

ESPAÇO TEMÁTICO: CRISE DO CAPITAL, DIREITOS HUMANOS E LUTA DE CLASSES

When the judiciary is the back up: the psychiatric hospitalization at issue

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Abstract: Faced with the precariousness of social policies, which impacts the conditions of the family to exercise its protective function, the judicialization of mental health demands becomes one of the mechanisms used to guarantee rights. In view of this, we aimed to discuss the sharing of responsibilities between the family of the subject in psychological distress and the State, based on the demands of compulsory internment that reach the Brazilian judiciary. This is a documental research in which 23 judgments were analyzed, which were processed between 2001 and 2017, in the second instance of the Paraná State Court of Justice. As results, we highlight that by individualizing and reducing collective demands, the judiciary configures itself as a functional apparatus to the capital in crisis, based on the discourse of legal equality. The primacy of the individual is also evident in the few mentions of families, taken as informants of the condition of the user, their inclusion in the service offered by the network is superficial.

Keywords: Judicialization of Health; Family; Social Policy; Psychiatric Reform.

Quando o judiciário é o respaldo: a internação psiquiátrica em questão

Resumo: Diante da precariedade das políticas sociais, que impactam nas condições da família exercer sua função protetora, a judicialização das demandas de saúde mental torna-se um dos mecanismos utilizados para garantir direitos. Diante disso, objetivamos discutir a partilha de responsabilidades entre a família do sujeito em sofrimento psíquico e o Estado, a partir das demandas de internação compulsória que chegam ao judiciário brasileiro. Trata-se de uma pesquisa documental em que foram analisados 23 julgamentos, que tramitaram entre 2001 e 2017, na segunda instância do Tribunal de Justiça do Estado do Paraná. Como resultados, destacamos que ao individualizar e reduzir demandas coletivas, o judiciário se configura como um aparato funcional ao capital em crise, baseado no discurso da igualdade jurídica. A primazia do indivíduo também se evidencia nas poucas menções às famílias, tidas como informantes da condição do usuário, sua inserção no serviço oferecido pela rede é superficial.

Palavras-chave: Judicialização da Saúde; Família; Política social; Reforma Psiquiátrica.

Recebido em 19.07.2022. Aprovado em 28.03.2023. Revisado em 22.05.2023.



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Crisis and family

Despite being minimally preserved in its privacy, the family is not an island. It is subject to state, economic, and legal determinations, among many others, which lead it to seek mechanisms to respond to the societal transformations that impact its daily life. Therefore, it is not the changes that have been taking place in the family that alter the organization in place, which are sometimes identified in the empirical field as a demoralization and/or disruption of the family that causes social disorder. On the contrary, it is the changes in the productive sphere that demand (re)organizations from these families to respond to the socioeconomic determinations that fall upon them.

Among the changes observed in the family sphere, we can briefly mention the insertion of women in formal and paid work, which, in face of the gender wage inequality, reverberates as an efficient way to extract surplus value. There is also an increase in divorces and single-parent families, the reduction of time devoted to the domestic sphere in the face of exhausting workdays, among other changes, which put in the spotlight the family's ability to maintain its quality of crisis buffering and its own "naturalized" functions of caring for its members (Zola, 2015). Therefore, to understand how the macro-context intends the family, corroborating the transformations that have been occurring in its core, it is necessary to reflect on the political economy and its determinations.

The production of wealth in capitalism is sustained by the exploitation of labor power, through the appropriation of surplus value that guarantees capital accumulation and profit. Without human labor there is no valorization of capital (Iamamoto, 2007). Based on these fundamentals, it is cognizable that the structural crisis affecting capital has been demanding renewed forms of intensified labor exploitation for the extraction of surplus value to guarantee the maintenance and/or growth of profit rates.

The crisis affects the entire sociometabolic system of capital, which has found substantial difficulties in maintaining minimally constant growth rates since 1970. The economic unbalance and the adoption of the neoliberal prescription, as one of the measures to get around these constant crises, are intensely experienced by the workers; either through the precariousness of the labor universe, with the worsening of the expressions of the social issue, or with the recrudescence of the State in the offer of broad social policies. This scenario impacts the family in terms of its organization and establishment of affective ties.

With the withdrawal of part of the social and labor rights, the lowering of salaries, the increase in competitiveness, the weakening of unions, among other elements that contribute to the intensification of labor exploitation, more and more members of the family group need to sell their labor force to make up the family income and/or take on several work shifts, which decreases the time of coexistence and care among its members¹. Furthermore, weaker subsistence conditions reveal the intensified expressions of the social issue, such as the increase of unemployment, social inequality, violence, use and abuse of psychoactive substances, imprisonment, among many other expressions that permeate the workers' daily lives.

The family, weakened by the impact of the structural crisis of capital, needs to be protected so that it can exercise its protective functions, which is challenging given the minimization of the State in the provision of social policies. The neoliberal ideology has direct repercussions on the limits faced by social policies, which are progressively more selective, compensatory, and focused on poverty. The precariousness of these policies is reflected in the search of individuals to guarantee social protection through the market, by buying services such as health insurance, private education, and private pensions, among others; services that, based on the discourse of the inefficiency of the State, seek, in the strengthening of the market, a form of profit from the sale of goods and social services.

This context strengthens privatization and makes the service sector an interesting niche for investment and capital accumulation, configuring itself as one of the exit strategies for the crisis experienced (Batista, 2014). On the other hand, the State begins to invest more in the social welfare policy to care for the most vulnerable, in addition to adopting measures that burden families in the protection of their members. In this scenario of family weakening in the exercise of its protective function, lack of State protection, and privatization and commodification of social goods and services, who will take on the care and protection of the most vulnerable and sick subjects, who cannot insert themselves into the productive circuit?

The family and the care of the subject in psychological distress

In recent decades, the focus of social policies has shifted to the family. This change is clear in the field of health through the Family's Health Strategy (Estratégia Saúde da Família), family matrixiality expressed in the National Policy of Social Assistance (Política Nacional de Assistência Social - PNAS), among other examples that we can cite and that demonstrate a movement of redirection of actions and discourses in the field of social policies. The insertion of the family as the privileged focus of intervention, while revealing substantial advances in seeking to break with actions directed almost exclusively to the individual who accesses the service, inserting it in a broader context, also lights up a warning sign.

In times of minimal State, this (re)orientation may also signal an attempt to unaccountability of the State, burdening and blaming the family for the difficulties in exercising its protective function, after all, for the family to become a space of protection, it also needs to be protected. Teixeira (2015) criticizes the so-called "familistic" policies, which burden families by making them responsible for the welfare of their members without offering conditions for this, given the precariousness of social policies and the low or non-existent supply of services by the State.

This debate needs to be extended to the field of the National Mental Health Policy (Política Nacional de Saúde Mental – PNSM). After all, from 1970 on, the insertion of the family in the field of health and mental health gained notoriety with the projection of family therapies in Brazil. From then on, the family is gradually called to participate in the treatment of its ill family member and, with the advances of the Psychiatric Reform Movement in 1990, it starts to be taken as a partner in the care of the subject in psychological distress (Rosa; Silva, 2019). However, the effective insertion of the family in mental health services is still challenging. As Nisiide (2020) point out, facing the objective limits for the execution of services, such as poor infrastructure, lack of human resources, scarce financial resources, among others, the focus of the action is still the individual. The family, although considered in the process, acts more as a facilitator of the user's access to the service and as a caregiver.

Criticism of the crisis of the state in the performance of social protection must consider the function of the public fund in the "structuring of the reproduction of capital"² by socializing the productive costs and feeding the financial capital at the expense of resources and/or the provision of broad social policies (Oliveira, 1998, p. 24). In the case of the PNSM, in recent years we have verified a 5.20% decrease in its investment, while health spending has increased by 42.22% (Oliveira, 2017). Although data from the Pan American Health Organization (PAHO) and World Health Organization (WHO) (2018) show an increase in the index of psychological distress in the American continent, the resource allocated to its treatment has decreased in Brazil.

This mismatch highlights the place of mental health in the capitalist mode of production. By assuming the execution of social policies, the State is responsible for offering part of the conditions of reproduction of the working class life, in the case of health, keeping the labor force in healthy conditions of surplus value exploitation, which ranges from preventive programs to the treatment of highly incapacitating diseases. In the mental health field, these workers may become incapacitated for work due to their illness, but many are able to produce, but not always in the way and at the pace required by the capitalist production mode.

This specificity causes the worker to have his value in the circuit of buying and selling labor power reduced due to the inability to produce surplus value and, consequently, to valorize capital. This situation is expressed in the resources allocated to the PNSM, which highlights the disregard for the lives of those who are not part of the labor exploitation circuit, even more so in the face of unemployment that advances in periods of crisis.

This scenario of scarce financial resources and precariousness of the PNSM reverberates in the support and care provided to service users and their families. Thus, it is worth noting that it is not possible to analyze the efficiency of the Psychosocial Care Network (Rede de Atenção Psicossocial – RAPS) only by the number of open services, but we must evaluate which services are these and what their capacity to solve the problem is. After all, as we will highlight in our study, the exhaustion of the family and its possibilities of access to the social protection network reverberates in the judiciary, which is placed as one of the mechanisms for alleviating the crisis. Faced with this problem, this study seeks to shed light on the sharing of responsibilities between the family of the subject in psychological distress and the State, based on the demands for compulsory internment that reach the judiciary.

To this end, we make use of data collected during doctoral research that investigated the judicialization of mental health in Paraná. To unveil these mediations, we started with a documentary research where we listed the study of judgments and monocratic decisions on mental health, which were processed between 2001 and 2017 in the second instance of the Court of Justice of the state of Paraná (Tribunal de Justiça do Paraná – TJ/PR) and were available for public consultation on the court's website. The selection of these documents was made by using the descriptor “psychiatric”, and 316 possible judgments were filtered to be tabulated and analyzed. The survey of these judgments was rich in providing the analysis of a wide range of themes that reach the judiciary of Paraná; on the other hand, it limited the access only to the summary of the process, making it impossible to analyze the process and opinions in their entirety.

When we looked at the documents surveyed, we found that among the mental health demands, 7% dealt with involuntary and compulsory psychiatric hospitalization through the Unified Health System (Sistema Único de Saúde – SUS). Despite not being the most expressive request in numerical terms, this section revealed a particularity that was not representative in the other requests, which concerns the inter-relationship between the family and the judiciary.

The analysis of the data collected and the theoretical construction of this research sought to ideally reproduce the real movement of the object studied. To do so, it was necessary to capture the structure and dynamics of the object through analytical procedures and perform its synthesis, in which “one begins ‘by the real and the concrete’, which appear as data; through analysis, some elements are abstracted and, progressively, with the advancement of the analysis, one arrives at concepts, at abstractions that refer to simpler determinations”³ (Paulo Netto, 2009, p. 19).

The concepts discussed here, of social protection of the subject in psychological distress and his family and the sharing of responsibilities with the State through lawsuits, were possible through abstraction that “allows extracting from its determined contextuality (of a totality) an element, isolating it, examining it”⁴ (Paulo Netto, 2009, p. 20). After reaching these simpler determinations, which are part of the object, but are not enough to understand the multiple determinations contained therein, it was necessary to return, aggregating these elements to leave the chaotic representation that the object appeared to reach the closest possible understanding of its essence, understanding the multiple determinations that synthesize the real.

These categories of analysis will be exposed in this paper in two topics. The first dialogues with the cases of compulsory internment, bringing the family demands for internment, its relationship with the social protection network, and the care to the family of the subject in psychological distress. Next, we will address the difficulties of the neoliberal State in guaranteeing social policies that support families, which has repercussions in the judicialization rates. From these analyses, it was possible to trace some considerations about the function of judicialization of mental health in the democratic rule of law.

Judicial requests for psychiatric hospitalization

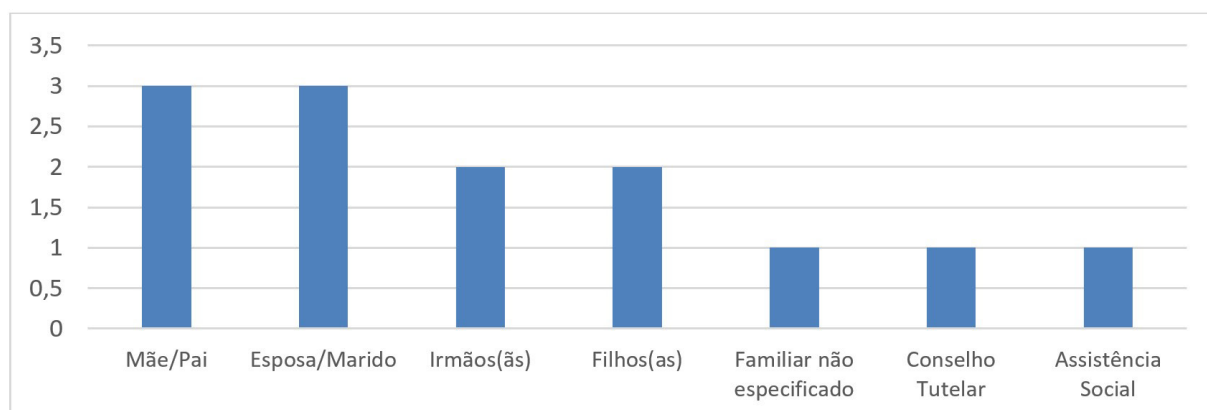
In Law 10.216 of 2001, the modalities of psychiatric hospitalization are voluntary, involuntary, and compulsory⁵. Since the documents analyzed in this study are legal proceedings, there is a prevalence of data on compulsory hospitalization (70% of the judgments), followed by involuntary hospitalization (30% of the judgments).

In the case of the five involuntary hospitalizations, all were requested by family members. The subject in psychological distress, dissatisfied with the hospitalization, filed suit questioning its pertinence, and in cases 869.651-7/PR (2013) and 818.416-9/PR (2012), the hospitalization was shown to be unjustified.

We did not take as the focus of this study the rights violations reported in the processes of involuntary internment, despite its relevance in a period of setbacks in the field of PNSM. We will take as the object of study the judgments of compulsory internment because they respond to the problematic of this research and reveal the sharing of responsibilities between family and State, through the judiciary.

The compulsory internment processes analyzed were filed by the Public Prosecutor's Office (Ministério Público – MP), since this is the legal procedure in these cases, but they occurred at the request of third parties. Even though it was not explicit in all the cases, we identified that most of the requests were made by family members, mainly parents or spouses, as shown in Figure 1.

Figure 1 - Direct or indirect hospitalization requester of the subject in psychological distress in the judgments of the TJ/PR, from 2001 to 2017



Source: Authors' own elaboration, based on the research conducted.

All the judgements of compulsory internment argued that the reason for the request was the risk that the subject in psychological distress offered to themselves and/or to society. The argument took into consideration previous actions, especially in relation to family members, as in case n°. 1615961-4 of 2017, which cites that the user puts themselves at risk “since they have a history of traumatic brain injury due to a fall due to drunkenness. That their situation is serious, given that there are episodes of aggressiveness in the family context, being feared by their relatives for fear of being assaulted”⁶ (p. 6).

Similar reports of aggression and violence against family members and third parties were common in the decisions analyzed, such as situations of physical violence against the mother, attempted sexual abuse of a family member, use of a machete to threaten a family member, verbal and physical aggression against neighbors, among others. Although these cases reverberate in the judiciary, which can lead to a reductionist analysis that reinforces the stigmatizing association between madness-perilousness-crime, it is necessary to point out that these situations are not the rule. The research of Passos, Stump & Rocha (2013) shows that patients with severe mental disorder are more likely to suffer acts of violence. Those who suffer psychically have higher rates of victimization than of violent actions, “they are more victims than tormentors”⁷ (p. 191).

The judgements studied reveal borderline scenarios, where the family seeks the judiciary to use the resource of hospitalization to solve long-standing situations that have not been solved by other means. Although the judgements do not explicitly mention all the paths taken by the subject in psychological distress and their family until they reached the judiciary and the forms of treatment carried out until then, they do mention previous care in the Health Care Network, in the RAPS, in Education, in Social Assistance, and in the Guardianship Council. In the cases that do not mention any previous assistance from the social protection network, there was an attempt at dialogue with the Psychosocial Care Center as a measure prior to hospitalization, as in judgment n°. 1615961-4 of 2017.

These paths reveal that the legal sphere is sometimes one of the last resources used by families when they cannot find support in the other services offered by the State. We have verified that after resorting to other services in the social protection network and going through previous psychiatric hospitalizations, the family and/or other services in the network – in cases where the family bonds had already been broken – end up resorting to the judiciary when the cases become more complex and require hospitalization, either because of the difficulty in getting a hospital bed or because of the user's refusal.

Corroborating the data presented here are the results of the research conducted by Reis, Guareschi and Carvalho (2015), who, when studying protective measures for adolescent drug users, reported that the cases analyzed were filed in two ways: 1) through the family's request, due to the refusal of the adolescent to undergo treatment or for not finding a place for hospitalization in the network and 2) through the request of services of the social protection network when reporting situations of rights violation.

The authors found that throughout the litigation these adolescents end up going through repeated psychiatric hospitalizations until sentencing, making the sentenced internment just one more on the list of internments experienced. The way these families enter the judiciary brings the social protection network to light, showing limits in the services provided, lack of services to meet social demands, and the guilt of the families for not exercising their protective function, without questioning the objective conditions that they have for this, or the protection offered by the State.

In the present study, the attention given to the family also proved to be precarious. In the judgments studied, the family appears mostly as the caregiver of the person in psychological distress. Despite reports of situations of violence experienced by these family members as a justification for hospitalization, we found no mention of the offer of care directed to the family, either to allow them to deal with the situations of violence experienced, or even to allow them to strengthen themselves and receive the necessary follow-up for the exercise of their protective function. After all, after hospitalization, the subject in psychological distress returns to their territory and to their family, which was often the one demanding compulsory internment, which reveals the importance of working with families.

We assume that the person who suffers psychically is not a being separated from the context in which he lives, thus, understanding the psychological distress and the care provided to the subject should take into account his objective conditions, including his family. However, in the few situations in which the family is mentioned as a user of social protection services, the professionals' discourse was in the sense of pointing out the abandonment of treatment, as in case n°. 1.350.311-0 of 2015, or to inform that the family environment does not contribute to the rehabilitation of the patient, as in case n°. 1.425.144-2 of 2016.

The difficulty of inserting the family as a user of the services, despite it being considered fundamental in the process of psychosocial care after the Psychiatric Reform Movement, reveals, to some extent, obstacles experienced by professionals inserted in these spaces, that by reproaching the family reduces it "to what is said by these specialists and the withdrawal of its function on behalf of the State [...] that neither can account for what the family was accused of failing"⁸ (Reis, Guareschi, & Carvalho, 2015, pp. 397-398). In addition, it alerts us about the objective conditions that these health services and professionals face to offer care to both users and their families. After all, this movement is not detached from the budgetary limits imposed on the RAPS or even the difficulties faced by families in the scenario of production and reproduction of the current societal order.

Therefore, social policies still face challenges in their operationalization to expand the service, taking the focus off the "problem individual" and effectively including the family and the territory in their analyses and interventions. The policies themselves are fragmented, understanding the right as sectorialized when they establish it as the right of the elderly, the right of women, the right of children and adolescents, among others (Mito, 2006). This relationship does not happen only in the scope of social policies, since the legal system in the capitalist production mode also tends to fragment the expressions of the social issue that arrive there, camouflaging the contradictions between capital and labor and individualizing the problems. In view of this, the Public Prosecutor's Office is called, most of the time, to arbitrate on individual issues, among them compulsory internment.

The scenario presented here, of the distancing of the family as the user of services and the very limits faced in the care of individuals in psychological distress, leads us to another point of analysis that appeared frequently in the judgements studied and which concerns the execution of social policies in times of a minimal State.

The sharing of responsibilities between family and State

Observing the paths prior to judicialization, even with limited data due to the very scope of this study, reveals the importance of the social protection network as an element for analyzing the judicial indices. This relevance becomes clearer when we observe who files the lawsuit in the second instance and against whom the lawsuit is filed.

Between 2008 and 2014, the most frequent actions were related to involuntary hospitalizations, questioning their relevance. However, from 2014, this scenario changes with the increase in requests for compulsory internment, which coincides with the economic crisis that intensifies in Brazil and the changes/regressions in the PNSM. When it comes to cases of compulsory internment, we notice that most of the lawsuits are filed by the state of Paraná and the municipalities against the MP. They occur to contest the value of the fine if the public agencies do not guarantee hospitalization, such as case n°. 1125139-5 of 2014, in which the fine was set at R\$ 5,000.00, limited to 5 days, if the municipality did not provide psychiatric hospitalization. Informing that the amount was disproportionate, the municipality was able to reduce the fine, since according to the decision the “amount arbitrated in the first degree is beyond the level strictly necessary for the fulfillment of the specific obligation, and, in case of non-compliance, it would overly burden the municipal treasury”⁹ (p. 6).

This expense, not foreseen in the budget, and the lack of resources to comply with the judicial measure, was also one of the arguments of the public entities that appealed the lawsuit. As stated by the municipality in case n°. 1344801-2 of 2015, it “cannot afford expenses not foreseen in the budget and that compliance with the decision would imply reprogramming, downward, the supply of health services and actions aimed at the population”¹⁰ (p. 1). This quotation highlights the imbroglio between individual and collective rights, between public and private interests, in a society based on the private accumulation of wealth and that presupposes equality through legal means when faced with extreme social and economic inequalities.

Most of the compulsory internment lawsuits were filed against municipalities, some of which requested that the other federal entities also be part of the lawsuit and be financially responsible, as in case n°. 1.425.144-2 of 2016. In case n°. 1445672-7 of 2015 the state of Paraná claims to be illegitimate pole of the action, being the responsibility of the municipality to guarantee the hospitalization. In these cases, the jurists’ interpretation is that the “responsibility to meet the constitutional right to health of Brazilian citizens **is joint and several among the federative entities**, which means that any of the entities can be demanded jointly or separately, being up to the citizen to make the choice”¹¹ (p. 5, emphasis added).

For Dresh (2014), at the same time that the Federal Constitution of 1988 provides for the universal right to health, solidarity federalism to care for health, and municipalization in the execution of services, there is also the legal prediction of a SUS of regionalized, hierarchized, and decentralized organization. In this case, health expenditures are distributed among the federated entities, but with a much greater burden for the municipalities. Therefore, the judiciary must also pay attention to the infraconstitutional norms and cannot decide based only on the solidarity between the entities, since “once the network of care is created with the distribution of competence (SUS) there will be the fractioning of solidarity, which is transformed into subsidiary responsibility”¹² (p. 20). The contributions of Dresh (2014) are important to reflect on the organization of the SUS in the Democratic State of Rights, however, we understand that investment in social policies contributes to improving the living conditions of workers, but does not break with the exploitation process.

Still regarding compulsory hospitalizations, most of the judgements portray that they have been occurring because of the inability of municipalities and the state to provide adequate care to users. As found by Sousa and Jorge (2019), the weaknesses in the management and assistance of substitutive services and the lack of medical support, especially in times of outbreak, are pointed out by the workers of the Psychosocial Care Center as the reasons for referring users to psychiatric hospitals.

Due to the lack of support for the moments in which hospitalization is indicated, the MP ends up requesting compulsory internment as a measure to guarantee the right to health. This scenario revealed the obstacles to the effectiveness of a universal health policy in the face of the austere investments it receives, considering that the State progressively minimizes the resources for health while redirecting them to the valorization of capital in a mix between public and private.

For Behring (2010), the formation of the public fund occurs through the allocation of part of the socially produced surplus value to the State, “that is, it is part of the surplus labor that has metamorphosed into profit, interest or land rent and that is appropriated by the State”¹³ (p. 20). Added to this, workers directly and indirectly pay taxes taxed from their wages and the goods they consume, in which “the exploitation of labor in production is complemented by the increasing *tax exploitation* in these times of intense crisis and metabolism of capital”¹⁴ (Behring, 2010, p. 21, italics added). Despite being burdened in terms of contribution, workers enjoy little of this value¹⁵ since the resources of the public fund are mostly destined to the attention of bourgeois interests of capital rotation, making them “increasingly dependent on this kind of return mediated by a State”¹⁶ (Behring, 2010, p. 21).

Faced with the absence or the precarious attention of the State for the availability and/or articulation of mental health services, added to the difficulties of the family in being continents or accessing these services, the judiciary becomes the mechanism used so that the right of the subject in psychological distress is effectuated. However, this effectiveness happens within the limits and the function of the legal apparatus, in an individualized manner and without modifications in the objective conditions of the mental health services or propitiating a critical reflection by the workers in relation to the capitalist mode of production and what are the impacts of this mode of production in their daily lives.

In short

By looking into the judicialization of mental health in Paraná, we realize that the judiciary is increasingly called upon to deliberate on various demands, which demonstrates the amplitude of this phenomenon. When we focused on the cases of psychiatric hospitalization, it was noticeable the increase in this demand over the years and its relation to the precarious living conditions of the working class, to the family's possibilities of exercising its protective function, and to the minimization of the State's action in the execution of social policies impacting the conditions of maintenance and execution of the social protection network. In this sense, taking into consideration the structural crisis of capital, the intensified expressions of the social question, the precarization of work, and the setbacks in the system of guaranteeing rights based on a neoliberal policy, we suppose that the judiciary will be increasingly requested to guarantee the social rights established by the Federal Constitution of 1988.

This scenario makes it clear that one of the paths taken by the family members of individuals in psychological distress, in the face of the sharing of responsibilities that they establish with the State, is the legal sphere. After all, the current conjuncture of the capitalist mode of production and its reverberations in the family environment makes it increasingly difficult for the family to exercise its protective function and serve as a buffer for the adversities that affect its members. In Brazil, a situation in which social policies end up having a familistic tendency and do not provide families with consistent support, the alternative of judicialization is put on the table.

The struggle to guarantee rights in the legal field is mostly based on individual demands, which does not implement significant changes in the structure and quality of the services offered by the State. Being restricted to an individualized right, contradictorily, at the same time that the judiciary seeks to give voice to the subjects in a democratic society, guaranteeing their rights, it ends up individualizing the problem, making discussion in the democratic field and collective mobilization more difficult, thus disarticulating the workers, who resort to the judiciary to solve their individual issues, instead of seeking alternatives based on the understanding and articulation with the class to which they belong, or even through the democratic arrangements constituted as councils, social control mechanisms, social movements, associations, unions, among others. The primacy of the individual is also evident in the few mentions of families, which may mean a psychosocial care focused on the subject and that still takes the family as an informant of the user's condition, without effectively including it in the care offered by the services.

References

- ACÓRDÃO 1344801-2/PR (2015, 17 fevereiro). Relator: Desembargador Paulo Roberto Vasconcelos. Câmara Cível. <https://portal.tjpr.jus.br/jurisprudencia/publico/pesquisa.do?actionType=pesquisar>
- ACÓRDÃO 1445672-7/PR (2015, 9 outubro). Relator: Desembargador Luiz Mateus de Lima. Câmara Cível. <https://portal.tjpr.jus.br/jurisprudencia/publico/pesquisa.do?actionType=pesquisar>
- ACÓRDÃO 1.125.139-5/PR (2014, 18 fevereiro). Relatora convocada: Denise Hammerschmidt. 5ª Câmara Cível. <https://portal.tjpr.jus.br/jurisprudencia/publico/pesquisa.do?actionType=pesquisar>
- ACÓRDÃO 1.350.311-0/PR (2015, 11 agosto). Relatora: Desembargadora Maria Aparecida Blanco de Lima. 4ª Câmara Cível. <https://portal.tjpr.jus.br/jurisprudencia/publico/pesquisa.do?actionType=pesquisar>
- ACÓRDÃO 1.425.144-2/PR (2016, 16 fevereiro). Relator: Juiz Rogério Ribas. 5ª Câmara Cível. <https://portal.tjpr.jus.br/jurisprudencia/publico/pesquisa.do?actionType=pesquisar>

- ACÓRDÃO 1.615.961-4/PR (2017, 23 outubro). Relator: Juiz Hamilton Rafael Marins Schwartz. 2ª Vara da Fazenda Pública. <https://portal.tjpr.jus.br/jurisprudencia/publico/pesquisa.do?actionType=pesquisar>
- ACÓRDÃO 818.416-9/PR (2012, 13 dezembro). Relator: Desembargador Francisco Luiz Macedo Junior. 9ª Câmara Cível. <https://portal.tjpr.jus.br/jurisprudencia/j/11400724/Acórdão-818416-9>
- ACÓRDÃO 869.651-7/PR (2013, 06 junho). Relator: Desembargador Macedo Pacheco. 1ª Câmara Criminal. <https://portal.tjpr.jus.br/jurisprudencia/j/11481993/Acórdão-869651-7>
- BATISTA, A. A. (2014). Trabalho, questão social e Serviço Social. Cascavel: Edunioeste.
- BEHRING, E. R. (2010). Crise do capital, fundo público e valor. In: Boschetti, I., Behring, E. R., Santos, S. M. de M. dos & Mioto, R. C. T. (Org.). Capitalismo em crise, política social e direitos. São Paulo: Cortez.
- DRESH, R. L. (2014). Federalismo solidário: a responsabilidade dos entes federativos na área da saúde. In: Santos, L., & Terraz, F. (Org.). Judicialização da Saúde no Brasil. Campinas: Saberes. p. 25-57.
- IAMAMOTO, M. V. (2007). Serviço Social em tempo de capital fetiche: capital financeiro, trabalho e questão social. São Paulo: Cortez.
- Instituto de Pesquisa Econômica Aplicada (IPEA). (2019). Carta de conjuntura: política fiscal. (45). February 11. http://www.ipea.gov.br/portal/images/stories/PDFs/conjuntura/191211_cc_45_politica_fiscal.pdf
- Instituto Brasileiro de Geografia e Estatística (IBGE). (2019). Pesquisa de orçamentos familiares 2017–2018: primeiros resultados. <https://www.ibge.gov.br/estatisticas/sociais/ptecao-social/24786-pesquisa-de-orcamentos-familiares-2.html?edicao=25578&t=publicacoes>
- MIOTO, R. C. T. (2006). Novas propostas e velhos princípios: a assistência às famílias no contexto de programas de orientação e apoio sociofamiliar. In: Sales, M. A., Matos, M. C. & Leal, M. C. (Org.). Política social, família e juventude: uma questão de direitos. (pp. 43-59). São Paulo: Cortez.
- NISIIDE, A. C. B. (2020). Reclames ao judiciário: o caso da saúde mental. [doctoral dissertation]. Universidade Estadual de Maringá, Maringá, PR.
- PAULO NETTO, J. (2009). Introdução ao método na teoria Social. In: Serviço Social: direitos sociais e competências profissionais. Brasília: CFESS/ABEPSS.
- OLIVEIRA, E. F. A. (2017). Gastos da política de saúde mental e os rumos da reforma psiquiátrica. (Tese de Doutorado), Programa de Pós-Graduação em Política Social da UFES, Vitória, ES, Brasil. <http://repositorio.ufes.br/handle/10/8776>
- OLIVEIRA, F. de. (1998). O surgimento do antivalor: capital, força de trabalho e fundo público. In: Oliveira, F. de. Os direitos do antivalor: a economia política da hegemonia imperfeita. Petrópolis: Vozes.
- ORGANIZAÇÃO PANAMERICANA DE LA SALUD (OPAS), & Organización Mundial de la Salud (OMS). (2018). La carga de los trastornos mentales en la región de las Américas. Washington.
- PASSOS, A. de F., STUMPF, B. P., & ROCHA, F. L. (2013). Vitimização de doentes mentais. Archives of Clinical Psychiatry, 40(5), 191-196.
- REIS, C. dos, GUARESCHI, N. M. de F., & CARVALHO, S. (2015, julho/setembro). Discursos sobre família e risco nas internações compulsórias de usuários de drogas. Revista Psico, 46(3), 386-399. doi: <https://doi.org/10.15448/1980-8623.2015.3.19388>
- ROSA, L. C. dos S., & DA SILVA, E. K. B. (2019). Família na política brasileira de saúde mental, álcool e outras drogas. SER Social, 21(44), 199-222.
- SOUSA, F. S. P. de, & JORGE, M. S. B. (2019). O Retorno da centralidade do Hospital Psiquiátrico: retrocessos recentes na política de saúde mental. Trabalho, Educação e Saúde, 17(1).
- TEIXEIRA, S. M. (2015). Política social contemporânea: a família como referência para as Políticas Sociais e para o trabalho social. In: Mioto, R. C. T., Campos, M. S. & Carloto, C.M. (Org.). Familismo, direito e cidadania: contradições da política social. São Paulo: Cortez.
- ZOLA, M. B. (2015). Políticas Sociais, família e proteção social: um estudo acerca das políticas familiares em diferentes cidades/ países. In: Mioto, R. C. T., Campos, M. S. & Carloto, C. M. (Org.). Familismo, direito e cidadania: contradições da política social. (pp. 45-95). São Paulo: Cortez.

Notes

- ¹ Data from the Household Budget Survey (Pesquisa de Orçamentos Familiares – POF, 2017-2018) reveal family income inequality, showing that only 2.7% of Brazilian families concentrate 20% of the national average income, while another 23.9% of families concentrate only 5.5%. Moreover, the income of the most vulnerable families depends 59% on non-monetary income such as access to cash transfer programs, pensions, etc. (IBGE, 2019).
- ² “estruturação da reprodução do capital”.

- ³ “começa-se ‘pelo real e pelo concreto’, que aparecem como dados; pela análise, um e outro elementos são abstraídos e, progressivamente, com o avanço da análise, chega-se a conceitos, a abstrações que remetem a determinações as mais simples”.
- ⁴ “permite extrair da sua contextualidade determinada (de uma totalidade) um elemento, isolá-lo, examiná-lo”.
- ⁵ As expressed in Law 10.216 of 2001, in voluntary hospitalization there is the consent of the patient, who must sign a statement attesting to their choice for this type of treatment. Involuntary hospitalization occurs without the consent of the user and at the request of a third party, and it can only be terminated at the written request of a family member or legal guardian, or when there is a manifestation of the physician responsible for the treatment. Compulsory internment, on the other hand, is the result of a court order after a medical opinion has been issued attesting to the need for the measure.
- ⁶ “uma vez que possui histórico de traumatismo crânio encefálico devido à queda por embriaguez, que sua situação é grave, eis que há episódios de agressividade no contexto familiar, sendo temido por seus familiares, por medo de serem agredidos”.
- ⁷ “são mais vítimas que algozes”.
- ⁸ “aquilo que é dito por esses especialistas e a desistência de sua função em nome do Estado [...] que tampouco consegue dar conta daquilo que a família foi acusada de fracassar”.
- ⁹ “valor arbitrado em primeiro grau foge do patamar do estritamente necessário para o cumprimento da obrigação específica, vindo, em caso de descumprimento, a onerar demasiadamente o erário municipal”.
- ¹⁰ “não tem como arcar com despesas não previstas no orçamento e que o cumprimento da decisão implicaria na reprogramação, para menor, na oferta dos serviços e ações de saúde voltados à população”.
- ¹¹ “responsabilidade em atender o direito constitucional à saúde dos cidadãos brasileiros **é solidária entre os entes federativos**, o que significa dizer que quaisquer dos entes podem ser demandados de forma conjunta ou separadamente, cabendo ao cidadão fazer a escolha”.
- ¹² “uma vez criada a rede de atenção com a repartição de competência (SUS) haverá o fracionamento da solidariedade, que se transforma em responsabilidade subsidiária”.
- ¹³ “ou seja, é parte do trabalho excedente que se metamorfoseou em lucro, juro ou renda da terra e que é apropriado pelo Estado”.
- ¹⁴ “a exploração do trabalho na produção é complementada pela *exploração tributária* crescente nesses tempos de intensa crise e metabolismo do capital”.
- ¹⁵ IPEA data from 2019 reveals that 78.3% of the national Gross Domestic Product corresponds to gross public sector debt.
- ¹⁶ “cada vez mais dependentes dessa espécie de retorno mediado por um Estado”.

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Agradecimentos

Not applicable.

Agência financiadora

This study was financed in part by the Coordenação de Aperfeiçoamento de Pessoal de Nível Superior – Brasil (Capes) – Finance Code 001.

Contribuições das autoras

Ana Carolina Becker Nisiide: elaboration of the manuscript.
Maria Lucia Boarini: critical review of the manuscript.

Aprovação por Comitê de Ética e consentimento para participação

Not applicable.

Consentimento para publicação

Authors' consent.

Conflito de interesses

There is no conflict of interest.