



**Press Release**

**The Dili District Court**

**11 February 2019**

**For the first time the Dili District Court imposed an effective prison sentence against a defendant in a crime of simple offence against physical integrity characterized as domestic violence**

The Dili District Court convicted the defendant JdC and imposed an effective prison sentence of 1 (one) year after he was found guilty of committing the crime of simple offences against physical integrity characterized as domestic violence against his wife, even though the defendant had no prior convictions. The ruling in this case was read out on 28 January 2019.

The court imposed an effective penalty against the defendant after finding that the defendant physically assaulted the victim on multiple occasions and these assaults were committed in front of their children. The court also found that the defendant mistreated the victim by spitting his coffee in the victim's face, and the defendant did not cooperate with the court because the defendant denied all of the facts in the indictment.

The court believed that an effective prison sentence is appropriate in this case to reflect the behaviour of the defendant. The court believed that this prison sentence could educate the defendant to not repeat his actions in the future, even though the victim told the court that she wanted to separate from the defendant. This evidence was based on corroboration provided by the victim and their oldest daughter regarding the facts set out in the indictment of the public prosecutor.

“JSMP values the decision of the court to impose an effective prison sentence against the defendant even though the defendant had no prior convictions, and this is a major step forward for the justice sector. This is the first time a decision of this kind has been handed down in a case of simple offences against physical integrity characterized as domestic violence. JSMP hopes that this decision can prevent crimes involve family members in the future,” said Luis de Oliveira Sampaio, the Executive Director of JSMP.

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This decision is the results of advocacy work carried out for many years by JSMP since the Law Against Domestic Violence came into force in July 2010. Although there is inconsistency in decisions handed down in different cases, JSMP believes that this decision will provide a reference point and establish jurisprudence in other cases of domestic violence in the future. However, JSMP is critical of the Public Prosecution Service for not including charges of attempted homicide in this case even though there was evidence that the defendant also had the 'intention' to kill his wife and threatened the victim in front of their child that he would kill his wife. The prosecutor should have assessed the relevant facts when formulating the charges to provide the court with an option to consider imposing a more proportionate penalty in line with the behaviour of the defendant.

JSMP also agrees with the prosecutor's decision to make a substitution when presenting his final recommendation of sentence, namely that this case should be charged as mistreatment of a spouse because the defendant mistreated and dehumanised the victim, and did not just commit the crime of simple offences against physical integrity.

“JSMP hopes that despite the imperfections in the charges of the Public Prosecution Service, this sentence can provide a reference point for future sentencing in crimes characterized as domestic violence in the future,” added Luis de Oliveira Sampaio, the Executive Director of JSMP.

In this case, the public prosecutor alleged that on 16 October 2017, at approximately 10:00am, in Ermera District, the defendant JdC took a glowing coal and struck the victim twice in the knee and the victim's clothing caught on fire. Also, the defendant was drinking coffee and spat the coffee in the face of the victim. The defendant took a machete and chased the victim to strike her, but did not manage to do so because the victim ran away and hid in the neighbour's house. The defendant then went looking for the victim so he could hit her with the machete. For this reason the victim ran to the home of their oldest daughter. The defendant followed the victim to the home of their oldest daughter and told her *“you can hide your mother, but within a week you will only remember her name”*.

Before this crime occurred, the defendant was returning for a game of cards at a neighbour's house and asked the victim to give him some money so he could keep gambling. The victim did not give him the money because she didn't have any and then the defendant assaulted the victim. The defendant and the victim have been living together as husband and wife since Indonesian times and had 14 children, but five died.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity that carries a maximum penalty of three years in prison or a fine as well as Articles 2, 3, 35(b) and 36 of the Law Against Domestic Violence.

In his final recommendations the prosecutor substituted the charges because he considered this crime to be serious and believed it should have been charged as mistreatment of a spouse because in addition to multiple assaults in front of their children, the defendant mistreated his wife by committing such acts as spitting coffee in his wife's face. Therefore, even though this crime was charged as simple offences against physical integrity the public prosecutor requested for the court to impose a penalty of three years imprisonment against the defendant, suspended for four years.

The defence requested for the court to impose a lenient penalty against the defendant because the evidence was based on the statement of the victim and the testimony of the witness who were the defendant's wife and daughter, but the defendant denied the facts set out in the indictment.

This case was registered by the court as Case No. 0297/17.ERERM. The trial was presided over by Judge Ana Paula Fonseca. The Public Prosecution Service was represented by Osoorio de Deus and the defendant was defendant by Rui Manuel Guterres.

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