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POSITION OF MENTALLY ILL PERSONS IN THE 19TH CENTURY SERBIA – LEGAL ASPECTS

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Short title of paper: Mentally ill in the 19th century Serbia

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Abstract

Serbia had many-century lasting tradition of healing mentally ill persons in monasteries that was not abandoned even after the fall of Serbian states under the Ottoman rule. However, several incidents involving mentally ill individuals that occurred in 1839 resulted in reconsidering this practice and setting more rigorous requirements that had to be fulfilled in order to send a patient into a monastery. Namely, from that time only patients who did not show any signs of aggressive behavior were admitted to monasteries, while others would be, after the prayer had been read to them, sent home accompanied by a family member. This paper aims to point out the first legal attempt to solve the problem of housing patients with mental disorders, and, especially, the establishment and development of “Lunatic Asylum” - the first hospital specialized in the treatment of mental illnesses in Serbia. Attention was also given to legislation referring to all significant aspects of legal position of mentally ill persons in vigor in the 19th century Serbia.

Key words: history of medicine; monasteries; “Lunatic Asylum”; legislation; mentally ill persons.

Апстракт

У Србији је постојала вишевековна традиција лечења душевно оболелих лица у манастирима која није прекидана ни након пада српских земаља под османску власт. Ипак, инциденти који су се 1839. дешавали са душевним болесницима резултирали су преиспитивањем ове праксе и прописивањем строжих услова које је било неопходно испунити да би пацијент био смештен у манастир. Наиме, од тог времена у манастире су примани само болесници који нису показивали никакве знаке агресивног понашања док би остали, након што би им се очитала молитва, у пратњи неког од чланова породице били слати кућама. Циљ рада је да укаже на први покушај да се законским путем реши питање збрињавања лица са душевним поремећајима, и, посебно, на оснивање и развој “Дома за с’ ума сишавше” као прве болнице специјализоване за лечење душевних болести у Србији. Пажња је посвећена и законској регулативи која се односи на све битне аспекте положаја душевно оболелих лица у позитивном праву Србије 19. века.

Кључне речи: историја медицине; манастири; “Дом за с’ ума сишавше”; законска регулатива; душевно оболела лица.
Introduction

In medieval Serbia, mentally ill persons were treated in monasteries because it was believed that religious medicine had a crucial role in the treatment of various neuropsychiatric diseases. Especially relics of saints were believed to have healing power. As of the 12th century, scientific medicine started developing under the influence of Byzantine and western medicine. It was also the time when the first Serbian hospitals were founded in the monasteries of Hilandar, Studenica, Dečani. Even after the Serbian Despotate fell under the Ottoman rule, treatment and care for the mentally ill in monasteries were not abandoned. They continued throughout the Ottoman rule, but soon after the 1830 Hatt-i sharif, by which Serbia was recognized as a vassal principality with its autonomous internal government, this practice started diminishing.

First attempt at solving the issue of housing for the mentally ill

In the 19th century Serbia, it was common to send mentally ill persons to monasteries where they were treated by fasting, prayer and “other known means”. However, since monks, being busy doing other chores, could not take care of patients, sometimes mentally ill people would physically hurt other people, even commit murders. In the monastery of Vujan on June 7, 1839, a mentally ill person, Jovan Milovanović, from the village of Brđan, killed a servant of the monastery, Aksen Stojanović, with an axe while he was sleeping. This incident was a motive for imposing certain restrictions on the practice of placing mentally ill people in monasteries. With regard to this, on July 10, 1839, the Ministry of Justice and Education issued the “Circular on people who lack brains, and who come to monasteries and churches for healing, in order to prevent their harmful actions”. The Ministry in agreement with the Metropolitan of Belgrade decided that these persons, if acting aggressively, could not be placed in a monastery, but should, as soon as the prayer was read to them, be sent home. The district court was advised that it should, on its behalf and in agreement with the district government, inform all the people through county officials, that every family in which “by ill fate, there are crazy people or people affected by other dangerous disease” should take all precautions. Hence, every family was supposed to accompany ill persons to a monastery, for treatment and prayer, and to look after them throughout the whole time so that they would not harm any member of the monastic fraternity nor the present faithful. The Ministry of Internal Affairs made the regulations of the Circular even more strict by demanding that every householder in whose house a person “is inflicted by insanity” should inform the local government of them, and immediately take away from them any weapons or harmful tools. The county and district prefects were obliged to take precaution measures and to instruct the householder as to how to take care of the patient’s mental health in order to avoid unwanted consequences.

Considering the inconveniences that could be caused to monks by mentally ill people staying in monasteries, and constantly referring to the Circular of July 10, 1839, the Metropolitan allowed mentally ill patients to stay in a monastery only as a final measure and with numerous precautions. In the second half of July of 1839 there was an issue of how to deal with the case of Petar Simić from the village of Ripanj in the Belgrade district, who “in the lack of common sense” cut his brother-in-law Ranko Nedeljković’s throat with a knife. The police authorities freed him from guilt and responsibility and sentenced him to two years in the monastery of Kalenić. Based on the testimony of Gavrilo Nedeljković, the abbot of the monastery, Petar had...
been healthy, sane, harmless and diligent in doing monastery chores throughout the whole stay. On the way home, since he did not have his passport on him, he was arrested by the Smederevo district authorities and directed to the Belgrade court, where he was in custody at the time when his case was being discussed. Because of the fear of blood feud by relatives of the murdered man in case that Petar should be sent home, the Ministry of Justice and Education on August 12 appealed to the Metropolitan to direct him either to the monastery of Kalenić or to Studenica, where “prisons for wretched people can also be found”, and where he would earn for food and clothing by doing monastery chores. The Metropolitan thought that it would be most appropriate to send Petar as “a man in a dubious health condition” to a place where he could be constantly guarded, given the fact that it was not possible in a monastery setting. Nonetheless, if there was no other solution, he should be sent to Studenica, as it was quite remote from his place of residence, “since abbot Gavrilo, today’s Archimandrite, vouched for his harmlessness and calmness”. In other words, if a patient had no brothers or any other male relative who could look after him during his stay in a monastery, the Metropolitan agreed to issue an escort letter for taking the patient to a monastery for treatment only if he was verified to be harmless and calm.

No matter how unwillingly the Metropolitan sent mentally ill patients to monasteries, the problem of their housing was urgent. Namely, sometimes unguarded mental patients posed a risk of spreading contagious diseases. Such was the case of a man named Marko Taslak from Mokra Gora. As the head of the Mokra Gora quarantine informed the Ministry of Internal Affairs on August 11, 1839, Marko “had fantasies in the grip of insanity while wandering across hills and rocks, crossing the Turkish border and leaving the Cordon”. Since there was an epidemic contagious disease in Turkey at the time, upon returning to Serbia he had to be taken to quarantine, but he could not be kept there “because he wanted to smash all doors and made great noise”. After getting an opinion from the State Council, the corresponding ministry on August 31 ordered the head of the quarantine that, when the quarantine period was over, Marko Taslak should be put under arrest by the competent court, until a general statute on this very present issue of stationing mentally ill persons was enacted. Two months later, the Belgrade police asked the same ministry for instruction on how to handle a man named Sima Nerandžić from the village of Ševarice in the district of Šabac, who was a craftsman in Belgrade. He was “out of his mind” and was, therefore, sent to hospital to see a district physician Florijan Birg. But, since he was left in the hospital without supervision, it was necessary to put “the aforementioned delusional person” in the police station. The police, however, did not have a place for him nor the money for his medication, hence the Ministry of Internal Affairs on October 14 decided to send the patient home, but at the same time appealed to Regency to issue a general instruction for acting in similar cases.

There was also a possibility that a mentally ill person was put under police supervision without his family knowing it. This happened when the State Council on October 23, 1839 ordered the district court of Jagodina to act upon that in the case of a former president of the district court of Rudnik Marko Rakić, who started showing signs of a mental illness and suicidal tendencies during serving his sentence. Namely, the State Council was of the opinion that the patient would recover sooner in the family environment and not being aware of the supervision.
As a result of numerous incidents involving mentally ill people and persistent requests and endeavors to permanently solve the problem of their housing, eventually, on November 24, 1839 came an official action in the form of the “Project for housing mentally ill and other unfortunate individuals with contagious diseases, within the monastery of Studenica”, which was drafted by the Ministry of Justice and Education. It consisted of five provisions. This document envisaged the construction of a building affiliated to the monastery, divided into four sections - three for ill people and one for two police officers who would guard them. The cost of the food, clothing and necessary furniture for the ill, as well as salaries for the police officers, would be paid from the state treasury. The project recommended that, apart from monks who would care for “the wretched”, a district physician should come as well, in order to “examine the state of their health” and prescribe appropriate medical therapy. All relevant state organs were unanimous in the opinion that placing mentally ill individuals on the property affiliated to the monastery of Studenica was the optimal solution at that time. Although at first the Ministry of Justice and Education had insisted upon establishing a separate institute, it was convinced that there was not enough money for that and accepted the opinion of the majority.

The project never came into force because it was strongly opposed by the Metropolitan. After receiving the text for appraisal, in his reply to the Ministry of Justice and Education on December 11 the Metropolitan presented his argumentation against the suggested way of housing the mentally ill. Expressing his regret that executive authorities did not consult with him before making the draft, he firstly mentioned practical advantages of building a dwelling for the mentally ill near a town, because then they would be able to easily reach physicians, who were very much needed. The need to place mentally ill people near urban areas was recognized in all European countries, since there was no example of these institutions being built on remote monastery properties. Of course, pointed out the Metropolitan, priests would continue to read prayers “to this group of people who suffer”, but it did not necessarily mean that they would have to live in a monastery, where their clamor would disturb church service, and scare and offend the faithful. The Metropolitan ended by indicating that founding such an institute which would completely be under the jurisdiction of the executive authority and on the Studenica monastery property, would disturb the internal autonomy of the monastery. The Metropolitan suggested that, in the beginning, mentally ill persons should be taken to monasteries according to the provisions of the Circular of July 10, 1839. In case that the stay in monastery did not help them, and they proved to be dangerous, head of the church would recommend that they should be placed in an appropriate institution for treatment and care. The Metropolitan’s resolute refusal to accept the suggested project of placing persons with mental illnesses in Studenica indefinitely postponed the problem of housing mental patients.

Establishment of the first mental hospital

The problem of housing mentally ill individuals was revived in 1855, when in the state treasury a fund was set up to build a department for the mentally ill within the general town hospital. The department was designed to admit 20 mentally ill persons, who would have their own backyard and a garden and would be isolated from other patients. Until the building was over, the patients were supposed to be placed in barracks in Požarevac which were adapted for that purpose, but, in the meantime, a garrison unit was moved into them, so the initial plan was
given up on ». The competent authorities also considered the possibility of placing the patients in the administration building in Karanovac, but it turned out the building was on the main street, and therefore could not be enclosed and used for that purpose ». Eventually, at the end of 1860 it was decided to adapt the military warehouse on Vračar – the so called “Doctor’s Tower”, and to use it for housing mentally ill patients ».

The Ministry of Internal Affairs brought a legal project “The Establishment of Lunatic Asylum” to the State Council for consideration on February 6, 1861 ». The State Council made only minor changes in the text, so it can be said that the original form of the document was approved of with insignificant changes. The paper was divided into sections in order to make it more easily read. The final version consisted of 37 paragraphs, as opposed to 35 in the original version; they were systematized in seven sections and marked with Cyrillic alphabet letters ». As early as February 11 the State Council brought the revised version to Prince Mihailo Obrenović, who authorized it on February 20 and ordered the State Council to print 100 originals of the text and 450 copies, and to have them brought back to him for signature and confirmation ». The State Council did it the next day and “The Establishment of Lunatic Asylum” was published on March 3, 1861 ».

“Lunatic Asylum” was situated in the “Doctor’s Tower” and was managed by a principal, who was in direct subordination of the minister of internal affairs and took orders and instructions from him ». The personnel of this institution consisted of one physician, one doctor of medicine who was also the principal, one physician assistant who had to be at least a “patron of surgery” – an educated physician of the lowest degree in the Habsburg Monarchy », one procurement clerk and the necessary number of servers ». All of them (except the servers) were appointed by a decree of the prince, according to the suggestion of the Ministry of Internal Affairs (§§ 1-5) ». An Orthodox priest was chosen for performing religious duties, and was obliged to visit the hospital three times a week, talk to patients and comfort them, except when the physician estimated that it was counterproductive for the patient’s recovery (§§ 6 and 26) ».

Paragraph 9 stated that this Asylum was for the treatment of all mentally ill persons, both male and female, adults and children ». Given the accommodation capacity and available resources, the corresponding ministry was supposed to decide on the number of mentally ill persons that could be admitted to Asylum (§10). Wealthier patients would pay for their own stay and treatment (§ 12). According to paragraph 14, the treatment of poorer patients would be paid for by the state ». Modifications of this paragraph from 1873 specified that poorer patients were to be financed through the fund of the general hospital from their hometown district or the district they had lived in lately ». According to patients’ financial status, they were classified by the line ministry as “paying” and “not paying”, based on the opinion of the police authorities of the patient’s place of residence (§ 15) ».

A person could not be placed in Asylum unless they had been previously categorized as mentally ill by a decree of the competent court (the court of the city of Belgrade) and without the approval of the corresponding ministry ». Police authorities were obliged to notify the minister of internal affairs of every unaccountable, mentally ill person who had committed a crime. Police authorities were also obliged to inform the minister of the financial status of the offender and his family, with the purpose of deciding whether they should pay for wrongdoer’s hospital stay ».
Then, the ministry would issue an order to put the delinquent in the hospital, if no family member nor a friend wanted to take care of him. If, however, a family member or a friend offered to look after a mentally ill person, they would have to vow that the ill person would be guarded in such a manner that they “could not jeopardize neither other people’s nor their own life, nor would be an embarrassment to anyone”\(^{11}\). The same would happen if that person came to Asylum while the patient was still in “confusional state”, except that in this case the approval of the Ministry of Internal Affairs was needed as well. The Ministry’s approval was also needed for discharging from the hospital of patients who were cured (§§ 19-25)\(^{11}\).

The physician’s main duty was “to take care of mental patients according to laws of medical science and cure them from confusion as well as any other illness which developed in this state”, and he had no right to ask for a special reward for that\(^{11}\). As the principal, he was in charge of the internal management of Asylum and he was responsible for maintaining law and order, legal usage of medication and supply of necessary medical instruments. He had help from the physician assistant, who had to act upon the doctor’s orders, and if necessary, be his substitute\(^{11}\). A procurement clerk was in charge of the supply of necessary equipment for Asylum, keeping business records in order and taking inventory (§§ 29-31)\(^{11}\).

There was a plan to establish a hospital fund from donations, income from paying patients, money earned from selling deceased patients’ possessions and objects made by patients. Asylum would deposit the raised money to earn interest in the same way as other hospitals did. This fund was for financing “Lunatic Asylum” (§§ 34-35)\(^{11}\). The document ended with a short section of only two paragraphs on procurement of medicines. The provisions stated that the procurement of medications for the hospital should be done by the pharmacy from which the Ministry of Internal Affairs obtained medicines for poorer patients whose treatment was paid for by the state (§§ 36-37)\(^{11}\). Asylum was opened soon after its establishment and the first patient was admitted on August 26, 1861\(^{15}\). All mentally ill people who had been in prisons until the establishment of Asylum were sent to the hospital for treatment on the basis of the Decree issued on August 8, 1861 by the Ministry of Justice and Education\(^{16}\).

The head of Asylum was a physician, i.e. a doctor of medicine\(^{17}\). From 1861 to 1865 those were: Florijan Birg, the Master of Surgery, the second physician of the town of Belgrade; Dr. Vasa Teodorović, previously a quarantine doctor of Aleksinac, and physician assistant (later Dr.) Samuilo Pops\(^{17}\). However, the first physician who was partly more skilled in psychiatry was Dr. Mladen Janković (1830-1885), who was appointed to this position in March 1865. He was soon sent to Vienna for three months in order to get acquainted with contemporary forms of the housing, procedure and treatment of mentally ill patients, and, upon his return to Serbia, to propose amendments to the organization and procedure. He remained in that position, with shorter breaks, until his death\(^{17}\).

“The Establishment of Lunatic Asylum” stopped applying on May 1, 1881, when “Law on the organization of the sanitary profession and public healthcare” came into force\(^{18}\). This law in 16 paragraphs regulated all important issues regarding mentally ill persons and their hospitalization. “Lunatic Asylum” was renamed as “Hospital for Mental Diseases”, divided into two departments\(^{18}\). The first, general department was designated for the treatment of all mental patients, and the second one was created with the aim of “guarding and caring for incurable
delusional patients until their death” 

The level of professional qualifications of the hospital principal was raised, comparing to the previous requirements, so that only a psychiatrist, doctor of medicine, could be appointed to the position. Apart from the principal, the physician assistant, procurement clerks, adequate number of servers and auxiliary staff, the hospital personnel also included a secondary doctor, who had to be at least doctor of medicine and surgery

The minister of internal affairs appointed a special priest for “Hospital for Mental Diseases” to whom he assigned annual salary. Institute still remained under the direct jurisdiction of the minister of internal affairs (§§ 1-4).

Persons who suffer from “all types of mental illnesses, from melancholia to insanity and dementia paralytica” were sent to hospital. Citizens of foreign countries were admitted to hospital on the basis of reciprocity with the country whose citizen the patient was (§ 5). This law also identified two categories of patients: wealthier, who paid for their own treatment, and poorer, whose treatment was paid for from the sanitary fund, which was decided by the minister of internal affairs upon receiving the opinions of affiliated municipality and police (§ 9).

Subjected to his exclusive jurisdiction was the decision on hospital admission based on the professional opinion of three doctors who had been observing the patient. If the ill person in question or their family or friends filed a written objection to the hospitalization, the case was resolved by the court. The court also had jurisdiction to classify a person as delusional based on the results of the treatment, and to move them to another department (§ 12). The local police authorities were obligated to notify the line minister on all mentally ill people in their area, because guarding delusional persons in private homes was not allowed, unless their family swore to vouch for their actions and promised to treat them humanly. Patients were discharged from the hospital only with the approval of a special committee formed by the corresponding minister. In order to be discharged from the hospital, a patient had to be completely cured or, at least, their health had to be improved to the extent that they could not cause harm to anyone any more. Since the hospital was under the direct jurisdiction of the minister of internal affairs, every year he decided which public pharmacy would handle procurement of medicines for the hospital (§§ 13-16).

**Legislation on mentally ill persons**

In order to send people with mental disorders to the hospital, it was necessary to legally define the concept of a mentally ill person. It was done in paragraph 40 of the Civil Code of 1844, which stated that persons who completely or partially lacked sanity and free will were “insane, crazy, delusional”. They were under the special protection of law because, due to the illness, they were not aware of harmful consequences of their actions. A commentator of the Civil Code, a notable professor of Civil and State law at Belgrade Lyceum, Dimitrije Matić was complimentary about the fact that the legislator had not gone into a more detailed classification of different types of mental disorders, given that it was a matter of disagreement among many doctors and psychologists. Matić pointed out that even the behavior of mentally ill people in so called lucid intervals (“lucida intervalla”) had no legal importance, because it would be very difficult to determine what a person incapable of reasoning did in the state of narrowed awareness and what in moments of full awareness of their actions.
Paragraph 53 of the Criminal Code of 1860 excluded criminal responsibility of mentally ill delinquents. In the first edition this paragraph stated that there was no criminal act if it had been committed by a person who “is not in their right mind”, and in the amendment of 1861 it was specified that “there is neither a criminal act nor wrongdoing if a person who committed an act did so while he was crazy”. Such a vague definition, as our famous jurist Đorđe Cenić warned, left room for the court’s subjective judgement about which offender was crazy, and therefore considered both unaccountable and criminally irresponsible. All the more so “because people call ‘crazy’ persons who are just silly and, moreover, those who suffer from epilepsy are also put in the same category”. It would thus be good, thought Cenić, for judges to have at least basic knowledge about mental disorders. However, since these disorders were a matter of disagreement among doctors, whose professional opinions, which were given in proceedings on offenders’ mental states, were ultimately contradictory, it would be unrealistic to expect that judges should always be able to evaluate the mental state of a particular offender. Cenić reasoned that it would be better that only “crazy” persons should be considered criminally irresponsible, than to go into classification of mental disorders as it had been done in paragraph 40 of the Civil Code, which had only created more confusion.

Cenić’s concern about courts’ subjective judgments on the mental health of offenders proved to be justified. It is evident in two court case records which the Ministry of Internal Affairs sent to the minister of justice for consideration in 1869. In the first case, the accused of a murder was declared crazy and sent to Asylum, based on the doctor’s opinion and hearing of the witnesses. After fifteen days in Asylum he was found perfectly healthy. Furthermore, it turned out that it was highly disputable whether he had been crazy at the time of committing the murder or whether his insanity was just “a result of his continuous drinking, which is why he got well when alcohol was forbidden for him”. In the second case, a father reported that his son was crazy and socially dangerous, which was confirmed by a doctor. The court handling the case declared him crazy without a further evidentiary procedure, but he could not be admitted to the hospital because he showed no symptoms of a mental illness. Taking into consideration all mentioned above, the minister of justice concluded that courts had solved these cases very superficially and in his 1869 Circular he made an appeal to judicial organs not to be easily trustful of every claim, but to examine them with scrutiny. He also addressed the Circular issued on May 14, 1863 by the minister of justice, which advised all courts that, before declaring a person mentally ill, they should demand as evidence not only a medical report from a doctor, but also a statement from the local authorities of the municipality the defendant was from, as well as to hear the family and neighbors of the accused. If they still had some doubts concerning the mental state of the offender, they were authorized to demand a second opinion from another doctor and bring the delinquent to court in order to personally discern his mental state.

Persons who due to their mental illness were not able to take care of themselves and their property were placed under guardianship (§§ 156-161 of the Civil Code). A guardian was mostly chosen from the closest relatives, and performed this duty, according to paragraph 180, until the reason for guardianship ceased to exist. Guardianship over a mentally ill person was over, in the words of Dimitrije Matić, “when the one who is insane regains sanity”. These provisions ceased to have effect when in 1872 the “Law on Guardianship” was enacted. The Law became a part of the Civil Code as a separate regulation. The paragraphs concerning adult
mentally ill persons were not substantially changed. Since 1872, decisions on guardianship were made by a guardianship judge, who would award guardianship to the spouse or a parent of the person being placed under guardianship (§§ 137-139) \(^2\). According to paragraph 143, when the guardianship judge was assured, on the basis of the court-medical investigation, that the person who had been placed under guardianship due to a mental illness was cured, he would end the guardianship \(^2\). This meant that at that moment the person regained legal capacity and, thus, the ability to take care of themselves and their property.

Conclusion

With the establishment of Lunatic Asylum in 1861 the treatment of mentally ill persons in the 19th century Serbia became significantly more humane. Until then, in the absence of an appropriate institution for their housing, ill people who were aggressive and showed suicidal tendencies, and did not have any relatives who would take care of them, were taken to prison. Staying in inhumane conditions without adequate care surely contributed to the deterioration in their mental health in periods when they would become aware of their surroundings and the place they were in. Therefore, the establishment of a special institute for the treatment of the mentally ill was helpful for improving the mental state of those patients, and it was also beneficial for other mentally ill people, who received professional medical help in the institution. A step forward was raising the level of professional qualifications of medical staff by the 1881 Law, and dividing the hospital in two departments in an attempt to isolate very ill patients. The foundation of the hospital for the mentally ill was performed in compliance with the adequate legislature. Admittedly, it was terminologically imprecise, but it is completely understandable, given the fact that, at the time there were still numerous disagreements even among experts with regard to the diagnosis and classification of mental illnesses. Taking into consideration all above said, it can be concluded that in the 19th century Serbia a lot was done for mentally ill persons, in terms of providing not only appropriate medical care but also adequate legal protection for this particularly sensitive and vulnerable category of patients.

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