

MENTAL HEALTH: THE END OF LIFE "IMPRISONMENT"?

The Portuguese Law 35/2023 provides for the definition, foundations and objectives of mental health policy, enshrines the rights and duties of people in need of mental health care and regulates the restrictions of these rights and the guarantees of protection of their freedom and autonomy.

This new Mental Health Law, which replaces Law No. 36/98 of 24 July, in force for more than 20 years, ends the possibility of an automatic extension of the hospitalization of non-custodial offenders.

The repeal of Article 92(3) of the Penal Code promises to provoke disagreement in society, as it ends the possibility of an automatic prolongation of the hospitalization, since it puts an end to the "life imprisonment" for the unfit, even if the state of criminal dangerousness, which gave rise to the hospitalization, is maintained.

"Mental Illness" is a condition characterized by significant disturbance of the cognitive, emotional or behavioral spheres, included in a group of clinical entities categorized according to the diagnostic criteria of the International Classification of Diseases of the World Health Organization.

The following rights are enshrined for people with mental health care needs:

- Access to full and integrated quality health care, from prevention to rehabilitation, appropriate to their family and social environment.
- freely choose the health care provider, within the limits of existing resources.
- to make free and informed decisions at all times, to the best of their ability, about the health care offered to them and about their participation in research, trials, clinical studies or training activities
- see their empowerment and autonomy promoted, in the various areas of their life, with respect for their preferences, independence, will and privacy.
- enjoy conditions of regularity, hygiene, food, open-air stay, safety, respect and privacy in residential or residential care facilities and establishments.
- communicate with the outside world by any means and receive visits from family members, friends, carers, health care proxies and representatives for the purpose of follow-up care.
- vote, subject to the incapacities provided by law.
- not be subject to measures involving deprivation or restriction of liberty of unlimited or indefinite duration.

People with mental health care needs have the right to not be subjected to:

- coercive measures, including isolation and physical or chemical means of containment, except as provided in this law;
- electroconvulsive therapy or transcranial magnetic stimulation without his consent, except as provided by law;
- psychosurgical interventions without their written consent and favorable written opinion of two psychiatrists and a neurosurgeon designated by the National Coordination of Mental Health Policies.

The figure of **involuntary treatment** portrays the situation of treatment decreed or confirmed by a judicial authority, in an outpatient clinic or hospitalization. This treatment is aimed at the integral recovery of the person, through therapeutic intervention and psychosocial rehabilitation.

Cumulative assumptions of involuntary treatment:

- the existence of mental illness.
- The refusal of medically prescribed treatment, necessary to prevent or eliminate the existence of the foreseen danger to personal or property legal interests, of a third party or of himself.

Involuntary treatment can only take place if it is:

- the only way to guarantee the medically prescribed treatment
- adequate to prevent or eliminate one of the dangerous situations for the existence of personal or patrimonial legal assets.
- proportionate to the severity of the mental illness, the degree of danger and the relevance of the legal interest.

Involuntary treatment takes place on an outpatient basis, provided by community mental health teams, unless hospitalization is the only way to guarantee the medically prescribed treatment, ceasing as soon as treatment can be resumed on an outpatient basis.

The new mental health law also provides for the creation of a commission to monitor the implementation of the legal regime for involuntary treatment.

This law provides for the possibility of having advance directives of will and the appointment of a health care attorney, in terms of mental health care.

Provisions that express the clear and unequivocal will of the grantor in terms of mental health care may appear in the document of advance directives of will.

If someone assumes, without authorization to do so, the management of the assets of those who need mental health care, the business management regime will apply.

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Pedro Vitorino
Trainee Lawyer

