



## Universal Periodic Review Submission

Croatia

September 2014

This submission highlights Human Rights Watch's concerns in Croatia, including developments in relation to human rights concerns identified during Croatia's first Universal Periodic Review in 2009. It focuses on the rights of people with mental or intellectual 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 people with intellectual or psychosocial disabilities are forced to live in institutions where they cannot enjoy their basic rights to privacy, autonomy and dignity. Persons with intellectual or psychosocial disabilities face particular human rights violations including deprivation of legal capacity, forced and prolonged institutionalization and forced treatment, and lack of access to adequate community-based living arrangements.

During its previous UPR in 2010, Croatia had accepted the recommendation to "reinforce its efforts to protect the rights of people with disabilities and to oversee the work of mental health residential facilities, and amend its legal framework to ensure that it contains human rights guarantees in line with international standards."

The recently adopted June 2014 Family Act abolishes full guardianship and includes a five-year deadline for reviews of court decisions on deprivation of legal capacity. However, the Act continues to include provisions that permit legal capacity for persons with intellectual or psychosocial disabilities to be limited. The Act retains the power of courts to place individuals under 'partial' guardianship in order to "ensure the protection of the rights and interests in areas where a person's legal capacity has been limited by a court decision."<sup>1</sup> According to self-advocates and experts in Croatia, this provision may mean that in practice courts will not grant full restoration of legal capacity except in very few cases and will instead specify 'areas' in which a person is not capable of undertaking independent decisions and for which a guardian can make decisions, particularly with regard to health care and property.<sup>2</sup> In effect, this might result in *de facto* full deprivation of legal capacity.

Persons with intellectual or psychosocial disabilities still face barriers to their right to live in the community on an equal basis with others. 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 6500 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

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<sup>1</sup>Family Act, Official Gazette, No. 75/14, 2014, <http://www.zakon.hr/z/88/Obiteljski-zakon> (accessed on July 21, 2014), Article 219.

<sup>2</sup>Human Rights Watch interview with Kristijan Grdjan, coordinator of the human rights program, Shine - Association for Social Affirmation of People with Psychosocial Disabilities, Zagreb, May 16, 2014.

can substitute for the consent of an individual who is deprived of legal capacity.<sup>3</sup> The law does not provide for judicial supervision of such placements nor is there any provision in the law according to which a person could challenge such placements.<sup>4</sup>

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, only a total of 554 persons have benefited from the program and started living in community settings. It 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. Second, 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.

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 considers family homes and foster homes for adults as non-institutionalized 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.<sup>5</sup>

The right to live in the community and to legal capacity on an equal basis with others is guaranteed by the Convention on the Rights of Persons with Disabilities, which also states 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.<sup>6</sup>

*The Government of Croatia should be recommended to:*

- 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 closed institutions, psychiatric hospitals, “family homes” and foster homes can live in the community, and given them the necessary support so they can transfer out of institutions without delay.
- Reform laws that deny persons with disabilities their right to legal capacity, including the Social Welfare Act that permits placement in institutions without consent, in line with the Convention on the Rights of Persons with Disabilities;

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<sup>3</sup> Law on Social Welfare, <http://www.zakon.hr/z/222/Zakon-o-socijalnoj-skrbi>, Article 17, Article 74 para 3.

<sup>4</sup> According to the European Court of Human Rights, people who have been placed in institutions are deprived of liberty within the meaning of Article 5 when they have not consented to placements in the institution, the staff at the institution exercise “complete and effective control over [their] care and movements.” (European Court of Human Rights, *Storck v. Germany*, para 74; European Court of Human Rights, *H.L. v. United Kingdom* (no. 45508/99) Judgments of October 5, 3004, para 191) Additionally, a person is deprived of liberty when placed in an institution against his or her will even if that person is not actively resisting institutionalization, the facility is not locked or lockable, or the person has been permitted to frequently leave the facility unsupervised. Thus, under the European Convention, the prohibition on arbitrary detention applies even to those facilities that claim they are not detaining individuals, as long as those housed within them are not free to leave.

<sup>5</sup> 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. 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>

<sup>6</sup> Convention on the Rights of Persons with Disabilities, Arts. 12, 14, 19.

- 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;

## 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 UNHCR, in August 2014, there were 139 unaccompanied migrant children registered in Croatia, of whom four 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.

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.<sup>7</sup> Guardians appointed to unaccompanied 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.

*The government of Croatia should be recommended to:*

- Ensure that the particularly vulnerable category of unaccompanied migrant children receive specialized protection, including adequate reception facilities, guardians with needed competence present in the same locality as the children.

## 3. Human rights of minorities

During its previous UPR in 2010, Croatia has accepted the recommendations to take measures to eliminate discrimination against the Roma minority.

However, 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.

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<sup>7</sup>UN Committee on the Rights of the Child, General Comment No. 6, para 33.

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 to facilitation naturalization of stateless persons.<sup>8</sup>

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 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 the right to it.

The International Convention on the Elimination of All Forms of Racial Discrimination requires states to take measures to eliminate laws, policies and practices that infringe on the right to be free from discrimination, including in the area of economic and social rights.<sup>9</sup> The principle of non-discrimination is also stated in the International Covenant on Economic, Social and Cultural Rights.<sup>10</sup>

*The government of Croatia should be recommended to:*

- 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.

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<sup>8</sup> 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.

<sup>9</sup>International Convention on the Elimination of All Forms of Racial Discrimination, UNGA 2106 (XX), December 21, 1965, Art., 5.

<sup>10</sup>International Covenant on Economic, Social and Cultural Rights, UNGA 2200A (XXI), December 16, 1966, Art. 2.

#### 4. Accountability for War Crimes

Since its last UPR in 2010, domestic war crimes prosecutions have improved, but concerns remain with 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 according to the Croatian general prosecutor the practice of in absentia trials has now been brought to an end.

The 2013 amendments to the Criminal Code aimed at decreasing the burden on the four specialized courts to allow them to focus solely on serious crimes, including war crimes. Nevertheless, war crimes prosecution and processing of cases remain slow, with 257 pending war crimes investigations as of June 20, 2014. 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 and to encourage witnesses to come forward, particular attention should be given to strengthening witness support and protection.

In 2013, Croatia agreed 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.

*The government of Croatia should be recommended to:*

- Improve the capacity of domestic courts and witness protection mechanisms to improve efficiency and effectiveness in domestic war crimes prosecution.