



UPR Submission Croatia March 2010

Summary

This submission focuses on a key area of Human Rights Watch's work on Croatia—the rights of persons with intellectual disabilities and long-term mental health difficulties.

In addition to the issues highlighted in this submission, Human Rights Watch has further concerns regarding Croatia's record on human rights. Those concerns include: ongoing obstacles to the return and reintegration of refugee and internally displaced Serbs; inadequate progress on domestic war crimes accountability, including the slow pace of trials and concerns over ethnic bias and lack of professionalism; Croatia's cooperation with the International Criminal Tribunal for the former Yugoslavia (centered on the handover of key documents related to the trial of three Croatian generals); the treatment of migrants and asylum seekers; and media freedom. Those concerns are summarized in the Croatia chapter of our 2010 World Report, available at <http://www.hrw.org/en/node/87503> and annexed to this submission.

Croatia was one of the first countries in the world to sign and ratify the Convention on the Rights of Persons with Disabilities (CRPD). With regard to the rights of persons with intellectual disabilities and/or long-term mental health difficulties, however, Croatia's actions lag behind its commitments. A growing number are confined to long-term residential institutions in Croatia, while little is being done to provide community-based alternatives. This violates the right under the CRPD to live in the community and the right against arbitrary detention and detention based on disability. Also, the lack of government action to address the problem, combined with a practice of depriving persons with intellectual disabilities or mental health difficulties of their legal capacity, means that today in Croatia, persons with intellectual disabilities and mental health difficulties are still subject to indefinite detention in institutions based solely on their disability, in violation of the CRPD.

Article 19 of the CRPD – The Right to Live in the Community

Many institutions in Croatia—including psychiatric hospitals, social welfare homes, and smaller family homes—provide long-term care in closed facilities for adults and children with intellectual disabilities and/or long-term mental health difficulties. In addition, the Croatian government runs a foster care program for adults with disabilities, placement into which follows the same procedure as for social welfare homes and family homes. Most persons placed into these settings are not free to leave to live somewhere else without a doctor's assessment that they are "capable" of doing so.

According to official annual statistics, as of the end of 2008 there were approximately 7,300 persons with intellectual disabilities and 4,400 persons with long-term mental health difficulties living in social welfare homes, family homes, and foster families in Croatia, with the vast majority living in social welfare homes. (There are no comparable statistics on the number of long-term residents of psychiatric hospitals). These numbers represent a slight increase since 2004, when the government began reporting these statistics. Human Rights Watch research in institutions in Croatia and discussions with Croatian Ministry of Health and Social Welfare officials in December 2009 indicate that there are waiting lists for many institutions and that numbers are unlikely to decrease in the 2009 statistical report.

Although the Ministry of Health and Social Welfare does not keep similar statistics concerning how many people have left institutions, interviews with institutions themselves and with NGOs providing community-based alternatives to institutions indicate that, in the past three years, few persons with intellectual disabilities and long-term mental health difficulties have moved from institutions into the community. Additionally, the total number of these individuals staying in supportive community living environments remains comparatively low. Human Rights Watch identified approximately 250 places in supportive community living programs for persons with intellectual disabilities and/or mental health difficulties, as compared to nearly 12,000 such places in institutions. Only seven of the supportive community living places are currently available for adults who have long-term mental health difficulties.

Officials from the Ministry of Health and Social Welfare, which has primary responsibility for deinstitutionalization, indicated to Human Rights Watch that the principal reason for slow reform is not lack of financial resources but a limited vision about how the process of deinstitutionalization should proceed. This mindset manifests itself in several ways both in institutions and in the community: fear of losing jobs on the part of institution staff, an inability or unwillingness to identify those who could live in the community with support, and the stigma associated with long-term mental health difficulties.

While government officials are seemingly aware of barriers to reform, they have not taken significant steps to address them. For instance, staff members at institutions told Human Rights Watch that they were unaware of any programs offered by the government to re-train or prepare them for the transition from institutional to community-based care, even though the Ministry of Health and Social Welfare said the slow pace of reform was partly because "people might lose their jobs when people are deinstitutionalized." Also, a ministry official stated that the government had set aside funding for NGO-run programs that would help address stigma in the community against persons with mental health difficulties. The ministry did not, however, identify any such programs currently underway, attributed the lack of progress in deinstitutionalization to the absence of NGOs focused on service provision to persons with mental health difficulties, and saw no role for the ministry to be directly involved in solving the problem.

Indeed, the Croatian government does not even have a vision for reform. Nearly three years after signing the CRPD, Croatia has promised but not yet delivered a

comprehensive plan to deinstitutionalize and provide community-based support services to persons with intellectual disabilities and mental health difficulties.

Instead, the Croatian government has invested its time and energy in projects that directly contradict the intention of the right to live in the community. According to the World Bank and Croatia's own reporting, since 2006 Croatia has invested more than €30 million (€20 million from the World Bank, with €10 million in matching funds from the government) in infrastructure projects for the social welfare system, much of it spent on the refurbishment of 44 institutions. Additionally, in 2008 a new institution opened in the town of Dubrovnik, which the ministry deemed necessary because of an increased demand for social services. Human Rights Watch also heard of plans from monitoring bodies and institutions themselves to build or replace at least three more institutions in the next few years.

At the same time, although supportive community living programs exist in Croatia for persons with intellectual disabilities and mental health difficulties, the government has not taken steps to expand these programs. For instance, the largest and best established supportive community living program for persons with intellectual disabilities, which has operated since 1997 and receives most of its funding from the state, told Human Rights Watch that they have not been given a new contract to house and care for more persons leaving institutions since 2006. The organization has received special permission from the ministry on a case-by-case basis to house and provide care for additional individuals beyond the number allowed by its contract, but this process sometimes takes months and does not allow the organization to plan for future expansion.

Additionally, the World Bank in 2006 gave €4 million to government and NGO actors to create community-based social services, part of which went to sponsor five programs for persons with intellectual disabilities or mental health difficulties. Unlike the program for institutions, however, the government contributed no matching funds to the World Bank project, and according to the World Bank this collaboration ended in 2009 because of a lack of government interest in continuing it. This lack of interest and investment in community-based alternatives as compared with the increased investment and interest in institutions is directly contradictory to Croatia's obligations under Article 19 of the CRPD.

Persons with intellectual disabilities and long-term mental health difficulties also receive less support to live in the community in Croatia than do those with sensory or physical disabilities. For example, Croatia's personal assistance program—identified by the Ministry of Family as a success in developing community-based support—provides a personal assistant to “replace the disability” of persons with the most severe disabilities. This program benefits 338 people, all of whom have severe *physical* disabilities. Although persons with intellectual disabilities and mental health difficulties could also benefit from personal assistants, the head of the section for disabilities at the Ministry of Family told Human Rights Watch that there are no plans to expand this program.

Recommendations

- Develop a plan for deinstitutionalization, based on the values of equality, choice, independence, and inclusion for persons with disabilities. Ensure that this plan includes closing institutions, developing a wide range of community-based alternatives, and providing choices to persons with disabilities.
- Learn from and expand the models for deinstitutionalization that already exist in Croatia. Renew existing contracts and create new contracts with NGOs, private actors, and local/regional governments to provide socially-inclusive care in the community for persons with intellectual disabilities and long-term mental health difficulties, particularly independent and supportive living arrangements.
- When NGOs are not providing adequate alternatives to institutions, as is the case for persons with long-term mental health difficulties, create centralized, government-run programs that can provide care in the community for persons currently housed in institutions.

Article 12 of the CRPD

The right to live in the community is linked to several other important human rights. In Croatia, an overwhelming majority of persons with intellectual disabilities and long-term mental health difficulties living in institutions are placed there by their guardians; institutions Human Rights Watch visited in December 2009 reported that between 70 and 100 percent of their residents were under guardianship. And, according to official statistics, as of the end of 2008 approximately 25 percent of those who had been deprived of legal capacity lived in institutions.

Under Article 12 of the CRPD, an individual has the right to legal capacity on an equal basis with others, and any measures or limitations taken regarding a person's legal capacity must be narrowly tailored, reviewed periodically, and be for the shortest time possible. In Croatia, according to official statistics, persons who are deprived of legal capacity are almost always deprived fully and permanently of all rights to act on their own behalf. And although the law on legal capacity states that this decision should be reviewed by a doctor (though not a court) every three years, not a single person deprived of legal capacity we interviewed reported that they were aware of a periodic review of their status. Even if doctors do periodically review the need for deprivation, a doctor's assessment without the awareness of such a review from the individual whose capacity has been deprived and without a subsequent review by a court does not provide the necessary safeguards to protect an individual's right to legal capacity.

Recommendations

- Fundamentally reform the law on legal capacity to create a system in which persons with intellectual disabilities and mental health difficulties are supported in making decisions rather than deprived of the ability to exercise their rights.
- Legislate safeguards that prevent abuse or overuse of the legal capacity system, including: the right to publicly-funded legal representation before any court proceedings connected to legal capacity; automatic and regular periodic judicial review of legal capacity; the abolition of full deprivation of legal capacity; and the right of persons deprived of legal capacity to challenge the deprivation before a judge at any time, with the assistance of a lawyer.

- Ensure that any requirements regarding legal capacity apply with equal force to all persons in Croatia, regardless of disability.

Article 14 of the CRPD and Article 9 of the ICCPR

Placement into an institution without an individual's consent is a form of detention and thus a deprivation of liberty. Article 14 of the CRPD, expanding on Article 9 of the ICCPR, enumerates that no one can be deprived of liberty based on disability and that there should be a court mechanism for persons to challenge the lawfulness of any such deprivations. As it stands today in Croatia, people are placed in institutions specifically because of their disabilities, as determined by doctors, lawyers, and social workers at Centers for Social Welfare. Also, guardians themselves can place individuals without their consent into institutions as long as the Centers for Social Welfare agree. When it comes to placement in psychiatric hospitals, there is not even intervention by a government agency; the guardians' consent is all that is required for the placement to be considered voluntary. Persons with disabilities currently have no mechanism or right to challenge placement by a guardian in an institution, and there is also no requirement that guardians, doctors, or social workers confer with or seek the permission of the individuals whose liberty is at stake.

Recommendations

- Set out in law that any deprivation of liberty should be automatically and speedily reviewed by a court, with the power to order immediate release, and with the right to representation for the person detained, including a publicly-funded lawyer. Any continuing detention should be reviewed regularly by the court.
- Make explicit in legislation that consent for institutionalization can only come from an individual him or herself and not from a guardian, and that all cases in which a guardian seeks to place an individual in an institution must be reviewed by a court.
- Specifically enumerate the reasons a person could be forcibly placed in an institution in legislation, ensuring that those reasons apply with equal force to all persons in Croatia and that none are targeted at persons with disabilities.
- Explicitly create in Croatian law the right to challenge the lawfulness of forcible placement into institutions, including the right to a publicly-funded lawyer.
- Set up a mechanism for the payment of compensation for unlawful or arbitrary detention.

Article 25 of the CRPD and Article 12 of the ICESCR

Finally, a person's right to the highest attainable level of physical and mental health is violated in Croatian institutions, particularly with regards to mental health treatment. In two social welfare homes for adults with mental health difficulties visited by Human Rights Watch with a combined 448 residents, the only professional mental health service available was a weekly visit by one psychiatrist. In a third facility visited by Human Rights Watch, psychiatric care was only provided when a person became unstable. By contrast, persons in psychiatric hospitals have constant access to psychiatrists, indicating that the resources exist in Croatia to provide psychiatric care in some settings. For persons who are institutionalized on the basis of long-term mental health

difficulties, psychiatric treatment must be part of their rehabilitation. Denial of that treatment is a violation of their right to the highest attainable level of mental health. It further constitutes discrimination on the basis of disability and a denial of the right to live in the community.

Recommendation

- Provide consistent care from a qualified psychiatrist to individuals living in social welfare homes, family homes, and foster families, particularly those homes for adults with mental health difficulties. Ensure that the goal of this care is rehabilitation to live in the community.