** The use of restraining measures in general may be justified when the conditions set out in the Police Act and in the Service Regulation of the Police are met, particularly against persons

- who show violent, rowdy behaviour, and cannot be forced to stop that behaviour by using physical force;
- who attack the proceeding police officer, the person assisting the police officer, or any other person taking part in executing the police measure;
- who are arrested upon a well-founded suspicion that they have committed a criminal offence, and their absconding cannot be prevented without using handcuffs;

[18] Police Act, Article 16(1)
[19] Report of the Commissioner for Fundamental Rights in case no. 3288/2017.
[20] Report of the Commissioner for Fundamental Rights in case no. 3288/2017.
[21] Service Regulation of the Police, Article 39

- whose resistance against a lawful police measure cannot be broken by using physical force;
- who inflict self-harm or threaten with inflicting self-harm;
- whose **escort** was ordered while being detained, and who is guarded outside the police holding cells for those in custody and in 72-hour detention (for the period of being guarded outside the police cell);
- and who is taken into custody by **a police officer proceeding alone**.[22]

According to Article 39(2) of the **Service Regulation of the Police**, the behaviour of a person subject to a police measure may be categorised as follows:

- **passive resistance** means that the person concerned does not comply with the lawful instructions given by the police in the course of the police measure, but does not take any action;
- **active resistance means** that the person concerned does not subject themselves to the lawful police measure and tries to interfere with it by using physical force;
- **attacking** means that the person concerned attacks the proceeding police officer or the person supporting or protecting the police officer.

Article 41(5) of the Service Regulation of the Police sets out that it is prohibited to use the handcuffs in a way that unnecessarily causes suffering or harm, or is degrading due to its nature.

According to Article 41(6)(a) of the Service Regulation of the Police, the acting police officer shall choose the method of handcuffing that is the most expedient under the given circumstances.

According to Article 41(4), the various methods of cuffing are the following:

- cuffing the hands of two or more persons together;
- handcuffing a person in front or behind their back;
- if justified, cuffing the legs of a person together;
- if justified, cuffing a person to an object.

Handcuffing a person behind their back may be expedient if the handcuffs had to be applied by using physical force, or when there is a well-founded reason to believe that the person subject to the measure will attack the police officer or will escape, or if the police officer is alone when taking the concerned person into custody (except if the hands of the person subject to the measure are handcuffed to a waistband designed for that purpose). **Using leg irons, or cuffing a person's hands and legs simultaneously** is justified if it may be presumed that the person concerned may harm themselves or others even when handcuffed, or when it is justified by the nature of the underlying criminal offence. Police officers may **handcuff someone to an object** if preventing the concerned person from inflicting self-harm, attacking police officers or absconding, breaking their resistance, or concluding the measure successfully is not possible in any other way (but it is prohibited to do so while the person is transferred in a vehicle). Police officers may apply the handcuffs with the person concerned lying on the ground, or by pushing the person against the wall or against another object if that is necessary due to the active resistance of, or an attack or violent behaviour by the person concerned, or to prevent that these occur. Police officers may not handcuff themselves to another person in the course of taking a police measure.[23]

Almost all of the interviewees were of the view that according to their recent experiences, handcuffs and handcuffs with leading straps are the most commonly used means of restraint, with the

[22] About the procedure followed by "a police officer proceeding alone", see the judgment of the Curia in detail in Chapter 1.5. of the present research report.
[23] Service Regulation of the Police, Article 41

defendants being handcuffed in front. The use of leg irons has become significantly less common in their view.

According to Article 41(3) of the Service Regulation of the Police, the measure of handcuffing shall be performed by using designated handcuffs, but **if those are not available** or fail to work, police officers may use any other means suitable for achieving the aim of the handcuffing. However, it is prohibited for them to use thin cords made out of metal or plastic, or any other means that can harm the person handcuffed.

It shall be noted that the **Service Regulation of the Police was amended** as of 1 December 2015, and that has **brought along significant changes in the practice** in the view of many of the stakeholders interviewed. Before the amendment, Article 41(1) of the Service Regulation of the Police set out that "the use of handcuffs is justified in the instances established by Article 48 of the Police Act, particularly against persons who […]", while according to the text of the provision as currently in force, "the use of handcuffs may be justified exclusively in the instances established by Article 48 of the Police Act, when the conditions for applying means of restraint as set out in the Police Act and [in the Service Regulation of the Police] are met, particularly against persons who […]".

Several interviewed stakeholders were of the view that the above change in the law can be considered a clearly positive development. However, one of the interviewees added that the former rules, prescribing obligatory handcuffing, *"remained in the minds of the officers"*. The reason for that in our view are the provisions of the Service Regulation of the Police on escorts presented earlier, and some further legal rules may also strengthen this approach. For example, Article 38 of the Service Regulation of the Police sets out among the general rules that when police officers use restraints in the course of an escort (solely for the purposes of executing the escort), they have to compile a written report after concluding the measure, with the only exception being the use of handcuffs.

The scope of persons who may be arrested by the police and may be taken into police custody is established by the Police Act.[24] Accordingly, **police shall arrest and** present to the competent authority (i.e. **take into police custody**) persons

- who are caught in the act of committing an intentional criminal offence;
- who are subject to an arrest warrant, an international arrest warrant, or a European arrest warrant;
- whose 72-hour detention, pre-trial detention, mandatory pre-trial psychiatric treatment, or the observation of their mental state was ordered;
- who absconded from detention (e.g. 72-hour detention, pre-trial detention, temporary extradition custody, extradition custody, imprisonment, confinement, etc.), or failed to return to a place of detention after allowed to leave temporarily; who violated the rules of criminal surveillance prescribing that the defendant shall not leave a designated area, an apartment, other premises or an institution or the adjacent area, or violated the rules of a no-contact order; and who evaded mandatory pre-trial psychiatric treatment, the observation of their mental state, mandatory psychiatric treatment or placement in a juvenile reformatory;
- whose police custody is ordered on the basis that conditions established by an Act of Parliament are met;
- who resides in the territory of the country unlawfully;
- and whose custody is necessary on the basis of Article 38(5) of Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and the Petty Offence Confinement.[25]

In addition to that, police **may take into police custody** persons

[24] Police Act, Article 33
[25] Police Act, Article 33(1)(a)-(g)

- who are not able to identify themselves adequately upon the request of the police, or refuse to identify themselves;
- who are suspected of having committed a criminal offence;
- whose urine sample shall be taken due to the suspicion that a criminal offence was committed, or in order to prove that a petty offence or a violation of road traffic rules punishable by an administrative fine was committed, or whose blood sample shall be taken in order examine their blood alcohol level, or another kind of sample shall be taken from them in a non-surgical way;
- who leave parental custody, guardianship custody, their foster parents or a children's home without permission, and children who were ordered to be sought out and taken into custody in the course of a judicial executory procedure aimed at handing over the child;
- who violate the rules of probation as established by a separate Act of Parliament and falling under the authority of the police;
- who continue to commit a petty offence also after requested to stop, against whom the procedure may be conducted instantly, from whom physical evidence shall be obtained, or from whom a confiscated object shall be withheld;
- against whom a temporary preventive no-contact order was issued.[26]

Most items in the list above are clear, but Article 33(2)(f) of the Police Act, i.e. the provision about the instances when the person concerned continues to commit a petty offence also after requested to stop, and when **the procedure** against the concerned person **may be conducted "instantly",** may require further explanation.

Article 73(1) of Act II of 2012 on Petty Offences, on the Petty Offence Procedure, and the Petty Offence Registry System (hereafter: Petty Offence Act) sets out that in the case of petty offences punishable with confinement (e.g. breach of domicile, disorderly conduct, rowdiness, petty offence against property, unauthorized hunting), the police may take into petty offence custody the perpetrator who is caught in the act in order to conduct a so-called fast-track court procedure. It is also set out that the same rules shall be applied when the perpetrator who absconded from the scene of the petty offence is caught by the police within 48 hours from the commission of the offence. However, on the scene of the offence the police officer cannot know whether the conditions for bringing the person concerned before the judge instantly are met or not. This can be decided on the basis of a declaration by the court, but acquiring this is usually not possible on the scene.

An example for the instances when procedure may be conducted instantly has been introduced by an amendment of the Petty Offence Act, which entered into force on 15 October 2018 and criminalised homelessness by setting out that residing on public premises habitually is a petty offence.[27] When police officers take measures against homeless persons on the basis of this new provision, they perform an ID check as a first step, and then order the homeless person to leave the given location. If the person concerned does not comply with the order, or receives three related warnings within a 90-day period, they are taken into police custody and a court procedure is launched against them. The use of restraints, especially the use of handcuffs may lead to paradox situations in these instances. For example, it occurred in a case that a homeless person was taken away in handcuffs from the location he was instructed to leave, and the use of handcuffs was justified by preventing an escape. However, this could not have been the real and rational reason for the handcuffing, because the aim of the whole measure was to make the homeless person leave the given location.

Case study: taking a homeless man into police custody

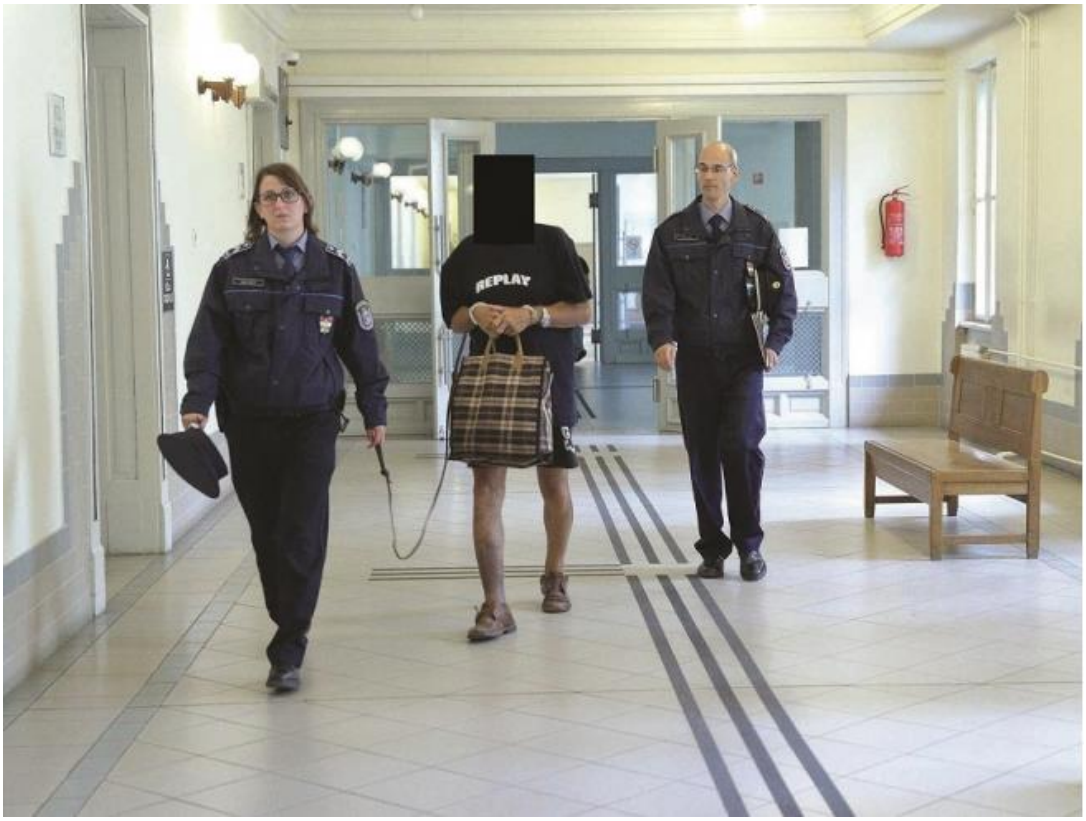
After the respective amendment came into force, the police took measures against homeless persons in several instances on the basis of the new provision. On 16 October 2018, in the city of Gödöllő, a

[26] Police Act, Article 33(2)(a)–(g)
[27] Petty Offence Act, Article 178/B

man sitting on a bench – after it was established that he was homeless, which he did not deny – was instructed to leave the location, and was subsequently taken to the police station, where he was taken into petty offence custody, and then he was escorted to the local court in Gödöllő in handcuffs. In the fast-track court procedure conducted in his case, the police asked for a 30-day confinement as a sanction, but the court clerk proceeding in the case only gave the man a warning, which was accepted by both parties, so no appeal was filed in the case.

Police officers regularly use handcuffs against homeless persons when taking them into custody and when taking them to court, even if they are cooperating.

In several similar cases the court heard the homeless "perpetrators" via a video connection, in spite of the requests of the defence for a personal hearing. The courts argued that the reason for the remote video hearing was that they wanted to protect the dignity of the accused persons, since their dignity would have been violated if they would have been escorted to the court from the police interrogation room on a leading strap. However, the "perpetrators" were sitting just a few meters away, in another courtroom, so the above reasoning is false. Furthermore, it shall be noted that the attorneys of the persons subject to the procedure asked the court multiple times to allow their clients to participate at the hearing personally, but the court clerks proceeding in the case rejected these requests without any reasoning.



A man who violated road traffic rules is being brought before a judge. (Source: http://www.police.hu/hu/hirek-es-informaciok/legfrissebb-hireink/zsaru-magazin/biro-elott-is-helytallnak.)

The practitioners interviewed in the present research reported that the practice of the police concerning the use of handcuffs seems to have improved in the past years. Earlier, on the basis of an order issued by the National Police Chief,[28] handcuffing was quite common in the course of police measures and arrests. According to the interviews, this practice has improved a bit. However, the use of restraints still depends many times on the defendant's social status. For example, it is more likely for a homeless defendant to be handcuffed, even for committing a petty offence, than for a well-

[28] Interview with a defence counsel, 28 January 2019

dressed upper-middle class woman. At the same time, some respondents noted that police officers use – and remove – handcuffs often without performing any balancing exercise.

This was the case for a homeless person who was handcuffed by the proceeding police officer and was kept in handcuffs for 72 hours in the police cell in spite of not showing any kind of resistance and in spite of cooperating the whole time.[29] The judgment issued in the case by the Curia (i.e. the Supreme Court, the highest judicial forum in Hungary)[30] emphasized that handcuffing is unnecessary when the person subject to the procedure does not show any sign of trying to abscond or resist.

Another example for the arbitrary and disproportionate use of handcuffs in the course of a police measure is the case in which an over 60-year-old man was stopped by the police because he was riding his bicycle on the pavement instead of the road. This happened in a small town, where there was no bicycle lane established, and it was common knowledge that cycling on the road is dangerous. After the man was stopped, he and the police officers started arguing, and when he started to push his bicycle in order to lean it against a fence five meters away, the police officers handcuffed him, claiming that there was a risk of absconding. The man was left handcuffed for hours, even after he started to feel ill and had to be taken to a doctor. He was kept handcuffed in the medical waiting room as well, which was witnessed by his acquaintances. In this case, the court had to rule upon a complaint that the restraints were used in an unnecessary and disproportionate manner,[31] and concluded that the two police officers had not disclosed any such circumstance that would have justified the use of handcuffs: the police officers reported that *"while being escorted [to the doctor], the complainant, who was cooperating, was handcuffed"*, but at the doctor he did not show any kind resistance and did not display any aggressive behaviour. Furthermore, the Curia stated that *"the statement by one of the police officers, saying that 'due to his age the man could not have attacked us, younger persons, with adequate efficiency', also shows that it is improbable that the complainant was attacking the police officers*".[32] In this case, the provisions of the Directive on the Presumption of Innocence were clearly violated. Many witnessed the scene, which occurred in a small town where people know each other, and so the police measure may have gravely violated the concerned person's right to human dignity.

2.1.1.2. Excise officers

Excise officers carry out various law enforcement tasks of the National Tax and Customs Administration, including tasks at border crossings, and tasks related to crime prevention, petty offences, customs, etc. Excise officers are entitled to wear uniform and a service gun.[33]

Excise officers, just as police officers, are entitled to take persons into custody. Accordingly, excise officers may arrest and present to the competent authority (i.e. take into custody) those who were caught in the act of committing a criminal offence, whose custody has been ordered, or who are suspected of committing a criminal offence falling under the jurisdiction of the National Tax and Customs Administration's investigating authority.[34]

The National Tax and Customs Administration Act and Act CXX of 2012 on the Activities of Certain Persons Carrying out Law Enforcement Tasks and on the Amendment of Certain Acts in order to Counter Truancy also contain provisions regarding police custody.

Article 36/A(4) of the National Tax and Customs Administration Act pertains to ID checks, and says that when a person refuses to identify themselves, they may have held up in order to establish their

[29] https://index.hu/belfold/2017/09/05/kuria_bilincs_rendorseg_hajlektalan/
[30] For more information, see: https://www.helsinki.hu/19195/.
[31] Hajdúszoboszló Police Headquarters, Decision no. 09050-105/15-43/2015.P.
[32] Hajdúszoboszló Police Headquarters, Decision no. 09050-105/15-43/2015.P.
[33] National Tax and Customs Administration Act, Article 35(1)
[34] National Tax and Customs Administration Act, Article36/D (1)–(2)

identity, and if their identity cannot be established, they may be taken into police custody, or, in the case of foreign nationals not having Hungarian citizenship, they may be brought before the alien policing authority.

Article 36/D of the National Tax and Customs Administration Act practically repeats the provisions of the Police Act on police custody, but of course in a way that takes into account the differences between the competences of excise officers and police officers.

Article 41(1) of the National Tax and Customs Administration Act sets out the instances when excise officers may use handcuffs identically to Article 48 of the Police Act, providing that handcuffs may be used **to prevent** the person whose liberty the officers wish to restrict or whose liberty is already restricted **from attacking, absconding, or inflicting self-harm, or to break the concerned person's resistance**.

2.1.1.3. Persons carrying out law enforcement tasks

According to Article 20(1) of Act CXX of 2012 on the Activities of Certain Persons Carrying out Law Enforcement Tasks and on the Amendment of Certain Acts in order to Counter Truancy, **nature reserve rangers, members of the forestry authority performing law enforcement tasks, fishing guards, law enforcement officers of the local government, nature reserve rangers of the local government and countryside rangers** may take the perpetrator caught in the act into custody if a criminal offence or a petty offence punishable also by petty offence confinement has been committed, and may impose an on-the-spot fine for the latter. If the person concerned resists, the actors above – except for the nature reserve rangers – have to ask for help from the police, but they **may apply** physical force, chemical means and **handcuffs** while taking the person into custody in order **to break the concerned person's resistance or prevent absconding**.[35] They are also **entitled to hold up** persons caught in the act **for a maximum of two hours**.[36]

Decree 86/2012. (XII. 28.) of the Minister of Interior on Requesting, Receiving and Returning Means of Restraint Used by Persons Conducting Law Enforcement Tasks and Assisting Guards, on the Method of Reimbursement, and on the Detailed Rules on the Types, Kinds and Application of Means of Restraint, on Reporting, and on the Order of Investigating (hereafter: Decree 86/2012. of the Minister of Interior) sets out the rules of handcuffing very similarly to the Service Regulation of the Police, so we only describe the differences below.

Article 8(3) of Decree 86/2012. of the Minister of Interior contains a provision similar to that in Article 41(4) of the Service Regulation of the Police in terms of the use of physical restraints, but it does not allow for cuffing the legs of a person to each other.

Furthermore, according to Decree 86/2012. of the Minister of Interior, handcuffing a person behind their back "may be expedient" not only in the instances established by the Service Regulation of the Police, but also if the person concerned is transported in a vehicle.

[35] Act CXX of 2012 on the Activities of Certain Persons Carrying out Law Enforcement Tasks and on the Amendment of Certain Acts in order to Counter Truancy, Article 20(4)

[36] Act CXX of 2012 on the Activities of Certain Persons Carrying out Law Enforcement Tasks and on the Amendment of Certain Acts in order to Counter Truancy, Article 16(1)(b)

2.1.2. Custody and escort of persons deprived of their liberty, and the use of restraints in courtrooms

In the context of the present research, the term **"escort"** shall mean the so-called **outside escort**, i.e. when the person deprived of their liberty is escorted somewhere outside the place of detention (police cell/jail or penitentiary institution). In practice, this mostly happens when the defendant is escorted to a trial hearing.

The **president of the** proceeding **judicial council** may also decide on the use of restraining measures in the course of trial hearings. In the case of defendants in pre-trial detention, the president of the judicial council may instruct the police officer or prison guard escorting the detainee to remove the detainee's handcuffs in the courtroom, with a view to the pre-trial detainee's criminal record, the criminal offence they are charged with, and their security risk classification. If the president of the judicial council orders that the means of restraint restricting the movements of the pre-trial detainee shall be removed, the prison guard and the police officer performing the escort shall comply with this order.

However, according to the experts interviewed by the HHC, the handcuffs are often not removed adequately: the officers do not remove the handcuffs fully, but remove it only from one hand of the detainee, meaning that the other half of the handcuff remains attached to the other wrist of the detainee.

Pre-trial detainees **who are exceptionally dangerous or are under enhanced supervision**, and have a double handcuff on them, are an exception from the above rule: in their case, handcuffs cannot be removed for security reasons. However, the main handcuff shall be applied even in their case in a way that it allows the defendants to write.

Furthermore, according to one of the interviewees it causes a lot of problems in practice that **judges with a civil law docket** have to apply the Police Act when adjudicating the lawfulness of the use of handcuffs, but these judges, who do not deal with criminal cases, are not familiar with the Police Act to the extent necessary.[37]

2.1.2.1. Police escort

According to the Police Cell Guidelines, escorts shall be performed exclusively on the basis of a specific escort order.[38] The police chief issuing the escort order, the police chief despatching the detainee, and the police officer performing the escort are responsible also individually for establishing a secure environment for the escort, for guaranteeing the necessary conditions of that, and for executing the escort professionally.[39] Only professional service members of the police may be appointed to perform escorts.

If it is necessary to contact the state authorities of another country in order to execute an escort order which provides for an escort from Hungary to abroad or from abroad to Hungary, the manner of executing the escort shall be coordinated with the head of the Centre for International Cooperation in Criminal Matters.[40]

[37] Interview with a defence counsel, 28 January 2019
[38] Police Cell Guidelines, Section 118
[39] Police Cell Guidelines, Section 116
[40] Service Regulation of the Police, Article 76(4)

The gear to be used by the escorting police officer is regulated by the Service Regulation of the Police,[41] while, as described above, the Police Acts sets out the means of restraints that may be used by the proceeding police officer. Physical force may be used to break the concerned person's resistance, or to force them to act or stop a certain behaviour, while handcuffing may be used to prevent inflicting self-harm, attacking or absconding, and to break their resistance (see below). The Police Act lists further restraining measures (using a service dog, roadblock, etc.), but these are not significant in terms of the subject of the present research, because they cannot be used for a prolonged period of time, they are typically not used when taking someone into police custody, and do not influence the perception about the defendant's innocence.

In addition, Article 76 of the Service Regulation of the Police also contains rules on performing escorts. According to Article 76(2), an escort, depending on the manner of its execution, may be an "**ordinary"** escort or a "**strengthened"** escort. An ordinary escort is carried out in cases in which, based on the already available information, there is no reason to believe that the person would try to escape or attack the police officers. In situations where the aforementioned risks exist or escorting the person is carried out under difficult circumstances, a strengthened escort is applied.

According to Article 76(5) of the Service Regulation of the Police, the escorted person shall receive instructions as to their expected behaviour while being escorted and a warning that restraining measures will be applied in case of an escape, an attack, or if they resist the police officer escorting them. In addition, the above provision states that the escorted person **must be handcuffed** when the person's **dangerousness** justifies it. The latter provision leads to significant problems in the practice (see below), and raises concerns with regard to the constitutionality of the level of regulation as well. The Police Act identifies the four instances when restraints may be used on the level of an Act of Parliament, and this exhaustive list cannot be extended. However, the Service Regulation of the Police, which is a ministerial decree, thus, a lower level legal norm, includes a way more abstract term when referring to the "dangerousness" of the person concerned, an instance which is not listed by Article 48 of the Police Act as a basis for using handcuffs. Accordingly, the above provision of the Service Regulation of the Police may give rise to serious abuses. Furthermore, regulating the restriction of personal liberty on the level of a ministerial decree violates Article I(3) of the Fundamental Law, which sets out that rules for fundamental rights and obligations shall be laid down in an Act of Parliament.

As far as the so-called "outside escort" is concerned, the rules included in the Police Cell Guidelines shall be also mentioned.[42] In the course of an **ordinary** escort, the number of police officers performing the escort shall be at least one higher than the number of detainees escorted if the escort is not performed by using a patrol wagon specifically designed for transferring detainees. Furthermore, the Police Cell Guidelines sets out that **breaks** necessary in the course of an escort may only be taken in police buildings, typically in the police holding cell for those in police custody. While the handcuffed detainee is being escorted, the handcuffs may not be removed. The handcuffs may be temporarily removed for the purposes of medical examinations or official proceedings, but only for the period while those take place. During this period, the police officer performing the escort shall be prepared to prevent any so-called "extraordinary event" (e.g. an extraordinary event threatening the life or personal integrity of a person, threatening the security of guarding, or requiring the help of another police officer).[43]

Courts, and especially the **Curia**, have an important role in shaping the practice regarding the use of handcuffs.

[41] According to Section 117 of the Police Cell Guidelines, the police officer performing the escort shall do so by using the gear standardised for that, a strap attached to the handcuffs, and – if prescribed by the escort order – using a waistband worn by the detainee to which the handcuffs are attached. The police officers performing the escort may only have such small objects on them that do not hinder their movements.

[42] Police Cell Guidelines, Sections 133–134, 138, and 140

[43] Police Cell Guidelines, Section 99

As far as handcuffing by the police is concerned, the Curia[44] highlighted that "in terms of establishing the lawfulness of handcuffing, it is not sufficient to merely argue that there a risk of absconding with regard to that specific person (…), but it is also necessary to demonstrate **all specific and individual circumstances** in the given case **which can duly justify** the use of handcuffs". Thus, **the use of handcuffs should be decided on the basis of a case-by-case assessment and with a due regard to all circumstances of the case, but this rarely happens so in practice.** Several court decisions have examined the issue of the behaviour of the defendant, and whether and when their behaviour can justify the use of handcuffs.

In one of its cases[45] the Curia had to decide whether it is still lawful to use handcuffs to exclude the possibility of absconding if the person subject to the measure was cooperative, with a view also to the fact that the police officer was proceeding alone, i.e. was alone on the scene when he took the person concerned into police custody. The plaintiff in the case was cooperating, and when he was asked by the police to show his ID, he returned to his apartment in order to get his papers, where he was handcuffed. Nothing indicated that he wanted to escape. The Curia argued that the use of handcuffs "cannot be justified merely by the remote possibility of absconding". The court added that in order to claim that there was a risk of absconding that had to be prevented, "the person's conduct must be such that it can only be prevented by using handcuffs". The Curia concluded that since "under Article 16(1) of the Police Act police officers may apply restraining measures only if the conditions established in the Police Act are met, and with a view to the principle of proportionality, if there has been no compelling circumstance in the case as per Article 48 of the Police Act, the fact that there was only one police officer on site cannot be the mere ground of the use of handcuffs."

In another case[46] the Curia ruled that the lawfulness of the use of handcuffs by the police shall be adjudicated not on the basis of Decree 6/1996. (VII. 12.) of the Minister of Justice on the Rules of Executing Imprisonment and Pre-Trial Detention, pertaining to the penitentiary system, but on the basis of the provisions included in the Police Act and the Service Regulation of the Police. Assessing the lawfulness of handcuffing shall be based on the individual circumstances of the case, and it shall be assessed with a view to the person affected by the handcuffing and the procedural act in question whether there is any special reason to keep the person concerned in handcuffs.

2.1.2.2. Transfer and escort of inmates

The general rules on how professional service members of the penitentiary service may use means of restraint in the course of performing their duties are included in the Act on the Penitentiary System. According to this law, coercive measures may only be applied for the time period and to the extent necessary in order to achieve the goal of the measure, and only those coercive measures may be applied that are necessary in order to achieve the goal of the measure.[47] The Act on the Penitentiary System sets out among the general rules that restraining measures may be applied against the detainees if their conduct infringes or threatens the order or security of the prison facility; if they infringe or threaten the life, physical integrity or personal liberty of another person; or if the use of restraining measures is necessary in order to prevent a criminal offence.[48]

[44] Kfv.III.37.713/2015.
[45] Kfv.III.38.129/2016/4.
[46] Kfv.III.37.713/2015.; Leading Decision in Administrative Law Matters no. 2/2017.
[47] Act on the Penitentiary System, Article 15(1a)
[48] Act on the Penitentiary System, Article 17(1)

With regard to the use of **handcuffs**, the Act on the Penitentiary System prescribes that handcuffs can only be applied to prevent the detainee from attacking someone, absconding, leaving without permission or inflicting self-harm, or to break their resistance against a lawful measure.[49]

The Prison Escort Guidelines stipulate the rules for escorting prisoners outside the detention facility. Section 3 of the Prison Escort Guidelines states the following:

> *"Organizing and executing the transferring and escorting of detainees [outside the penitentiary] is one of the riskiest tasks among the duties of the penitentiary service, and shall be handled as a high priority task in order to prevent any extraordinary event. Executing this task securely and without any extraordinary event is an important aspect of the successful operation of penitentiary institutions and how their performance as an institution is assessed."*

This paragraph in itself shows that the rules on escorting persons detained in penitentiary institutions are stricter than the rules pertaining to police escorts. Furthermore, it is a significant difference that penitentiary institutions have considerably more information on the detainees than the police (on the criminal offence or offences committed, the personal and environmental risks, etc.).

Transferring and escorting detainees outside the penitentiary institution may occur in order to bring them

- **to court, or to a place designated by the court** (both in criminal and civil law cases, and even to on-site trial hearings);
- to the prosecutors' office (for interrogations, hearings, carrying out investigative acts, getting finger- and palm prints, having their picture taken, providing a DNA sample, etc.);
- to a notary public (to take care of inheritance issues, etc.);
- to the funeral of a relative (to practice their right to pay their respects);
- to visit a severely ill relative;
- to a medical specialist, a civil medical facility, or for other medical reason (e.g. for forensic medical examination);
- to an educational institution (in order to take an exam);
- to another location or institution (for an individual reason).[50]

The Prison Escort Guidelines set out as a general rule that the transfer and escort shall be performed **by at least two prison guards** (professional service members). If that is not possible, or it is not required by all the circumstances of the escort and by the security risk posed by the detainee, the person chosen to perform the transfer and escort shall be capable of carrying out the transfer alone.[51]

The transfer and escort shall be **organised** by the head or deputy head of the penitentiary's security department, or, outside office hours, by the security officer on duty.

Section 14 of the Prison Escort Guidelines lists the factors that must be taken into account while organising the transfer and escort of detainees. These factors are the following:

- the number of prison guards performing the escort and their aptness for the task;
- the bodily and physical characteristics of the guard(s) performing the escort and their familiarity with self-defence;
- the location where the detainee has to be escorted and its characteristics with a view to security and guarding;
- the distance of the location where the detainee has to be escorted from the penitentiary institution (cf. planning for technical breaks, preparing a transport plan and a seating order);
- the prospective waiting time before and after transferring and escorting the detainee;

[49] Act on the Penitentiary System, Article 19(1)
[50] Prison Escort Guidelines, Section 4
[51] Prison Escort Guidelines, Section 5

- the bodily and physical characteristics of the detainee, their familiarity with martial arts or any other sports requiring physical strength, along with their military background and training or their background and training with weapons, if any;
- the medical state of the detainee and their state of mind;
- the criminal offence the defendant is charged with or what they committed;
- the severity and degree of the prospective punishment (what kind of behavioural change may a condemning judgment cause in the case of the given detainee, and whether that may lead to an extraordinary event);
- the criminal background of the detainee (the degree of recidivism) and their conduct in the course of their earlier detention;
- the detainee's security risk classification (if this has not been established yet, the detainee shall be treated as posing a medium security risk) and their security regime classification;
- if they have special information about a detainee in the penitentiary file, the part of that information that is relevant for performing the escort;
- contact with third persons and that being restricted (this information is included in the escort order that is handed over to the guard performing the escort);
- the prospective number and mood of relatives (close and more distant relatives) showing up;
- the interest and presence of the media;
- whether there are premises at the location where the detainee is escorted to that are suitable for placing the detainee and are also adequate from a security aspect, even for a longer waiting period;
- the need to comply with the rules of separation (e.g. separating co- perpetrators and men and women, and taking this into account when preparing the transport plan);
- **the use of physical restraints on the basis of the detainee's dangerousness, and the necessity and possibility of using service dogs**;
- the degree of help received from cooperating authorities, while appointing the contact persons;
- whether the vehicle(s) used for transport are secure, operational, and their communications systems work;
- other tasks of the penitentiary institution that influence performing the escort;
- extreme weather conditions (e.g. if there is a heatwave alert, water shall be provided).

Referring to the **dangerousness** of the detainee as a basis for using restraints gives rise to similar problems as those explained in relation to Article 76(5) of the Service Regulation Act.[52] First, this wording is not precise and so may give rise to abuses, and second, it does not comply with the constitutional requirement that the rules for fundamental rights and obligations shall be laid down in an Act of Parliament.

According to the Prison Escort Guidelines, before the transfer and escort begins, the detainee shall receive instructions pertaining to the escort,[53] shall be **informed** about the rules of conduct to be complied with, and warned about the consequences of non-compliance. Detainees shall also be informed that restraining measure will be applied against them if necessary, and about the rules of contact with third persons.[54] Detainee shall verify it with their **signature** that they received the above instructions.[55]

[52] Article 76(5) of the Service Regulation Act sets out that "the escorted person shall receive instructions as to their expected behaviour while being escorted and a warning that restraining measures will be applied in case of an escape, an attack, or if they resist the police officer escorting them. In addition, the escorted person must be handcuffed if the person's dangerousness justifies it. If the escorting officer notices a circumstance that threatens the security of the escort, they shall approach the nearest police body without delay."

[53] Prison Escort Guidelines, Section 30

[54] Prison Escort Guidelines, Section 33

[55] Prison Escort Guidelines, Section 34

According to the Prison Escort Guidelines, physical restraints shall be applied after a body search. The guards shall apply the waistband first, then the handcuffs, the leg irons, and, finally, the handcuffs with leading straps.[56]

Chapter IV of the Prison Escort Guidelines specifically regulates how detainees shall be escorted to trial hearings and prosecutorial hearings. It sets out that the guards and the detainee shall primarily wait in a separate room (a designated guarding or waiting room), or far away from other people, or even in the vehicle used to transport the detainee.

Section 108 of the Prison Escort Guidelines sets out that if the judge gives an instruction to ease the measures restricting the movements of the defendant, that shall always be included in the escort order. Furthermore, according to the Prison Escort Guidelines, "if the judge orders the removal of handcuffs with leading straps [i.e. handcuffs with a strap attached to them, the other end of which is held by the guard] and of the leg irons, they shall be politely informed that their instructions cannot be complied with due to Article 54(4) of Decree 16/2014. (XII. 19.) of the Minister of Justice on the Detailed Rules of Executing Imprisonment, Confinement, Pre-Trial Detention and Confinement Replacing a Disciplinary Fine".

The Prison Escort Guidelines also establish the "optimal seating order" in courtrooms for trial hearings:

- guards shall sit behind the detainee, sideways from them;
- or separately from the detainee (on a chair) and turning away from the detainee in a way that the guard can see the areas of the courtroom both in front of and behind the detainee;
- and if none of the above is possible, guards shall sit next to the detainee, keeping an adequate distance from them, in a way that the detainee is not on that side of the guard where their gun is kept, that the guard performing the guarding and the escort is turned a bit towards the detainee, and that they are positioned as separately from non-detained co-perpetrators as possible, keeping an adequate distance from them.

Interestingly, the Prison Escort Guidelines include provisions in relation to cases the **media** is interested in. Accordingly, Section 124 of the Prison Escort Guidelines sets out that *"if the case of the escorted detainee received wide media coverage, or the case deserves special attention, and the press is present at the trial hearing, the guard performing the escort shall report this to their supervisor immediately".* Section 14 of the Prison Escort Guidelines, referred to earlier, also lists media attention and the presence of the press as one of the factors to be taken into account when a detainee is transported and escorted.

According to the Prison Escort Guidelines, the rules on using physical restraints are the same in the in other scenarios of escorting detainees as well, with the additional rule that when the detainee is escorted to a medical facility, the restraints may have to be removed in certain instances (e.g. for surgeries and for certain medical examinations).[57] With regard to escorting the detainee to a medical facility, Section 153 of the Prison Escort Guidelines sets out that "if the handcuffs have to be removed in order to carry out the medical examinations, the guard performing the escort may do so only after cuffing the detainee to an object or applying leg irons and/or rapid handcuffs."

It shall be noted that based on the interviews with experts, **in practice, defendants are almost always handcuffed in the course of escorts**.

Stakeholders (judges, attorneys) were unanimously of the view that in most cases, the judge orders the removal of the handcuffs at the beginning of the trial hearing, even if that is not requested by the defence. (It is important to note that the judge is not entitled to order the leg irons to be removed, but only the handcuffs from the wrists.) When the judge fails to do so on his or her own initiative, they

[56] Prison Escort Guidelines, Section 42
[57] Prison Escort Guidelines, Section 150

usually order the removal of the handcuffs anyway upon the request of the defence counsel. The interviewees were of the view that judges never refuse the respective requests of the defence. Only one interviewee reported that he had a different experience: at some trial hearings in the countryside, it occurred that the judge refused the request to order the removal of the handcuffs, even though the defendant in the case was charged with a non-violent criminal offence.

The practice described above may be considered favourable, since it shows that courts respect the presumption of innocence in this regard. However, these kinds of automatisms generate problems. The fact that defendants always show up in handcuffs at trial hearings, irrespective of the severity of the charges, the defendant's personality and their other characteristics, and that judges are aware that handcuffs are used practically without any individual assessment and even in cases when it is not necessary may result that judges also order the removal of the handcuffs practically in an automatic manner, and often without acquiring the necessary information in advance. This practice may lead to serious consequences.

As a result of the automatic use of handcuffs, judges generally presume that the handcuffs are unnecessary, and they **often fail to get information in advance or to ask for information from the guard performing the escort** about the dangerousness of the defendant.

A case that almost turned into tragedy is an example for the above.[58] In the case, the defendant participated at the trial hearing with his handcuffs removed, and after the condemning judgment was announced, he started to grapple with the guards when they tried to put his handcuffs back on, acquired the gun of one of the guards, and escaped the courtroom with leg irons on him. In the meantime, the judge alerted the court's security service, but the fleeing defendant took a member of the security service hostage. He managed to leave the building with the hostage, and on the street forced a car to stop with his gun. After that, he released the hostage, got into the car, and left the scene with the car, with the driver in it. Finally, the police managed to force the car down from the road, and managed to capture the fugitive after a small gunfight. Nobody died, but the guard escorting the detainee got severely injured, and the injuries suffered by the defendant were life-threatening.

In relation to the case described above, the National Penitentiary Headquarters claimed that in the course of the court proceedings guards cannot refuse to comply with the orders of the judge, and so the guard cannot be called to account because of what happened.[59] This case also showed that the mutual cooperation between penitentiary institutions and the courts is not satisfactory.

Furthermore, the case above also shows the problems emerging in relation to the state of the staff of penitentiary institutions. The penitentiary system is seriously understaffed, and the interviewees[60] reported that it occurs that detainees are not escorted outside the detention facility by professional, trained guards, but by employees who originally have an entirely different job description. Interviewees mentioned IT specialists, stock-keepers and chefs as employees who have been seen escorting detainees.

According to the judge interviewed in the present research, as a result of the case described above, the practice of removing handcuffs has become significantly stricter.[61] The judge reported that guards escorting the defendants refuse to remove the handcuffs while citing an internal order, or are willing to remove the handcuffs only after a lengthy argument with the judge. However, this practice is

[58] See e.g.: https://index.hu/belfold/2019/02/15/fegyveres_rab_szokott_meg_a_fovarosi_torvenyszekrol/.
[59] See e.g.: https://444.hu/2019/02/15/a-biro-engedelyezte-hogy-vegyek-le-a-bilincset-a-fovarosi-torvenyszekrol-fegyverrel-elszoko-rab-kezerol
[60] Interview with a judge, 11 March 2019. At a conference organised by the HHC on 14 June 2019 in Budapest, a participant who worked in the penitentiary system earlier confirmed the problems related to the staff of the penitentiaries, and the staff performing the escorts in particular.
[61] Interview with a judge, 11 March 2019

unlawful, since the internal order should comply with higher level laws, but in this case this requirement is not complied with.

Furthermore, it is an explicit violation of the relevant provisions of the Directive on the Presumption of Innocence if defendants are escorted and transported back to the penitentiary institution in handcuffs after an exonerating judgment has been issued in their case.

It is not only the use of restraints that may influence the perception about the defendant's innocence, but the manner of the escort as well. If the defendant is escorted by the "commando" team of the penitentiary institution, dressed in black, which of course suggests that the defendant is dangerous. Of course, if the defendant is classified as posing a high security risk, such an escort team may be justified. However, some of the interviewees recalled cases where it was clearly unnecessary for the defendant to be escorted by the "commando" team to the trial hearing, because nor the characteristics of the defendant, neither the nature of the underlying petty offence or criminal offence warranted that. The judges and defence counsels interviewed mostly cited the demonstration of power and intimidation as reasons for this practice. However, in order to get a full picture, it shall be added that they also reported an instance when the only reason for having a "commando" team as an escort was the fact that the given penitentiary institution was understaffed, and there was no one else available to perform the escort.

2.1.2.3. Remote hearing as a possibility to avoid an escort

In addition, the possibility of a **remote hearing** has to be mentioned here, i.e. the possibility that the concerned person participates at the procedural act via a telecommunication device. (This opportunity was established by the new CCP.) The number of remote hearings has been increasing constantly, and they have many advantages: they save time and money. Remote hearings may have special significance in the case of detainees posing a high security risk, since a remote hearing means that the risk that comes with them being transported is evaded. Furthermore, remote hearings allow for hearings across borders, or for protected persons or victims requiring special treatment, such as juveniles, to testify without being disturbed, far away from the accused person, in a separate room. As a further practical advantage, defence counsels may decide at which of the locations connected by the telecommunication device they will participate at the hearing. This is an important advantage because in this way it can be avoided for example that the defence counsel has to travel hundreds of kilometres to participate at a hearing.

Furthermore, remote hearings make it possible to fully comply with the Directive on the Presumption of Innocence. In the case of trial hearings performed via a telecommunication device, there is no need to apply means of restraint, and it is not inevitable to surround the defendant with guards, and so there is a higher chance that the principle of the presumption of innocence is not violated by the manner in which the defendant is presented. However, remote hearings also give rise to problems. They may violate other fundamental principles, such as the principle of an adversarial proceeding and the right to a lawyer. Therefore, in the case of remote hearings it is necessary to strike a right balance between respecting the presumption of innocence and other procedural rights

2.1.2.4. Excise officers

The detailed rules of how excise officers shall **guard and escort** persons arrested, taken into police custody, taken into 72-hour detention, or otherwise detained are included in Article 20 of Decree 20/2018. of the Minister of Finances.

The escort of detainees is performed by the National Tax and Customs Administration's Deployment Directorate upon the request of the unit of the National Tax and Customs Administration ordering the measure. An order to guard or escort a detainee outside the detention facility may be issued by

a) the head of investigative authority entitled to order the measure,
b) a supervisor entitled to issue decisions in a criminal case,
c) a court with the adequate authority and competence, or
d) a prosecutor's office with the adequate authority and competence,

who also establishes the method, time, itinerary and location of guarding and escorting the person who was arrested, taken into police custody or 72-hour detention, or is otherwise detained.

Similar to Article 76 of the Service Regulation of the Police, Article 21(2) of the National Tax and Customs Administration Act sets out that escorts may be **ordinary or strengthened**. An ordinary escort shall be carried out in cases in which, based on the already available information, there is no reason to believe that the person concerned would try to escape or attack police officers. In situations where the aforementioned risks exist, or the escort is carried out under difficult circumstances, or if the destination of the escort is abroad or the person is escorted from abroad to Hungary, a strengthened escort shall be applied. In the case of an ordinary escort, the number of officers shall be one higher than the number of persons escorted. In the case of a strengthened escort, the necessary number of escorting guards and the necessary gear, in excess of what is necessary for an ordinary escort, is established by the supervisor ordering the escort.[62]

Decree 20/2018. of the Minister of Finances refers to Article 41 of the National Tax and Customs Administration Act and sets out that if there is a risk that the person who was arrested, taken into police custody or 72-hour detention, or is otherwise detained will commit any of the acts described in Article 41 of the National Tax and Customs Administration Act, the supervisor ordering the escort **shall** also **order that the person concerned is handcuffed** when being guarded and escorted outside the police cell or penitentiary institution.

The obligation to inform the person escorted is similar to what is included in the Service Regulation of the Police. Persons who were arrested, taken into police custody or 72-hour detention, or are otherwise detained shall receive instructions as to their expected behaviour while being escorted, and shall be warned that a restraining measure may be applied against them in case of escape or resistance, or in order to prevent them from inflicting self-harm.[63]

The use of handcuffs by the excise officers is regulated by Decree 20/2018. of the Minister of Finances. The provisions of Decree 20/2018. of the Minister of Finances differ from the provision of the Service Regulation of the Police only in the following: according to Article 37(5)(a)(ab) of Decree 20/2018. of the Minister of Finances, handcuffing a person behind their back is expedient also if the person subject to the measure is transported and escorted in a car which is not specifically designed for that purpose, and based on the circumstances of the arrest, there is a risk that they will attack the officers.

2.2. Taking measures against vulnerable persons

According to Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, "vulnerable persons" are those "who are not able to understand and to effectively participate in criminal proceedings due to age, their

[62] Decree 20/2018. of the Minister of Finances, Article 21(3)
[63] Decree 20/2018. of the Minister of Finances, Article 22(2)

mental or physical condition or disabilities"[64] Accordingly, the category of vulnerable persons includes for example children, juveniles, elderly persons, persons with disabilities, and sick and/or injured persons.

Several Hungarian laws contain provisions pertaining to certain vulnerable groups.

According to Article 16 of the Act on the Penitentiary System, means of restraint shall not be applied against **incapacitated persons** and (except for the use of physical force or handcuffs) against pregnant women and **minors** if these characteristics are known to the proceeding officer, or if they are obvious. **Persons under mandatory psychiatric treatment or mandatory pre-trial psychiatric treatment, or mentally ill detainees** can only be subjected to the use of physical force (grasping or holding down). According to the Act on the Penitentiary System, the use of restraints shall be discontinued if the concerned person does not resist the measure any more or if the goal of the measure can be achieved without the use of restraints. Using restraints against a member of the groups listed above shall be instantly reported to a supervisor, and the lawfulness of using restraints shall be examined by the warden of the penitentiary. The person against whom the restraining measure was applied shall be informed within eight days from the incident about the conclusions of the warden as to the lawfulness of using restraints. If the restraints were used by the warden or upon the warden's instructions, the lawfulness of the measure will be examined by the Director General of the penitentiary system. If it is concluded that the use of restraints was unlawful, the prosecutor's office[65] shall be informed about the incident within eight days, while if the use of restraints caused bodily harm or death, the prosecutor's office shall be informed instantly. Article 16(6) of the Act on the Penitentiary System adds that if the means of restraint was used against a person under mandatory psychiatric treatment or mandatory pre-trial psychiatric treatment, the conclusion reached about the lawfulness of using restraints shall be submitted not only to the person concerned, but also to the patients' rights representative, the legal or authorised representative of the detainee, and the prosecutor supervising the lawfulness of detention conditions.

The Prison Escort Guidelines include practical rules with regard to **ill detainees, who are impaired in their movements:**

> *55. The handcuff with leading straps shall be installed over the [ordinary] handcuffs, towards the elbows of the detainee, on the hand of the detainee which is closer to the guard performing the escort. If the detainee's arm is **in a cast**, is bandaged, or is otherwise **injured**, the handcuff with the leading strap shall be applied on their other, intact hand.*
>
> *56. If the detainee is **using a walking frame or a walking cane** authorized by a physician in the service of or contracted by the penitentiary, the handcuff with the leading strap shall be installed securely (even on their hand) in a way that it does not hinder their movements.*

In addition, the Prison Escort Guidelines establish the rules for escorting detainees to an outside **medical facility**. According to Section 158 of the Prison Escort Guidelines, "when using physical restraints (handcuffs), the injuries of the detainee shall be taken into account (e.g. if their hand is injured, the restraints shall be installed on their legs), along with the nature of their disease, their security risk classification, and whether the detainee is lying or sitting when transported in the ambulance. If the detainee is lying while transported, it shall be examined whether the medical staff has secured the detainee to the stretchers with the designated strap due to the detainee being incapacitated or to avoid further injuries."

[64] Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, Recital (1)

[65] The prosecutor's office is responsible for supervising the lawfulness of coercive measures involving the deprivation of liberty [Act CLXIII of 2011 on the Prosecution Service, Article 2(1)(g)].

However, in practice, the guarantees set out in the law for vulnerable groups are not complied with adequately (nor with regard to non-detained defendants, neither regarding detainees). The respondents in the present research were unanimously of the view that the practice of using restraints, especially handcuffs, is mostly the same in the case of vulnerable persons as in the case of non-vulnerable ones. They identified two groups where authorities tend to act in a more cautious manner when deciding on the use of handcuffs and the manner of handcuffing: those with obvious injuries (e.g. having a broken hand) and pregnant women. In general, it can be concluded that whether discretion is applied in terms of using handcuffs is dependent upon how obvious the "vulnerability" of the person is. In the view of the stakeholders interviewed, the practice of using handcuffs is less rigid when it comes to juvenile defendants, but this is mostly true for cases where the defendant is clearly very young.

A participant at the conference organised by the HHC on 14 June 2019 who works in a juvenile reformatory noted that pre-trial detainees held in juvenile reformatories may be taken to a physician only if an adequate police escort and a police car is available. Accordingly, pre-trial detainees may have to wait even as long as four days before taken to a dentist for example. According to recent experiences, the only question in these instances is whether the juvenile pre-trial detainee (even if he or she weighs only about 40 kilograms) will have to wear only handcuffs or will a handcuff with a leading strap applied as well.

Handcuffing is often disproportionate in the case of sick defendants who do not have any visible injuries. This is illustrated by the case of a detainee who regularly had to be transported for dialysis due to his severe kidney failure. He was not only transported in handcuffs, but "was also handcuffed to the bed while receiving treatment, even though the ECtHR had stated many times that handcuffing in these situations violates the right to human dignity".[66]

An attorney reported at the conference organised by the HHC that in one of his cases he had to consult in the hospital with his client who was in a 72-hour detention and just had an appendectomy. While they were consulting (with the permission of the police officers), the defendant, who was barely able to move, was handcuffed to a gas pipe.

Case study: the case of Ágnes Geréb

The defendant in the case, Ágnes Geréb, is a physician, a midwife, and an activist supporting home birth. The criminal procedure was launched against her after two home birth she assisted ended tragically due to complications. While in pre-trial detention, the elderly midwife was escorted to the court from the penitentiary institution in handcuffs attached to a waistband and in leg irons upon the decision of the warden of the respective penitentiary institution. In the courtroom, the waistband was removed following an order from the judge, but the leg irons were not removed in lieu of any further instructions, and these leg irons injured the defendant' ankles. The Commissioner for Fundamental Rights (the Ombudsperson) acquired information from the National Penitentiary Headquarters and the Chief Prosecutor of Budapest regarding the case, who concluded in relation to the lawfulness and appropriateness of applying the handcuffs that no constitutional right had been abused.

In contrast, the Ombudsperson noted that penitentiary institutions have a discretion with regard to using handcuffs if there is a risk that the detainee will attack the guards, escape, or inflict self-harm, but this discretion is not absolute, and does not exempt the penitentiary from under the obligation to proceed with caution, and to act expediently, proportionately and impartially.

[66] Interview with a defence counsel, 28 January 2019

The Ombudsperson concluded that the decision to use the three different kinds of physical restraints simultaneously had not complied with the requirement above, even when taking into account that the penitentiary institution was not able to assess the risks posed by the behaviour of the midwife in pre-trial detention in the few days available to them before the transportation had to be carried out. Using the means of restraint in the way they did against a woman of weak physique was disproportionate, and in the view of the Ombudsperson this violated the principles of the rule of law and legal certainty, and the right to a fair trial and human dignity.

The Commissioner for Fundamental Rights recommended legislative action in relation to the case, and recommended the Director General of the penitentiary system to organise trainings to make penitentiary staff members more aware of the principles of necessity and proportionality when using handcuffs. The Ombudsperson also requested the Director General to ensure that handcuffing is not degrading and does not cause unnecessary suffering and harm to detainees.

2.3. Rules to be followed by the press when showing the defendants in the courtroom

The rules on presenting the accused persons in the courtroom are included in the CCP and Act V of 2013 on the Civil Code. The CCP sets out that everyone has a right to be informed about a trial hearing via the media. Audio and video recordings may be made about a trial hearing exclusively with the permission of the head of the proceeding judicial council.[67] Furthermore, an audio or video recording may be made about the persons present at the trial hearing (except for the members of the court, the notary, the prosecutor and the defence counsel) if the person concerned consents to it.[68]

The heads of judicial councils usually permit recordings, but the law prescribes instances when they may decline to do so,[69] e.g. if the presence of the press and/or disclosing a particular information would violate the protection of special personal data, would hinder the efficiency of the procedure, or would threaten the life or personal integrity of the accused person.

In the interviews conducted by the HHC in 2018 in the framework of the present research, both judges and attorney emphasized that at the beginning of the trial hearings, judges inform the representatives of the press about the rules and conditions of taking pictures. In addition, judges explicitly ask the defendants whether they consent to an audio recording and/or their picture being taken, and request the representatives of the press to proceed accordingly. In most cases, the press complies with these requests.

If the person concerned does not consent to a recording or their picture being taken, the representatives of the press are not allowed to take any picture or recording that shows the accused person in a way that he or she is recognizable. However, in practice, views vary as to what exactly "not recognizable" means. If the consent is not given, representatives of the press often use pictures only showing the back or the cuffed hands of the accused person, or cover the accused person's face and distort their voice. In theory, these techniques comply with the rules, but being recognizable also depends on the circumstances. In a small town, where people know each other, the accused person is

[67] CCP, Article 108(1)
[68] CCP, Article 108(2)
[69] CCP, Article 109

easily recognizable from their clothing, haircut or movements. Some judges are of the view[70] that if the accused persons does not consent to their picture taken, the press should be banned from taking any kind of picture at all.

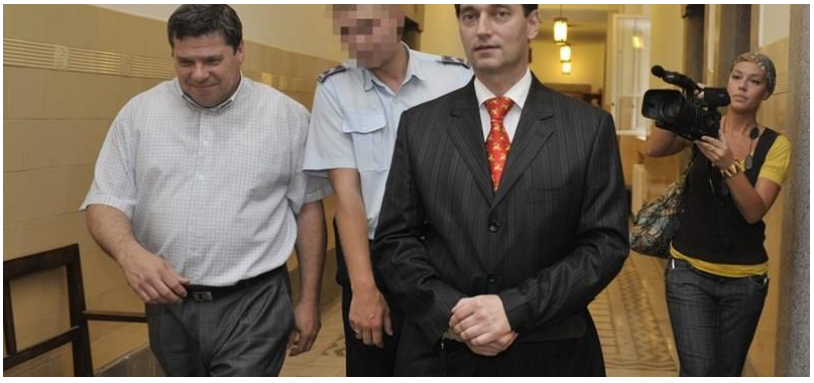
As far as the approach of the media is concerned, the experience of the interviewees varied. The majority of them were of the view that in the past years, journalists have become more informed and prepared in terms of their legal obligations.

Instead of the pictures taken in the courtroom, stakeholders raised the issue of pictures taken outside the courtroom (e.g. on the street or during arrests) as problematic in relation to the conduct of the press. These pictures typically have a greater impact than the ones taken in the course of the court procedure, and so publishing them violates the principle of the presumption of innocence more often.

It was also raised as a criticism that the press regularly misuses the various legal terms, and so it often happens that their choice of words itself (e.g. using the word "perpetrator", or referring to the person who "committed the criminal offence") suggests that the defendant is guilty, even though no final judgment has been reached in the given case yet.

2.3.1. Escorting public figures

As far as the escorting of public figures is concerned, the constitutional complaint submitted to the Constitutional Court by György Hunvald, the former mayor of Budapest's 7th district has to be mentioned, in which the former mayor asked the Constitutional Court to repeal a related judgment by the Curia.[71] The decision of the Constitutional Court issued in the case[72] covers several issues that are significant in terms of the present research study. According to this decision of the Constitutional Court, it does not violate the Fundamental Law and does not in itself violate the presumption of innocence if a media report, published before the final judgment is reached in the case, is accompanied by a picture in which the defendant is shown in handcuffs and escorted on a leading strap.



The criminal procedure against the former mayor was covered by several online news portals. In the picture used to illustrate the articles, the former mayor was shown with his face being visible, while being escorted by two prison guards in the corridor of the court to his pre-trial hearing. It was also slightly visible in the picture that he is handcuffed and is escorted on a leading strap. Görgy Hunvald launched a civil law suit against the online news portals, claiming that by publishing the picture taken without his consent, the news portals violated his right to his own image (an inherent personality right).

In its decision concluding the case, the Curia ruled (in contradiction with the first and second instance courts, for that matter) that the right to report about a case triggering public interest trumps the right to one's own image. Following the Curia's judgment, György Hunvald submitted a constitutional complaint to the Constitutional Court requesting that the Curia's judgment is quashed, claiming that

[70] Interview with a judge, 3 March 2019
[71] Pfv.IV.21.840/2015/5.
[72] Decision 3313/2017. (XI. 30.) of the Constitutional Court. Available at: http://public.mkab.hu/dev/dontesek.nsf/0/C6FAD41A87BB5219C125802F00588E42?OpenDocument.

the judgment violated the Fundamental Law. In his complaint he argued that the picture (published before the final judgment was issued in the case and showing him in handcuffs and being escorted on a leading strap) suggested that he was guilty.

In its decision, the Constitutional Court referred to the case-law of the ECtHR, and stated that even though authorities shall respect the defendant's right to the presumption of innocence when conducting a criminal procedure, this shall not violate the freedom of the press, and that reporting on a criminal case affecting a large segment of the society falls under the scope of the freedom of the press. Furthermore, the use of restraints in the course of a criminal procedure in itself is not a violation of the presumption of innocence. The Constitutional Court was of the view that György Hunvald's pre-trial detention, in relation to which the restraints were used against him, was public knowledge. Finally, the decision stated that it could not be established that the authorities applied handcuffs to present the defendant as guilty before the public.

However, the above decision of the Constitutional Court can be called into question. If reporting is done in an adequate manner, without showing the concerned person in restraints, freedom of the press will still prevail and the public will still be adequately informed about matters of public interest. The primary problem is not that the news portals published the photo, but that the concerned person was shown in the picture in a way (in restraints) that contradicts the case-law of the ECtHR and violates Article 3 of the ECHR. It is indeed hard to strike a balance between the freedom of the press and reporting on public matters and between the protection of privacy and the presumption of innocence, but the authors of the present study are of the view that the Constitutional Court should have interpreted the presumption of innocence widely, as it has done in its earlier decisions,[73] since the decision above may have a negative effect in terms of respecting the presumption of innocence in the future.

2.4. Remedies and their efficiency

In Hungary, there are **two ways** to challenge the unjustified use of physical restraints, including of course the unjustified use of handcuffs as well:

a) Firstly, the person concerned **may file a complaint to the police unit that has taken the measure** against the complainant, within 30 days after the measure.[74] The lawfulness and appropriateness of the use of the handcuffs shall be assessed by the police chief upon a complaint. If the police chief rejects the complaint, the decision can be challenged before the superior police unit. If the superior police unit also rejects the complaint, the complainant may, as a last resort, request a judicial review from the competent administrative court.

b) Secondly, the concerned person may file a complaint to **the Independent Police Complaints Board** (hereafter: IPCB), within 30 days after the incident.[75] The IPCB investigates the police measure taken and decides whether it was lawful, necessary, justified, proportionate, and whether the concerned person's fundamental rights have been violated. The IPCB in its decision can establish that (i) there was no violation of a fundamental right, or (ii) the infringement of a fundamental right cannot be established because of the contradiction between the statements of the complainant and the police, or (iii) there was an infringement of a fundamental right (insignificant or severe). If the IPCB establishes the lack of a fundamental right violation or finds that there has been one, but it does not reach a certain

[73] Decision 3087/2016. (V. 2.) of the of the Constitutional Court
[74] Police Act, Articles 92–93
[75] Police Act, Article 92

level of severity, the IPCB refers the case to the head of the police unit concerned and the procedure continues the way described above under point a). If it is concluded that there has been a severe violation of a fundamental right, the IPCB refers the case to the National Police Headquarters. The decision of the National Police Headquarters can be challenged before the competent administrative court. Even though the procedure of the IPCB looks more efficient than the ordinary complaint mechanism, the opinions issued by the IPCB are not binding, and the National Police Headquarters rarely accepts the IPCB's conclusions. As a result, in these cases too, a judicial review must be sought eventually. Since the administrative courts cannot change the police decisions if they do not agree with the police but can only quash the police decisions and send the case back for retrial, these proceedings tend to be very lengthy, which often deters complainants from launching the procedure.

If the police complaint procedure is successful from the complainant's point of view, they can submit a **claim for compensation to a civil court**.

As far as the possible remedies are concerned, interviewees were unanimously of the view that *"the avenues of remedy are not efficient at all".*

Attorneys interviewed during the research claimed that police officers often deny their actions and because of the lack of adequate evidence, complaints submitted directly to the police remain inefficient.

The IPCB examined in substance the practice of using restraints and specifically the practice of using handcuffs in several cases. Their experiences in this regard were summarised by András Kristóf Kádár and András Féja (members of the IPCB) in 2012 as follows: "With respect to the use of handcuffs and physical force, it can be generally stated that the police chiefs' investigations and the opinions issued by them still show a certain degree of automatism, no actual investigation happens, and the measures taken by the police and the use of restraints are found to be lawful, or lawful and appropriate in all the instances."[76] In contrast, the IPCB concluded in numerous cases that "the application of the means of restraint did not comply with the respective rules, and, accordingly, established the violation of the right to liberty, human dignity and physical integrity in these cases."[77]

In the course of its investigation, the IPCB examines whether the conditions included in Article 48 of the Police Act have been met, i.e. examines the reasons behind the decision that the person whose liberty the police aims to restrict or whose liberty is already restricted should be handcuffed. The IPCB criticised the automatic use of handcuffs in many instances, e.g. because the report of the acting police officer did not mention at all the circumstance which allegedly gave rise to the handcuffing, most probably because there was no such circumstance. In these cases, the IPCB established that the human dignity of the complainant had been violated.

The lawfulness and the circumstances of using handcuffs was first examined by the IPCB in Opinions no. 32/2008. (VII. 9.) and Opinion no. 33/2008. (VII. 9.), and later on in Opinions no. 42/2008. (VII. 16.), 43/2008. (VII. 16.) and 45/2008. (VII. 16.). In most of these cases, the reason for the handcuffing was that the complainants resisted a lawful police measure, which qualifies as a petty offence. Based on Article 60(1)(d) of the Service Regulation of the Police, this may be a reason for using handcuffs, but – due to the principle of applying available measures gradually – only if the resistance against the police measure could not be broken by applying physical force. In the cases above, no resistance occurred at all: in the view of the police, the petty offence was committed when some people did not leave the scene after a demonstration was dissolved. The persons who stayed were ID checked, handcuffed, and

[76] A Független Rendészeti Panasztestület beszámolója a 2008–2010. évi tapasztalatairól [Report of the Independent Police Complaints Board about its Experiences from 2008–2010]. *Rendészet és Emberi Jogok*, 2012/1-2, p. 92. Available at: http://epa.oszk.hu/02200/02222/00005/pdf/EPA_02218_ReEJ_2012_01-02_023-107.pdf.

[77] A Független Rendészeti Panasztestület beszámolója a 2008–2010. évi tapasztalatairól [Report of the Independent Police Complaints Board about its Experiences from 2008–2010]. *Rendészet és Emberi Jogok*, 2012/1-2, p. 92.

taken into police custody. The complainants subjected themselves to these measures, and there was no need to apply physical force against them, so, accordingly, no handcuffs should have been used against them either. (Moreover, handcuffing was executed in many cases by using a plastic cable tie.) According to the IPCB, this severely violated the complainants' fundamental rights to personal liberty and a fair trial.

The IPCB was not able to identify the legitimate reason for using handcuffs in the case underlying Opinion no. 155/2009. (VI. 3.) either. In this case, the complainant refused to subject himself to a search of his clothes upon entering a location, and was taken into police custody because of that. The acting police officer reported that the complainant "complied with all of the instructions", while – according to the same report – the aim of the handcuffing was to break the resistance of the complainant [Police Act, Article 48(d)]. This case also shows a general feature of the practice of the IPCB: if the original measure is unlawful (in this case, taking the complainant into police custody after he refused to subject himself to the search of his clothes was unlawful, because such a refusal could have only warranted that he is not let in), all the related measures and means of restraints used (in this case, the use of handcuffs, extending the length of the police custody, a degrading search that violated his human dignity, etc.) become unlawful as well, sharing the fate of the original police measure starting the chain of measures.

Opinion no. 273/2009. (IX. 16.) adjudicated a complaint that concerned the police measures taken against the complainant during and after an event held on the Saint Stephen's Square in Budapest, namely the ID check, the search of his clothes, the police custody and the circumstances of how he was taken into police custody, and the use of handcuffs. The complainant was not handcuffed at the scene, when taken into police custody, but – probably – later on, by the guards transporting him. The guards transporting him referred to the dangerousness of the escorted person as the reason for using handcuffs, but this was in contradiction with the statement of the police officer who took the complainant into police custody, saying that the complainant was cooperating all along in the course of the police measure. The IPCB concluded that the handcuffs were used by the police in the case unlawfully, without any of the reasons included in the Police Act applying in the case.

As far as the further reasons for applying handcuffs as listed by Article 48 of the Police Act are concerned, related hints by relatives or neighbours included in the police reports may serve as a sufficient basis to claim that the use of handcuffs is necessary to prevent self-harm. According to the practice of the IPCB, the risk of attack or absconding has to be real and present. The fact that the concerned person acted violently in a previous procedure does not serve as sufficient grounds for using handcuffs. As far as the risk of absconding is concerned, due diligence shall be paid to the information available in the case.

The IPCB has received several complaints claiming that the use of handcuffs was degrading or caused physical suffering. In Opinion no. 226/2009. (VIII. 5.) the IPCB established the violation of the right to physical integrity. In this case, the police officers used physical force and handcuffing in a disproportionate and unnecessary way, and acted with unjustified harshness, injuring the complainant on his leg, chest, and hand.

One of the stakeholders interviewed in the present research noted in this regard that the IPCB does not take into account who was present at the handcuffing, and whether the complainant considered it degrading that the handcuffing took place at their workplace or in front of their children. Instead, the IPCB's investigation focuses exclusively on the lawfulness of the police measure, and whether the use of restraints was necessary and proportionate.

In Opinion no. 123/2017. (VII. 6.) the IPCB examined whether it amounted to the severe violation of a fundamental right that when taken into police custody, the complainant was handcuffed in front of his spouse and other persons. The IPCB concluded that taking the complainant into police custody

complied with Article 33(2) of the Police Act, and the police measure had not violated his fundamental right to personal liberty.

3. Statistical data

There are only limited statistical data available about the use of restraints.

According to the data of the National Police Headquarters, police officers use some kind of means of restraint in more than 75,000 instances a year, but the number of instances has been decreasing in the past four years.

Table 1 – *Use of restraints (Police Act, Articles 47–52) 2010–2017*
National data, broken down by regional police organs[78]

Kényszerítő eszközök alkalmazása összesen [Rtv. 47 - 52. §]
2010-2017. évek közötti időszak
országos adatok területi szervenkénti bontásban

	2016. XII.	2017. XII.	Dinamika 2016-2017.	2010. I-XII.	2011. I-XII.	2012. I-XII.	2013. I-XII.	2014. I-XII.	2015. I-XII.	2016. I-XII.	2017. I-XII.	Dinamika 2016-2017.	Dinamika 2010-2017.	Országos %-a 2017
BRFK	1 083	961	-11,3%	n. a.	n. a.	n. a.	n. a.	16 984	16 308	16 268	15 726	-3,3%		20,9%
Baranya	204	192	-5,9%	n. a.	n. a.	n. a.	n. a.	3 566	2 841	3 032	2 689	-11,3%		3,6%
Bács	109	124	13,8%	n. a.	n. a.	n. a.	n. a.	2 312	2 124	2 117	1 653	-21,9%		2,2%
Békés	140	131	-6,4%	n. a.	n. a.	n. a.	n. a.	3 093	2 398	2 462	1 888	-23,3%		2,5%
Borsod	495	592	19,6%	n. a.	n. a.	n. a.	n. a.	11 141	7 786	7 212	6 684	-7,3%		8,9%
Csongrád	201	278	38,3%	n. a.	n. a.	n. a.	n. a.	17 009	12 611	4 700	3 142	-33,1%		4,2%
Fejér	251	201	-19,9%	n. a.	n. a.	n. a.	n. a.	5 205	3 740	3 285	2 956	-10,0%		3,9%
Győr	128	170	32,8%	n. a.	n. a.	n. a.	n. a.	3 837	2 869	2 641	2 020	-23,5%		2,7%
Hajdú	772	624	-19,2%	n. a.	n. a.	n. a.	n. a.	14 601	12 245	10 665	8 705	-18,4%		11,5%
Heves	160	197	23,1%	n. a.	n. a.	n. a.	n. a.	3 774	3 322	2 788	2 604	-6,6%		3,5%
Komárom	111	113	1,8%	n. a.	n. a.	n. a.	n. a.	3 984	2 748	1 880	1 481	-21,2%		2,0%
Nógrád	61	70	14,8%	n. a.	n. a.	n. a.	n. a.	1 562	1 029	930	918	-1,3%		1,2%
Pest	419	402	-4,1%	n. a.	n. a.	n. a.	n. a.	9 856	8 095	6 440	5 680	-11,8%		7,5%
Somogy	241	204	-15,4%	n. a.	n. a.	n. a.	n. a.	5 603	4 267	4 047	3 252	-19,6%		4,3%
Szabolcs	406	363	-10,6%	n. a.	n. a.	n. a.	n. a.	7 824	6 695	6 220	4 936	-20,6%		6,5%
Szolnok	263	233	-11,4%	n. a.	n. a.	n. a.	n. a.	5 710	4 453	3 945	3 249	-17,6%		4,3%
Tolna	80	71	-11,3%	n. a.	n. a.	n. a.	n. a.	1 745	1 289	1 271	1 104	-13,1%		1,5%
Vas	128	93	-27,3%	n. a.	n. a.	n. a.	n. a.	3 444	2 529	2 082	1 614	-22,5%		2,1%
Veszprém	56	66	17,9%	n. a.	n. a.	n. a.	n. a.	1 983	1 465	1 178	1 043	-11,5%		1,4%
Zala	153	118	-22,9%	n. a.	n. a.	n. a.	n. a.	3 529	2 225	2 118	1 854	-12,5%		2,5%
KR	90	141	56,7%	n. a.	n. a.	n. a.	n. a.	6 672	3 509	2 252	1 622	-28,0%		2,2%
RRI	70	27	-61,4%	n. a.	n. a.	n. a.	n. a.	543	2 039	699	557	-20,3%		0,7%
ORFK	0	0		n. a.	n. a.	n. a.	n. a.	0	1	0	0			0,0%
Összesen	**5 621**	**5 371**	**-4,45%**	**0**	**0**	**0**	**0**	**133 977**	**106 588**	**88 232**	**75 377**	**-14,57%**		**100%**

Kék szín jelöli az elmúlt év adataihoz képest tapasztalható számszaki csökkenést.
Piros szín jelöli az elmúlt év adataihoz képest tapasztalható számszaki növekedést.
A sárga szín az előző évi adatokkal történő megegyezést mutatja.
15,0% A zöld szín a területi szerv %-os részesedését jelenti az országos adatokból 2017. évre vonatkozóan.

[78] *Colour code: blue – nominal decrease, as compared to the preceding year; red – nominal increase, as compared to the preceding year; yellow: no changes as compared to the preceding year; green – regional data as compared to the national data in percentages, for the year 2017.*

Table 2 shows that the police use handcuffs the most often from among the available means of restraint. For example, in 2017 the police used handcuffs in 65,001 instances from the total number of 75,377, i.e. the police used handcuffs in 86% of the respective instances.

Table 2 – *Use of restraints – handcuffs (Police Act, Article 48) 2010–2017*
National data, broken down by regional police organs[79]

Kényszerítő eszközök alkalmazása - bilincs [Rtv. 48. §]
2010-2017. évek közötti időszak
országos adatok területi szervenkénti bontásban

	2016. XII.	2017. XII.	Dinamika 2016-2017.	2010. I-XII.	2011. I-XII.	2012. I-XII.	2013. I-XII.	2014. I-XII.	2015. I-XII.	2016. I-XII.	2017. I-XII.	Dinamika 2016-2017.	Dinamika 2010-2017.	Országos %-a 2017
BRFK	949	836	-11,9%	n. a.	n. a.	n. a.	n. a.	15 373	14 609	14 244	13 836	-2,9%		21,3%
Baranya	165	164	-0,6%	n. a.	n. a.	n. a.	n. a.	3 055	2 307	2 526	2 262	-10,5%		3,5%
Bács	84	90	7,1%	n. a.	n. a.	n. a.	n. a.	1 937	1 767	1 773	1 331	-24,9%		2,0%
Békés	110	103	-6,4%	n. a.	n. a.	n. a.	n. a.	2 395	1 922	2 053	1 559	-24,1%		2,4%
Borsod	428	496	15,9%	n. a.	n. a.	n. a.	n. a.	9 379	6 537	6 070	5 666	-6,7%		8,7%
Csongrád	178	242	36,0%	n. a.	n. a.	n. a.	n. a.	16 480	12 137	4 308	2 770	-35,7%		4,3%
Fejér	205	161	-21,5%	n. a.	n. a.	n. a.	n. a.	4 590	3 293	2 850	2 572	-9,8%		4,0%
Győr	121	148	22,3%	n. a.	n. a.	n. a.	n. a.	3 584	2 646	2 408	1 796	-25,4%		2,8%
Hajdú	634	528	-16,7%	n. a.	n. a.	n. a.	n. a.	12 301	10 333	8 724	7 414	-15,0%		11,4%
Heves	144	182	26,4%	n. a.	n. a.	n. a.	n. a.	3 485	3 026	2 557	2 393	-6,4%		3,7%
Komárom	92	91	-1,1%	n. a.	n. a.	n. a.	n. a.	3 751	2 469	1 633	1 255	-23,1%		1,9%
Nógrád	43	54	25,6%	n. a.	n. a.	n. a.	n. a.	1 277	836	726	702	-3,3%		1,1%
Pest	363	357	-1,7%	n. a.	n. a.	n. a.	n. a.	9 056	7 384	5 771	5 130	-11,1%		7,9%
Somogy	216	186	-13,9%	n. a.	n. a.	n. a.	n. a.	4 884	3 835	3 669	2 990	-18,5%		4,6%
Szabolcs	328	299	-8,8%	n. a.	n. a.	n. a.	n. a.	6 729	5 646	5 326	4 145	-22,2%		6,4%
Szolnok	231	207	-10,4%	n. a.	n. a.	n. a.	n. a.	5 177	4 008	3 508	2 859	-18,5%		4,4%
Tolna	66	64	-3,0%	n. a.	n. a.	n. a.	n. a.	1 604	1 141	1 131	996	-11,9%		1,5%
Vas	79	62	-21,5%	n. a.	n. a.	n. a.	n. a.	2 183	1 662	1 322	1 022	-22,7%		1,6%
Veszprém	42	46	9,5%	n. a.	n. a.	n. a.	n. a.	1 726	1 226	965	813	-15,8%		1,3%
Zala	133	97	-27,1%	n. a.	n. a.	n. a.	n. a.	3 122	1 948	1 802	1 602	-11,1%		2,5%
KR	80	111	38,8%	n. a.	n. a.	n. a.	n. a.	5 743	2 576	1 865	1 338	-28,3%		2,1%
RRI	68	27	-60,3%	n. a.	n. a.	n. a.	n. a.	534	2 028	683	550	-19,5%		0,8%
ORFK	0	0		n. a.	n. a.	n. a.	n. a.	0	1	0	0			0,0%
Összesen	**4 759**	**4 551**	**-4,37%**	**0**	**0**	**0**	**0**	**118 365**	**93 337**	**75 914**	**65 001**	**-14,38%**		**100%**

Kék szín jelöli az elmúlt év adataihoz képest tapasztalható számszaki csökkenést.
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A sárga szín az előző évi adatokkal történő megegyezést mutatja.
15,0% A zöld szín a területi szerv %-os részesedését jelenti az országos adatokból 2017. évre vonatkozóan.

[79] *Colour code: blue – nominal decrease, as compared to the preceding year; red – nominal increase, as compared to the preceding year; yellow – no changes as compared to the preceding year; green – regional data as compared to the national data in percentages, for the year 2017.*

The case statistics of the IPCB provide further information in relation to the subject of the present research. According to these data, 4-5% of the complaints submitted to the IPCB per year concern the use of handcuffs during a police measure, and the IPCB establishes the violation of a fundamental right in only a fragment of these cases.

2015 – Number and ratio of police measures and omissions complained about		
The measure complained about	**number**	**%**
handcuffing (Police Act, Article 48)	67	4.4%
physical force (Police Act, Article 47)	56	3.7%
using a service dog (Police Act, Article 50)	1	0.1%
using a gun (Police Act, Articles 52–56)	1	0.1%
use of police troops (Police Act, Article 58)	1	0.1%
using a chemical device, an electric shocking device, a police truncheon, the flat of a sword, or other means (Police Act, Article 49)	0	0.0%
using a gun against a person in a crowd (Police Act, Article 57)	0	0.0%
ordering a crowd to disperse (Police Act, Articles 59–60)	0	0.0%
dispersing a crowd (Police Act, Articles 59–60)	0	0.0%
roadblock, forcing someone to stop their vehicle (Police Act, Article 51)	0	0.0%

2015 – Number and ratio of police measures where a severe violation of a fundamental right was established		
The measure complained about	**number**	**%**
conditions of using means of restraint (legal preconditions, proportionality, restraints to be used until resistance is broken / measure is successful) [Police Act, Article 16(1)–(3)]	4	0.7%
physical force (Police Act, Article 47)	14	2.6%
handcuffing (Police Act, Article 48)	38	6.9%
using a chemical device, an electric shocking device, a police truncheon, the flat of a sword, or other means (Police Act, Article 49)	0	0.0%
using a service dog (Police Act, Article 50)	1	0.2%
roadblock, forcing someone to stop their vehicle (Police Act, Article 51)	0	0.0%
using a gun (Police Act, Articles 52–56)	0	0.0%
using a gun against a person in a crowd (Police Act, Article 57)	0	0.0%
use of police troops (Police Act, Article 58)	0	0.0%
ordering a crowd to disperse (Police Act, Articles 59–60)	0	0.0%
dispersing a crowd (Police Act, Articles 59–60)	0	0.0%

2016 – Number and ratio of police measures and omissions complained about, in the order of their frequency		
The measure complained about	**number**	**%**
handcuffing (Police Act, Article 48)	28	4.6%
physical force (Police Act, Article 47)	10	1.6%
roadblock, forcing someone to stop their vehicle (Police Act, Article 51)	1	0.2%
dispersing a crowd (Police Act, Articles 59–60)	1	0.2%
using a service dog (Police Act, Article 50)	0	0.0%
using a gun (Police Act, Articles 52–56)	0	0.0%
use of police troops (Police Act, Article 58)	0	0.0%
using a gun against a person in a crowd (Police Act, Article 57)	0	0.0%
ordering a crowd to disperse (Police Act, Articles 59–60)	0	0.0%

2016 – Number and ratio of police measures where a severe violation of a fundamental right was established		
The measure complained about	**number**	**%**
conditions of using means of restraint (legal preconditions, proportionality, restraints to be used until resistance is broken / measure is successful) [Police Act, Article 16(1)–(3)]	7	2.3%
physical force (Police Act, Article 47)	5	1.7%
handcuffs (Police Act, Article 48)	18	6.0%
using a chemical device, an electric shocking device, a police truncheon, the flat of a sword, or other means (Police Act, Article 49)	0	0.0%
using a service dog (Police Act, Article 50)	0	0.0%
roadblock, forcing someone to stop their vehicle (Police Act, Article 51)	0	0.0%
using a gun (Police Act, Articles 52–56)	0	0.0%
using a gun against a person in a crowd (Police Act, Article 57)	0	0.0%
use of police troops (Police Act, Article 58)	0	0.0%
ordering a crowd to disperse (Police Act, Articles 59–60)	0	0.0%
dispersing a crowd (Police Act, Articles 59–60)	0	0.0%

2017 – Number and ratio of police measures and omissions complained about, in the order of their frequency		
The measure complained about	**number**	**%**
physical force (Police Act, Article 47)	24	3.9%
handcuffing (Police Act, Article 48)	18	3.0%

2017 – Number and ratio of police measures and omissions complained about, in the order of their frequency		
The measure complained about	**number**	**%**
ordering a crowd to disperse (Police Act, Articles 59–60)	5	0.8%
dispersing a crowd (Police Act, Articles 59–60)	3	0.5%
using a chemical device, an electric shocking device, a police truncheon, the flat of sword, or other means (Police Act, Article 49)	2	0.3%
use of police troops (Police Act, Article 58)	1	0.2%
roadblock, forcing someone to stop their vehicle (Police Act, Article 51)	0	0.0%
using a service dog (Police Act, Article 50)	0	0.0%
using a gun (Police Act, Articles 52–56)	0	0.0%
using a gun against a person in a crowd (Police Act, Article 57)	0	0.0%

2017 – Number and ratio of police measures where a severe violation of a fundamental right was established		
The measure complained about	**number**	**%**
conditions of using means of restraint (legal preconditions, proportionality, restraints to be used until resistance is broken / measure is successful) [Police Act, Article 16(1)–(3)]	8	4.2%
physical force (Police Act, Article 47)	11	5.7%
handcuffing (Police Act, Article 48)	7	3.6%
using a chemical device, an electric shocking device, a police truncheon, the flat of sword, or other means (Police Act, Article 49)	0	0.0%
using a service dog (Police Act, Article 50)	0	0.0%
roadblock, forcing someone to stop their vehicle (Police Act, Article 51)	0	0.0%
using a gun (Police Act, Articles 52–56)	0	0.0%
using a gun against a person in a crowd (Police Act, Article 57)	0	0.0%
use of police troops (Police Act, Article 58)	0	0.0%
ordering a crowd to disperse (Police Act, Articles 59–60)	5	2.6%
dispersing a crowd (Police Act, Articles 59–60)	3	1.6%

4. Recommendations

Trainings and the creation of codes of conduct can be useful tools in changing the culture of the concerned professions, including journalists. For this reason, we recommend the following:

- Training should be offered to journalists on the presumption of innocence to help them understand this important but complex issue and the impact their reporting can have. Training should also extend to the rules governing how suspects and accused persons are allowed to be presented in the media and also to the proper use of legal terms to avoid any negative impact on the perception of the public.
- Trainings should if applicable be based on the personal participation of former defendants who can share their personal experience on how the coverage of their trial impacted their lives during and after the proceeding.
- Similar trainings based on personal encounters with former defendants should be offered to law enforcement and judicial officials.
- Only journalists who have undergone training on these issues should be allowed to cover criminal proceedings.
- The codes of conduct of journalists should contain a specific section on covering criminal proceedings, with sufficiently specific guidelines.
- There are some aspects of the issue that can be addressed through legislation. On the one hand, legislation can contribute to culture change. By way of example, a legal framework which declares that there shall be no handcuffing in the case of certain vulnerable groups (such as persons with disabilities or pregnant women), unless there are very pressing grounds to apply restraints, could go a long way in changing the mind-set of law enforcement personnel.

On the other hand, reducing or excluding personal discretion with regard to certain matters may improve the chances of defendants or persons subject to petty offence procedures of getting a procedure where the presumption of innocence is respected to a greater extent than what appears to be the case in Hungary. The most obvious example for this is the French blanket prohibition of taking photographs of persons when they are in restraints.[80] Introducing such a ban should be considered instead of other solutions which in practice fail to achieve a sufficient protection of the presumption of innocence, and lead to the pictures showing the defendants in handcuffs being published repeatedly.

On this basis, we put forth the following recommendations:

- The French example of a blanket prohibition on taking photos of people when they are in restraints should be followed. This should not mean a general ban on covering court cases, but since restraints are very strongly linked to perceptions of guilt and being dangerous to society, this kind of limitation of publicity seems to be a reasonable restriction.
- Special regulation for vulnerable groups of suspects (children, elderly people, pregnant women) should be put in place making it the default option that they are not restrained (handcuffing included). The use of measures of restraint with regard to members of these groups should only be allowed if absolutely necessary and inevitable.

[80] Hungarian Helsinki Committee, *Innocent until proven guilty: the use of restraints and its impact on the presumption of innocence – Comparative study*, 2019, p. 29.

- Other circumstances excluding or reducing the likelihood of the need for the application of means of restraint (e.g. voluntary surrender, or if the underlying criminal offence is of minor nature and the background of the person subject to the procedure does not suggest that there is a risk of escaping or attacking) should also be identified and it should be prescribed that if these prevail restraints should be applied only exceptionally, if other circumstances make it absolutely necessary and inevitable.

- The French and Maltese[81] example in legislating the relationship between the use of restraining measures and the presumption innocence more directly (e.g. according to the Maltese rules, suspects and accused persons shall not be presented as being guilty through the use of measures of physical restraint), should be followed in other EU Member States, and similar legislative solutions should be adopted, as reminding law enforcement personnel on the fair trial implications of the use of restraints may have a positive impact on the organisational culture.

- In general, adequate and effective remedies should be ensured for the violation of the presumption of innocence, including effective procedures for compensation.

Finally, an efficient way to minimise the chances of a breach of the presumption of innocence and the dignity of the suspects or accused person is the adopting of infrastructural and technological solutions that reduce the likelihood of the defendant being seen in restraints by the public, the media and also the actors of the proceeding, including the judge.

Solutions in this regard may include the following:

- Where possible, an itinerary (or separate infrastructure) should be created in court buildings to make sure that defendants are not exposed to public attention when they arrive and leave in restraints, and that this should be a requirement whenever a court building is constructed or renovated.

- Another solution would be to hold remote hearings. However, this would require striking the right balance between protecting the presumption of innocence and other procedural rights or interests (e.g. the right to appear before the judge in person, and the right to undisturbed communication between the defendant and the defence counsel).

- Free and easy communication between the accused person and the defence counsel should be guaranteed through their placement both inside and outside of the courtroom.

- Relevant information on circumstances that may substantiate or weaken the necessity of using means of restraint shall be provided to judges well in advance of hearings so that they could make a sufficiently informed and well-grounded decision on whether means of restraint are necessary to be applied in the courtroom. The information may be provided through a database for assessing risks, which is accessible to both the escorting authorities and the courts, and can be reviewed and challenged by the concerned detainee.

[81] Hungarian Helsinki Committee, *Innocent until proven guilty: the use of restraints and its impact on the presumption of innocence – Comparative study*, 2019, p. 14.