

MINISTÉRIO DA ADMINISTRAÇÃO INTERNA
INSPEÇÃO-GERAL DA ADMINISTRAÇÃO INTERNA

TRANSLATION*

Original: Portuguese

PA – 538/2015

RECOMMENDATION IG – 2/2016

Subject: Execution of a warrant for commitment to a medical facility of a citizen with a serious mental disability

- 1 - Following an information presented by a citizen, a *short legal analysis was determined regarding the need to establish a reasonable delay for the intervention of the police forces when issuing warrants of arrest of persons with a serious psychic illness or when executing the warrants of detention of mentally ill persons issued by the public health authorities, having in mind that the postponement of these proceedings might increase dangerous situations to legal assets, namely of a personal nature, of the sick persons themselves or a third party.*

- 2 - The execution of a warrant of commitment to a medical facility is included in the scope of the attributions of the Security Forces (Public Security Police – PSP - and National Republican Guard – GNR), in accordance with the *Lei de Saúde Mental*** (Law No. 36/98, dated July 7, 1998¹), hereinafter referred to as LSM.

* Translated by Maria da Conceição Santos, Senior Technician of the Inspectorate General of Home Affairs.

** In English, Mental Health Act. (Translator's note)

¹ Amended by Law No. 101/99, dated July 26, 1999; any future mention of this Law is always made to the amended text.

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- 3 -** The compulsory commitment may only be ordered when this is the sole way to ensure the submission to treatment of the person concerned and it finishes as soon as the grounds that determined it are over.

- 4 -** The compulsory commitment may only be ordered if it is proportional to the degree of risk and the legal assets concerned (art. 8, par. 2).

- 5 -** The bearer of a serious physic illness who creates, by reason of that illness, a situation of danger to legal assets of a significant value, belonging to him/her or to a third party, or to property, and who refuses to be subjected to the necessary medical treatment, may be committed to the appropriate medical facility (art. 12, par. 1).

- 6 -** A bearer of a psychic illness who is not able to evaluate the sense and extension of the consent may also be committed to a medical facility when the absence of treatment causes a serious aggravation of his/her condition (art. 12, par. 2).

- 7 -** The legitimacy to require the compulsory commitment of the bearer of a psychic illness is incumbent on his/her legal representative, any person with legitimacy to require his/her interdiction, the public health authorities and the public prosecutor's office (art. 13, par. 1).

- 8 -** According to the provisions of art. 22, the [cumulative] circumstances for urgent [mandatory] commitment are the following:
 - A)** When there is a citizen who is the bearer of a serious psychic illness;
 - B)** When there is a serious psychic illness that originates a situation of danger to legal assets (of a personal nature or to property) of a significant value belonging to the bearer of the illness himself/herself or to a third party (personal assets or property of a significant value of a third party);

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- C)** When the bearer of that serious psychic illness who creates such a situation of danger refuses to be submitted to the necessary medical treatment because he/she is not able to evaluate the sense and extension of the consent to be committed to a medical facility and the absence of treatment causes a serious aggravation of his/her condition;
- D)** When there is a situation of imminent danger to personal assets or property belonging to the bearer of a serious psychic illness or assets (of a personal nature or to property) of a third party, such as the serious aggravation of his/her condition, or when he/she causes bodily harm to a third party or even a great and credible possibility of such aggravation to a third party is likely to happen.
- 9 -** Therefore, a compulsory commitment can only take place when the conditions for an urgent commitment, foreseen in art. 12 and above mentioned, are established.
- 10 -** Verified the conditions for a compulsory commitment (because the requirements for an urgent commitment are present), it must be established who or what entity may determine the commitment of a bearer of a psychic illness to the nearest medical facility with a psychiatric emergency unit closer to the place where the commitment began, in accordance with the provisions of art. 24 (Delivery of the person to be committed).
- 11 -** Police forces (*in casu* the PSP and the GNR) or public health authorities, unofficially or by request, may order the compulsory commitment of a bearer of a serious psychic illness to a medical facility by means of a warrant (art. 23, par. 1).

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- 12 -** The warrant is executed by police forces, accompanied, whenever possible, by elements of the services of the public health authorities (art. 23, par. 1, first part).
- 13 -** The warrant contains the signature of the competent authority, the identification of the person to be committed and the reasons for that commitment (art. 23, par. 2, second part).
- 14 -** When, by reason of an emergency situation and the danger in a delay, the previous issuance of a warrant is not possible, any police officer takes immediately the person to be committed and writes a report in which the facts are described, as well as the circumstances of time and place in which the commitment was done; afterwards, a communication is made to the public prosecutor's office with jurisdiction in the area (art. 23, pars. 3, 4 and 5²).
- 15 -** The transport must be, preferably, made by the health unit to which the bearer of the psychic illness is to be committed or, by lack of it, by the fire-fighters closer to the place where that person is, in collaboration with the police officers who are executing the warrant; as a last resource, an unidentified police car may be used.
- 16 -** A [regular/identified] police car may not be used.
- 17 -** The person is immediately presented to the medical facility that possesses a psychiatric unit and is nearest to the place where the transport began, in which

² These rules impose to police forces the responsibility for the commitment of the bearer of a serious psychic illness to the medical facility when there is an emergency situation (of danger or delay); it does not make them wait for the time it takes to issue the warrant (either regarding the police forces or the public health authorities); in these circumstances, the officers must act as soon as they have knowledge of the situation of danger to the assets (of a personal nature or to property) of the bearer of a psychic illness or to the assets (of a personal nature or to property) of a third party.

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he/she is submitted to a psychiatric evaluation with a medical report and the necessary medical support is given (art. 24).

- 18 -** In this art. 24, the legislator makes very clear, without a shadow of a doubt, that the bearer of a serious psychic illness that puts in danger legal assets (of a personal nature or property) belonging to himself/herself or to a third party must be immediately transported to a medical facility; it does not make a distinction if that transport is or not in the scope of the execution of a warrant and, where the “legislator does not refer that distinction, it is not up to the interpreter to make it”.
- 19 -** Thus, we are of the opinion that, either in the situation where it is not possible to issue a warrant or when it is possible, the bearer of the psychic illness must immediately be presented to the nearest medical facility that possesses a psychiatric unit.
- 20 -** Subsequently, we cannot pass without noticing, in both situations, the urgent nature of the execution of the warrant, considering the situation of danger to the legal assets concerned (namely the life of the person to be committed and that of others), an essential requirement for the bearer of a serious psychic illness to be subjected to a compulsory commitment; and this is the danger that characterises the situation of emergency, inclusive in order to avoid the death of the bearer of a psychic illness and that of others.
- 21 -** So, we consider that the urgent nature of the execution of the warrant does not put up with the delays in which many proceedings may translate, putting at stake the physical integrity or even the death of the bearer of the illness and others.

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- 22 -** For that reason, the need for an urgent execution of the warrant issued by the public health authority is clear in the warrant when, for instance, it is determined that the commitment is made “In accordance with arts. 22 and 23 of Section IV of Law No. 36/98 dated July 24, 1998...”.
- 23 -** Another question that may be put is that of knowing in what lapse of time the warrant must be executed, i.e., what we understand for “immediate”.
- 24 -** As the very word says “immediate” means “now” / “at the present time” and thus we consider that this “now” / “at the present time” must be as soon as there are conditions for the execution of the warrant (namely police officers who may be deployed to execute the warrant, although they are in another mission without an urgent nature of imminent danger for the physical integrity or property of the bearer of the illness or others); the execution of the warrant cannot take into consideration the proceedings that, for taking a long time, are susceptible of not implementing the transport of the bearer of the psychic illness to the medical facility for not arriving in time to prevent, for instance, an assault with harm for his/her physical integrity or that of a third party and, consequently, the aggravation of the health condition of the person to be committed, because the necessary medical support was not delivered in due time.
- 25 -** Consequently, the commitment must take place in the shortest possible lapse of time after the reception of the compulsory warrant of commitment, when sent by the public health authority that issued it or after the issuance of the warrant by the police authority.

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ACCORDINGLY, WE RECOMMEND:

To the Command General of the National Republican Guard and to the Directorate National of the Public Security Police that, concerning the proceedings to adopt by the security forces in the scope of the execution of warrants of commitment to a medical facility of bearers of a serious psychic illness (and considering the good practices in the scope of the implementation of the Convention on the Rights of Persons with Disabilities, approved by Resolution of the Assembly of the Republic No. 56/2009), the issuance of guidelines / rules concerning this subject that take into consideration the urgent need of the execution of those warrants.

To be forwarded and notice given of its contents.

Lisbon, July 19, 2016.

Margarida Blasco
Senior Judge
Inspector General of Home Affairs