



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Trial of Railos and others: Step forward in case of attack on the F-FDTL HQ

The case of Railos and others was one of a series of important cases listed for trial before the courts of Timor-Leste. This case was one of a number of cases that occurred during the national political crisis in 2006. This group is accused of playing a major role in the attack on the F-FDTL HQ in Tasitolu, Dili on 24 May 2006. Some time ago the Dili District Court continued the trial of this case, which had been postponed several times, in order to establish the involvement of the defendants Railos and others in the aforementioned attack.

The first hearing in the trial against the defendant Railos and others was carried out on 12 January 2009, but was then adjourned because one of the defendants M 'AR' did not attend the scheduled hearing. The trial was adjourned until 1 April 2009 by the Dili District Court but this hearing did not eventuate because an international prosecutor appointed to handle this case was visiting his home country, Cape Verde, because of the death of his child.¹ Another judge was appointed as a replacement to take over this case however he needed time to examine the indictment and the details of the case.

The third hearing was conducted on 28 April 2009. For the third hearing there was a separation of charges relating to the main perpetrator Railos and one of his men. At this stage of the trial the whereabouts of the suspect remained unknown. For the third hearing the international prosecutor who was initially handling this case had returned from Cape Verde and therefore the trial progressed smoothly.

JSMP believes that charges were separated because one of the defendant's whereabouts was unknown², and the other defendants are entitled to a speedy trial and to have their rights guaranteed. JSMP welcomes and supports the decision of the judge to separate the charges. JSMP believes that the right to justice is a fundamental human right that cannot be denied. The right to due process is based on the norms, principles and practices of a state based on the rule of

¹ Press Release JSMP (early April): Case of Attack on F-FDTL HQ is adjourned once more

² Press Release JSMP (early February): Need for separation of proceedings

law, as set out in Articles 1 and 2 of the RDTL Constitution and access to courts is also set out in Article 26 of the RDTL Constitution. These principles are not merely the realization of a legal process in a criminal matter, but rather are the manifestation of the broad aim of democracy itself. Namely, that the law needs to be applied and upheld in a consistent and serious manner to ensure that justice is provided to all layers of society in Timor-Leste. The judicial system is a fundamental and basic element of efforts to protect human rights in strict accordance with the Constitution, as demonstrated through democratic governance. Human rights and core principles that are enshrined in the Constitution must be interpreted and implemented in the strictest manner to ensure the provision of an independent and fair judicial system.

JSMP believes that if the aforementioned principles are respected and administered in accordance with the applicable law, then each case that is registered with the competent court will be processed through the judicial system in accordance with standard procedures and without any exceptions, including the case of Railos and his group.

The trial of the defendant Railos and his group was adjourned three times. JSMP believes that this shows that the parties who are responsible did not take the matter seriously and have given a limited response to the demands of the community because the cases from 2006 have progressed very slowly.

The fourth hearing in this trial was adjourned on 15 May 2009 because the judges were suddenly summoned by the Court of Appeal to attend training on the new Timor-Leste Penal Code³. The trial continued on 21 May 2009 to examine testimony from several witnesses in relation to an attack on the F-FDTL HQ in Tasitolu.

Charges presented by the Public Prosecutor

The public prosecutor charged two defendants Railos and Grayhana for committing the crimes of illegally possessing firearms, murder, making threats, kidnapping and maltreatment.

A) Vicente da Conceição “Railós”

CHARGES made by the Prosecutor against the defendant Railos

The Prosecutor charged the defendant Railos for criminal acts committed on 24 May

³ Press Release JSMP (mid May): Trial of case relating to attack in Tasi Tolu postponed again.

2006. The PP charged the defendant pursuant to:

- a) Articles 4 and 4.7 of UNTAET Regulation 5/2001
- b) Article 338 of the Indonesian Penal Code
- c) Article 336 of the Indonesian Penal Code
- d) Article 333 of the Indonesian Penal Code
- e) Article 352.1 of the Indonesian Penal Code

The prosecutor used the aforementioned articles to charge the defendants with serious criminal offences. The actions of the defendants correspond with a number of elements set out in criminal offences. JSMP is aware that the articles charged against the defendant Railos basically fulfill the necessary criteria, although they have to be proven during a trial through comparison with other facts establishing the motive behind their attack on the F-FDTL HQ in Tasitolu. It has to be legitimately and convincingly proven that the defendant committed the crimes charged by the prosecutor.

JSMP also believes that in a nascent legal system like the one in Timor-Leste there should be attempts to interpret the law in order to fulfill international human rights standards. JSMP believes that Railos has to be given the right to speak freely and tell the court about his actions, to reveal if he was given support by particular individuals or groups.

B) Leandro Lobato “Grey Arana”

The defendant Leandro Lobato a.k.a Grey Arana was charged by the prosecutor as being a member of the Railos group and for committing criminal acts in violation of the following articles:

- a) Articles 4 and 4.7 of UNTAET Regulation 5/2001
- b) Article 338 of the Indonesian Penal Code
- c) Article 336 of the Indonesian Penal Code
- d) Article 333 of the Indonesian Penal Code⁴

After examining the prosecutor’s charges it appears that there is a slight difference between the charges made against each of the defendants (Railos and Leandro Lobato “Grey Arana”) because the defendant Grey Arana was not charged with Article 352.1 on light maltreatment.

⁴ Refer to the charges of the international prosecutor, page 4

JSMP believes that the defendants are members of a group called ‘the secret group’ which was eventually known as the Railos group, and therefore their actions were similar.

JSMP respects the courage of the public prosecution service for upholding the rule of law in this nation, for bravely charging the defendants in accordance with the authority and constitutional mandate bestowed upon it.

Although it appears that the establishment of the rule of law has encountered some obstacles, JSMP is certain that the defendant Railos and his group, who are well known in Timor-Leste, are not private individuals who can be simply ignored, but careful consideration must be given to them by the competent authorities. The authorities should have knowledge and understanding about the background of the national crisis that involved the state institutions and politicians of this young nation. JSMP also appeals to the prosecution to impartially carry out their duties without being influenced by the political intervention of high ranking officials so that justice can be administered and the rule of law can flourish.

JSMP recommends for the court to immediately locate the associates of the defendant Railos and his group, including M ‘AR’, so that they can be brought to justice in accordance with the applicable law of Timor-Leste. Ideally, the defendant M ‘AR’ should be tried together with the others but for a variety of reasons the charges had to be separated. The reason for the separation of charges between the defendant Railos and his associates was because of the non-attendance of the defendant M ‘AR’, because the court does not know his whereabouts.

JSMP recommends for the authorities to be ready to execute the court’s decision if the court decides to issue a warrant of arrest against the defendant and place him in pre-trial detention so that the trial of the defendants can progress as anticipated. JSMP also recommends for the defendant to adhere to the trial process so that everyone can know if the defendant is guilty or not in accordance with Article 31 of the Constitution which provides protection for every person before the law.⁵ Those held in pre-trial detention are considered innocent until proven guilty and therefore there are no reasons to deny their fundamental rights, such as the right to justice and the presumption of innocence. The state is obliged to guarantee the rights of its citizens as set out in the Constitution.

⁵ RDTL Constitution, p. 20

JSMP believes that if the aforementioned matters are ignored then the state will have failed in its duty, as set out in Article 6 of the RDTL Constitution⁶, because it has not protected and implemented fundamental human rights, including the right to justice and due process. JSMP hopes that the absence of the defendant will be dealt with as quickly as possible to avoid further delay because this can set a bad precedent for other defendants and can result in the back log of cases at the courts.

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⁶ RDTL Constitution, p. 7