



Press Release

The Dili District Court

12 December 2018

The courts need to guarantee fair and appropriate defence in cases involving multiple defendants

JSMP requests for the courts to guarantee that defendants are given appropriate legal representation in cases involving multiple defendants, to guarantee complete, balanced and appropriate assistance to protect the interests of the defendants throughout the entire process.

JSMP has observed that in a case tried on 27 November 2018 at the Dili District Court regarding abuse of power, use of another person's identity document and aggravated fraud against three defendants Certorio Martins, Clotilda Babo Soares and Filipe da Conceição were assisted by one public defender. In this case JSMP noted that while making their statements, each defendant defended his or her own position and they tended to blame each other. Despite these circumstances, both the court and the defence did not consider this situation to be a risk that could undermine the defendants or the role of the public defender during the proceedings.

“The Court needs to be sensitive to such circumstances so as not to undermine the interests of the defendants and to ensure that the defendants receive the same amount of legal assistance and representation that they require. As a public defender representing the legitimate rights of the defendants, it is necessary to analyse the circumstances to provide a favorable defence to uphold the interests of each of the defendants as provided in the law,” said the Executive Director of JSMP, Luis de Oliveira Sampaio.

Article 69 of Criminal Procedure Code on assistance to various defendants states where there is more than one defendant in the same case, they may have a common defender, if this does not thwart the work to be carried out by the counsel for the defence. However, when defendants start to blame each other about the judicial facts or there is the potential for them to undermine each other, JSMP believes that the defendants need to have their own public defender to defend their rights in accordance with the law.

JSMP believes that in circumstance like this it is also difficult for the public defender to provide the same amount of legal aid to defendants at the same time. Even though Article 269 of the Criminal Procedure Code states that a judge can decide for multiple defendants to be heard during a single trial, to avoid the defendants blaming each other or repeating the same facts, JSMP requests for the court to listen to the statements of each defendant separately.

Article 66.4 of the Criminal Procedure Code on the defender states that the public defender can be replaced, on the initiative of the defendant, or by invoking reasoned grounds on the initiative of the public defender. These provisions allow the public defender to use his/her own initiative to request for the court to suspend the trial if there are reasoned grounds, so the court needs to appoint another public defender to represent the other two defendants because there are signs of a conflict of interest between the defendants.

Article 60 of the Criminal Procedure Code states that defendants have the right to be represented by defence counsel to present evidence that favours the interests of the defendants. Also, Article 135.2 of the Timor-Leste Constitution on lawyers guarantees that the primary role of lawyers and defenders is to contribute to the good administration of justice and the safeguard of the rights and legitimate interests of the citizens.

These provisions guarantee and uphold the right of a defendant to receive equal defence to help the defendant during the trial process. These provisions also reflect the basic and universal principles on the presumption of innocence that ensure that the defendant/accused will be presumed innocent until there is a definitive decision (carrying the full force of the law) from the court finding the defendant guilty. Therefore the presence of the public defender is very important to provide technical assistance to the defendant so the defendant can properly exercise the rights provided for in the law until there is a decision carrying the full force of the law.

In this case, the public prosecutor alleged that on an unspecified day and date at some time during 2012 the defendant Certorio Martins Babo was the Coordinator of the Dona Ana Lemos Primary School in Ermera District. As the Coordinator for this primary school the aforementioned defendant told the defendant Clotilda Babo Soares, who was a voluntary teacher at the aforementioned school, to collect the salary of the deceased person Filomena da Conceição who was a contracted teacher who died in August 2012. The aforementioned defendant received this salary by signing the deceased person's name from 2014 until 2016 with a salary of \$ 166.00 every month and between January and December 2017 the salary was US\$ 204.00 every month.

In May 2014 the defendant Certorio Martins received a retroactive salary payment for the deceased person Filomena da Conceição for the period 2015 - 2017 totalling US\$ 800.00. However the defendant Clotilda gave all of the money to the defendant Filipe da Conceição who is the husband of the deceased person. The defendant Filipe submitted documents such as a Secondary School Diploma and baptism certificate of the deceased person to obtain the retroactive salary, even though the defendant Filipe knew that the retroactive payment could only be given to a person currently performing this function. The defendants' actions caused the State to lose US\$ 8,960.00.

The public prosecutor alleged that the defendant Certorio Martins violated Article 297 of the Penal Code on abuse of power, Article 267.1 of the Penal Code on aggravated fraud and Article 306 of the Penal Code on use of another person's identification document. The defendants Clotilde Babo Soares and Filipe da Conceição were charged by the public prosecutor for violating Article 267.1 of the Penal Code on aggravated fraud and for violating Article 306 of the Penal Code on the use of another person's identification document.

During the trial, the defendant Certorio Martins Babo confessed to all of the alleged facts but stated that he did not obtain any advantage or benefit from these payments. The defendant added that he told the defendant Clotilda Babo Soares to change the name of the deceased person with the intention that the

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defendant Clotilda would continue teaching at this school so the students would not be left behind. This defendant stated that prior to this he told the defendant Filipe as the husband of the deceased person and the idea was accepted. In relation to the signing of the deceased person's name, the defendant Certorio stated that previously he presented the name of the defendant Clotilda Babo Soares to the Ministry of Education to replace the defendant's status as a volunteer with that of a contracted teacher but the Ministry of Education did not accept this and removed the defendant's name so she would remain as a volunteer.

The defendant Clotilda Babo stated that she received the deceased person's money because the defendant Certorio Martins Babo informed her to do so and before she received this money they had informed the husband of the deceased person, the defendant Filipe da Conceição. This defendant also stated that the entire retroactive payment of US\$ 800.00 was given to the defendant Filipe da Conceição because he had provided the documents of the deceased person to have this payment processed.

The defendant Filipe da Conceição stated that he agreed when the defendant Certorio told him that the defendant Clotilda would replace his wife, but he didn't understand that this meant using his wife's name to receive money including the retroactive salary payment. However the defendant acknowledged that he received the retroactive payment of US\$ 800.00 from the defendant Clotilde because the defendant said that this money was given for him to upgrade the grave of the deceased person, not because the defendant had provided the deceased person's documents, because the aforementioned defendant had said that the defendant Clotilda collected these documents at the aforementioned school.

After hearing the statements of the defendants, the public defender asked the defendants if they were willing to compensate the State for its loss, and each defendant said they are willing to do so, but based on their financial means.

After hearing the statements of the defendants, the court decided that the trial will continue on 13 December 2018 at 4:00pm to hear from witnesses.

This case was tried by the court as Case No. 0013/18.PGCC and was presided over by Judges Jose Maria de Araujo, Francisca Cabral and Maria Modesta. The Public Prosecution Service was represented by Rogerio Viegas and the defendants received legal assistance from the public defender Sergio Quintas who replaced the public defender allocated to this case, Juvinal Yanes Freitas.

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