

28 Annex - Consumer and health protection

213. LAW ON PROTECTION AND EXERCISE OF THE RIGHTS OF THE MENTALLY ILL

LAW ON PROTECTION AND EXERCISE OF THE RIGHTS OF THE MENTALLY ILL

I BASIC PROVISIONS

Article 1

This law defines the way of providing protection and exercise of the rights of the mentally ill, organization and implementation of the protection as well as creating conditions for applying the measures of protection of the mentally ill against discrimination.

Article 2

Exercise of the rights and freedoms is provided to the persons suffering from mental illnesses in accordance with international papers and general rules of the international law.

Article 3

Discrimination against the mentally ill is prohibited.

Discrimination, in terms of paragraph 1 of this Article, shall not imply special measures that are undertaken in order to protect health or safety of the mentally ill, that is to provide improvement of their health.

No one should regard a person as a mentally ill or point in any other way to his/her mental disorder, except if the purpose of it is to undertake the measures of protection of this person pursuant to the Law.

Article 4

No person may be forced to be medically examined with the aim of determining if there is a mental disorder, except in the cases and according to the procedure prescribed by the Law.

Persons with mental illness have the right to:

- 1) Accessible and efficient mental healthcare and accessible basic psychotropic drugs, under equal conditions;
- 2) Health and social care that respond to the needs and treatment under equal conditions and in line with equal standards as all other persons that are being treated in the health care institutions;
- 3) Protection against economic, sexual and other forms of exploitation, physical or other abuse, every form of maltreatment, humiliation and any other form of violating the personal dignity and creating unpleasant, aggressive, humiliating or insulted state;
- 4) Protection of personal dignity, humane treatment and respect of his/her personality and privacy.

Article 5

Exercise of the rights of the mentally ill pursuant to this Law may be limited only in the cases prescribed by the Law and if it is necessary for protecting health or safety of such or other persons.

Psychiatrists and other healthcare workers are obliged to carry out treatments of the mentally ill in a way that the patients' freedoms and rights are limited as little as possible taking care not to cause physical or psychic uneasiness that insult their personality and human dignity.

Article 6

In order to exercise and secure the rights of the mentally ill prescribed by this Law, the Government of Montenegro defined the Strategy for Mental Health Improvement in Montenegro (hereinafter referred to as: the Strategy).

Plans for improvement and maintenance of mental health make an integral part of the Strategy.

Article 7

Expressions used in this Law have the following meanings:

- 1) Mental healthcare implies primary prevention, identifying and diagnosing the mental state of a person, as well as treatment, guardianship and rehabilitation due to mental disorder and behavioural disorder or suspicion that those exist;
- 2) Mentally ill person is a person who suffers from mental disorders, a person with developmental difficulties, a person addicted to psychoactive substances (alcoholics and drug addicts), or a person with other behavioural disorders;
- 3) Person with a severe mental illness is a person who is not capable of grasping the significance of his/her actions or controlling his/her will, or has those abilities reduced to such an extent that he/she needs psychiatric aid;
- 4) Mental disorders and behavioural disorders are clinically important conditions that are characterized by changes in thinking, mood or behaviour, accompanied by personal suffering and/or damaged functioning (permanent or temporary mental illness or mental disorder or slow mental development or other mental disorders and behavioural disorders);
- 5) Discrimination against the mentally ill implies every legal or physical, direct or indirect distinction, privileging, exclusion or limitation on the basis of mental disorder, and as a result recognition, use or exercise of the human rights and freedoms is made harder or denied for the mentally ill;
- 6) Juvenile is a person under 18 and a person who by the decision on extension of parental right after turning 18 is equalized with the juvenile;
- 7) Representative is a person who represents the interests of a mentally ill person and implies a legal representative, temporary representative or other party, in accordance with the Law;
- 8) Legal guardian is a parent, guardian or adoptive parent, who meet the requirements pursuant to the Law;
- 9) Psychiatrist is a doctor of medicine specialized in psychiatry or neuropsychiatry;
- 10) Mental healthcare worker is a doctor of medicine, medical nurse and medical technician, trained in the mental healthcare;
- 11) Mental health associate is a clinical psychologist, special education teacher, sociologist, social worker, or other person trained in mental healthcare;
- 12) Psychiatric institution is a medical institution, which provides specialized-consultation and hospital treatment in the field of psychiatry;
- 13) Mental health centre is a segment of the primary healthcare, which provides mental healthcare services, pursuant to this Law;
- 14) Community is a family or other form of living together, social or other institution, place of residence or other close surroundings where the mentally ill person lives;
- 15) Medical procedure is a particular form of treatment, diagnostic procedure, admission and placement in the psychiatric institution for diagnostic processing and treatment, inclusion in educational, socio-therapeutic and rehabilitation programmes which are carried out in the psychiatric institution, conduct of surveys in the field of mental healthcare and improvement;

- 16) Consent implies a willingly expressed agreement by a mentally ill person, without threats, blackmailing or any other form of force imposed on him/her, for carrying out a particular medical procedure;
- 17) Voluntary placement implies a placement of a mentally ill person in the psychiatric institution with his/her consent;
- 18) Forced placement implies a placement of the person with a severe mental illness or a mentally ill person who committed a crime or violation in the psychiatric institution, without his/her consent;
- 19) Forced keeping is a placement of the mentally ill person in the psychiatric institution from the moment of passing the decision by the psychiatrist on keeping that person without his/her consent until the competent court makes decision on forced placement.

II EXERCISE OF THE PROTECTION OF THE MENTALLY ILL

Article 8

Whether a person suffers from a mental disorder and behavioural disorder is determined in compliance with the internationally recognized standards.

Mentally ill person has the right to be treated in the least restrictive environment and with the least restrictive, imposing and forceful methods.

Treatment and care of the mentally ill person must be based upon individually set plan, which is introduced to this person and on which his/her opinion is listened to.

In the process of setting up the plan referred to in paragraph 3 of this Article, it is necessary to include members of the family or a legal guardian of the mentally ill person.

Article 9

Mental healthcare is carried out in compliance with applicable ethical principles, pursuant to this Law.

Treatment of the mentally ill person has to be aimed at maintenance and strengthening of personal integrity.

Article 10

Juvenile mentally ill persons enjoy special care pursuant to this Law.

The person referred to in paragraph 1 of this Article may be assigned a guardian who is not a member of his/her family if that is necessary for protection of his/her rights, in accordance with the Law.

Article 11

The guardian of the mentally ill person, whose ability to work is to be taken away, may not be a representative of the psychiatric institution, of the mental health centre respectively, which participated in the process of taking away the ability to work, nor members of the family of the mentally ill person, except in the cases when the court, guardianship authority respectively establishes that there is no conflict of interest between them.

The guardian is obliged to take special care of the health status of the mentally ill person and exercise of his/her rights, pursuant to this Law.

The court, the competent guardianship authority respectively, is obliged to, in the process of taking away the ability to work and after the decision on taking away the ability to work has been made, take the measures for protection of the rights and interests of this person, pursuant to the Law.

Article 12

Mentally ill person has the right to protection from unjustified application of medications, maltreatment by other patients, and by the employed in the psychiatric institution, mental health centre respectively where the patient is being treated, as well as from other actions that cause mental distress, physical or other inconvenience, pursuant to the Law.

Article 13

Mentally ill person, his/her legal guardian respectively, has the right to choose a doctor who will treat him/her in the mental health centre, in accordance with the Law.

The person referred to in paragraph 1 of this Article has the right to community treatment and care, except if that is objectively not possible.

Mentally ill person has the right to be treated in the mental health centre, the nearest psychiatric institution respectively to his/her place of residence or place of residence of his/her relatives or friends, and has the right to go back to a community as soon as it is determined that his/her state of health permits that.

Article 14

Mentally ill person who can understand the nature, consequences and danger of proposed medical procedure and who, based on that, may make a decision and express his/her will, may be examined or be subject to the medical procedure only with his/her prior written consent.

Ability of a person to give consent is determined by the doctor of medicine trained in mental healthcare or a psychiatrist at the time of making the decision and for that purpose he issues a written confirmation, which is an integral part of medical documentation.

Mentally ill person may request that the process of consenting is attended by one or more persons he/she confides in.

Article 15

Mentally ill person who is not able to give a consent, because he/she cannot understand the nature, consequences and danger of proposed medical procedure, or cannot make a decision or express his/her free will, may be subject only to the medical procedure which is in his/her best interest.

Mentally ill adult who is not able to give a consent, may be subject to an examination or other medical procedure 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.

Juvenile mentally ill person may be subject to an examination or other medical procedure 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.

In the case referred to in paragraph 3 of this Article, the opinion of a juvenile mentally ill person is also taken into account in accordance with his age and maturity.

In the case referred to in paragraphs 2 and 3 of this Article, psychiatrist is obliged to give the legal guardian, the ethical committee respectively, the information that he is obliged to give the mentally ill person in the case when that person gives a consent.

Article 16

The consent referred to in Article 14 paragraph 1 and Article 15 paragraphs 2 and 3 of this Law may be withdrawn at any moment in a written form.

The person who withdraws the consent must be warned of the consequences of termination of a particular medical procedure.

Article 17

Exception to Articles 14, 15 and 16 of this Law, the consent is not obligatory, if getting it would directly endanger the life of a mentally ill person or if that would pose a real and direct threat to his/her health.

Medical procedure may be applied without consent only during the time the circumstances referred to in paragraph 1 of this Article persist.

Mental health care worker, a psychiatrist respectively, who manages the work process or other authorized person (hereinafter referred to as: the authorized person) of the mental health centre, the psychiatric institution respectively, decides on necessity and urgency of particular medical procedure and informs, without delay, the legal guardian of the mentally ill person thereof, if such legal guardian exists.

Mentally ill person, who was forcefully kept, placed in the psychiatric institution respectively, may be subject to the examination or other medical procedure with a purpose of treating such patient, without his/her consent, only if without that procedure severe damages to the health of such person would occur.

In the cases referred to in paragraphs 1 and 4 of this Article and Article 15 paragraphs 2 and 3 of this Law, it must be explained to the mentally ill person, to the extent possible, what the consequences of the treatment are and such person has to be involved in the process of planning his/her treatment.

III THE RIGHTS OF THE MENTALLY ILL PERSONS AND PERSONS WHO CARRY OUT THEIR PROTECTION AND TREATMENT

Article 18

Mentally ill person who is placed in the psychiatric institution has the right to:

- 1) 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;
- 2) Be acquainted with the reasons and purpose of his/her placement, as well as with the purpose, nature, consequences, benefits and danger of the proposed type of treatment and other possible types of treatment;
- 3) Take an active part in planning and carrying out of his/her treatment, recovery and re-socialization;
- 4) Receive an education and training for work according to the general and special programme for the mentally ill persons with developmental difficulties and with learning disabilities;
- 5) Submit an objection to the authorized person in the psychiatric institution as well as to the independent multidisciplinary body referring to the mode of treatment, diagnosis, discharge from the institution, and violation of his/her rights and freedoms;

- 6) Without surveillance and constraints, submit requests and declare objections, complaints and other legal remedies to the competent judicial and other state authorities;
- 7) To have consultations, at his/her expense, in private with the doctor of medicine or lawyer, at his/her choice;
- 8) Socialize with other persons, engage in recreational activities and participate in working-therapeutic activities in accordance with his/her abilities, and receive visitors;
- 9) At his/her expense, send and receive, with full respect of privacy, without surveillance and constraints, mail, parcels, newspapers, and make phone calls;
- 10) Listen to radio and watch TV programmes;
- 11) Keep with himself/herself things for personal use;
- 12) Be accommodated and sleep in a room separated from a person of the opposite sex;
- 13) Express his/her religious convictions, within the possibilities provided by the psychiatric institution;
- 14) Ask for a transfer to another psychiatric institution;
- 15) Be discharged from a psychiatric institution with a safe support for acceptance in a community.

Information referred to in paragraph 1 indents 1 and 2 of this Article is entered into medical documentation of the mentally ill person.

The rights referred to in paragraph 1 indents 1, 2, 3, 5, 6, 7 and 14 of this Article may be exercised, on behalf of the mentally ill person, by members of his/her family and a representative.

The right referred to in paragraph 1 indents 8, 9, 10 and 11 of this Article may be limited when there is a justified suspicion that the mentally ill person intends to get weapons, narcotics or psychoactive substances, make plans for escape, plan committing a crime or when it is required because of the health condition of the mentally ill person.

Article 19

Treatment of the mentally ill person, when the need for such a treatment is established in compliance with the Law, is carried out in a psychiatric institution which is located in his/her place of residence or, if that person does not have a place of residence, in a place where he/she was found.

In the case that there is no psychiatric institution in the place referred to in paragraph 1 of this Article, treatment shall be carried out in the nearest psychiatric institution selected in compliance with the Law on Healthcare.

Treatment of the mentally ill person may be carried out in another psychiatric institution, with a written consent of that person, of the legal guardian of the person respectively, whose work ability was taken away or juvenile mentally ill person, pursuant to the provisions of Article 14 par 1 and Article 15 paragraphs 2 and 3 of this Law.

Article 20

Treatment of the juvenile mentally ill persons in a psychiatric institution is carried out separately from the treatment of adult mentally ill persons.

Article 21

Electroconvulsive or hormonal treatment may be applied only under the following conditions:

- 1) Based on the written consent of the mentally ill person or if such person is not able to give a consent, based on the written consent of his/her legal guardian;

- 2) With the positive opinion of at least two psychiatrists on the necessity and consequences of the application of such a medical procedure;
- 3) If all other treatment methods have been previously exhausted;
- 4) If the application of the mentioned treatment method is necessary for treatment of the mentally ill person, and
- 5) If it is not expected that application of the mentioned methods could have adverse side effects.

Electroconvulsive treatment may be applied to a person with a severe mental illness who was forcefully kept or forcefully placed in a psychiatric institution without a consent of such person or his/her legal guardian, only with the approval of the ethical committee of the psychiatric institution and under the conditions established in paragraph 1 indents 2, 3, 4 and 5 of this Article.

Application of the treatment referred to in par. 1 and 2 of this Article is entered into the medical documentation together with a written consent of the mentally ill person or his/her legal guardian, opinion of at least two psychiatrists and approval of the ethical committee of the psychiatric institution.

It is prohibited to apply electroconvulsive or hormonal treatment to juvenile mentally ill persons.

Article 22

It is prohibited to apply sterilization of the mentally ill persons.

Article 23

Psychosurgery and other irreversible methods may be applied to mentally ill persons under the conditions referred to in Article 21 paragraph 1 of this Law.

The methods referred to in paragraph 1 of this Article may also be applied without consent of the legal guardian of the mentally ill person, only with approval of the ethical committee of the psychiatric institution.

Psychiatrist is obliged to inform the independent multidisciplinary body on application of the methods in terms of paragraph 2 of this Article.

It is prohibited to use psychosurgery and other irreversible methods to the juvenile mentally ill persons.

Article 24

Biomedical research on the mentally ill persons may be carried out if:

- 1) There is no other appropriate research method of the people;
- 2) Danger related to research on the mentally ill persons is not incongruous with the benefits from the research;
- 3) The research project was approved by the public administration body competent for health-related issues (hereinafter referred to as: the competent body of the public administration), after the impartial reconsideration of scientific importance, significance of the goal and ethics of the research itself;
- 4) The persons who take part in the research are informed on their rights and legal protection they enjoy;
- 5) The persons who take part in the research gave a written consent, which may be withdrawn at any moment.

The biomedical research on the mentally ill persons, who are not able to give a consent, may be carried out under the conditions referred to in paragraph 1 indents 1 to 4 of this Article and Article 15 par. 2 of this Law and if:

- 1) It is expected that the results of the research would be of real and direct use for the health of such person, and
- 2) Ethical committee of the psychiatric institution gives approval for each respective case if the aim of the research is to contribute to better understanding of particular illness or condition, benefits for the person who takes part in the research or persons of the same age who suffer from the same disorders if the research represents the least possible danger and burden to such person.

The biomedical research referred to in paragraph 2 of this Article may be carried out only if there is no possibility to carry out this research on the mentally ill persons who can give their written consent themselves.

It is prohibited to carry out biomedical research on the juvenile mentally ill persons.

Article 25

Psychiatrists, mental healthcare workers, mental health associates and other persons who provide services in mental healthcare are obliged to keep, as a professional secret, everything they find out or notice when performing those activities.

The persons referred to in paragraph 1 of this Article may disclose what they find out or notice during the examination of the mentally ill person, only with the approval of such person or his/her representative, in accordance with the provisions of Article 14 of this Law.

As an exception, persons referred to in paragraph 1 of this Article may also, without the approval of the mentally ill person, but with the approval of his/her representative, disclose what they find out during the treatment and care of such person:

- 1) To the other psychiatrist or doctor of medicine if that is necessary for providing medical care to such person;
- 2) To the official staff in the Centre for Social Work and governmental agency when it is necessary to carry out the procedure in relation to the mentally ill person, based on and within its own competencies, only when the mentally ill person is not able to give a written consent, and persons referred to in paragraph 1 of this Article are convinced that the mentally ill person would not be against disclosing such information;
- 3) If it is necessary to do that in the public interest or in the interest of another person, pursuant to the Law on Healthcare.

In the case referred to in par. 3 of this Article it is allowed to disclose only the information that is needed for reaching the purpose due to which it was allowed to disclose them and it must not be used for other purposes.

Clinical and other materials used at lectures or in scientific publications, must conceal identity of the mentally ill person.

Article 26

On all undertaken medical procedures in the treatment of a mentally ill person there is a medical documentation, in accordance to the Law.

Article 27

Medical documentation on treatment of a mentally ill person is available to the court for the purpose of proceedings.

The medical documentation referred to in paragraph 1 of this Article may contain only the data necessary for reaching the purpose due to which submission of medical documentation is requested.

Statements of the mentally ill person, which are in the medical documentation, may not be used as evidence in the court proceedings.

The data from the medical documentation that are necessary for the exercise of the rights of the mentally ill person, may be given for the official purposes at the request of the competent bodies, only with the approval of such person, and if such person is not capable of giving an approval, only if it justifiably suspected that the mentally ill person would not be against giving that data.

Mentally ill person has the right to have insight into his/her medical documentation, under the condition that it would not have a serious impact on worsening of his/her state of health or protection of other persons.

Article 28

Psychiatrist may approve conversation of the mentally ill person placed in a psychiatric institution with the official staff of the administration body which is responsible for internal affairs and professional workers in the Centre for Social Work, only when the state of health of the mentally ill person allows that.

Psychiatrist may not approve conversation of a person referred to in paragraph 1 of this Article with the mentally ill person who is not capable of understanding the state he/she is in, not the consequences of such a conversation.

IV PLACEMENT OF THE MENTALLY ILL PERSONS IN A PSYCHIATRIC INSTITUTION

Article 29

Admission to a psychiatric institution comprises the procedure from arrival or taking the person to a psychiatric institution for examination and treatment, until the decision on his/her voluntary placement or forced keeping in a psychiatric institution has been made.

1. Voluntary placement

Article 30

Mentally ill person who can understand the purpose and consequences of the placement in a psychiatric institution and who is capable of making a decision based on that, may be, with his/her written consent, placed in a psychiatric institution.

The consent is given before the authorized healthcare worker and a psychiatrist on duty, who are obliged to, at the time when the consent is being given, determine the capability of the mentally ill person of giving a consent and to issue a written confirmation, which is added to the medical documentation.

The person referred to in paragraph 1 of this Article will be placed in a psychiatric institution if the authorized person and a psychiatrist who receives the mentally ill person, respectively, by separate and independent examinations, determine that such person suffers from a mental illness and that adequate therapeutic results cannot be achieved by treating the patient out of such an institution.

Article 31

If there is no uniform opinion of the persons referred to in Article 30 paragraph 3 of this Law about the need for placement of the person in a psychiatric institution, or if such person is the adult who is not capable of giving a consent and who does not have a legal guardian, or if such person is a

juvenile or a person with mental disorders whose work ability is taken away, a person who is not capable of giving a consent, and whose legal guardian gave a consent for placement of such person in a psychiatric institution, the decision on placement in a psychiatric institution will be made by the court which is competent for deciding on forced placement, under urgent procedure, in accordance with the Law.

In the procedure referred to in paragraph 1 of this Article, the court is, prior to making a decision on placement of the mentally ill person, obliged to get a written opinion of a psychiatrist from the list of court experts, preferably out of psychiatric institution in which the person is kept, on whether this is a mentally ill person in whose case adequate therapeutic results cannot be achieved by treating him/her out of such an institution.

When deciding on placement of a mentally ill person, the court is obliged to get an opinion referred to in paragraph 2 of this Article from the psychiatrist specialized in treating the juvenile mentally ill persons.

Mentally ill persons referred to in paragraph 1 of this Article are equalized to voluntarily placed persons in all other procedures, rights and freedoms.

2. Forced keeping and forced placement

Article 32

A person with a severe mental illness who due to a mental disorder or behavioural disorder seriously and directly endangers his/her own life, health or safety, life, health or safety of other persons respectively, may be kept and placed in a psychiatric institution without his/her consent, pursuant to the Law.

Juvenile mentally ill person or a person whose work ability is taken away may also be, for the reasons referred to in paragraph 1 of this Article, placed in a psychiatric institution without a consent of his/her legal guardian, pursuant to the Law.

A mentally ill person who committed a crime or violation, defendant with a mental disorder who is arrested temporarily, as well as a convicted person who gets mentally ill during his prison term, may be placed in a psychiatric institution, in accordance with the Law.

Article 33

When official staff of the administration body competent for internal affairs, while performing their duties, suspect that a person suffers from a mental illness, they are obliged to, without delay, take that person to the nearest health institution for an examination.

If there is a justified suspicion that a mentally ill person may endanger his/her own life or health, the life or health of other people respectively, in especially urgent cases, may be taken to a psychiatric institution by the official staff of the administration body competent for internal affairs.

Article 34

A psychiatrist who receives a mentally ill person for an examination is obliged to perform an examination immediately so as to determine if there are reasons for keeping and placing that person in a psychiatric institution referred to in Article 32 paragraphs 1 and 2 of this Law.

A psychiatrist may not keep a mentally ill person in a psychiatric institution if he determines there are no reasons for keeping and placing such person in a psychiatric institution referred to in Article 32 paragraphs 1 and 2 of this Law.

Article 35

A psychiatrist is obliged to, when he determines that the reasons referred to in Article 32 paragraphs 1 and 2 of this Law exist to make immediately a decision on forced keeping of a mentally ill person and to enter his decision with a rationale into the medical documentation.

A psychiatrist is obliged to communicate his decision referred to in paragraph 1 of this Law to the forcefully kept person 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 this Law.

Article 36

Submission of the notice of forced keeping to the competent court, as well as the procedure of forced placement in cases referred to in Article 32 paragraphs 1 and 2 of this Law, are carried out in accordance with the Law on Non-contentious Proceedings.

Notice of forced keeping with medical documentation should be submitted by the psychiatric institution within 48 hours also to the legal guardian of the forcefully kept person, competent body for social work, and the independent multidisciplinary body.

Detailed contents of the notice and documentation referred to in paragraphs 1 and 2 of this Article is regulated by the competent body of the public administration.

Article 37

The procedure referred to in Art. 35 and 36 of this Law shall be applied also in case when a mentally ill person, who is voluntarily placed in a psychiatric institution, withdraws the consent and the reasons referred to in Article 32 paragraph 1 of this Law exist.

Deadline for submission of the notice referred to in Article 36 paragraphs 1 and 2 of this Law, starts from the moment of the withdrawal of the consent of a mentally ill person.

Article 38

Discharge of a voluntarily placed mentally ill person from a psychiatric institution is carried out according to the rules that apply to discharge from other healthcare institutions.

Exceptionally, discharge from a psychiatric institution shall not be carried out in compliance with the par. 1 of this Article, in case when a voluntarily placed mentally ill person withdraws the consent and a psychiatrist determines that the reasons referred to in Article 32 par. 1 of this Law exist.

Article 39

Forcefully placed mentally ill person shall be discharged from a psychiatric institution immediately upon the end of the period of forced placement defined by the decision on forced placement made by the court.

A psychiatric institution may discharge a forcefully placed mentally ill person before the end of the period referred to in par. 1 of this Article, pursuant to the Law on Non-contentious Proceedings.

A mentally ill person – perpetrator of a crime or violation, defendant who is temporarily arrested or a convicted person, who is placed in a psychiatric institution, shall be discharged after the treatment has been finished, in accordance with the Law.

Article 40

In case when a mentally ill person should be discharged from the psychiatric institution, and such person, due to his/her mental state, financial, family-related or other problems, is not capable of taking care of himself/herself, nor has relatives or other persons who are obliged by the Law to

take care of such person, he/she shall be transferred from the psychiatric institution to the institution of social care.

The psychiatric institution is obliged to immediately inform the court that made the decision on forced placement or discharge from the psychiatric institution about the transfer referred to in paragraph 1 of this Article.

Article 41

The psychiatric institution may allow the forcefully placed persons to go out due to recovery, medical therapy or for personal reasons, except in case when the forcefully placed mentally ill persons are perpetrators of a crime or violation.

V USE OF FORCE, ISOLATION AND LIMITATIONS IN THE PROTECTION OF THE MENTALLY ILL

Article 42

Force, isolation and limitation, for the purpose of this Law, imply means for physical confinement of movement and action of a mentally ill person.

Healthcare workers may, in order to implement the measures referred to in paragraph 1 of this Article, use means in compliance with the regulations set by the competent body of the public administration.

Authorized persons of the administration body competent for internal affairs implement the measures referred to in Article 33 paragraph 2 and Article 47 of this Law, in compliance with the regulations that regulate protection of life, personal and property-related safety of the people and prevention and discovering of crimes and catching the perpetrators of such crimes.

Article 43

Force, isolation and limitation in protection of the mentally ill may be applied in a psychiatric institution solely when it is the only way to prevent such person from endangering life or health of another person or his/her own life, or destroying or damaging the property of a great value.

Force, isolation and limitation referred to in paragraph 1 of this Article are applied solely to the extent and in the way that is necessary for eliminating danger caused by the attack performed by a mentally ill person.

Force, isolation and limitation in protection of the mentally ill may be applied solely during the period that is necessary for reaching the purpose referred to in paragraph 1 of this Article.

Article 44

Decision on the use of force, isolation or limitation is made by a psychiatrist.

Expert monitoring over the implementation of the decision referred to in paragraph 1 of this Article is performed by the psychiatrist who made the decision.

If extraordinary circumstances require the decision referred to in paragraph 1 of this Article to be made urgently, in the absence of the psychiatrist the decision may be made by a doctor of medicine, nurse or a medical technician, who are obliged to inform immediately the psychiatrist thereof, who shall decide on its further application.

Article 45

In the event of isolation of a mentally ill person or tying up or another form of restraining a mentally ill person, there must be a continuous expert monitoring over the physical and mental condition of such person, which is carried out by appropriate healthcare workers.

Article 46

Mentally ill person on whom the force will be applied should be warned of that, if that is, considering the circumstances, possible.

Reasons for the use of force, way and the measure of the use, as well as the name of the person who made the decision on its use should be entered in the medical documentation.

Legal guardian of a mentally ill person and the independent multidisciplinary body must be immediately notified of the use of force.

Article 47

Authorized persons of the administration body competent for internal affairs are obliged to, at the request of a doctor of medicine, nurse or a medical technician, provide assistance to the healthcare workers in restraining the physical resistance of a person with a severe mental illness referred to in Article 32 paragraphs 1 and 2 of this Law, only while that person is resisting and until care is provided and the immediate danger for such person is eliminated, including the transfer of such person.

In case when there is a direct danger that a mentally ill person in a psychiatric institution would attack physically another person or steal, damage or destroy the property of such institution, authorized persons of the administration body competent for internal affairs are obliged to, at the request of the authorized person of the psychiatric institution, provide urgently the necessary assistance.

Authorized persons of the administration body competent for internal affairs are obliged to, on the basis of the reported missing by the psychiatric institution, find and bring back such mentally ill person to the institution.

The person who has sent the request referred to in par. 1, 2 and 3 of this Article is obliged to provide a written explanation later on and add that explanation to the medical documentation.

VI CONTROL OF THE PROTECTION AND EXERCISE OF THE RIGHTS OF THE MENTALLY ILL PERSONS

Article 48

For the purpose of performing the professional activities in the field of protection and exercise of the rights of the mentally ill, competent body of the public administration set up the Committee for Mental Health consisting of experts in the field of psychiatry and neuropsychiatry, social care, judiciary, protection of human rights and freedoms or other related fields.

The Committee referred to in paragraph 1 of this Article prepares expert opinions and gives proposals to the competent body of the public administration in the procedure of determining the measures for prevention of occurrence of mental disorders and behavioural disorders and the measures for improvement in dealing with the mentally ill persons, supervising the conditions and the way implementation of protection of the rights and treatment of the mentally ill are carried out, approving the implementation of research projects in psychiatric institutions and supervising the implementation of these as well as determining the measures for improvement of protection of the rights and treatment of the mentally ill.

By the Act on setting up the Committee for mental health the composition, number and the way of work are regulated in detail.

Article 49

For the purpose of taking care of the rights of the mentally ill, within the psychiatric institution there has been formed the independent multidisciplinary body.

The independent multidisciplinary body is appointed by the Board of Directors of the psychiatric institution consisting of the experts in the field of psychiatry and neuropsychiatry, social care, judiciary, protection of human rights and freedoms or other related fields.

Detailed composition, way of forming and way of work of the body referred to in paragraph 1 of this Article are determined by the psychiatric institution.

Article 50

Independent multidisciplinary body:

- 1) Performs monitoring of the implementation of procedures regulated by this Law and informs the competent bodies of the psychiatric institution and competent public bodies of the noticed omissions;
- 2) Performs supervision over the respect for the human rights and freedoms and for the dignity of the mentally ill;
- 3) According to their own assessment or at the proposal of the third party, it examines individual cases of forced keeping and forced placement in a psychiatric institution, in particular placement of juveniles, persons whose work ability has been taken away and other persons who are not capable of giving a consent;
- 4) Undertakes necessary activities for the purpose of checking the protection and exercise of the rights of the mentally ill regarding the objections or complaints submitted by such persons, their representatives, family members, third parties or the Centre for Social Work;
- 5) Initiates bringing the decision on discharge from the psychiatric institution
- 6) Performs other tasks in compliance with the Law.

Article 51

For the purpose of monitoring the application of ethical principles of the health profession in the field of psychiatry and giving opinions on ethical issues in this field, the Ethical Committee has been established in the psychiatric institutions at the tertiary and secondary levels, in accordance with the Law.

VII SUPERVISION

Article 52

Supervision over the enforcement of this Law, regulations and other general acts passed on the basis of this Law, as well as over the implementation of the legal measures of protection of the mentally ill is performed by the competent body of the public administration, in accordance with the Law.

VIII PENAL PROVISIONS

Article 53

A fine amounting to twenty times to three-hundred times the lowest labour cost in the Republic of Montenegro (hereinafter referred to as: Montenegro), shall be imposed on the mental health centre, a psychiatric institution respectively for a violation, if:

- 1) they examine or subject to a medical procedure a mentally ill person who can understand the nature, consequences and danger of the proposed medical procedure and based on that can make a decision and express his/her own will, without a written consent of such person (Article 14 paragraph 1);
- 2) subject to a medical procedure an adult mentally ill person who is not capable of giving a consent or a juvenile mentally ill person, without a consent from his/her legal guardian, Ethical Committee of the psychiatric institution respectively (Article 15 par. 2 and 3);
- 3) there is no medical documentation on all the undertaken medical procedures in the treatment of a mentally ill person (Article 26);
- 4) they give the data from the medical documentation which is needed for exercise of the right to healthcare, domestic and legal protection or pension for official purposes at the request of competent bodies, contrary to the provision of Article 27 paragraph 4 of this Law.

The fine amounting to five times to twenty times the lowest labour cost in Montenegro shall be imposed on the responsible person in the mental health centre, psychiatric institution respectively for committing the violation referred to in paragraph 1 of this Article.

Article 54

The fine amounting to twenty times to three-hundred times the lowest labour cost in Montenegro shall be imposed on the psychiatric institution for committing a violation, if:

- 1) it does not introduce a mentally ill person to his/her rights, or in his name, does not introduce the members of his/her family and a representative to such rights, at the time of admission or later at their request, and does not instruct them on how to exercise such rights or does not explain to them the reasons and purpose of his/her placement, as well as the nature, consequences, benefits and danger of the proposed type of treatment and other possible types of treatment (Article 18 paragraph 1 indents 1 and 2 and paragraph 3);
- 2) deprives a mentally ill person of the possibility to receive an education and work training according to the general and special program for the mentally ill with developmental difficulties and with learning disabilities or to have consultations, at his/her own expense, in private with the doctor of medicine or lawyer, at his/her choice (Article 18 paragraph 1 indents 4 and 7);
- 3) deprives a mentally ill person of the possibility to take an active part in planning and carrying out of his/her treatment, recovery and re-socialization or to submit an objection to the authorized person in the psychiatric institution as well as to the independent multidisciplinary body referring to the mode of treatment, diagnosis, discharge from the institution, and violation of his/her rights and freedoms or to ask for a transfer to another psychiatric institution or make it impossible for the members of his/her family and representative to exercise such rights in the name of the mentally ill person (Article 18 paragraph 1 indents 3, 5 and 14 and paragraph 3);
- 4) deprives a mentally ill person of the possibility to socialize with other persons, engage in recreational activities and participate in working-therapeutic activities in accordance with his/her abilities, and receive visitors or to at his/her expense, make phone calls or to listen to radio and watch TV programmes or to keep with himself/herself things for personal use, except when there is a justified suspicion that the mentally ill person intends to obtain weapons, narcotics or psychoactive substances, make plans for escape, plan committing a crime or when it is required because of the health condition of the mentally ill person (Article 18 paragraph 1 indents 8, 9, 10 and 11 and paragraph 4);
- 5) does not provide for a mentally ill person to be accommodated and sleep in a room separated from a person of the opposite sex or to be discharged from a psychiatric

institution with a safe support for acceptance in a community (Article 18 paragraph 1 indents 12 and 15);

- 6) treatment of the juvenile mentally ill persons in a psychiatric institution is not carried out separately from the treatment of adult mentally ill persons (Article 20);
- 7) electroconvulsive or hormonal treatment is applied: without a written consent of the mentally ill person or if such person is not capable of giving a consent, without a written consent of his/her legal guardian; without a positive opinion of at least two psychiatrists on the necessity and consequences of the application of such a medical procedure; if all other treatment methods have not been previously exhausted; if the application of the mentioned treatment method is not necessary for treatment of the mentally ill person and if it is expected that application of the mentioned methods could have adverse side effects (Article 21 paragraph 1);
- 8) electroconvulsive treatment is applied to a person with a severe mental illness who was forcefully kept or forcefully placed in a psychiatric institution without the approval of the Ethical Committee of the psychiatric institution; without a positive opinion of at least two psychiatrists on the necessity and consequences of the application of such a medical procedure; if all other treatment methods have not been previously exhausted; if the application of the mentioned treatment method is not necessary for treatment of the mentally ill person and if it is expected that application of the mentioned methods could have adverse side effects (Article 21 paragraph 2);
- 9) electroconvulsive or hormonal treatment is applied to a juvenile mentally ill person or psychosurgery and other irreversible methods to a juvenile mentally ill person or biomedical research to a juvenile mentally ill person (Article 21 paragraph 4, Article 23 paragraph 4 and Article 24 paragraph 4);
- 10) sterilization of the mentally ill persons is applied (Art 22);
- 11) psychosurgery and other irreversible methods are applied to mentally ill persons without a consent of the mentally ill person or if such person is not capable of giving a consent, without a consent of his/her legal guardian; without a positive opinion of at least two psychiatrists on the necessity and consequences of the application of such a medical procedure; if all other treatment methods have not been previously exhausted; if the application of the mentioned treatment method is not necessary for treatment of the mentally ill person and if it is expected that application of the mentioned methods could have adverse side effects (Article 23 paragraph 1);
- 12) psychosurgery and other irreversible methods are applied to mentally ill persons without the approval of the Ethical Committee of the psychiatric institution (Article 23 paragraph 2);
- 13) biomedical research is applied to a mentally ill person contrary to Article 24 of this Law;
- 14) the notice on forced keeping with medical documentation is not submitted within 48 hours to the legal guardian of the forcefully kept person, competent body for social work and to the independent multidisciplinary body (Article 36);
- 15) discharges a mentally ill person contrary to the provisions of Articles 38 and 39 of this Law;
- 16) it does not immediately inform the court about the transfer of a mentally ill person from the psychiatric institution to the institution of social care (Article 40 paragraph 2);
- 17) it applies force, isolation or limitations in the mental healthcare of the persons contrary to the provisions of Articles 42, 43 and 44 of this Law.

The fine amounting to five times to twenty times the amount of the lowest labour cost in Montenegro shall be imposed also on the responsible person in the psychiatric institution for the violation referred to in paragraph 1 of this Law.

Article 55

The fine amounting to five times to twenty times the lowest labour cost in Montenegro shall be imposed on the doctor of medicine trained in mental healthcare or a psychiatrist for committing a violation, if he/she does not warn a mentally ill person or his/her legal guardian of the consequences that may arise due to termination of a particular medical procedure (Article 16).

Article 56

The fine amounting to five times to twenty times the lowest labour cost in Montenegro shall be imposed on the psychiatrist or a mental healthcare worker and mental healthcare associate or other person who provides care and treatment of the mentally ill person for committing a violation, if he/she does not keep, as a professional secret, all that he/she finds out or notices during the performance of these activities in accordance with Article 25 of this Law.

Article 57

The fine amounting to five times to twenty times the lowest labour cost in Montenegro shall be imposed on the psychiatrist for committing a violation, if:

- 1) he/she does not inform the independent multidisciplinary body of the application of psychosurgery and other irreversible methods (Article 23 paragraph 3);
- 2) he/she allows the official staff of the administration body competent for internal affairs and professional workers of the Centre for Social Work to have a conversation with a mentally ill person placed in the psychiatric institution, who is not capable of understanding the state he/she is in, nor the consequences of such a conversation (Article 28 paragraph 2);
- 3) he/she does not immediately examine a mentally ill person whom he/she receives for examination, so as to determine if there are reasons for keeping and placement of such person in the psychiatric institution referred to in Article 32 par. 1 and 2 of this Law (Article 34 paragraph 1);
- 4) he/she keeps a mentally ill person in the psychiatric institution after he/she has determined there are no reasons for keeping and placement of such person in the psychiatric institution (Article 34 paragraph 2);
- 5) he/she does not make a decision on forced keeping or does not enter it into the medical documentation or does not inform the forcefully kept person of such decision in an adequate manner and does not introduce him/her to the reasons and goals of the forced keeping, as well as to his/her rights and responsibilities (Article 35).

IX TRANSITIONAL AND FINAL PROVISIONS

Article 58

Bylaws for implementation of this Law will be passed within 12 months from the day of the entering into force of this Law.

Until the bylaws referred to in paragraph 1 of this Article are passed, the acts that were applicable until the entering into force of the present Law shall be applied, if they are not contrary to this Law.

Article 59

Competent public administration body will pass the acts on the establishment of the Committee for Mental Health within 18 months from the day of the entering into force of this Law.

The acts on the establishment of independent multidisciplinary body and Ethical Committee will be passed within 18 months from the day of the entering into force of this Law.

Article 60

Psychiatric institutions and health care institutions that provide mental healthcare services will harmonize their work with the provisions of this Law within 24 months from the day of the entering into force of this Law.

Until the general acts of the institutions referred to in paragraph 1 of this Article are passed the existing acts shall be applied if they are not contrary to this Law.

Article 61

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of the Republic of Montenegro, and it shall apply from 1 January 2006.