

REPORT ON THE STATE OF HUMAN RIGHTS OF PERSONS PLACED IN THE PUBLIC INSTITUTION FOR PEOPLE WITH SPECIAL NEEDS

Public Institution for People with Special Needs “Komanski most”

(1 November 2011)

Summary report

Living conditions in the institution have significantly improved with the change of director in 2010, especially when compared to the previous period marked by the negative report of the CPT on its visit to this institution in September 2008¹. Furthermore, no evidence of any maltreatment has been observed. The residents are not being tied anymore. Female and male residents have been appropriately separated in different pavilions, as well as the children.

The Institute satisfies primary needs of persons with intellectual disabilities and provides living conditions they cannot have in the community, especially when rejected by their families, which is unfortunately the rule in the case of residents of the Institute. The practice in European countries, that Montenegro should strive to attain, entails deinstitutionalization of such institutions. It is necessary to establish a network of services in the community to prevent the admittance of people with intellectual disabilities to the institution, and through appropriate treatment help those who are already in the Institution to get discharged. However, for a certain number of residents rejected by their families and incapable of independent living, life in this or a similar type of institution where the state provides them with care shall continue to be necessary in future, as well.

The institution accommodates persons of different ages with different degrees of intellectual disability and support needs, but lacks detailed assessment of their individual abilities and needs. Also, the court proceedings assessing personal legal capacity have not been determined in due course with regard to a significant number of residents. Clearly, such conditions do not provide best solutions for individual development of each resident and raise the question whether all of them need to be placed in the Institute. It is necessary to develop psycho-social-therapeutic programs based on individual potential, needs and desires of residents as soon as possible. Such programs should be developed by institutions for social protection together with other relevant institutions and organizations involved in education, employment, health and

¹ Report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 22 September 2008. The Report is available at <http://www.cpt.coe.int/documents/mne/2010-03-inf-eng.htm>. The Committee, inter alia, found the living conditions in the institution to be “appalling”.



care of persons with mental disabilities, in order to provide adequate support to the Institute's activities. It is necessary to improve respect for the rights protecting residents' personal integrity and dignity be and in this sense provide appropriate training for employees and a brochure on the rights of residents and their families.

One of the key problems in the functioning of the institution are clearly insufficient staffing levels, particularly of specialized personnel, and lack of regular training for all employees. This problem mainly affects residents' quality of life, care, development, health care and human rights guarantees. In comparison to the current practice, much more should be invested in this field.

The Analytical Report of the European Commission of November 2010 also noted that the conditions of the institutionalization of the Institute residents remain a major problem "especially in regard to the deficit of adequately trained staff and facilities which are substandard."²

Until Montenegrin society and welfare system allow for wider and different social integration of these persons, the Institute shall still represent a necessary asylum to people with intellectual disabilities. In accordance with the obligations assumed by the State based on adopted international human rights treaties and domestic legislation, the state administration system is responsible to ensure respect for human rights of residents of the Institute without discrimination, especially with regard to protection of the right of health, privacy, property, etc. It has been observed that the provision of a specialized health care of the residents still remains a challenge for the Montenegrin health system and the ministry should consider additional training and motivation of the health workers in this regard. The Institute alone cannot be responsible for living conditions of its residents and respect for their human rights, but the relevant ministries and the government in general. On the other hand, establishment of an independent body to supervise the work of the institution, which would include representatives of parents and other motivated citizens, could provide significant support to the management and contribute to continuous involvement of residents in community life.

² Analytical Report of the European Commission to the European Commission Opinion on Montenegro's application for membership of the European Union, 9 November 2010, p. 28. In October 2011, in the Progress Report, the Commission determined that the conditions in the institution Komanski most are still not fully compliant with European and international standards, p. 17-18.



COMPARATIVE TABLE OF RECOMMENDATIONS BY THE CPT, THE PROTECTOR OF HUMAN RIGHTS AND FREEDOMS AND THE NGO MONITORING TEAM

CPT RECOMMENDATIONS ³	RECOMMENDATIONS OF THE PROTECTOR OF HUMAN RIGHTS AND FREEDOMS ⁴	RECOMMENDATIONS OF THE NGO MONITORING TEAM (1 November 2011)
✓	Fulfilled recommendations	x Unfulfilled recommendations
Living Conditions		
<p>The CPT recommends that the Montenegrin authorities sustain the emerging efforts made to improve living conditions at the Komanski Most Institution and, in particular, take steps to:</p> <p>✓ allocate a specific budget for the</p>	<p>✓ Take all the requisite measures to ensure the adaptation – reconstruction and equipping of the female pavilion in the Komanski most Institution with the aim of improving the living conditions and quality of life in it;</p>	<p>➤ Provide funds for the construction of a recreation room and a physical therapy room.</p> <p>➤ Improve care extended to immobile wards and facilitate the staff's work with them by providing: safety belts for</p>

³ The Report on the visit to Montenegro carried out by the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment of Punishment (CPT) from 15 to 22 September 2008 is available at <http://www.cpt.coe.int/documents/mne/2010-03-inf-eng.pdf>

⁴ The Special Report on the State of Human Rights of Institutionalised Mentally Disabled Persons by the Protector of Human Rights and Freedoms of March 2011 is available in Montenegrin language at: http://www.ombudsman.co.me/docs/izvjestaji/POSEBN_IZVJESTAJ_NS_21.03.2011.doc



<p>Institution's reconstruction and maintenance;</p> <ul style="list-style-type: none"> ✓ carry out a comprehensive refurbishment of ward B; ✓ replace all broken doors and windows; x provide more congenial and personalised surroundings for residents, in particular by: <ul style="list-style-type: none"> x ensuring that the rooms offer privacy, x providing residents with lockable space for their personal belongings, and x improving the decoration and equipment of the dormitories and common areas. (Paragraph 118) ✓ The CPT recommends that the Montenegrin authorities take steps to accommodate children separately from adults 	<ul style="list-style-type: none"> ✓ Take all the necessary measures to refurbish the dining-hall and x Refurbish kitchen in Komanski most to adapt them to the wards' needs ✓ Take all the necessary measures to ensure the full segregation of adult and underage wards at Komanski most by building a designated yard 	<p>wheelchairs, gurneys, bathtub lifts and mobile wash basins.</p> <ul style="list-style-type: none"> ➤ The dayroom in Pavilion A should be refurbished and made more comfortable for the wards and adjusted to their abilities and needs. The walls need to be washed or repainted. ➤ Equip the Institution's yard with adequate adult recreational devices. ➤ Provide a suitable wheelchair ramp in the children's yard. ➤ Begin the planned refurbishment of the kitchen as soon as possible and equip it with a dishwasher and a potato peeling machine to alleviate the problem of understaffing and facilitate the work of the wards assigned kitchen duty. ➤ Guarantee the wards' right to privacy by having the staff ensure that the wards do not undress in front of others
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<p>x and to provide protected bedrooms for female residents</p> <p>and</p> <p>x sanitary areas (paragraph 119).</p>		<p>and provide lockable cabinets in which wards, who are capable of using them, can keep their personal possessions.</p> <p>➤ Improve the children's personal hygiene by ensuring that they are bathed at least twice a week, especially during summer.</p> <p>➤ Provide adequate aides for wheelchair users and ensure that all approaches and entrances to the Institution are adapted to allow wheelchair access.</p>
<p>Note: The wards cannot lock their personal possessions, there are two bathrooms in Pavilion A, the kitchen has not been renovated, and the rest of the recommendations have been fulfilled.</p>		
<p>Institution Staff</p>		
<p>x The CPT recommends that the Montenegrin authorities explore the possibilities of providing enhanced conditions of service for staff, so as to facilitate appropriate staff recruitment and retention, and offer both initial</p>	<p>x Take all the requisite measures to ensure a sufficient complement of specialists and staff in direct contact with the wards (nurses, educators, carers, work therapy experts, social workers) and ancillary staff;</p>	<p>➤ Recruit a psychologist, pedagogue (andragogue) and three more carers as provided for by the Komanski Most staffing plan. Seriously consider the possibility of hiring additional staff as well.</p>



<p>and ongoing training to staff (paragraph 126).</p> <p>x The numbers of staff in direct contact with residents should be substantially increased, including nurses, educators, work therapists, social workers, etc. (paragraph 126).</p>		<ul style="list-style-type: none"> ➤ Ensure appropriate staffing during annual leave periods as well, by engaging qualified staff registered as unemployed with the Montenegrin Employment Agency. Improve cooperation with the medical high school and medical college. ➤ In particular, take steps to prevent situations in which one member of staff has to look after the children all by himself/herself for 12 hours straight. ➤ Additionally motivate the staff by providing them with the support of professional consultants, supervision, performance assessments and adequate remuneration for the difficult working conditions. ➤ Provide continuous training for all Institution staff, which will include specialised training in everyday care for the wards and in furthering their
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		<p>abilities, and training in the rights of the wards, with the aim of raising the level of professionalism and improving the treatment of the wards.</p> <ul style="list-style-type: none"> ➤ Provide adequate equipment needed to care for immobile wards, to physically facilitate work with them. ➤ Recruit additional male staff. “Carers” should not comprise only women, particularly in view of the fact that the Institution has more male than female wards (64:47).
<p>Note: Five female nurses and five female carers were hired in 2010.</p>		
<p>III-Treatment and Means of Restraint</p>		



<ul style="list-style-type: none"> ✓ A clear message must be given to staff that physical and psychological ill-treatment of residents is unacceptable and will be dealt with severely. The Institution's management should also actively address factors that may have contributed to such staff behaviour (paragraph 111). x The CPT calls upon the Montenegrin authorities to take appropriate steps to protect residents from other residents who might cause them harm (paragraph 112). ✓ Steps should be taken to ensure that the room, behind the sanitary facilities on Ward B, is never again used as a seclusion room (paragraph 127). ✓ Chaining residents is totally unacceptable and could well be considered as amounting to inhuman and degrading treatment, in addition to being potentially physically harmful 		<ul style="list-style-type: none"> ➤ Train the staff in techniques by which they can prevent the wards from becoming aggressive. ➤ Introduce additional safeguards regarding chemical restraints on the freedom of movement. E.g. introduce a separate ampoule therapy register in which data will be entered on which therapy was administered and when, its dosage, the circumstances and reasons why chemical restraint was resorted to, the name of the doctor who prescribed it and the name of the nurse who administered it. The data on the therapy should also be entered in the ward's medical file. ➤ Introduce the same safeguards with respect to the mechanical restraints on the wards' freedom of movement – a register of physical restraints must be established.
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<p>(paragraph 127).</p> <ul style="list-style-type: none"> ✓ Fixation for days cannot be justified from a medical viewpoint and amounts, in its view, to ill-treatment (paragraph 128). x The Committee wishes to stress that seclusion should never be used as a punishment vis-à-vis mentally disabled persons (paragraph 127). x Further steps should be taken to ensure that a comprehensive and clearly-defined policy on the use of restraint (paragraph 129) 		<ul style="list-style-type: none"> ➤ Train the staff in preventing self-harm, particularly among autistic wards, and provide it with the technical devices used in developed countries to prevent self-harm ➤ Refurbish one room for the isolation of agitated wards and pad its walls with upholstered sponge.
<p>Note: Although the isolation room mentioned in the CPT Report is no longer in use, there is another room in the same pavilion used for that purpose. Wards are still punished by isolation on occasion. This practice needs to be eliminated entirely.</p>		
<p>Activities and Organisation of Work with the Wards</p>		
<ul style="list-style-type: none"> x The CPT recommends that the Montenegrin authorities make efforts to ensure the implementation of the individual treatment and rehabilitation 	<ul style="list-style-type: none"> x Take all the necessary measures to develop individual work plans for all adult wards and ensure their involvement in work and occupational 	<ul style="list-style-type: none"> ➤ Improve the existing and introduce additional work, educational and recreational activities for the wards. Develop content and activities for all



<p>plans by involving all residents in activities adapted to their needs. Achieving this goal will require recruiting more qualified staff (paragraph 122).</p> <p>x Steps should be taken to offer all residents, health permitting, at least one hour a day of outdoor exercise in a reasonably spacious setting, which should also offer shelter from inclement weather (paragraph 122).</p> <p>x It is also desirable for residents to be offered education and suitable work, the aim being to prepare residents for independent or at least more autonomous living (paragraph 122).</p>	<p>therapy.</p>	<p>wards, including those suffering from deep mental retardation or motoric disorders.</p> <ul style="list-style-type: none"> ➤ With the aim of facilitating the socialisation of mentally disabled persons, devote more attention to free activities and diversify them with various sports, recreational and cultural and artistic activities outside the Institution as well. ➤ The wards should be provided with the opportunity to themselves decide on issues that affect them, such as the activity programmes and schedules, the look of the rooms they spend time in and the exterior of the Institution. ➤ Provide the workshops with equipment needed for the wards' occupational therapy. ➤ Encourage the staff to apply as many as possible programmes and activities
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		<p>in their work with the wards, in order to increase the degree of their functionality.</p> <ul style="list-style-type: none"> ➤ Introduce new therapeutical methods applied in developed countries (e.g. sensory room in which therapy can be conducted free of the distractions of the outside world, light and sound, and with the aim of stimulating the senses, particularly among children. This method facilitates the correct development of the perception of the outside world, checks aggression and relaxes the child.) ➤ Organise stays at the seacoast or occasional trips outside the Institution and interaction with the local community for all wards who have the psychological and physical capacities to take part in them. ➤ Engage volunteers to assist the staff in implementing the proposed activities.
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		Encourage schools, NGOs and other civil society organisations, as well as potential donors for the activities to cooperate with the Institution and the wards.
Health Care		
<p>x The treatment of mentally disabled persons should involve a wide range of therapeutic, rehabilitative and recreational activities, such as access to appropriate medication and medical care, occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Residents should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis (paragraph 122).</p>		<p>➤ Ensure the equality of health care to the Institution wards and other insurants. To that aim, notably: 1) ensure without delay the issuance of health cards for all the wards; 2) ensure appropriate funding to cover the costs of the wards' medications that are not on the Health Insurance Fund list of free medications and the other medical treatment costs; 3) provide the medical specialists and staff at the Clinical Hospital Centre with training in the appropriate treatment of mentally disabled children and adults.</p> <p>➤ The Health Ministry should adopt the relevant regulations without any further delay and ensure the registration of the</p>



		<p>surgery in the Institution in accordance with Article 78 of the Health Protection Act; this will require a new systematisation of the staff and equipping the surgery in accordance with the regulations.</p> <ul style="list-style-type: none"> ➤ Improve the level of dental care and introduce regular comprehensive check-ups as soon as possible. ➤ Hire a full-time general practitioner or, at least, a visiting doctor who will spend a much greater number of hours in the Institution than now. ➤ Recruit another external specialist – gynaecologist – as soon as possible. ➤ Link the Institution’s internal medical database comprising the patients’ medical files with the public health database and provide for the relevant protocols enabling their continuous health care regardless of personnel
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		<p>changes.</p> <ul style="list-style-type: none"> ➤ Ensure adequate therapy for wards suffering from cancer. The Institution needs to provide the wards also with preventive cancer care. Ensure coverage of the wards by the compulsory screening tests now included in the basic primary health care package. ➤ Introduce the legal obligation to conduct post mortems of persons who had died in the Institution in accordance with Article 128 of the Health Protection Act. The Health Ministry must enact a rulebook governing the work of medical examiners.
Contacts with the Family and the Community		
<p>x The CPT invites the Montenegrin authorities to pursue their efforts to encourage residents' contacts with the outside world (e.g. by means of</p>	<p>✓ Take all the necessary measures to encourage the parents – guardians and families to maintain regular contacts with the wards and take an active part</p>	<p>➤ Establish an independent authority to monitor the work of the Institution and enable the involvement of the wards' parents in its work and their</p>



<p>inviting voluntary visitors, NGOs, etc.) (Paragraph 135);</p>	<p>in their treatment and rehabilitation.</p> <ul style="list-style-type: none"> x Undertake the necessary public outreach activities to eliminate prejudices against persons with mental health problems. x Take all the necessary measures to establish and develop various services supporting the families of mentally ill persons at the local level 	<p>membership in its Management Board.</p> <ul style="list-style-type: none"> ➤ Establish cooperation with various organisations to provide the wards with sports, recreational and cultural and entertainment opportunities, e.g. organise picnics, trips to town, attendance of performances, concerts and sports events ➤ Organise a public campaign and raise public awareness of persons with mental disabilities with the help of the media. ➤ With the assistance of the social care centres, the Institution should continue taking measures to promote the wards' contacts with their families. ➤ Improve the quality of cooperation between the Institution and the Labour and Social Welfare Ministry, the social care centres, colleges and, notably, the medical high school.
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<p>Note: The Institution has invested some effort in encouraging parents to the visit their children in the Institution by covering their travel costs.</p>		
<p>Status Issues and Other Rights of the Wards</p>		
<p>x The delegation was informed that all residents had been placed at the Komanski Most Institution by the Social Welfare Centre in the area of the resident's family, which was also entrusted with the guardianship of the residents. Discharge was reportedly also decided by the competent Social Welfare Centre. Ex officio placement by the public authorities in social care institutions should always be surrounded by appropriate safeguards. In particular, the procedure by which ex officio placement is decided should offer guarantees of independence and</p>	<p>x Take all the necessary measures to establish mechanisms for monitoring and overseeing the work of the institutions and nationwide standards for the provision of services to the beneficiaries</p>	<ul style="list-style-type: none"> ➤ The Labour and Social Welfare Ministry should without delay adopt the bylaws precisely laying down the standards and procedures for placing a person in the Institution and extending his/her placement and provide him/her with social support upon discharge from the Institution. ➤ Establish an independent authority to oversee the guardian appointment procedure, the procedure for categorising a person prior to admission, his/her recategorisation upon admission, and to oversee the



<p>impartiality as well as being based on objective medical, psycho-social and educational expertise. The CPT considers that persons involuntarily placed in an institution must have the right to bring proceedings by which the lawfulness of their placement is speedily decided by a court. It is also crucial that the need for placement be regularly reviewed and that this review afford the same guarantees as those surrounding the placement procedure (paragraph 132).</p> <p>x The CPT recommends that the Montenegrin authorities take steps to ensure that the procedure for placement of persons with mental disabilities in social care institutions complies with the above requirements. In particular, such persons should enjoy the effective right to apply to a court for a prompt ruling on the legality of their placement and enjoy appropriate legal safeguards (i.e. right</p>		<p>work of the Institution. Ensure the involvement of the wards' parents, experts and representatives of human rights NGOs in the work of this authority.</p> <ul style="list-style-type: none"> ➤ Design an information brochure which will inform the wards, their families and the Institution staff of the wards' rights. ➤ Ensure the greater involvement of the wards and their families in the decisions affecting them and their stay in the Institution (e.g. provide them with the opportunity to choose their roommates, the activities they want to engage in, what the rooms they spend time in will look like, allow a representative of the parents to sit on the Management Board of the Institution, et al). ➤ Regularly review the categorisation of the persons placed in the Institution
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<p>to a lawyer, possibility of being heard by a judge, etc.). (Paragraph 132)</p> <ul style="list-style-type: none"> x The CPT recommends that the Montenegrin authorities take the necessary steps to avoid potential conflict of interest which arises when a Social Welfare Centre is appointed as a guardian and at the same time is responsible for admission and discharge decisions (paragraph 133). x Informational brochure should be distributed to residents' families/ guardians (paragraph 134). x The CPT invites the Montenegrin authorities to introduce a firm legal basis for regular visits to the Komanski Most Institution by bodies which are independent of the social care authorities (paragraph 136). x The CPT invites the Montenegrin authorities to take steps to reorganise 		<p>and the need for extending their institutionalisation.</p> <ul style="list-style-type: none"> ➤ Implement transitional planning (transition projects: residential communities, sheltered housing and half-day and day care centres) envisaged in the Komanski most 2011 Work Plan. ➤ Build a system of social support to adults with intellectual disabilities and establish counselling centres, work training centres, sheltered workshops, assisted employment et al. to prevent institutionalisation.
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<p>the system for the provision of care to persons with mental disabilities, including both de-institutionalisation programmes and options for those persons who are not able to benefit from such programmes (paragraph 110).</p>		
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