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## **LAW AND MENTAL HEALTH: CASE STUDY OF JUDICIAL ACTION**

*O direito e a saúde mental: estudo de caso de ação judicial*

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## **ABSTRACT**

This study aimed to promote the intersection between law and health and reflect on the role of the law operator in relation to health policies. A case study was conducted based on documentary analysis of the initial petition of an Administrative Misconduct Action on Mental Health, and a bibliographic research was also conducted on Mental Health policies, the carnival block *Os Conspirados* and related health concepts. The lawsuit disregarded the carnival block of mental health users as a health action, disapproving the allocation of funds from Ouro Preto's Municipal Health Fund for its maintenance. It was observed, from this case, that is a need for closer approximation between the areas and the actors of law and health, to improve the technique, dialogue and rationalization of the judicialization of health.

### **Keywords**

Health Law; Psychiatric Reform; Mental Health.

## **RESUMO**

Este estudo teve o objetivo de promover interseção entre direito e saúde e refletir sobre o papel do operador do direito perante as políticas de saúde. Foram realizados um estudo de caso com base em análise documental da petição inicial de uma Ação de Improbidade Administrativa sobre Saúde Mental e pesquisa bibliográfica sobre as políticas de saúde mental, o bloco carnavalesco *Os Conspirados* e conceitos de saúde relacionados. A ação judicial desconsiderou o bloco de carnaval dos usuários da saúde mental como ação de saúde, reprovando a destinação de verbas do Fundo Municipal de Saúde de Ouro Preto (MG) para sua manutenção. Observou-se, a partir desse caso, uma necessidade de maior aproximação entre as áreas e os atores do direito e da saúde para melhorar a técnica, o diálogo e a racionalização da judicialização da saúde.

### **Palavras-Chave**

Direito Sanitário; Reforma Psiquiátrica; Saúde Mental.

## Introduction

Mental health in Brazil and in the world has a history of exclusion and isolation from those considered “crazy”<sup>1</sup>. These people were often imprisoned in hospitals and subjected to inhuman treatment and living conditions. As an example, the mass genocide that took place between the 1960s and 1980s at Hospital Colônia, in Barbacena (MG)<sup>2</sup> stands out. A landmark for the change in this mental health model was the Psychiatric Reform<sup>3</sup>, which broke with the hospital-centered model to adopt an inclusion policy, mainly through artistic and cultural interventions.

In this context, there is a carnival block *Os Conspirados*, in the city of Ouro Preto (MG)<sup>4</sup>, which is an action for the inclusion of users of mental health services in society, along with their families, mental health workers and supporters of the cause.

In contrast, Public Civil Action (ACP) n. 0062218-80.2015.8.13.0461<sup>5</sup>, proposed in 2015 by the General Attorney of the Municipality of Ouro Preto, at the Minas Gerais Court of Justice (TJMG) considered *Os Conspirados* as a mere carnival block, which should not be the object of investments in health resources. With this ACP, there was a case of judicialization of health.

The judicialization of health occurs through frequent appeal to Judiciary, through legal actions, to solve problems related to the area. The figure of the legal practitioners is highlighted, as they are responsible for judging, accusing and defending the issues related to the concession or denial of a certain claim. The Judiciary is the only institutional body specialized in interpreting norms and arbitrating on their legality and application, in the cases subject to controversy<sup>6</sup>.

### I. Analysis of the specific case (Administrative Improbability Action)

ACP n. 0062218-80.2015.8.13.0461 for Act of Administrative Misconduct in the face of the Mayor and the Secretary of Health of Ouro Preto (term 2005-2012) was proposed in 2015 by the General Attorney of the Municipality of Ouro Preto. She accused the defendants of adjudicating the bidding object to a company that

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<sup>1</sup>LAMB, H. Richard; WEINBERGER, Linda E. Persons with severe mental illness in jails and prisons: a review. *Psychiatr Serv*, v. 49, n. 4, p. 483-492, Apr. 1998. <https://doi.org/10.1176/ps.49.4.483>.

<sup>2</sup>ARBEX, D. *Holocausto brasileiro*: genocídio: 60 mil mortos no maior hospício do Brasil. 1. ed. São Paulo: Geração Editorial, 2013.

<sup>3</sup>AMARANTE, Paulo. *Loucos pela vida*: a trajetória da reforma psiquiátrica no Brasil. 2. ed. rev. e ampl. Rio de Janeiro: SciELO-Editora FIOCRUZ, 1998.

<sup>4</sup>CONSPIRADOS, Diretoria do Bloco. Saúde mental: Ouro Preto. *Libertas Quae Será Tão Bombo*. 2010. Available at: <https://saudementalouropreto.wordpress.com/>. Accessed on: 10 Aug. 2018.

<sup>5</sup>TRIBUNAL DE JUSTIÇA DE MINAS GERAIS. *Ação Civil de Improbidade Administrativa n. 0062218-80.2015.8.13.0461*. Available at: [https://www4.tjmg.jus.br/juridico/sf/proc\\_complemento.jsp?comrCodigo=461&numero=1&listaProcessos=15006221](https://www4.tjmg.jus.br/juridico/sf/proc_complemento.jsp?comrCodigo=461&numero=1&listaProcessos=15006221). Accessed on: 14 Oct. 2020.

<sup>6</sup>MACHADO, Felipe Rangel de Souza. Contribuições ao debate da judicialização da saúde no Brasil. *Revista de Direito Sanitário*, São Paulo v. 9, n. 2 p. 73-91, 2008. Available at: <https://www.revistas.usp.br/rdisan/article/view/13118/14921>. <https://doi.org/10.11606/issn.2316-9044.v9i2p73-91>.

had irregularities in the Service Time Guarantee Funds (FGTS) and the National Social Security Institute (INSS), intending to pay with funds from the Municipal Health Fund (FMS) and harm the constitutional principles of public administration.

It is observed that the object of the bidding in which alleged irregularities are pointed out was the purchase of T-shirts for the carnival block Os Conspirados. What stands out in this lawsuit is the way the Attorney's Office deals with the concepts of health in promoting its prosecution.

First, the plaintiff raises an illegality in linking the FMS budget and claims that the defendants

not only did they allow the above unacceptable conduct to happen, but they also committed the failure of intending to use funds that are part of the FMS to fund the block's shirts [...] they intended to pay for carnival shirts with a fund that should be used to purchase medicines and vaccines, the payment of professionals to serve the population, the acquisition of first aid materials, the investment in campaigns for the prevention of diseases and awareness of the population about them, among others<sup>7</sup>.

The prosecution also claims that the FMS guarantees the exclusive application in health and accounts for a volume of T-shirts "greater than due", noting that the number bid is much higher than the number of employees and users that year in the mental health of Ouro Preto.

Finally, the plaintiff says that:

in addition to being known to all that public health in Brazil has been going through degrading moments, we are faced with public agents who are not content with not only investing health funds in their urgent demands, but even worse, they are destined to the acquisition of shirts for carnival parades<sup>8</sup>.

Therefore, this lawsuit considers that the block of users of mental health services should not be the object of investments by FMS resources.

From the analysis of the statements made by the representative of the Prosecutor's Office, several reflections are opened in the field of health: is it that Os Conspirados is not a health action? Is the integration of users of mental health services in the community not a health action? Isn't FMS intended for integration actions promoted by mental health? Shouldn't families, employees and the community participate in these integration actions?

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<sup>7</sup>TRIBUNAL DE JUSTIÇA DE MINAS GERAIS. *Ação Civil de Improbidade Administrativa n. 0062218-80.2015.8.13.0461*, cit., p. 7.

<sup>8</sup>*Id. Ibid.* p. 10.

## II. Brief contextualization about mental health care in Brazil

During the 16th and 17th centuries, the poor crazy lived on the streets and depended on charity, while the rich crazy were kept at home<sup>9</sup>. At the beginning of the 19th century, a policy of exclusion from the Western cultural and historical tradition was adopted, which turned madness into mental illness. At that time, there was a policy of rejecting everything that was not considered “normal” by everyday standards<sup>10</sup>.

The Brazilian asylum model emerged after World War II, especially with private asylums. In the 1960s, the use of private sector psychiatric services by the State began, due to the emergence of the National Social Security Institute (INPS)<sup>11</sup>.

At the end of the 1970s, the movement for the Brazilian Psychiatric Reform (RPB) and anti-asylum struggle emerged, raising a banner of defense of the rights of users of mental health services in Brazil<sup>12</sup> from the Movement of Mental Health Workers (MTSM)<sup>13</sup>. From 1990 onwards, the advent of new strategies, services and concepts in mental health set in motion the deinstitutionalization<sup>14</sup>.

In mid-2001, the RPB became institutionalized with a wide range of its actions and principles<sup>15</sup>. The reform was made positive by Law n. 10.216/2001<sup>16</sup>, called the RPB Law, which promotes “the protection and rights of people with mental disorders and redirects the mental health care model” as a State policy, and not as a government policy, and with the III National Mental Health Conference, which

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<sup>9</sup>MARTINS, Álissan Karine Lima; SOARES, Flaviana Dávila de Sousa; OLIVEIRA, Francisca Bezerra de; SOUZA, Ângela Maria Alves e. Do ambiente manicomial aos serviços substitutivos: a evolução nas práticas em saúde mental. *SANARE: revista de políticas públicas*, Sobral, v. 10, n. 1, p. 28-34, jan./jun. 2011. Available at: <https://sanare.emnuvens.com.br/sanare/article/view/140/132>.

<sup>10</sup>ALVERGA, Alex Reinecke de; DIMENSTEIN, Magda. A reforma psiquiátrica e os desafios na desinstitucionalização da loucura. *Interface: comunicação, saúde, educação Botucatu*, v. 10, n. 20, p. 299-316, dez. 2006. Available at: <https://www.scielo.br/pdf/icse/v10n20/03.pdf>. <https://doi.org/10.1590/S1414-32832006000200003>.

<sup>11</sup>MESQUITA, J. F. D.; NOVELLINO, M. S. F.; CAVALCANTI, M. T. A reforma psiquiátrica no Brasil: um novo olhar sobre o paradigma da saúde mental. In: ENCONTRO NACIONAL DE ESTUDOS POPULACIONAIS, 17., ABEP. Minas Gerais, set. 2010.

<sup>12</sup>*Id. Ibid.*

<sup>13</sup>FURTADO, Juarez Pereira; CAMPOS, Rosana Onocko. A transposição das políticas de saúde mental no Brasil para a prática nos novos serviços. *Rev. latinoam. psicopatol. fundam.*, São Paulo, v. 8, n. 1, p. 109-122, mar. 2005. Available at: <https://www.scielo.br/pdf/rfp/v8n1/1415-4714-rlpf-8-1-0109.pdf>. Accessed on: 09 Nov. 2020. <http://dx.doi.org/10.1590/1415-47142005001011>.

<sup>14</sup>BOTTI, Nadja Cristiane Lappann; TORREZIO, Michele Cecília Silva. Festival da loucura e a dimensão sociocultural da reforma psiquiátrica. *Psicol. Soc.*, Belo Horizonte, v. 26, n. esp., p. 212-221, 2014. Available at: <https://www.scielo.br/pdf/psoc/v26nspe/22.pdf>. <https://doi.org/10.1590/S0102-71822014000500022>

<sup>15</sup>COUTO, Maria Cristina Ventura; DELGADO, Pedro Gabriel Godinho. Crianças e adolescentes na agenda política da saúde mental brasileira: inclusão tardia, desafios atuais. *Psicol. clin.*, Rio de Janeiro, v. 27, n. 1, p. 17-40, jul. 2015. Available at: <https://www.scielo.br/pdf/pc/v27n1/0103-5665-pc-27-01-00017.pdf>. Accessed on: 09 Nov. 2020. <https://doi.org/10.1590/0103-56652015000100002>.

<sup>16</sup>BRASIL. *Lei n. 10.216, de 6 de abril de 2001. Dispõe sobre a proteção e os direitos das pessoas portadoras de transtornos mentais e redireciona o modelo assistencial em saúde mental*. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/leis\\_2001/110216.htm](http://www.planalto.gov.br/ccivil_03/leis/leis_2001/110216.htm). Accessed on: 14 Oct. 2020.

promoted the replacement of the hospital-centered, medically-centered and medicalizing model with that of community care<sup>17</sup>. It is also important to mention the ordinances of the Ministry of Health (Ordinance MS) n. 189/1991<sup>18</sup>, n. 336/2002<sup>19</sup> and n. 251/2002<sup>20</sup>, which provide for substitute services, such as Psychosocial Care Centers (CAPS) and Psychosocial Support Centers (NAPS), among others<sup>21</sup>.

Thus, it is important to validate deinstitutionalization as the norm for substitute services, which, according to Hirdes, “means to shift the center of attention from the institution to the community, district, and territory”<sup>22</sup>. Therefore, the service network is always built prioritizing the subjectivity of the individual, as well as his participation and social interaction<sup>23</sup>.

The reform came from popular and social struggles, in a genuine civil society movement. As Amarante and Torre say, it does not come from the “State or from the interest groups”<sup>24</sup>, it is “a reform of the relations between the State and society”. Thus, the RPB broke with the old asylum model and incorporated other subjects in the treatment of users of mental health care, such as the family, other health professionals and even the community<sup>25</sup>.

In this context, CAPS are presented, instituted by Ordinance MS n. 336/2002<sup>26</sup> and which are substitutes for the hospital model. They are arranged in a mental health care network, which is essentially carried out through the partnership of the health service with the population<sup>27</sup>. CAPS are organized according

<sup>17</sup> COUTO, Maria Cristina Ventura; DELGADO, Pedro Gabriel Godinho. *op. cit.*

<sup>18</sup> MINISTÉRIO DA SAÚDE - MS. Secretaria-Executiva. Secretaria de Atenção à Saúde. *Legislação em saúde mental 1990-2004*. 5. ed. ampl. Brasília-DF, 2004. Available at: [http://bvsmms.saude.gov.br/bvs/publicacoes/legislacao\\_mental.pdf](http://bvsmms.saude.gov.br/bvs/publicacoes/legislacao_mental.pdf). Accessed on: 14 Oct. 2020.

<sup>19</sup> MINISTÉRIO DA SAÚDE. *Portaria n. 336, de 19 de fevereiro de 2002*. Available at: [https://bvsmms.saude.gov.br/bvs/saudelegis/gm/2002/prt0336\\_19\\_02\\_2002.html](https://bvsmms.saude.gov.br/bvs/saudelegis/gm/2002/prt0336_19_02_2002.html). Accessed on: 14 Oct. 2020.

<sup>20</sup> MINISTÉRIO DA SAÚDE - MS. Secretaria-Executiva. Secretaria de Atenção à Saúde. *Legislação em saúde mental 1990-2004, cit.*, p. 118.

<sup>21</sup> MARTINS, Álissan Karine Lima; SOARES, Flaviana Dávila de Sousa; OLIVEIRA, Francisca Bezerra de; SOUZA, Ângela Maria Alves e. *op. cit.*

<sup>22</sup> HIRDES, Alice. A reforma psiquiátrica no Brasil: uma (re) visão. *Ciênc. saúde coletiva*, v. 14, n. 1, p. 299, fev. 2009. Available at: <https://www.scielo.br/pdf/csc/v14n1/a36v14n1.pdf>. <https://doi.org/10.1590/S1413-81232009000100036>.

<sup>23</sup> MARTINS, Álissan Karine Lima; SOARES, Flaviana Dávila de Sousa; OLIVEIRA, Francisca Bezerra de; SOUZA, Ângela Maria Alves e. *op. cit.*

<sup>24</sup> AMARANTE, Paulo; TORRE, Eduardo Henrique Guimarães. Loucura e diversidade cultural: inovação e ruptura nas experiências de arte e cultura da Reforma Psiquiátrica e do campo da Saúde Mental no Brasil. *Interface: comunicação, saúde, educação Botucatu*, v. 21, n. 63, p. 765, dez. 2017. Available at: <https://www.scielo.br/pdf/icse/v21n63/1807-5762-icse-21-63-0763.pdf>. <http://dx.doi.org/10.1590/1807-57622016.0881>.

<sup>25</sup> MARTINS, Álissan Karine Lima; SOARES, Flaviana Dávila de Sousa; OLIVEIRA, Francisca Bezerra de; SOUZA, Ângela Maria Alves e. *op. cit.*

<sup>26</sup> BRASIL. *Portaria n. 336, de 19 de fevereiro de 2002*. Available at: [https://bvsmms.saude.gov.br/bvs/saudelegis/gm/2002/prt0336\\_19\\_02\\_2002.html](https://bvsmms.saude.gov.br/bvs/saudelegis/gm/2002/prt0336_19_02_2002.html). Accessed on: 12 Nov. 2020.

<sup>27</sup> LIMA, Elizabeth Maria Freire de Araújo; YASUL, Silvio. Territórios e sentidos: espaço, cultura, subjetividade e cuidado na atenção psicossocial. *Saúde em debate*, Rio de Janeiro, v. 38, n. 102, p. 593-606, set. 2014. Available at: <https://www.scielo.br/pdf/sdeb/v38n102/0103-1104-sdeb-38-102-0593.pdf>. <https://doi.org/10.5935/0103-1104.20140055>.

to the “logic of the territory”, with a network of care and demands in mental health in the space of the territory covered by each CAPS. According to Ordinance MS n. 336/2002 are made up of outpatient daily care services<sup>28</sup> and must cherish the social reintegration of people in mental distress, offering artistic and cultural activities, psychotherapeutic assistance, among others<sup>29</sup>.

The change in the mental health model in Brazil has improved the care for the user<sup>30</sup>. From the moment the disease ceases to be the focus, individuals and their particularities arise, such as routine, family, friends and work, allowing the expansion of integrality in mental health and psychosocial care<sup>31</sup>. In other words, the reform seeks personal, social and cultural emancipation that allows, among other things, an end to the imprisonment of so many forms of existence<sup>32</sup>.

### **III. Policy of inclusion of people with mental disorders in society and socio-cultural movement in the field of psychiatric reform**

The psychiatric reform came to modify the system of clinical treatment of mental disorder, increasingly eliminating hospitalization as a form of social exclusion<sup>33</sup>. From the psychiatric reform process, a field of artistic-cultural activities was formed in Brazil with structural conditions that point to its independence in relation to the psychiatric field itself in which such activities arose<sup>34</sup>.

In order to promote forms of inclusive treatment, psychosocial care services have created art-culture workshops<sup>35</sup>. This proposal for therapeutic projects based on the idea of social reintegration comes from the struggle to rescue citizenship and human rights, especially through psychosocial rehabilitation practices. These are years of cultural transformation with the aim of creating “another social place” for madness.<sup>36</sup>

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<sup>28</sup> *Id. Ibid.*

<sup>29</sup> MARTINS, Álissan Karine Lima; SOARES, Flaviana Dávila de Sousa; OLIVEIRA, Francisca Bezerra de; SOUZA, Ângela Maria Alves e. *op. cit.*

<sup>30</sup> *Id. Ibid.*

<sup>31</sup> AMARANTE, Paulo; FREITAS Fernando; NABUCO Edvaldo; PANDE Mariana Nogueira Rangel. Da diversidade da loucura à identidade da cultura: o movimento social cultural no campo da reforma psiquiátrica. *Cad. Bras. Saúde Mental*, Rio de Janeiro, v. 4, n. 8, p. 125-132, jun. 2012 Available at: <http://stat.elogo.incubadora.ufsc.br/index.php/cbsm/article/viewFile/2026/2317>.

<sup>32</sup> ALVERGA, Alex Reinecke de; DIMENSTEIN, Magda. *op. cit.*

<sup>33</sup> REINALDO, Amanda Márcia dos Santos. Saúde mental na atenção básica como processo histórico de evolução da psiquiatria comunitária. *Esc. Anna Nery*, Rio de Janeiro, v. 12, n. 1, p. 173-178, mar. 2008. Available at: <https://www.scielo.br/pdf/ean/v12n1/v12n1a27.pdf>. <https://doi.org/10.1590/S1414-81452008000100027>.

<sup>34</sup> AMARANTE, Paulo. *Saúde mental e atenção psicossocial*. Rio de Janeiro: Editora Fiocruz, 2007.

<sup>35</sup> AMARANTE, Paulo; COSTA, Ana Maria. *Diversidade cultural e saúde*. Rio de Janeiro: CEBES, 2012. p. 7-64. Available at: <http://cebes.org.br/site/wp-content/uploads/2015/02/10DIVERSIDADE-CULTURAL-E-SA%C3%9ADE.pdf>.

<sup>36</sup> ALVERGA, Alex Reinecke de; DIMENSTEIN, Magda. *op. cit.*

From then on, in addition to a “therapeutic function”, the artistic-cultural movement has a role in transforming the subject’s experience and society’s relations with him. As stated by Paulo Amarante, the concept of cultural diversity “brings new and important dimensions to the field of health, expanding and re-signifying the notions of health, quality of life, equity, integrality, participation and social control, and many others”<sup>37</sup>. In another moment, Amarante *et al.* also write that:

artistic-cultural projects become fundamental components in the context of psychiatric reform, identified as some of the fields of cultural diversity, and defined by UNESCO as the multiplicity of ways in which the cultures of groups and societies find expression<sup>38</sup>.

An example of this is the “*Loucos pela Diversidade*” project, a public policy carried out in 2009 by the Ministry of Culture (MinC), with the purpose of giving visibility to the work carried out by and for users of mental health care.<sup>39</sup> With this and other programs, MinC made public cultural policies feasible as a tool for social transformation and valuing individuals, expanding territories and breaking with the idea of incapacity and marginalization of people in mental suffering<sup>40</sup>. Bezerra Jr. mentions the “participation of organized blocks in the CAPS in carnivals”<sup>41</sup> in the field of the successful initiatives of socio-cultural activities carried out in Brazil.

Thus, there was a paradigm break about health conceptions, which are no longer characterized only as the absence of disease or abstractly as physical, psychological and social well-being, but as the right to be and exercise difference and its diversity<sup>42</sup>. For Amarante and Torre, the artistic-cultural field is one of the biggest innovations of RPB, valuing the autonomy generated in reaction to the “health equipment”. The authors state that this field produces cultural goods and values for the city, in addition to creating family and social inclusion in public spaces<sup>43</sup>.

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<sup>37</sup> AMARANTE, Paulo. *Saúde mental e atenção psicossocial, cit.*, p. 21.

<sup>38</sup> AMARANTE, Paulo; FREITAS Fernando; NABUCO Edvaldo; PANDE Mariana Nogueira Rangel. Da diversidade da loucura à identidade da cultura: o movimento social cultural no campo da reforma psiquiátrica, *cit.*, p.129.

<sup>39</sup> BOTTI, Nadja Cristiane Lappann; TORREZIO, Michele Cecília Silva. *op. cit.*

<sup>40</sup> AMARANTE, Paulo; TORRE, Eduardo Henrique Guimarães. Loucura e diversidade cultural: inovação e ruptura nas experiências de arte e cultura da Reforma Psiquiátrica e do campo da Saúde Mental no Brasil, *cit.*

<sup>41</sup> BEZARRA JR., Benilton. Desafios da reforma psiquiátrica no Brasil. *Physis*, Rio de Janeiro, v. 17, n. 2, p. 243-250, 2007. Available at: <https://www.scielo.br/pdf/physis/v17n2/v17n2a02.pdf>. <https://doi.org/10.1590/S0103-73312007000200002>.

<sup>42</sup> AMARANTE, Paulo; COSTA, Ana Maria. *Diversidade cultural e saúde, cit.*

<sup>43</sup> AMARANTE, Paulo; TORRE, Eduardo Henrique Guimarães. Loucura e diversidade cultural: inovação e ruptura nas experiências de arte e cultura da Reforma Psiquiátrica e do campo da Saúde Mental no Brasil, *cit.*



#### IV. **Block Os Conspirados**

After the contextualization of RPB and the anti-asylum struggle, the expanded concept of health is emphasized, according to which health is much more than the mere absence of disease, but rather a social process characterized by people's relationships with nature and with other people in a certain geographical space and in a certain historical time. Thus, the guarantee of health transcends the sphere of clinical-care activities, raising the need for a new parameter of the health-disease process that covers prevention, promotion and recovery<sup>44</sup>.

As already mentioned, it is at this juncture that the manifestation of the artistic-cultural field as a health issue is inserted. Paulo Amarante *et al.*<sup>45</sup> exemplify the Carnival Block Os Conspirados (BCOC) when referring to artistic-cultural initiatives that began to be developed from the 1990s.

BCOC was born in 2000 in Ouro Preto, in the state of Minas Gerais, is a carnival block of CAPS users in the city that officially opens the Ouro Preto-Carnival on Thursday<sup>46</sup>. It is a cultural intervention that covers mental health users, their families, workers and the sympathetic public. It is a block open to the population and accepts all differences<sup>47</sup>. At BCOC there is no distinction as to who is a user, worker, family member or popular, everyone is treated equally<sup>48</sup>. One of the block's objectives is to erase the history of exclusion and isolation of people with mental disorders, who have always been treated on the margins of society. Thus, it has a strong role in promoting more respect and solidarity with all the diversity present in society.

Carnival is one of the most important demonstrations of Brazilian culture and, after the RPB, it also presents itself as a space for mental health, covering carnival expressions in several cities in the country. Amarante and Torre consider BCOC as one of the highlights<sup>49</sup>, for example of activity of the socio-cultural dimension in the Brazilian process of psychiatric reform with

the objective of provoking the social imaginary to reflect on the theme of madness, mental illness, psychiatric hospitals, based on the cultural and artistic production of the social actors involved (users, family members, technicians, volunteers)<sup>50</sup>.

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<sup>44</sup> BATISTELLA, Carlos. Abordagens contemporâneas do conceito de saúde. In: FONSECA, A. F.; CORBO, A. M. D. (Orgs). *O território e o processo saúde-doença*. Rio de Janeiro: EPSJV/Fiocruz, 2007.

<sup>45</sup> AMARANTE, Paulo; FREITAS Fernando; NABUCO Edvaldo; PANDE Mariana Nogueira Rangel. *Da diversidade da loucura à identidade da cultura: o movimento social cultural no campo da reforma psiquiátrica*, cit.

<sup>46</sup> CHAVES, Lilián Leite. *"Esse negócio de loucura, cê sabe né, fia": integração e diferenciação pelas ruas de Ouro Preto*. Dissertação (Mestrado) - Departamento de Antropologia-UNB. Brasília-DF, 2009.

<sup>47</sup> CONSPIRADOS, Diretoria do Bloco. *Saúde mental: Ouro Preto*, cit.

<sup>48</sup> *Id. Ibid.*

<sup>49</sup> AMARANTE, Paulo; TORRE, Eduardo Henrique Guimarães. *Loucura e diversidade cultural: inovação e ruptura nas experiências de arte e cultura da Reforma Psiquiátrica e do campo da Saúde Mental no Brasil*, cit.

<sup>50</sup> AMARANTE, Paulo. *Saúde mental e atenção psicossocial*, cit., p. 73.

Thus, the BCOC in Ouro Preto is a cultural and health action that has contributed to the new social construction of the issues of “madness” and the insertion of users. There is a carnival block that manages to promote solidarity and equality for everyone in social spaces.

## V. Health concepts relevant to the initial piece of Improbability Action

In order to analyze what the accusatory piece of the Improbability Judicial Action has already said, it is considered that the aforementioned art and culture demonstrations break with the psychiatric paradigm, from a change in the understanding of mental illness as an inability to value art and culture as therapy. These are ruptures that redefine the concepts of culture and RPB<sup>51</sup>.

Such a paradigm considers mental health in the field of collective health:

understanding the health-disease process as a result of complex social processes that demand an interdisciplinary, transdisciplinary and intersectoral approach, with the consequent construction of a diversity of territorialized devices of attention and care. Furthermore, for this new paradigm, health production and production of subjectivity are intertwined and are inseparable<sup>52</sup>.

There is a break with the “reductionist biological view”, medicalizing and hospital-centered. RPB criticizes the domain of scientific rationality to bring more dialogues between the fields of knowledge<sup>53</sup>.

About the Health Fund, it is an instrument to manage the resources destined to the financing of actions and public health services at the municipal, state and federal level. The Fund is also responsible for planning, so that managers can visualize the resources they have for health actions and services<sup>54</sup>. These cannot be used for any other activity that is not in the health area, according to article 71 of Law n. 4,320/1964<sup>55</sup>, and finance the actions and health services of primary care and assistance of medium and high complexity carried out by states and municipalities<sup>56</sup>.

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<sup>51</sup> AMARANTE, Paulo; TORRE, Eduardo Henrique Guimarães. Loucura e diversidade cultural: inovação e ruptura nas experiências de arte e cultura da Reforma Psiquiátrica e do campo da Saúde Mental no Brasil, *cit*.

<sup>52</sup> YASUI, Silvio; COSTA-ROSA, Abílio. A estratégia atenção psicossocial: desafio na prática dos novos dispositivos de saúde mental. *Saúde em Debate*, v. 32, n. 78-80, p. 29, dez./jan. 2008. Available at: <https://www.redalyc.org/articulo.oa?id=406341773003>

<sup>53</sup> *Id. Ibid.*

<sup>54</sup> MINISTÉRIO DA SAÚDE - MS. Departamento Nacional de Auditoria (Denasus). *Manual de auditoria na gestão dos recursos financeiros do SUS*. 2004. Available at: [https://www.saude.mg.gov.br/images/documentos/manual\\_auditoria\\_na\\_gestao\\_recursos\\_financeiros\\_SUS.pdf](https://www.saude.mg.gov.br/images/documentos/manual_auditoria_na_gestao_recursos_financeiros_SUS.pdf).

<sup>55</sup> BRASIL. *Lei n. 4.320, de 17 de março de 1964. Estatui Normas Gerais de Direito Financeiro para elaboração e controle dos orçamentos e balanços da União, dos Estados, dos Municípios e do Distrito Federal*. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/14320.htm](http://www.planalto.gov.br/ccivil_03/leis/14320.htm). Accessed on: 14 Oct. 2020.

<sup>56</sup> MINISTÉRIO DA SAÚDE - MS. Fundo Nacional de Saúde. *Gestão Financeira do Sistema Único de Saúde: manual básico*. 3. ed. rev. e ampl. Brasília-DF: Ministério da Saúde, 2003.

Public Health Actions and Services (ASPS) are referred to in article 4 of Law n. 8,080/1990<sup>57</sup>: “The set of health actions and services, provided by federal, state and municipal public bodies and institutions, of the direct and indirect Administration and of the foundations maintained by the Public Power, constitutes the National Health System”. ASPS in the scope of mental health are guided by the National Mental Health Policy, supported by Law n. 10.216/2001 and which seeks to establish an open mental health care model, based on the community network, guaranteeing the free movement of people with mental disorders through services, the social body and the city, and basing the care to be offered on the resources of that the community has<sup>58</sup>. This model has a network of varied services and equipment, such as CAPS, Therapeutic Residential Services (SRT), Community and Culture Centers and comprehensive care beds.

Thus, after knowing the destination of the Municipal Health Fund, the guidelines of the ASPS for mental health and the CAPS as the main strategy of the RPB process, it is clear that the BCOC, which appeared in the CAPS in the city of Ouro Preto, fits into the National Mental Health Policy and meets the objectives of integrating people with mental disorders into a concrete social and cultural environment, in harmony with their families, health professionals and other areas of knowledge and with society. Therefore, it also fits into the FMS transfer policy for health actions in which mental health is inserted.

## Final considerations

It should be noted that the legal action in question, when considering the Os Conspirados block as a mere carnival block not liable to receive FMS funds, disregarded the entire history of the RPB's struggle. The municipal prosecutor, author of the accusatory piece, did not adhere to the RPB's premise of including people with mental disorders in society or to the socio-cultural dimension of the Brazilian psychiatric reform process.

When the author of the piece points out that the number of shirts bid for is much higher than that of users and workers in the health system, he disregards the importance of the participation of families and the community in the health, care and insertion of these people in society. And, in saying that public officials committed improbity in intending to make the payment for shirts for the block instead of

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<sup>57</sup> BRASIL. *Lei n. 8.080, de 19 de setembro de 1990*. Dispõe sobre as condições para a promoção, proteção e recuperação da saúde, a organização e o funcionamento dos serviços correspondentes e dá outras providências. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/18080.htm](http://www.planalto.gov.br/ccivil_03/leis/18080.htm). Accessed on: 14 Oct. 2020.

<sup>58</sup> GOVERNO DO ESTADO DE SÃO PAULO. Secretaria de Estado da Saúde. *Saúde mental*. Available at: <http://www.saude.sp.gov.br/humanizacao/areas-tematicas/saude-mental>. Accessed on: 06 Sep. 2018.

buying medicines and vaccines and paying employees, he stuck to the medicalizing dimension of mental health, in the sense that the right to health would be restricted to access to medicines and technologies.

In view of the above, the Os Conspirados block is considered a health action and deserves resources from the FMS. The policy of inclusion of users of mental health services goes against the restricted concept of health as just the absence of disease, is opposed to the process of medicalization of everyday life and adopts other forms of care, such as the artistic-cultural manifestation for inclusion of users in society.

This case demonstrates an impasse between the legal practitioner and health policies and, being a lawsuit involving health issues; it can be considered a case of judicialization of health. However, for a more balanced and fairer judicialization, it is necessary that jurists, before deciding, take all necessary precautions. It is important to listen in advance to a specific technical body that assesses the effectiveness and the need for the requested action or service, within technical and scientific criteria, avoiding providing unnecessary demands and therapies without scientific evidence, motivated by articulation between the doctor who prescribes the medication or procedure and commercial interests of the pharmaceutical industry or even that do not follow clinical-scientific protocols.

Therefore, it is observed that the legal practitioner in the judicial action under analysis interpreted some concepts of health in disagreement with what the RPB preaches. Recurrently, these professionals must decide, accuse and defend issues related to health. Based on this impasse between health policy and law enforcers, the need for greater harmony between the fields of law and health is investigated, through the creation of spaces for discussion, mediation and conciliation between the actors, as well as well as advancing and enhancing technical partnerships between health professionals and the Judiciary.

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