



# RESPECT FOR HUMAN RIGHTS OF RESIDENTS IN THE PUBLIC INSTITUTION "KOMANSKI MOST"

REPORT OF THE NGO MONITORING TEAM

HUMAN RIGHTS ACTION

CENTRE FOR ANTIDISCRIMINATION "EQUISTA"

CENTRE FOR CIVIC EDUCATION

WOMEN'S SAFE HOUSE - SHELTER



Centar za građansko obrazovanje



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Podgorica, 1 November 2011

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## **Introduction**

### ***Project***

The project "Monitoring Respect for Human Rights in Closed Institutions in Montenegro", whose aim is to promote human rights of persons residing in these institutions, is implemented by Montenegrin NGOs Human Rights Action (HRA), as the project leader, Centre for Anti-discrimination "EQUISTA", Centre for Civic Education (CCE) and Women's Safe House (Shelter), in cooperation with the Belgrade Centre for Human Rights and Latvian Centre for Human Rights. The project is funded by the European Union through the Delegation of the European Union to Montenegro and the Embassy of the Federal Republic of Germany. Under this project, on 17 June 2011, the project leader NGO "Human Rights Action", the Ministry of Labour and Social Welfare and the Public Institution Komanski Most concluded an agreement on cooperation, allowing unannounced visits of NGOs monitors to Komanski Most Institution for People with Special Needs, presentation of and discussion about monitoring reports at the round table, development of a brochure on the rights of Institution's residents and cooperation in a public campaign aimed at raising awareness about the rights and needs of Institution's residents.

The project involves development of a report on the extent of adoption of recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Protector of Human Rights and Freedoms (hereinafter: Ombudsman) for improving the respect of the rights of Komanski Most Institution residents, and contains further recommendations of NGOs participating in this project. This is the first report developed on the basis of information provided during the visits to the Institution during the period from July to November 2011, and from other sources. The final report, assessing progress in implementing all the recommendations will be published shortly before the completion of the project in September 2012.

### ***Visits***

For the purpose of drafting this report, the monitors visited Komanski Most Institution five times in the period from July to November 2011.

First unannounced visit took place on 21 July 2011. Monitoring team included: Tea Gorjanc-Prelević, Project Coordinator, HRA; Maja Raičević, Assistant Project Coordinator, Shelter; Milan Šaranović, Assistant Project Coordinator, EQUISTA; Jovana Hajduković, social worker, monitor, Shelter; Velibor Bošković, legal expert, monitor, EQUISTA.

Second visit was conducted on 5 August 2011. The visit was announced, in order to ensure an interview with the Institution Director Vaselj Dušaj, and physician Dr Mersudin Grbović. The monitoring team included: Olivera Vulić, psychiatric specialist, monitor; Maja Raičević, Assistant Project Coordinator, Shelter; Jovana Hajduković, social worker, monitor, Shelter; Mirjana Radović, legal expert, monitor, HRA.

Third, unannounced visit, was conducted on 22 September 2011 by Maja Raičević, Assistant Project Coordinator and Jovana Hajduković, social worker, monitor, Shelter.

Fourth unannounced visit was conducted on 19 October 2011 by Tea Gorjanc-Prelević, Project Coordinator, HRA; Maja Raičević, Assistant Project Coordinator, Shelter; and Milan Šaranović, Assistant Project Coordinator, EQUISTA.

During the fifth announced visit on 27 October 2011, Maja Raičević, Assistant Project Coordinator, Shelter, conducted an interview with the Director of the Institution, Vaselj Dušaj.

### *Aim, method and sources of information*

The subject of this report is a description and assessment of the respect for human rights in the Public Institution Komanski Most (hereinafter: the Institution). The aim of the report is to contribute to improving the living conditions of residents, while pointing out good practices and deficiencies in the work of the Institution.

Observations provided in this report are the result of five visits of several hours to the Institution, based on personal monitors' observations and interviews with the Director and staff of the Institution, officials of the Podgorica Social Welfare Centre (social workers and psychologists), residents' parents and residents of the Institution. Visits were carried out by monitors of different professional backgrounds, additionally educated on this matter at the training held from 12 to 14 May 2011 in Podgorica.<sup>1</sup> In addition to HRA and partner NGOs representatives, the monitoring team included psychiatrist Dr Olivera Vulić, representative of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in Montenegro, employed at the Podgorica Health Centre (Dispensary for Mental Health), who was engaged as the project monitor in a professional capacity as a psychiatrist.<sup>2</sup>

In drafting the report, the monitoring team used international standards and recommendations<sup>3</sup>, applicable regulations in Montenegro concerning social/health care and status of persons with intellectual disabilities<sup>4</sup>, training material for monitors, reports of the

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<sup>1</sup> Training was conducted by experienced and reputable trainers from partner organizations - the Belgrade Centre for Human Rights and Latvian Centre for Human Rights.

<sup>2</sup> Ms. Vulić previously sought the opinion of the CPT's Vice-President and received confirmation that she may participate as a monitor in this project.

<sup>3</sup> Universal Declaration of Human Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms; Convention on the Rights of Persons with Disabilities; Convention on the Rights of the Child; UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities; CPT recommendations in the reports to the Council of Europe member states, etc.

<sup>4</sup> The Constitution of Montenegro (Sl. list CG, 1/2007); Anti-Discrimination Law (Sl. list CG, 46/2010); Law on the Rights of Mentally Ill Persons (Sl. list RCG, 32/05); Law on Healthcare (Sl. list CG, 39/2004 and 14/2010); Law on Social and Child Protection (Sl. list CG, 78/2005); Decision on the organization of the Public Institution for accommodation of people with special needs (Sl. list RCG, 11/06); Rulebook on internal organization and job classification in the Public Institution "Komanski most" published on the notice board of the Institution, no. 04 -842, Podgorica, 10 December 2010; Statute of the Public Institution "Komanski most" of 1 June 2006; Rules on detailed conditions for the exercise of the fundamental rights of social and child welfare (Sl. list RCG, 5/94, 31/95 and 47/01); Work Program for 2011 in the Public Institution "Komanski most", January 2011.

CPT<sup>5</sup> and the Ombudsman<sup>6</sup> and their recommendations, as well as available international standards for this type of institution.<sup>7</sup> All these sources, along with the report, are available on the project's web site: [www.hracion.org/monitoring\\_u\\_ustanovama\\_zatvorenog\\_tipa](http://www.hracion.org/monitoring_u_ustanovama_zatvorenog_tipa).

The problem encountered in the analysis of the respect for human rights in institutions for people with special needs is the lack of national standards related to this area. The methods used include: qualitative and quantitative research, method of content analysis, legal analysis, as well as comparison with international standards and regulations. As regards scientific research techniques, the monitors used observation and interview techniques.

### **1.1. History of the Institution**

Komanski Most Institution was established in 1976 as an institution for children and young people with moderate, severe and profound intellectual disabilities. The Institution has about 3 acres of land, comprising three wards for accommodation of residents. The total area of the facility is 2,623 m<sup>2</sup>.<sup>8</sup>

Pursuant to the Decision on the organization of the Public Institution for accommodation of persons with special needs<sup>9</sup> of 2 February 2006, Komanski Most Institution was organized as a public institution for people with intellectual disabilities.

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<sup>5</sup> Report 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, available at: [http://www.cpt.coe.int/documents/mne/2010-03-inf-eng.htm#\\_ftnref23](http://www.cpt.coe.int/documents/mne/2010-03-inf-eng.htm#_ftnref23); Response of the Government of Montenegro to the CPT report of March 2010, available at: <http://www.cpt.coe.int/documents/mne/2010-04-inf-eng.htm>.

<sup>6</sup> Special report of the Ombudsman on the human rights of mentally ill persons placed in institutions, March 2011, available at: <http://www.ombudsman.co.me/izvjestaji.php>.

<sup>7</sup> CPT standards ("Substantive" sections of the CPT's General Reports): <http://www.cpt.coe.int/en/docsstandards.htm>.

<sup>8</sup> Data from the official website of the Public Institution "Komanski most": <http://juzkomanskimost.me/>.

<sup>9</sup> Decision on the organization of the Public Institution for accommodation of people with special needs (*Sl. list RCG*, 11/06).

## 2. Residents' living conditions

During the monitoring visits, **the Institution accommodated 121 persons:** 64 men, 47 women and 10 minors. Residents were placed in three wards: Ward A, accommodating men, Ward B, accommodating women and Ward C, accommodating children.

At the time of the visits hygiene level was satisfactory. Hallways and bathrooms in all wards were freshly cleaned. According to staff, hygiene of the rooms is maintained several times a day, and bedding is regularly replaced in all rooms. This represents an apparent improvement compared to the experience of HRA and Shelter during the 2010 visits, and especially compared to the situation found by the CPT in September 2008.<sup>10</sup>

Renovated **Ward A**, accommodating men, has been divided into three blocks, implementing thus recommendations of the Ombudsman.<sup>11</sup> The first accommodates residents with profound "mental retardation"<sup>12</sup>, with limited or no ability to look after themselves, incapable of communication and mobility. Second part of this ward accommodates residents with severe intellectual disability, and the third - residents with moderate impairment in intellectual development.

During the visit in October 2011, on the ground floor of Ward A, in the common room, monitors noticed the dominant table that takes up most of the room, while residents with severe intellectual disability mostly lay or sat on the floor around the table. It seems that different, more comfortable furniture would be more suitable for the common room, especially because it did not appear that any of the residents present in the room at the time of the visit could perform any activities at the table. Furthermore, monitors did not receive any information that the table has been used for occupational therapy. Also, it is necessary to repaint the room or clean the walls which are dirty.

Recommendations from the 2008 CPT Report<sup>13</sup> and Ombudsman's recommendations from 2008<sup>14</sup> and 2011<sup>15</sup> regarding the separation of residents by gender have been met by adapting **Ward B**, accommodating only women. Ward B consists of two parts. One part accommodates female residents with moderate intellectual disabilities, with whom it is

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<sup>10</sup> "In some of the dormitories, there was urine and faeces on the floor, walls and bedding. Furthermore, the establishment was infested with mice." CPT Report on the 2008 visit to Montenegro, p. 114.

<sup>11</sup> "Separate adult residents by gender - accommodation in separate wards, as well as by age and level of their abilities (within the same ward)." Special report of the Ombudsman on the human rights of mentally ill persons placed in institutions, March 2011, p. 20.

<sup>12</sup> The terminology is harmonized with the ICD 10 - International Classification of Mental and Behavioral Disorders, World Health Organization (WHO).

<sup>13</sup> CPT Report, p. 119: „As regards mixed-gender wards, particular precautions are required to ensure that residents are not subjected to inappropriate interaction with other residents which threaten their privacy; in particular, female residents should have their own protected bedrooms and sanitary areas. **The CPT recommends that the Montenegrin authorities take steps in the light of the above remarks.**“

<sup>14</sup> Report on the work of the Ombudsman for 2008, p. 75.

<sup>15</sup> "Take all necessary measures to ensure adaptation - reconstruction and equipping of women's ward in the Public Institution "Komanski most" in order to improve accommodation conditions and quality of life." Special report of the Ombudsman on the human rights of mentally ill persons placed in institutions, March 2011, p. 20.



possible to implement occupational therapy in accordance with their abilities. Rooms of some female residents in this part are equipped with a TV set. Second part accommodates female residents with severe intellectual disabilities, semi-mobile and immobile, who have not adopted hygiene and self-service habits. In Ward B there is a staff room equipped with a video surveillance monitor, which enables supervision of the movement of female residents and persons entering the ward. This is a novelty compared to the last year, when there was no proper supervision of persons entering the ward. During HRA and Shelter's last year's visits, it was noted that adult male residents freely entered the section of Ward B accommodating semi-mobile and immobile female residents, which could have led to their abuse.

In the same ward, gynecology clinic and general medical clinic are at the stage of preparation. Access to the general medical clinic is more difficult for wheelchair users, while access to the gynecology clinic is adequate, as the door width complies with the standards. It has been observed that bed sheets are used to fix immobile residents to a wheelchair (in order to prevent a fall from a wheelchair) instead of special leather belts. It is necessary to allocate funds for the purchase of these belts, so that staff would no longer have to improvise methods to protect residents.

Staff room is equipped only with chairs; there are no beds that would be suitable for a short break during the night duty. During the first visit in July 2011, Director informed monitors that beds for this purpose are to be donated soon. Beds have not been provided even at the time of our fifth visit in October 2011.

Children's ward, **Ward C**, is completely separated from the rest of the complex. At the entrance to the Ward there is an intercom; the door is constantly locked, so that the children are completely separated from adults, which is in compliance with recommendations of the CPT<sup>16</sup> and Ombudsman<sup>17</sup>. Adapted area includes bedrooms, living room, dining room with a kitchen, bathroom, toilets and additional room for the washer and dryer for children's clothes. According to monitors' observations, hygiene level in the rooms in children's ward is satisfactory. However, maintenance of personal hygiene of children is not at a proper level. Specifically, in addition to direct observations of monitors, there was a bathing schedule for children in the staff room indicating that children bathe once a week, which is insufficient, especially in conditions of high summer temperatures as during the visit. This problem is obviously related to insufficient number of personnel for the care of children, as indicated below under Section 3 "Institution staff".

The positive change noticed by the monitors concerns individual schedules of children's activities put up on the walls, as well as pictorial instructions for the use of premises that illustrate their purpose, which were not there last year. Within the same ward there is a yard for children. Yard is accessed through the balcony - there are two steps to the left and a ramp to the right, which was not made according to the standards. The yard has

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<sup>16</sup> CPT Report on the 2008 visit to Montenegro, p. 119: "The CPT is of the view that to accommodate children and unrelated adults together inevitably brings with it the possibility of domination and exploitation; therefore, as a rule, children should be accommodated separately from adults."

<sup>17</sup> "Take all necessary measures for ensuring complete separation of children from adult users of the Komanski Most Institution by constructing isolated yard area." Special report of the Ombudsman on the human rights of mentally ill persons placed in institutions, March 2011, p. 20.

playground equipment, however, given the ability of residents, only a small number of children can use it independently. Given the insufficient number of staff to look after the children during their stay in the yard, it seems that children rarely use this equipment. The fact that children never leave this ward and its yard (with the exception of five children, three of whom attend classes at the "1 June" Centre, and two at the Institution for Education and Vocational Rehabilitation of Children and Youth) questions the capacity of children's ward for permanent residence of 10 children.

In front of other facilities there is a green area with benches. However, there is no proper sports ground and equipment intended for recreational activities of residents. Exterior could be more functional, as recreational activities could contribute to the wellbeing and development of the residents. Komanski Most Institution also lacks a gym and premises for physical therapy, necessary for the proper treatment of residents. It is necessary to provide the funds for their construction as soon as possible.

One part of the dining room has been renovated, which partially meets the Ombudsman's recommendation<sup>18</sup>, as the kitchen renovation is yet to start. Dining hall has been freshly painted, with newly installed PVC doors and windows. During the third visit, the monitors spoke with a cook, who informed them that the nutritional value of meals was very good, as monitors saw for themselves. However, the Institution lacks proper kitchen equipment, namely dishwasher and potato peeler. Accessible ramp has been set at the entrance to the dining room, while the doors to sanitary units are not wide enough for residents who are wheelchair users.

Rooms in all wards are equipped with cabinets where residents can leave their personal belongings. However, not a single cabinet can be locked, although, according to the CPT standards, those residents who show a certain degree of autonomy must be provided with lockable cabinets for their personal belongings.<sup>19</sup> In the majority of cabinets for personal belongings there were only bedding and personal hygiene items. It can be concluded that only a small number of residents have personal belongings. It is necessary to ensure the possibility to lock personal belongings, at least for those residents who are able to take care of themselves. Art. 4 of the Law on the Rights of Mentally Ill Persons<sup>20</sup> stipulates that "mentally ill persons are entitled to the protection of personal dignity, humane treatment and respect for their person and privacy." Furthermore, the UN Convention on the Rights of Persons with Disabilities stipulates the obligation of the state in this regard. However, monitors noticed that the changing of female residents takes place in the corridor, separated from the ward entrance by a glass door, exposing female residents to the views of all persons in the ward, including guests. It seems as if the personnel are unaware of the need to ensure residents'

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<sup>18</sup> "Take all necessary measures to adapt the dining room and kitchen in the Komanski Most Institution to the needs of its users - residents". Special report of the Ombudsman on the human rights of mentally ill persons placed in institutions, March 2011, p. 20.

<sup>19</sup> CPT Report on the 2008 visit to Montenegro, p. 118: "Provide more congenial and personalised surroundings for residents, in particular by: ensuring that the rooms offer privacy, providing residents with lockable space for their personal belongings, and improving the decoration and equipment of the dormitories and common areas."

<sup>20</sup> Law on the Rights of Mentally Ill Persons, *Sl. list RCG*, 32/05.

privacy. Female residents spontaneously accept this practice, which leads to the conclusion that it has been well-established.

Compared to the last year, significant improvement in the accommodation conditions is evident in all the facilities. Interior of the residents' rooms is generally satisfactory. However, many parts of the facilities, especially walls, still seem cold and need to be decorated in cooperation with the residents, to ensure more pleasant and homelike stay for residents, since the Institution is their home.

Residents' parents with whom the monitors spoke also believe that the living conditions at the Institution have improved considerably. According to them, the state of hygiene and overall care for the residents have been at a much higher level after the appointment of a new director Vaselj Dušaj. Mother of one of the residents noted that her visits are not limited, that only her daughter uses items she brings to her (food, personal hygiene items and clothes) and that her daughter's belongings are separated from other residents' belongings, which was not the case earlier. Monitors have not received parents' critics in relation to the housing conditions.

Residents who use wheelchairs (about 10) have dilapidated and inadequate assistive devices, which do not fulfil their primary role to help, and may result in deterioration of health of a user.<sup>21</sup> In a written response to our questions of 21 October 2011, one of which related to deterioration of these devices, particularly evident in a wheelchair used by resident G.Đ., and the possibility of addressing the Health Insurance Fund, the Institution's Director stated that "in March of this year G.Đ. was provided with a wheelchair that did not fit him because of his physical constitution" and that "the abovementioned donation provided all users with used wheelchairs, and as for the procurement of better ones, the Institution submitted an official letter to the Pension and Disability Insurance Fund". During the last visit conducted on 27 October 2011, Director informed the monitors that a donation from Germany provided for 15 wheelchairs; however, those noticed during the visits were quite worn out and absolutely inadequate for children and a number of adult residents, while staff had to tie users with improvised straps, so that they would not fall out of their wheelchairs. Users G.Đ. and others need to be provided with adequate wheelchairs.

## **2.1. Recommendations**

- Provide funds to construct a gym and premises for physical therapy.
- Improve the care of immobile residents and assist staff in the work with them by providing safety belts for wheelchairs, gurneys, mobile platforms for lowering and raising residents from a bathtub and mobile sinks.
- Refurbish common room in Ward A to make it more comfortable for the residents and meet their needs and abilities. Wash or paint the walls.
- Equip the Institution's yard with adequate inventory for recreation of adults.
- Provide adequate wheelchair ramp in the children's yard.

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<sup>21</sup> For instance, some wheelchairs do not match the size of a resident, who may fall out of them, and some do not allow users to reach and move the wheels themselves etc.

- Start the planned kitchen renovation as soon as possible, provide for a dishwasher and potato peeler to reduce the issue of support staff shortage and facilitate the work of residents engaged in the kitchen.
- Ensure the right to privacy of the Institution's residents by making sure that staff do not change and undress residents in front of others and by providing lockable space for residents' personal belongings, in accordance with their abilities.
- Improve personal hygiene of children by giving them a bath at least twice a week.
- Provide wheelchair users with adequate assistive devices and ensure that all access points and entrances be adapted for wheelchair users. It is necessary to make a request to the Health Insurance Fund for the purchase of new assistive devices.

### 3. Institution staff

The Institution employs 68 people; the following staff members work directly with residents:

- four defectologists;
- two educators;
- one social worker;
- four occupational therapists;
- eleven nurses, and
- nineteen carers.<sup>22</sup>

Rulebook on internal organization and job classification in the Public Institution "Komanski most"<sup>23</sup> provides that the Institution shall employ six educators with a university degree in special education or humanities and social sciences, to carry out educational activities and assist in achieving the overall development of psycho-physical abilities of residents, based on identified individual characteristics. Number of employed defectologists, social workers, occupational therapists and nurses is in accordance with the Rulebook. The Institution employs a total of nineteen carers - three below the required number (14 carers and 8 auxiliary carers). During the visit conducted on 27 October 2011 the monitors learned that the Institution engaged a physiotherapist, who has not yet begun to perform his duties.<sup>24</sup> In order for practice to be in accordance with the prescribed norms, it is necessary to open at least two new positions - for a psychologist and educator (andragogist). However, we believe that the Institution Administration should not only meet the requirements prescribed by the Regulations, but consider hiring additional staff, particularly professional staff such as defectologists, oligophrenologists, speech therapists, music therapists, etc.

The kitchen too is understaffed. During the third visit, monitors found only one cook in the afternoon shift, without support staff. Ancillary kitchen tasks were performed by residents with moderate intellectual disabilities. Institution staff consider residents' work in the kitchen to be a type of occupational therapy. It is evidently difficult for the cook, who is alone in the afternoon shift, to supervise the work of residents and at the same time prepare food, so it is necessary to hire additional support staff in the kitchen. Some residents complained to monitors about having to work in the kitchen all day, with a short break in between meals, which they found very exhausting. Providing a dishwasher and potato peeler would solve some of the issues concerning the lack of staff in the kitchen.

The main issue in the functioning of the Institution is shortage of staff, particularly of specialized personnel in direct contact with residents. Low staffing levels in the already difficult working conditions lead to fatigue and additional stress, which naturally increase the risk of inadequate reactions towards residents. Komanski Most Institution Director finds the

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<sup>22</sup> Data from the official website of the Public Institution "Komanski most": <http://juzkomanskimost.me/>.

<sup>23</sup> Rulebook on internal organization and job classification in the Public Institution "Komanski most" published on the notice board of the Institution, no. 04 -842, Podgorica, 10 December 2010.

<sup>24</sup> Information obtained during the last visit on 27 October 2011.

ratio of staff to the number of residents to be a major problem in the functioning of the Institution. According to the Director, German standards (that he learned about during a study visit to the institution accommodating persons with intellectual disabilities in Germany) envisage the ratio of 3 staff members per 1 resident, while in the Institution this ratio is reversed - 1 staff member per 3 residents.<sup>25</sup> However, during the monitoring visits in the afternoons and on weekends, the number of residents in all the wards exceeded the number of employees severalfold.

In children's Ward, during four visits, monitors found only one carer (for ten children), and during only one visit – a carer and educator, of a total of 6 employees in this ward (4 carers and 2 educators). It is obvious that the needs of ten children are much higher, so it is very difficult to provide even the palliative care, let alone other activities. According to the carer, at the time of the monitoring visit her shift lasted for 12 hours. Whatever the circumstances of staff annual leaves, it is absolutely unacceptable that only one person be in charge of ten children with disabilities for 12 hours continuously (monitors were informed that not all children sleep in the afternoon). Such work schedule is inhuman for both staff and residents, and it is reasonable to expect that it could jeopardize the health and safety of children.<sup>26</sup> Annual leave period issues need to be overcome in a pre-planned manner, through hiring additional labour force for a limited time. In any case, Komanski Most Institution should intensify its cooperation with the secondary medical school, so that its students spend much more time in this institution for practice.

The share of female staff at the Institution is far greater, which, according to employees, causes difficulties in the work with immobile residents, since the institution does not have modern equipment to facilitate their work in a physical sense. Also, in this type of institution physical strength is often needed to restrain or catch a resident in the case of attempted escape, which has happened in practice.

Two carers per shift are engaged in Ward B, which is a small number compared to 48 residents currently residing at the Institution. One nurse is on duty and she visits all three wards. Director justified the existing situation with the vacation season, as most employees use their right to annual leave during the summer months. However, last two monitoring visits took place in October, when the vacation season was over, and the number of staff found was slightly higher than in the previous visits. During the last unannounced visit, there were a carer and educator in children's Ward, defectologist and educator in Ward A, and a nurse and carer in Ward B. One or two staff members in the children's Ward and four staff members in charge of 111 residents is insufficient even for the most basic care, let alone other prescribed activities for residents.

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<sup>25</sup> In Slovenia, for example, the Centre for training, work and protection Dolfke Boštjančič, Draga (Centre za usposabljanje, delo in varstvo Dolfke Boštjančič, Draga, [www.center-db.si](http://www.center-db.si)) accommodates 400 residents and employs the same number of staff.

<sup>26</sup> Although on all occasions children's carers have been extremely friendly and attentive to children, as well as to visitors-monitors, we are confident that the independent performance of their duties during regular shifts, especially during 12-hour shifts, requires superhuman effort.

According to the *Work Program for 2011*,<sup>27</sup> the Institution's expert team consists of: head of work/educational occupational treatment, social worker, head nurse, legal expert, psychologist, psychomotor re-education specialists and neuropsychiatrist. Expert team meetings are managed by the head of work/educational occupational treatment. Director attends the expert team meetings as appropriate. However, the Director has informed us that Komanski Most Institution lacks a psychologist, and that a neuropsychiatrist is not a permanent employee of the Institution, but pays occasional visits, so it is unclear how he can be a member of the expert team. **In any case, there is a contradiction between the needs of this institution prescribed in official documents and the actual situation in practice.**

Komanski Most Institution and the Ministry of Labour and Social Welfare have only partially implemented recommendations of the CPT<sup>28</sup> and the Ombudsman<sup>29</sup> concerning strengthening of the Institution's staff capacity. In 2010, five nurses and eight carers were employed. However, when it comes to staff training, the Ombudsman's recommendations<sup>30</sup> have not been met. Working with people with intellectual disabilities is very difficult. With that in mind, in addition to adequate education prior to employment, it is essential that staff obtain continuous training during their service. There is no organized initial training for the newly employed, as they are expected to have gained the knowledge throughout their studies. There is no continuous staff training on new approaches and methods for working with persons with intellectual disabilities. Until 2011, staff training was organized only in cooperation with UNICEF representatives (Cath Irvine, Director of the Intensive Interaction Institution in London) and only for two educators who work in children's Ward. They have been trained to apply *the method of intensive interaction* in working with children. Having received the certificate for coaches, these educators now pass their knowledge to carers who work in children's Ward. Compared to the practice in the region (e.g. in Serbia, where all persons engaged in direct work with residents attend at least 40 hours of accredited training programs per year<sup>31</sup>), training of staff in the Institution is absolutely insufficient. Employees in this institution believe that they need further education, especially expert training concerning the methods of work with aggressive residents (methods of verbal command in cases of aggression, as well as manual techniques for overcoming resistance), currently implemented at their own discretion, because, according to their statement, during many

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<sup>27</sup> Available at the Komanski Most Institution web page:

<http://juzkomanskimost.me/images/stories/Dokumenti/PROGRAM%20RADA%20ZA%202011.pdf>

<sup>28</sup> CPT Report on the 2008 visit to Montenegro, p. 126: 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 and ongoing training to staff. The numbers of staff in direct contact with residents should be substantially increased, including nurses, educators, work therapists, social workers, etc.

<sup>29</sup> "Take measures to increase the number of employees in the Institution, particularly those in direct contact with residents (nurses, teachers, carers, occupational therapy specialists, social workers), according to the number of residents and in line with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)."

<sup>30</sup> "Take all necessary measures to implement the continuing training of personnel in the Institution." Special report of the Ombudsman on the human rights of mentally ill persons placed in institutions, March 2011, p. 36.

<sup>31</sup> See "Minimum standards and specification of services - Institutional placement of children and youth," The Republic Bureau for Social Protection of the Republic of Serbia, 2008, available at: [www.pzs.gov.rs](http://www.pzs.gov.rs)

years of practice staff have themselves created a method of treatment of individual residents. CPT recommendation that "initial attempts to restrain agitated residents should, as far as possible, be non-physical (e.g. verbal instruction) and that, where physical restraint is necessary, it should in principle be limited to manual control"<sup>32</sup> shall be consistently observed in practice only after personnel have been trained in this area. One of the forms of staff training was a study visit to a similar institution located in Finland, organized by UNDP, in October this year. However, these sporadic visits do not encompass all employees in need of additional training and exchange of experience with colleagues.

Developed countries address the problem of training of staff working with people with intellectual disabilities by introducing the training for work with this population already in the basic medical studies. *European Manifesto: Basic Standards of Healthcare for People with Intellectual Disabilities* states that medical students at the undergraduate level spend 0 to 36 hours dealing with topics in this area, and thus gain just an insight into this issue. Those starting to work with the marginalized groups acquire the knowledge gradually, through training programs. In Finland and the Netherlands, as part of a special medical care, there is a specialist doctor who deals with the treatment of people with intellectual disabilities.

It is evident that Komanski Most Institution does not have sufficient staff, both medical and professional, that focus on residents' education and rehabilitation. Nevertheless, the monitoring team noticed affectionate and intimate relationship of certain employees with the residents. However, employees are striving to meet high expectations, but on the other hand are not provided an incentive, although this has been recommended by the CPT<sup>33</sup> and Ombudsman<sup>34</sup>.

There is no specialized training concerning the daily care; also, it is necessary to organize training on the inclusion and the rights of residents. There is no proper supervision, which is necessary given the nature of their work.

One of the parents rated positively the cooperation with the staff, noting that parents' communication with the newly hired staff has been much better and that all complaints so far have been taken into consideration. In contrast, personnel working at the Institution for a longer time, in the opinion of this parent, hardly change their inadequate methods of working with the residents applied until recently. In addition, important information received from the parents is that the supervision over the work of employees has improved upon the arrival of a new director, who also visits the Institution on weekends, so there is an impression that all employees, due to intensified supervision, treat residents better.

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<sup>32</sup> CPT Report on the 2008 visit to Montenegro, p. 129.

<sup>33</sup> CPT Report on the 2008 visit to Montenegro, p. 126: "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 and ongoing training to staff. The numbers of staff in direct contact with residents should be substantially increased, including nurses, educators, work therapists, social workers, etc."

<sup>34</sup> Bearing in mind difficult working conditions, consider the possibility of increase in salaries to employees in institutions, in order to increase motivation for recruitment and retention of employees in institutions.



### **3.1. Recommendations**

- ✓ Employ a psychologist, pedagogue (andragogist) and three more carers, in accordance with the current Rulebook on internal organization and job classification in the Public Institution "Komanski most". Consider hiring additional staff, particularly a defectologist - oligophrenologist, speech therapist, etc.
- ✓ Provide for adequate number of staff during the vacation season as well, by engaging people with appropriate qualifications registered with the Employment Bureau of Montenegro. Enhance cooperation with the secondary medical school and Faculty of Medicine.
- ✓ Prevent the practice where one employee works a 12-hour shift alone with ten children.
- ✓ Additionally motivate employees by providing them with expert consulting support, supervision, performance evaluation and adequate remuneration for work in difficult conditions.
- ✓ Conduct ongoing training for all staff at the Institution, which would include specialized training concerning the daily care of residents and improvement of their capabilities, as well as training on their rights, in order to raise the level of professionalism and improve the treatment of residents.
- ✓ Ensure proper equipment for the care of immobile residents that would facilitate employees' work with them in a physical sense.
- ✓ Engage additional male staff. "Carers" do not have to be only women, especially bearing in mind that Komanski Most Institution accommodates more male than female residents (64:47).

#### 4. Ill-treatment and means of restraint

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>35</sup> stipulates the following: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

It is not uncommon in this type of institutions that the increased attention of staff is required, as residents in psychomotor restlessness may be hazardous to themselves and the environment. Employees at the Institution do not deny the occurrence of violent behaviour of residents, but also point out that their response in such situations does not present a major difficulty. Monitoring team has gained the impression that staff speak unwillingly of this subject. We believe that there is no need to conceal problems that are certainly an integral part of life in this kind of institution. Staff noted that the use of chains and other inadequate means of restraint, mentioned in the 2008 CPT's visit report<sup>36</sup>, was fully discontinued. In the earlier period, fixation of residents was a common practice in Komanski Most Institution. For example, resident of the Institution G. had been constantly fixated until the appointment of a new director, Vaselj Dušaj. Staff noted that leather fixations for restraining residents have not been used over the past several months, so the central registry on the use of physical restraints, that any institution that conducts fixation should have, does not exist. In its report the CPT pointed out that the physical abuse of residents was unacceptable<sup>37</sup> and that the isolation room, whose use is sometimes justified, should never be used to punish the residents.<sup>38</sup>

According to employees at the Institution, isolation for the purpose of punishing is also not implemented. Although the isolation room mentioned in the CPT report is no longer used, there is another room in the same ward (Ward B) which serves this purpose. It is necessary to ensure that this room be never again used for the purpose of punishment. Residents are usually contained in rooms until a state of psychomotor agitation passes. Isolation rooms should be completely empty, and the walls lined with cushioned sponge (the so-called padded cell), to prevent head injuries. Komanski Most Institution should have such room, but with clearly defined guarantees and a record of who orders such measure, when,

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<sup>35</sup> Available at: <http://www.ombudsman.co.me/propisi.php>.

<sup>36</sup> CPT Report on the 2008 visit to Montenegro, p. 127: "The low staffing levels, combined with a lack of alternative strategies and material and regime provision, resulted in a considerable reliance on the use of physical restraint. On Ward B, the delegation found, in an unstaffed and locked area, patients fixated to beds or other furniture, mostly with torn strips of cloth but also by chains and padlocks; one of them was sitting on a bench completely naked. The CPT must stress that chaining residents is totally unacceptable and could well be considered as amounting to inhuman and degrading treatment, in addition to being potentially physically harmful. Further, in the dormitories, some beds had soft restraints attached to them. The fact that the Institution's gate, locked wards and dayroom entrances were manned by residents, some in overt possession of soft restraints, clearly indicated that they could be involved in the restraining of other residents."

<sup>37</sup> CPT Report on the 2008 visit to Montenegro, p. 111: "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 (see paragraphs 124 and 125)."

<sup>38</sup> CPT Report on the 2008 visit to Montenegro, p. 127: "The CPT recommends that steps be taken to ensure that this room is never again used for such a purpose. Moreover, the Committee wishes to stress that seclusion should never be used as a punishment vis-à-vis mentally disabled persons."

how long residents stay in it, where this is recorded. Also, it is advisable to establish an independent board composed of experts and citizens, who would periodically review all these records and conditions at the institution.

In conversation with some of the residents, monitors were informed that staff do not physically abuse them, which was also confirmed by the parents of residents. This is certainly a positive step in the functioning of this institution.

As for restraint techniques, the Institution staff use solely manual restraint and verbal command, and in extreme cases pharmacotherapy. Chemical restraint (use of sedatives, antipsychotics, mostly intramuscularly) is implemented in Komanski Most Institution and sometimes unavoidable in this type of institutions. Chemical restraint must be accompanied by certain guarantees, same as mechanical restraint. The so-called "treatment on demand" (ordered by a psychiatrist in the case of resident's psychomotor restlessness) puts too much responsibility on the nursing personnel and opens the door for potential abuse. This type of so-called blank approval for the application of ampoule treatment in the case of psychomotor restlessness can be justified only in exceptional cases and during a very limited period of time. It is necessary that a doctor always be informed of cases when "treatment on demand" is administered, so that s/he can examine the reasoning for the application. The use of therapy "on demand" at the Institution is entered into a duty handover notebook, at the order of a neuropsychiatrist. It is advisable to introduce a special registry for this purpose, for recording time, type, dose and circumstances for the application of ampoule treatment, name of the doctor who ordered the treatment and name of the nurse who applied such treatment. Data on received ampoule therapy should be entered in the residents' medical records. It will be possible to gain accurate insight into the frequency of resorting to chemical fixation and monitor and learn about good and bad practices only if a central registry is introduced at the Institution. Also, possible use of mechanical means of restraint (such as leather straps) must be accompanied by the same guarantees, i.e. must be recorded in the register provided for that purpose.

During the first visit to the Institution, a girl diagnosed with autism was visibly upset, manifesting that in self-harm. Her hands had visible injuries from earlier, suggesting frequent anxiety. It is necessary that staff members be trained on methods to apply in such situations (e.g. apply bandages on hands or other adequate means to prevent self-harm). According to Dr Grbović, the Institution has provided a number of helmets, which should be used in situations when residents hit their heads against a hard surface. However, residents refuse to wear them. Monitoring team believes that application of this type of equipment in the work with residents at the Institution is not desirable. It is necessary to find an appropriate way to prevent residents' self-injury, preferably by providing adequate padded isolation room in the event of restlessness.

In addition to self-injury, another difficulty in working with residents is the fact that residents inflicting injury to each other. In the last three months, three such incidents occurred at the Institution. During the third visit there was a female resident in one of the rooms with bandages on her head, and staff informed the monitors that another resident had pushed her, causing injury.

We believe that it is very difficult to completely eliminate the problem of self-injury and causing injury to others, but the situation would certainly be much better if the number of

professional staff in direct contact with residents was significantly higher, as recommended in the CPT report.<sup>39</sup> Thus, in case of necessity, one qualified person could be engaged to work with only one resident (1:1), and in extreme cases a resident could be placed in a padded isolation room, when assessed as the only option to eliminate the risk of self-injury. Autistic persons can very easily become disoriented when isolated in this way, so it is necessary to introduce all possible guarantees to assess the state of urgency, i.e. its beginning and end.

#### **4.1. Recommendations**

- Train staff to use appropriate techniques to prevent residents' aggressive behaviour.
- Introduce additional guarantees for the use of chemical restraint. For example, introduce a separate register for ampoule treatment for recording time, type, dose and circumstances for the application of ampoule treatment, name of the doctor who ordered the treatment and nurse who applied such treatment. Data on received ampoule therapy should be entered in residents' medical records.
- Introduce the same guarantees for the use of mechanical restraint - establish a register of fixation.
- Train staff in order to prevent residents' self-harm, particularly in autistic people, and provide technical means used for that purpose in the developed countries.
- Provide an isolation room with padded walls, where the residents would be placed in the case of agitation.

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<sup>39</sup> CPT Report on the 2008 visit to Montenegro, p. 112: "The authorities' obligation to care for residents includes the responsibility to protect them from other residents who might cause them harm. This requires an adequate staff presence at all times, including at night and weekends. Staff should be both properly trained and resolved to intervene when necessary."

## 5. Treatment of residents

According to the CPT standards, "the treatment of persons with mental disabilities should include a wide range of therapeutic, rehabilitative and recreational activities, such as access to appropriate medications 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; it is also desirable for them to be offered education and suitable work, the aim of which is to prepare residents for independent or at least autonomous life" (p. 122).

Institution staff believe that parents often make the mistake of fully taking over the duty of meeting the needs of their children with disabilities. Therefore, it often happens that adult residents who have lived with their families are incapable of performing routine everyday activities such as dressing, maintaining personal hygiene, etc., even if they have a predisposition. For those reasons, it is very difficult to teach some of the adult residents, who now reside in the Institution, to lead an independent life.

### 5.1. Treatment of adult residents

Institution's Work Program for 2011 provides for the work-occupational engagement of residents. In a written response to our questions of 21 October 2011, Director stated that "work and occupational groups have been established, as well as work training groups." During the five visits, monitors did not come across the examples of work-occupational engagement of residents, with the exception of work in the kitchen, job of a doorkeeper and help in the care of other residents (also considered work therapy by staff). During the monitoring visits, most residents were sitting on the benches in the yard.

In an interview with the Institution's staff, monitors learned that the work with adult residents implies activities in proportion to their remaining abilities. This refers to the maintenance of hygiene and self-service habits. It has been noticed that persons with motor disorders were devoid of any daily activities, completely bedridden and often unable to go out to the yard. It is necessary to provide daily activities and the possibility of being outdoors for these persons as well.

Work therapy, according to staff, takes 3 hours per day, while the residents are under constant supervision. There are four work therapists and in Director's opinion this is sufficient, given the number of residents. Standards applied in the region, for example in Serbia, state that "for organization and implementation of social work services, an institution should have one work therapist per 100 residents in an institution for mentally ill persons, or one work therapist per 150 residents with moderate and severe mental retardation".<sup>40</sup> Work therapy can currently be carried out with 16 male residents and 13 female residents. The therapy implies: maintenance of green areas, maintenance of orchards located within the

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<sup>40</sup> Rules on detailed conditions for starting and conducting activities and norms and standards for the performance of activities in social care institutions for adults with mental disabilities, the mentally ill and disabled ("*Sl. glasnik RS*", 88/93 and 53/2005).

Institution, work engagement in the kitchen or maintenance of hygiene of the Institution's premises. In an interview with male and female residents, monitors learnt that they found the work in the kitchen very difficult. Parent of one of the residents noted that the resident had initially been interested in maintenance of the orchard, but lost his interest after a month, and that afterwards he had no other work therapy. The question is how effective the existing work therapies are and whether they provide the desired results. It is necessary to introduce work therapies in accordance with residents' preferences and abilities.

Occupational therapy, according to defectologists, includes stacking cubes and cutting paper. Work and occupational treatment are monitored by teams composed of defectologists, educators, social workers, work therapists, nurses and carers. It has been planned to set up greenhouses, where residents would have an opportunity to be engaged in the cultivation of flowers, as a form of work-occupational therapy. One of the options, which can be put into practice, is the establishment of cooperation with entrepreneurs who would buy final products produced during the work-occupational treatment. Funds obtained in such manner, according to the Director, should be invested in the necessary work material or organization of trips in order to have a positive effect on the motivation of residents.

At the time of the CPT's visit in 2008 "there was an almost total lack of occupational, educational and recreational activities; only some 20 residents were involved in such activities" (p. 121). From that time until now, very little has been done as regards this issue. Monitors believe that the current situation is not satisfactory either and that these activities are still largely at the level of improvisation. Komanski Most Institution lacks adequate support from other institutions and professional personnel in devising these programs.

Residents' opportunities to communicate with people outside the Institution are very limited. Institution occasionally organizes cultural and entertaining activities for a limited number of residents with adequate skills. These imply visits to certain events in the city. As a part of recreational activities, in the period from 10 - 18 June 2011 and in cooperation with the Children's home "Mladost" the Institution organized summer vacation in the coastal town of Bijela for five children and seven adult residents.<sup>41</sup> Other residents are not involved in any kind of activity, although recommended by the CPT<sup>42</sup> and Ombudsman.<sup>43</sup>

According to the CPT standards, it is necessary to offer all residents outdoor exercise as a part of recreational activities.<sup>44</sup> Furthermore, it is necessary to include physical therapy, which is an important part of both medical and psychosocial treatment.

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<sup>41</sup> In Slovenia, for example, the Centre for training, work and protection Dolfke Boštjančič, Draga (Centre za usposabljanje, delo in varstvo Dolfke Boštjančič, Draga, [www.center-db.si](http://www.center-db.si)) conducts a variety of activities such as horseback riding, taking care of animals, swimming, picnics, camping, training for computer literacy, cultural and artistic activities etc.

<sup>42</sup> CPT Report on the 2008 visit to Montenegro, p. 122: "The CPT recommends that the Montenegrin authorities make efforts to ensure the implementation of the individual treatment and rehabilitation plans by involving all residents in activities adapted to their needs. Achieving this goal will require recruiting more qualified staff."

<sup>43</sup> Take all necessary measures for the development of individual programs for all adult residents in the Institution "Komanski most" and their involvement in work-occupational therapies.

<sup>44</sup> CPT Report on the 2008 visit to Montenegro, p. 122: "The CPT recommends that steps 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."

There are no individual plans of treatment and care for adults; the Director stated<sup>45</sup> that these plans will be devised following residents' evaluation by the Commission for Evaluation established by the Ministry of Labour and Social Welfare.

In our opinion, very little has been invested in improving the treatment of residents and their training on independent living. Of course, the lack of professional staff is reflected in the quality of work with residents. All of the above indicates that the majority of adult residents have been deprived of educational treatment and that more could be done for them to achieve their maximum development. Social support system is not at an adequate level. Therefore, residents stay at this institution for a long time. Based on available information, monitors concluded that the quality of activities provided for the residents is unsatisfactory, and that most issues concerning this topic remained at theoretical level. Three parents of residents also share this viewpoint and claim that there have been no major changes when it comes to activities related to rehabilitation and work-occupational therapy. They believe that such activities barely exist.

For the purpose of socialization of people with intellectual disabilities, it is crucial to devote more attention to leisure activities and enrich them with various sports, recreational, cultural and artistic events. Residents should be given the opportunity to decide on the program and schedule of activities, on decoration of the premises in which they reside, as well as the institution's exterior.

## **5.2. Treatment of juvenile residents**

UN Convention on the Rights of the Child<sup>46</sup> under Art. 23, para 1 stipulates that "States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community." Art. 23, para 2 of the same Convention states that "States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child."

Three children placed in the Institution are included in the educational programs of the Centre "1 June"<sup>47</sup> and two attend "Institution for professional rehabilitation of disabled children and youth".<sup>48</sup> The European standard implies the inclusion in the education system at the lowest level, i.e. in kindergartens, and then the inclusion of children with disabilities in the education system by forming a class with specialized personnel in schools. According to

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<sup>45</sup> Director Vaselj Dušaj's written response to HRA questions of 21 October 2011.

<sup>46</sup> UN Convention on the Rights of the Child: <http://www2.ohchr.org/english/law/crc.htm>.

<sup>47</sup> Institutions of social and child protection for education and training of disabled children.

<sup>48</sup> Institutions of social and child protection for the professional rehabilitation of disabled children and youth.

the Director, individual care and treatment plans have been developed in cooperation with the Social Welfare Centre for each child placed at the Institution, and their review is carried out twice a year. Due to attention problems, educational class does not exceed 30 minutes. Method of intensive interaction is used in the work with children. UNICEF Expert Consultant has trained two educators to apply this method, who are now passing their knowledge to the children's carers. This method is implemented by an educator trying to communicate with the child at a level that s/he understands through careful listening and observing of the children. Intensive interaction has been applied in the Institution for the past two years, and according to staff some progress is evident in the children this method has been used with. Occupational therapy is conducted with the children unfit for educational programs.

However, the fact that during all five visits there was an insufficient number of staff working with children (only one carer during three visits and only once both carer and educator), who were not even able to meet the needs of palliative care for children, leads to the conclusion that programs for children are not implemented in a way that could ensure their proper development.

### **5.3. Recommendations**

- Improve the existing and introduce additional work, educational and recreational activities for residents. Create activities for all residents, including for persons with profound intellectual disabilities and those with motor disturbance.
- For the purpose of socialization of people with intellectual disabilities, devote more attention to leisure activities and enrich them with various sports, recreational, cultural and artistic events, outside the Institution as well.
- Provide technical assistance of other, especially educational institutions, so that the Institution's efforts to design and implement work, educational and recreational activities are not isolated.
- Provide residents with the opportunity to decide on matters concerning themselves, such as activities programs and schedules, decoration of the premises in which they reside, as well as of the exterior of the Institution.
- Equip workshops for resident's occupational therapy.
- Encourage staff to implement as many programs and activities as possible in the work with residents, in order to increase the level of residents' functionality.
- Introduce new therapeutic methods following the example of developed countries (e.g. sensory room where the treatment is carried out in isolation from external influences of light and sound, with the aim to stimulate the senses, especially in children.<sup>49</sup> This method encourages proper development of experience of the outside world, controls aggression, relaxes the child).

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<sup>49</sup> More on this and other methods at: [http://www.inkluzija.gov.rs/?page\\_id=4010](http://www.inkluzija.gov.rs/?page_id=4010).



- Ensure stay at the seaside or occasional trips outside the Institution for all residents whose psycho-physical abilities allow for such activities and interaction with the local community.
- Engage volunteers to assist staff with the proposed activities. Encourage educational institutions, NGOs and other civil society organizations, as well as potential donors to cooperate with Komanski Most Institution and its residents.

## 6. Healthcare

Public Institution Komanski Most in the majority of cases accommodates people with "mental retardation."<sup>50</sup> The most common are moderate and severe intellectual disability - retardation. A small number of residents have mild mental retardation. Residents' healthcare is regulated by the Law on Healthcare of Montenegro<sup>51</sup>, namely Art. 78 of this law, which reads: "Social and child care institutions, institutions for the execution of criminal sanctions and other institutions for accommodation of certain persons, state bodies with specific needs in the area of health care and business organizations for persons located or employed in them, can organize or perform healthcare services at the primary level of healthcare under the conditions stipulated herein for the appropriate medical institution." The Ministry of Health prescribes the conditions for the establishment of ambulatory care clinics. However, these conditions have not yet been prescribed, so the Institution's clinic is not registered.

It is essential that the Ministry of Health prescribes these conditions as soon as possible in order to carry out the registration of the clinic, which would also imply new job classification and evaluation of the Institution's real needs in terms of healthcare.

All residents of the Institution, regardless of whether they are citizens of Montenegro, are entitled to primary healthcare and other rights in the field of healthcare. However, most residents are Montenegrin citizens included in the regular healthcare system. Seven female residents under the competence of the Social Welfare Centre (SWC) in Podgorica do not have a health insurance card. Although noted in the Institution's written response<sup>52</sup> that Podgorica SWC has undertaken necessary activities to regulate the healthcare of these residents, medical staff of the Institution told monitors that this process has been pending a long time, due to inefficiency of the competent SWC. Consequences of such inefficiency have been evident during the visits. On 30 March 2011, a medical specialist prescribed an orthopedic device (Shantz collar) for one of the residents, which was impossible to obtain due to the lack of a health insurance card. As a result, at the time of the monitoring visit this resident wore an improvised collar and had serious neck problems, causing her pain and difficulty swallowing. The fact that this orthopedic device was prescribed as many as nine months ago and has still

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<sup>50</sup> Under the International Classification of Diseases - ICD, mental retardation can be mild, moderate, severe and profound:

Mild mental retardation - IQ between 50 and 69, which corresponds to mental age of 9-12 year old children.

Moderate mental retardation - IQ between 35 and 49, corresponding to mental age of 6-9 year old children. Other mental disorders are often associated, as well as the signs of damage to the central nervous system (paresis, paralysis, epilepsy ...). Number of persons with moderate mental retardation has children autism and other pervasive disorders.

Severe mental retardation - IQ usually between 20 and 34, corresponding to mental age of 3-6 year old children. Lesions of the central nervous system are often present, as well as epilepsy.

Profound mental retardation - IQ below 20. Mostly incontinent, immobile, capable of the most rudimentary forms of non-verbal communication. Neurological and other physical impairments are associated, as well as epilepsy, visual and hearing impairment. Atypical autism is very frequent in those who are mobile.

<sup>51</sup> Law on Healthcare of Montenegro, "Sl. list RCG", 39/2004.

<sup>52</sup> Director Vaselj Dušaj's written response to HRA questions of 21 October 2011.

not been provided - is unacceptable. This clearly points to a problem with Podgorica SWC, which failed to provide a health insurance card during the mentioned period.

CPT always insists on equality in the care system, i.e. equivalence of care,<sup>53</sup> as the residents of the Institution must be entitled to all the rights granted to all other policyholders in the basic healthcare package. Residents should be included in the mandatory screening tests - mammography and cervical cancer screening.<sup>54</sup> It is essential that the Ministry of Health draw up a protocol for users with intellectual disability to have the same level of healthcare as all other citizens.

According to the Director, nursing staff, which includes 11 nurses, is present at the Institution 24 hours a day. The Institution does not have a doctor employed full time, but engages 3 external medical consultants - chosen doctor, occupational medicine specialist and neuropsychiatrist, as well as a dentist who visits the Institution at least once a week, or more if necessary. During the first visit, monitors were told that negotiations about hiring a gynecologist were in progress, however, no one has been hired until the fifth visit in October. During interviews with staff and residents' parents, monitors have learned that a dentist was available only for emergencies and mostly on sick leave, so this type of healthcare is virtually inaccessible. It is necessary to ensure that a dentist be available at least once a week and perform regular preventive examinations of residents, in addition to interventions in acute problems.

One of the key problems related to healthcare of residents of the Institution is the issue of healthcare financing, i.e. uncertainty whether this is the responsibility of the Ministry of Health or Ministry of Labour and Social Welfare. Up until ten months ago, the Health Insurance Fund awarded additional funds to Komanski Most Institution for healthcare expenses. As of 1 January 2011, the costs of healthcare have been covered by the budget of the Institution<sup>55</sup>, which is quite modest at 230 Euros per resident.

Neuropsychiatrist visits the Institution once a week. The use of psychotropic drugs<sup>56</sup> is extensive, given the pathology of residents. Supply of drugs is satisfactory. After medical specialists issue prescriptions, head nurse is in charge of the procurement. The cost of medicines is not borne by the Institution - medicines are obtained in pharmacies with doctor's prescription. According to Dr Grbović, medicines used at the Institution are on the list of the Health Insurance Fund (HIF), obtained through a public tender and the same as those available to the general population. The costs of drugs that are not included in the HIF list of medicines and all supplementary medicinal products are borne by the Institution, additionally burdening its budget.

According to an assessment of our team's expert consultant, somatic healthcare is at satisfactory level. All residents have their individual medical records, maintained in both

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<sup>53</sup> CPT standards, p. 27.

<sup>54</sup> Art. 34, para 6, 7 and 8 of the Law on Healthcare, "Sl. list RCG", 39/2004 of 9 June 2004.

<sup>55</sup> More about financing and acquisition of funds for the work of the Institution in the Decision on the organization of the Public Institution for accommodation of people with special needs (Sl. list RCG, 11/06).

<sup>56</sup> Medicines that contain substances influencing primarily the central nervous system and altering brain function, which changes person's perception, mood, consciousness and behavior.

paper and electronic form in the same way as the records of all other citizens of Montenegro entitled to the primary healthcare. All residents undergo a thorough physical examination upon the admission at the Institution. Referral to specialist examinations does not pose a problem, because internal computer database allows for writing of referrals. *This system works in practice, but it has not been addressed systematically, so it is advisable to connect the internal Institution's database with the public healthcare database* and provide for appropriate protocols that will ensure continuity of healthcare, regardless of who is a treating physician. Given that Komanski Most Institution's healthcare system currently relies on the efforts of an individual, Dr Grbović, who also performs the duties of a chosen doctor at the Health Centre in Podgorica and since recently holds the post of an Assistant Minister of Health, there are valid reasons for concern in terms of his further ability to dedicate time to the care of residents at the Institution.

The most common health problems among residents often include locomotor and central nervous system diseases, such as hypertension, diabetes, obesity and hypothyroidism. The Institution currently accommodates 2-3 persons suffering from schizophrenia, who are treated by consultant psychiatrist Dr Zorica Barac-Otašević, employed at the Clinical Centre of Montenegro. She administers therapy which is then packed in individual dozers, so it should not happen that nurses give therapy independently, although monitors learned from informal sources that this has occurred in practice. According to Dr Grbović, there were no cases of suicide, while attempts at self-injury that could have serious consequences are rare.

Residents of childbearing age have been protected by receiving an intrauterine device.<sup>57</sup>

During the visit, monitors noticed that the posture of a number of immobile female patients seemed to cause them constant pain. It would be necessary to provide an appropriate type of physical therapy for such residents, in order to ease somewhat their extremely difficult physical condition.

During the first monitoring visit, medical staff reported two residents suffering from cancer, one of whom died in the meantime. According to the medical staff, such patients receive no special treatment for this type of disease. According to Dr Grbović too, patient suffering from skin cancer (melanoma) does not currently receive any kind of therapy, pursuant to the recommendation of an oncologists from the Clinical Centre (CC). Generally, as stated by Dr Grbović, in cancer cases diagnosed in residents, therapy is proposed by treating doctors from the CC. Residents are sometimes sent to the CC for examination, which cannot be performed or is performed only partially because the residents are unable to obey verbal instructions of a doctor, in which case the doctor writes in the report that "the patient does not cooperate". Despite these difficulties, the state is obliged to provide appropriate

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<sup>57</sup> CPT Report on the 2008 visit to Montenegro, p. 123: „ During the visit, the delegation was informed by staff that some residents had sexual relations. The management's approach in this respect was to ensure that most sexually active female residents received an intrauterine device. With regard to pregnancies, the policy was to carry out abortions after evaluation of each case by a council of gynaecologists. A psychiatrist was also consulted, but from the information gathered it appeared that the residents' guardians were not involved in the process. In view of the numerous ethical and legal issues involved (among others, the issue of residents' capacity to express consent to sexual relations and to eventual abortions), the CPT would welcome the comments of the Montenegrin authorities on the above-mentioned subject.”

medical personnel able to treat this population, which requires specialized training of medical staff. One way to ensure this is mentioned on page 14 of this report.

As for concerns about the health of residents, interviews with the parents confirmed monitors' findings. They specifically noted that the staff respond only in acute situations, for example in the case of severe toothache, while there are no regular dental examinations. One of the parents noted that one resident died of diabetes, which raises the question of the level of healthcare provided to residents at this institution. Also, a complaint set forth by one of the parents concerned medical treatment received by residents. The suspicion namely concerns the possibility that nurses combine medications and change the quantity of prescribed medications at their own discretion, not according to doctors' instructions.

The very pathology of residents requires doctor's daily presence. In case that the Ministry of Health legalizes the clinic, a doctor should be employed full time. Also, the clinic should be adequately equipped so that more necessary analyses could be carried out in the Institution. Residents would "cooperate better" during certain examinations if they were in the familiar environment of their "home" and in the presence of the Institution's doctor (employed full-time) who would have the knowledge and sensibility to approach all residents in a manner suited to each individual resident.

Autopsy should be performed on all persons who pass away in closed institutions to clarify their cause of death, unless they were suffering from a terminal illness. The CPT recommends that the relevant authorities draw up a clear protocol for dealing with unexpected deaths in social care homes.<sup>58</sup> In the CPT's opinion, an autopsy should be carried out in all cases where a patient dies in hospital, unless a clear diagnosis of a fatal disease has been established prior to death.<sup>59</sup>

In Montenegro this is not the case. This area is regulated by the Law on Healthcare, which defines a coroner.<sup>60</sup> The Ministry of Health is currently drafting the rules to regulate the work of a coroner, death establishing process, autopsy request, necessary forms. Such rules should be adopted as soon as possible.

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<sup>58</sup> CPT Report on the 2007 visit to Bosnia and Herzegovina, p. 127.

<sup>59</sup> CPT Report on the 2006 visit to Turkey, p. 35.

<sup>60</sup> Art. 128 of the Law on Healthcare:

Autopsy shall be performed as a special measure to establish the cause of death.

Autopsy shall be performed on a corpse:

- 1) of a person who passed away in a medical institution, if the exact cause of death has not been determined;
- 2) at the request of a medical doctor who treated the deceased;
- 3) of a person brought to a health facility whose cause of death is unknown;
- 4) at the request of a medical doctor who determines the cause of death;
- 5) at the request of a family member of a deceased;
- 6) if requested by an investigation authority because there is suspicion that the death was caused by the commission of a criminal offense or in connection with the commission of a criminal offense;
- 7) when of particular importance for the health of citizens or for epidemiological and sanitary reasons;
- 8) if death occurs during diagnostic or therapeutic procedures;
- 9) if death occurs within 24 hours of admission of a person in a health facility;
- 10) if a person was subject to clinical trial of a drug or medical device, or other scientific testing.

## **6.1. Recommendations**

- Raise the level of dental care at the Institution as soon as possible and introduce regular medical examinations. Hire a full-time general practitioner, or as a minimum engage external general practitioner with the significantly increased number of hours spent at the Institution as compared to the current situation.
- Accelerate the negotiation process and hire another external expert – gynaecologist, as soon as possible. Provide funds to cover the Institution’s costs for the procurement of drugs that are not on the Health Insurance Fund list.
- Connect internal Institution’s medical database containing medical records of patients with the public healthcare database and develop appropriate protocols that will allow the continuity of residents’ healthcare regardless of staffing solutions.
- Ensure appropriate therapy for residents suffering from cancer. Healthcare should also be preventive. Include residents in the mandatory screening tests that are now part of the basic primary healthcare package.
- Define the legal obligation to perform an autopsy on persons who pass away in the Institution in accordance with Art. 128 of the Law on Healthcare. It is essential that the Ministry of Health adopt rules that regulate the work of a coroner.
- Ministry of Health should adopt relevant regulations and ensure registration of the Institution’s clinic in accordance with Art. 78 of the Law on Healthcare, which would imply new job classification and its equipping in accordance with the regulations.

## 7. Contact with family and community members

Policy of the Institution does not limit contact with the outside world. Apart from being able to visit residents without prior notice and limitations, parents and guardians may take part in all activities relating to the residents and carried out in the Institution. However, these rights are used rarely. Unfortunately, according to the Director and defectologist, a very small number of parents (relatives) maintain contact with the residents, only about 15%. Pursuant to the Ombudsman's recommendations,<sup>61</sup> the Institution has taken certain measures to animate families in order to establish and maintain contact. According to the Director, Komanski Most Institution covers part of the travel costs for residents' parents who are in difficult financial position. This action of the Administration is commendable, but the results are still lacking and further efforts need to be made to involve the parents. It is necessary to ensure that staff members work with the parents and organize more intensive cooperation with social welfare centres, to involve them in taking measures for ensuring parents' active participation.

As regards decision making about the lives of residents, one parent noted that there were parents interested in improving cooperation with the Institution's Administration and staff. He had addressed the Ministry of Labour and Social Welfare with the request to consider the possibility of including representatives of the residents' parents in the Governing Board of Komanski Most Institution. By the time of completion of this report, there was no response to this proposal.

In its report on the 2008 visit to the Institution, the CPT invited the Montenegrin authorities "to pursue their efforts to encourage residents' contacts with the outside world (e.g. by means of inviting voluntary visitors, NGOs, etc.)". As regards contact with other institutions and civil society, the Institution shows improvement compared to the earlier period. Komanski Most Institution now has a web site, which is a step forward in making the work of the Institution more transparent.

However, it seems that other institutions are not sufficiently involved in the work of the Institution and do not provide adequate technical support. It is necessary to enhance cooperation with other state institutions, especially those dealing with education, employment and care for persons with mental disabilities, as well as civil society organizations. It is extremely important to raise the level of cooperation with local governments and social welfare centres, in order to develop support service for people with intellectual disabilities at the local level.

Komanski Most Institution cooperates with the relevant ministries and once a month a meeting is organized with the Ministry of Labour and Social Welfare representatives. In 2008 the CPT recommended the establishment of an independent body responsible for the inspection of residents' care "authorised, in particular, to talk privately with residents, and make any necessary recommendations to the authorities on ways to improve the care and

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<sup>61</sup> Take all necessary measures to animate parents – guardians and families, in order to maintain regular contact with the residents and actively participate in the process of treatment and rehabilitation.

conditions afforded to residents."<sup>62</sup> Independent body has not been established, but the Ombudsman, UNICEF and certain NGOs have the opportunity to visit the Institution in order to monitor its work.

The Institution has established cooperation with the Faculty of Medicine and Faculty of Political Science (Social Policy and Social Work majors), which includes students' two-hour visits to the Institution in order to learn about its functioning.<sup>63</sup> However, cooperation has not proceeded as planned, including visits of students. It is necessary to encourage students to volunteer, which can be achieved in cooperation with their teachers. Also, it is necessary to develop programs that would motivate students to work with this category of population and become a part of the Institution's expert team after graduation. As mentioned above, it is necessary to improve cooperation with the secondary medical school and ensure that part of their practice is regularly performed at the Institution.

As regards other types of contact, the Director noted the cooperation with the sports club "Budućnost". Thanks to this club, about 20 residents of the Institution had a chance to go to a sports match, which they found very enjoyable. Unfortunately, this is an isolated case in the practice of the Institution - interaction between the community and residents is very limited. Activities such as going out to the city, to concerts, performances and sporting events should be organized more frequently, in cooperation with other organizations and institutions, as is the case in Slovenia.<sup>64</sup>

Media too have a major role in achieving more humane relationship of the society towards the residents of the Institution. Also, one of the Ombudsman's recommendations addressed to the Institution related to this issue.<sup>65</sup> It is necessary to establish cooperation with media representatives in order to raise public awareness about the importance of the presence of people with intellectual disabilities in community life and to promote, assist and support people residing at the Institution.

## **7.1. Recommendations**

- ✓ Establish an independent body to monitor the work of the Institution and ensure participation of residents' parents in its work, as well as in the Governing Board of the Institution.
- ✓ Establish cooperation with different organizations in order to organize sports, cultural, recreational and entertaining activities for residents, e.g. out-of-town trips or trips to the city, shows, concerts and sporting events.

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<sup>62</sup> CPT Report on the 2008 visit to Montenegro, p. 136: "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, taking into account the above remarks."

<sup>63</sup> For example, in Slovenia more intensive cooperation has been established between centres for people with mental disabilities and medical schools and faculties. This helps form specialized personnel for working with this population (Source: Centre za usposabljanje, delo in varstvo Dolfke Boštjančič, Draga, <http://www.center-db.si>).

<sup>64</sup> Ibid.



- Organize public campaign and raise the awareness about persons with intellectual disabilities with the help of the media.
- Komanski Most Institution should continue taking measures to encourage family contact with the residents, with the help of social welfare centres.
- Improve the quality of cooperation of the Ministry of Labour and Social Welfare, social welfare centres, local community, secondary medical school and faculties with the Institution. It is necessary to enhance cooperation with other state institutions, especially those dealing with education, employment and care for people with intellectual disabilities, as well as civil society organizations.
- ✓ Take measures to open counselling centres, mental health clinics and day care centres, in order to help and support people with intellectual disabilities and their families.

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<sup>65</sup> Take necessary actions in order to eliminate prejudice of the general public against people with mental health problems.

## 8. Status issues and other rights of residents

Pursuant to Art. 25 of the Law on Social and Child Protection (*Sl. list RCG, 78/2005*), "people with physical, mental or sensory disability, who cannot be provided care in any other way due to housing or health or social or family circumstances" also have the right to be placed in an institution (as a form of social protection). Accordingly, the Decision on the organization of the Public Institution for accommodation of people with special needs (*Sl. list RCG, 11/06*) stipulates that Komanski Most Institution is a public institution for placement of people with intellectual disabilities.

Competent social welfare centre decides on the right to placement at the institution in the first instance, and the Ministry of Labour and Social Welfare decides on appeal against the decision of the centre. Action can be brought against the decision of the Ministry of Labour and Social Welfare before the Administrative Court of Montenegro.

On the basis of Art. 224 of the Family Law, guardianship authority is required to initiate the guardianship procedure as soon as it learns that a person should be placed under guardianship due to an intellectual disability. Since adults may be placed under the custody of a relative or social welfare centre only if they have previously been fully or partially deprived of their legal capacity in non-contentious proceedings on account of mental illness, mental retardation or other causes due to which they cannot look after their own rights and obligations, social welfare centre should initiate this procedure *ex officio*, which is by its nature urgent. Once a person has lost his/her legal capacity in court proceedings (e.g. due to mental disability), social welfare centre shall place that person under guardianship on the basis of a court decision (Art. 236 of the Family Law) and, if necessary, at the initiative of a guardian, or *ex officio* if in the interest of the person deprived of legal capacity, initiate the procedure for placement at the institution (again led by a social welfare centre) in accordance with Art. 100 of the Law on Social and Child Protection.

However, since no Montenegrin law expressly forbids placement at the institution of persons who have not previously lost their legal capacity (i.e. court did not find intellectual disability), social welfare centres often place persons at Komanski Most Institution on the basis of medical documentation, without prior judicial procedure and placement under guardianship.<sup>66</sup> Thus, the adults who have not yet been deprived of their legal capacity or placed under guardianship are residing at this Institution for a long time now.<sup>67</sup> The situation in which closed institutions hold people against their will and without a court decision, or without the actual possibility for a court to effectively decide on the legality of their stay in that institution, violates their human right to freedom guaranteed by international treaties.<sup>68</sup> In contrast, in a situation where these persons have not lost their legal capacity, partially or fully, while someone else looks after their property and other rights and obligations, without legal authority, represents further violation of their rights to property, privacy, marriage, etc.

<sup>66</sup> Explanation received from the legal expert of the Podgorica Social Welfare Centre.

<sup>67</sup> Although Komanski Most Institution's 2011 Work Program states that the Institution only admits persons under custody.

<sup>68</sup> Art. 5, para 1, item e and para 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Art. 9, para 1 of the International Covenant on Civil and Political Rights.

It is therefore absolutely necessary without further delay to conduct proceedings regarding possible deprivation of legal capacity and placement under guardianship which have not been initiated or conducted for years, but which are, as monitors were informed, now in progress. It should also be noted that now, in accordance with *the Institution's 2011 Work Program*,<sup>69</sup> that institution can only accommodate persons placed under guardianship.

Regarding the protection of this category of children, social welfare centres carry out protection measures in accordance with the proposal of the first level Commission for directing children with special needs, operating on the basis of Art. 16 of the *Rules on the criteria for determining the type and degree of impairment, disability or disorder in children and youth with special needs and the manner of inclusion in educational programs*. The said Commission is under the authority of the Ministry of Education and Science. The Ministry of Labour and Social Welfare continuously, within its competencies, communicates with social welfare centres on the subject of implementation of regulations relating to the protection of these groups of children and adults. Also, a manual on the treatment in these cases has been developed and delivered to the centres.

Representatives of the Podgorica Social Welfare Centre notified us that the Ministry is informed about the cases of residents of the Institution, actively, but we have not received confirmation that there is a document precisely regulating the competence of both institutions. Social Welfare Centre organizes meetings with representatives of the Ministry of Labour and Social Welfare once a month to address this issue.

Resident's guardian, which is usually a social welfare centre, is obliged to manage the property of the resident conscientiously and take all necessary actions to obtain funds for the implementation of measures in the resident's interest ordered by the social welfare centre,<sup>70</sup> and these expenses are primarily settled from the resident's income, property, funds received from persons obliged to support the resident, social welfare support and other sources.<sup>71</sup> In its report on the 2008 visit to the Institution, the CPT pointed to a possible conflict of interest which arises when a social welfare centre is appointed a guardian and at the same time decides on the admission and discharge of residents.<sup>72</sup> In response to this CPT's remark, the Government provided an unconvincing explanation that the area of guardianship "is regulated in detail by provisions of the Family Law. By placing persons under custody, the Law provides protection of status and property rights and other interests of residents. From the above, it can be concluded that children and adults are fully covered by legal protection of their person and property as well as in terms of placement in appropriate institution of social

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<sup>69</sup> Komanski Most Institution's Work Program for 2011, available at: <http://juzkomanskimost.me/images/stories/Dokumenti/PROGRAM%20RADA%20ZA%202011.pdf>.

<sup>70</sup> Art. 195 of the Family Law, "Sl. list RCG", 1/07.

<sup>71</sup> Art. 196 of the Family Law, "Sl. list RCG", 1/07.

<sup>72</sup> CPT Report on the 2008 visit to Montenegro, p. 133: "The 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 needs be addressed. The CPT recommends that the Montenegrin authorities take the necessary steps to avoid such a conflict of interest."

care."<sup>73</sup> This issue certainly deserves a more detailed analysis and strengthening of guarantees for the protection of the rights of residents under the guardianship of a social welfare centre. This especially if taken into account that the competent centre has failed to ensure validation of a health insurance card of a seriously ill resident of the Institution for a period of seven months, which violates her right to medical treatment.<sup>74</sup> Such actions indicate serious negligence in the performance of duties and require proper investigation.

Process of categorization of persons<sup>75</sup> is the responsibility of social welfare centres and should be carried out prior to the placement at the Institution. Re-categorization is carried out in relation to residents included in the proceedings for establishing guardianship, when a court seeks the opinion of a neuropsychiatrist. Ministry of Labour and Social Welfare has established the Commission for re-evaluation of all residents of the Institution, which is the basis for the development of individual treatment plans for residents. The Commission consists of representatives of the Institution, psychiatrist, psychologist and chosen doctor. Individual plans for the protection of residents provide for placement under guardianship or extension of parental rights. Current state of these procedures is as follows<sup>76</sup>: 56 procedures for deprivation of legal capacity are pending (12 residents are from Nikšić, 1 from Plužine, 2 from Šavnik, 3 from Kotor, 2 from Budva, 1 from Ulcinj, 4 from Rožaje, 29 from Podgorica, 2 from Kolašin), 56 procedures for placement under guardianship were completed, while three residents await completion of the procedure on the restriction of parental rights at the initiative of the Bijelo Polje Social Welfare Centre. The Institution also accommodates five people from the region, three of which have the status of displaced persons.

These data and the situation at the Institution indicate that the re-categorization of residents has so far been carried out in extremely rare cases, which means that the residents, once classified into these categories, remain there until the end of their stay in the Institution. This has largely prevented the development of residents. There is a justifiable concern about the professional capacity of social welfare centres to assess the needs and abilities of each person individually. It is obvious that primarily the staff at the Institution carry the burden of evaluation and only after the placement of a person. This raises the question whether the placement at the Institution truly was the best solution for all the people who reside there. In this sense, the following example is illustrative:

Resident M.P., who has a mild intellectual disability, resides at the Institution for 14 years, but the procedure for depriving her of legal capacity has not yet been completed and her guardian is the Ulcinj Social Welfare Centre. M.P. was orphaned at an early age and the Centre had no adequate solution to her situation – she was first placed in a retirement home and then transferred to Komanski Most Institution. Defectologist at the Institution with whom the monitors spoke confirmed that M.P. does not belong there, as the Institution should not

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<sup>73</sup> Response of the Government of Montenegro to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Montenegro from 15 to 22 September 2008, 11 March 2010, available at: <http://www.cpt.coe.int/documents/mne/2010-04-inf-eng.htm>.

<sup>74</sup> More detail on p. 26.

<sup>75</sup> The process of determining IQ in persons with mental retardation.

<sup>76</sup> Official letter from the Institution's Director, no. 04-870 of 24 October 2011.

accommodate people with mild intellectual disabilities. During the reconstruction of the Institution, residents, including M.P., stayed in the retirement home in Risan, where M.P. started an emotional relationship with I.B. M.P. wishes to leave the Institution and enter into marriage with I.B., who regularly visits her at the Institution. The Director does not allow M.P. to exit the institution, as he has no authority to make such decision. According to legal provisions, a decision about the possibility to leave the Institution and enter into marriage must be made by the Social Welfare Centre, as her guardian. Under the Family Law "Marriage can not be entered into with a person who is incapable of reasoning due to mental illness or other reasons". Despite this resident's desire to leave the Institution<sup>77</sup> and start a new life with her partner, competent authorities have not yet decided whether and when she will be able to accomplish that. This example confirms poor performance of the entire system for the protection of persons with intellectual disabilities, which provides space for violations of human rights of residents. People with intellectual disabilities have the right to self-determination<sup>78</sup> same as everyone else. Denial of this right deprives them of the opportunity to improve their chances for a decent life.

We have received information that ten years ago two female residents had left the Institution and entered into marriage, with the approval of competent social work centres, but we do not have detailed information on their status, i.e. procedures that may have been conducted in relation to their deprivation of legal capacity and placement under custody.

Introduction to their rights is of great importance for this marginalized population, as well as the establishment of an appropriate control mechanism for the protection of their rights. In a report drafted in response to the CPT recommendations<sup>79</sup>, the Government of Montenegro stated: "With a view to explain the terms and conditions of admission, stay and discharge, public establishment Komanski Most plans to draw up information brochure and disseminate it to residents-custodians, professionals and public at large."<sup>80</sup> Almost a year and a half passed since the publication of this report, but the information brochure has not yet been developed. In this context it should be noted that the Ombudsman made the same recommendation in his report.<sup>81</sup> Within the project "Monitoring Respect for Human Rights in Closed Institutions in Montenegro" it was agreed to start drafting the relevant brochures in cooperation with the Ministry of Labour and Social Welfare.

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<sup>77</sup> Interview with M.P. during two visits in September and October 2011.

<sup>78</sup> Art. 19 of the UN Convention on the Rights of Persons with Disabilities: „Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement.“

<sup>79</sup> The CPT recommends that such a brochure be drawn up and systematically distributed to residents, their families and guardians (CPT Report on the 2008 visit to Montenegro, p. 134).

<sup>80</sup> Response of the Government of Montenegro to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Montenegro from 15 to 22 September 2008, 11 March 2010, available at: <http://www.cpt.coe.int/documents/mne/2010-04-inf-eng.htm>.

<sup>81</sup> "Develop an informative brochure on the terms of admission, stay and discharge of residents from an institution and their rights, and make it available to residents, their parents or guardians, experts and general public", Special report of the Ombudsman on the human rights of mentally ill persons placed in institutions, March 2011: [http://www.ombudsman.co.me/docs/izvjestaji/POSEBN\\_IZVJESTAJ\\_NS\\_21.03.2011.doc](http://www.ombudsman.co.me/docs/izvjestaji/POSEBN_IZVJESTAJ_NS_21.03.2011.doc)

In 2011 the Ombudsman also recommended the establishment of the mechanism of control and supervision over the work of the Institution.<sup>82</sup> The Government must initiate the adoption of by-laws to accurately determine the standards and procedures for the work with residents, from referral to the Institution to social support programs upon discharge. There is no organized monitoring of individual treatment of each resident to ensure that individual protection plans do not merely serve as formal coverage for current regulations.

Human rights activists argue that the concept of institutionalization represents an obvious violation of human rights. The United Nations Convention on the Rights of Persons with Disabilities explicitly guarantees the right of these people to live and be involved in the community, and that states must "take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community".<sup>83</sup> The process of deinstitutionalization in Montenegro has begun, but has been slow. Opening of day care centres for children and youth with intellectual disabilities offers a non-institutional care, and, according to the Director, efforts are being made to achieve that in future the Institution accommodates only adults with intellectual disabilities. Non-institutional care programs are aimed at children, which is certainly very affirmative. However, there are no such support programs for adults with intellectual disabilities and occupational program offered to them at the Institution is monotonous and demotivating; thus, they are not provided adequate training for independent living. In order to ensure respect for human rights to the full extent to persons with intellectual disabilities, it is necessary to develop a strategic approach at the national level and provide these persons and their families psycho-social, educational and pedagogical support (organize counselling centres, parenting groups, home care, centres for occupational training, protective workshops, supported employment ...). As for transition planning, in its 2011 Work Program the Institution envisaged several transition projects, including: construction of residential small house communities, assisted living and half-day room or day room.<sup>84</sup> During the monitoring visits, the implementation of these activities has not yet been started.

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<sup>82</sup> "Take all necessary measures to establish mechanisms for the control and supervision of the work of institutions, as well as uniform standards for providing service to users", Special report of the Ombudsman on the human rights of mentally ill persons placed in institutions, March 2011:  
[http://www.ombudsman.co.me/docs/izvjestaji/POSEBN\\_IZVJESTAJ\\_NS\\_21.03.2011.doc](http://www.ombudsman.co.me/docs/izvjestaji/POSEBN_IZVJESTAJ_NS_21.03.2011.doc).

<sup>83</sup> International Convention on the Rights of Persons with Disabilities, Art. 19 (Law on Ratification of this Convention was published in *Sl. list CG*, 02/09 of 27 July 2009).

<sup>84</sup> For more detail see Institution's Work Program for 2011:  
<http://juzkomanskimost.me/images/stories/Dokumenti/PROGRAM%20RADA%20ZA%202011.pdf>.

## **8.1. Recommendations**

- ✓ Ministry of Labour and Social Welfare without delay to adopt by-laws to specify the standards and procedures for admission and stay of residents, as well as for social support after discharge from the Institution.
- ✓ Form an independent body to monitor the procedures of determining guardianship, categorization of persons prior to admission to the Institution, re-categorization after the placement at the Institution, as well as the work of the Institution. Allow residents' parents, experts and representatives of civil society concerned with human rights to be involved in the work of this body.
- ✓ Develop an information brochure with the purpose of introducing the residents' rights to employees at the Institution, residents and their families.
- ✓ Provide for greater involvement of residents and their families in decision-making processes that affect them and their stay at the Institution (e.g. allow them to choose their roommate, activities they want to practice, design their living space; ensure that parents representative be included in the Governing Board of the Institution, etc).
- ✓ Regularly perform re-categorization of persons placed at the Institution and review the need for their further stay.
- ✓ Implement transitional planning (transition projects: residential communities, assisted living and half-day or day room).
- ✓ Develop a system of social support for adults with intellectual disabilities and establish counselling centres, centres for occupational training, protective workshops, supported employment, etc, in order to prevent institutionalization.