



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Press Release

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Controversy continues between Court of Appeal and the courts of first instance regarding Article 125 of the Criminal Procedure Code

On 12 March 2012 the Suai District Court held a retrial in a case of domestic violence registered as Case No. 36/PEN2011/TDS. The crime was allegedly committed by the defendant Samuel Amaral against the victim Deolinda da Conceição.

The trial of this case was led by single judge Álvaro Maria Freitas. The public prosecution service was represented by Zélia Trindade and the defendant was given legal representation by private lawyer Hipólito Moniz.

The Executive Director of JSMP, Luis de Oliveira Sampaio, said that JSMP urges the Court of Appeal and lawyers at the various district courts or courts of first instance to immediately take the appropriate steps to resolve differing interpretations about the application of Article 125 of the Criminal Procedure Code to prevent any negative ramifications in cases of domestic violence that are taken to court.

JSMP monitoring has noted that the Court of Appeal issued Decision No. 80/CO/2011/TR on 5 October 2011; however this ‘Decision’ has resulted in an ongoing argument and conflict regarding application by the courts of first instance.¹ The decision of the Court of Appeal is aimed at standardizing the interpretation of Article 125 of the Criminal Procedure Code in cases of domestic violence. To date the Court of Appeal is the highest court in Timor-Leste as set out in Article 164.2 of the Constitution.²

¹ Refer to JSMP Press Release published on 3 March 2012 entitled “Controversy between judges at Baucau District Court regarding application of Court of Appeal Decision No. 80/CO/2011/TR”. Also refer to a Case Summary regarding trials at the Dili District Court published on 27 February 2012, with particular reference to Summary No.7 regarding a Case of Domestic Violence registered as Case No. 563/C.Ord/2011/TDD.

² Until such a time as the Supreme Court of Justice is established and starts its functions, all powers conferred to it by the Constitution shall be exercised by the highest judicial instance of the judicial organization existing in Timor-Leste.

In its current capacity the Court of Appeal also has competence as the highest court in Timor-Leste and has other constitutional obligations such as upholding the provisions enshrined in Article 124.1 of the RDTL Constitution.³

According to JSMP if this conflict is not promptly resolved then it will have a negative impact on cases involving domestic violence and this conflict will continue to place victims of domestic violence in a position of uncertainty and a long way from the justice they seek. If this situation is left unchecked then JSMP believes that the existence of Law No. 7/2010 Against Domestic Violence will not have a progressive impact because its application will always conflict with the provisions of Article 125 of the Criminal Procedure Code.⁴

JSMP monitoring has shown that this case was decided by the Suai District Court on 14 July 2011. In its decision the Suai District Court acquitted the defendant from all legal charges because in the aforementioned trial both the victim and the defendant chose to remain silent as set out in Articles 60 (c) and 125 of the Criminal Procedure Code.

The the decision in the aforementioned case was announced by judge Anabela Cabral (international) acting as a single judge. The Public Prosecution Service was represented by António da Silva Tavares and the defendant was represented by Public Defender Marçal Mascarenhas.

Then during the retrial the indictment stated that on 05 February 2011 at approximately 5.30am the defendant struck the victim twice on the head and once above the eye which caused the victim to fall to the ground. These acts caused the victim to suffer an injury to the area close to her eye.

In relation to the aforementioned facts, the public prosecutor charged the defendant with Article 145 of the Penal Code and Article 35 of the Law Against Domestic Violence.

JSMP noted that the defendant admitted what was stated in the indictment of the public prosecutor, however the defendant also explained the motive for the incident, which was in response to the behavior of the victim who turned the volume of the television up very loud and caused a disturbance. The defendant continued by stating that even though he asked the victim to

³ The Supreme Court of Justice is the highest court of law and the guarantor of a uniform enforcement of the law, and has jurisdiction throughout the national territory.

⁴ Article 125 of the Criminal Procedure Code states that “The persons below may refuse to give a deposition as witnesses: (a) progenitors, siblings, descendants, relatives up to the second degree, adopters, adoptees, and the spouse of the defendant; spouse is a party; (b) a person who has been married to the defendant or who cohabits, or has cohabited, with the latter in a relationship similar to that of spouses, in relation to facts that have occurred during marriage or cohabitation. 2. The authority competent to take the deposition shall, under penalty of nullity, advise the persons referred to in subarticle 125.1 that they are allowed to refuse to give a deposition.

turn down the volume the victim ignored his request. Therefore the defendant became angry and maltreated the victim, as set out in the prosecutor's indictment.

In addition, the victim also confirmed the facts as described in the indictment of the public prosecutor.

In his final recommendation the public prosecutor requested for the court to sentence the defendant to one year and six months imprisonment, to be suspended for three years.

The lawyer for the defendant requested for the court to hand down a non-custodial sentence, because the defendant was a first time offender and the victim had already forgiven the defendant.

After hearing the final recommendation from the public prosecutor and evaluating all of the facts revealed during the trial, the court was convinced that the defendant was guilty of violating Article 145 of the Penal Code and Article 35 of Law No.7/2012 Against Domestic Violence. The court then sentenced the defendant to six months imprisonment, suspended for one year and six months. In addition the court ordered the defendant to pay compensation to the victim of US\$ 50.00 and court costs of US\$ 25.00.

For more information, please contact:

Luis de Oliveira Sampaio
Executive Director of JSMP
Email: luis@jsmp.minihub.org
Landline: 3323883