

The Association for Self Advocacy (ASA) was established in October 2003 in Zagreb. It is the first, and still the only, NGO in Croatia and this part of Europe established and maintained by and for people with intellectual disabilities. The objective of ASA is to promote and protect the rights of people with intellectual disabilities. ASA actively supports deinstitutionalization and the development of community-based alternative services, with the full inclusion of people with intellectual disabilities in society as the goal. In the seven years since it was established, ASA has trained people with intellectual disabilities from across Croatia about rights and self-advocacy, organized public awareness campaigns about the human rights of people with intellectual disabilities, and prepared and distributed easy-to-read materials on the rights of people with intellectual disabilities. ASA is a member of two international organisations - Inclusion Europe and European Coalition for Community Living.

Summary

In this report informations regarding items B and C are covered in the way that General Guidelines for the Preparation of Information under the Universal Periodic Review requires.

- Under item B we have expressed our concern about serious omissions in implementation of the Convention on the Rights of Persons with Disabilities and shortcomings in possibilities and goodwill to implement the rights stated in the Convention in practice.
- Under item C we have expressed our concern about violation of human rights and freedoms of persons with disabilities and inability to effectively protect this rights. We pointed out to specially severe situation for significant number of people with intellectual disabilities placed in institutions of social welfare and those deprived of legal capacity.
- In every specified area we were free to set forth numerous recommendations about the items to which we referred in this report.

B. Background and Framework

B.1. Scope of international obligations

With regards to area of special interest for people with disabilities, the Republic of Croatia has incorporated principles stated in the Universal Declaration of Human Rights in its legal system. Furthermore, Croatia is a State Party to the Convention on the Rights of Persons with Disabilities, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the 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.

Moreover, Croatia, as a candidate country for membership in the European Union, is obliged to standardize its legislation to *acquis communautaire*, and which relates also to persons with disabilities, particularly to the prohibition of their discrimination on any ground. Considering the current practice of acceptance of international agreements and obligations, there is no doubt that Croatia will promptly adopt this set of standards and obligations.

Recommendations:

- There were certain problems regarding the procedure of acceptance of numerous international obligations. Some major problems emerged in the course of translation of the Convention on the Rights of Persons with Disabilities into Croatian. Namely, the Croatian translation of Articles 12 and 19 significantly reduces rights of persons with disabilities in

comparison with the original text of the Convention. Stated Articles regulate and guarantee legal capacity and the right to live in the community, and are therefore very important. We call upon all stakeholders to ensure that the translation of those two Articles is in line with the original text, in a way that that term “legal capacity” should be translated exclusively with Croatian term „poslovna sposobnost“ (Article 12 of the Convention) and words „residential and other community support services” as “stambenim i drugim službama podrške u zajednici” in Croatian language (Article 19 of the Convention).

B.2. Constitutional and legislative framework

The Constitution of the Republic of Croatia, as a supreme legal act, prescribes legal framework for regulation of all areas concerning human rights and prevention of discrimination. Article 3 of the Constitution of the Republic of Croatia prescribes that principle of equality represents the highest value of the constitutional order of the Republic of Croatia and the ground for the interpretation of the Constitution, and Article 14. guarantees rights and freedoms to everyone, regardless of race, color, gender, language or other characteristics. Article 57 states that the Republic of Croatia shall devote special care to the protection of disabled persons and their integration into social life. Article 63 offers additional protection to children with physical and intellectual disability, indicating that they (children) have the right to special care, education and welfare. Numerous acts furthermore elaborate the aforementioned constitutional provisions, defining the rights and position of persons with disabilities. The most important acts are: Social Welfare Act, Family Act, Labor Act, Act on Professional Rehabilitation and the Employment of Persons with Disabilities, Act on the Education in elementary schools and high-schools, Act on Obligatory Health Insurance and other acts.

Recommendations:

- It is obvious that Article 57 of the Constitution does not work in practice. With the purpose of protection of human rights in practice, it is our opinion that the full inclusion of persons with disabilities should be stated in the Constitution of the Republic of Croatia as one of the highest constitutional principles. Subsequently all other legal acts would have to adopt the stated constitutional principle.
- Different acts in Croatian legislation contain different definitions of disability, which leads to problems with regards to exercising the rights deriving from disability and causes various misconceptions. Those definitions are also discriminatory, since they perceive disability solely as a result of impairment of an individual. As opposed to that, Convention on the Rights of Persons with Disabilities in its preamble states that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. We think that the aforementioned definition should be included in all domestic acts defining rights and position of persons with disabilities.

B.4. Policy measures

So far, the Croatian Government adopted two strategies related to persons with disabilities. On June 5th, Croatian Government adopted the National Strategy of Equalization of Opportunities for Persons with Disabilities from 2007 to 2015. Beside that, Reform Strategy of Social Allowances and ongoing process of changing the Social Welfare Act are important for the people with disabilities.

Recommendations:

- Although these are the most important acts for persons with disabilities, process of their adoption was not transparent in most cases. There was almost no possibility for interested

wide public to bring their suggestions and commentaries forth on any of these documents. Instead, they were adopted in the narrow circle between Government and certain non-governmental organizations chosen by the Government itself. Excluding the persons with disabilities from decision process is contrary to the Convention on the Rights of Persons with Disabilities. We consider that Croatian government must stop undemocratic and untransparent practice of bringing important acts behind the back of the public and should make this processes open to the widest range of interested public.

- Adopting new strategic documents is often conducted in ad hoc manner and without any previous analysis of existing laws and strategic documents. That is why strategies often remain only a list of political appetites and desires with very little or nothing to do with real life. We consider that the Croatian government should make additional efforts to ensure evaluation of the implementation of strategic documents. This process must be transparent and beside government representatives, experts from relevant fields and civil society representatives should also participate in it.

C Implementation of international human rights obligations

C.1. Equality and non-discrimination

Although Republic of Croatia adopted Anti-discrimination Act, discrimination of persons with intellectual disabilities is still present. Seemingly neutral provisions of Family Act and regulations and Social Welfare Act, which regulate the question of deprivation of legal capacity and placement under guardianship, still have the most affect on population of people with intellectual disabilities.

Recommendation:

- Eliminate the practice of protection of the persons with intellectual disabilities through the use of deprivation of legal capacity and develop new ways of care compatible with the Convention on the Rights of Persons with Disabilities.

Although the law guarantees the right of a child with disabilities to be integrated in kindergardens as all other children, this feature is practically dependent on the good will of providers of these services. In practice they decide for themselves whether they will accept children with disabilities or not. There are few kindergardens in Croatia today which include the children with disabilities in their programmes. This is a direct discrimination of children with disabilities starting from their earliest childhood.

Recommendation:

- Law and regulations which would strictly prohibit discrimination against children with disabilities in all kindergardens and preschools. This prohibition is necessary to include strict penalties for all forms of discrimination which may occur during entering of the child in kindergarden programmes or in the functioning of that programmes.

C Implementation of international human rights obligations

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

Ownership rights of persons with intellectual disabilities are insufficiently protected and many malversations happen with the assets of these persons. Social Welfare Act allows Centers for Social Welfare to conduct the surveillance over the performance of guardianship duties. The same law prescribes that in certain conditions Center for Social Welfare designates one of the employees to be guardian to a person deprived of legal capacity. It is so called guardian ex officio (by official duty) and employees of Centers for Social Welfare are required to accept guardianship in such situations. Number of persons under the guardianship of one ex officio guardian is limited to five. This means that for each person completely deprived of legal

capacity, ex officio guardian (employee of Center for Social Welfare) is required to make practical everyday decisions and to look after that person. This is, of course, completely impossible and does not provide any protection of rights for the person deprived of legal capacity. It is also one of the reasons why social workers who are forced to accept the guardianship make the decision to send a person to the institution. By doing so, they take part of the „burden“ of caring for the person off themselves and delegate it to the institution because objectively they are unable to carry it out in satisfactory way. However, the biggest problem with ex officio guardianship lies in the fact that supervision of guardianship is carried out by Centers for Social Welfare – the ones that selected the guardians, not to mention that the guardians are their employees.

This permits broad spectrum of malversations and violations of the rights of persons under guardianship. Since it is practically the same legal entity that employs social workers and appoints the guardians among those social workers, this is rather closed system with no public insight. Such circumstances leave the room for wide discretion power and decisions to which neither public or the person under guardianship have the possibility to influence.

Recommendations:

- Adjust the Family Act and Social Welfare Act with the demands in Article 12 of the Convention on the Rights of Persons with Disabilities and stop using deprivation of legal capacity as a tool for protection of persons with intellectual disabilities.
- Form an independent judicial authority which would make an inventory of all assets of the person deprived of legal capacity and define ways of protection and access to those assets.

C.4. Freedom of religion or belief, association, and peaceful assembly and the right to participate in public and political life

Although the Constitution guarantees the right to vote to every full age person (age 18 years or more), people who are deprived of legal capacity have no right to take part in the elections and can not sign in electoral register. Number of people with intellectual disabilities deprived of legal capacity is high and they are all denied the possibility to exercise their right to vote thus being excluded from participating in political life.

Recommendation:

- Association for Self Advocacy recommends to Croatian Government that the right to vote is guaranteed by the Constitution to every full age person, i.e. to change the legal provision that prevents persons with intellectual disabilities from exercising the right to vote.

Although the majority of persons with intellectual disabilities placed in institutions are deprived of their legal capacity, there are people who have partially kept their legal capacity. Also, there are probably people whose process of depriving of legal capacity has not yet begun or is not finished. Theoretically, all of these persons have the right to participate in the elections since the law rules out the right to vote only to the people who are completely deprived of legal capacity. Unfortunately, the testimonies of people who have spent most of their lives in institutions are pointing out to the fact that they have never exercised their right to vote. Sadly, this shows that in institutions there is no willingness whatsoever to respect this basic human right and to make possible for the people with legal capacity to exercise their right by ensuring the needed support.

Recommendations:

- We consider that Croatian government must start the implementation of deinstitutionalization process as soon as possible and enable people to come out of institutions and start living a normal life in the community.
- The process of closing institutions will probably take some time so we demand from Ministry of Health and Social Welfare to make possible for self advocacy organizations and

other human rights organizations to freely enter and work within institutions. This organizations would introduce the processes of political decision making to people and give them support in exercising their right to vote.

People who are placed in institutions are deprived even from the freedom of association, although the Associations Act guarantees this freedom placing no prerequisites. However, according to aforesaid law, people deprived of legal capacity can not apply for management positions in organizations departments, but they can be nominal members in these organizations.

Not one case is known to us of someone, from nearly 4000 people placed in institutions, being a member in some association although they all have that right.

Recommendation:

- We ask from Croatian government and from Ministry of Health and Social Welfare to grant undisturbed access of organizations in every institution of social welfare for persons with intellectual disabilities. We also ask that organizations are allowed to present their work and programme to the people placed in institutions.

C.7. Right to education and to participate in the cultural life of the community

Discrimination of people with intellectual disabilities is also present in regard to the right to education. Although in Croatia primary education is obligatory many children with intellectual disabilities are not attending elementary schools at all. Only children who are categorized as persons with a mild intellectual disability can attend regular elementary schools. Other children are referred to special schools and considerable number of them are not attending school. Regarding secondary education the situation is even more severe. Extremely small number of people with intellectual disabilities have the opportunity to attend regular high schools. Instead, a vast majority of them are referred to special schools or even suggested to terminate their education. Therefore, in the end they are not able to enter the labour market or if they do, they have significantly lower possibilities because special schools do not offer education for vocations competitive in the labour market.

Recommendations:

- We ask the Croatian government to provide participation for children with moderate and severe intellectual disability in regular schools by changing educational legislation. In accordance with the fact that the right to education is one of the basic human rights, it should be accessible under equal conditions for all children, regardless of the category and degree of disability.
- We ask the Croatian government to set universal primary and secondary education as their strategic priority instead of sustaining dual system of regular and special education.
- We ask the Croatian government and Ministry of Science, Education and Sports to adopt the Salamanca Declaration and to coordinate National curriculum and legislation with guidelines from Salamanca Declaration and Convention on the Rights of Persons with Disabilities.