

The Association for Promoting Inclusion (API) is a non governmental organization established in year 1997. Our activities are directed towards creating a system of community-based care for people with intellectual disabilities (PWID). Our goal is to enable PWID to leave social isolation and to ensure their inclusion into society. We aim to create an inclusive society offering equal opportunities to PWID and ensuring the respect of their human rights.

Abstract

The report contains information regarding points B and C as noted in the General Guidelines for the Preparation of Information under the Universal Periodic Review. Under point B we expressed our concern regarding the incorrect translation of the UN Convention on the Rights of Persons with Disabilities as well as lacking opportunities to implement the rights guaranteed by the Convention in practice. Under point C we expressed our concerns with regard to the violation of human rights of PWID and the inability of effective rights protection for these people. We particularly addressed the difficult situation of people placed in long term residential institutions, as well as people deprived of legal capacity. In all the mentioned areas we also recommend possible measures aimed at improving the current situation.

B.1. Scope of international obligations

The Republic of Croatia has established its legal status based on the principles of the General Declaration on Human Rights and is a state party of the following international documents: UN Convention on the Rights of Persons with Disabilities, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, as well as additional protocols to the stated conventions. In addition, the Republic of Croatia has ratified the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and all of the protocols.

Recommendations:

- Such a wide spectrum of accepted international documents related to the protection of rights of persons with disabilities reflects an optimistic attitude of the government regarding the acceptance of international standards and obligations. Still, many of the rights from the above mentioned international documents are not available to PWID in practice. The right to education, the right to life in the community, the right to employment, the right to marriage and family, the right to vote, the right to participate in the public and political life and even the right to freedom of movement and privacy still remain unobtainable for numerous PWID. We therefore recommend that the government of Croatia pays more attention to ensure the practical availability of all the rights from international documents signed by Croatia for the population of PWID.

B.2. Constitutional and legislative framework

The international legal instruments ratified by Croatia are a part of the internal legal framework of the Republic of Croatia and in a legal sense overpower the national legislation. The Croatian courts also directly implement international contracts in accordance with the Constitution and laws as well as international agreements to which Croatia is a party and which are a part of the national legal system.

Recommendations:

- As we can see, the Republic of Croatia has an wide base for the alignment of it's legislation in the areas of the protection of rights of persons with disabilities, as well as it's further development, specifically with regard to judicial practice. It is recognized that the international documents usually do not contain sanctions for the disregard of proclaimed rights. In this sense the protection of any specific right from the international documents is made more difficult in specific court cases. On the other hand, there is no obstacle to interpolate solutions from international documents into national legislation and to prescribe certain sanctions for disregarding rights. We therefore recommend that the Government invests greater efforts in supporting the interpolation of rights protected through international documents into national legislation, taking account of necessary measures to protect these rights in concrete cases in front of national judicature.

C Implementation of international human rights obligations

C.1. Equality and non-discrimination

The pilot project of personal assistance for persons with the most severe levels of physical disability which has been implemented for a number of years within the framework of the Ministry of Family, War Veterans and Intergenerational Solidarity is directly discriminating against PWID. For years, personal assistants for numerous persons with the most severe types of disabilities have been financed through this project, but PWID are exempt from gaining access to this type of funding. The Association for Promoting Inclusion sees this as direct discrimination of persons with intellectual disabilities. The implementation of this pilot project should result in the passing of a Law on Personal Assistance and there is a justified concern that PWID will be excluded from the possibility of using personal assistants within this new law.

Recommendations:

- The Ministry of Family, War Veterans and Intergenerational Solidarity should take immediate steps to seize this discriminating practice and enable PWID to receive financing for personal assistance.
- The Ministry of Family, War Veterans and Intergenerational Solidarity has to ensure the possibility for PWID to use the service of personal assistance within the proposal of the Law on Personal assistance which is currently being drafted.

C.2. Right to life, liberty, and security of the person

PWID are a group of persons who are, in relation to all other groups of persons with disabilities, most commonly subjected to institutionalization. Many PWID in Croatia spend their entire lives in residential social welfare institutions. Their institutionalization is due to the fact that they require support in order to live independently. The decision to place a person in a residential institution is brought by the centers for social care through an administrative process. If the PWID has been deprived of legal capacity, which is a very common case, the person has no possibility to influence the decision on placement in an institution. People in residential institutions most commonly spend their entire lives without the possibility to themselves influence changes in their place of residence. Permanently imposing a specific living arrangement through an administrative procedure can not represent care for the person; it represents a violation of the person's fundamental human rights. Life in a residential institution is lingering, deprived of the opportunity of social affirmation and a dignified life. The majority of residential institutions are surrounded by protective fences preventing people to realize their right to freedom of movement. A person placed in a residential institution can leave the grounds of the institution and interact with the community

only when accompanied by staff or when staff permits such an interaction. In all the residential institutions in Croatia people are physically divided by gender and are not allowed to develop romantic relationships. Numerous people who lived in residential institutions testify that they were prevented from developing romantic relationships by staff, not allowed to have intimate relationships which were prohibited and received inhuman punishment if they were caught in relationships. Additionally, in Croatian residential institutions there is virtually no respect of the right to privacy, personal belongings and dignity.

Recommendations:

- The government of Croatia should take immediate steps to amend the Law on Social Welfare to ensure that the right to life and support in the community is recognized as a fundamental human right implemented and protected by the social welfare system.
- Through the amendments of the Law on Social Welfare the Government should take immediate steps to ensure that PWID have the freedom of choice to choose their place of residence. The freedom to choose one's place of residence is a personal freedom of every individual and has to be treated as such in all laws and legal acts. As such, the decision about one's residence should not be delegated to other people, excluding the person whose life is going to be most influenced by the decision from the decision making process. Accordingly, the Croatian government and the Ministry of Health and Social Welfare should take immediate steps to amend the social welfare regulative which excludes the person from actively participating the decision making process regarding the person's place of residence.
- The Government should immediately cease its practice of placing PWID in residential social welfare institutions, and provide community-based support services to those persons already institutionalized. In order to make this possible, the Government and the Ministry of Health and Social welfare should commit far greater support to existing community-based services, to the establishment of new community-based services and take immediate steps to implement the process of deinstitutionalization.

C.3. Administration of justice and the rule of law

Persons placed in institutions and deprived of legal capacity are also deprived of the opportunity to seek legal counsel. The State believes that their rights are sufficiently protected through guardians, centers for social welfare and the institutions they reside in. This leaves many opportunities for illegal punishment and its successful cover-up. People in institutions are at the mercy of the staff and the system and commonly do not have access to defense mechanisms available to other citizens such as the police, courts or independent organizations. Unfortunately, while such disregard of human rights of institutionalized persons occur, and occasionally leak to the media and the public, there is still no case where a PWID or her legal representative took court action against an institution for violation of human rights.

Recommendations:

- Organizations active in the field of human rights protection should gain undisturbed and unlimited access to institutions and people residing in them
- The State should support these organizations to provide free legal counsel and to advocate the rights of people placed in institutions through national courts and other government bodies, when cases of rights abuse have been identified..

C.5. Right to work and to just and favorable conditions of work

PWID are prevented from accessing the open labor market. One of the reasons for this is that many PWID are deprived of their legal capacity and can therefore not themselves sign and

employment contract. In such cases a guardian has the authority to sign an employment contract but to our knowledge there has been no such case in Croatia. Neither the Law on Employment or the Law on Professional Rehabilitation and Employment of Persons with Disabilities present an solution to this problem, reflecting the attitude that people deprived of legal capacity have no place in the open labor market. For people deprived of legal capacity, the majority of them PWID, the Law on Professional Rehabilitation offers only work in sheltered conditions and Work Centers. A person working in a Work Centre does not have the status of an employee but the status of a user of this service. An additional barrier faced by PWID wanting to enter employment in the open labor market is a lack of professional training resulting from discrimination of these people in the system of education. As a result, PWID either have no access to education at all or they only have access to special schools which provide them with skills which are not sufficient to compete at the open labor market. PWID usually do not have access to professional training or requalification processes. In addition, the incentives provided by the state for employment of persons with disabilities such as tax benefits for employers and workplace adaptations have proven to be inadequate and have not increased the number of employed PWID. The procedures for obtaining these incentives are complicated and unclear, and the outcomes are uncertain, making them less attractive for potential employers. The Croatian Government and the Ministry of Health and Social Welfare are for years unveiling to financially support the establishment of supported employment services for PWID. The Association for Promoting Inclusion has been providing an Supported Employment Service for PWID for a number of years through projects and own funding. This program has very good results in finding workplaces for PWID, and training job coaches to provide on the workplace support to employees with intellectual disabilities working in open labor market conditions. Still, all attempts of the Association to gain acceptance for the supported employment program as a viable solution for the unemployment issues regarding PWID have either been ignored or rejected by the administration. To conclude, PWID in Croatia face great barriers in their attempt to realize their right to work and employment. .

Recommendations:

- The Croatian Government should take steps to align the Family Law, the Law on Employment and the Law on Professional Rehabilitation and Employment of Persons with Disabilities with the UN Convention on the Rights of Persons with Disabilities, in a way which will support the inclusion of PWID into the open labor market.
- The Croatian Government, the Ministry of Economy, Labor and Entrepreneurship and the Ministry of Health and Social Welfare should take steps to enable the establishment and to financially support the work of supported employment services which will offer assistance to PWID in finding and maintaining work in open labor market conditions.
- The Croatian Government, the Ministry of Economy, Labor and Entrepreneurship and the Ministry of Health and Social Welfare should secure reasonable financial incentives and supports to employers hiring PWID. The process for gaining these incentives should be made simple for the employers, and abundant administrative and bureaucratic barriers and discretionary decision making should be excluded from this process.

The right to work is most endangered when we talk about people who are placed in residential institutions. People residing in social welfare institutions usually do not have the right to work. As far as we know, there is not as single employed person residing in a state social welfare institution. There are no mechanisms regulating the right to work of persons placed in care out of their family. When one of the PWID supported through our Association's supported housing program gained employment, her social worker requested that her right to

placement in our program should be revoked, regardless of the fact that the person in question had no other place of residence. When Association staff asked the social worker where the person should live, the answer was that there are homeless shelters available. In addition, the social welfare regulations state that a person who receives out of home placement has to contribute to the costs of this service with all financial resources available to the person. This means that if a PWID through a miracle finds employment and continues using the services of residential placement, the person has to contribute the entire paycheck to cover her placement costs. This is the case with several PWID currently employed at the Association for Self Advocacy and at the Association for Promoting Inclusion. The amount of financial support the Ministry of Health and Social Welfare provides to our Association as the supported housing service provider for these people is reduced by the total amount of their salaries.

Recommendations:

- We believe the Government should, in accordance with the principles of the UN Convention on the Rights of Persons with Disabilities, enable PWID to realize their right to work. While securing this right, the Government should pay special attention to protect PWID who use the services of out of family placement or other social welfare services from discrimination or an unfavorable position
- While regulating the work relationship of people who use the services of out of family placement or other social welfare services, the Government should revoke the decision which states that people have to contribute their entire financial resources to covering the costs of these services and enable them to keep a part of their financial resources for themselves.

C.6. Right to social security and to an adequate standard of living

Even though some PWID own housing, they are forced to live in residential institutions because they can not receive community-based support from the system of social welfare which would enable them to remain living in their homes. As the regulations demand that the person participates in the costs of his placement with all of his possessions, this means that the state confiscates the property of the person to cover the expenses of placement. Due to such an practice, parents usually decide to completely exclude their child with intellectual disabilities from the family inheritance. Therefore PWID are deprived of the opportunity to obtain an adequate living standard through inheritance.

Recommendations:

- The Croatian Government should secure adequate legal protection which will enable PWID to receive court supervision and support in handling their resources in accordance with their best interests.
- The Croatian Government and the Ministry of Health and Social Welfare should put an immediate end to building new residential institutions, and invest available financial resources in establishing a system of community-based services and supports.
- The Croatian Government and the Ministry of Health and Social Welfare should take immediate steps to initiate the processes of closure and transformation of existing residential institutions into community-based service providers
- The Government of Croatia should take immediate steps to implement the fiscal and organizational decentralization of the social welfare system, enabling every local community to organize support services in its territory. This will not be possible without a real decentralization as the majority of local communities currently do not have the capacity and necessary financial resources to finance the establishment of community-based support services.