



HUMAN RIGHTS MONITORING INSTITUTE
ŽMOGAUS TEISIŲ STEBĖJIMO INSTITUTAS

ANNUAL REPORT
2006

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Human Rights Monitoring Institute was established in 2003 in order to promote the development of an open, democratic society in Lithuania through the consolidation of human rights principles. The Institute seeks to create an independent civic monitoring of state policies, legislature and practice in the area of human rights, enhance public awareness of human rights and freedoms, and suggest improvements to human rights laws, programmes and services. HRMI performs daily monitoring of state institutions, conducts systematic research, prepares findings and recommendations, as well as initiates strategic litigation.

WWW.HRMI.LT

¹ Abbreviated translation from Lithuanian

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MONITORING

Human Rights in Lithuania: 2005 Overview

The HRMI prepared the third annual review of the implementation of human rights in Lithuania. The review focused on those areas that demand most attention and formulated proposals on how to improve legislature, policies and the actual implementation of human rights.

The HRMI relied on information and data obtained from ongoing long-term projects, daily monitoring (including media monitoring), reports and other documents by international governmental and nongovernmental organisations, as well as public opinion polls and expert opinions.

This overview presents the state of political and civil rights and freedoms in Lithuania in 2005. It addresses the right to privacy, the right to a fair trial, civil liberties, discrimination, racism and other forms of intolerance, as well as human rights in police activities. The publication offers a separate overview of the situation of vulnerable groups, such as women, children, crime victims, convicts, and the mentally disabled.

The overview was presented to the State President. The findings and conclusions of the overview served as basis for numerous discussions and media appearances.

Monitoring the Right to Respect for Private Life

The capacity to protect the right to privacy is facilitated through adequate awareness and defining the meaning of respect for privacy in the public domain. The general public, politicians, the media, law enforcement officers and courts still do not view protection of private life as an imperative and worthy component in the quest for democracy. In this environment, the use of video surveillance, which is largely unregulated, expanded rapidly in 2005 and 2006.

Inappropriate practices within law enforcement agencies led to widespread abuse of personal data protection, where private information entered the public domain without legal sanction. Wide-spread public use of personal identification numbers created an increased risk. Personal identity theft became an increasingly worrisome issue. Events of 2005 and 2006 illustrate the need for the establishment of an independent national institution, which would safeguard data protection within its mandate.

In 2006, the HRMI continued the **Right to Respect for Private Life: Situation Analysis** project, supported by the Office of the Canadian Embassy in Vilnius. A study was conducted to find out the reasons and consequences for violations of the right to respect for private life in the area of electronic workplace surveillance, the examination of problems raised in 2005 was pursued further, and preparations for new studies were made.

Electronic surveillance in the workplace and the right to respect for private life

The HRMI performed a research, which revealed that, in spite of the evident growth in the number of companies using software to control employees' electronic workstations, the Lithuanian law does not regulate this area.

HRMI recommended that the Government issues the general rules on this matter and the Personal Data Protection Inspectorate prepares a detailed commentary, which would further detail the executive's rules and help create rules for each employer.

The Lithuanian Government assigned the State Data Protection Inspectorate, the Ministry of Justice and the Committee for the Development of Information Society Development to examine and assess the analysis and recommendations submitted by HRMI.

Biometric documents

On the basis on performed analysis, on 26 January HRMI made a public statement regarding the problems of the use of biometric data, pointing out the unreliability of biometrics, integrated in personal documents, and cautioning about the potential threat of the measure for personal privacy.

Regretfully, legislative amendments accepting biometrics in Lithuanian passports went through the Parliament without meaningful discussion, neither in the public domain nor in the Parliament. HRMI will continue monitoring the process of implementation of biometric documents as reportedly the first bearers of the new passports with biometric data have already been experiencing problems.

Use of personal identification numbers

In 2006, amendments to the Law on Legal Protection of Personal Data were initiated. The Government of the Republic of Lithuania approved the draft and submitted it to the Parliament.

Amendments to the law are largely based on the findings and recommendations of the Human Rights Monitoring Institute. Among other recommendations, the HRMI emphasized the need to reduce the instances where the presentation of personal data is required by law, limit the disclosure of the personal identification code in the mass media, and disconnect the tax-payer's ID from his personal identification code.

The draft law also takes into account the HRMI's proposals to regulate the growing use of video surveillance systems by law.

Genetic Data Management and Protection Of Private Life

In 2006, the HRMI began a study in the area of genetic data management. The study will review the main issues in genetic data management in Lithuania in the context of the right to private life and the standards of data protection. The final study will present recommendations to the Government and the State Data Protection Inspectorate in order to encourage action and initiative in regulating this complex area.

Children Rights in Residential Care and Educational Institutions

In 2006, HRMI together with partners made public the report on the rights of Children in Custodial and Educational Institutions.

In Autumn 2005, the Global Initiative on Psychiatry, the Association of Psychological Support by Telephone, the Lithuanian Welfare Society for People with Intellectual Disabilities "Viltis", The Child Support Centre, the Office of the Ombudsperson for the Protection of Children Rights and the Human Rights Monitoring Institute formed a coalition to examine whether residential care and special educational institutions secure the rights of

children in their care. The project aimed to identify systemic problems and make recommendations encouraging fundamental reforms.

With support from the European Commission and the Nordic Council of Ministers, experts visited 20 institutions working in the area of child care, custody and education in the course of the project.

The study revealed that life in residential institutions prevents successful socialisation of children by promoting dependency of children on the system and discouraging the development of their self-dependency. The study revealed that residential care and educational institutions unnecessarily restrict childrens' rights, in particular the right to respect for private life and the right to freedom of expression. Violence and taunting is present and the prison slang and standards of behaviour are prevalent in these institutions.

The report recommends a change of governmental attitude towards residential care institutions and a clear definition of their mission on the basis of the principles of the UN Convention on the Rights of the Child. An immediate reform of child care is necessary, moving towards child care and education in families or family-like environments, which would allow preparing a child for independent life. All possible efforts should be made to keep children in their biological families, making use of effective methods of work with risk families.

Problems of People with Mental Disability

As a follow up to the monitoring project, conducted in 2005, in early 2006 a group of non-governmental organisations held a press conference on the urgent issues of mental health and the main obstacles in resolving them. Nongovernmental organisations expressed their opinion on the mental health problems that exist in Lithuania and the main directions of actions to resolve them. In particular, NGOs recommended reducing investment into existing institutional infrastructure and expanding the network of communal services at their expense. The National Mental Health Strategy drafted in 2006 essentially agrees with this approach.

Over 2006, HRMI consistently drew the attention of the relevant authorities and general public to the current mechanism for declaring legal incapacity due to mental disability – in Lithuania, it is fairly easy to strip a person of his/her legal capacity without proper legal safeguards. In contrast to many other countries, the legal status of partial incapacity for individuals with mental disorders is absent in Lithuania. In fact, individuals who are declared legally incapable are often able, at least partially, to take care of themselves and participate in civic life.

In 2006, strategic litigation proved to be the most effective way to challenge relevant regulations and practices. In the case of D.L., who is represented by HRMI, Vilnius district court granted a right to appeal for a woman who was divested of her legal capacity in absentia. In unprecedented move, the Court argued that the principles of justice and fairness call for the decision despite an expiration of the statutory time limit for an appeal. This decision set an important precedent in cases regarding legal incapacitation.

The media article, published by HRMI and based on this case, concluded that the right to a fair trial for individuals who challenge court decisions that incapacitated them and attempt obtaining decisions that they are legally capable is an illusion.

Roma Rights: Legal Assistance Programme

The project of legal assistance to the Roma supported by the Embassy of the Kingdom of the Netherlands was continued in 2006.

Roma community problems were also the focus of the European-wide Action Week against Racism. On March 21, during one of the events of this week HRMI presented its study "Housing Problems of Vilnius Roma".

The study analysed the legal possibilities to resolve Roma housing problems in Kirtimai settlement in Vilnius, historically occupied by Roma families but lacking proper legal authorisation. The analysis revealed that the situation of legal ambiguity makes the rights of the Roma living in Kirtimai especially vulnerable and does not conform with the international standards for the protection of national minorities. Suggestions were made as to how the housing problem of Vilnius Roma residing in Kirtimai could be resolved.

Right to Fair Trial

In April 2006, HRMI contributed a number of recommendations to the ongoing debate about the need to reform the judicial system. Emphasising the need to preserve the independence of the judiciary, HRMI highlighted the necessity of changing the mentality of the judges through continuous professional training, establishing an effective system for the assessment of judges' performance, acquiring specialised expertise in management and, more generally, opening the judicial system to qualified professionals, and increasing accountability and operational transparency of the system.

In May, HRMI made a presentation at the yearly meeting of the European Association of Judges attended by more than 50 judges from 31 countries. The presentation concluded that the Lithuanian judiciary went through a significant reform, the result of which was wide institutional and administrative autonomy. However, the reform of the Lithuanian judiciary was one-sided – the strengthening of independence was not counterbalanced by the introduction of efficient accountability of the system, individual courts and judges; not enough attention has been paid to strengthening the professional and democratic competence of judges; and the importance of professional management was underestimated. Judicial reform can be meaningful and help courts acquire the trust of the society only if it includes all of these four factors – independence, accountability, new competences and effective management.

In May, HRMI in cooperation with the Civil Society Institute organized a discussion during which politicians, lawyers and representatives of NGOs and media discussed amendments to the Law on Courts proposed by the working group created by the State President.

Trial Observation: Evaluation of Judicial Impartiality, Equality of Arms and Adversity of Court Proceedings

At the end of the year, HRMI presented the findings of the long-term trial observations. The aim of the project was to evaluate whether criminal trials are impartial and secure the principles of equality of arms and adversity of court proceedings. Other issues related to the functioning of the judiciary were discussed during the presentation.

Conclusions of trial observations, conducted in Vilnius, Kaunas, Salcininkai and Moletai for over a year:

- Courts consider evidence collected at the pre-trial stage as more reliable and valuable than the evidence presented during the trial;
- Judges are critically predisposed towards witness testimonies that do not match the evidence collected by the pre-trial investigation officers;
- Judges view negatively defence requests to call witnesses and examine evidence that were not questioned and examined in the course of the pre-trial investigation;
- The behaviour of judges often gives an impression that judges are on the side of the prosecution, rather than being a neutral arbiter.

Initiatives in The Fight against Terrorism and Human Rights

In 2006, HRMI performed an analysis and published an article that examined one of the measures employed to fight terrorism – the mechanism for compilations of lists of individuals and organisations suspected of terrorism.

The lists of persons related to terrorism and their groups have been drawn by the United Nations, the European Union and individual countries. Such a list was approved by Lithuania as well in February 2006.

HRMI sought to alert the public and government officials to the fact that compiling lists of persons and organisations related to terrorism is one of the initiatives that are rapidly and negatively changing the face of Western democracies and the human rights climate in the world. The legality of such lists is ambiguous because criteria for inclusion on the lists are not transparent and the procedures for their drawing are faulty. Negative consequences of being included on the list, such as inability to freely use bank accounts, violate the principle of the presumption of innocence and limit other human rights – among them the right to property, the right to freedom of association and assembly, and the right to the inviolability of private life - without ensuring effective legal defence measures.

PUBLIC AWARENESS AND ADVOCACY

The findings of the research conducted by HRMI were presented by making public statements, staging presentations, publishing commentaries in the media, and taking part in radio and TV shows. The HRMI organised conferences, discussions and other events on the basis of its reports, analyses and other products in order to raise public awareness of human rights. The staff, Board members and experts of HRMI publish articles on relevant topics in the electronic media.

In addition to the events and other measures organised within the framework of the projects presented above, HRMI implemented or participated in the implementation of the following advocacy and educational measures in 2006:

Discussion on the Necessity of a National Human Rights Institution

In February, HRMI held a human rights briefing for the ambassadors of the EU States in Lithuania. Among participants were also representatives of State institutions and NGOs.

During the meeting, the human rights situation in Lithuania was reviewed and opinions were exchanged regarding the possible steps to achieve better human rights protection.

In reviewing the problems and the dominant tendencies, examples were given of the worsening human rights situation in Lithuania following the accession to the EU. This has been partially conditioned by the discontinuation of regular reports on the implementation of the political criteria of the EU membership by an independent observer - the European Commission upon Lithuania's accession to the EU. On the other hand, there is lack of regular monitoring and coordination between the state institutions that are working in the area of human rights.

In the opinion of the HRMI, Lithuania does not have a state human rights policy – there is no state institution that is charged with monitoring, identification of existing problems, formulation of possible solutions, and coordination of efforts by governmental and non-governmental actors in the field of human rights. This function could be delegated to a public institution established and acting in accordance with the Paris Principles, adopted in

1993 within the UN for national human rights institutions. The legal status, mission and powers of the Danish Human Rights Institute, including the guarantees of its independence, its structure and functions, were analysed as an example.

The participants of the meeting emphasised in their interventions that human rights are one of the fundamental European values that must be protected at all times. In this regard and in the context of the worsening human rights situation in Lithuania, ambassadors and other participants of the meeting viewed positively HRMI's proposal to examine the possibility of establishing a national human rights institution in accordance with the Paris Principles.

Manifestations of Discrimination and Intolerance

Presentation of the report on Lithuania by the European Commission against Racism and Intolerance

In February, HRMI called a roundtable discussion and a press-conference to introduce the third periodic report on Lithuania by the European Commission against Racism and Intolerance.

A presentation of the report emphasized that although the legal framework had been improved and can be efficiently used to fight racism, the law enforcement institutions are not ready to apply it properly. Therefore, the enhancement of knowledge and skills of prosecutors, lawyers, police officers and judges should become a priority. Legislation should further be improved; in particular the Criminal Code should be amended to include racial motives for criminal activity as an aggravating circumstance. Lithuania should also consider providing additional venues to seek recourse for alleged acts of discrimination and intolerance – ratification of Protocol 12 to the European Convention on Human Rights, which prohibits any forms of discrimination, is the immediate priority.

In case of the Roma community, participants of the discussion agreed that, because of illiteracy, many individuals belonging to this minority, who allegedly are discriminated against, have no practical opportunity to take advantage of the existing anti-discriminatory mechanisms. The provisions of the EU Race and Employment Directives of 2000 regarding the creation of a system of support for victims of discrimination to seek remedies remain to be implemented.

Roundtable discussion "Discrimination in Lithuania: Assessments of International Organisations"

In June, HRMI in cooperation with the Centre for Ethnic Studies of the Institute for Social Research held a roundtable discussion "Discrimination in Lithuania: Assessments of International Organisations".

Once again, during the roundtable discussion followed by a press-conference, participants analyzed and discussed the findings and conclusions of international agencies regarding discrimination and intolerance in Lithuanian society. In addition to the report by the European Commission against Racism and Intolerance, concluding remarks by the UN Committee Against All Forms of Racial Discrimination were discussed. A different group of participants, mainly representatives of research institutions and human rights NGOs, reached conclusions that were similar to those arrived at during the February event.

European-wide Action Week against Racism

To mark the international day for the elimination of racial discrimination, the Human Rights Monitoring Institute took part in the Europe-wide 'Action Week Against Racism'. The 20-26

March 2006 campaign was aimed at raising awareness and sensitizing relevant sectors of society to the current rise of racism, xenophobia, and intolerance.

Programme of the *Action Week against Racism* included:

- Photography Exhibition "One World",
- Presentation of the report on housing in Roma settlement in Vilnius,
- and Film Festival that, among other films, presented premiere of a documentary "We, Lithuanian Roma".

International Human Rights Day and Human Rights Awareness Month

This was the second consecutive year for HRMI to declare December as Human Rights Month. A number of events were presented that aimed to raise public awareness, especially among the youth, about human rights, promoting democratic values and more active participation by the citizens in the development of a tolerant culture based on respect for human rights.

The Human Rights Month is becoming an increasingly important feature of public life and has received positive responses from the youth, community leaders, politicians and the media.

The main feature of the Month was the film festival "Cinema for Human Rights", which took place in fifteen Lithuanian cities and towns: there were 21 shows in 17 cinema theatres and culture houses. Local youth took an active part in discussions on various human rights topics following the shows.

Events of the *Human Rights Month 2006*:

- National student essay competition "How can I contribute to enhancing human rights in my community?"
- Student discussion at Mykolas Romeris University on the status of economic and social rights;
- After-show discussions with members of regional communities on relevant human rights issues;
- Film festival "Cinema for Human Rights";
- Presentation of the public opinion poll on the situation of human rights in Lithuania;
- Nomination of the "Human Rights Ambassador of the Year" and awarding the winner;
- Announcement of the traditional "Human Rights Shame League".

Opening event of the Human Rights Month 2006

During the **opening ceremony of Human Rights Month 2006** on December 4, the latest public opinion survey was presented, which revealed that large numbers of Lithuanians believe that their rights have been violated but they did not know where to seek remedies. A significant portion of polled individuals stated that they did not seek any redress as they did not expect it would help. Furthermore, a large part of the society considers the institutions charged with the protection of human rights as their main violators.

During the event, HRMI presented its first award for the Human Rights Ambassador of the Year – a check for 5000 Litas. The award was given to Dalia Budrevičienė, who exercised her right to free speech and spoke out about the practice of illegal payments at her workplace. D. Budrevičienė's case has prompted a wide national campaign against illegal payments.

The winners of the national student essay competition, which attracted active participation of students from all around Lithuania, were honoured as well. The most memorable parts of the essays were read to the guests of the event.

Continuing the tradition of spotlighting the deviations of politicians and officials from established human rights standards through humour the Institute announced the Human Rights Shame League 2006. A public irony about erroneous acts or statements by politicians, state officials and institutions seeks to point to unacceptable practices and increase the awareness of human rights among general public.

HRMI and The Media

HRMI regularly expresses its opinion on pertinent human rights issues in the national media and consults Lithuanian and foreign journalists. In 2006, the representatives of HRMI were quoted in various media for approximately 300 times and received invitations to radio and television shows for discussions and reviews. Many of the HRMI's statements raised public discussions and prompted the publication of approving or opposing articles, as well as the creation of television and radio shows.

The representatives of the HRMI were quoted or invited to voice their opinion by the following media:

National Television and Radio, LNK, TV-3, BTV, 5 kanalas, Žinių radijas, Radijas M-1, and Radijas Lietus; national and regional dailies: *Lietuvos Rytas*, *Respublika*, *Kauno diena*, *Lietuvos Žinios*, *Vakarų ekspresas*, and *Klaipėda*; weeklies: *Veidas*, *Laikas*, *Panorama*, and *Kontrastai*; national news agencies BNS and ELTA; as well as Internet news portals: Delfi.lt, Omni.lt (Balsas.lt), Bernardinai.lt, LRT.lt, Lrytas.lt, INFOLEX.lt, and Alfa.lt

STRATEGIC LITIGATION

Exceptionally, HRMI prepares cases that are related to a particularly important issues that have not been solved through political processes or/and that affects a large group of individuals. The special focus is on the vulnerable groups of people that find it more difficult to defend their rights and interests independently.

In 2006, the Institute was working with the following strategic cases:

Case of Illegally Paid Wages

In April 2006, the Human Rights Monitoring Institute offered legal support to Dalia Budrevičienė who spoke out publicly about the wages paid "under the table" in Krekenava agricultural company. D. Budrevičienė was fired from her job at the end of March after her public declaration that part of the wages in Krekenava agricultural company was paid to the employees illegally. Subsequently, a libel case was brought against her by the director of the company. Altogether, D. Budrevičienė was involved in three court cases and came out a winner in all of them.

L vs. Lithuania

In October 2006, the European Court of Human Rights held public hearings in the case of L v. Lithuania. It was only the third time that a case against Lithuania was examined in the oral procedure. Judges usually examine cases in the written procedure. The case received substantial public interest throughout Europe.

The complaint alleges violations of the rights to life, protection against inhuman and degrading treatment, respect for private life, as well as the right to marriage and protection against discrimination as the applicant is not able to change his sex and register his new identity in the absence of the legal provisions.

The decision of the ECHR in this case is currently pending.

Case Regarding the Destruction of Buildings in Kirtimai Settlement

In August, a resident of the Roma Kirtimai settlement Anastazija Ragauskienė, represented by the Institute, applied to the District Prosecutor's Office of Vilnius City requesting to recognize her as a victim and a civil claimant in criminal proceedings and claimed damages for destruction of her shelter at the end of 2004.

In September, Anastazija Ragauskienė obtained the status of a victim in an ongoing criminal investigation.

Case Challenging the Practice of Legal Incapacitation

On the basis of the information about violations of the rights of legally incapable people collected during the implementation of the project **Monitoring Human Rights in Mental Health Care Institutions** in 2004-2005, HRMI undertook an analysis of the Lithuanian system of legal incapacity and custody. The analysis showed that the laws regulating incapacity and custody do not conform to human rights standards. One of the most effective ways to fight these violations is strategic litigation. Therefore, the analysis was used to prepare a strategic case.

In 2006, HRMI reached the first significant victory in a strategic case challenging the legal regulation of incapacity. The District Court of Vilnius recognised that the formalistic interpretation of relevant procedural law was not sufficient alone and granted a possibility to a person who was recognised legally incapable in her absence and without informing her to challenge the decision of the court that stripped her of legal capacity

COOPERATION

The HRMI continued close cooperation with both domestic and foreign governmental and non-governmental organisations in order to bring important human rights issues to political debates, policy formation and legislature nationally and Europe-wide.

Among the main national partners were the Ombudsperson for Equal Opportunities, **Civil Society Institute**, **Transparency International – Lithuanian Chapter**, the **Lithuanian Welfare Society for People with Intellectual Disability "VILTIS"**, the **Global Initiative in Psychiatry**, the **Ethnic Research Centre of the Institute for Social Research**, and the **Centre for Legal Projects and Research**.

Internationally, project-based cooperation included the Danish Institute for Human Rights (successful application for the EU funding for 2007 common program on Enhancing National Capacity for the Protection of Human Rights in Lithuania), the Kazakhstan Bureau for Human Rights and the Rule of Law (successful application for the EU funding and common activities in 2006 within the program on Enhancing Human Rights Culture in Kazakhstan), the UNITED campaign (the Europe-wide week against racial discrimination). HRMI took part in the Community Action Programme to combat discrimination, conducted by the European Commission.

Representatives of HRMI made presentations at international conferences and conducted seminars for legal professionals and NGO activists. In particular, HRMI Executive Director continued his cooperation with the Council of Europe and ABA/CEELI as an expert on the European Convention of Human Rights (seminars in Russia, Moldova, and Armenia).

BOARD

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Journalist; Director of Transparency International – Lithuanian chapter

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Lawyer

Since December 2006

Kęstutis Čilinskas – Chairman

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Director of the Human Rights Monitoring Institute

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FUNDING

In 2006, the budget of the HRMI consisted of the funds obtained from the sponsors, the sales of the Institute's annual reviews, and individual donations.

Main sponsors of HRMI: the Open Society Fund – Lithuania, the Ministry of Foreign Affairs of the Kingdom of Netherlands, the Canadian Embassy, the USA Embassy, the Dutch Embassy, and the European Union.