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Advance Directives in Macao: Not Legally Recognised, but. . .

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14.1 Introduction

The Macao Special Administrative Region (SAR) is one of two special regions of the People's Republic of China (PRC). According to the PRC principle of "one country, two systems", Macao is vested with its own executive, legislative and judicial powers. Macao law rests on many different legal theories and practices, and is heavily inspired by the Portuguese legal tradition, which differs from that of the PRC. Although the Joint Declaration on the Question of Macao, which was signed into effect on 26 March 1987, provided for the transfer of sovereignty from Portugal to the PRC on 20 December 1999, Macao's law has remained largely unchanged following the handover of power.[1] The profound influence of the previous Portuguese administration means that it appears natural that courts in Macao should adopt solutions from Portuguese doctrine and case law to support their judicial decisions. However, new legal trends from the PRC and nearby countries, and the growing influence of Chinese values imposed by a predominantly Chinese community, are being added to this Portuguese tradition. All of these factors have created in Macao a legal framework that blends the West and the East.[2]

Regarding informed consent theory more generally, most of the solutions in place in Portugal are also applicable in Macao. As in Portugal, Macao's main informed consent solutions reside in its Criminal Code (CC)[3],

[1] Joint Declaration of the Government of the Portuguese Republic and the Government of the People's Republic of China on the Question of Macau, Number 23/1988, 6 June 1988, Article 2(4), https://bo.io.gov.mo/bo/i/88/23/out01.asp#1.

[2] For explanations of the legal and cultural particularities of Macao law, see V.L. Raposo, "Macao Report: Informed Consent in a Multilingual and Multicultural Region: A Bioethical Challenge" (2018) 27(3) *Cambridge Quarterly of Healthcare Ethics* 385.

[3] Decree 58/95/M, 14 November 1995, which approved the Macao Criminal Code, https://bo.io.gov.mo/bo/i/95/46/codpenpt/codpen0001.asp#1.

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specifically in Article 150 (which requires prior patient consent for medical acts) and Article 151 (which requires referred consent to be fully informed). However, they depart in similarity in the domain of advance directives (ADs), which is a branch of the right to informed consent. Although ADs have been legally recognised in Portugal since 2012,[4] Macao has not followed this legislative step. Even though members of the Ethics Committee for Life Sciences under Macao's Health Bureau agreed that ADs should be implemented in Macao in 2019,[5] efforts to legislate ADs have now reached a standstill.

To date, no legal document has dealt with ADs in Macao or with the professional regulation of, or guidance for such directives. However, this does not mean that ADs have no application in this small territory. The present chapter analyses the legal relevance of ADs in the Macanese CC, the applicability of ADs in Macao, the ways in which doctors and family members can affect their applicability, the attitudes of the Macao government and Macanese residents towards the current application of ADs and the possible features of a future legislation.

14.2 The Legal Relevance of Advance Directives in the Macanese Criminal Code

One of the most relevant provisions in the Macanese CC is Article 150, which provides for the crime of "arbitrary medical-chirurgical interventions".[6] Number 1 of this norm states that "[t]he people mentioned in Article 144 that in view of the purposes referred to therein, perform effective intervention or treatment without the patient's consent shall be punished with imprisonment up to 3 years or a fine".[7] In contrast with

[4] Recognised by Law 25/2012, 16 July 2012, www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1765&tabela=leis&nversao=.

[5] Macao Health Bureau, "2nd Meeting of Ethics Committee for Life Sciences" (3 December 2019), www.gov.mo/pt/noticias/217173/.

[6] For analyses of Articles 150/1 and 2 of the Criminal Code, see M.T. Iong, "Criminal Liability for Violation of Informed Consent in Macao" (2020) 22 *UMagazine* 62; M.O. Leal-Henriques, *Anotação e Comentário ao Código Penal de Macau (Parte Especial). Vol. III* (Macao: Centro de Formação Jurídica e Judiciária, 2014), pp. 262–6; V.L. Raposo, "Informed Consent in China and Macao" in T. Vansweevelt and N. Glover-Thomas (eds.), *Informed Consent and Health – A Global Analysis* (Cheltenham, UK: Edward Elgar Publishing, 2020), pp. 151–3; V.L. Raposo, "Quando o paciente diz não: sobre o artigo 150. do Código Penal de Macau (Intervenções e Tratamentos Médico-Cirúrgicos Arbitrários)" (2015) 36 *Boletim da Faculdade de Direito da Universidade de Macau* 59.

[7] The expression "people mentioned in Article 144" refers to any "doctor or other legally authorized person", and the expression "in view of the purposes referred to therein" refers

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the situations in nearby jurisdictions, such as Hong Kong, the PRC or Taiwan, in Macao, a doctor who does not obtain lawful consent for medical interventions or treatments commits a criminal offence: the crime of arbitrary medical-chirurgical intervention. According to the wording of the norm, the criminal penalty applies even if the patient's health condition improves, and even if their life is saved by the doctor. In practical terms, however, it is unlikely that the doctor would be condemned; certainly, in Macao, there are no instances of legal suits having been brought against doctors, based on this norm, and the instances of such legal suits in Portugal are few in number.

However, obtaining lawful consent is not an absolute requirement for doctors. Lawmakers have accepted that in certain scenarios it is not possible to obtain the patient's prior consent, and thus Article 150/2 includes two exceptions. The first refers to a situation in which consent can be obtained, but would require that the medical intervention be postponed, an eventuality that would involve danger to life (simple danger) or serious danger (qualified danger) to body or health. The second involves a situation in which consent has been given for a certain intervention or treatment, but it is later discovered in the course of treatment or surgery that a different procedure must be performed (due either to new information on the patient's medical situation or to actual changes in the patient's condition) to avoid danger (simple danger) to life, body or health. However, for the doctor to avoid criminal prosecution, an additional condition is set for both exceptions: the existence of circumstances which lead to the certain conclusion that consent would be refused. Such circumstances include conversations with the patient's family members, relatives or friends, and the existence or discovery of ADs or similar documents. A hypothetical danger that is not likely to occur is not an adequate basis for medical intervention or treatment; otherwise, it would be acceptable to invoke presumed consent each time a doctor wanted to override a patient's wishes.[8] Doctors must be able to safely conclude that the patient would not have rejected the proposed medical interventions or treatments if they were in a condition to express their will.

This requirement – the absence of circumstances leading to the certain conclusion that consent would be refused, provided in Article 150/2 of the CC – is called "presumed consent". This solution is established in

to the "intention to prevent, diagnose, defuse or alleviate illness, suffering, injury or bodily fatigue, or mental disorder", as clarified by Article 144 of the Criminal Code.

[8] Raposo, "Informed Consent in China and Macao", note 6, p. 152.

Number 2 of Article 38 of the same code,[9] which provides the legal regime of consent for most situations, whereas Article 150/2 provides a specific regime that is only applicable to the medical domain.[10] The relation between these two norms is one of *lex generalis/lex specialis*. However, there is a difference between the two: Article 38/2 considers the conduct lawful whenever the surrounding circumstances lead to the conclusion that the holder of the legal interests protected (the person whose consent is required to prevent the agent's criminal liability) would have provided his/her consent, whereas Article 150/2 considers the conduct lawful unless the surrounding circumstances lead to the conclusion that if the interest holder were in a position to express their will, consent would have been refused. Thus, Article 150/2 permits broader scope for some interventions to be made without consent than does Article 38/2.[11]

Presumed consent cannot become an instrument used to override the patient's refusal of a medical act in favour of the relatives' wishes or the doctor's assessment. Article 150/2 of the CC clearly centres on the patient's true wishes, as demonstrated by a systematic interpretation of the CC and the inclusion of this criminal provision in the chapter regarding self-determination. Accordingly, the legal value protected in Article 150 of the CC is self-determination in health matters – that is, regarding the healthcare that the patient desires to receive (or not).

There are, of course, some situations where the patient's doctor does not have any knowledge of the patient's wishes. When there is doubt surrounding the patient's presumed decision, doctors must intervene and provide the required medical intervention or treatment, in line with the *in dubio pro vita* principle,[12] that is, in case of doubt, the doctor should act on decisions that will safeguard the patient's life.

14.3 The Applicability of Advance Directives

As discussed previously, ADs are not subject to specific legislation in Macao. Moreover, they are seldom studied or mentioned in local

[9] "There is presumed consent when the agent acts on the reasonable assumption that the holder of the legally protected interest would have effectively consented to the fact had he known the circumstances in which it is practiced".

[10] Moreover, not all medical acts are regulated by Article 150 of the CC; only those that meet the requirements of Article 144 of the CC. Cf. Raposo, "Quando o paciente diz não", note 6, 64–6.

[11] Cf. Raposo, "Quando o paciente diz não", note 6, 70; though this legal mechanism is known as "presumed consent", the concept is closer to the idea of "no presumed refusal".

[12] The same clarification in Raposo, "Quando o paciente diz não", note 6, 68.

doctrine.[13] There is therefore an absence of explicit legal guidance or provision to direct the outcome if a patient presents an AD, more correctly, something similar to an AD. The absence of a legal concept of AD in Macao prevents a definition of what would be considered an AD in this jurisdiction, and which requirements would have to be fulfilled. In this study, we will consider written ADs because we believe these to be the form most likely to be accepted in Macao, a very conservative jurisdiction in this regard.

Because there is no specific legal standard, the legal value of ADs must be assessed considering other applicable norms, namely those addressing informed consent and presumed informed consent. Under Article 150/2 of the CC, doctors are required to consider any indications given by the patient about the medical care that they would or would not wish to receive. ADs typically contain the patient's wishes, which doctors must take into consideration. Here, to take "in consideration" merely means to acknowledge its existence, though there is no binding requirement.

The only situation in which doctors may violate the criminal standard occurs when they completely disregard the AD, for instance, where the doctor is alerted to the existence of an AD, but does not read the document. By contrast, if the doctor reads the AD but acts against the wishes expressed within, this is not necessarily interpreted as an act of non-compliance. The doctor can always argue that they were not sufficiently convinced that the wishes contained within the AD were true reflections of the patient's actual wishes. Thus, even when the doctor has considered the AD, the freedom of assessment granted by law empowers them to disregard its contents and to decide to proceed as they see fit to do. In sum, there is no law that forces doctors to be bound by ADs in Macao[14] and moreover, the extant regulations indicate that current documents lack binding force. Consequently, ADs are valid only if

[13] Nonetheless, some Macanese authors defend the implantation of legislation on ADs in the near future, including its binding nature in the Macanese jurisdiction. See, for instance, M.T. Iong, *Directivas Antecipadas de Vontade: Um Regime Existente em Macau?* (Brazil: Novas Edições Acadêmicas, 2017), pp. 13, 28, 71, 110–11; M.T. Iong, "Please Allow True Self-Decision under Macao Law" (2019) 38(2) *Medicine and Law* 183.

[14] Portugal, as the original source of Macao's doctrine and legal practices, has a different situation because Law 25/2012, 16 July 2012, imposes the binding power of ADs; thus, if doctors do not respect the content of ADs without proper justification, they may be criminally punished.

doctors believe them to be the authentic expression of the patient's current and true will, leaving the decision to the doctor's discretion (and eventually to the court's assessment in case of litigation).[15]

Another major obstacle to compliance with an AD in light of Article 150/2 of the CC is the requirement that the patient's consent shall be actual – that is, consent must be given concurrently with the medical act.[16] This rule excludes consent given years, months or even weeks in advance. By nature, ADs involve advance (often well in advance) consent/refusal, which raises issues regarding the timeliness of the decision. A possible interpretation of this requisite is that all decisions remain up to date – that is, valid – as long as the AD is not changed by the patient. However, this legal interpretation is open to debate. This requirement has been circumvented by some jurisdictions by requiring revalidation of the AD after a certain number of years to ensure that it remains the patient's will.[17] This could be a possible solution for a future law on ADs in Macao.

In conclusion, the Macanese legal framework has not determined the legal status of ADs,[18] but this "omission" does not affect their validity. ADs can be regarded as a legitimate indicator of the patient's acceptance or rejection of medical care, according to Article 150/2 of the CC. However, they have no binding power over doctors. Besides their non-binding nature, the patient's wishes as expressed in ADs can be affected by factors that inform their actual decision, and which may actually contradict such wishes, such as information provided by relatives or friends to the doctor.[19]

[15] This same interpretation in light of existing law in Macao was advocated by Raposo, "Quando o paciente diz não", note 6, pp. 71–2.

[16] V.L. Raposo, *Do Ato Médico ao Problema Jurídico (Breves Notas sobre o Acolhimento da Responsabilidade Médica Civil e Profissional na Jurisprudência Nacional)* (Coimbra: Almedina, 2013), pp. 220–1.

[17] See, for instance, Article 7/1 of Law 25/2012, which regulates ADs in Portugal, and that establishes a validity period of 5 years.

[18] Interestingly, this is despite the fact that Macao generally adopts solutions from Portuguese legal doctrine, and Portugal has already legislated on ADs in 2012. See also J.P. Meneses, "Gentlemen, please think about this...", Macau Business Media (24 February 2020), www.macaubusiness.com/gentlemen-please-think-about-this/.

[19] Regarding the last example, see Iong, "Please Allow True Self-Decision", note 13, p. 186. In this example, this author proposes the binding nature of prior will and the use of sychiatric ADs for the specific case of mentally ill patients in Macao (Iong, "Please Allow True Self-Decision", note 13, pp. 186–90), but the reasoning can be transposed for other situations.

14.4 The Triumvirate Relationship between Family Members, Doctors and the Patient

In Macao, according to Numbers 2 and 3 of Article 37, consent is always a personal act. Except in the case of minors and incompetent adults – both of whom should have legal representatives empowered to act on their behalf and in their best interest – consent can be given only by the patient.[20] In theory, then, ADs should represent the exclusive decision of the patient, made freely, and without the influence of others.

In practice, however, the patient's stated desire as expressed in the AD may be informed by others, especially by the wishes and decisions of family members and doctors. Medical decisions frequently involve a triangular relationship between family members, doctors and the patient. In the majority of cases, the extent to which the patient's expressed desires (specifically as stated within the AD) may be considered an autonomous decision, or to which their desires will be wholly or partially followed depends on the interventions of family members and/or doctors. In jurisdictions such as Macao, where family members can exercise major influence over their relatives' medical decisions, we envisage that they will be able to affect the patient's desires as expressed in their AD.

Familism is a cultural practice which in China facilitates and encourages the family to play a decisive role in the healthcare of family members.[21] Chinese familism has its philosophic roots in Confucianism (although other more practical factors explain familism in modern Chinese society), and still plays a major role in Chinese communities.[22] Based on the social and cultural specificities of the territory, it is fair to assume that family wishes continue to be critical actors in the process of actually instigating ADs, in shaping doctors' perceptions of the content of an AD, and in determining the extent to which the doctor takes the patient's wishes into account.

Presumed consent must be assessed considering – among other criteria – information regarding the patient taken from their relatives.[23]

[20] Raposo, "Informed Consent in China and Macao", note 6, p. 151.
[21] See note 2 and the references quoted in that study.
[22] Ibid., pp. 391–2.
[23] There are no specific guidelines in Macao on how to assess the patient's presumed consent, so we used the existing guidelines in Portugal, see Entidade Reguladora da Saúde, *Consentimento Informado-Relatório Final* (May 2009), www.ers.pt/uploads/writer_file/document/73/Estudo-CI.pdf.

When assessing an AD, doctors normally take several elements – including conversations with family members – into consideration in order to determine whether the content of the AD is consistent with the patient's current and true desire. In this regard, the family's reaction is often a primary factor shaping doctors' perceptions. In certain situations, family members may want to keep the patient alive even though their relative's AD expresses their desire to reject essential medical interventions or treatments. In this case, family members may attempt to influence the doctors' perception of the veracity of the patient's wishes as expressed in the AD. The prevalence of familism is such that within Chinese culture, doctors believe that family members possess knowledge of their relative's true desire and are thus able to confirm whether the desire stated in the AD is true and current.[24] Moreover, when confronted with an AD that rejects a medical treatment – especially if that intervention is life saving – doctors will probably disregard it, fearing potential litigation by family members, and the likely outcome of a conservative (pro-life) judgment of any court assessing the conflict. Thus, in defending a refusal to comply with the AD, the doctor might argue, for instance, that the patient's desire expressed in the AD was indeed taken into consideration, but that it did not correspond to the patient's current or true will. Under Macanese law, relatives are not called upon to make medical decisions for the patient, but in actuality the concept of presumed consent is operationalised in such a way that relatives can influence the way the AD (or any other "sign" to be considered in light of Article 150/2) is understood by the doctor. This is likely to happen in individualist communities (see the case of Portugal, with this very same norm), but the likelihood of this occurring increases in more collectivist communities such as Macao. It can be confidently argued that the triangular relationship in healthcare (patient, doctor, family) enables family members to influence doctors' interpretation of the ADs.

Given the power of the cultural influence of familism within Chinese healthcare provision, and decision-making, patients' wishes can be affected by erroneous (and very discretionary) interpretation of ADs by healthcare providers. That ADs must be given binding force is therefore imperative if patients' autonomy is to be respected and protected. Further legislation to clarify the legal status of ADs and to enforce binding power

[24] C.Y. Tse and J. Tao, "Strategic Ambiguities in the Process of Consent: Role of the Family in Decisions to Forgo Life-sustaining Treatment for Incompetent Elderly Patients" (2004) 29(2) *Journal of Medicine and Philosophy* 207.

in Macao is required, considering that Article 150/2 of CC does not provide sufficient mechanisms to protect the patient's decisions as expressed in the AD.

14.5 Advance Directives and Palliative Care

The Hospice & Palliative Care Centre in Kiang Wu Hospital is Macao's sole healthcare institution providing hospice and palliative care[25] for terminal cancer patients.[26] Local residents (holders of Macao identity card) who receive diagnoses of terminal cancer can receive hospice and palliative care at the centre. Patients who require such care are typically experiencing extreme physical and emotional suffering. The centre provides palliative care which includes painkillers, morphine injections and acupuncture (traditional Chinese medicine), to eliminate or at least relieve pain. On a spiritual level, the centre organises events such as birthday parties and tea gatherings. In addition to patient care, the centre provides psychological counselling for family members.[27] Care is provided free of charge, as it is paid for by the Macao SAR government.

Before admission to the centre, cancer patients must sign a document called "Consent for the Hospice & Palliative Care Centre",[28] which is intended to allow doctors the right to not intervene should the patient's condition require specific urgent medical action, such as cardiopulmonary resuscitation, electrical cardioversion, tracheal intubation or cardio tonic injection. The literal translation of the document is "Consent for. . .", but in practice, it is not a document for patients to authorise the provision or non-provision of medical procedures, but an acceptance of the hospital's terms and conditions, which include the non-provision

[25] The World Health Organization (WHO) defines palliative care as an approach that improves the quality of life of patients and family members who face life-threatening illness by preventing and relieving suffering by way of early identification and accurate assessment and treatment of pain and other problems, whether physical, psychosocial or spiritual. Cf. WHO, "Palliative Care" (5 August 2020), www.who.int/news-room/fact-sheets/detail/palliative-care.

[26] Kiang Wu Hospital, *Brochure Hospice & Palliative Care Centre – Introduction*. Information also available at www.kwh.org.mo/medical%20center.php.

[27] Detailed information regarding the centre's operations was obtained from a conversation with a nurse who worked in the centre. There are no formal official documents in this regard.

[28] In the past, patients who were admitted in the centre were required to sign a document called "Do-Not-Resuscitate Declaration". Currently, the "Consent for the Hospice & Palliative Care Centre" document integrates the previous document.

of these medical procedures. The decision to sign – or to not sign – the document is usually made by the family, not by the patient, and to withhold a signature is considered a rejection of the centre's services and conditions, and thus the patient cannot be admitted. Notably, the consent form required by the Hospice & Palliative Care Centre is the closest formally recognised mechanism to an AD in Macao, and it appears that the form has binding force only when used at the Kiang Wu hospital. However, its ambit is narrow: (i) it includes only the rejection of medical interventions, not acceptance and (ii) it covers only medical acts standardised in the document, rather than covering the full range of medical acts.

A further drawback to this document is evident: the signatory to the "Consent in the Hospice & Palliative Care Centre" is not the patient, but a relative (in the presence of a witness).[29] This document can thus regarded more as a "family AD", where the AD represents the wishes of the family, rather than those of the individual patient. However, under Article 150/2 of the CC in Macao, third parties cannot give consent to the refusal of medical interventions –particularly life-saving medical interventions – a right reserved solely for the patient, except for some specific cases where a legal representative is assigned by the court. Not only does this document demonstrate profound disregard for the rights and autonomy of patients who are already vulnerable due to their terminal state: there is a glaring contradiction, for the fact that a relative is required to sign this document in order to indicate consent to the refusal of medical interventions for the patient represents an act that is in clear violation of Macao law.

14.6 The Current Position of the Macao Executive on Advance Directives

To date, the Macao Executive[30] has taken a cautious approach towards ADs, accepting (or tolerating) these instruments, but yet not investing

[29] This information was obtained from the "Consent in the Hospice & Palliative Care Centre" document.

[30] Macao is, together with Hong Kong, a special administrative region of the People's Republic of China. It has its own government and Chief of Government (the Chief Executive). As for Article 2 of the Macao Basic Law, "The National People's Congress authorizes the Macao Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law". See António Katchi, *As Fontes de Direito em Macau* (Macau: Faculdade de Direito da Universidade de Macau, 2006), pp. 273–408.

them with binding force. It has been reported that given Macao's ageing population, and in light of the adoption of AD legislation in over twenty countries including the United States, Australia, Canada and Singapore, the Executive has recognised the need to legislate ADs. Such binding legal instruments will not only help to enhance the quality of life and to protect the dignity of patients at the end of their lives, but will also reduce unnecessary medical expenses.[31] On 3 December 2019, the Macao Health Bureau, under its sub-entity the Ethics Committee for Life Sciences, introduced "Questions and Future Policy Guidelines for ADs" in Macao and agreed to legitimise ADs.[32]

Despite agreement over the implementation of ADs, the Executive insists that discussions over ADs remain at the preliminary stage. This hesitancy may reflect the bureau's fear of difficulties and controversies surrounding plans for their implementation.[33] These barriers to implementation arise from low public awareness regarding the legislation of ADs, the possibility that the patient could change their mind as the end of life approaches, and the willingness of the patient's family to comply with their relative's desires. The bureau holds that extensive and in-depth public education in the social, academic and legal fields is needed, and that a law introducing ADs can be implemented only after obtaining consensus from all sectors.[34]

In response, it is possible to argue that the Executive's position lacks proper justification. First, the kind of consensus invoked to postpone a regulation on ADs is not possible to achieve, given the multiplicity of legal, ethical and even religious views on the matter. Second, even if such a consensus could be achieved, the Executive has not taken steps to encourage or facilitate discussion or awareness among the population.[35] This was

[31] All about Macau Media, "The Claim that the Legislation Is Not Yet Due to 'Low Public Awareness' – Health Bureau's Reply and Public Response" (29 August 2020), www.cyberctm.com/zh_TW/news/mobile/detail/2620690#.YRko4y3R1QI.

[32] Macao Health Bureau, "2nd Meeting of Ethic Committee for Life Sciences" (3 December 2019), www.gov.mo/pt/noticias/217173/.

[33] All about Macau Media, "Before Existing 'Advance Directives' – Healthy and Undisturbed Centre that Allows End-of-Life Patients to Have a Choice (II)" [in Chinese] (13 July 2020), tinyurl.com/3f5wyu3m.

[34] Ibid.

[35] The only noticeable step is the promotion of ADs by some public and private entities. For example, the Macao Social Welfare Bureau promotes the use of ADs by the elderly when educating them on life-and-death matters (Macao Social Welfare Bureau, *Macao Pension Status and Policy Research Report* (2015), www.ageing.ias.gov.mo/uploads/file/a8387e568125adacb3c4d280d5354985.pdf), and the Geriatrics Society of Macao held an

demonstrated in a recent study exploring the willingness of Macao Chinese people to make ADs.[36] The study found that the lack of information about ADs was the main factor deterring individuals from making ADs. The study also found that 73.6% of the sample (n = 724) were willing to complete an AD if the document had legal recognition. Together with recent media coverage of this issue with voices supporting patients' choices regarding end-of-life decisions,[37] these findings suggest that the questions raised by the formal recognition of ADs are clearly of concern to residents. Two grounds for their concern are apparent: first, the patient's well-being, for in Macao it is common for healthcare delivery to extend until the patient's death, at the cost of much physical and mental pain for the patient and distress to the family; and second, the financial burden of such futile medical treatment, either for the patient or for the hospital. Notwithstanding these important and prevalent concerns, there remains a great deal of resistance – from certain groups of Macao residents and from the Executive – to the implementation of proper regulations on ADs. One possible reason for this hesitancy is the fear that formally legislating ADs could lead to euthanasia, a practice forbidden in Macao,[38] even though the two situations are clearly different.[39]

Academic Annual Meeting in 2019 with teaching on how ADs are put into practice in clinical work for the elderly (Cheng Pou Journal, "Geriatrics Society of Macao Held Its Inauguration Ceremony and Academic Annual Meeting" (26 November 2019), www.chengpou.com.mo/dailynews/183073.html).

[36] S.M. Leong et al., "Prevalence and Predictors of Willingness to Make Advance Directives among Macao Chinese" (2021) 18(15) *International Journal of Environmental Research and Public Health* 7942.

[37] All about Macau Media, "Claiming No Legislative Time Due to 'The Public's Low Awareness' – Macao Health Bureau's Response and the Public's Response" [in Chinese] (29 August 2020), tinyurl.com/3756nz38. See also All about Macau Media, "Do Patients and Their Family Members Have the Right to Terminate 'Invalid Medical Treatment?' – The True Story of Miss Lam and her Family Members" [in Chinese] (1 May 2020), tinyurl.com/yckfdm3x.

[38] It is not completely clear whether all forms of euthanasia are legally forbidden. Regarding the legality of euthanasia in Macao SAR, see Iong, *Directivas Antecipadas de Vontade*, note 13, pp. 54–67. For the same discussion in light of the Portuguese law, whose Criminal Code is the same as the one of Macao in this regard, see V.L. Raposo, "Doctor's Criminal Liability and Medically Assisted Death – The Portuguese Case" (2019) 26(3) *European Journal of Health Law* 240.

[39] For a distinction see Macao SAR, Iong, *Directivas Antecipadas de Vontade*, note 13; V.L. Raposo, "No Dia em que a Morte Chegar (Decifrando o Regime Jurîdico das Diretivas Antecipadas de Vontade)" (2013) 22(24) *Revista Portuguesa do Dano Corporal* 79; V.L. Raposo, "Directivas Antecipadas de Vontade: Em Busca da Lei Perdida" (2011) 32(125) *Revista do Ministério Público* 169.

It is imperative that the Executives regulate ADs, namely, to clarify some legal voids, such as the requirements to be met in order for them to be legally operational. The decision on whether ADs should be merely indicative or truly binding is the most controversial feature. The binding nature would clearly be in syntony with patient's autonomy, the cornerstone of modern healthcare law, and would also be the most adequate solution from a human rights perspective. Moreover, the binding nature of ADs is also the solution most compatible with Article 150/2 of the CC and with the Portuguese legal heritage that still largely shapes the Macanese jurisdiction. In that respect, a regulation such as that stated in Portugal (Law 25/2012, 16 July 2012) could be a viable option. However, the hazards of legal transplants are well known and it is not clear whether binding ADs would indeed be congruent with the general values of a predominantly Chinese community, still very grounded in and attached to familism. Further studies are required to clarify this and other issues, for example, there are no data on the estimated number and implementation of ADs in Macao's jurisdiction, and there is an urgent need for research studies that explore doctors' perspectives on ADs.

14.7 Conclusion

Macao represents an interesting case study from legal, ethical and sociological perspectives: the existence and application of predominantly Western (Portuguese-inspired) legislation does not always meet the expectations of a community composed primarily of Chinese people[40] nor of an Executive that aims to implement a "not so Western law". However, it is unclear whether the Executive's decision to put a pause on AD legislation actually has the support of the population, especially considering the empirical evidence suggesting that a large percentage of the Macanese population is likely to be willing to complete an AD if legalised, and the growing number of voices in favour of legally binding ADs in the PRC.[41]

[40] A detailed description of this disconformity is provided in Raposo, note 2.

[41] K.Q. Wang et al., "On Legislative Protection of Living Will in China" (2017) 38(6A) *Medicine and Philosophy* 67; Q.S. Qi and J.Q. Xu, "Reflection upon the Legislation of Living Will in China" (2019) 35(8) *Journal of Jilin Engineering Normal University* 71; Y.P. Luo et al., "Promotion of Living Will: Practice and Suggestions" (2020) 41(22) *Medicine and Philosophy* 6; X. Bai and X. Liu, "On the Implementation of Living Wills in China" (2019) 11(1) *Medicine and Jurisprudence* 10; H.M. Zhang et al., "Evidence from Clinical Trials of the Changed Status in Living Will over the Past Twenty Years" (2020) 41(22) *Medicine and Philosophy* 13; S. Sui, "Discussion on the Issues of Living Will" (2014) 22(2) *China Health Law* 10.

While there is currently a mechanism whereby the content of ADs may be taken into consideration, via Article 150/2 of the Macanese CC, there remains some uncertainty as to how effective ADs will be, particularly in light of the fact that doctors are likely to disregard any AD rejecting life-sustaining treatment, as discussed previously.

In Macao, the AD discussion is almost non-existent. Without clear and transparent discussions that include experts and assessments of sound legal arguments, there will be no related legal developments concerning the nature, scope and use of ADs in the near future.