



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

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JSMP is concerned that the Public Prosecution Service and the courts are still not using the most specific article for physical violence against minors

JSMP is concerned that the Public Prosecution Service and the courts are still not using the most specific article for physical violence against minors.

JSMP has observed that prosecutors and judges often fail to use Article 155 of the Penal Code on mistreatment of a minor as the most specific article to formulate charges, or to decide cases involving acts of physical violence against a child, even though the Penal Code includes a specific article for minor victims.

“JSMP believes that the correct provisions for a crime of violence against a child are found in Article 155(a) of the Penal Code on the mistreatment of a minor because this article specifically sets out the relevant elements and circumstances of children/minors,” said the Executive Director of JSMP, Luis de Oliveira Sampaio.

JSMP is concerned about the charges and decision in case No. 0051/17 DICMR categorised as a crime involving the mistreatment of a spouse and simple offences against physical integrity characterized as domestic violence, which was decided by the court on 8 May 2019. This case involved the defendant FRP who allegedly committed the offence against his wife and child. The defendant committed this criminal act against his child and the prosecutor charged the defendant with Article 145 of the Penal Code on simple offences against physical integrity.

Also, in March 2019 JSMP noted two cases, namely Case No. 0163/18 PDDIL (a father committed a physical offence against his child) and Case No. 0145/13 PDDIL (an uncle committed a physical offence against his niece). In the second case what is very strange is that initially the prosecutor charged the defendant with mistreatment of a minor (Article 155 of the PC) but after the examination of evidence the court amended the charge to Article 145 of the PC on simple offences against physical integrity on the grounds that the defendant only hit the victim once.

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Also, other case was registered as Case No. 0221/17 DICMR which was decided in September 2018, involving a female teacher who committed a physical offence against her student. In this case the court attempted conciliation so that the male victim could withdraw the complaint against the defendant, but because the victim's father did not want to this, the case went to trial and the defendant was issued with a fine.

Article 155.1 of the PC on mistreatment of a minor states that any person who provides guardianship or custody, or is responsible for the upbringing of a minor aged less than 17 years, or does so under employment, and: a) Causes *harm to the minor's body or health*, or inflicts physical or mental mistreatment or cruel treatment, is punishable.

In this article, the important elements for consideration are:

- The person provides guardianship or custody to the minor
- The minor is aged less than 17 years
- The person is responsible for education or
- The minor is under employment
- The person caused harm to body or health
- The person inflicts physical or mental mistreatment or cruel treatment

Based on JSMP analysis, Article 155 of the PC does not require repetition and does not consider the seriousness of the crime. However if parents, teachers who are responsible for education, or those providing employment, cause harm to the minor's body or health, their actions will fulfil the elements of the crime of mistreatment of a minor.

In the three examples above the perpetrators included a father and an educator. The victims were aged 1 year and six months and 8 years respectively, namely they were under 17. Based on the circumstances and the legal elements/requirements set out in the law, JSMP has no doubt that the actions of the defendants fulfilled the elements of the crime of mistreatment of a minor provided for in Article 155 of the Penal Code.

JSMP observed that the Public Prosecution Service and the courts have failed to interpret these provisions appropriately and consistently. These failures and errors are fatal because they continue to allow parents, teachers and society to practice acts of violence against children because charges and decisions are not sufficient to educate people in order to deter acts of violence against children in society.

JSMP also observed that often when deciding cases involving children the courts themselves do not mention the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women to strengthen and reinforce their decisions, even though the State of Timor-Leste has ratified these conventions and the State is obliged to ensure all efforts possible to protect the rights of children.

The Public Prosecution Service and the courts need to carefully assess each case based on the nature and the circumstances before formulating charges or issuing a decision, in order to ensure protection for children and to prevent other crimes against children.

JSMP recommends for the Public Prosecution Service and the courts to consider Article 155 of the Penal Code for formulating charges or for consideration when issuing a decision because this article is more appropriate and specific for acts of physical violence against children.

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