



MENTAL HEALTH ACT

On 21st July, the **Mental Health Law - Law n.º 35/2023**, was published amending the Penal Code, the Code of Execution of Sentences and Measures Depriving Liberty, the Civil Code and related legislation. It will enter into force next month.

The new law repeals the Law n.º 36/98, of 24th July 1998 and provides for the definition, grounds and objectives of mental health policy, **enshrines the rights and duties of persons in need of mental health care and regulates the restrictions of these rights and guarantees for the protection of their freedom and autonomy.**

In addition, it **ends the automatic extension of secure detention.** Those who are incapable of committing a criminal offence are compulsorily released after serving a sentence. The law in force until now allowed for indefinite extensions of detention, which resulted in life imprisonment. For this reason, at least half a hundred unlawful persons are to be released from psychiatric hospitals.

The **involuntary treatment** (or so-called compulsory admission) **requires the following cumulative conditions:** mental illness, refusal of medically prescribed treatment and a danger to personal or

property (of third parties or the individual).

The following have legal standing to request involuntary treatment:

- the legal representative of a minor;
- the accompanying person of an adult;
- persons with legal standing to request the accompaniment of an adult;
- the health authorities;
- the Public Prosecutor's Office;
- the clinical manager of the medical unit, when during the voluntary hospitalisation there is a danger to personal or property legal assets; and,
- the doctor who verifies one of these situations of danger in the exercise of his functions.

Involuntary hospitalisation must be requested in writing to the competent court, and clinical-psychiatric and psychosocial reports must be attached.

A commission is created to monitor the implementation of the involuntary treatment regime, which will be composed of psychiatrists, magistrates, psychologists, nurses and technicians, among others, appointed by order of the

Government and whose mandates will last for three years.

In addition, coercive measures - which include isolation and physical and chemical means of restraint - may only be used to the extent strictly necessary to prevent serious and imminent offence to the body or health of the person in need of such care or of a third party, becoming a true measure of last resort.

FINAL NOTES

The new legislation abandons concepts such as "mental abnormality" and "compulsory hospitalisation", instead referring to terms such as "person in need of mental health care" and "involuntary hospitalisation".

This replaces legislation that has been in force for more than 20 years, in view of the mental health reform that the Government wants to complete by the end of 2026.

Rodrigo Graça
r.graca@caldeirapires.pt