



## Case Of Fernandes De Oliveira v. Portugal

[2017] ECHR 78103/14

**Country:** Portugal

**Region:** Europe

**Year:** 2017

**Court:** The European Court of Human Rights

**Health Topics:** Controlled substances, Health care and health services, Hospitals, Mental health

**Human Rights:** Right to life

### Facts

The applicant's son, A.J., had a history of mental health disorders, and alcohol and substance addiction, and since 1984 had spent several periods in psychiatric hospitals.

During the period in September 1999 in which A.J. was hospitalised, the doctor treating A.J. did not permit him to leave the hospital whilst he was being treated. However, during his two most recent hospitalisations, A.J. was permitted to leave the hospital to spend weekends at home with the applicant. During the recent periods, A.J. also regularly escaped from the hospital to go home.

A.J. was last hospitalised between 2 April 2000 and 27 April 2000, due to a suicide attempt. On 25 April 2000, A.J. was permitted to spend the weekend at home. However, he consumed a large quantity of alcohol and was subsequently sent back to the psychiatric hospital. According to A.J.'s medical records, his state of health improved over the next day. On 27 April 2000, A.J.'s notes record that he presented at lunch and for the afternoon snack in a calm manner. However, around 7 p.m. that day staff noticed that A.J. had not appeared for dinner. The hospital staff searched the hospital premises and reported A.J.'s disappearance to the National Republican Guard and the applicant. It was later discovered that at around 5.37 p.m. A.J. had committed suicide by jumping in front of a train near the hospital.

After being unsuccessful in her domestic claim, which lasted over eleven years, the applicant made an ECtHR claim against the authorities, complaining that the Portuguese authorities had violated Article 2 of the Convention by failing to adequately secure the hospital and prevent her son from leaving and committing suicide, and for the sluggish handling of her case.

### Decision and Reasoning

The Court concluded that the authorities had violated their substantive obligations under Article 2.

The Court reiterated that Article 2 enjoins the State to take appropriate steps to safeguard the lives of those within its jurisdiction. As such, there can be a positive obligation on State authorities to protect mentally ill patients from others or, in some instances, themselves. However, the Court held that this obligation will only apply where the authorities know, or ought to know, that the life of the person concerned is at real and immediate risk.

Having regard to A.J.'s clinical history, and his recent suicide attempt, the Court held that the hospital staff had reason to expect that he might try to commit suicide again, and given his frequent escapes, that another escape attempt might be imminent. The Court further held that the hospital's "open door" policy, though in line with modern psychiatric treatment research, could not exempt the State from its obligations to protect suicidal patients who had special monitoring needs. The Court found that, in light of the fact A.J. was not found to be missing until 7 p.m., over two hours after he was last seen, the hospital's monitoring of suicidal patients was inadequate.

The Court also held that the authorities had violated their procedural obligations under Article 2 of the convention, by failing to provide an effective and prompt response to A.J.'s death. The Court reiterated that Article 2 imposes a procedural obligation on States to set up an effective judicial system for establishing the cause of death of an individual under the care and responsibility of health-care professionals, as well as any responsibility on the part of the latter. In the instant case, the applicant faced several lengthy periods of unexplained inactivity during domestic proceedings, particularly a three-year wait for a judgment on the first

hearing, which was unacceptable.

### **Decision Excerpts**

“States are required to make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients’ lives and to set up an effective independent judicial system so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable. (para 66)

“The very passage of time prolongs the ordeal for members of the family . . . The Court cannot accept that domestic proceedings instituted in order to shed light on the circumstances of an individual’s death should last for so long. In circumstances such as those in the present case, a prompt response by the authorities is essential in maintaining public confidence in their adherence to the rule of law, and also to allow the dissemination of information and thereby prevent the repetition of similar errors and contribute to the safety of users of health services.” (para 80)

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