



**Written submission by the Mental Disability Advocacy  
Center  
To the Universal Periodic Review Working Group,  
Ninth Session 1-12 November 2010  
With respect to CROATIA**

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## ***1. Introduction.***

1. The Mental Disability Advocacy Center (*hereinafter* "MDAC"), is an international NGO based in Budapest, that advances the human rights of children and adults with actual or perceived intellectual disabilities or psycho-social (mental health) disabilities. Commencing work in Croatia in 2007, MDAC focuses its attention on the rights of people with disabilities living in segregated institutions, because of their social exclusion and increased vulnerability to rights abuse and neglect. Together with local NGO partners, MDAC carried out monitoring of 13 psychiatric and social care institutions in Croatia in 2007, and a follow up monitoring mission in 2010 is being planned. MDAC respectfully submits the following written comments concerning Croatia for consideration by the Human Rights Council (*hereinafter* "the Council") at its 9th Session of Universal Periodic Review.
2. In the present report, MDAC wishes to draw the Council's attention to the situation of some of the most vulnerable and marginalised individuals in Croatia, namely, people with mental health and/or intellectual disabilities. In this report we use the terms mental health disability (or psychiatric disorder) and intellectual disability (or developmental disability, mental retardation). We sometimes use the umbrella term mental disability, doing so recognizing that the two different 'groups' are not homogenous, and individuals have different needs and aspirations.
3. **Part 1** of the present report lays out anomalies in the Croatian legal and institutional framework, and **Part 2** focuses on human rights on the ground covering **(a)** the rights violations of persons who have been formally stripped of their legal capacity on grounds of mental disability (*hereinafter* "persons deprived of legal capacity"), **(b)** institutionalisation, & **(c)** use of restraint. **Appendix I** contains recommendations.

### ***Part 1. Legal and institutional framework in the promotion and protection of human rights***

4. Croatia ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) on 15 August 2007. However, the Croatian translation of Article 12 of the CRPD, which guarantees that persons with disabilities exercise legal capacity on an equal basis with others, poses a serious gap with respect to the rights provided in the original text. The English phrase "legal capacity" has two meanings in Croatian legislation: a) the capacity to have rights which commences at birth and belongs to all individuals, and b) the capacity to exercise rights in legal and other matters.<sup>1</sup> Regrettably, the Croatian translation of Article 12 of the CRPD covers only the first meaning, a linguistic error which potentially inhibits the paradigm shift which Article 12 envisions. As a result, Croatian law is at odds with international law. This also puts into question the principle of equal recognition before the law prescribed by the Croatian Constitution (Art 14(2)).
5. Croatian law does not provide for alternatives to guardianship which, rather than substituting an adult's decision-making, provide support in decision-making and promote

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<sup>1</sup> Articles 17 and 18 of the Civil Obligations Act

autonomy in accordance with Article 12(3) of CRPD. Croatian law must be reformed to ensure that persons deprived or restricted of legal capacity continue to enjoy and exercise their basic human rights, including the right to marry, found a family, to vote, work and take legal action and seek judicial remedies. Deprivation of a person's legal capacity also impedes their rights to a fair trial, and, freedom of association and property ownership.

6. Article 150 of the Family Act requires that the court must reinstate legal capacity to an adult where the conditions for depriving legal capacity are no longer met. However, there is no automatic review which examines the continuing necessity of the measure, and so it is very rare for someone's legal capacity to be restored. The only provision which could purport to require a periodic review is Article 165 of the Family Act which requires a three-yearly review by a doctor, upon request of the Centre for Social Care, to give an opinion on the health status of the adult in relation to the reason for deprivation or restriction of legal capacity. This provision is inadequate for several reasons: (a) three years is insufficiently frequent given many mental health problems are cyclical in nature, (b) it is a medical review instigated by a State body and is not automatic for all: MDAC has heard from staff of institutions that the centres for social care which are responsible for instigating reviews rarely take the initiative to do so, leaving countless persons needlessly restricted of their rights.<sup>2</sup>
7. Croatian law does not provide State-funded legal representation for the adult during guardianship proceedings. The centre for social care of the local authority has the responsibility to appoint a guardian *ad litem* (case guardian) upon an application to restrict or deprive an adult of legal capacity (Family Act, Art 168). There is no legal requirement for this person to represent the adult's wishes (and in practice, these people frequently do not represent the person with disabilities).
8. The Family Act removes the entitlement for adults fully deprived of legal capacity, and those partially deprived of legal capacity where the judge has specified so, to have their maternity or paternity recognised (Art 57(2)), unless specifically determined in court proceedings. An application for such determination is made by the guardian in the adult's name. A child of an adult deprived of legal capacity can automatically be placed under the guardianship of the state (Family Act, Art 152), and the local authority can remove the child from the family, and place him or her under guardianship of another person, or send the child to a children's institution (Family Act, Art 153).
9. According to the 'Law on Health Measures for the Realisation of the Right to Free Choice on Giving Birth' (Official Gazette 814/78- still in effect), for persons over the age of 35 fully deprived of their legal capacity, their sterilisation can be requested by their parents or their guardian with the consent of the guardianship authority (Article 10) and it is considered that consent is implicit in the request (Article 11).
10. Article 45 of the Croatian Constitution provides for a right for all citizens of Croatia over the age of 18 to vote. However, the Electoral Register Act provides that adults who have been fully deprived of legal capacity are not entitled to vote (Article 2), and a judge can

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<sup>2</sup> This has also been noted in a report by the Zagreb Institute for Economics which states that " *much of the existing assessment work in CSWs [centres for social care] is based on psycho-medical models in which people are not treated holistically in terms of social needs but are, rather, the sum of their problems defined by various professionals*". Report of the Zagreb Institute of Economics, "Social Protection and Social Inclusion in Croatia", p. 90, <http://www.eizg.hr/AdminLite/FCKeditor/UserFiles/File/Summary-Stubbs.pdf>

specifically remove voting rights when partially restricting an adult of legal capacity (Family Act, Art 159(3)). This restriction has no rational basis, for it cannot be automatically accepted that people lacking capacity are unable to express political views and preferences; no test or standard exists to determine whether adults with or without disabilities are able to vote.

11. The current practice of involuntary detention in psychiatric hospitals and placement into social care institutions for persons with mental disabilities, and persons lacking legal capacity fail to satisfy the requirements and procedures established by international law. Persons deprived of their legal capacity who do not consent to hospitalisation cannot by law access safeguards available in Croatian law for persons not restricted of their legal capacity; it is only their guardian's consent which is required to qualify the admission as voluntary.<sup>3</sup> Residents in social care institutions cannot access a court to challenge the lawfulness of their detention.
12. Despite policies in Croatia to promote community-based care for persons with mental disabilities,<sup>4</sup> very little progress has been made.<sup>5</sup> There is no legal right to live in the community, and no legal obligation duties on local governments to find alternatives to institutions. Independent living support is not available. Persons with disabilities can be detained in institutions for life by the decision of a guardian, a public law function which attracts no scrutiny, appeal processes or transparency.
13. Croatian law fails to safeguard informed consent to treatment for persons being treated in psychiatric establishments including persons lacking legal capacity, thus creating increased risk of non-consensual and forced measures of admission, treatment and restraint.<sup>6</sup> Contrary to international standards and Croatian law, there are no written policies, regulation or guidelines on how restraint should be administered, monitored and recorded,<sup>7</sup> and there

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<sup>3</sup> This practice has been addressed and found as unlawful, by the European Court of Human Rights in an analogous case: see *Shtukaturov v. Russia*, 2008.

<sup>4</sup> The Croatian government recognised the particular problem of institutionalisation of persons with mental disabilities and in 2007 set it as a priority in their EU Joint Inclusion Memorandum (JIM) stating that a "strong impetus to deinstitutionalisation was given by non-governmental organisations and associations. However, legal provisions aimed at deinstitutionalisation of social services are not sufficient; what is needed is a strong support from the state and a different social climate where a new concept of social services and their providers will be realised". JIM on Social Inclusion of the Republic of Croatia, 5 March 2007, para. 4.2.4.1; [http://ec.europa.eu/employment\\_social/social\\_inclusion/docs/2007/JIM-croatia\\_en.pdf](http://ec.europa.eu/employment_social/social_inclusion/docs/2007/JIM-croatia_en.pdf)

<sup>5</sup> The European Commission's Annual Progress Report on Croatia 2008 evaluated that "*continued efforts are needed as regards socially vulnerable and/or persons with disabilities. In the area of mental health, the policy of providing care through community-based services instead of in institutions has shown no tangible progress*". SEC(2008) 2694 5 November 2008, p.54, [http://ec.europa.eu/enlargement/pdf/press\\_corner/key\\_documents/reports\\_nov\\_2008/croatia\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/croatia_progress_report_en.pdf)

<sup>6</sup> The Law on the Protection of Persons with Mental Disorders does not require written consent for admission to and treatment in a psychiatric hospital. This requirement had been formerly envisioned in the Law on the Protection of Persons with Mental Disorders, however following the 1999 amendments to the law, the requirement was removed.

<sup>7</sup> Article 55 of the Law on the Protection of Persons with Mental Disorders instructs healthcare workers to the ordinances of the Ministry of Health & Social Welfare for guidance on the use of restraint, yet such ordinances were never adopted.

are no provisions regulating the use of chemical restraint.<sup>8</sup> This leads to defective practices across psychiatric establishments in breach of the right to be free from ill-treatment.

## ***Part 2. The promotion and protection of human rights on the ground***

### **a. Legal capacity**

14. Although the need for reforming the legal capacity / guardianship system has been identified by both the European Commission and the Croatian government as a priority issue in anticipation of Croatia's accession to the European Union,<sup>9</sup> no progress has been made. Governmental data indicates that the numbers of people deprived of their legal capacity is increasing, with 17,810 persons recorded in 2008.<sup>10</sup> These people are subject to serious, arbitrary, and automatic rights deprivations, including the right to fair trial, to respect for private life, to marry, freedom of movement, freedom of association and access to justice. The guardianship system contributes to long term institutionalisation and social exclusion.
15. Most placements into social care institutions result in arbitrary detention. Residents are subject to a strict regime and those lacking legal capacity are detained. There is no court review of a placement decision by the local municipality, and there is no court review of the necessity of detention.
16. Croatian law violates an adult's right to equality before the courts by denying persons lacking legal capacity of their participation in court proceedings. The European Court of Human Rights (ECtHR) judgment in the case *X v. Croatia* is illustrative.<sup>11</sup> In this case, a mother was deprived of her legal capacity and automatically denied her parental rights. She was excluded from court proceedings determining her daughter's adoption. The ECtHR found a violation of her right to a fair trial and her right to private and family life due to the way in which she was automatically exclusion from adoption proceedings.
17. In violation of Article 12(4) of the CPRD, the law allows for employees of mental health and social care institutions to be appointed as guardian of one or more persons residing in institutions – a common practice throughout the country. According to governmental data over the last three years approximately 77 per cent of adults under guardianship living in institutions have a guardian who is an employee of that institution,<sup>12</sup> despite Croatian law

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<sup>8</sup> Law on the Protection of Persons with Mental Disorders, Chapter VIII, Articles 54–58. The Special Rapporteur on Torture has given special attention to psychiatric interventions, that “forced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely scrutinized. Depending on the circumstances of the case, the suffering inflicted and the effects upon the individual's health may constitute a form of torture or ill-treatment.” Report of the Special Rapporteur on Torture, A/63/175, 28 July 2008, para 63.

<sup>9</sup> See the *Joint Memorandum on Social Inclusion of Croatia*, 5 March 2007, para 4.2.4.2 (in the JIM, guardianship is referred to as “custodianship”);

[http://ec.europa.eu/employment\\_social/social\\_inclusion/docs/2007/JIM-croatia\\_en.pdf](http://ec.europa.eu/employment_social/social_inclusion/docs/2007/JIM-croatia_en.pdf)

<sup>10</sup> According to data from the Ministry of Health and Social Welfare, in 2006, 16,230 persons under guardianship of which 4257 lived in institutions (plus 542 more in hospitals); in 2007, 16,448 persons under guardianship of which 4392 lived in institutions (plus 534 more in hospitals); in 2008, 17,810 persons under guardianship of which 4866 lived in institutions (plus 500 more in hospitals). See [http://www.mzss.hr/hr/zdravstvo\\_i\\_socijalna\\_skrb/socijalna\\_skrb/statisticka\\_izvjesca](http://www.mzss.hr/hr/zdravstvo_i_socijalna_skrb/socijalna_skrb/statisticka_izvjesca)

<sup>11</sup> Application no 11223/04, judgment of 17 July 2008

<sup>12</sup> In 2006, 3,243 of the 4,257 adults under guardianship living in institutions had guardians who were simultaneously employees of the residential institution where the person under guardianship lived; in

prohibiting guardians to have potential conflicts of interest (Family Act, Art. 175(3)). However there are no appeal rights against the appointment of a guardian, perpetuating both corruption and impunity for human rights violations.

18. In some institutions, on arrival residents' legal capacity is intact, but staff initiate the process to deprive them of legal capacity and for the staff to be the guardian. This is not based on individual need but done for staff convenience and control.
19. Guardians can place an individual into an institution without even consulting that individual, and do so against the individual's express wishes, resulting in *de facto* detention. They need only seek approval from the local government's centre for social care (Family Act, Arts 185, 186). There is no obligation on guardians to seek alternative and less restrictive accommodation. Placement of persons into psychiatric and social care institutions continues well after it is clinically necessary. According to staff, many residents are capable of living on their own, yet due to the lack of community based services and social factors such as poverty, homelessness, and social exclusion, they remain in institutions on a long term basis.<sup>13</sup>

### **b. Institutionalisation**

20. The practice of detaining persons in remote social care institutions infringes on the right to live in the community, set out in Article 19 of the CRPD. The population of these detainees is overwhelmingly persons with (or diagnoses of) intellectual disabilities or mental health disabilities. Such segregation is a form of disability-based discrimination.
21. MDAC has observed that in some psychiatric hospitals and social care institutions, patients/residents are restricted in their interactions with others with the explicit aim of discouraging forming intimate relationships. Displays of sexual interest or conduct are considered as a treatable consequence of the patients/residents' mental disorder and as a result, sexual and reproductive health including information about these issues (Article 25 CRPD) is severely restricted.

### **c. Use of restraints**

22. There are no national guidelines or training for mental health and social care professionals on the ab/use of physical and chemical restraints and seclusion in mental health and social care institutions. This contributes to health, safety and dignity being jeopardized. Restraints are applied in circumstances which do not call for it. MDAC has witnessed residents in social care institutions being placed into straight-jackets during mealtimes for convenience of staff to feed them, and wheelchair users in social care institutions being tied by strips of cloth around their waist to their wheelchairs, and also having their chairs tied to fixtures such as radiators to prevent them from moving around. Staff of a psychiatric hospital said that all newly admitted forensic patients were automatically placed in isolation to conduct observation of their behaviour: this is contrary to accepted international practice.

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2007, it was 3,451 of 4,392 adults; and in 2008, 3,650 out of 4,866, See [http://www.mzss.hr/hr/zdravstvo\\_i\\_socijalna\\_skrb/socijalna\\_skrb/statisticka\\_izvjesca](http://www.mzss.hr/hr/zdravstvo_i_socijalna_skrb/socijalna_skrb/statisticka_izvjesca)

<sup>13</sup> This was also noted in the supplementary report to Croatia's Joint Inclusion Memorandum, many residents are in care "as much for social reasons, lacking a carer, as for any rehabilitation or therapeutic purpose." Social Protection and Social Inclusion in Croatia Final Report for the European Commission Employment, Social Affairs and Equal Opportunities DG", Institute of Economics, Zagreb, May 2006, p.80, see [http://ec.europa.eu/employment\\_social/spsi/docs/social\\_inclusion/2006/study\\_croatia\\_en.pdf](http://ec.europa.eu/employment_social/spsi/docs/social_inclusion/2006/study_croatia_en.pdf)

23. MDAC' is aware that certain Croatian children's institutions use cage beds or net beds as a method of restraint. Due to a shortage of staff, and a lack of training, cage beds are resorted to, to keep children in order. MDAC learned that staff working with children and adults with mental disabilities do not receive training on working with persons with disabilities, resulting in situations in which residents' right to moral and physical integrity are put at risk.

## Appendix 1 - Recommendations

In light of the above, MDAC would like to assist the UPR Working Group by suggesting that it makes the following recommendations to the Croatian Government to enable the Government to take appropriate measures, in full consultation with people with disabilities and their respective organisations, to bring law, policy and practice in line with the requirements of the UN body of human rights law and standards:

- Introduce changes to the law governing legal capacity proceedings and the guardianship system as a whole, to ensure that adults retain their legal capacity, including capacity to act, on an equal basis with others. Develop less restrictive alternatives to guardianship in the law which provide support for exercising one's autonomy, such as supported decision-making.
- Ensure that guardianship legislation prevents conflicts of interest arising between an adult and their guardian. Abolish the policy of appointing as their guardian the institution (or staff members thereof).
- Provide sufficient guarantees of the right of adults under guardianship to meaningful participation in the guardianship process from the beginning and for as long as the adult is under guardianship; in particular, ensure full participation of a person in court proceedings in which their capacity is decided on (including the right to be present at the court hearing, to be heard by the court and to present and challenge evidence), and to be provided with high quality legal representation by an attorney paid for by the state.
- Amend legislation to ensure that a person deprived of legal capacity has the right to apply to court for the restoration of their legal capacity, and ensure that courts automatically and periodically review the continued need for guardianship measures.
- Provide for automatic and regular court review of detention in social care institutions, which are places of detention. Ensure that these institutions are regularly monitored by an independent body.
- Enshrine a legal right to live in the community. Develop & enhance community-based care services & community living to support the deinstitutionalisation process, ensure that persons with mental disabilities exercise their right to live in the community, to choose their place of residence, & freedom of movement.
- Introduce legislation and/or a Ministerial protocol on restraint to systematise the use of restraint and prevent its abuse, with the prior full consultation of persons with intellectual disabilities and mental health problems and their representative organisations. Ensure that staff are regularly trained on all aspects of restraint, including its limited purpose and the strict requirements for monitoring and recording incidents of restraint. Provide training and clear guidelines on the importance of informed consent to treatment for all individuals, and ensure that the needs of vulnerable groups, including those who have been fully or partially deprived of their legal capacity, are given special consideration, and that information and consultations are adapted accordingly for meaningful participation of one's treatment.
- Abolish the use of cage beds and restraint in children's institutions. Ensure sufficient number of staff available and properly trained to work with children with disabilities in order to prevent abusive practices.
- Amend legislation to ensure that patients' fundamental rights are upheld in psychiatric and social care institutions. Whether voluntary or involuntary, and regardless of their legal



capacity status, every patient/resident must be fully informed about the treatment which is intended to be prescribed; consent to treatment must be required in writing from the individual concerned and refusal of treatment respected; and consent issues should not be delegated to a third party regardless of limitation on the adult's legal capacity.

- Ensure that court orders for involuntary hospitalisation are taken as a last resort after less restrictive measures have been considered, and that these measures are not grounded upon past medical history or family, professional or other conflicts, but based on an individual's current clinical need.
- Ensure that there is a functioning independent body designated to promote and protect the rights of persons with disabilities as well as monitor the implementation of the UN Convention on the Rights of Persons with Disabilities (Article 33(2) of the Convention).