



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Press Release
Dili District Court
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Dili District Court issues a decision ordering a defendant to pay civil compensation in a case of mistreatment of a spouse together with a suspended sentence

This is a historic decision for cases involving gender based violence in Timor-Leste

The Dili District Court convicted the defendant RX (member of F-FDTL) for the crime of mistreatment of a spouse and imposed a sentence of three years in prison, suspended for five years, and ordered him to pay compensation of US\$800 to the victim on 4 July 2017.

“This decision is a historical decision in the development of the justice sector in Timor-Leste, because this is the first time the court has applied compensation in a case characterized as gender based violence. The judges presiding over this case deserve our utmost appreciation for the progress they have made”, said Luis de Oliveira Sampaio, Executive Director of JSMP.

This is a very important step because it shows significant progress in judicial decision making to ensure that this decision will have an effect of preventing others from committing such crimes in the future. The crime of mistreatment of a spouse is characterized as domestic violence and considered a serious crime in the legal framework of Timor-Leste.

Article 154 of the Penal Code (PC) states that “*Any person who inflicts physical or mental mistreatment or cruel treatment upon a spouse or person cohabiting with the perpetrator in a situation analogous to that of spouse is punishable with 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision*”.

JSMP considers this decision to be an important point of reference for judges and other courts and it can provide jurisprudence for other cases involving domestic violence and rape. The Timor-Leste Penal Code ensures the right to obtain civil compensation resulting from a criminal act.

Article 104.1 of the Penal Code on civil liability arising from crime states that “*Compensation for losses and damage resulting from a crime is obligatory and shall be assessed and arbitrated by the court, whenever the same have been appraised and quantified, except in the event the*

aggrieved party expresses, under terms of criminal procedural law, an intention to file suit separately”.

For many years JSMP has recommended for decisions to be educative and preventive to teach people not to commit further crimes in the future. Decisions that match the crimes committed by defendants have multidimensional implications for the justice system in Timor-Leste. This means that in addition to ensuring justice for the victim in this case, this decision also has the ability to prevent this defendant and other potential perpetrators in our society from committing other crimes.

JSMP believes that in addition to repressive measures such as sending the defendant to prison, civil compensation is a more effective way of redressing physical and psychological harm caused by a crime.

In cases of domestic violence, this compensation is even more powerful in responding to the issue of the victim's economic dependence on the defendant and provides the victim with a remedy. However, this compensation should not replace criminal penalties such as a prison sentence.

In this case the public prosecutor proved that on 13 September 2015 the defendant dragged the victim inside, kicked her once on her hip and this caused the victim to fall to the ground and the defendant then dragged the victim inside. As a result of this assault the victim suffered severe pain to her hip, and she required treatment in hospital.

The court also found that in 2014, 2012 and 2010 the defendant repeatedly committed physical violence against the victim by punching her in the body, pushing her onto the bed, slapping the victim's cheeks and kicking the victim in the chest. The defendant also threw the victim on the ground and stood on her and tied a piece of cloth around her throat and only let the victim go when she got on her knees and apologised.

The court found that the defendant committed this crime based on the victim's testimony, the defendant's confirmation of some of the facts as well as the cross examination of the defendant and the victim. The court concluded the matter and ordered the defendant to 3 years in prison, suspended for 5 years and ordered the defendant to pay court costs of US\$50. In addition, the court also ordered the defendant to pay compensation of US\$800 to the victim to redress the financial expenditure of the victim who had to obtain treatment for her physical injuries and other relevant expenditure relating to alimony for the three children that the victim has been looking after all of this time. The court also informed the victim through the Public Prosecution Service to make a request to the court to ensure that her rights to receive alimony for the children are upheld.

Previously the Dili District Court also issued a similar decision in a case of property damage and threats involving the defendant AA who committed the offence against his wife, in Ermera District, which imposed a prison sentence of six months, suspended for 2 years, including compensation of US\$18.

This case was tried by the court as Case No. 0402/15.PDDIL, and was presided over by a Panel of Judges comprising Jacinta Correia, Ana Paula Fonseca and Eusebio Vitor. The victim was represented by Ivonia Guterres and the defendant was represented by Fernando de Carvalho.

For more information please contact:

Luis de Oliveira Sampaio

Executive Director JSMP

Email : luis@jsmp.tl