



Human Rights Watch

Concerns and Recommendations on Croatia

Submission to the UN Human Rights Committee
March 2015

This submission highlights areas of concern that Human Rights Watch hopes will inform the United Nations Human Rights Committee's consideration of the Croatian government's compliance with International Covenant on Civil and Political Rights. This submission discusses the violations of the rights of people with disabilities, inadequate safeguards for unaccompanied migrant children, the human rights of minorities, and accountability for war crimes.

1. Rights of People with Psychosocial or Intellectual Disabilities

In a 2010 report, [Once You Enter, You Never Leave: Deinstitutionalization of Persons with Intellectual or Mental Disabilities in Croatia](#), Human Rights Watch documented that approximately 9,000 persons with intellectual or psychosocial disabilities are forced to live in institutions that strip them of their basic rights to privacy, autonomy, and dignity.

In a 2014 follow up research, [Croatia: Locked Up and Neglected: Meager Progress on Moving People with Disabilities Into the Community](#), Human Rights Watch found that more than 8,200 persons with intellectual or psychosocial disabilities in Croatia continue to be isolated in segregated institutions and psychiatric hospitals with little control over decisions that affect their lives. While the Croatian government has made some progress in protecting the rights of persons with disabilities, individuals with intellectual or psychosocial disabilities continue to face particular human rights violations including deprivation of legal capacity, forced and prolonged institutionalization and treatment, and lack of adequate community-based living arrangements.

Roughly 18,000 persons with intellectual or psychosocial disabilities are placed under guardianship in Croatia, and denied their legal capacity or the right to make decisions about basic rights, such as the right to marry and form a family, to sign an employment contract, or to decide where to live. A significant majority are placed under full guardianship, under which guardians—often nominated by the state—make all decisions for them.

In June 2014, Croatia adopted a new Family Act which abolishes full guardianship and includes a five-year deadline for reviews of court decisions on deprivation of legal capacity. The 2014 Family Act further protects the rights of persons with disabilities by stipulating that individuals and institutions

that initiate procedures for deprivation of legal capacity (family members and social welfare centers) can no longer be appointed to act as guardians in court proceedings, which has often been the practice in Croatia. Under this new law, the social welfare centers have to appoint a “special” guardian to represent the person in question during the court proceedings. The Family Act also provided courts the option of partially restricting legal capacity and placing individuals under partial guardianship.

However various groups who assert, among other claims, that deprivation of legal capacity is in the interests of persons with disabilities, have challenged the 2014 Family Act before the Constitutional Court. Therefore in January 2015, until it assesses the constitutionality of the 2014 Family Act, the Court temporarily suspended the new Family Act and the previous law is back in force. Under the previous law, people with disabilities can be placed under full guardianship, those who initiate the proceedings can be appointed as guardians, and there is no obligatory judicial review of court decisions on deprivation of legal capacity. As of this writing there is no indication of how long it may take the Court to address the legal challenges, even if it acts expediently.

Persons with intellectual or psychosocial disabilities are still deprived of their right to community living and are instead placed in psychiatric hospitals and other institutions for persons with intellectual and psychosocial disabilities. In Croatia, persons with disabilities can be placed in institutions—social welfare homes, foster homes, and “family homes”—without their consent and without a possibility to challenge their placement. According to information obtained from the Ministry of Social Policy and Youth in September 2014, more than 8,200 people with disabilities live in institutionalized settings in Croatia, some 6,500 in state institutions, more than 1,600 in private institutions. According to the Croatian Law on Social Welfare, placement in an institution is considered a social benefit, a “right” and a guardian’s consent for placement can substitute for the consent of an individual who is deprived of legal capacity.¹ The law does not provide for a judicial supervision of such placements nor is there any provision in the law according to which a person can challenge such placements.

The 2011 National Plan for Deinstitutionalization and Transformation of Social Welfare Homes (often referred to as the “Master Plan”) is limited in scope and implementation has been very slow. Since the Master Plan was enacted and as of February 2015, only a total of 843 persons have benefited from the program and started living in community settings. The plan does not encompass persons with intellectual or psychosocial disabilities who live in the 24 privately-run but state-funded institutions, denying those the choice of where and how to live. Persons with psychosocial disabilities placed, without their consent, in long-term housing in psychiatric hospitals, run by the Ministry of Health on the basis of an agreement with the Ministry of Social Policy and Youth, are also not included in the Master Plan.

¹ Law on Social Welfare, Official Gazette, No. 157/13 <http://www.zakon.hr/z/222/Zakon-o-socijalnoj-skrbi> (accessed July 21, 2014), Article 74, para 3.

The Master Plan also excludes people with intellectual or psychosocial disabilities who are placed in so-called family homes (designed for up to 20 people and run by private individuals) and foster homes (where adults with disabilities are placed without their consent and generally have limited interaction with the community). The Law on Social Welfare and the National Master Plan considers family homes and foster homes for adults as noninstitutionalized community living arrangements, but based on its research, Human Rights Watch considers that they might amount to institutionalization when residents are not placed there by choice, they are closed to outsiders, and they restrict interactions between residents and the community.²

Individuals with intellectual and psychosocial disabilities who live in institutions that are part of the de-institutionalization plan face barriers to their right to live in the community. First, they continue to be subjected to an assessment by institution staff on whether an individual is “ready to live in the community.”³ Second, according to the Law on Social Welfare, guardians still retain the right to make decisions on where and with whom people stripped of legal capacity can live. According to directors of three Croatian institutions, an estimated 90 percent of people with disabilities in each of these three institutions are deprived of legal capacity.⁴ Finally, there is limited community housing and support for people with disabilities even if they are permitted to leave an institution.

Placement of people with psychosocial disabilities in psychiatric hospitals in Croatia follows a different process. Persons who are currently placed in psychiatric hospitals in Croatia have been placed either a) voluntarily at their own request, b) involuntarily but with the consent of a guardian, or c) forcibly via court proceedings initiated by the hospital where the person is placed.⁵ Until June 2014, the last option involved a periodic review by a court; placements by a legal guardian were not considered “involuntarily” and such cases were therefore not referred to a court for review.

In June 2014, the Croatian Parliament adopted amendments to the Mental Health Law, which introduce obligatory review of all future involuntary placements in hospitals by the Ombudsperson for Persons

² Ibid.; Human Rights Watch, *‘Once You Enter, You Never Leave’*: *Deinstitutionalization of Persons with Intellectual or Mental Disabilities in Croatia*, September 2010, <http://www.hrw.org/reports/2010/09/23/once-you-enter-you-never-leave>.

³ Human Rights Watch interview with Sanjica Grbavac, director of the Center for Rehabilitation Stančić, Dugo Selo, May 20, 2014.

⁴ Ibid.; Human Rights Watch interview with Ruzica Stipčić, director of the Center for Rehabilitation Zagreb, Zagreb, May 21, 2014; Human Rights Watch interview with Dijana Borović, director of the Center for Rehabilitation Ozalj, Karlovac, May 23, 2014.

⁵ Human Rights Watch, *‘Once You Enter, You Never Leave’*, page 26.

with Disabilities with the possibility of referral by the Ombudsperson to the courts for judicial review.⁶ According to the amendments to this law, a guardian continues to have a right to give consent to placement in psychiatric hospitals.⁷ However, these placements are not considered to be “voluntary” and psychiatric hospitals will now be obliged to inform the Ombudsperson for Persons with Disabilities, who is then expected to review such placement.⁸ In case the Ombudsperson is concerned with a placement without consent, the Ombudsperson will inform a court which will then initiate judicial proceedings on involuntary hospitalization.⁹ Conditions for involuntary hospitalization and forced confinement in psychiatric hospitals continue to be justified if “a person with severe psychosocial disability, because of the disability, seriously and directly endangers his or her own or someone else’s life, health or safety.”¹⁰ It is not clear what steps have been taken by Croatian authorities to review all cases of persons with disabilities who have been deprived of their liberty in hospitals and specialized institutions on the basis of a guardian’s consent prior to June 2014.

On consent to treatment, the current amendments to the Mental Health Law, even though they keep the “best interest” test provide that “people with psychosocial disabilities can be subjected to medical treatment only with their “written consent.”¹¹ However, proposed amendments retain that mental capacity to give consent must be determined in each case.¹² In other words, a person with psychosocial disability despite having full legal capacity could still be subject to treatment without consent. Human Rights Watch is concerned how Croatia will ensure that existence of a psychosocial disability will not justify the presumption that a person lacks the capacity to provide informed consent for treatment. For example, when Human Rights Watch asked the director of Lopača Psychiatric Hospital if persons in the hospital are asked for informed consent before medical treatment is undertaken, he explained, “I disagree with you whether they want or don’t want to take medications. Medication is obligatory. All people in this hospital are on medication.”¹³

⁶ Law on the Protection of Persons with Psychosocial Disabilities, Article 26.

⁷ *Ibid.*, Article 2.

⁸ *Ibid.*, Article 26 para 1.

⁹ *Ibid.*, Article 26, para 2.

¹⁰ *Ibid.*, Article 27.

¹¹ *Ibid.*, Article 12 para 1.

¹² *Ibid.*, Article 12 para 2. According to Article 3 of the current draft, a person with psychosocial disability “is capable of giving consent if the person can understand information that is important to giving consent, memorize that information and use it in the process of giving the consent.”

¹³ Human Rights Watch Interview with Dr. Radmir Rakun.

In 2010 and 2014, Human Rights Watch documented abuses of the rights of persons with disabilities in institutions and Lopača Psychiatric Hospital, including many cases of prolonged detention without consent, treatment without consent, prolonged seclusion, and the use of physical and chemical restraints.

Residents at the Lopača Psychiatric Hospital who were interviewed by Human Rights Watch told how they were placed there without their consent, forced to take medication, work, and spend considerable time in seclusion rooms and have experienced use of restraints—both physical and chemical. Current Mental Health Law in Croatia prescribes that restraints will be used only in exceptional cases “to remove imminent danger arising from the behavior of the person concerned and which seriously and directly endanger the person’s life or health or life and health of other persons.”¹⁴ However, during a visit to Lopača Psychiatric Hospital in May 2014, most of the people Human Rights Watch saw who lived there appeared sedated. Currently, there are no official guidelines on the use of restraints in Croatia,¹⁵ allowing for broad discretion on the use of physical and chemical restraints and seclusion by healthcare staff in psychiatric hospitals.

In addition, Human Rights Watch observed that restraints are used also on persons with intellectual disabilities who live at the Center for Rehabilitation Stančić in Croatia. As the mental health law applies only to people with psychosocial disabilities it is not clear on what legal basis persons with intellectual disabilities are restrained.

With regard to outpatient treatment programs, access to healthcare in the community continues to be a challenge for many: persons with intellectual disabilities who have moved to apartments usually have to continue to see doctors at an institution. The Croatian Ombudswoman for Persons with Disabilities has documented that not even minimal progress has been made in the development of outpatient treatment and improving the quality of health care for people with psychosocial disabilities, which leads to multiple hospitalization.¹⁶

¹⁴ Law on the Protection of Persons with Psychosocial disabilities, Article 61.

¹⁵ The amendments to the mental health law prescribe that the Ministry of Health shall issue guidelines. See: Draft Law on the Protection of Persons with Psychosocial disabilities, Article 60 para 2.

¹⁶ Ombudswoman for persons with disabilities of the Republic of Croatia, *Izvešće o radu 2013. godine* [Annual Report 2013], file:///C:/Users/cerimoe/Downloads/Izve%C5%A1%C4%87e%20o%20radu%20Pravobraniteljice%20za%20osobe%20s%20invaliditetom%20za%202013%20%20godinu%20(1).pdf. (accessed July 10, 2014), page 19.

2. Inadequate Safeguards for Unaccompanied Migrant Children

Specialized systems for protection of unaccompanied migrant children (children travelling without parents or guardians) are inadequate. According to the Croatian Ministry of Internal Affairs, in 2014, there were 320 unaccompanied migrant children registered in Croatia, of whom ten had applied for asylum. In 2013, the number of registered unaccompanied children was 302, of whom 49 applied for asylum.

Unaccompanied migrant children who have not applied for asylum are accommodated in the Residential Home for the Raising of Children and Young People in Zagreb, a facility that primarily houses children with behavioral problems. Unaccompanied migrant children who have applied for asylum are placed in the newly renovated and re-opened Kutina reception center which since June 2014 is designated for vulnerable groups, such as single mothers and unaccompanied children.

Human Rights Watch is concerned about the European Union Instrument for Pre-Accession Assistance (IPA) funded facility for accommodation of unaccompanied children within the Reception Centre for Foreigners in Ježevo, a closed detention facility for migrants. International and EU standards for protection of unaccompanied migrant children state that all persons under the age of 18 should only in exceptional circumstances be subject to deprivation of liberty; in those rare cases when detention is unavoidable, they should be kept separated from unrelated adults, in adequate accommodation facilities.¹⁷ Placing unaccompanied migrant children in facilities for children with behavioral problems or in reception centers for adults is not compatible with those standards and is not consistent with the requirement of international law that children who are deprived of their liberty are treated with humanity and respect for their dignity, and in a manner which takes into account the needs of persons of their age.¹⁸

International law requires that countries provide unaccompanied children with guardianship and legal assistance in order to protect their interests in immigration proceedings and help children with their basic need, including accommodation and education.¹⁹ Guardians appointed to unaccompanied

¹⁷ UNHCR Detention Guidelines (2012); Action Plan on Unaccompanied Minors (2010-2014), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>, (accessed February 13, 2015).

¹⁸ Convention on the Rights of the Child, art. 37(c).

¹⁹ UN Committee on the Rights of the Child, General Comment No. 6, para 33.

migrant children lack necessary training on how to act in the best interests of the child. Criteria for appointing guardians are unclear. Appointed guardians often are employees in social care centers located in the south and east of Croatia. Unaccompanied children, however, are accommodated in Zagreb and appointed guardians have limited contact with the children in person.

3. Human Rights of Minorities

Stateless Roma are often unable to access basic state services. According to UNHCR, there are approximately 500 stateless Roma in Croatia and another 1,000 Roma at risk of statelessness. Statelessness occurred as a result of the break-up of Socialist Yugoslavia, where Roma often did not possess the republican citizenship of the Yugoslav republic in which they resided. As a result they were not entitled to automatically acquire citizenship in independent Croatia, but instead needed to apply for citizenship by naturalization. Since Roma often lack personal identity documents, those who are stateless have found it difficult to meet the requirements to obtain Croatian citizenship by naturalization.

As they are not citizens and lack identity documents, stateless Roma are unable to access state services such as health care, social assistance, or education. UNHCR and the Croatian Office of Human Rights and National Minorities estimate that the problem is widespread among stateless Roma. Article 15 of the UDHR affirms that everyone has the right to a nationality and Croatia should comply with its obligations to prevent and reduce statelessness under the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, in particular by facilitating naturalization of stateless persons.²⁰

Ethnic Serbs face obstacles in relation to the right to property. In particular, Serbs who were stripped of tenancy rights during the war face ongoing difficulties benefitting from the 2010 government program that permits the purchase of property at below market rates because of the cost of making an application and cumbersome administrative procedures, which includes providing documentation establishing Croatian citizenship, confirmation from the Croatian justice system that they are not under investigation for war crimes investigation in Croatia, and evidence that the person does not possess property elsewhere in the world. The latter criterion does not apply to ethnic Croatians from Bosnia and Herzegovina and therefore discriminates against ethnic Serbs. Local human rights

²⁰ UN Convention Relating to the Status of Stateless Persons, U.N.T.S., vol. 360, p.117, Article 32 and UN Convention on the Reduction of Statelessness, U.N.T.S., vol. 989, p. 175.

organizations and UNHCR told Human Rights Watch in May 2013 that although properties are offered for sale at below market rates, the cost is often three to four times higher than the market value of the property at the time they lost possession of it.

4. Accountability for War Crimes

Since the 2010 Committee Concluding Observations, domestic war crimes prosecutions have improved, but concerns remain regarding the administrative capacity of courts to effectively deal with cases, witness support and protection, and the speed of investigations. While the ICTY is winding up its operations, over 200 cases in Croatia involving allegations of war crimes and crimes against humanity have yet to be addressed by national courts. Strengthening national capacity to do so remains essential.

During the last review period, in absentia trials, particularly in cases involving ethnic Serb defendants, raised concerns over fairness of domestic war crimes prosecutions. All domestic war crimes cases were transferred from local courts to four designated county courts (Zagreb, Osijek, Split, and Rijeka) by the end of 2012. Following the transfer, the specialized courts suspended several cases, particularly those affecting Serbs that had been conducted in absentia, and the practice has now been brought to an end, according to the Croatian general prosecutor.

The 2013 Criminal Code aimed at unburdening the four specialized courts to allow them to focus solely on serious crimes, including war crimes. But as of February 18, 2015, there were 220 pending war crimes investigations. In some cases, the investigations have been hampered by the reluctance of witnesses to come forward as well as the location of suspects outside the country. To tackle these concerns, particular attention should be given to strengthening witness support and protection to encourage witnesses to come forward.

In 2013, Croatia agreed on a protocol to exchange information and evidence with Serbia, Montenegro, and Bosnia and Herzegovina regarding war crimes prosecution, exchanging data and documentation. It is common for suspects wanted for crimes committed in one country in the region to have citizenship and residence in another country. All four countries have bars on the extradition of their citizens. The initiative is designed to facilitate the transfer of information and evidence to enable initiating proceedings against persons suspected of committing war crimes in the country in which the person is now resident.

Recommendations

The Government of Croatia should be urged to:

- Reform laws that deny persons with disabilities their right to legal capacity, including the Family Act and the Social Welfare Act that permits placement in institutions without consent, in line with the UN Convention on the Rights of Persons with Disabilities;
- Amend the Social Welfare Act to ensure people with disabilities are no longer placed in institutions without their consent except in limited circumstances, such as in emergencies and when no other alternatives are immediately available;
- Set up an independent judicial tribunal, rather than a Center for Social Welfare, to review placement in an institution without consent and ensure people placed in institutions have the right to challenge their institutionalization;
- Allocate the necessary financial and administrative resources to develop and maintain community-based living and support programs so that all persons with intellectual or psychosocial disabilities living in close institutions, psychiatric hospitals, “family homes,” and foster homes can live in the community, and provide the necessary support so they can transfer out of institutions without delay;
- Ensure that the particularly vulnerable category of unaccompanied migrant children receive specialized protection, including adequate reception facilities and guardians with needed competence present in the same locality as the children;
- Provide pathways to citizenship for stateless people and in the meantime ensure that they are able to access basic services in the same way as Croatian citizens;
- Facilitate meaningful access to the purchase of property for Serb former tenancy rights holders, including by reviewing the rate at which the property is offered for sale and streamlining the administrative process;
- Improve the capacity of domestic courts and witness protection mechanisms to improve efficiency and effectiveness in domestic war crimes prosecution.