

“PRE-TRIAL ARREST AND DETENTION IN LITHUANIA”

SUMMARY

In 2011, HRMI launched a project focusing on pre-trial detention in Lithuania. Previous HRMI activities, such as trial monitoring, revealed that one of the major problems remains overuse and, in certain cases, abuse of pre-trial arrest and detention. The initiative was aimed at promoting change in attitudes and practices of the law enforcement and judiciary in the area of deprivation of liberty of suspected offenders.

For this purpose, HRMI conducted a research into deprivation of liberty in pre-trial phase consisting of: a) statistical survey on the rates of arrest and detention on remand; b) qualitative research, i.e. focus group interviews with persons who have been arrested or/and detained on remand; c) analysis of existing legal framework, including effectiveness of available legal remedies against arrest and detention on remand.

I.1. LEGAL FRAMEWORK ANALYSIS

The analysis of the legal framework revealed the following key issues:

- a) **Provisional arrest:** the Code of Criminal Procedure (CCP) does not lay down sufficient limitations and guarantees to ensure that arrest is only employed when it is strictly necessary and that the maximum duration of arrest, 48 hours, be used only in exceptional circumstances. This leads to frequent use and sometimes abuse of the provisional arrest. Although the CCP stipulates that every arrestee shall have a right to challenge his/her provisional arrest in a court of law, no particular, expedited court procedure is laid down. As a result, there is no realistic possibility to challenge and terminate an unlawful arrest while it is in progress.
- b) **Legal guarantees for the accused in the pre-trial phase:** the CCP provides that the accused must be informed of his/her right to legal counsel from the moment of the arrest, right to appeal the actions and decisions of officers pertaining to his/her case, and right to remedy for unlawful arrest and/or detention. However, the research gives

reason to believe that this is not always the case in practice, and even if these rights are explained, it is usually done in a way that leaves the person insufficiently clear as to their content.

- c) **Pre-trial detention:** a focal problem concerning the pre-trial phase of the criminal procedure is the overall willingness of the courts to grant detention. Pre-trial detention is often seen as the main means of ensuring an unhindered criminal process and the participation of the suspect that only occasionally can be substituted by less strict measures such as home arrest or bail, and not the other way around. In order to grant pre-trial detention there are two conditions that must be met: inadequacy of less strict measures, and requirement that the offence must carry a penalty of more than one year imprisonment. However, in practice the first one is mostly observed only formally, and detention is often the preferred measure. As regards the second condition, this threshold is of very little practical relevance as almost all offences carry a penalty that exceeds one year of imprisonment. There are also numerous other provisions in the CCP regarding pre-trial detention which benefit the prosecution and disadvantage the accused, and make the grant of detention more likely.
- d) **Conditions of detention:** the conditions under which detainees are kept are very similar and in some cases even worse than those of actual imprisonment. This gives basis to considerations that pre-trial detention may in some instances become a form of early punishment, incompatible with the presumption of innocence.
- e) **Remedy for unlawful arrest:** persons who were illegally arrested and/or detained can claim satisfaction in two ways: either through court or through a settlement with the State for a fixed amount under a particular law. However, the compensated amounts are fairly small and can hardly be considered a just satisfaction. Also compensations cannot be sought in all cases of acquittal but only in cases of unlawful arrest and/or detention.

I.2. STATISTICAL ANALYSIS AND FOCUS GROUP INTERVIEWS

During the implementation of the project it was established that there is a lack of statistical data on the rates of arrest (up to 48 hours). State authorities do not collect enough data which would allow assessing the scale of the problem and providing a comprehensive evaluation.

As regards detention on remand, statistics gathered and analyzed by HRMI clearly demonstrated the widespread and disproportionate use of pre-trial detention. In 2007-2011 on average 1815 detentions were granted by courts per year, whilst alternative measures such as home arrest or bail were applied 69 and 106 times respectively. Such major disproportion indicates that detention is considered by the courts as primary measure rather than *ultima ratio* – a measure to be used as the last means.

Whilst researching detention conditions, focus group interviews revealed that arrested or detained persons do not see any substantial difference between the conditions in the police custody and the detention centers although some indicated that the conditions in remand centers are even worse than in prisons. The major problem is not only considerable overcrowding of detention sites but also the failure on the part of the authorities to ensure that the very basic hygienic needs of the detainees are met.

Another area of concern revealed by the focus group interviews is the behavior of penitentiary system officers, especially guards at remand centers dealing directly with detainees. The officers were described by the respondents as lacking basic knowledge, competence and professional skills and who on occasions behave “worse than detainees”. According to the respondents, the very fact of detention is often considered to be sufficient evidence of guilt and the detainees are often stigmatized by the guards, especially the ones who have been previously imprisoned. All respondents confirmed that the system of complaints in detention centers is flawed and ineffective, and the attempts to file complaints and defend their rights only cause hostility from the officers.

The detainees interviewed also stressed moral and material damages incurred whilst being unable to carry on with their usual lives. They expressed considerable skepticism in relation to the access to redress in case of unlawful or unfounded detention. The detainees were also very critical of the work of state appointed lawyers.

The focus group interviews revealed that upon arrest or detention persons are poorly if ever informed of their rights. The procedure of familiarizing persons with their rights is carried out only formally because the officers themselves do not seem to be familiar with the actual content of those rights and are therefore unable to inform the detainees accordingly.

Based on the findings of legal analysis, statistical survey and focus group interviews, HRMI prepared and issued a comprehensive study which contains a detailed analysis of the situation and 12 specific recommendations to the State authorities for improvement of legal regulation and practice.

HRMI *inter alia* suggested to:

- 1) Explicitly state in the CCP that arrest for a maximum period of 48 hours shall be granted only as an exception, and the unreasonably long detention shall be considered unlawful;
- 2) Set out the specific procedure in the CCP for appealing arrest which would allow to cease the application of the arrest in cases of the absence of lawful grounds for arrest;
- 3) Introduce a limit to the maximum detention length when a case is brought before court;
- 4) Establish a procedure under the CCP guaranteeing the possibility for detainees to attend the court hearings where the issue of the continuation of their detention is being dealt with;
- 5) Raise public awareness and educate law enforcement and judiciary on the damages caused to persons by pre-trial arrest and detention and on the possibilities and benefits of applying alternative measures;
- 6) Provide additional training to prosecutors and investigating police officers on the significance of the adequate introduction of the arrestees and detainees to their rights and the actual enforcement of those rights.