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COMPULSORY INTERNMENT AND TREATMENT IN MENTAL HEALTH PATIENTS - LEGAL IMPLICATIONS IN PORTUGAL

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Introduction: The possibility of detention for treatment of mental patients may be controversial since introduces the possibility of the judicial power to dominate one's private life.

Objectives: It is made an analysis of the legal problems in compulsory internment and treatment in mental patients in Portugal.

Material and Methods: The diplomas mainly analysed were the Portuguese mental health law, Constitution and Penal Code. The study was based in four legal principles: necessity, proportionality, subsidiary and adequacy whenever a compulsory detention for mental treatment is imposed and the requisites for that decision.

Results: Compulsory internment may only be determined when it is the only way to guarantee that patient is submitted to treatment, and when is deemed proportional to the danger of the legally protected value in question. Restrictions on patient's fundamental rights shall be those strictly necessary and suitable to the effectiveness of treatment. Compulsory internment may be petitioned by the Public Attorney, patient's legal representative, public health authorities or any person.

Conclusion: In spite of the diversity of criteria for compulsory mental health care across several countries, Portuguese mental health law emphasizes the need for treatment as an essential condition for detaining patients with mental illness. The compulsory treatment is based on the judge decision supported in the psychiatric report. However, how can we be certain that a mental patient is going to practice a specific crime? Is it fair to punish without crime? Are there scientific criteria capable of ensuring that mental patients cause always violent behavior?