The relationship between *Habeas Corpus* and robot technology in criminal proceedings

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Abstract

In law enforcement activities, the most common restriction on fundamental rights is the limitation on personal freedom – that is, the apprehension and preliminary detention of suspects. With developments in technology, it is conceivable that robots will be able to carry out these measures instead of (or alongside) human beings in the near future. The question is: Is it legally or technologically feasible for robots to assume the role of police patrols in the coming decades?

There is no legal dogma that prevents the use of robots to apprehend people, since there are already numerous examples of machines or installations carrying out activities that have the effect of limiting personal liberty, even without human intervention.

Keywords: *fundamental rights, robot, habeas corpus, arrest, criminal procedure, European Court of Human Rights, robotic cop car, War on Terror*

I. Introduction

Habeas corpus proceedings are generally understood to be cases in which an individual in custody files an urgent petition to a court with the aim of obtaining his release[2]. The principle is closely related to the accused party's right to a hearing before the bench and right to judicial review. The law on criminal procedure seeks to ensure that the accused shall be detained exclusively within the framework of an adversarial process. During the investigation, the investigating judge makes the decision; during the preparatory phase, this can only be accomplished at a hearing at which the defendant is present[3].

However, questions about the restriction of personal freedom go much further in the present day. The time may be ripe to ask whether the apprehension and detention of suspects during enforcement activities can be performed by robots rather than humans[4]. We already take it for granted that traffic lights and automatic gates restrict our freedom of movement. In Hungarian law, the codification of rules on legal

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[2] László Blutman (1993), *„A fogvatartás bírói felülvizsgálata: a habeas corpus az európai alapjogok között"* („Judicial Review of Detention: *Habeas Corpus* Among European Fundamental Rights"), *Jogtudományi Közlöny*, August-September 1993, pp. 309-317.

[3] Law XIX (1998) on criminal procedures, Article 210 §(1)a, Article 272 §(2)a

[4] Zoltán Székely (2014), *„Habeas Corpus Machinima. Avagy elfoghat-e engem egy robot?"* (*Habeas Corpus Machinima*; or, Can a Robot Arrest Me?") *Hadmérnök*, IX(1) (March 2014), pp. 291- 303.

preventive defense has opened the possibility for the apprehension of unlawful attackers through automatic installations.

In law enforcement activities, the most common restriction on fundamental rights is the limitation on personal freedom – that is, the apprehension and preliminary detention of suspects. With developments in technology, it is conceivable that robots will be able to carry out these measures instead of (or alongside) human beings in the near future. The question is: Is it legally or technologically feasible for robots to assume the role of police patrols in the coming decades[5]? Furthermore, how might an individual who is arrested or detained by robots exercise his right to a court hearing on the legality of his arrest?

„The basics of robotics are one of the rare subjects to be handled as a whole in a due to the extreme diversity of scientific technologies it incorporates. It uses quite many fields of technology, for example; mechanical engineering, electrical engineering, computer sciences, electronics, sensors, actuators and artificial intelligent. It is a multidimensional area which takes advantage of all engineering studies that exist in our life besides a hard mathematical module application which is required to be applied"[6].

In years, maybe decades, the officer could be replaced by a robotic cop car. The robot will scan the driver's license, decide whether to issue a warning or ticket, and inform of its decision[7].

II. The origins of the principle of *habeas corpus*

Habeas Corpus is a legal principle that derives from English law. *„The writ of habeas corpus has its origins in the early common law courts of medieval England. Some legal historians have found a reference to the writ in Article 39 of the Magna Carta, which in 1215 provided that 'no Freman shall be taken, or imprisoned…but by lawful Judgement of his Peers, or by lawful Judgement of his Peers, or by the Law of the Land.' Whether this refers to the writ of habeas corpus (or something like it) is disputed, but the prohibition against unlawful imprisonment or detention has always been at the heart of the writ"*[8].

Habeas corpus is the greatest safeguard of personal freedom, guaranteeing that an individual can only be deprived of liberty for a short period of time unless he is formally charged or arraigned before a judge. The principle first appeared in the 13th Century as a means of preventing the arbitrary restriction of personal freedom during the war between England's barons and the king. An individual detained at the king's behest could receive a writ of *habeas corpus* from a judge, which would then be handed to the arresting authorities. In this manner, the detainee could demand that the authorities disclose the reasons for his arrest, grant him a court hearing and allow a judge to review the legality of the arrest. By sending back the writ, the authorities would confirm that they had fulfilled these conditions. The development of the *habeas corpus* principle

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[5] Zoltán Székely (2014), *„Habeas Corpus Machinima. Avagy elfoghat-e engem egy robot?"* (*Habeas Corpus Machinima*; or, Can a Robot Arrest Me?") *Hadmérnök*, IX(1) (March 2014), pp. 291- 303

[6] Lahden Ammattikorkeakoulu Tekniikan ala Kone – ja tuotantotekniikka Mekatroniikka Opinnaytetyö Syksy 2011 Fareed Shakhatreh (Lahty University of Applied Siences). https://www.theseus.fi/bitstream/handle/10024/37806/Shakhatreh_Fareed.pdf?sequence=2.

[7] Steven Nelson, *Are robot cops the future of efficient, bias-free policing?* February 06, 2018.

[8] James Landman, *You Should Have the Body Understanding habeas Corpus.* Social Education 77(2) pp 92-105, 2008 National Council for the Social Studies, https://www.americanbar.org/content/dam/aba/images/public_education/05_mar08_habeascorpus_landman.pdf.

covers several important milestones, including the prohibition on arbitrary detention enshrined in the Magna Carta[9].

The very first written source of law in Hungary, the Golden Bull, shows that the Hungarian legal system was developing in parallel to that of England. Proclaimed in 1222 by King András II, this document qualifies the detention of suspects as the most basic restriction on the individual right to liberty. According to Ferdinandy, the Golden Bull represents „the basic code of personal freedom in Hungarian public law" since it mandates the state to respect the individual and, by extension, personal freedom[10]. The Bull deals with arrest and detention in Article II: „We also desire that neither [the current monarchy] nor any king that succeeds us shall arbitrarily arrest or oppress any nobleman unless he is previously convicted in a court of law and through proper procedure".

In Anglo-Saxon law, the most critical juncture in the development of the *habeas corpus* principle occurred during the era of the English Civil War. In 1627, Parliament issued a Petition of Rights in response to legal violations by the King's Bench, the supreme royal court. It stipulated that a free person could only be deprived of liberty through formal charges and lawful proceedings, not by royal decree. At first, King Charles I deemed the Petition to be a violation of his royal prerogative, but Parliament forced the monarch's hand by refusing to pass tax legislation until he signed it. On 28 July 1628 Charles I approved the Petition, which stated that nobody should be subject to arrest by royal order in the absence of a clear reason for the arrest and formal charges[11].

The struggle between the monarch and Parliament continued. According to the Habeas Corpus Act of 1640, every arrested individual would have the right to submit a writ. However, this institution was swept away by the ensuing English Civil War. During the reign of King Charles II, Parliament passed the Habeas Corpus Act of 1679, which required the court to issue an order based upon a written complaint or petition submitted by the individual in custody (or on his behalf). This order enjoined the arresting authority to disclose the time of the detention and the reason for it; to grant the detained individual a court hearing; and to fulfill the provisions of the judge's ruling. The Habeas Corpus Act of 1679 expressly addresses the requirement to bring the arrested individual's „body" before a magistrate[12]. At the order of a judge, the prison warden had to produce a report that spelled out the reasons for the detention as well as a certification that he would bodily release the imprisoned person[13]. The Latin term *habeas corpus* literally means „that you have a body". It implies that authorities are required to „bodily" produce a detained person or bring him before a judge. Ultimately, a *habeas corpus* order is a written legal formula that makes it possible to examine whether an individual's detention is legitimate.

The British Habeas Corpus Act of 1816 extended these legal guarantees to all types of deprivations of liberty – not just those pertaining to criminal cases.

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[9] Barna Mezey (2015), *„A Runnymede-i carta, 1215"* („The Carta of Runnymede, 1215"), *Ügyvédek Lapja*, 2015/3, pp. 2-6.

[10] Gejza Ferdinandy (1899), *Az arany bulla* (*The Golden Bull*), Hungarian Academy of Sciences, Budapest, p. 169.

[11] Lajos Hajdú, Pál Horváth, József Ijjas, Katalin Szegvári Nagy, János Zlinszky, István Stipta (1991), *Általános Jogtörténet* (*General History of Law*), Tankönyvkiadó, Budapest, pp. 178-180.

[12] János Poór (ed.) (2000), *Kora újkori egyetemes történeti szöveggyűjtemény* (*Early Modern Universal Historical Document Collection*), Osiris Kiadó, Budapest, pp. 87-88.

[13] Lajos Hajdú, Pál Horváth, József Ijjas, Katalin Szegvári Nagy, János Zlinszky, István Stipta (1991), *Általános Jogtörténet* (*General History of Law*), Tankönyvkiadó, Budapest, p. 179.

The principle later underwent additional developments. The United States of America's Declaration of Independence cites British authorities' violations of the *habeas corpus* principle as one of the root causes of the War of Independence. The US Constitution as well as American legal practice place great emphasis on upholding and defending this principle. *Habeas corpus* was a cornerstone of legal challenges to the George W. Bush administration's policy of detaining prisoners without trial at the Guantánamo Bay military base during the War on Terror. In 2006, Congress passed the Military Commissions Act, which denied „enemy combatants" the right to use *habeas corpus* to challenge their detention in federal courts, including the Supreme Court. However, a majority of Supreme Court justices opined that denying a prisoner the right to a *habeas corpus* review was, in fact, a violation of the constitutional principle of separation of powers. If the president and Congress can decide whether the Constitution applies in a given area of law, then ultimately it is not the judiciary, but the executive and legislative branches that interpret the Constitution. Writing for the majority, Justice Anthony Kennedy affirmed that the Constitution extends the right of *habeas corpus* petitions to Guantánamo prisoners. In other words, these detainees would be able to mount legal challenges to the state's decision to restrict their liberty, the Military Commissions Act notwithstanding[14].

It is worth mentioning that the 1789 Declaration of the Rights of Man and of the Citizen also codified *habeas corpus.* The Universal Declaration of Human Rights, adopted in 1948 by the United Nations, makes the principle mandatory. *Habeas corpus* also constitutes a significant part of the European Convention on Human Rights, signed on 4 November 1950 in Rome with the aim of defending human rights and fundamental freedoms.

Article 5 of the Convention lists the circumstances under which it is possible to deprive an individual of liberty. The Convention not only details the scope of circumstances, it also discusses the most important procedural necessities, such as the requirement that court proceedings be overseen by a judge. An arrested or detained individual must, with all deliberate speed, appear before a judge or other public official who is legally vested with commensurate powers. Throughout the period of arrest or detention, every individual who is deprived of liberty has the right to a hearing during which the court will decide on the legality of the detention; in case of unlawful detention, the court will order the petitioner released[15].

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[14] Orsolya Salát (2008), *„Az Egyesült Államok Legfelső Bíróságának döntéseiből"* („From the Decisions of the Supreme Court of the United States"), *Fundamentum*, 2008/3, pp. 101-104.

[15] Hungarian Act XXXI of 1993, the Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, Rome; *Article 5, Right to Liberty and Security*

„1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

The Convention's clause on arrests is supplemented by other recommendations. These include Resolution 11 (1965) of the Council of Europe's Committee of Ministers, which suggests that detention of suspects should not be an automatic requirement, but rather a decision made by a court of law following an examination of the facts and circumstances of the particular case. Arrest should be regarded as an exceptional measure that can be ordered and sustained only when absolutely necessary.

III. Constitutional considerations in Hungarian *habeas corpus* proceedings

Hungarian procedures on the restriction of personal liberty also use the technical term *habeas corpus.* This is particularly notable in the practice of the Constitutional Court. Preliminary detention, orders of house arrest and extensions thereof are all known as „*habeas corpus*-related procedures"[16]. The Constitutional Court determined that §55 of the Constitution guarantees the right to freedom and personal security: „This provision is the Constitution's *habeas corpus* rule, which states that nobody can be deprived of liberty except when such action is based upon legally determined reasons and court proceedings, and the individual must be brought before a judge as speedily as possible"[17].

In constitutional democracies, special enforcement provisions or legal remedies apply in the case of healthcare or medical operations that might result in a restriction of, or a clear threat to, fundamental rights. Special *habeas corpus* procedures apply in the case of mental patients who pose a threat to themselves or others and are therefore committed to mandatory psychiatric treatment. The court must order the treatment or review its rationale in an expedited process[18].

Naturally, a good part of the Hungarian Constitutional Court's rulings took shape before the current constitution, known as the Fundamental Law (*Alaptörveny*), went into force in 2012. But the Fundamental Law has generally preserved the previous rules on *habeas corpus.*

The Fundamental Law's Article 4(2) constitutionally mandates that a person can be deprived of liberty only through legal procedures. Article 4(3) of the Fundamental Law states, „Any person suspected of having committed a criminal offense and taken into detention shall, 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 forthwith take a decision

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(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

[16] Constitutional Court decision 166/2011 (XII. 20)

[17] Constitutional Court decision 67/2011 (VIII. 31)

[18] Constitutional Court decision 39/2007 (VI. 20)

with a written reasoning to release or to arrest that person." This is a word-for-word duplication of the corresponding passage in the old constitution.

The text of the Fundamental Law's Article 4(2) is similar to that of Articles 5(1) and 5(3) of the European Convention on Human Rights. With respect to coercive measures, the Constitutional Court decided that the rules of the constitution and the Fundamental Law should be interpreted in harmony with the European Convention on Human Rights.

In line with Article 46(1) of the Convention, Hungary considers any final judgment by the Strasbourg-based European Court of Human Rights (ECtHR) binding in cases to which is it a party. In other words, Hungary, as a signatory to the Convention, is only required to eliminate legal violations in cases where the Court establishes a violation of the Convention. During a judicial review, Hungary's highest court, the Kúria, stressed that „although Hungarian law (Law XXXI/1993) promulgates the provisions of the European Convention on Human Rights, and the ECtHR's interpretation of the Convention's provisions takes precedence over all others, the principle of subsidiarity remains unrealized in signatories' judicial practice. The signatory states do not directly apply the judgments of the ECtHR. When domestic norms are at variance with the Convention, the courts disregard the Convention's provisions, even though the sources of law (our domestic laws) are on the same level"[19].

The Constitutional Court regularly cites the ECtHR's practice as confirmatory arguments in the explanations that accompany its rullings.

IV. The European Court of Human Right's Practice with Respect to the System of Guarantees with Respect to Coercive Measures

The European Court of Human rights has, in numerous judgments, addressed the legality of detention in light of the guarantee of due process enshrined in Article 5 of the European Convention on Human Rights.

In harmony with the provisions Article 5 (1c), every person who is arrested or detained must be brought promptly before a judge (or other public officer authorized by law to exercise judicial power); the arrested or detained individual has a right to a hearing on his case within a reasonable amount of time, or must be released until the hearing takes place. His release must take place under conditions that will guarantee his appearance at the hearing.

The European Court of Human Rights has held that under Article 5 (1c), the goal of the hearing that takes place during detention is to supplement the criminal investigation with data that confirms or refutes the reasons for the arrest. (*Murray v. the United Kingdom*, judgment of 28 October 1994, §55-56). The European Court of Human rights listed these same criteria in §53 of its judgment in the case of *Goussinski v. Russia* on 19 May 2004.

According to the European Court of Human Rights, the system of guarantees with respect to detention and arrest rests upon on three conditions: The action should be prompt, should be automatic, and should be handled by an independent judicial body that is authorized to release individuals from custody. (Judgment in the case of *Zervudacki v. France* of 27 July 2006, §33-35)[20]. In *Zervudacki*, the Strasbourg court also

[19] Kúria Bfv.II.1812/2014/18. In this case the Chief Prosecutor's Office argued that a motion by the defense counsel inaccurately stated that all ECtHR decisions were binding upon Hungary.

[20] Constitutional Court Decision 3/2007 (II/13), in an accompanying explanatory statement by Constitutional Court Judge Dr. Péter Kovács.

established a violation of Article 5(3) of the Convention because the petitioner (who was later sentenced to 18 years and nine months in prison) was not brought promptly before a judge or other public official legally vested with judicial powers following his detention[21].

In *Gábor Nagy v. Hungary* (2014), the European Court of Human Rights ruled that „in the present case, the Court is not persuaded that the applicant was heard as to the justification of his detention at reasonable intervals, all the more so since his request for release was adjudged in solely written procedure. In particular, the period of some four months cannot be regarded as a reasonable interval"[22].

It is especially worthwhile to mention that, in the Strasbourg court's practice, a particularly important part of the system of guarantees regarding coercive measures is the detailed completion of the justification for legal action[23]. The explanatory statement must take experiences into account. This can perhaps be illustrated in cases where it is not possible to launch new proceedings against a given individual due to the principle of *ne bis in idem*, hence it is impossible to apply coercive measures if another European country has already held the accused person responsible for the same act[24]. When databases are not readily available and information is incomplete, it is sometimes only possible to shed light on this during a hearing where the accused is present.

V. The Right to a Hearing in Relation to Coercive Measures

In a 2007 ruling, the Constitutional Court struck down certain provisions of Hungary's law on criminal procedures (Act XIX of 1998) on grounds that they were unconstitutional and incompatible with the right to a fair trial. These rules made it possible to order a defendant's arrest in his absence and without a court hearing.

The Constitutional Court's ruling, which examined the constitutionality of procedural requirements applicable to investigating judges, used the Strasbourg court's practice as a starting point. Under Article 5(3) of the Convention, the requirements are fulfilled „if the judge (or other officer authorized by law to exercise judicial power) grants the detained individual a hearing; and, when it is necessary to review the circumstances militating for or against detention, decides whether there are reasons to justify detention; and, if there are no such reasons, to order the accused released." (*Schiesser v. Switzerland*, 4 December 1979, §31)"[25] The European Court of Human Rights stuck to this test in the following decades, stressing the importance of these

[21] Ágnes Czine, Sándor Szabó, József Villányi, p. 255: Judgment in the case of *Soysal v. Turkey*, 3 May 2007, petition no. 50091/99.

[22] *Gábor Nagy v. Hungary* (2014); *Erisen and Others v. Turkey*, no. 7067/06, § 51, 3 April 2012

[23] See the European Court of Human Rights judgment in *Hunvald v. Hungary,* petition no. 68435/10, 10 December 2013, and the European Court of Human Rights judgment in *Maglódi v. Hungary*, petition no. 30103/02, Strasbourg 2004.

[24] Marek Kordik (2011), *„Ne bis in idem: The role of national criminal law in the European Union area and the alternative resolutions of criminal procedure,"* Collection of Papers from the International Scholastic Conference Law as a Unifying Factor of Europe – Jurisprudence and Practice, Comenius University Faculty of Law, Bratislava, pp. 221-226.

[25] Constitutional Court ruling 166/2011 (XII/20) [For the supporting theses from *Schiesser v. Switzerland*, see *Assenov v. Bulgária*, October 28, 1998, §146-149; *McKay v. United Kingdom*; *Medvedyev and others v. France* (Main Chamber), §119 and §124; *Moulin v. France*, §57-58.] For the Schiesser case, see Vincent Berger (1999), *Az Emberi Jogok Európai Bíróságának Joggyakorlata* (*The Legal Practice of the European Court of Human Rights*), Budapest, Károly Tóth (ed.), ISBN 963 03 811192.

judicial guarantees, even if the expectations under Article 5(4) are not the same as under Article 6(1) (Judgment in *Wesolowski v. Poland,* 22 September 2004, §60). At such times, a hearing is indispensable (Judgment in *Kampanis v. Greece,* 13 July 1995, §47) and it is generally necessary to ensure that both sides – that is, the prosecutor and the arrested person – possess „equal firepower." (Judgment in *Wesolowski v. Poland,* 22 September 2004, §61). „Equal firepower" means the state is required to provide the complainant the opportunity to appear at the same time as the prosecutor so that the complainant can reflect upon his conclusions. (Judgment in *Wesolowski v. Poland,* 22 September 2004, §66)[26].

In several cases the Constitutional Court has examined the regulations surrounding coercive measures in the case of misdemeanours. The contents of these rulings can also offer direction in criminal proceedings, since the two types of procedures are similar in many ways. The responsibility for both misdemeanour violations and criminal offenses is the perpetrator's subjective, guilt-based responsibility, which the state may punish with retaliatory, repressive sanctions, including deprivation of liberty. The difference between misdemeanour and criminal responsibility does not lie in the repressive nature of the punishment, but in the fact that punishments for misdemeanours are less severe. Responsibility for misdemeanour offenses – whether the violations are administrative or criminal in nature – is in essence criminal responsibility: It corresponds to a violation of law committed by a natural person, and, based upon culpability, authorities apply a defined legal sanction that is repressive in nature[27].

Although misdemeanour procedures significantly differ from criminal procedures, they are related in terms of content. Misdemeanour cases are simpler and do not fully include the fundamental principles of criminal procedures. It is not possible to draw a parallel between criminal and misdemeanour cases in terms of gravity, danger to society, or system of sanctions. Misdemeanours cannot be handled with the same considerations or with the same legal guarantees that apply in criminal procedures[28]. At the same time, the Constitutional Court has held – in line with the practice of the European Court of Human Rights – that due to the criminal character of misdemeanour proceedings, misdemeanour trials must also meet the requirements that apply to criminal proceedings, as spelled out in the constitution[29].

The Constitutional Court struck down part of a law on misdemeanours specifically because it did not include the right to a court hearing in cases where a perpetrator was sentenced to imprisonment because he was unwilling or unable to pay a monetary fine. The Constitutional Court held that a fine could only be transmuted into loss of liberty after the perpetrator had been granted a hearing[30]. A hearing for the perpetrator is indispensable; without it, a procedure directed at the temporary deprivation of personal freedom cannot be fair. The restriction on personal liberty is based upon the court's ruling on transmuting the punishment. No fine for an administrative offense, no order to perform public service in lieu of a fine, and no on-the-spot fine can serve as a basis for

[26] Constitutional Court ruling 1/2008 (I/11), separate opinion by Constitutional Court Judge Dr. Péter Kovács.

[27] Constitutional Court ruling 1/2008 (I/11), ABh1., ABH 1997, 371., Constitutional Court ruling 1/2008. (I/11).

[28] Constitutional Court ruling 3/2007 (II/13) 1284/B/1990, ABH 1991, 562, 563-564.

[29] Constitutional Court ruling 63/1997 (XII/12), ABH 1997, 365, 368-369.

[30] 1/2008. (I. 11.) AB határozat.

the restriction of personal freedom. This only can occur by virtue of a court decision. The court cannot hand down such a decision without first granting the subject a hearing (i.e. without a trial); otherwise, the court cannot possibly conduct a fair procedure that truly examines the legal conditions for applying imprisonment. Since the restriction of liberty touches on a fundamental right, it can only be put into practice constitutionally if the court gives the perpetrator a hearing. In these questions, the Constitutional Court stressed that there is a significant difference between transmuting a monetary fine for a misdemeanour into imprisonment and taking the same action with respect to a fine imposed for a criminal act: In the case of a criminal act, the establishment of facts (and the assessment of responsibility that rests thereupon) is carried out by an official judge, not by an administrative authority or judicial employee (court secretary.)

All this highlights another significant difference that arises during the various phases of the procedure in relation to coercive measures that deprive a person of freedom. The vast majority of the Strasbourg cases are related to preliminary-arrest orders stemming from an established suspicion. The procedural-law situation is different if an order of preliminary arrest is determined to be necessary in a first-instance proceeding; a still different situation arises if a court of first instance takes a position on the question of a defendant's guilt and establishes proof thereof, and the second-instance court issues an order for coercive measures.

VI. The Subjects of Arrest and Preliminary Detention in Light of the Legal Environment

Under current legal regulations, arrests and preliminary detention are carried out by the police, which obviously means any person officially on police staff. The situation is the same in the case of national-security services, the National Tax and Customs Office, and the Parliamentary Guard. In the sphere of private security, those assigned to protect people and property also have the right to detain perpetrators. According to the Fundamental Law, it is possible to authorize an independently operating robot to apprehend people in Hungary, but this would require a legislative amendment. Under current Hungarian law, a robot cannot carry out such activities. Police can use robots as tools during the apprehension process. Hence robots, like handcuffs or police dogs, can help ensure a successful apprehension so long as a law-enforcement official is present[31].

In his study on robotics, Zoltán Székely points out that the main challenge is as follows: After we have designed the ideal robot, made of heavy-duty material, whose motions are governed by flawless factory software, and equipped with superhuman sensory organs, we must also provide that which governs the body – the brain, the central computer, the artificial intelligence. A rookie robot lacks life experience, ethics and morals, habits and norms. It has no intuition, no sense of suspicion, zero feeling of empathy, and has no way of determining whether someone is lying or simulating an act[32].

The consequence of the arrest may be the hearing. The robot shall not do the hearing. As the **Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States sayes**

[31] Zoltán Székely (2014), „Habeas Corpus Machinima. Avagy elfoghat-e engem egy robot?" (*Habeas Corpus Machinima*; or, Can a Robot Arrest Me?") *Hadmérnök*, IX(1) (March 2014), pp. 291- 303.

[32] Zoltán Székely (2014), *„Habeas Corpus Machinima. Avagy elfoghat-e engem egy robot?"* (*Habeas Corpus Machinima*; or, Can a Robot Arrest Me?") *Hadmérnök*, IX(1) (March 2014), pp. 291- 303.

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State[33].

VII. Conclusion

At present, robots cannot independently arrest people because only law-enforcement officials are authorized to carry out apprehension activities. However, the law permits police to use them as tools.

There is no legal dogma that prevents the use of robots to apprehend people, since there are already numerous examples of machines or installations carrying out activities that have the effect of limiting personal liberty, even without human intervention.

„In some cases, the use of police robots may increase the safety of policing, for both officers and the public. In other cases, however, the use of police robots to detain or subdue a suspect may raise challenges to the conventional ways in which we have regulated the police"[34].

The technical realization of this goal is possible through several steps: First, by having robots assist in arrests, then using them „partners" in police patrols, and finally, if necessary, allowing robots to independently apprehend human beings under strict security and quality-control requirements. Anyone detained by a robot would have to be brought before a judge promptly. No machine can ever replace a judge under any circumstances.

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