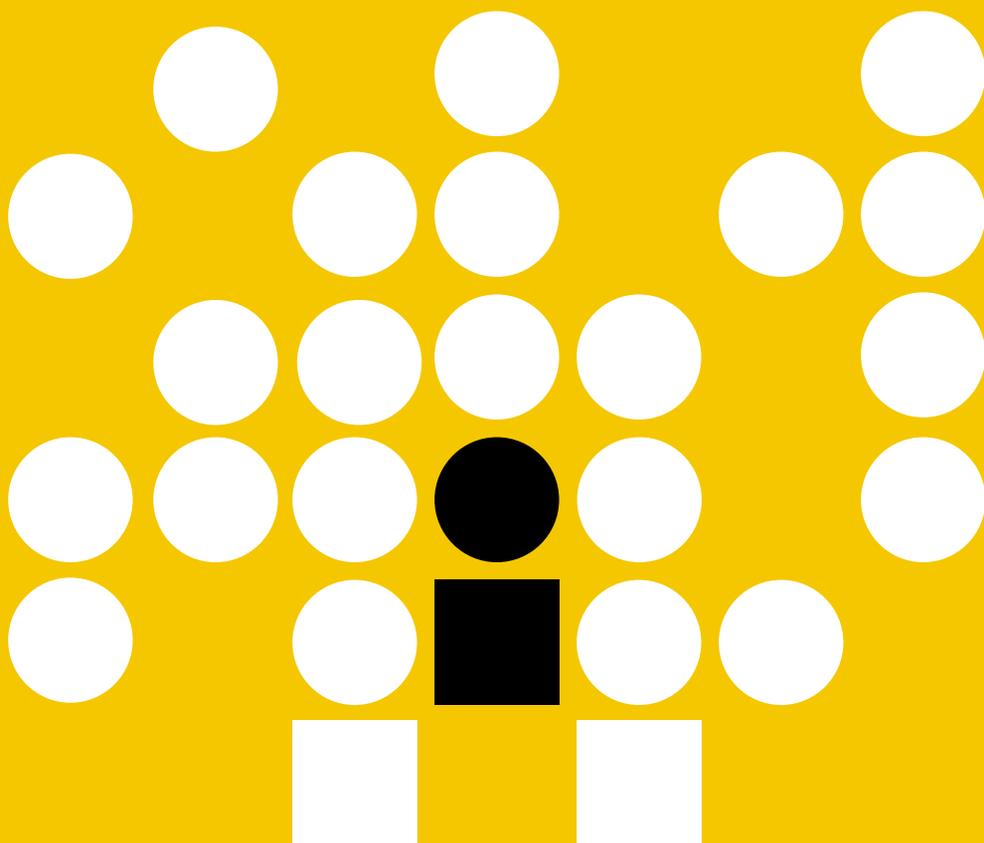


**The Importance of
Appearances:** How Suspects
and Accused Persons are
Presented in the Courtroom,
in Public and in The Media
Research Report 2018



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Appearances:** How Suspects
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RESEARCH TEAM: Tina Đaković, Sven Marčelić,
Ivan Novosel, Sara Sharifi

PROOFREADING AND EDITING: Kelsey Montzka

Human Rights House Zagreb is a human rights watch-dog and advocacy organization founded in 2008 as a network of civil society organisations with the goal to protect and promote human rights and fundamental freedoms. HRHZ's vision is a democratic, pluralistic and inclusive society based on the values of human rights, the rule of law, social justice and solidarity. Through research, monitoring, public advocacy, and education, the HRHZ contributes to the protection, promotion, and development of human rights and fundamental freedoms in Croatia and Europe.

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Introduction

Aims and objectives

Recognizing the importance of the presumption of innocence and its proper understanding, Human Rights House Zagreb (HRHZ) conducted this research on the presentation of suspects and accused persons in public. The aim of this research was to question whether different levels of restraining measures used by the police have impact on public perception of guilt. This research is a part of a project called 'The Importance of Appearances: How Suspects and Accused Persons are Presented in the Courtroom, in Public and in the Media', whose main objective is to contribute to the correct implementation of the *Directive (EU) 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* (Directive) through reducing the number of instances in which suspects and accused persons are presented in the public in ways that create a perception of guilt, and to contribute to a better understanding of the presumption of innocence among public officials and the general public.

Specific objectives set out in this research are threefold. The first is to increase the available knowledge in the EU about the broad application of restraining measures on suspects and accused persons in the public. Furthermore, the results of this research aim to sensitise public authorities, media and wider public to the importance of the manner in which a suspect or accused person is presented in the public through the use of restraining measures by the police and the way these measures negatively influence the perception of guilt. The last

specific objective is to disseminate the results regarding the application of physical restraints across the EU.

Presumption of Innocence

The presumption of innocence (PoI) is one of the most important principles of the modern human rights system that plays an important role in safeguarding the rights of a person facing criminal proceedings. Definitions and normative qualifications of the PoI range in the existing academic literature from procedural qualifications establishing sets of practice – standards to broader ones. De Jong and van Lent categorise these PoI qualifications within '... [the] three wide-ranging normative characterisations (...) broadly recognised in both the literature and the international case law: [PoI's] portrayal as a safeguard against wrongful convictions, as a shield against intrusive state powers, and as a norm of treatment and mindset.'¹

While PoI is the continuous subject of academic debates and relevant scholarly writings, its every-day relevance is of essential importance for a democratic society governed by the principle of the rule of law. PoI is a key element of the fair trial rights² which affect the rights of suspects and the accused to remain silent, the prosecution's burden of proof obligations, and the *in dubio pro reo* principle (if there is a doubt of one's guilt, no conviction can be rendered).³

Although PoI can be traced back to the era of ancient Roman law, historically, its systemic developments start in twelfth century Europe with the development of *Ius commune*. Its gradual development through the Medieval period led to the first-ever codification of PoI in the 1789 French Declaration of the Rights of Man and Citizens.⁴ Declarations in its Article 9 states that '... all persons are held innocent until they shall have been

- 1 Ferry de Jong & Leonie van Lent, *The Presumption of Innocence as a Counterfactual Principle*, *Utrecht Law Review*, Volume 12, Issue 1, January 2016, page 34, available at: <https://www.utrechtlawreview.org/articles/abstract/10.18352/ulr.324/>
- 2 Fair Trails and Legal Experts Advisory Panel, *Joint position paper on the proposed directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings*, November 2014, para 1, available at: <https://www.fairtrials.org/wp-content/uploads/Presumption-of-Innocence-Position-Paper2.pdf>
- 3 European Parliament's Committee on Civil Liberties, Justice and Home Affairs, *Working Document on Strengthening of Certain Aspects of the Presumption of Innocence and of the right to be present at one's trial in criminal proceedings*, 17 March 2014, available at: <http://www.statewatch.org/news/2014/mar/ep-presum-innocence-wp1.pdf>
- 4 Kenneth Pennington, *Innocent Until Proven Guilty: The Origins of a Legal Maxim*, *The Jurist* 63, 2003, available at: <https://scholarship.law.edu/scholar/172/>

declared guilty (...).⁵ This historical precedent set a model to follow that will ultimately enable PoI being codified in all relevant contemporary human rights treaties guaranteeing due process rights.

Within the United Nations human rights fora, PoI is incorporated in Article 11 of the Universal Declaration of Human Rights⁶, and Article 14(2) of the International Covenant on Civil and Political Rights⁷. In its General Comment No. 13, the Human Rights Committee notes that PoI is essential for the protection of human rights, however, the Committee observes that this principle is laid down in national legislation very ambiguously which has negative consequences for the full enjoyment of the fair trial rights. Furthermore, the Committee emphasises that public authorities also have a duty to respect PoI and refrain from any action that might be seen as a prejudgment the outcome of the judicial proceedings.⁸

The PoI principle is also enshrined in Article 6(2) of the European Convention of Human Rights, and well developed throughout the case-law of the European Court of Human Rights (ECtHR). ECtHR established criteria that neither courts nor other public authorities⁹ can make public statements that might suggest suspect's guilt. '(...) [PoI] will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law.'¹⁰ Furthermore, ECtHR also dealt with cases in which the suspects were presented in media outlets in photographs or their image was broadcasted on television.¹¹

In the case of *Jiga v. Romania*¹², ECtHR dealt with the portrayal of suspects being presented in the court room and in the public in prison clothing. The suspect was obliged to attend the court session in prison clothing and was led handcuffed, although his co-accused was allowed to attend the session in civilian clothing. In its reasoning, '[t]he ECtHR noted that the Government had not suffi-

- 5 1789 French Declaration of the Rights of Man and Citizens, available at: http://avalon.law.yale.edu/18th_century/rightsof.asp
- 6 Universal Declaration of Human Rights, available at: <http://www.un.org/en/documents/udhr/>
- 7 International Covenant on Civil and Political Rights, Article 14(2), available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- 8 UN Human Rights Committee, General Comment 13, Article 14 (Twenty-first session, 1984), available at: <http://www.refworld.org/docid/453883f9o.html>
- 9 *Daktaras v. Lithuania*, no. 42095/98, § 42: 'Moreover, the principle of the presumption of innocence may be infringed not only by a judge or court but also by other public authorities (...) including prosecutors.'
- 10 *Butkevicius v. Lithuania*, no. 48297/99, §49
- 11 ECtHR, Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial, 2014, § 225, available at: https://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf
- 12 *Jiga v. Romania*, no. 14352/04

ciently demonstrated the necessity of the measure, which in its view, suggested that the order to present the applicant in prison clothing was lacking any justification. The ECtHR found that the appearance of the co-accused in his own clothes had been especially damaging to the applicant insofar as it was likely to give the public the impression that he was guilty. Therefore, the ECtHR found that there had been a violation of the presumption of innocence'¹³

Directive 2016/343 on the presumption of innocence and of the right to be present at the trial in criminal proceedings

The 2016 Directive on the presumption of innocence was adopted by the European Parliament and the Council with '[t]he purpose (...) to enhance the right to a fair trial in criminal proceedings by laying down common minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.'¹⁴

Years before the adoption of the Directive, in 2006 the European Commission presented the Green Paper on the presumption of innocence to acquire the knowledge on how PoI is understood and implemented throughout EU Member States.¹⁵ Following this, in 2009 the Council adopted the *Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings*¹⁶ which calls for creation and adoption of a new legislation. This call was followed by the European Council's adoption of the *Stockholm Programme – An open and secure Europe serving and protecting citizens*.¹⁷ In point 2.4., the Stockholm program recognises that '[t]he protection of the rights of suspected and accused persons in criminal proceedings is a fundamental value of the Union, which is essential in order to maintain mutual trust between the Member States and public confidence in the Union.'¹⁸

¹³ Fair Trials and Legal Experts Advisory Panel, EU Directive on the presumption of innocence: implementation toolkit, 2017, page 20, available at: https://www.fairtrials.org/wp-content/uploads/2017/06/Presumption-of-Innocence-Toolkit_2.pdf

¹⁴ Directive (EU) 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, §9, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0343&from=HR>

¹⁵ European Commission, Green Paper on the presumption of innocence, 2006, page 2, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0174&from=EN>

¹⁶ Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2009.295.01.00.01.01.ENG&toc=OJ:C:2009:295:TOC

The Directive has its legal basis in Article 6(1) of Treaty on European Union EU¹⁹ which states that EU recognises the rights set forth in the Charter of Fundamental Rights of the EU. In its Article 48(1) the Charter guarantees all persons a right to be presumed innocent until proven guilty in accordance with the law.²⁰ Furthermore the Directive builds its minimum standards to a fair trial in criminal proceedings on the provision of Article 82(1) of the Treaty on the Functioning of the European Union which stipulates that '[j]udicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions (...)'²¹.

Therefore, the Directive defines the presumption of innocence in Article 3: 'Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to law.'²² This definition builds upon the provision of ICCPR and both the ECHR and case-law of the ECtHR, and therefore recognises the essential aspect of PoI: the right not to be pronounced guilty by the authorities before a final judgment²³, presentation of suspects and accused persons²⁴, burden of proof²⁵, right to remain silent and right not to incriminate oneself²⁶, and right to be present at the trial²⁷.

Vis-a-vis, the perception of a person's innocence, the Directive prescribes two key safeguards on how suspects and the accused are presented in court or in public. In Article 4, the Directive requires from Member States to ensure that public statements made by public officials do not refer to suspects and accused persons as being guilty as long as they have not been convicted. This obligation, however, '(...) shall not prevent public authorities from publicly disseminating information on the criminal proceedings where strictly necessary for reasons relating to the criminal investigation or to the public interest'²⁸.

In addition, Article 5 obliges Member States to take appropriate measures to ensure that suspects

17 The Stockholm Programme — An open and secure Europe serving and protecting citizens, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2010.115.01.0001.01.ENG&toc=OJ:C:2010:115:TOC

18 *Ibid.*, point 2.4

19 Consolidated version of the Treaty on European Union, Article 6(1), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex-%3A12012M%2FTXT>

20 Charter of Fundamental Rights of the European Union, Article 48(1), available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

21 Consolidated version of the Treaty on the Functioning of the European Union, Article 82(1), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX-%3A12012E%2FTXT>

22 See note 14 above, Directive (EU) 2016/343, Article 3

23 *Ibid.*, Article 4

24 *Ibid.*, Article 5

25 *Ibid.*, Article 6

26 *Ibid.*, Article 7

27 *Ibid.*, Chapter 3

28 *Ibid.*, Article 4

and accused persons are not presented as being guilty, in court or in the public, through the use of measures of physical restraint, which is not to prevent the usage of physical restraint if deemed necessary on a case-by-case basis.²⁹

29 Ibid., Article 5

30 Ibid., §20

In addition, Article 5 obliges Member States to take appropriate measures to ensure that suspects and accused persons are not presented as being guilty, in court or in the public, through the use of measures of physical restraint. However, Paragraph 20 of the Recitals notes that '[t]he 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, either relating to security... or relating to the prevention of suspects or accused persons from absconding or from having contact with third persons...'³⁰.

Although the importance of the portrayal of suspects and the accused by using physical restraints in court and in public is recognised by the ECtHR in its above-cited case-law as an important issue that could eventually lead to the violation of the right to be presumed innocent, the Directive goes one step further in safeguarding the procedural rights of accused and suspects within the EU judicial area.

Following the strong presumption that an unselective approach of the use of restraining could lead to the strong impression of guilt and could therefore produce a significant negative effect on the daily lives of suspects and accused persons, HRHZ undertook a sociological research to probe whether different levels of restraining measures influence the public perception of guilt.

Research methodology

Research was set up to answer three following research questions:

- Does the sight of using restraining measures against a suspect have an impact on the perception of guilt?
- How do the different levels of restraining measures influence the perception of guilt?
- Is there a correlation between different socio-demographic variables, political values and the perception of innocence?

Research was conducted using qualitative and quantitative approaches. In the quantitative part of the research, a set of photographs was shown to participants representing 3 different degrees of the use of restraining measures while apprehending suspects in situations of arrest. A sample of 300 participants was divided into three groups, each containing 100 participants who were asked via online questionnaire to estimate whether the person in the photograph is guilty or innocent.

The qualitative part of the research was conducted using the focus group method. Altogether 48 people participated in 6 separate focus groups. The focus group method was used to specify the results obtained from the quantitative part of the research and gain a broader understanding of the influence of restraining measures on the perception of guilt.

Using a mixed method provided us the possibility of examining the question on different levels and increase the methodological validity of the research.

Before conducting the research, the first task was the production of the aforementioned photographs. The main criteria for the photographs was their authenticity and producing them in such a

manner so as to avoid – as much as possible – inducing any bias in the participants. Photos had to represent convincing scenarios of police arrests and 3 different restraining measures, ranging from (1) no measures of restraint, (2) moderate measures of restraint and (3) severe measures of restraint. Therefore we decided to use actors who staged both police officers and suspects, but who were not familiar to the general public. They represented middle class persons aged between 25 and 40, with uniform characteristics. Gender was added as a variable to test if that had an impact on the perception of guilt, but no other variables were added to avoid bias considering these attributes such as social class or ethnicity. Photographs were shot in three different locations in Zagreb, lacking circumstances in the settings that might influence the judgement of particular situations. Photographs were shot in a form that imitates the perspective a journalist has while on assignment. Another crucial factor while taking the photos was ensuring that 3 different degrees of restraining measures were clearly shown and captured.

Quantitative approach

In the quantitative part of the research altogether 300 respondents were involved and a quota sample was used, where the quota was determined according to age, gender and level of education. The sample was then divided into three independent subsamples which consisted of the same number of respondents (100) for the each category of restraining measures (ranging from none to severe). The logic behind this design was to use the first group as the control group and compare it to groups with increasing levels of the use of force and restraint to determine what the effect of using particular degrees of restraint during apprehension is.

All three groups of participants were given the same questionnaire, but the accompanying photographs that they had to evaluate were different. The set of photographs shown to the first group included three persons being apprehended by the police while no means of restraint or force were applied. The second group was asked to evaluate a set of photographs with a similar situation, only handcuffs were used during apprehension. The third group was shown a more severe method of restraint, with apprehended persons handcuffed behind their back and physically suppressed by the police. The level of force featured in the photographs gradually increased. All three sets of photographs involved actors and all three groups of respondents saw the same people, only with different levels of use of the force demonstrated. All three persons were about the same age and the reason for such a choice was to avoid bias towards certain age groups. Furthermore, all three were Caucasian, as that is the predominant skin colour in Croatia and all other options would present a significant distraction since there are no large groups of any other race in the country. The number of photographs in each group was three, so a total of nine photographs were used.

In the survey, participants had to estimate whether the person in the photograph is guilty or innocent and indicate their level of certainty, ranging from 1 to 4, where 1 signified a low level of certainty and 4 absolute certainty. In this way, innocence or guilt was measured in a binary and continuous way. Furthermore, summing all of the outcomes on both variables provided us with two cumulative indices.

Furthermore, every photograph was accompanied with a set of characteristics which were graded by participants – followed by a brief set of questions asking about the perception of the situation, for example 'does this person look threatening?', 'is the use of force excessive?' etc... This included possible sources of bias, such as threatening im-

pression, dangerous appearance and physical attractiveness and similar characteristics. This was followed by a brief set of scales measuring different values and attitudes in order to demonstrate if there is a relation between different values and perception of guilt. From this we were able to determine whether measures of restraining the suspect/accused influence perception of guilt and innocence on three different levels.

RESULTS

A → Perception of guilt

The hypothesis of this research was that using measures of restraint would influence the perception of guilt of the arrested person and that this perception would be such that the more severe restraining measure is used, the more likely a respondent perceives the person guilty. To measure such perception we have constructed two different propositions. One is that every person shown to the respondents in our study is more likely to be judged as guilty if measures of restraint are used. This way we were trying to measure individual effect. There was also another assumption and that was that the absolute perception, or rather the sum of individual guilt, would also be significant. To prove this, we divided our sample into three equal groups and showed them three different individuals being apprehended by the police, two men and one woman. Their clothes were non-distinct, apart from the woman who wore a white fur coat.

The first group was shown three photographs where these three persons were escorted by the police, but without any physical restraint. The second group saw the same three persons, but handcuffed and with their hands in front of their bodies. The third group was shown the same people, but this time handcuffed behind their back and with significant amount of physical force used on them. The first two persons in the photographs were male and the last one was a woman and this order was the same for all of the presentation of the photographs to the groups.

Then the respondents were asked whether or not they thought the person shown in the photograph is guilty. The result was as shown in Tables 1–3. Since the number of respondents in every subsample is precisely 100, frequencies are exactly the

same as percentages and therefore percentages will not be given as they are redundant.

Table 1. Responses to the question 'Do you think that this person is guilty of committing a criminal act?' for the first person (male).

	YES	NO
GROUP 1	69	31
GROUP 2	77	23
GROUP 3	83	17

As can be seen, no matter what the measure of restraints were, there was a high level of agreement that the person in the photograph is guilty. Even when no restraints are shown more than two thirds of respondents thought that the person is guilty. It is, however, obvious that this confidence rises as the use of force increases.

Table 2. Responses to the question 'Do you think that this person is guilty of committing a criminal act?' for the second person (female).

	YES	NO
GROUP 1	67	33
GROUP 2	74	26
GROUP 3	79	21

The distribution of answers for the second person is similar to that of the first one, and it still predominantly involves the opinion that the person shown is guilty. **The trend is also repeated, as this view increases as the use of force gets more pronounced.**

Table 3. Responses to the question 'Do you think that this person is guilty of committing criminal act?' for the third person (male).

	YES	NO
GROUP 1	61	39
GROUP 2	57	43
GROUP 3	69	31

In this case we can still see that there is a prevailing view that the person is guilty. It changes in rank because the respondents feel that the person is guiltier when unrestrained than when being handcuffed. Still, highest degree of the use of force results in the highest level of guilt and the person is still dominantly perceived as guilty.

Two things can be concluded from these findings. First, any situation of apprehending by the police results in the perception that the person is guilty. Second, this perception rises as the level of force and physical restraint increases. Even the presence of the police without using any restraining measures seems to have an impact on the presumption of innocence. This raises the possibility that respondents trust the police and do not suppose that they do actions against innocent people. This is an important finding when compared to levels of trust in police (52%) and legal system (17.3%). It means that the respondents tend to be distrustful of legal action in an abstract sense, but they believe it when applied.

At the level of individual guilt, we could not confirm that measures of restraint have a statistically significant influence on the perception of guilt. This was also confirmed by post-hoc tests (Turkey HSD and Scheffe tests). But even though at the level of individual guilt, we could not confirm that measures of restraint have a statistically significant influence on the perception of guilt, **the trend is linear and consistent – perception**

of guilt increases as the use of force gets more pronounced. However, on the level of the summation of individual guilt, this changes. This measure was created by summing together all the respondents who thought that all of the persons shown were guilty. This means that they were divided in two categories: those who think that all apprehended persons are guilty and those who think that at least one of them is not guilty. Results for the sum of individual guilt are shown in Table 4.

Table 4. Sum of individual guilt.

	YES (SUM)	NO (SUM)
GROUP 1	39	61
GROUP 2	54	46
GROUP 3	61	39

When all perceptions of guilt are summed together, it becomes obvious that we have a differentiation because less than 50% of respondents in the first group think that all respondents are guilty compared to 61% in the last group. To determine if there is a statistically significant difference between three groups, one-way ANOVA was used. **This difference was found between the first and the third group – the one with no measures of restraint and the one with the severe use of physical force and measures of restraint. The difference was significant on 0.01 level.** We can conclude that, although there is no significant difference at the level of individuals, **there is a cumulative effect that shows a statistically significant connection between the use of force and measures of restraints during apprehension and perception of guilt.**

Respondents were also asked how certain they are of their answers, ranging from '1 – not certain at

all' to '4 – absolutely certain'. No significant differences were found for any of the photographs or any groups.

B → Impression of the persons in the photographs

Apart from responding to the question of perceived guilt, respondents were also asked to give their **impression of the persons in the photographs**. A scale of 15 different characteristics, both positive and negative, was developed and applied to each of the photographs, which meant that participants had to answer it repetitively three times. The question was expressed in a following manner: *'On a scale between 1 meaning 'not at all' and 4 meaning 'absolutely' would you say that this person looks?'* with the characteristics listed below.

Factor analysis was then used to determine what items were statistically and logically connected in order to develop concepts behind them. Items were gathered in the manner indicated in the Table 5. below. The positive factor gathers items that had clear positive connotations, both physically and mentally, consisting of seven items. The negative factor was the opposite, with five items indicating negative characteristics. The neutral factor consisted of only two items that cannot be readily described as either positive or negative and was therefore called neutral. Since this factor entailed only two items and had low eigenvalues, it was dropped from further analysis. The structure below repeats in all three subsamples with items extracting in this exact constellation.

Table 5. Factors based on 15-item scale of characteristics

Factor		
POSITIVE	NEGATIVE	NEUTRAL
Physically attractive	Aggressive	Harmless
Well dressed	Threatening	Nervous
Educated	Dangerous	
Intelligent	Repulsive	
Smart	Hot-tempered	
Self-confident		
Strong		

Further analysis shows that both the positive and negative indices have explanatory value, with **negative one being statistically significant in all three cases** and positive with the third person. Respondents who thought that the **first person** was guilty, regardless of the use of force, were significantly more likely to see that person in a negative manner. For the **second person** (female) this result is confirmed. The positive index did not yield a statistically significant difference, however the negative one did. For the **third person** both positive and negative indices were shown to be statistically significant and, as expected, with strong differentiation. Those who see the third person as guilty tend to see him more negatively and less positively and vice versa.

Two important findings can be identified from this fact. First, people are more likely to see a person as guilty if they ascribe negative characteristics to him/her. This has been demonstrated in all three cases. Positive characteristics have a role, but they are not as strongly expressed as negative ones, as only in one of three our examples was it found to be statistically significant. **Second, respondents tend to see the female in the most positive manner and to ascribe least negative views about her.** It should further be noticed that negative indices had a statistically significant positive correlation with the opinion that the person will be sentenced when it came to both males. This

connection was not found with the female person and positive indices did not show statistical significance.

C → Perception of possible conviction

Respondents were further asked whether or not they believe that the person in the photograph will be convicted. Results show that in this case fewer respondents think there will be a conviction compared to their perception of guilt, but it is still high for male respondents.

Table 7. Responses to the question 'Do you think that this person will be sentenced?' for the first person (male).

	YES	NO
GROUP 1	57	43
GROUP 2	57	43
GROUP 3	61	39

When judging the first male, respondents tended to think that he will be sentenced and it did not vary a lot, regardless of the level of measures of restraint.

Table 8. Responses to the question 'Do you think that this person will be sentenced?' for the second person (female).

	YES	NO
GROUP 1	41	59
GROUP 2	39	61
GROUP 3	49	51

When judging the female person respondents replied with a much lower level of sentencing predicted, with less than a half of them seeing her as convicted in the future. The reason for this will be examined in the following chapters, but it is important to stress that gender plays a role in this estimation.

Table 9. Responses to the question 'Do you think that this person will be sentenced?' for the second person (male).

	YES	NO
GROUP 1	63	37
GROUP 2	59	41
GROUP 3	66	34

Similar to the first case, majority of respondents thought that this person will be convicted. The respondents were clearly under impression that the court would be more lenient toward the apprehended female. This does not necessarily reflect the actual legal practice, but shows that there is an inherent bias that causes respondents to view the female in a more positive light. No statistical difference was found between groups on individual level or when responses are summed up. Statistically significant difference on how convinced the respondents were of their answer was also not found.

D → Sociodemographic characteristics, values and perception of guilt

Various questions considering sociodemographic characteristics were included in the questionnaire but absolutely none of them proved to have any statistical significance. It can thus be concluded that gender, level of education, age group, birthplace size and size of the city/village where respondents were currently living, previous experience with the Croatian judiciary system and economic status did not play a role in their perception of whether a person is guilty or not. This was found in all three cases and with all subgroups. While this finding is unexpected, it helps us concentrate on other aspects of this research.

The situation is similar when it comes to values. Several questions about values were asked, and it was shown that political values and a post materi-

alistic worldview do not explain the perception of guilt. When it comes to religious views, we found that those that are indifferent or undetermined about religion are more likely to perceive the first person as guilty than those that are not religious. Religious respondents are not statistically different from either of the previous groups. It can be concluded that both sociodemographic characteristics and values play a small, if any, role in perception of guilt. Nevertheless, this finding could be attributed to the limited sample size ($N=300$).

Qualitative approach

In this second research phase, focus groups were conducted to avoid the classical objection to a quantitative experiment as a method, specifically its isolation from real social situations. Six focus groups were organized and participants were divided in three age groups: 18–34, 35–54 and 55 or older. For each age group two focus groups were assembled, each with 8 participants. Total number of participants was thus 48. They were all shown all of the pictures and asked a series of questions according to the previously-defined protocol. Topics of the focus group were the participant's perception of the apprehended people and the potential crime the apprehended may have committed.

In this report all quotes will contain a reference to the age group and the person respondents are describing. The first group (18–34) will be marked with A1, second (35–54) with A2 and the third group (55 or older) with A3. First 'apprehended person' (first male) will be marked with M1, second (female) with F and the third person (second male) with M2. For example, if a notation behind a quote reads 'A2, M2' it is a quote from a person aged 35–54 commenting on the second male.

Quotes from the participants will be used as indications for the findings in the qualitative part of the report.

RESULTS

Analyzing the results of the focus groups, we would like to highlight two different tendencies that we identified – one regarding the perception of crime and the other regarding the perception of the apprehended person.

Perception of crime

Perception of crime is clearly connected to two important concepts: (a) the respondent's perception of the possible crime committed by each person tends to move towards that of a more serious crime as **the use of force** increases and (b) **gender profiling**, as two males are being judged in a similar way which is distinct from the judgment towards the female in the photographs.

A → Perception of crime in regard
to the use of force

As noted before, when faced with the first photograph in the series, the one **where no force is used, respondents tended to perceive the possible crime as** minor, a misdemeanour or even non-existent, where the person might be victim of unlucky circumstances. Respondents predominantly consider arrests with no use of restraints as a response to crimes such as minor drug abuse, disturbing the peace, alcohol abuse in public, avoiding witness duty and similar offences. Respondents are aware that in this case police procedure does not involve use of restraints and judge the situation accordingly, including that reasoning in their description of the situation.

Alcohol. Weed. Abuse of some drug. Somebody that smokes weed. A1, M2

It could be an eviction, or avoiding witness duty, who knows? A2, F

*I have a feeling that there was, you know, simply a raid and he was there. But did he do something...
A1, M1*

When the apprehended **persons were shown as handcuffed** respondents changed their definition of the situation, reacting with a more **severe estimation of the possible crime**. Police action was clearly taken into consideration and included in their thinking of the situation, as they have immediately identified this as an important change. The first response was usually in regards to handcuffs and then the situation was interpreted accordingly. After noting that the person had probably done something more serious, the range of the hypothetical crime committed was primarily connected to theft, physical aggression, more serious drug abuse, breaking and entering, prostitution and similar crimes, all clearly different from the previous category.

Bigger crime or amount, or both. Something serious, it certainly isn't a parking ticket. A3, F

Since there is a park behind them he was stealing a bike. Maybe breaking and entering, attempted breaking and entering. A2, M1

He might have even beaten his girlfriend. A1, M3

When shown the third series of photographs which show the **increased level of applied force** while arresting a person, respondents reacted with **more serious crime estimations**. An increased use of force was also noted and commented on, and the range and type of hypothetical crime changed drastically. In this case, several respondents reacted spontaneously with a thought that the person must have done something 'nasty', which was met with agreement by other participants. This nastiness could be further expressed through the list of crimes proposed as possible triggers for such a level of measures of restraints: bank robbery, murder, resisting arrest and drug distribution, most of them involving certain level of violence committed. **Use of force was seen as a necessary mean of dealing with potentially dangerous situation.**

He was resisting arrest. And it was a more serious crime. A3, M1

Murdered her husband. Some kind of murder. She did something impulsive. A2, F

It must have been some violence when they are holding him like that. Or heavy crime. Or he tried to escape.

A1, M3

It is also important to notice that most of the respondents evaluate different levels of use of force at face value, not questioning the circumstances or the use as such. **This corresponds to the findings from the quantitative part when there was a high level of conviction that the people on photographs are guilty.**

B → Perception of crime in regard to gender

While there is a **clear tendency to judge hypothetical crime more severely when heavier measures of restraints and force are used**, there is another element that needs to be examined, and that is the role that gender plays in respondent's definition of crime. There is a coherent narrative that the participants offer for both males and it clearly differs from the one applied to the female.

The so-called 'Male crime' in its mildest form had to do with recreational use of drugs (especially marijuana), football-related hooliganism, disturbing the peace or simply being in the wrong place at the wrong time (with particular reference to being present at a drug raid in a club). The female was perceived as having committed a different type of crime, with the exception of disturbing the peace, although in that case she was exclusively described as probably drunk, unlike males. The hypothetical crime she might have done was mainly attached to financial aspects like fraud or tax evasion, avoiding witness duty and stealing clothes. It is obvious that in this, least severe category, **her possible crime was seen as more private, while males**

were seen as those whose crime was probably committed in public.

On the second level, when handcuffs were involved, gradation remained, but so did the gendering of the possible crime. Males were seen as those who committed acts of violence already at this level, with violence in a relationship was usually mentioned. There were also references to possible robberies, thefts and drug dealing. The female, on the other hand, was seen as someone who had committed **serious financial crime** or was involved with **organizing prostitution**. These are still non-violent crimes and retain a private and gendered dimension, as prostitution was never mentioned in regard to male suspects.

When the third and the most severe level of use of force and measures of constraint was introduced, definitions of possible crimes also became more severe. When it comes to males, their crimes were seen as very violent, ranging from murders to bank robberies to the use of weapons. In fact, all responses from the participants involve a serious level of violence when describing what the male person might have done. In case of the female, here is the first time that violence comes into the picture, because murder was hypothesized as a possible cause for her being apprehended, together with serious financial crimes. However, there is also an important gender element in their estimate of the situation: males are seen as murderers generally, with no specific victim identified, whereas the female was invariably seen as person who has killed her husband.

Perception of the apprehended person

Quantitative part of the study has clearly demonstrated that **participants tend to perceive a person they see in a negative light as more likely to be guilty**. The correspondence of the factor of negative traits with the perception of

guilt had the statistically strongest significance. Positive traits were not so important, but were still found to be statistically significant in one case, leading to a lesser perception of guilt. In that context, it is important to understand what the mechanisms applied to positive and negative perception are (a) and what the situational logic that guides participants in seeing a person as positive or negative is. Physical appearance of the apprehended (b) and respondent's opinion of it will also be analysed.

A → Negative and positive traits

There are several important issues to be addressed when analysing the negative perception of the apprehended person, which are usually interpreted as a part of a broader context. In one discussion (A1) the first male was seen as 'decent' by the first participant, but then the argument 'they would not apprehend him if he was decent' prevailed after the discussion, and subsequently the traits attached to the first male were 'arrogant', 'rebellious' and 'careless'. The female was predominantly seen as 'arrogant', 'pretending to be a martyr' and 'fake'. Second male was seen as 'cunning' and 'calculating'. **The typical situation within the group dynamic was that at some point the fact that the person was apprehended became used as a motive to start looking for negative traits.** The group discussion would later lead to a similar conclusion between groups for each of the cases, resulting in the above-described characteristics.

Negative perception thus stems from the definition of the situation: if a person is being apprehended, they must be guilty, and if he/she is guilty then this must be something negative. This mechanism is applied from the first photograph, when no use of force is shown. **The mere presence of the police is sufficient to perceive a person in a negative light.** One of the participants described a real life situation in which the same logic was applied.

Have you ever seen an apprehension live or in the media? Yes. In the media and live. And what did you think about that person then? That he is a hobo. Thank God that he was apprehended. (...) Rarely would they apprehend someone without a reason, they need to have a suspicion, some proof or a reliable tip. A3

However, when it comes to positive perception situation changes. This perception usually comes in two contexts: at the beginning of the group discussion and as a mean of justifying. **Since the definition of the situation in the photograph is contextual, it makes sense that a more negative view becomes more common as restraint measures become more severe.** On the other hand, another source of positive estimation stems from a discrepancy between stereotypical views of a criminal and the people in the photographs. Respondents would often notice that they are not 'dirty', 'bruised' or 'looking aggressive'. This is, in essence, a social construction as criminals are seen as belonging to lower classes and given traits that are features of social exclusion and difference. There is, however, one class of potential criminals that is notably mentioned often: politicians accused of crime. Lenient behaviour of the police in the first series of photographs was often compared to such cases.

In conclusion, negative traits are usually more often expressed after a group discussion, which can be particularly relevant in the context of media presentation and potential public perception. On the other hand, there is a stereotypical view of a criminal that is dirty, untidy and aggressive and differentiation from such a stereotype can be the source of possible positive perception.

B → Physical appearance

As mentioned in the previous paragraph, there is a stereotypical view of a criminal. While taking the photographs that were used in the survey, the criteria were their authenticity by staging convincing situations of arrests and producing them in

such a manner so as to avoid - as much as possible - inducing any bias in the participants. Photos had to represent convincing scenarios of police arrests so actors were asked to wear their usual everyday clothing. Still, depiction of arrested person in usual everyday clothing interfered with the tendency to view a criminal in a stereotypical manner and **there are signifiers that our participants read as potentially dangerous or 'more criminal' than others.** One of the most important signifiers was a **hooded shirt** worn by one of the males. Hooded shirt was immediately interpreted as an attempt to hide one's identity and connected with probable criminal activity in various groups of respondents. **Sunglasses** worn by the female were also a signal that the person is trying to hide her face. Attempts, or rather, **perceived attempts to hide one's identity are seen as one of the most reliable grounds upon which to deem a person as guilty.** There is also a social element to the interpretation, as the female was often seen as a person involved with prostitution, however never as a prostitute, but rather as a madame, as she was wearing a fur coat. A hooded shirt was also attached to a specific potential source of criminal behaviour: football-related hooliganism. Male persons were often compared in a sense that one of them was wearing tracksuit pants and a hoodie, whereas the other was wearing more 'decent' clothes. The first male was also perceived as the most guilty in the quantitative part. That was also the biggest difference between the two males. **Due to their attire, one of them was more often seen as a hooligan, while the other was more often seen as a recreational drug user.** Explanation for this usually included perception of their clothes as the former was wearing a hooded shirt and tracksuit pants, while the later was wearing jeans, a leather jacket and a scarf. This opinion was illustrated by a participant in A2.

Classy, rich. Clean, neat. With good clothes, I would say. Born with a silver spoon. His scarf and jeans are... Well, I would say it is a well-off drug user. For me drug dealers are guys with much rougher looks and haircuts.
A2, M3

On the other hand, detailed description of the first male given by a respondent in A1 sums up the argument on hooligans.

Like a hot shot, he thinks he is a hot shot. Sporty, hooligan type. Out of control. He is in puberty and now he wants to prove himself. (...) This hoodie, the cap, sneakers... They are all saying 'football fan'. This tracksuit is not really good for sports, it is more Bieber style, but it is good for running. So these are some of the reasons why I think he is a hooligan. I have football fans among my friends and they all look like that. A1, M1

C → Police procedure and perception of guilt

As it was already noted, the **mere presence of the police was enough for participants to perceive the apprehended person as guilty** in most of the cases. The underlying logic for such a result was that the police and measures of restraint would not be present if the person was not guilty of something or at least suspicious. In this light, it is interesting to notice that the respondents are invoking this view when justifying police conduct. Furthermore, when measures of restraint are absent, they are oftentimes mentioned by the participants as a possible solution after a more serious crime. Thus, even the absence of measures of restraint, they are seen as relevant, as they are clearly incorporated in respondent's view of a typical arrest situation.

Perhaps she's drunk and that's why they are only holding her by her arm, without handcuffs. A2, F

To me this does not look like an arrest because he is not handcuffed. They are either helping him or he might have done something minor. A3, M1

There is no rough treatment by the police. If he really did something, if he was resisting... I don't know. This doesn't look like much. (...) It is probably a routine procedure as they are very gentle. A3, M3

If it was something really serious, he would be handcuffed. A1, M1

Handcuffs are seen as the immediate signal of guilt and typically commented on as soon as they are seen. Just like their absence was the foundation for an argument for perception that a person might have committed some minor crime, the fact that they are used is crucial for perception of guilt and the type of crime.

I think it must be something serious. Because of handcuffs and the way they are holding him. A3, M1

To me this looks like something involving aggression, because of the handcuffs. A2, M3

Ah, handcuffs. That means he's guilty. A2, M1

This is a more serious situation. More serious. This is heavy stuff. Something is wrong. A1, F

She is handcuffed and that's a sign of guilt. A2, F

Respondents also showed empathy when they thought that the apprehension procedure was too rough when they have perceived the person as responsible for a minor criminal act. There is a sense of justice about what should be the appropriate level of force. Usually respondents comply with the level presented in the photographs as it is contextually the most important element for their definition of the hypothetical crime, but if the discrepancy is too big they may see the situation as too lenient if they think that a more serious crime was committed and too rough if they see it as something minor. This happens at first two levels, but not when the most severe use of force is shown.

I disagree that handcuffs should be a standard procedure. For me they shouldn't be because it's not the

same as being apprehended without them. He certainly feels discomfort and I think that for handcuffs to be used there should be some guilt, suspicion or resisting. A1, M1

He looks to decent to be treated like that. A2, M3

Maybe he's on drugs. Look at his pale face. The two, the policemen, they seem too gentle, in my opinion, for his kind of people. A3, M1

When faced with photographs depicting the highest level of measures of restraining the suspect, respondents are in agreement that the person is guilty and deserving the treatment, as it must have done something very serious, usually including aggression. Element of control is also mentioned and such control is seen as justified because a person that has committed a serious crime would probably attempt to resist the arrest.

We have already concluded that those aggressive guys... You know, dragged in such a way, handcuffed with hands on their back so they cannot move... They are bursting with physical force and maybe this one was aggressive so the police has to take that into consideration. It looks rough, but it's the only adequate procedure for such behaviour. A3, M1

She was probably aggressive. To police. Or someone else. She might even killed someone. Maybe she was resisting arrest. A1, F

Summarized results

Measures of restraint and use of force did not prove to be significantly correlated with the use of force on an individual level, although the direction of answers on each of the cases was clear and increasing with the increased use of force. There is, however, a statistical significance when individual cases were summed up and an index of overall guilt was constructed. This means that the use of force and measures of restraint plays a role in perception of guilt and respondents' perception is clearly different in cases when restraining measures are lacking and when those are severely used (group 1 vs. group 3).

Furthermore, the **mere situation of apprehension and presence of the police results in a very high level of agreement that the person is guilty**, although certainty about tends to be low. Visual component of the apprehended person and characteristics attached to him/her by the respondents seem to play a big role. The mechanisms of perception clearly involve positive and negative traits ascribed to a certain person as statistically significant when it comes to judging guilt. This is especially relevant for negative characteristics, which proved to be significant in all three cases. **There is a positive and statistically significant correlation between negative traits and perception of guilt.** It is also more likely that negative traits will be attached to men rather than attached to women. Negative characteristics are statistically significant predictors of sentencing when it comes to men, as well.

Sociodemographic characteristics of the respondents were also tested in the quantitative research phase, but they turned out to be statistically insignificant, just like values. This means that **when thinking about mechanism of judging guilt, there must be more emphasis placed on visual and contextual elements as opposed to on the person judging the situation.** This

is, of course, also due to a relative small sample size, and further research is certainly desirable. Finally, trust in institutions did not prove to be significant except for one of the cases where trust in politics and international institutions was relevant. When it came to sentencing, however, people that trust institutions more tended to think that apprehended persons were more likely to be sentenced and vice versa. This means that people use different mechanisms when judging potential guilt, where they rely on the context and visual material. Nevertheless, when it comes to sentencing, respondents tend to rely on the idea that the efficacy of the system (or lack thereof) will result in prosecution.

Discussion and conclusions

The maxim 'innocent until proven guilty' is incorporated in the UN Declaration of Human Rights and is one of fundamental postulates of EU *Directive (2016/343) on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings*. According to the Directive, all Member States have to ensure that suspects and accused persons are presumed innocent until proven guilty under the law. Yet, results of this research show that in Croatia public perception is different. Indeed, the mere presence of the police results in a very high level of agreement that the person is guilty. This finding was shown while analysing the results of the quantitative research phase and was later reinforced by the findings resulting from the qualitative phase. The underlying logic behind that result is that 'police would not be present if he/she wasn't guilty', which presents an attitude completely opposite from the idea the Directive is trying to convey. That mere fact speaks of the importance that this research has.

As the Directive indicates, competent authorities should abstain from presenting suspects or accused persons as being guilty, in court or in public. That means the use of measures of physical restraint, such as handcuffs, glass boxes, cages and leg irons should be employed only in those cases that justify using those measures, decided according to case-specific and security reasons. However, the research showed that not only does the public find people accompanied by police guilty, but also that perceived guilt linearly increases as more severe restraining measures are utilized. Improper means of restraining a person can have a dire impact on one's professional and personal life and police must bear that in mind while making

an a arrest. Restraining measures have shown to influence public perception on one's guilt, which is why the police must have proper understanding of the presumption of innocence and act with caution.

Another key finding of this research is related to the public's perception of the apprehended person, namely their physical appearance and ascribed positive and negative traits. Respondents were more likely to see a person as guilty if they ascribed negative characteristics to him/her, such as aggressive, dangerous, threatening, repulsive and hot-tempered. The focus group showed that a participant's negative perception stemmed from their definition of the situation: if police are present, the person is guilty. The results from the focus group also showed that participants tend to see a guilty person in stereotypical ways – wearing a hoodie translates to, by their impression, looking like a hooligan; wearing sunglasses translates to hiding something. Police should be aware of this connotation, since such negative characteristics are often ascribed to various vulnerable groups (minorities, homeless persons, migrants, etc.) who are often victims of unfair bias and prejudice. By employing improper measures of restraining, they can antagonize those being apprehended even more.

Research has shown that visual components are crucial when it comes to presumption of guilt. Therefore not only should police, but also the media be aware of the notion that every person is innocent until proven otherwise. The media plays a key role in informing the public and can make a big difference in public perception and the presumption of innocence by reporting on arrests fairly and reacting promptly when presumption of innocence is breached.

