RESPECT FOR HUMAN RIGHTS OF PATIENTS PLACED IN PSYCHIATRIC INSTITUTIONS

(IN DOBROTA SPECIAL PSYCHIATRIC HOSPITAL IN KOTOR, PSYCHIATRIC UNIT AT THE GENERAL HOSPITAL IN NIKŠIĆ AND PSYCHIATRIC CLINIC AT THE CLINICAL CENTRE OF MONTENEGRO)

REPORT OF THE NGO MONITORING TEAM:

HUMAN RIGHTS ACTION
CENTRE FOR ANTIDISCRIMINATION "EQUISTA"
CENTRE FOR CIVIC EDUCATION
WOMEN'S SAFE HOUSE - SHELTER

Project funded by the European Union

Ambasada Savezne Republike Njemačke Podgorica

Podgorica, 21 November 2011

RESPECT FOR HUMAN RIGHTS OF PATIENTS PLACED IN PSYCHIATRIC INSTITUTIONS

(IN DOBROTA SPECIAL PSYCHIATRIC HOSPITAL IN KOTOR, PSYCHIATRIC UNIT AT THE GENERAL HOSPITAL IN NIKŠIĆ AND PSYCHIATRIC CLINIC AT THE CLINICAL CENTRE OF MONTENEGRO)

REPORT OF THE NGO MONITORING TEAM:

HUMAN RIGHTS ACTION

CENTRE FOR ANTIDISCRIMINATION ”EQUISTA”

CENTRE FOR CIVIC EDUCATION

WOMEN’S SAFE HOUSE – SHELTER

Podgorica, 21 November 2011

AUTHORS:

Mirjana Radović

Olivera Vulić

Danilo Ajković

EDITOR:

Tea Gorjanc-Prelević, LL.M.

This publication has been produced with the assistance of the European Union.
The publication does not contain a formal statement and does not necessarily represent the official position of the European Union.

TABLE OF CONTENTS

1. Introduction

1.1 *About the project*

The project "Monitoring Respect for Human Rights in Closed Institutions in Montenegro", aimed at promoting 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 19 May 2011, the project leader NGO "Human Rights Action" concluded an agreement on cooperation with the Ministry of Health, allowing unannounced visits of NGOs monitors to Dobrota Special Psychiatric Hospital in Kotor (hereinafter: the Hospital), Psychiatric Clinic at the Clinical Centre of Montenegro in Podgorica (hereinafter: the Clinic) and Psychiatric Unit within the public health institution General Hospital in Nikšić (hereinafter: the Unit), preparation of reports on visits and discussion about the report at the round table, development of a brochure on the rights of patients placed in these institutions and cooperation in a public campaign aimed at raising awareness about the rights of patients with mental disorders.

The report includes the assessment of NGOs monitoring team regarding 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) to improve respect for the rights of patients in Dobrota Hospital in Kotor, with further recommendations of the monitoring team pertaining to Psychiatric Clinic in Podgorica and Psychiatric Unit at the General Hospital in Nikšić. This is the first report developed on the basis of information obtained during the visits to the Hospital, Clinic and Unit in the period from 17 September to 4 November 2011, and from other sources. Final report, assessing the progress in the implementation of all recommendations will be published in September 2012.

1.2 *Visits*

For the purpose of drafting this report, monitors Tea Gorjanc-Prelević, Executive Director at the Human Rights Action (HRA) and Project Coordinator, Mirjana Radović (HRA), Danilo Ajković (CCE) and Dr Olivera Vulić carried out a total of four monitoring visits from 17 September to 4 November 2011, including two visits to Dobrota Hospital on 17 September and 4 November 2011, one to the Unit in Nikšić on 12 October 2011 and one to the Clinic in Podgorica, on 17 October 2011.

The level of cooperation was high, monitors had unrestricted access to all premises, access to necessary documentation[1] and the opportunity to talk to patients in private.

[1] Medical records were examined by psychiatrist Dr Olivera Vulić, while other monitors, who are legal experts, examined documentation on communication between the Hospital and court. During the examination of documents, monitors respected the right to privacy of patients - their identity has been protected.

1.3 *Subject, aim and method of the research and sources of information*

The subject of this report is a description and assessment of the respect for human rights of patients hospitalized in Dobrota Hospital, Clinic in Podgorica and Nikšić Psychiatric Unit. The aim of the report is to help improve human rights of persons placed in these institutions by indicating both good practices and shortcomings in their work, based on international standards and recommendations.

Observations made in this report are based on four visits of several hours to the Hospital, Clinic and Unit, i.e. monitors' personal observations and interviews with the Hospital Director Dr Aleksandar Tomčuk, Head of the Clinic Dr Željko Golubović and Head of the Unit Dr Radojka Mićović, as well as with individual patients, doctors and medical staff.

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.[2] 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.[3] In drafting the report, the monitoring team used international standards and recommendations[4], the CPT's report on the visit to Montenegro[5], applicable laws in Montenegro regulating the rights of the mentally ill[6], training material for monitors, the report of the Ombudsman[7] and his recommendations.

---

[2] Training was conducted by experienced and reputable trainers from partner organizations - the Belgrade Centre for Human Rights and Latvian Centre for Human Rights.

[3] Ms. Vulić previously sought the opinion of the CPT's Vice-President and received confirmation that she may participate in this project as a monitor.

[4] CPT standards, available at: http://www.cpt.coe.int/en/documents/eng-standards.pdf.

[5] Report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 22 September 2008 (http://www.cpt.coe.int/documents/mne/2010-03-inf-eng.htm#_ftnref23); Report to the Norwegian Government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 September 1999 (http://www.cpt.coe.int/documents/nor/2000-15-inf-eng.pdf); Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 9 May 2003 (http://www.cpt.coe.int/documents/bih/2004-40-inf-eng.pdf); Report to the Government of Serbia and Montenegro on the visit to Serbia and Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 28 September 2004 (http://www.cpt.coe.int/documents/srb/2006-18-inf-eng.pdf); Report to the Government of Serbia and Montenegro on the visit to Serbia and Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 28 September 2004 (http://www.cpt.coe.int/documents/srb/2006-18-inf-eng.pdf); Report to the Government of Denmark on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 January to 4 February 2002 (http://www.cpt.coe.int/documents/dnk/2002-18-inf-eng.htm); Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or punishment (CPT) from 17 to 24 February 2004 (http://www.cpt.coe.int/documents/ltu/2006-09-inf-eng.htm). Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 30 April 2008 (http://www.cpt.coe.int/documents/ltu/2009-22-inf-eng.pdf); Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 November to 7 December 2007

All these sources, along with the report, are available on the project's web site: www.hraction.org/monitoring_u_ustanovama_zatvorenog_tipa.

The methods used in drafting the report include: qualitative and quantitative research, method of content analysis, analysis of application of regulations and their compliance with international standards and recommendations of international expert bodies. As regards scientific research techniques, the monitors used observation and interview techniques.

We wish to thank everyone who in any way contributed to this report.

(http://www.cpt.coe.int/documents/lva/2009-35-inf-eng.htm); Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 26 May 2006 (http://www.cpt.coe.int/documents/mkd/2008-05-inf-eng.htm). Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 9 December 2003 http://www.cpt.coe.int/documents/hrv/2007-15-inf-eng.pdf; 8th General Report on CPT's Activities (1997); 16th general Report on CPT's Activities (2005-2006).

[6] Law on the Protection and Exercise of the Rights of Mentally Ill Persons (*Sl. list RCG, 32/2005*), Law on Patients' Rights (*Sl. list CG, 40/2010*), Law on Misdemeanors (*Sl. list CG, 1/2011, 6/2011 and 39/2011*), Criminal Procedure Code (*Sl. list CG, 57/2009 and 49/2010*); Criminal Code (*Sl. list RCG, 70/2003, 13/2004, 47/2006 and Sl. list CG, 40/2008, 25/2010 and 32/2011*); Law on Non-Contentious Proceedings (*Sl. list RCG, 27/2006*); Law on the Execution of Criminal Sanctions (*Sl. list RCG, 25/94, 29/94, 69/2003 and 65/2004 and Sl. list CG, 32/2011*); Law on Healthcare (*Sl. list RCG, 39/2004 and Sl. list CG, 14/10*).

[7] 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.

2. Dobrota Special Psychiatric Hospital

2.1 *Accommodation capacity*

Dobrota Hospital has a bed capacity of 241. At the time of the first visit, on 17 September 2011, according to the records of Hospital Director Dr Aleksandar Tomčuk, a total of 291 persons were hospitalized. Each patient had their own bed, and some wards (male and female acute ward) were not completely filled. Director explained the difference between the accommodation capacity and the number of patients hospitalized on the day of the visit by a number of patients being with their families, on the so-called adaptation weekend.

Hospital mainly provides care for patients with psychosis (F20-F29), both sexes, in acute and chronic phase of illness, as well as alcohol addicts (F10) and drug addicts (heroin-F11, with comorbidity, usually F60), but only male.[8] Women ordered the measure of compulsory treatment of alcoholics or compulsory treatment of drug addicts in a healthcare institution are placed in the acute-female ward within the Hospital. At the time of monitoring visits, there were no women ordered such measure.

Hospital accommodation is divided into eight wards, namely: emergency ward, substance abuse treatment ward, acute male ward, acute female ward, chronic male ward, chronic female ward, rehabilitation ward[9] and the eighth - forensic psychiatric unit (hereinafter: FPU). Within the FPU, which can accommodate 21 people, Dobrota Hospital accommodates the so-called forensic patients (patients ordered compulsory treatment measures at the closed institution by a court in criminal proceedings or by misdemeanour authority in misdemeanour proceedings).

The Hospital did not accommodate minors. Since there is no specialist in child psychiatry in Montenegro, juveniles must be treated abroad.[10]

At the same time, the Hospital is compelled in certain segments to serve the purpose of a social type of institution, as it is faced with the inability to discharge a number of patients, in most cases because their families refuse to house them. During the visit, there were patients in the chronic male ward who have been in the Hospital for more than ten years. The longest hospital stay was 54 years (case of a woman in the chronic female ward who was hospitalized back in 1957).

According to Dr Tomčuk, about 120 patients in Dobrota Hospital have been hospitalized for many years. Of these, mental condition in about eighty patients allows them to be placed in any type of social institutions or under family care, which means that one third of the Hospital capacities occupy patients whose mental state does not require hospitalization.

[8] The same situation is present at the public institution Centre for accommodation, rehabilitation and re-socialization of users of psychoactive substances - Kakaricka gora, which for three years already does not admit women interested in rehabilitation. Therefore, currently in Montenegro there is no facility for the rehabilitation of women addicted to psychoactive substances.

[9] More information available at: http://www.psihijatrijakotor.me/page3.html.

[10] Also, the measure of compulsory treatment and confinement in a psychiatric institution could not currently be carried out in relation to minors in Montenegro.

As regards the rest of the hospital population, the average time spent in the Hospital is about two months, including adaptation weekends with the family, so this time period seems acceptable.

Large number of hospitalized patients whose medical condition does not require hospital treatment represents one of the urgent problems, particularly bearing in mind that in 2008 the CPT concluded that efforts should be made to place voluntary chronic patients in appropriate community-based facilities.[11] Keeping people in the Hospital for years or even decades due to inability to place them elsewhere, not because of their mental state, is **unacceptable**. The same has been noted in the Report of the Ombudsman[12], according to which most social patients have been placed at the request of a Social Welfare Centre. Under Art. 40 of the Law on the Protection and Exercise of the Rights of Mentally Ill Persons (LPRMI), in case when a mentally ill person is to be discharged from a psychiatric institution, and that person, due to his/her mental state, financial, family and other circumstances, is not capable of taking care of himself/herself, nor are there relatives or other persons legally obliged to take care of him/her, that person shall be transferred from a psychiatric institution to a social care institution.[13] In terms of accommodation of these patients in two homes for the elderly, which are public institutions, the Director pointed out bad experience with the Public Institution Home for the elderly "Bijelo Polje", which had refused accommodation of patients treated in the Hospital despite medical certificates that they were capable of collective accommodation in this type of institution. In contrast, Public Institution Home for the elderly "Grabovac" in Risan, when there are accommodation options, accepts psychiatric patients able to cover accommodation costs.

Directors of the Hospital and the Institution for Execution of Criminal Sanctions (ZIKS)[14] informed monitors about the plans for the construction of the Special Hospital which would be located within ZIKS in Podgorica, with a bed capacity of 150, for placement of persons who had been imposed the measure of compulsory treatment and confinement in a medical institution, including women and minors. The Ministry of Health and Ministry of Justice are involved in the new Hospital construction project. Monitors were informed that the funds for the construction have been provided and that the facility construction plan is to be developed by the end of 2011. The Special Hospital will allow for separation of patients based on their gender, type of security measure imposed, necessary treatment and different security level requirements.

[11] Report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 22 September 2008, p 102.

[12] Report of the Ombudsman on the human rights of mentally ill people placed in institutions, March 2011, p. 33. Report available at: http://www.ombudsman.co.me/izvjestaji.php.

[13] "Although no longer requiring involuntary placement, a patient may nevertheless still need treatment and/or a protected environment in the outside community. In this connection, the CPT has found, in a number of countries, that patients whose mental state no longer required them to be detained in a psychiatric establishment nevertheless remained in such establishments, due to a lack of adequate care/accommodation in the outside community. For persons to remain deprived of their liberty as a result of the absence of appropriate external facilities is a highly questionable state of affairs." CPT, 8th General Report, 1997, p. 57.

[14] Interview with ZIKS Director Milan Radović, Spuž, October 2011.

2.1.1 *Recommendations*

a) The Ministry of Labour and Social Welfare to urgently provide social care for persons placed in Dobrota Hospital, whose further treatment at this facility is not needed.

b) The Ministry of Health and Ministry of Labour and Social Welfare to provide for better territorial mental health centres coverage, which would cooperate closely with social welfare centres to ensure care for mentally ill persons who do not require (further) hospital treatment, in order to achieve ultimate goal to provide help for the mentally ill in the community and reduce the need for hospital treatment (except in the acute phase of a disease).

c) The Ministry of Health and the Capital to ensure adequate inpatient treatment and rehabilitation for women with alcohol and substance abuse issues.

d) The Ministry of Health to urgently call for applications for specialization in the field of child psychiatry, and in the meantime endeavour to ensure the employment of a child psychiatry specialist in Montenegro. If necessary, ensure the possibility of placement of minors at the Hospital.

e) The Ministry of Health and Ministry of Justice to make an effort to start the construction of the Special Hospital within ZIKS as soon as possible and provide human resources solutions ahead, to avoid repeating the situation where the hospital was built but remained non-functional.[15]

2.2 *Prohibition of ill-treatment (torture and inhuman or degrading treatment or punishment)*

In direct contact with patients, monitors did not receive complaints about abuse by staff nor were they informed about such complaints otherwise.[16]

Director noted that Hospital doctors always remind the nursing and security staff at the FPU that the abuse of patients (including verbal abuse) is unacceptable. He also stated that during the past few years no disciplinary procedure has been initiated against staff due to poor treatment of patients. Former nurses (staff without the secondary medical school degree), who were the most common perpetrators of ill-treatment of patients, no longer work with them. Serious conflicts among patients are reportedly extremely rare. However, in an interview with the Director and based on the summary review of the documentation on the female acute ward, two such cases have been encountered: in the first case, a patient at the FPU attacked another patient (attempted suffocation), which was followed by his isolation with special bars

[15] "Prison hospital restored and equipped", p. 26, the Government of Montenegro, Commission for the implementation of Action Plan for the 2007-2012 Judicial Reform Strategy implementation, Report on the implementation of measures under the Action Plan for the Judicial Reform Strategy implementation.

[16] Anonymous complaint, that the monitors proved to be unfounded after the inspection of relevant documents, is described on page 17.

within the room (the patient committed suicide, more detail in section 2.9). In the second case a patient on the female acute ward had been tied several times for violent behaviour towards another patient.

Lack of nursing staff in the Hospital is obvious. On the day of the visit, 291 patients were accommodated at the Hospital, with a total of 74 engaged nurses working in two shifts, some of whom work only eight-hour shifts or part-time (for more detail see section 2.6). Director informed monitors about Norwegian standard under which 5 nurses take care of one patient.

According to the CPT's recommendation, in order to deal with challenging situations that require containment of patients, it is necessary to ensure proper training of medical staff as well as presence of sufficient staff.[17] Low staffing levels can lead to exaggerated response by staff out of fear, which is common in the closed institutions.

In its report on the 2008 visit to Montenegro, the CPT too pointed to the lack of nursing staff.[18] The same was noted in the Ombudsman's Report of March 2011.[19]

According to the Director, Hospital established good cooperation with the psychiatric hospital in Oslo, and Norwegian experts have so far conducted three training sessions for nursing and security staff on non-violent conflict resolution and verbal persuasion, which contributes to restrictive application of the measures of restraint. It is important to ensure that this acquired knowledge be continuously passed on to new employees.

2.2.1 *Recommendations*

a) The Ministry of Health to immediately ensure employment of another 15 nurses in accordance with the systematization of jobs and, in cooperation with the Hospital management, provide a new job structure to meet the real needs of patients.

b) Hospital Director to install complaint boxes in cooperation with the Ombudsman which would be accessible only by authorized person from the Ombudsman's Office or ensure other direct means of communication with the Office of the Ombudsman.

c) Hospital Director to ensure that the acquired knowledge on non-violent conflict resolution be continuously transmitted to new employees at the Hospital.

2.3 *Living conditions at the Hospital*

The hygiene level varied between different wards, but can generally be considered acceptable, although there is room for improvement. Compared with the former situation (that monitors learned about after seeing the Hospital photographs before the renovation), progress is evident.

[17] CPT standards, p. 30.

[18] CPT report on the 2008 visit to Montenegro, p. 86.

[19] Report of the Ombudsman on the human rights of mentally ill people placed in institutions, March 2011, p. 32.

According to the Director, after the CPT delegation's visit in 2008 part of the wooden doors and windows was replaced with PVC units, some sanitary facilities were renovated and a new facility for group therapy was built. However, hygiene and equipment in sanitation facilities could be at a higher level. For example, although under the CPT standard sanitary facilities should allow patients some privacy and due consideration should be given to the needs of elderly and/or handicapped patients[20], bathroom at the acute female ward does not have a bathtub/shower cabin, and patients take showers on tiles. Also, toilet at the acute female does not have a toilet bowl. At several wards there is a problem of leaking faucets and toilets (male chronic ward, male and female acute wards).

There are no immobile patients at the Hospital, and according to the Director, there have never been any. Nonetheless, the question of adaptation of the premises remains open for the future. The Hospital is currently organized into wards, arranged in cascade and connected with stairs, and there are no access ramps that would make the wards accessible to immobile patients or hospital visitors in a wheelchair.

Former dormitories have been transformed into rooms with multiple beds. Rooms have a maximum of six beds, mostly on chronic wards. Large number of rooms is equipped with three beds.

There are individual lockers next to beds, but it is not possible to lock them.[21] In 2008 the CPT recommended that patients be allowed to personalize their living environment and provided with personal lockable space for their belongings.[22] However, monitors noticed that the conditions have remained almost unchanged and wards quite impersonal. Furniture is worn out. In general, conditions at the Hospital do not provide for an optimistic therapeutic environment conducive to faster recovery, thus, it is advisable to conduct a comprehensive hospital renovation.[23]

Patients do not wear pyjamas during the day, but their personal or hospital clothes. The level of clothes hygiene should also be improved, especially in patients on the male chronic ward wearing hospital clothing.

Monitors received several complaints regarding the quality of food, especially monotonous breakfast, which consists mainly of tea, milk (diluted), bread and spreads. Patients expressed a desire to include dairy products and cereals in the breakfast. One patient complained about the rotten pâté served for breakfast several days prior to the visit. The nurse confirmed this claim, noting that not the whole consignment intended for the ward was bad, but only several packages. A number of patients stated that fruit were poorly represented in the diet (once a week, occasionally twice a week the patients are served a piece of fruit after lunch) and that a

[20] CPT standards, p. 34.

[21] Protection of privacy of the mentally ill is also envisaged under Art. 4 of the LPRMI, according to which a mentally ill person has the right to the protection of personal dignity, humane treatment and respect for his/her person and privacy.

[22] CPT report on the 2008 visit to Montenegro, p. 91.

[23] "The aim in any psychiatric establishment should be to offer material conditions which are conducive to the treatment and welfare of patients; in psychiatric terms, a positive therapeutic environment. Creating a positive therapeutic environment involves, first of all, providing sufficient living space per patient as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting hospital hygiene requirements." CPT report on the 1999 visit to Norway, p. 56, available at: http://www.cpt.coe.int/documents/nor/2000-15-inf-eng.pdf

dessert was served after lunch less than once a week. During one of the visits monitors had the opportunity to attend the lunch. Lunch was brought in plastic buckets from which it was served and included rice, potatoes and a small amount of ground meat. According to the opinion of the monitor who tasted the food, it was not appetizing. There was no salad. After lunch, patients received one banana.

According to the CPT standard, food must be not only adequate from the standpoints of quantity and quality, but also provided to patients under satisfactory conditions. The necessary equipment should exist, enabling food to be served at a correct temperature. Also, eating arrangements and food presentation is a factor which should not be overlooked.[24] The least that could be done is replacing plastic buckets from which the food is served with more adequate containers. Patients are served food in the dining room, which is consistent with the CPT standard on decent eating arrangements. The CPT emphasized that enabling patients to accomplish acts of daily life - such as eating with proper utensils whilst seated at a table - represents an integral part of programs for the psycho-social rehabilitation of patients,[25] in addition to the fact that such routine respects the dignity of a patient.

According to the Director, there are no malnourished patients and monitors have not noticed any.

Old electric generator has been noticed in the Hospital yard. According to the Director, it is a military unit, which is no longer in use. Given the profile and number of hospitalized patients, a small number of employees per shift and the fact that wards are located in separate complexes, Hospital of such profile should have a modern electric generator, to provide for safe operation of the Hospital in case of a power outage.

Standard that all patients must spend a minimum of one hour a day in the fresh air[26] has been implemented in practice. Patients placed in locked wards confirmed that they were allowed daily exit from the building. For example, at the female acute ward several patients stated that they spent at least an hour in the fresh air, and often longer (if the nurse in charge of their supervision has no other duties), which is commendable. Patients should always be allowed to have access to their room during the day, rather than being obliged to remain assembled together with other patients in communal areas.[27] In conversations with patients, monitors came to a conclusion that the access is practically allowed, because the rooms are never locked.

The Hospital has no special visiting facilities. In summer, patients receive visitors outside the building. In case of inclement weather, visits are organized in the dining rooms, which also serve as living rooms. It would be desirable to designate a room for visitors and equip it properly, so that visits take place smoothly in the event of inclement weather too, especially when the visit takes place during a meal.

[24] CPT standards, p. 35.

[25] CPT standards, p. 35.

[26] Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 9 May 2003, p. 134, available at: http://www.cpt.coe.int/documents/bih/2004-40-inf-eng.pdf.

[27] CPT standards, p. 36.

2.3.1 *Recommendations*

a) The Ministry of Health and Hospital Director to renovate all the facilities to achieve a positive therapeutic environment. It is necessary to renovate sanitary facilities and take measures to achieve a higher level of hygiene.

b) Hospital Director to ensure personalized space in which patients stay and provide for lockable space for patients' belongings.

c) Hospital Director to improve the quality and variety of food and provide suitable containers for serving.

d) The Ministry of Health and Hospital Director to equip separate rooms within wards so as to ensure that visits take place smoothly in the event of adverse weather conditions too, and regardless of the availability of dining rooms.

e) The Ministry of Health and Hospital Director to ensure that the Hospital be accessible to people with disabilities as well.

f) The Ministry of Health and Hospital Director to provide for a new electric generator.

2.4 *Treatment*

Treatment in hospital of this type should involve a wide range of rehabilitative, recreational and therapeutic activities, including access to appropriate medications and medical care.[28]

The Hospital complex includes sport courts and a well equipped gym. Patients placed at the rehabilitation ward have confirmed that they were able to use the gym for an hour on every week day. Patients from acute wards also have access to sport courts, however, according to the Director, a small number of patients expressed a desire to use them. On the other hand, if there were someone to motivate them to be involved in sports, they would have probably shown a greater interest in using the courts. Here we wish to reiterate the observation of the CPT from 2008 about the insufficient number of nursing staff reducing the opportunities of patients for escorted outdoor exercise.[29]

With the intention of combating dominant prejudice against psychiatric patients, the Director offered interested citizens to use the gym free of charge, but only a few people responded to the invitation.

Two defectologists work as occupational therapists. Between 20 and 40 patients are involved in occupational therapy, which is insufficient, so more efforts are needed to involve patients in these activities. The very choice of occupational activities should be expanded, which requires employment of extra staff and expansion of spatial capacities, since currently it is not possible to place more than eight patients at a time in the room for occupational therapy. Monitors were informed that occupational therapy involves handicraft, mainly pottery.

[28] CPT standards, p. 37.

[29] CPT report on the 2008 visit to Montenegro, p. 95.

However, the furnace needed for baking the clay, as we were informed, has not been in use for more than half a year, its repair is still expected, so it is currently impossible to work with clay (for which the patients reportedly express most interest). Also, monitors were informed that a number of patients, who had expressed such wish, have been employed in designing of the Hospital yard. Within the same building, a small multi-purpose room, amongst other things, serves as a library. According to what we have seen and the words of staff, the library is very modest and has been established through book donations from the citizens and other institutions.

Newly built facility for group therapy is equipped with computers, however, according to staff, the computers are rarely used and group therapy is conducted at the facility on a daily basis.

Every patient should have an individually tailored treatment plan, consisting of pharmacotherapy and a wide range of rehabilitative and therapeutic activities.[30] Such plan should indicate the goals of the treatment and therapeutic means used, as well as the outcome of regular reviews of the patient's mental health condition and medication. In 2008 the CPT reiterated the recommendation made in the report on the visit in 2004, that individual treatment plans be established for each patient, to include a psycho-social rehabilitation component.[31] It was also stated that greater efforts should be made to increase the offer of therapeutic and rehabilitative activities (e.g. occupational therapy, individual and group psychotherapy, education, sports) and involve more patients in activities adapted to their needs, which implies the recruitment of more staff.[32] Treatment must include occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Patients 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.[33]

Individual treatment plans are still not systematically made for each patient. According to the Director, only 40% of patients have an individual treatment plan. Bearing in mind that the CPT made the same remark in its report on the 2004 visit,[34] and that this obligation has been expressly provided by the law in 2005[35], the current situation must be urgently changed.

Generally, the Hospital has no issues with the supply of medications, which are procured through the public tender. Currently there is a problem of supply of certain medications because they are not available on the market (the same situation exists in the outpatient sector). The hospital prescribes new generation neuroleptics.

---

[30] CPT report on the 2008 visit to Montenegro, p. 94. This obligation is also envisaged under Art. 8, para 3 of the LPRMI.

[31] Ibid.

[32] CPT standards, p. 31. Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 9 December 2003, p. 127. Report available at: http://www.cpt.coe.int/documents/hrv/2007-15-inf-eng.pdf.

[33] CPT standards, p. 31. Also, CPT report on the 2003 visit to Croatia, p. 127.

[34] Report to the Government of Serbia and Montenegro on the visit to Serbia and Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 28 September 2004, p. 314, available at: http://www.cpt.coe.int/documents/srb/2006-18-inf-eng.pdf.

[35] Law on the Protection and Exercise of the Rights of Mentally Ill Persons (*Sl. list RCG*, 32/2005), Art. 8: Treatment and care of the mentally ill person must be based on an individually developed plan, provided that this person is aware of it and that his/her opinion has been taken into account.

Visiting the wards and talking to patients, monitors have not encountered patients who were "overdosed" on medicines. Monitor, a psychiatrist, who had an insight into medication charts of patients, did not notice any problems with medication prescriptions. However, HRA received an anonymous complaint from the acute female ward patient's mother, claiming that her daughter had been a victim of uncontrolled use of medicines (especially in cases of increased agitation and at night).

Doctors rarely enter the so-called "therapy on demand" into medication charts. For example, after examining medication charts for 21 patients placed at the acute male ward at the time of the visit, monitors found only one case where a psychiatrist allowed ampoule therapy in case when the patient refused oral treatment.

Interviewed staff members claim that a doctor on duty is called in the event of any psychomotor restlessness of a patient, who may administer ampoule therapy, which is entered in the duty handover book.[36] This information should be entered into the physical restraint record book (kept by each Hospital ward), and then all these "locally" collected data should be transferred to a central register (at the Hospital level). Also, it is important that the treating psychiatrist enters every "emergency" treatment into the patient's personal medical record.

Electroconvulsive therapy is not applied in the Hospital.

Regarding the somatic aspect of care, a doctor of internal medicine visits the Hospital once a week. If necessary, patients are taken for examination to the General Hospital in Kotor, Risan or Clinical Centre in Podgorica, depending on the examination requirements.

The Hospital employs a full-time dentist. Reportedly, in addition to extractions, the dentist also performs dental treatments. Dentist who is currently engaged is soon to retire, and it can be expected that no other dental practitioner will be motivated enough to work in the Hospital.

2.4.1 *Recommendations*

a) Hospital Director to ensure the development of individual treatment plans for patients, as also recommended by the CPT.

b) The Ministry of Health and Hospital Director to include more patients in occupational and sporting activities, expand the offer of these activities and for this purpose employ more occupational therapists and volunteers.

c) Hospital Director to ensure that every case of the so-called rapid tranquilization (chemical restraint) be entered not only in the duty handover books, but also in the physical restraint record books, and that all data from the books from individual wards be diligently transferred to the register at the central level.

d) The Ministry of Health and Hospital Director to ensure continuous work of a dentist, by providing additional stimulation or otherwise.

[36] In each Hospital ward nursing staff keeps the *duty handover book*, entering observations on important developments in the ward on a daily basis, and the *physical restraint record book.*

2.5 *Suicides and death cases*

According to the Director, two patients committed suicide in the past 5 years, during which 7029 people have been hospitalized.[37] The last suicide occurred in the summer of 2010, by hanging. Suicide was committed by a patient placed at the FPU. According to the security service members, at the time of this suicide the security service was not yet engaged and there was only one nurse working in the night shift at the time of suicide. After that event, security service has been engaged to work both day and night shifts.

Annually, 7-8 natural deaths occur at the Hospital, usually due to chronic illnesses. Autopsies are not performed in all natural death cases in the Hospital, which is[38] in accordance with Montenegrin legislation[39].

2.5.1 *Recommendations*

a) The Ministry of Health to ensure that the obligation to perform an autopsy on people who die in the Hospital be legally defined in accordance with Art. 128 of the Law on Healthcare. It is essential that the Ministry of Health as soon as possible adopt rules that will specifically prescribe the work of a coroner.

b) Hospital Director to strengthen the supervision of patients, especially those who have already shown a tendency towards suicide. All staff in a psychiatric facility should be trained to recognize patients who show signs of increased risk of suicide. These patients should be placed on a special surveillance program and provided with appropriate counselling.[40] (Recommendation deleted based on the discussion held on 30 November 2011)

2.6 *Hospital staff*

The Hospital employs 7 neuropsychiatrists, 5 psychiatrists and 2 psychiatrists in residency, a dentist, 2 psychologists and a psychologist in residency, 2 defectologists and 3 social workers. According to data obtained from the Hospitals Director, nursing personnel includes 74 medical technicians/nurses (of which 8 head nurses always work 8-hour day shifts; 57 nurses work 12-hour shifts: 12-hour day shift, followed by a 12-hour night shift, followed by 48

[37] Information amended based on discussions on the report held in Podgorica on 30 November 2011.

[38] Ibid.

[39] Article 128 of the Law on Healthcare (*Sl. list RCG*, 39/2004 and *Sl. list CG*, 14/2010). According to the CPT's opinion, an autopsy should be performed in all areas where the patient dies in the hospital, unless before death there was a clear diagnosis of the fatal disease (CPT report on the 2007 visit to Bosnia and Herzegovina, p. 127). In Montenegro this is not the case. This area is regulated by the Law on Healthcare, which defines the coroner. Monitors have been informed that the Ministry of Health is currently drafting rules that will regulate the work of the coroner, process of determining death, autopsy request, necessary forms (Information added for the purpose of clarification after the discussion on the report held on 30 November 2011).

[40] "All staff in a mental health-care facility, whatever their particular job, should be on the lookout for (which implies being trained in recognizing) indications of risk of suicide. A person identified as a suicide risk should, for as long as necessary, be kept under a special observation scheme with appropriate psychological support." CPT report on the 2003 visit to Spain, p. 133.

hours off; other 9 nurses work either 4-hour shifts or 8-hour day shifts). The rest are administrative staff, support staff and security service staff. In the day shift there are 2 nurses in each ward, and 1-2 nurses during the night, depending on the ward.

Compared to the situation in 2008, when CPT noted the lack of staff, two additional nurses have been employed, which still does not meet the requirements.[41]

In order to better illustrate the lack of medical personnel, below is a table of hospital facilities and employed medical staff provided by the Hospital Director:

Ward:	*Capacity:*	*Number of medical staff engaged in the Hospital during a workday:*
Emergency ward	10 beds	Head nurse until 3 p.m. and two nurses per shift, one nurse in the outpatient clinic (5).
Substance abuse treatment ward: Alcoholism and Drug Addiction	20 beds	Two nurses until 3 p.m. and two nurses per shift. Two more nurses work 4-hour shifts (8).
Acute male ward	21 beds	Head nurse until 3 p.m. and two nurses per shift (5).
Acute female ward	21 beds	Two nurses until 3 p.m. and two nurses per shift (6).
Forensic psychiatric unit (FPU)	21 beds	Two persons until 3 p.m., one in the day shift and one in the night shift (4).
Chronic male ward	46 beds	Head nurse until 3 p.m. and two nurses per shift (5).
Chronic female ward	40 beds	Head nurse until 3 p.m., two nurses per shift and one nurse working a 4-hour day shift (one person in the night shift) (6).
Rehabilitation ward (divided into two levels)	52 beds	Head nurse until 3 p.m. and one nurse per shift (one person in the night shift) (3).

The 1992 job systematization is currently in effect, in relation to which 15 nursing positions have been filled. Due to the fact that since 1992 two new wards were formed and that psychiatric trends have changed significantly since the period when the systematization was developed, it is obvious that the number of nurses necessary for optimal Hospital performance is significantly greater than 15.

Monitors noticed a very small number of nursing staff while visiting the Hospital; it is necessary to urgently to find a solution to fill the vacancies.

[41] CPT report on the 2008 visit to Montenegro, p. 95.

The coefficient for calculation of employees' salaries is the same as for other health workers in the public health system in Montenegro, which means that employees are not in any way stimulated as a result of difficult working conditions.[42] Stimulus to the salary awarded by the Hospital Director to staff (according to Director, one month he stimulates half the employees and the next month another half) is not an adequately solved and sustainable solution. Construction of a residential unit for the employees remained only at the plan level.

Another consequence of the deficit of nursing staff is that the current staff are "forced" to work overtime (over 40 hours of overtime per month, according to the Director). It is not hard to predict that the inevitable burn-out syndrome with such a large number of overtime hours may lead to inadequate attitude of staff towards patients, even with professionally trained and highly qualified staff.[43]

Wards do not have built-in alarm systems that would allow staff to indicate any incidents, which certainly has an influence on a sense of security and protection in the workplace, important for the quality of work.[44]

Last year the Hospital doctors internally educated nursing personnel about the basis of psychiatry, considering that the secondary medical school provides little education on mental health.

A number of doctors will start training in cognitive-behavioural therapy in the coming months at their own expense. According to the Director, staff education is funded by the Hospital, which is obliged to allocate 3% of the received funds for staff education.[45] Also, according to the same source, budget funding of employees has been at the same level for the past 6 years.

According to CPT standards, staff resources should be adequate in terms of numbers, categories of staff, experience and training.[46] External stimulation and support are also necessary to ensure that the staff of psychiatric establishments do not become too isolated; in this connection, it is highly desirable for such staff to be offered training possibilities outside their establishment.[47]

---

[42] CPT report on the 2008 visit to Montenegro, p. 95 („The authorities informed the CPT in their letter of 14 November 2008 that staff working at Dobrota Special Hospital received a special remuneration of 15% in addition to their salary."). In p. 95 of the Response of the Government of Montenegro to the CPT's 2008 report, available at http://www.cpt.coe.int/documents/mne/2010-04-inf-mne.pdf, it was noted that the information on a special remuneration of 15% „is inaccurate, because only the staff working in the forensic psychiatry unit gets a bonus of 15% on salary, as regulated by law."

[43] "In the CPT's view, the system of individual staff occupying more than one full-time post may be detrimental to satisfactory patient care, if it extends beyond short-term situations of staff shortages." CPT report on the 2007 visit to Latvia, p. 113.

[44] „In order to provide effective treatment, staff also need to be fully confident about their safety. The delegation noted with concern that no specific alarm/call system for staff was installed in the forensic and acute wards visited." CPT report on the 2003 visit to Bosnia and Herzegovina, p. 152.

[45] Pursuant to the Law on Budget of Montenegro for 2011 (*Sl. list CG*, 78/10), Health Insurance Fund allocated 137,537,226.13 € for 2011 for the program Health institutions (Health Insurance Program for Montenegro for 2011: http://fzocg.me/index.php#sadrzaj%289%29).

[46] CPT standards, p. 42.

[47] CPT standards, p. 46. " External stimulation and support are necessary to ensure that staff of such institutions do not become too isolated, a point emphasized by many members of staff at the Bakirköy and Samsun Hospitals. In this connection, it would be highly desirable to offer educational, research and secondment opportunities to staff. Similarly, the presence of independent persons and bodies (e.g. students and researchers) in psychiatric institutions should be encouraged." CPT's visit to Turkey in 1997, p. 226.

During the visit, several nurses/medical technicians drew attention to the fact that they were interested in additional training. Also, members of the nursing staff complained to monitors that despite the ward they have been engaged in, which implies complex work with patients, they were not entitled to early retirement plan and that the government was not taking steps to address their housing issues.

2.6.1 *Recommendations*

a) The Ministry of Health and Hospital Director to hire additional staff, necessary to perform the work in accordance with the standards. Take measures that would contribute to making the work with psychiatric patients at the Hospital more attractive to nursing stuff.

b) The Ministry of Health and Hospital Director to invest efforts and resources to further educate Hospital staff and exchange experience with colleagues who work in similar establishments.

c) The Ministry of Health to encourage more frequent practice for students in the Hospital.

d) The Ministry of Health and Hospitals Director to install an alarm system, particularly in male and female acute wards, so that staff could at any time call for help in case of an incident with patients. This measure is partly based on the increase in the number of employees, because this type of security protection would also be inadequate in a situation when only one or two nurses work in one ward.

e) The Ministry of Health and Ministry of Labour and Social Welfare to ensure an early retirement plan for staff working under difficult conditions and in high-risk wards.

2.7 *Fixation*

According to Hospital staff, physical restriction of freedom of movement is carried out exclusively by using leather belts, by fixating patient's arms and attaching leather belt to a bed in a room specially designed for this purpose and out of sight of other patients. According to CPT standards, every instance of the physical restraint of a patient should be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff.[48] Under the LPRMI, mentally ill person against whom physical force is to be applied must first be warned, if possible, given the circumstances. Reasons for the use of force, manner and measure of the application, as well as the name of the person who made the decision on its use must be entered in the medical records. Legal guardian of a mentally ill person and independent multidisciplinary body must be notified of the use of force immediately (Art. 46). CPT also recommends reporting of an independent supervisory body.[49]

[48] CPT standards, p. 50.

[49] "Regular reporting to an outside monitoring body, for instance a Healthcare Inspectorate, might be considered as well. The obvious advantage of such a reporting mechanism is that it would facilitate a national or regional

According to the Director, multidisciplinary body shall be notified on the use of force (Council for the protection of patients' rights), but not the patient's legal guardian.

Physical restraint is always carried out in accordance with the orders of doctors and reportedly always accurately recorded in the physical restraint record book; also, its use is not common and is mainly carried out in acute wards.

In reviewing the physical restraint record book in acute female ward, monitors found a few cases that were duly recorded and in general lasted less than two hours, and only in one case - more than four hours. Data from September show that each time it was the same female person and the reason for the application of force was patient's psychomotor agitation (according to the record book: "harassing other patients, not allowing them to sleep"). Doctor with whom the monitors spoke stated that the said patient was fixated in her own room, but was not exposed to the views of other patients. It would have been problematic to carry out the measure of restricting freedom of movement if it had not been possible to provide an empty hospital room at that point, since the room intended for that purpose does not exist in the acute female ward.

Patients should never remain immobilised in sight of other patients,[50] unless the patient insists on the company of a certain person in the given case. Measures of physical restraint of movement are exceptionally inevitable in psychiatric hospitals. If they do occur, the goal should be to measure the duration of restraint in minutes, not hours.

CPT has stressed the importance of talking to the patient once means of restraint have been removed, in order to explain the rationale behind the measure and restore the doctor-patient relationship,[51] as also recommended in the report on the 2008 visit.[52] The Hospital does not implement such practice.

Certain shortcomings have been noticed in the physical restraint record book in acute male ward. Namely, instances of physical restraint were duly recorded in the duty handover book, but not in the physical restraint record book. The very description of the measure of physical restraint was correct and contained the exact duration, name of the doctor who approved its implementation, the reason for resorting to restraint, etc.

It is advisable to accurately keep physical restraint record books in all wards, which would greatly facilitate both the management of such incidents and the oversight of the extent of their occurrence.[53] Better insight would be achieved in the case of introduction of a central

---

overview of restraint practices, thus facilitating efforts to better understand and, consequently, manage their use." CPT 16th General Report, p. 53.

[50] CPT report on the 2002 visit to Denmark, p. 115. Report available at: http://www.cpt.coe.int/documents/dnk/2002-18-inf-eng.htm.

[51] "Once means of restraint have been removed, it is essential that a debriefing of the patient take place. For the doctor, this will provide an opportunity to explain the rationale behind the measure, and thus reduce the psychological trauma of the experience as well as restore the doctor-patient relationship. For the patient, such a debriefing is an occasion to explain his/her emotions prior to the restraint, which may improve both the patient's own and the staff's understanding of his/her behaviour. The patient and staff together can try to find alternative means for the patient to maintain control over himself/herself, thereby possibly preventing future eruptions of violence and subsequent restraint". CPT 16th General Report, p. 46.

[52] CPT report on the 2008 visit to Montenegro, p. 99.

[53] CPT standards, p. 50.

register for recording all the data from the wards books (the same note as with the so-called chemical restraint). Subsequent analysis of such central registry could provide examples of good and bad practice and thus improve the treatment of patients.

2.7.1 *Recommendations*

a) The Ministry of Health and Hospital Director to designate special rooms in every ward for carrying out the measure of physical restraint.

b) Hospital Director to ensure accurate keeping of the physical restraint record books.

c) Hospital Director to ensure keeping of the central registry for continuously entering data from the wards record books, to provide an overview of all the measures taken to restrict the physical freedom of movement at the Hospital

d) Hospital Director to ensure debriefing of the patient after the measure of physical restraint has been removed.

e) Hospital Director to ensure enforcement of the legal obligation to promptly inform legal guardian of a mentally ill person about the use of force, in addition to informing independent multidisciplinary body.

2.8 *Protection of the right to freedom and personal integrity in terms of involuntary admission, stay and discharge from the Hospital*

2.8.1 *General guarantees*

The human right to liberty implies the prohibition of arbitrary deprivation of liberty, which includes guarantees against arbitrary detention in psychiatric clinics. In the history of human rights violations, it was not rare that public enemies or unwanted family members were forcibly placed in establishments for the mentally ill.[54] In order to prevent abuse, involuntary placement in a psychiatric establishment should always be surrounded by appropriate safeguards.[55] It is extremely important that there is a statutory procedure that guarantees the legitimacy of forced placement in a psychiatric clinic and patient's right to appeal against this decision; also, it is particularly important that these safeguards against abuse be consistently applied in practice.

Furthermore, every person has a right to privacy and protection of personal integrity, which includes the right to not be treated without his/her consent. Exceptions to this rule must be strictly regulated and applied restrictively, only when necessary. Thus, in accordance with the

[54] Well-known cases include Vasa Pelagić, Serbian writer and critic of the government who lived in the nineteenth century, Đorđe Karađorđević, king Aleksandar Karađorđević‘s brother and king Nikola Petrović‘s grandson, more than 300,000 "treated" dissidents in the Soviet Union in the twentieth century, as well as the unfounded involuntary hospitalization of Mirjana Pukanić in neighboring Croatia in 2008, which drew public attention.

[55] CPT standards, p. 51.

LPRMI, no one shall be forced to undergo medical testing to determine the presence of a mental disorder, except in cases and under the procedure established by law. The mentally ill have the right to health and social care appropriate to their medical needs, treatment under the same conditions and in accordance with the same standards as all other persons treated in health facilities, protection from economic, sexual and other forms of exploitation, physical or other abuse, any form of ill-treatment, humiliation and any other treatment that violates the dignity of a person and creates an unpleasant, aggressive, degrading or offensive situation and protection of personal dignity, humane treatment and respect for one's privacy and person.[56]

Placement of patient in a psychiatric institution can be voluntary and involuntary. Person with severe mental illness, seriously and directly threatening his/her own life, health or safety, or the life, health or safety of another person due to mental and behavioural disorders, may be kept and placed in a psychiatric institution without his/her consent, in accordance with the law on non-contentious proceedings, or criminal or misdemeanour proceedings.[57]

In the case of voluntary placement, all records of patients who were not forcibly placed in the Hospital include a form on voluntary consent to medical treatment signed by the patient, which is a significant improvement compared to the situation found by CPT in 2008.[58]

Procedure for involuntary placement in a psychiatric institution is regulated by the Law on Non-Contentious Proceedings in two cases: Involuntary placement in a psychiatric institution, Art. 44-53, and Revocation and restoration of legal capacity, Art. 29-43. The procedure prescribed by the Criminal Procedure Code and Law on Misdemeanours applies when suspected that the mentally ill person has committed a crime or misdemeanour offense and it is necessary to provide appropriate expertise testimony, or when determined that the mentally ill person has committed a crime or misdemeanour offense and is imposed a security measure of compulsory treatment and confinement in a medical institution, rather then a punishment.

2.8.2 *Judicial control of involuntary placement in a psychiatric institution*

Law on Non-Contentious Proceedings[59] stipulates that when a mental health institution admits the mentally ill person for treatment, without his/her consent or without a court order, that institution is required to report such case within 48 hours to the court on whose territory it is located (Art. 46). The procedure in which a court decides on involuntary placement of the mentally ill person in a psychiatric institution, as well as on his/her discharge when reasons for the placement cease to exist, must be completed within eight days (Art. 44). When a court decides to place the mentally ill person in a psychiatric establishment, it will determine the duration of involuntary placement, which may not be longer than 30 days from the date on which a psychiatrist made the decision on involuntary placement. Also, psychiatric institution is required to submit periodic reports to the court on the health status of such person (Art. 49). If psychiatric institution determines that the mentally ill person should remain in treatment after the time specified in the court decision, it must submit such proposal to the court seven days before the expiry of involuntary placement ordered by the court (Art. 51). The court may

[56] Art. 4 LPRMI, *Sl. list RCG*, 32/2005.

[57] See also Art. 32 LPRMI.

[58] CPT report on the 2008 visit to Montenegro, p. 102.

[59] *Sl. list RCG*, 27/2006.

decide to release the mentally ill person from a psychiatric institution before expiry of the time determined for the placement in a psychiatric facility, at the proposal of a psychiatric institution, if it determines that the health status of such individual has improved to such an extent that the reasons for his/her further placement ceased to exist (Art. 52).

Psychiatric facility which houses the mentally ill person, the patient, his/her guardian, or temporary representative and guardianship authority may appeal against the decision on placement in a psychiatric hospital and discharge from such institution within three days of receiving the decision. Appeal shall not stay the execution of the decision, unless the court determines otherwise for justifiable reasons. Court of first instance shall without delay submit the appeal with the files to the second instance court, which must make a decision within eight days of receipt of the appeal. The deadline for deciding in the retrial, after revocation by the second instance court, may not exceed eight days (Art. 53).

During examination of medical records it was noted that the Hospital, as a rule, in a timely manner informs the court about involuntary placement of patients. However, during the visit to acute male ward, monitors came across a record of the patient hospitalized one day before the visit (Friday). Since his file did not include a notice to the court, Director informed us that the said hospitalization took place on Friday afternoon, after the end of the Hospital's legal department shift and that the notice will be submitted the first following workday (Monday). This is more than 48 hours after the beginning of involuntary placement. Also, the Hospital legal department does not operate during public holidays, and in those cases a notice to the court is submitted not before the next workday.

However, **there is a problem in the practice of the court**, which decides on these notices with a significant delay. For example, in the case of patient M.Z., placement was carried out on 25 August 2011 and the Basic Court in Kotor was notified of involuntary hospitalization on 26 August 2011. On the day of the visit, 17 September 2011, twenty days later, there was still no response from the Basic Court in Kotor deciding on the placement or discharge from this psychiatric facility.

In the case of patient M.K., whose records have been examined by monitors, hospitalization was carried out on 5 September 2011, the court was notified on 6 September 2011, but there was no response from the court until the day of the visit (17 September 2011). In a previous involuntary hospitalization of the same patient, court's decision was submitted to the Hospital 24 days after the hospitalization.[60] Such court practice is problematic for several reasons:

1. Despite the fact that the court issued a decision last day of the statutory eight-day deadline, the decision was delivered to the patient only 13 days from the date of adoption, ***rendering meaningless the statutory deadline*** for deciding in order to ensure urgency and adequate protection of the patient's rights.

2. In this case, the court issued a decision on the patient's stay in the psychiatric Hospital. However, had the court assessed the contrary, the patient would have been unjustifiably detained for more than three weeks (time it took the court to deliver its order), which constitutes a serious violation of the human right to freedom of person.

[60] The patient was admitted to the Hospital on 24 May 2011, the court was informed on 25 May 2011 and decision issued on 3 June 2011 and delivered on 16 June 2011.

3. If a psychiatric institution determines that mentally ill person should remain in treatment after the time specified in the decision of the court, such proposal must be submitted to the court seven days prior to the expiry of involuntary placement by the court (Art. 51). In this case the institution was ***prevented*** from complying with the said deadline, as the court may not order the placement longer than 30 days (Art. 49), and the decision was delivered 24 days after involuntary hospitalization. Finally, according to LPRMI[61], forcibly placed mentally ill person shall be discharged from a psychiatric institution immediately after the period of forced placement defined by the decision on involuntary placement (Art. 39).

4. Given the time limits for filing an appeal against the decision on placement in a psychiatric institution and discharge from the institution and the second instance court decision (Art. 53 of the Law on Non-Contentious Proceedings), the circumstances of this case ***rendered meaningless the right to appeal*** to the decision on placement, at the moment when 24 days out of a maximum of 30 have passed, bearing in mind that the second instance court too takes 8 days to decide on the appeal. Even if the second instance court immediately decides to revoke the decision, first instance court has 8 additional days to decide at the retrial. Statutory deadlines for deciding on placement in psychiatric institutions in a system of appeal with two instances have been rendered meaningless in practice, despite the CPT standard by which an effective complaints procedure is a basic safeguard against ill-treatment in psychiatric establishments.[62]

There is also a question of whether the adoption of the court decision in this manner truly represents a guarantee against abuse, since judges do not come to the Hospital to visit patients and patients are not brought into court, and that decisions are produced automatically, based solely on the findings of a doctor who admits a patient to the Hospital?! According to CPT recommendations, the person who was forcibly admitted to the Hospital should have the right to meet with the judge in person during their involuntary placement or appeal procedure.[63] Also, in the case *Winterwerp v. the Netherlands, 1979*, the European Court of Human Rights found that "it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation, failing which he will not have been afforded the fundamental guarantees of procedure applied in matters of deprivation of liberty" (p. 60).

All forcibly hospitalized patients interviewed by monitors confirmed that they **did not meet the judge** who decided on their involuntary hospitalization. The Law on Non-Contentious Proceedings provides that a judge shall decide whether to visit a person on whose involuntary placement s/he is deciding, since it has been stipulated that a person whose rights or legal interests are being considered is a participant in the proceedings[64], and that the court decides on participants' requests on the basis of discussion at the hearing, among other things, when it deems necessary to hold the hearing in order to clarify or establish key facts, or for other reasons.[65] However, in practice, **the court generally does not schedule hearings and does not require seeing the patient on whose placement it decides**. Although on this occasion

[61] *Sl. list RCG*, 32/2005.

[62] CPT standards, p. 53.

[63] CPT report on 2008 visit to Montenegro, p. 100 and 101 (CPT was then wrongly informed that Montenegrin legislation provides for decision-making on involuntary hospitalization only after the court sees a person concerned). See also CPT report on 2004 visit to Lithuania, p. 133: http://www.cpt.coe.int/documents/ltu/2006-09-inf-eng.htm.

[64] Art. 4 of the Law on Non-Contentious Proceedings.

[65] Art. 10 of the Law on Non-Contentious Proceedings.

monitors found no history of abuse in deciding of the court on involuntary hospitalization on the basis of the psychiatrists' findings only, we believe that this risk may be excluded only if the court is bound to decide on involuntary placement in a psychiatric institution in a hearing attended by a person concerned, or on the appeal of the forcibly placed person only after scheduling a hearing and questioning that person. Similar legal solution has been prescribed for the procedure of revocation and restoration of legal capacity, according to which the court decides on the basis of a discussion attended by the person concerned, unless this person, in the opinion of the court, is unable to understand the significance and legal consequences of his/her participation in the procedure.[66]

In addition, in its report on the 2008 visit, CPT gained the impression that there were legal guarantees in Montenegro that oblige the court in deciding on involuntary placement to provide a second expert opinion, i.e. a panel of three doctors or an opinion of a court expert who is not employed by the institution in which the person is placed.[67] However, such guarantees are in fact not explicitly prescribed by law or applied in practice, although the court could apply them based on the possibility to hold a hearing. If a person placed in the institution had appropriate legal counsel, he might be able to convince the court to schedule a hearing on the appeal and conduct additional expertise. However, this does not happen in the ordinary course of things, just as people forcibly placed in the institution do not often have and cannot afford a lawyer. In this respect, the CPT has recommended that patients subject to compulsory treatment are assisted by a lawyer during the proceedings, those who are not in a position to pay for a lawyer themselves being provided with legal assistance.[68]

When deciding on involuntary placement, it is necessary that the court first determine whether the person concerned is able to understand the significance and legal consequences of his/her participation in the procedure, as prescribed for the procedure of revocation and restoration of legal capacity.

Also, we were not informed that patients are allowed to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment, in accordance with the international standard.[69] The patients we spoke to were not informed about the court procedure conducted with regard to their involuntary hospitalization, or about their right to appeal. Also, there is no mailbox in the Hospital for submitting complaints to the Ombudsman, i.e. patients are not informed about the possibility to address the Ombudsman in any way.

When asked whether the patients who have been forcibly hospitalized were informed about their rights (implying an explanation on the legal proceedings that follows and the possibility of appeal), the Director provided negative response, explaining that this would only worsen the situation and increase agitation of an acutely agitated patient. This practice is contrary to the international standard according to which an introductory brochure setting out the establishment's routine and patients' rights should be issued to each patient on admission, as well as to their families, and any patients unable to understand this brochure should receive appropriate assistance.[70] Furthermore, it is essential that a patient participate in the procedure,

[66] Art. 34 of the Law on Non-Contentious Proceedings.

[67] CPT report on the 2008 visit to Montenegro, p. 100.

[68] CPT report on the 2008 visit to Montenegro, p. 104.

[69] CPT standards, p. 53.

[70] CPT standards, p. 53.

receive the decision on placement in an institution and be granted the right to appeal, regardless of their mental state.[71]

However, the LPRMI provides that a mentally ill person placed in a psychiatric institution has the right to be acquainted with his/her rights at the time of admission and later at his/her request, and to be instructed on how to exercise his/her rights in a way and language he/she understands (Art. 18, para 1, item 1). Rights under this paragraph on behalf of the mentally ill person may be exercised by his/her family and a representative (Art. 18, para 3), but it is not clearly stipulated that family members and a representative may exercise these rights only while a mentally ill person is incapable of being acquainted with his/her rights, in order to inform him/her about these rights later. This would prevent the continued abuse in case when family members are not acting in the best interest of the person placed in the Hospital. Additionally, the same law prescribes the duty of a psychiatrist to inform the forcefully kept person about the decision on involuntary placement in an adequate manner and to introduce him/her to the reasons and purpose of forced keeping, as well as to his/her rights and responsibilities in accordance with the law (Art. 35). For the offense of failure to act under this provision, the LPRMI prescribes a fine of 250 - 2,000 Euros (Art. 57, para 1, item 5).

2.8.3 *Security measure of compulsory treatment and confinement in a medical institution*

2.8.3.1 *Imposition of a measure by the court in criminal proceedings*

At the Forensic psychiatric unit (FPU) in Hospital in Dobrota, Hospital management applies the security measure of compulsory treatment and confinement in a medical institution prescribed under Article 67 of the Criminal Code of Montenegro (CC), imposition and suspension of which is decided by the court in criminal proceedings, in accordance with the Criminal Procedure Code (CPC).

If the court, on the basis of evidence, establishes that the defendant committed a criminal offense and that at the time of committing the offense his/her mental capacity was excluded or diminished due to mental illness, it will decide based on the hearing of invited persons and findings and opinions of an expert witness whether to impose the security measure of compulsory psychiatric treatment and confinement in a medical institution against the defendant, if, in view of the criminal offense and the state of mental disorder, the court finds that there is a serious risk that the offender might commit a serious criminal offense and that his/her treatment in such an institution is necessary in order to eliminate such danger. Also, if suspicion arises during the criminal proceedings that the accused person's mental capacity is excluded or diminished, a psychiatric examination shall be ordered, and if, in the opinion of an expert, an extended observation is needed, the defendant will be sent for observation in a psychiatric institution (Art. 153 CPC).[72]

[71] *Winterwerp v. the Netherlands*, 1979, p. 60-61.

[72] However, serious errors occur in practice. Ferid Sijarić, who on 7 October 2010 in Podgorica attacked and injured an eleven-year-old girl with a knife, despite the media attention and public statements that he appeared to be a mentally ill person, after the arrest he was taken to Remand Prison in Spuž and bedridden for 18 days without previous specialist medical examination. Monitors visited Sijarić at FPU at the Hospital. According to staff, Sijarić's mental state has made significant progress after his placement at the Hospital, and he indeed seemed well. He has not been bedridden at the Hospital.

The CPC also prescribes a range of persons who may appeal against the decision of the court, within 8 days of receipt of the decision (Art. 382). The final decision by which the security measure of compulsory psychiatric treatment and confinement in a medical institution or compulsory psychiatric treatment out of the institution is imposed shall be submitted to a competent court to decide on a deprivation of legal capacity (Art. 474). The court that imposed the security measure shall examine *ex officio* the need for further stay and confinement in a mental institution every nine months. Also, psychiatric institution, guardianship authority and a person against whom the security measure has been imposed may submit to the court a motion to suspend the measure. If the motion to suspend the measure is rejected, it may be re-submitted six months from the date of that decision.

Monitors were informed that the court examines justification for the measure, i.e. that the Hospital submits a proposal to suspend the measure in cases when justified, and that the courts generally accept the Hospital's proposal.

Medical institution to which a person has been referred for treatment is required to report to the court about the health of that person at least once a year (Art. 80). Control of the legality of imposition of the security measure of compulsory treatment and confinement in a medical institution is carried out by the Ministry of Justice (Art. 82).

According to information obtained from the Hospital Director, the Ministry of Justice does not carry out this control in accordance with the law.

2.8.3.2 *Imposition of a measure by misdemeanour authority in misdemeanour proceedings*

According to the Law on Misdemeanours, in effect from 1 September 2011,[73] misdemeanour sanctions include fines, warning measures, corrective measures and security measures[74] (Art. 5). In relation to conditions, deadlines and manner of imposition of security measures, which include the compulsory psychiatric treatment and confinement in a medical institution, the provisions of the Criminal Code relating to the imposition of security measures are applied (Art. 49). Therefore, the misdemeanour authority too may impose these measures for up to two years.[75]

Imposing this measure in misdemeanour proceedings is problematic for the following two reasons:

a) *authorities who decide on deprivation of liberty are not independent of the executive branch, and*
b) *the procedure does not provide a proper assessment of patient's condition.*

In Montenegro, misdemeanour authorities, i.e. the Misdemeanour Council, still act in misdemeanour proceedings, while the president and judges of the Council and regional misdemeanour authorities are appointed by the Government based on the opinion of the Minister of Justice, which is why one can not speak of an independent and impartial tribunal established by law, required by the European Convention on Human Rights (Art. 6, para 1)

[73] *Sl. list CG*, 1/2011, 6/2011 and 39/2011.

[74] *Sl. list RCG*, 25/94 and 48/99.

[75] Art. 42 of the Law on Misdemeanours.

for deciding on "criminal charges", "civil rights", i.e. deprivation of liberty.[76] One cannot appeal to the court against the decision of such executive misdemeanour authority, and this right (to *habeas corpus* - an appeal to a court in every case of deprivation of liberty) is not provided by the Constitution of Montenegro either, which is one of its serious shortcomings.[77] It is worrying that the authority appointed in such a manner has the possibility to impose the security measure of compulsory treatment and confinement in a mental institution for a period not exceeding two years, despite the international standard under which the procedure by which involuntary placement is decided should offer guarantees of independence and impartiality.[78]

According to information received from the Hospital Director, ten patients were admitted to the Hospital on the basis of the Law on Misdemeanours, which provides for the security measure of compulsory psychiatric care and treatment in a medical facility for up to two years. The measure is imposed after conducting psychiatric evaluation of a person concerned by an expert witness, and, as several doctors stated in an interview with monitors, expertise in practice often implies one conversation between a psychiatrist-court expert and the person whose mental state is being assessed. Doctors point to the problem of conducting such evaluation, which leads to an increased number of persons placed in the institution, as an additional burden on hospital capacities; also, psychiatrists at the Hospital are required to write opinions to the misdemeanour authority at the expense of their regular duties, which entails a finding of the panel of doctors, stating that there is no need for keeping the offender in a psychiatric institution. All interviewed psychiatrists from the institution find it more appropriate that the offender *be sent for observation to a psychiatric institution prior to imposing the measure*. Expert evaluation conducted in this manner in practice would lead to a significant reduction in the imposition of this measure by misdemeanour authorities.

2.8.4 Consent to treatment

Consent to hospitalization does not entail consent to treatment.[79]

According to the LPRMI, a mentally ill person who can understand the nature, consequences and danger of the proposed medical procedure and who, based on that, can make a decision and express his/her will, can be examined or subject to the medical procedure only with his/her prior written consent. Ability of a person to give consent shall be determined by a doctor of medicine trained in mental health care or a psychiatrist at the time of making the decision and for that purpose he/she will issue a written confirmation, which is an integral

[76] For this reason Serbia and Montenegro only partially adopted Art. 6, para 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe ("European Convention on Human Rights"), with regard to the jurisdiction of misdemeanor authorities, with the promise to soon carry out a reform. Reform has been implemented in Serbia, but not yet in Montenegro. For the requirement that the court deciding on deprivation of liberty should be independent and impartial in relation to the executive branch and parties in the procedure, see also *Winterwerp v. the Netherlands*, 1979, p. 56.

[77] For more detail see ”International Human Rights Standards and Constitutional Guarantees in Montenegro”, Human Rights Action, Podgorica, 2008, available at: http://www.hraction.org/wp-content/uploads/knjiga-eng.pdf.

[78] CPT standards, p. 52.

[79] CPT report on the 2008 visit to Lithuania, p. 129. Report available at: http://www.cpt.coe.int/documents/ltu/2009-22-inf-eng.pdf.

part of medical documentation.[80] However, such confirmations were not found in the inspected medical records at the Hospital.

Under the same Law, mentally ill person who is not able to provide consent, because he/she cannot understand the nature, consequencies and danger of proposed medical procedure or cannot make a decision or express his/her free will, can be subject only to the medical procedure which is in his/her best interest, and examination or other medical procedure may be carried out only with the consent of his/her legal guardian, and if he/she does not have one, with the approval of the ethical committee of the psychiatric institution (Art. 15). Consent can be withdrawn at any moment in a written form (Art. 16). Exceptionally, consent is not obligatory if getting it would directly endanger the life of a mentally ill person or cause real and immediate threat to his/her health; medical procedure can be applied without consent only for the duration of these particular circumstances (Art. 17). However, in this case the Law on Non-Contentious Proceedings offers fewer guarantees, providing that the person placed in a psychiatric institution "shall be required to undergo necessary treatment measures, but any measure which might endanger his/her life or health or alter his/her personality requires patient's consent or the consent of his/her representative" (Art. 50, para 1), so this provision should be deleted from the Law.

Mental health care worker, i.e. psychiatrist who manages the work process or other authorized person of the mental health centre - the psychiatric institution, shall decide on necessity and urgency of particular medical procedure and without delay inform a legal guardian of the mentally ill person about that, if any (Art. 17, para 3). It is certainly necessary to prescribe that family members of the person concerned be informed on the implementation of a medical procedure without consent. This would be in accordance with Art. 12, para 2 and 29 of the Law on Patients' Rights.

In cases where the patient does not give consent to treatment, as recommended by the CPT, the patient should be allowed to leave hospital treatment if there are no grounds for immediate placement in an institution,[81] or the legal procedure provided for in the event of involuntary hospitalization should be applied.[82] Currently, according to our knowledge, such cases are very rare in practice as the doctors we spoke to informed us that the patients who are in the Hospital voluntarily take their therapy regularly, maintain contact with their families, cooperate well with the doctors and adhere to medical assessment on appropriate time for their discharge from the Hospital.

With regard to guarantees related to discharge from the Hospital, patient's mental status should be the sole reason for the decision on discharge. According to the CPT standard, situations in which people remain in the hospital only due to a lack of adequate care/accommodation in the outside community is deeply problematic and requires urgent resolution (see section 2.1).[83]

[80] Art. 14 LPRMI.

[81] CPT report on 2006 visit to Bulgaria, available at: http://www.cpt.coe.int/documents/bgr/2008-11-inf-eng.htm.

[82] CPT report on 2007 visit to Latvia, available at: http://www.cpt.coe.int/documents/lva/2009-35-inf-eng.htm.

[83] CPT standards, p. 57.

2.8.5 *Recommendations*

a) Hospital Director to ensure compliance with the Law on the Protection and Exercise of the Rights of Mentally Ill Persons, which provides for a written consent for undergoing medical examination or a procedure in cases when the mentally ill person can make a decision and express his/her will.

b) Hospital Director to ensure that the doctor issues confirmation regarding person's ability to provide consent to medical treatment, in accordance with the law.

c) Hospital Director to ensure that in all cases of involuntary hospitalization a notice of involuntary hospitalization be sent to the court within the statutory deadline of 48 hours.

d) President of the Court in Kotor to ensure effective implementation of deadlines in the case of involuntary hospitalization provided for in the Law on Non-Contentious Proceedings.

e) Hospital Director to ensure that the patient personally receive the decision on involuntary placement in a psychiatric institution in writing and be notified of the reasons for the decision in writing, as well as the possibilities and the deadline for filing an appeal.

f) The Ministry of Justice to amend the Law on Non-Contentious Proceedings by prescribing the court's obligation in the procedure for deciding on involuntary hospitalization to (1) hear the person concerned in the first instance procedure or a procedure on appeal, (2) require a second opinion on the need for compulsory hospitalization of an expert psychiatrist who is not employed at the facility, (3) decide whether the person concerned is able to understand the significance and legal consequences of his/her participation in the process, (4) ensure that patients who undergo compulsory treatment have assistance of a legal counsel during the procedure, and that those who are unable to pay their attorney's fees be granted legal aid.

h) Hospital Director to ensure that persons involuntarily placed in the Hospital be personally acquainted with their rights, as well as their families. Draft an appropriate brochure.

i) The Ministry of Justice to ensure regular control of the execution of the security measure of mandatory psychiatric treatment and confinement in a medical institution.

j) The Government and the Parliament to urgently adopt legislation that will ensure that courts act in misdemeanour proceedings, i.e. that misdemeanour judges are elected in the same manner as judges of ordinary courts.

k) Misdemeanour authorities to refrain from imposing a measure of compulsory treatment and confinement in a psychiatric institution without prior referral of the person concerned to the observation in a psychiatric institution.

l) The Ministry of Justice to stipulate under the LPRMI (Art. 17, para 3) the obligation to inform family members of the mentally ill person about the implementation of a medical procedure without his/her consent.

m) The Ministry of Justice to delete Article 50, para 1 from the Law on Non-Contentious Proceedings.

2.9 *Forensic psychiatric unit (FPU)*

Pursuant to the decision of the Government of Montenegro from 2005, forensic unit was established within the Hospital, according to the Director, as a temporary solution for accommodation of patients who have been imposed the compulsory measure of psychiatric treatment at the closed institution, as well as the measure of compulsory psychiatric treatment and imprisonment.

Protocol on the work of this ward still does not exist. In practice, this means that it has not been stipulated who is responsible for the security of the mentally ill, what type of equipment will be provided for the security officers and how will they use it or who will finance the security, so these decisions and the task to provide funding for the security were left to the Hospital. Private company "Security" has been hired to provide security services and is paid from the Hospital's budget, absurdly, with a foreign state's money, which the Serb Republic of Bosnia and Herzegovina pays for the treatment of its policyholders. Neither Ministry of Health nor the Ministry of Justice allocated special funds for this purpose. Such practice exhausts the Hospital financially, and it is necessary to urgently provide additional funding for the expenses of this ward and decide which ministry is responsible for it.

This situation indicates that an agreement according to which the State Administration for the Execution of Penal Sanctions (ZIKS) would provide a special unit to ensure the security of the FPU has not been reached and that the Ministry of Health failed to draft regulations concerning, inter alia, the type of equipment to be issued to security staff, as the Government informed the CPT in its letter of 6 February 2009.[84]

On the day of the visit, FPU accommodated 21 patients and this ward's capacity was completely filled. Four persons were awaiting admission to FPU – one of them with imposed prison sentence and the measure and three patients with the imposed measure. Director informed us that the patient with a prison sentence was serving his sentence in the prison and most likely receiving outpatient treatment, one patient was receiving outpatient treatment, while there was no information as regards the remaining two patients.

We were informed that since 1993 a total of six patients with the imposed measure have been on the run. Acute female ward accommodated three female patients with the imposed measure, and three were under observation (expert opinion).

Two nurses work in the day shift, and only one in the night shift, which is unacceptable (by comparison, in the prison hospital in Oslo, cooperating closely with Dobrota Hospital, five nurses are engaged per one patient). At the time of our visit, on Saturday, only one nurse was present in the day shift.

During the visit, we found two security officers within the FPU, which is a practice criticized by the CPT in 2008, recommending that they stay outside the Hospital building and secure its perimeter.[85]

[84] CPT report on the 2008 visit to Montenegro, p. 90.

[85] "Their presence inside the FPU appeared to a large extent to be a substitute for health-care staff … presence of uniformed guards inside the unit could hardly be seen as contributing to the emergence of a therapeutic environment; if guards are needed, it would be far preferable for the role of such staff to be limited to perimeter security." CPT report on the 2008 visit to Montenegro, p. 88.

According to the Director, Hospital doctors constantly remind security officers of the need to treat the patients properly.

As the Hospital and ZIKS directors informed us, new complex of the Special Hospital within ZIKS should be built by 2020, physically separated from the Remand Prison and Institution for sentenced prisoners buildings, for accommodating in separate units patients imposed the measure of compulsory treatment in a psychiatric institution, and those imposed the measure and a sentence. Sufficient number of medical staff should be provided for patients imposed the measure, since they are patients, not prisoners, regardless of the type of crime they committed. Psychiatric patients do not belong in prison. On the other hand, their placement in Dobrota Hospital in a cramped Forensic psychiatric unit is also inadequate. The presence of untrained persons, i.e. security officers employed by contract, is not conducive to quality therapeutic climate in the Hospital. In the case of relocation of these patients, the staff would be unburdened to some extent and would have the possibility of extending the range of offered therapeutic procedures.

In one room at the FPU there is a cage for isolation of patients, created by dividing the room with metal bars. There are currently two beds in this room, and the third one separated with bars from the rest of the room. During the second monitoring visit, the barred door separating the bed from the rest of the room has been removed.

The cage was made after an attempt of one patient to suffocate another. Patient that was placed in this cage committed suicide by hanging, although all cells have been under video surveillance (more detail in section 2.2). In relation to the patient who was placed in the enclosed space, CPT recommended that "all efforts be made to reduce the restrictions placed on the patient in question. Further, a record should be kept of the time during which he is locked up, with a view to ensuring appropriate monitoring."[86] In relation to the cited recommendation, the Government's response stated that "In the meantime, the patient whose bed was separated from the rest of the room with bars (as he is said to have attempted homicide twice so far by attempted strangling of other patients) has been moved out of the barred area after two other patients had been moved out of the room and this patient is accommodated alone in the room, in the area with no bars around."[87] However, as monitors have been informed, the patient was in the confined space when he committed suicide by hanging, using the bars he had been surrounded with.

Although CPT recommended that "steps be taken to ensure that patients at the FPU have ready access to a proper toilet at all times, including at night"[88], during the visit a number of patients and security staff confirmed the common practice for patients to use containers to urinate during the night. Containers for urine were noticed in the rooms. Findings that the monitors came across during the visit are not in accordance with the 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[89] (Government's Response), which states that: "The remark regarding the access to toilet in the forensic psychiatric unit over night when the (barred) gates of patient's rooms are locked has in the meantime been taken into consideration

[86] CPT report on the 2008 visit to Montenegro, p. 89.

[87] Response of the Government of Montenegro to the CPT's report on the 2008 visit to Montenegro, p. 89.

[88] CPT report on the 2008 visit to Montenegro, p. 87.

[89] Response of the Government of Montenegro to the CPT's report on the 2008 visit to Montenegro, available at: http://www.cpt.coe.int/documents/mne/2010-04-inf-mne.pdf.

and the situation has been improved in such way that patients can now use toilet at night and the guard comes by call to open the gate. Also, we should note that, even though this comment was based on information coming from some patients who, they allege, had to urinate in bottles over night – it does not reflect the practice in this unit. However, we would not eliminate possibility that such isolated incidents did happen."[90]

Security staff members found during the visit have not received any training related to the work with psychiatric patients, nor were they subject to any additional controls related to engagement in the Hospital, so it seems that CPT recommendation to the government to review the selection, training and supervision of security staff assigned to the FPU has not been met.[91]

2.9.1 *Recommendations*

a) The Ministry of Justice to ensure that the FPU be relocated from the Hospital, and in the meantime provide adequate funds for its operations, primarily for the necessary security staff expenses.

b) The Ministry of Justice and Ministry of Health to create a protocol on the FPU operations (until its relocation), especially in connection with the employment of security service.

c) The Ministry of Health and Hospital Director to ensure that more nursing staff be present at the FPU at all times, and that the role of security staff be limited to perimeter security.

d) Hospital Director to ensure that all patients placed at the FPU have access to toilet facilities 24 hours a day.

2.10 *Substance abuse ward*

The capacity of this ward is 19 beds, of which 10 beds are located on the ground floor for alcohol abusers and 9 beds on the first floor for psychoactive substance (drugs) abusers. Capacities have been filled, while 23 patients await admission to the ward for drug addiction treatment and 5 patients for the treatment of alcoholism.[92] Once again, we reiterate that both wards accommodate only men, while women with the imposed measure are placed in the acute female ward. Patients addicted to drugs are placed at this facility pursuant to the court's decision to impose the measure of treatment "for as long as necessary, but not longer than three years."[93] The court imposes this measure after the psychiatric evaluation of an expert witness.[94]

---

[90] Response of the Government of Montenegro to the CPT's report on the 2008 visit to Montenegro, p. 87.

[91] CPT report on the 2008 visit to Montenegro, p. 88.

[92] Information from the website of the Hospital: www.psihijatrija.co.me.

[93] The Criminal Code (*Sl. list RCG*, 70/2003, 13/2004, 47/2006 and *Sl. list CG*, 40/2008, 25/2010 and 32/2011), in Art. 71 (para 1 and 2) stipulates the following: "The court shall pronounce mandatory treatment to an offender who has committed a criminal offence because of addiction to narcotic drugs and if there is a serious danger that s/he might continue committing criminal offences due to this addiction. The measure set forth in Paragraph 1 of

The ward is extremely cramped, while hygiene and tidiness should be at a considerably higher level. The general impression is that this is a temporary accommodation for people in social need, not a medical institution that deserves the name it carries. This part of the Hospital needs to be renovated.

The optimal time that a person dependent on any kind of drug(s) should spend at the medical institution of this type is one month, which is enough to prevent the development of withdrawal symptoms and allow the patient to gain initial insights. Further treatment based on full psychosocial rehabilitation would have to be carried out outside the institution. There are many modalities: return to prison conditions is possible, where such persons would then have to be offered psychosocial rehabilitation programs, while staying in the so-called "drug free units" (where active participation in the treatments offered and voluntary consent to regular urine tests, adequate engagement and maintaining of abstinence would be awarded by going home for the weekend, longer visiting hours, etc.). It is also possible to refer them to the existing rehabilitation facility "Kakaricka gora".

Below is the table with the number of patients **without the imposed court measure** treated at the Substance abuse ward in the period from 1 January 2007 to 14 November 2011:

Year	*Number of patients treated for drug addiction*	*Number of patients treated for alcoholism*
2007	82	160
2008	110	170
2009	92	108
2010	37	79
2011	43	42

Table below shows the number of patients **with the imposed court measure** treated at the Substance abuse ward in the period from 1 January 2007 to 14 November 2011:

Year	*Number of patients treated for drug addiction*	*Number of patients treated for alcoholism*
2007	12	0
2008	9	3
2009	12	3
2010	18	11
2011	11	4

this Article shall be carried out in a penitentiary institution or in an appropriate medical or other specialized institution and shall last for as long as there is a need for treatment, but not longer than three years."

[94] The Criminal Procedure Code stipulates that the Court shall decide on the imposition of the security measure of compulsory treatment of alcohol and drug addiction after it obtains the findings and opinion of an expert witness. The expert witness shall also give a statement regarding possibilities for the accused person's treatment (Art. 476, para 1).

Hospital Director informed us that in planning accommodation capacities, Hospital strives to provide enough beds for the treatment of drug addicts without the imposed measure, i.e. those who did not commit an offense, as shown by the statistics provided. As the accommodation capacities are insufficient, patients with the imposed court measure too have been placed on a waiting list (a total of 27! [95]).

This ward does not engage security staff due to the lack of funding, so the monitoring of patients has been fully transferred to medical staff.

2.10.1 *Recommendations*

a) The Ministry of Health to provide emergency accommodation for women dependent on alcohol and psychoactive substances outside the acute female ward.

b) The Ministry of Health to provide funds for the renovation and capacity increase in the substance abuse ward, or to establish wards of this type in other institutions.

c) The Ministry of Justice to take action, particularly in the form of training of judges, in order to shorten the stay of patients with the imposed court measure of compulsory treatment in accordance with the patient's recovery, which would allow the treatment of a larger number of people in current accommodation capacities.

2.10.2 *Council for the protection of patients' rights*

Patients placed in the institution have the right to file complaints to the Council for the protection of the rights of the mentally ill regarding treatment, diagnosis, discharge from the institution and violations of their rights, freedom and dignity. In practice, this right is implemented by patients submitting their complaints in writing via mailboxes for complaints located in each ward. Interviewed patients confirmed that they are aware of the possibility to insert complaints in the mailboxes set up in each ward for this purpose, while the majority of interviewed patients stated that it was the nursing staff that informed them about this possibility. Hospital Director informed the monitors that the Council's President empties the mailboxes, who is a psychologist engaged at the Hospital twice a week, after which the received complaints are reviewed. According to the Director, the Council meets four times a year (every three months), and if necessary emergency meeting are organized.

The CPT noted that the Council has been established by the Board of Directors of the Hospital, at the Director's proposal, and recommended that the authorities take steps that this body be truly independent.[96] In the Government's response from 2009 it was stated that the Council was composed of three representatives of the institution and two representatives from other institutions, that it was appointed by the Board of Directors and that the process of

[95] Information amended based on discussions on the report held in Podgorica on 30 November 2011.

[96] CPT report on the 2008 visit to Montenegro, p. 107.

amending the Statute of the Special Hospital, based on which the Council would mostly consist of the members from other institutions, was under way.[97]

Current situation proves that changes have been made to the composition of the Council, with the majority of its members being from other institutions,[98] however, the manner of their appointment remained the same. All members of the Council are proposed by the Hospital Director and then appointed by the Board of Directors. The above method of appointing members of the Council still does not guarantee their impartiality.

Furthermore, in its response of March 2010, the Government announced the establishment of the Commission for Mental Health at the national level, which would be established by the Ministry of Health in order to perform additional external control of the work of the Hospital from the aspect of protection of Hospital patients' rights.[99] The Commission has been formed in the meantime and in August 2011 it developed the Action Plan for the Promotion of Mental Health in Montenegro for the period 2011 - 2014.[100]

Law on Patients' Rights provides for the right to file a complaint, under which this right is granted to a patient who was denied the right to healthcare or any other right prescribed by this law, or a patient who is not satisfied with the provided healthcare service or procedure by a healthcare worker or an institution. The complaint is submitted to the healthcare facility director or the Protector of patients' rights, appointed by the director (Art. 31). According to the Director, Protector of patients' rights in the Hospital was appointed in December 2010.

Hospital also has the Council of Patients, composed of the representatives of patients who regularly meet with the Director and present their remarks and other opinions.

2.10.3 *Recommendations*

a) The Ministry of Health and Hospital Director to amend the Hospital Statute in order to ensure the impartiality of the Council for the Protection of the Rights of the Mentally Ill (as regards the manner of proposing and appointing its members).

b) The Ministry of Health and Hospital Director to amend the Statute in order to provide that the Council members include representatives of non-governmental organizations dealing with human rights, in order to ensure its impartiality.

c) The Ministry of Health to establish the Committee for Mental Health.
(Deleted based on the discussion held on 30 November 2011)

[97] Response of the Government of Montenegro to the CPT's report on the 2008 visit to Montenegro, p. 107.

[98] Art. 23, para 3 of the Statute stipulates: "The Council for the protection of the mentally ill has five members: two representatives of the institution and three experts in the fields of psychiatry and neuropsychiatry, social protection, justice, human rights and freedom or other related fields".

[99] Response of the Government of Montenegro to the CPT's report on the 2008 visit to Montenegro, p. 108.

[100] Information amended based on discussions on the report held in Podgorica on 30 November 2011.

3. Psychiatric unit at the General hospital in Nikšić

3.1 *General*

Psychiatric unit within the General Hospital in Nikšić (the Unit) can be considered as the institution of closed type. Although the windows are not barred, the Unit is locked and patients do not have the possibility to discontinue their treatment at any time and leave the institution.

Total accommodation capacity of 30 beds has been equally divided between men and women. Occupancy rate is 80%. In relation to cooperation with other institutions, the most prominent are the cooperation with the Centre for Mental Health in Nikšić and the Hospital in Dobrota.

3.2 *Staff*

Three psychiatrists at the Unit are engaged full-time, while one psychiatrist works four-hour shifts. According to Dr. Radojka Mićović, Head of the Unit, two psychiatrists will retire soon and one of them is likely to leave the workplace for personal reasons, which raises the question of further work if appropriate replacements are not timely provided.

As regards nursing staff at the Unit, head nurse works eight-hour shifts Monday to Friday. One nurse, who is an occupational therapist, is currently on maternity leave. There are eight other nurses who work in shifts: 12-hour day shift, 12-hour night shift, followed by the day off. When no one is on sick leave or vacation, there are two nurses in each shift. Otherwise, only one nurse is on duty. All nurses have secondary medical education, while head nurse at the Unit has a higher education degree (two years at the university).

Interviewed staff has not passed any form of additional training or specialization in working with the mentally ill. During the visit monitors noticed the practice where medical staff working in other units of the General hospital show bias or resistance towards patients in the psychiatric unit.

In relation to the possibility of engaging students of the secondary medical school in the Unit as part of their mandatory school practice (at least in the performance of some of the less complex tasks, such as the monitoring of patients during their stay in the fresh air and talking to them), monitors have been informed that the odds were very small, since according to the curriculum students spend only part of the total time envisaged for practice at the psychiatric unit (5 to 15 workdays).

At evenings, one doctor is on duty for the entire hospital, for emergency cases. Psychiatrists from the Unit are on standby in turns.

3.3. *Patient structure and method of hospitalization*

Psychiatric unit at the General hospital in Nikšić mainly admits patients with psychoses, personality disorders in the phase of decompensation, as well as non-psychotic disorders, mainly depression.

Patients with drug addiction are also hospitalized. If there is strong motivation, the treatment lasts up to 3 weeks. If the patient is not motivated to establish healthy behaviour patterns, discharge from the Unit takes place after the signs of abstinence crisis have been handled, which is usually after 10-12 days.

Average length of hospital stay is 2-3 weeks, which is commendable. The global trend of shortening hospitalization is respected. A number of patients are hospitalized for one day only in order to introduce antipsychotic drug Rispolept Consta into their therapy (modern medicine administered intramuscularly every 14 days). The patients hospitalized for one day do not affect the aforementioned average of 2-3 weeks.

According to the Unit Head, the problem of long-term hospitalization of "social patients" is not prominent. Cases of hospital stay of several months are rare, not to mention of years or decades, as it has been the case at the Hospital in Dobrota. The longest case was three months. However, if it happens that the current situation is such that the patient would be left without proper care after discharge, patient's stay at the Unit is extended. This is especially the case when the hospitalized patient's guardian is a guardianship authority (Social Welfare Centre). Head of the Unit finds the cooperation with the Centre to be good. She pointed out that despite the limited financial resources, they always find a solution when buying clothing and other necessities for the patients. Obligations regarding the maintenance of hygiene of these patients have been completely taken over by the hospital (personal hygiene and laundry).

The Unit is treated as "open acute ward that closes in phases".

Explanation that monitors received for the so-called phased closure is that the front door is locked occasionally, when there is anxious patient at the Unit with high chances of escaping. From conversations with patients and staff, as well as through direct observation, monitors concluded that the locked door is the policy, and unlocked the exception, so the more accurate term would be "phased opening ".

"Open-type ward", according to the adopted, but incorrect interpretation, is determined by whether the psychiatric ward has bars on the windows or not, not by whether patients can voluntarily stop treatment whenever they want, without fearing the police would forcibly return them to the hospital. We stand by the notion that some patients need to be hospitalized involuntarily, as it is our duty to protect them and the environment from the devastating consequences that can occur due to untreated psychotic state. However, such cases imply all legal safeguards against abuse that are available to involuntarily hospitalized patients.

From discussions with the staff it was concluded that they do not make a clear distinction between voluntary and involuntary placement at the Unit. This conclusion is derived from the fact that the hospitalization of patients who strongly opposed it is considered as voluntary, if the patient's family gave an approval. Also, a patient placed at the Unit can not discontinue treatment when they want to. In this case, leaving the hospital is treated as an escape and the police are informed. If assessed that a person should remain hospitalized in spite of his/her opposition, it is necessary to comply with the regulations prescribed for the procedure for involuntary hospitalization.[101] Currently, staff are not aware of the obligation to inform the

[101] "The Committee also wishes to underline that, if it is considered that a given patient, who has been voluntarily admitted and who expresses a wish to leave the hospital, still requires in-patient care, then the involuntary civil placement procedure provided by the law should be fully applied." CPT report on the 2007 visit to Latvia, p. 128.

court about involuntary hospitalization, nor do they consult lawyers employed at the hospital on this occasion. Monitors were told that patients, who were in their understanding hospitalized involuntarily, are referred to the Hospital in Dobrota, with an explanation that the Unit cannot accommodate them, i.e. ensure their safety and the safety of other patients and staff. There are 20 to 25 such cases annually. However, monitors found involuntarily placed patients at the Unit, who were unable to leave the hospital voluntarily and whose records did not include hospital's notice of involuntary placement to the court or the response of the court, or other document as the basis for involuntary placement.

Safeguards in the context of involuntary placement on hospital admission, during stay and discharge are not implemented, meaning that in practice patients are forcibly retained without legal basis (except when referred from another psychiatric institution by the court order) and without the possibility of appeal.

According to medical staff, the court is informed about the patient's status only in the case of attempted suicide.

3.4 *Treatment*

According to the Head of the Unit, each patient is psychologically tested during his/her first hospitalization at the Unit.

All patients participate in the work of the social therapy group, which has a long tradition in the Unit and has been implemented since 1992.

Occupational therapy is currently not implemented, due to the lack of space, so the only solution appears to be the construction of a support building within the hospital perimeter, because the only common room at the Unit is the dining room.

Since the Unit has central position in the hospital perimeter, monitors heard the shocking fact that the hospital management encourages patients' stay indoors, i.e. not going out in the yard, to leave a better impression on various delegations and guests entering the main and largest part of the hospital complex. It is necessary to allow daily stay in the fresh air to patients in the locked wards too (including on weekends, without exceptions). Space for walking must be covered, so that there are no excuses in terms of inclement weather for keeping the patients indoors. From discussions with the staff monitors came to the conclusion that staff are not familiar with this obligation. Monitors were informed of the examples that staff occasionally allow patients longer stay in the fresh air, but as an act of goodwill. Patients themselves have stated that occasionally they spend time outdoors, but not on a daily basis. Current Unit arrangement does not allow patients to stay outside in the case of inclement weather.

Personal medical records of patients are maintained in electronic format. Based on what the monitors have seen, records are kept neatly and updated regularly, so there are no objections to this end. The use of drug therapy is in accordance with the standards, based on the verified drug charts.

Patients noted that they were satisfied with the food, but that there were no fruit in the diet. It is only available to patients whose visitors bring fruit. It would certainly be desirable to include more fruit in the diet, especially for those patients whose relatives do not bring it.

It is commendable that the House Rules are hung up on the door to each room, providing thus patients with a clear understanding of their responsibilities and functioning during the stay at the Unit.

3.5 *Registers*

Monitors inspected four registers in the nursing staff clinic:

1) Therapy book. Doctors at the Unit enter the so-called therapy on demand into therapy charts very rarely, and, therefore, such therapy is rarely administered. There were three entries for the past few months – *Trazem* as needed (*Trazem* is a hypnotic, sleep inducing drug, administered in patients with insomnia, which is a common phenomenon accompanying mental disorders, and the possibility for its abuse in this context is low).

2) Duty book. At the end of their shift, nurses register all that has happened during their working hours, so that the next shift has an insight into the developments at the Unit during the previous shift.

3) Follow-up book. It is mainly kept for patients at risk for suicide. On a doctor's order, shift nurse is required to visit the patient at regular intervals and enter in the book what the patient did at that moment. Currently one person is being followed, a girl suffering from MS. It is commendable that there is awareness of suicide prevention measures at the Unit.

4) Reminder book. All pre-scheduled examinations of patients outside the Unit are entered in advance, in order to timely organize patients' transport.

Monitors were informed that the measure of physical restraint of patients is not implemented. If this measure is applied the future, it would be necessary to introduce the physical restraint record book and provide a separate room for its implementation, out of the sight of other patients.[102]

Unlike all the other wards at the hospital, psychiatry unit has no doorman at the entrance. Nursing staff complained about the problem of working in night shifts, when substance addicts come banging at the Unit door, asking for therapy. Staff believe that engaging a doorman would lessen this problem.

3.6 *Protection of patients*

At the Unit's exit there are instructions on how to address the Protector of patients' rights, that each health institution was required to establish under the Law on Patients' Rights.[103] However, it was noted that the method of filing a complaint is not appropriate for patients of this Unit, as it implies that the complaint be submitted in writing and in triplicate. It is unrealistic to expect that patients placed at the Unit can comply with such a request.

[102] Sentence specified on 9 December 2011.

[103] *Sl. list CG*, 40/2010.

Also, the Law on Patients' Rights provides that a complaint may be filed orally (Art. 32), which is not indicated in this notice. We believe that patients must be provided more adequate access to institutions and individuals appointed to protect their rights.

3.7 *Recommendations*

a) Immediately ensure the implementation of safeguards in the context of involuntary placement during the admission, stay and discharge from the Unit, especially in terms of court supervision.

b) Take measures to fight prejudice against the mentally ill, which is particularly detrimental in medical staff and hospital management, as it leads to discrimination against patients.

c) Provide regular stay of patients in the fresh air in the yard, as well as a covered area so that patients are able to stay outside the Unit in the event of inclement weather as well.

d) Engage a doorman at the Unit.

e) Improve nutrition of mentally ill persons placed at the Unit.

f) Ensure that patients be informed of their rights.

g) Simplify the procedure for patients to address the Protector of patients' rights.

4. *Psychiatric clinic at the Clinical Centre of Montenegro in Podgorica*

4.1 *General*

Psychiatric clinic in Podgorica (the Clinic) is an open-type psychiatric establishment. This is justified by the fact that patients who refuse necessary medical treatment are referred to the Hospital in Dobrota, which means that involuntary placement is not implemented at the Clinic. In our opinion, the Clinic indeed does not meet conditions for the placement of patients requiring involuntary hospitalization.

Each patient is free to seek discharge, which is easily implemented, provided that the patient sign that he/she wants to discontinue the treatment at own request, and that their family members are familiar with it. The clinic is located on the ground floor and rooms do not have bars on the windows. During the visit, monitors noticed that the windows in the rooms were open. Doors are locked and there is a precise schedule according to which patients go and stay out, which was confirmed by several patients.

The level of cooperation during the visit was high. Dr. Golubović, Head of the Clinic, invited all staff members present at the time of the visit to a meeting with our team of monitors, which we find very positive (staff members of different profiles were present: nurses, psychiatrists, two psychologists, a social worker). It was obvious that everyone had the opportunity to present the problems faced at work, which helped us greatly in creating an objective picture of the Clinic.

4.2 *Accommodation conditions and treatment*

Material conditions at the Clinic are very poor. There is only one male and one female toilet and a shower cabin used by both male and female patients. The rooms mostly have 7 beds. There are lockers next to beds, which are in the poor condition and can not be locked. Even if the lockers had a key, it would be difficult to achieve a sense of privacy in a dormitory with seven beds.

In our opinion, the very structure of the building does not allow for adequate separation of men and women, or of patients by the type of illness (psychosis, non-psychotic illness), and the overall atmosphere is not conducive to healing.

The common room serves as a dining room and a living room. The room used for group staff meetings, patients' visits and as an office for a doctor on night duty is also an office for a social worker and one of the psychologists. Under such working conditions, the possibility of providing intimacy to a patient during testing is questionable, as well as during the so-called social survey of a patient.

The physical restraint record book is kept in an orderly manner, while this type of restraint is rarely applied in practice. However, there is no room intended for this purpose and physical restraining of patients is carried out in their rooms, in front of other patients placed in that room, which is unacceptable. Thus, special area within the Clinic should be designated for this purpose.

During inspection of medication charts of a doctor in charge of treating psychotic patients, it was noted that the so-called therapy on demand has not been prescribed. In case of distress of a patient, doctor on duty is notified (who is located at the Clinic during the night, so there is little possibility for abuse). This differs from the situation in the psychiatric unit in Nikšić, where no psychiatrist is on duty during the night, but, in general, a doctor of internal medicine in charge of the hospital is also in charge of the psychiatric unit.

Medical records of patients are kept not in an electronic, but only in a printed format, using typing machines, which differs drastically from the ward in Nikšić.

4.3 *Recommendations*

The Ministry of Health to improve material conditions for the stay of patients and work of personnel, by completely renovating the building in order to:

a) reduce the existing number of beds in the rooms.

b) provide a room for patient care and organisation of therapeutic groups.

c) provide a room for physical restraint of patients.

d) provide computer equipment for staff.

5. *Appendix: Psychiatric patients and the media*

Director of the Special Psychiatric Hospital in Kotor informed us that the Hospital developed a 28 second short video, which promotes anti-discriminatory attitudes toward people with mental illnesses. The video was made in 2010 on 10 October, World Mental Health Day, and submitted to all TV stations with a plea to broadcast it on that day. However, only one commercial TV station (Atlas TV) accepted to broadcast the video. The official explanation that RTCG, public service, sent to the Hospital, according to the Director, was the absence of RTCG Executive Director, without whom they could not decide on the broadcast.

Hospital Director pointed to an unethical media treatment of the mentally ill, and particularly emphasized bad experience with daily newspaper *Dan*. Namely, *Dan* published an article "From Dobrota back to work"[104], which revealed the identity of a doctor who returned to work after psychiatric hospitalization in Dobrota. Such texts encourage discrimination against psychiatric patients. On this occasion Director of the Hospital addressed the Self-regulatory Journalistic Body, as well as the Ombudsman, but did not receive any answer. After a patient is discharged, the Hospital always sends a notification to the competent Centre for Social Welfare, or Centre for Mental Health, preventing thus possible incidents, unlike the mentioned media reporting, which only deepens discrimination and may seriously endanger the health of treated people. The LPRMI stipulates that no one may qualify a person as mentally ill or otherwise indicate his/her mental disorder, unless for the purpose of taking measures to protect these persons (Art. 3). The Media Law prohibits the publication of information and opinions that incite discrimination (Art. 23), while the Code of Journalists of Montenegro states that journalistic research should be conducted with due sympathy and discretion when people with physical and mental impairments are concerned (guidelines for principle 6).[105]

In August 2011 the print and electronic media reported about a man, pointing out that this person was suspected of being mentally ill, who locked himself in his apartment in a multi story building and refused to provide access to damaged water pipes in his apartment. Acting in accordance with the decision of the Basic Court in Podgorica, bailiffs entered the apartment. Interior of the apartment was recorded and broadcasted by *Vijesti TV* in the central news program, while noting that the man probably had mental health problems. Daily newspaper *Pobjeda* reported that after the apartment was broken into, they were told: "Come in, you must see this". As this case concerned a problem with water supply in one part of the building, which was quickly addressed, there was no legitimate public interest to be informed about the interior of the apartment of a man suspected of being mentally ill, and particularly about his name and address.

[104] „From Dobrota back to work“, *Dan*, 1 March 2011.

[105] The Code available at: http://www.nstcg.org/indexst.php?page=03.

6. *Cases of poor treatment of mentally ill persons*

6.1 *The case of Ferid Sijarić*

On 7 October 2010 in Podgorica Ferid Sijarić[106] attacked and injured an eleven-year-old girl with a knife on her way to school. Although the neighbours claimed Sijarić was mentally ill, after his arrest he was taken to Remand Prison in Spuž, where he was bedridden for 18 days without previous specialist medical examination.[107] Monitors visited Sijarić at the Forensic psychiatric unit (FPU) in Dobrota Hospital. According to staff, Sijarić's mental state has made significant progress after his placement at the Hospital, and he indeed seemed well. While at the FPU, where the rooms have bars, he was not bedridden and was allowed to walk. Monitors met him in the hallway.

6.2 *The case of Milan Zeković*

After the High Court in Podgorica found in its ruling that Milan Zeković, mentally ill person suffering from paranoid schizophrenia, had committed five murders, based on the decision of the Court which become final in 2008 Zeković was supposed to be referred to a psychiatric institution for the enforcement of the measure of compulsory treatment and confinement. However, as the Hospital in Kotor responded that it does not meet the conditions for his placement, the public was first informed that Zeković will be referred to Serbia[108], and then that he is placed at the Special Psychiatric Hospital.[109] However, to this day, Milan Zeković has been staying at the Institution for Execution of Criminal Sanctions (ZIKS) in Podgorica, in a special room in Remand Prison. After learning that Zeković was still in ZIKS, on 7 November monitors submitted a letter to the Minister of Justice, ZIKS Director, Ombudsman and Ministry of Justice. By 15 November 2011, we received a response from ZIKS, stating that on 30 March 2011 a procedure has been initiated to extradite Zeković to Serbia, because of the inability to provide him with proper care in Montenegro.[110] We note that to date, despite the CPT recommendation,[111] Zeković has not been provided adequate accommodation in a psychiatric institution.

[106] Identity of the mentally ill person was made public on several occasions.

[107] Human Rights Action learned about the case of Ferid Sijarić from the newspapers ("Ferid Sijarić, charged with assault on a police officer and a girl, heard in court", *Vijesti*, 9 October 2010; "Neighbour stabbed a little girl", *Novosti*, 8 October 2010; "Person suspected of assaulting an eleven-year-old girl arrested", *Vijesti*, 7 October 2010). After addressing the Institution for Execution of Criminal Sanctions on 13 January 2011, HRA received a response from ZIKS Director, stating that Ferid Sijarić was admitted to ZIKS on 8 December 2010, when he was examined by the prison doctor Miraš Tomić, after which he was bedridden. On 11 October 2010 he was re-examined by the prison doctor, who suggested an examination by psychiatrist Alma Radovanović. Psychiatric examination was performed only 26 October 2010, which means that obviously mentally ill Ferid Sijarić had been bedridden for 18 days without a psychiatric examination.

[108] „Zeković referred to Serbia", *Dan*, 6 October 2010.

[109] "Killer was preparing hit list", *Dan*, 1 September 2011.

[110] Response of the State Administration for the Execution of Penal Sanctions (ZIKS) no. Z-KD-br. 361/10/11 of 11 November 2011, available in the Human Rights Action archives.

[111] CPT report on the 2008 visit to Montenegro, p. 68.

6.3 *Recommendations*

a) The Ministry of Justice, Police Directorate and courts to ensure that in each case of suspected mental condition of the perpetrator of a criminal or misdemeanour offence, that person be examined by a psychiatrist and/or referred to expert evaluation in an appropriate psychiatric institution.

b) The Ministry of Justice and Ministry of Health to urgently provide appropriate placement in a psychiatric institution for mentally ill person Milan Zeković.

7. Conclusions in relation to the monitored institutions

a) Patient's living conditions

It would be necessary to improve accommodation in all three monitored institutions and make them suitable for therapeutic environment. In accordance with the CPT recommendation, it is necessary to personalize patients' living space and enable them to keep their belongings locked. As regards the Hospital, the existing capacities are insufficient and particularly burdened by one-third of patients whose mental state does not require their placement in the Hospital ("social patients"). This problem should be urgently addressed by placing those patients in a social care institution. Regarding the Ward in Nikšić, it is necessary to ensure patients' stay in fresh air on daily basis and in that sense combat prejudice of other medical staff and administration of the General Hospital towards the mentally ill. In order to allow patients' stay in fresh air even in case of bad weather, all institutions should find adequate space solutions. Quality of patients' nutrition can be significantly improved with respect to all three institutions. As regards the Clinic in Podgorica, the material living conditions are particularly bad and require urgent improvement. The Clinic does not have the possibility of involuntary hospitalization, which means that in practice all patients in need of involuntary hospitalization are sent to the Hospital. In this sense it is necessary to provide material conditions for involuntary hospitalization at the Clinic in order to reduce the pressure on the Hospital and provide patients whose mental condition requires involuntary hospitalization the opportunity to be treated closer to their place of residence (especially important for patients from the northern part of Montenegro).

b) Implementation of the measure of compulsory psychiatric treatment and confinement in a medical institution

There is a problem of violation of international standards regarding implementation of the measure of compulsory psychiatric treatment and confinement in a medical institution for up to two years by misdemeanour authorities - which are not courts and do not have the capacity of independence, and are appointed by the executive branch. Nonetheless, misdemeanour "Monitoring Respect for Human Rights in Closed Institutions in Montenegro" This Project is supported by the EU through the Delegation of the European Union in Montenegro authorities decide on involuntary placement in an institution in a summary procedure based on expert opinion, which in practice comes to a conversation between a court expert and offender.

c) Compulsory hospitalization

Guarantees in the context of involuntary placement of patients in the psychiatric institutions are not adequately implemented. Regarding the Hospital, the periods during which a competent court forwards its decision on involuntary hospitalization are upsettingly long, invalidating thus the urgency procedure, i.e. an effective right to appeal. Furthermore, it is necessary to ensure the guarantee of mandatory presence of a person in a court proceedings regarding involuntary hospitalization, except in cases where the court determines that the person is unable to understand the purpose and importance of the procedure by obtaining alternative opinion of an expert who is not employed at the facility where the person is involuntarily placed, etc. Regarding the Ward in Nikšić, no guarantees are enforced, which means that patients are hospitalized involuntarily and that the court is never informed about

involuntary hospitalization, so it does not decide on it. The Clinic in Podgorica does not perform involuntary hospitalization.

d) Informing the patients, their family members or caretakers on their rights

Patients placed in psychiatric institutions are generally uninformed about their rights. This problem is particularly pronounced in patients who have been forcibly hospitalized. In this sense it is necessary to take measures to inform all patients, especially those who are hospitalized involuntarily and their families or their legal representatives, through e.g. appropriate brochures. If the patient is unable to understand his/her rights during the hospitalization, they surely should be informed as soon as there is improvement in their condition.

e) Abuse

Although complaints indicating abuse in monitored institutions have not been received, in this context it is particularly necessary to hire more nurses in the Hospital in Kotor, in order to provide patients with appropriate care. By reducing pressure at work the stuff is exposed to, the risk of burnout syndrome at work, which may lead to inappropriate reactions to patients, would be reduced.

f) Restraint registers

It is advisable to introduce a central restraint register in the Hospital in Kotor, in order to provide insight into implementation of restraint measures at the level of the whole institution. In addition to implemented measures of physical restraint of freedom of movement, the central registry would also include all cases of implementation of so-called chemical restraint (rapid calming of patients using medications from ampoules). "Monitoring Respect for Human Rights in Closed Institutions in Montenegro" This Project is supported by the EU through the Delegation of the European Union in Montenegro

g) Independence of multidisciplinary bodies and control of implementation of measures of compulsory psychiatric treatment and confinement in a medical institution

The current method of appointment of multi-disciplinary bodies of the Council for Human Rights Protection of Patients and the Ethics Committee does not provide for their independence, given that Director of the Hospital proposes the appointment of members of both bodies. Also, the Ministry of Justice has not been supervising the implementation of measures of compulsory psychiatric treatment and confinement in a medical institution, which in practice means that the work of the Hospital is not subject to regular external supervision mechanism.

h) Occupational therapy

Implementation of occupational therapy in the monitored facilities could be improved. Its improvement is possible by increasing spatial capacity or redistributing existing facilities and hiring additional professional staff.

i) Treatment of female users of psychoactive substances

There are no facilities in Montenegro for treatment of female substance users. Furthermore, the institution for accommodation, rehabilitation and resocialisation of users of psychoactive substances is available only to men. Such discriminatory treatment should be corrected and women should be offered the same opportunities and treatment as men.

j) Relationship of the public, especially the media towards the mentally ill

Misconception that mentally ill persons generally can not be cured, that they pose a threat to the society and should be isolated and prevented from working or otherwise participating in the community life is widespread in Montenegrin public. The media should spread correct information and combat prejudice and false stereotypes. After all, they are bound to do so in accordance with the valid legislation, providing for the obligation to respect rights to privacy and prohibition of discrimination against the mentally ill by not disclosing their identity.