



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

**Press Release
Baucau District Court
17 January 2020**

The Baucau District Court adjourned the trial of two cases because the public defender was absent without justification

“The Court intends to request for the Superior Council of Public Defenders to impose disciplinary sanctions”

In January 2020 the Baucau District Court adjourned the trial of two cases involving the crime of using a bladed weapon and the crime of attempted homicide and using a bladed weapon because the public defender assigned to these cases was absent without justification even though the parties, including the defendants, were present in court.

“JSMP understands that public defenders from the Office of the Public Defender sometimes face a range of obstacles in performing their duties. However, it is very important to ensure that these obstacles do not mean that they fail to fulfil their obligations or duties to provide effective and good quality legal aid to those parties seeking justice,” said Casimiro dos Santos, the Acting Director of JSMP.

According to the court schedule, on 14 January 2020 at 9:30am the Baucau District Court was supposed to try a case involving the crime of using a bladed weapon, registered as Case Number: 0001/19.BCBCV, and all of the parties in this case were notified, including the public defender providing assistance to the defendant in this matter. However, after waiting for two hours the aforementioned public defender did not appear and the court clerk contacted the public defender but his phone was off, so then the court clerk rang the Office of the Public Defender and was told that the public defender was not there. The judge presiding over the trial attempted to find an alternative and offered a private lawyer to the defendant to ensure that the trial could continue, but the defendant stated that he had no financial capacity to pay a private lawyer. Therefore the court decided to adjourn the trial of this case until 25 February 2020, at 09:00am.

Faced with this situation, the court decided to request that disciplinary sanctions be imposed against the aforementioned public defender by sending the matter to the Superior Council of Public Defenders because the aforementioned public defender was absent on two occasions without justification.

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JSMP requests for the Superior Council of Public Defenders to give serious consideration¹ to the court's request for disciplinary sanctions in response to this behaviour so that the public defender cannot undermine the trial process in the future nor undermine defendants seeking justice who are mostly vulnerable and come from remote areas.

Previously, on 9 January 2020 the same situation arose in a case involving the crime of attempted homicide and use of a bladed weapon registered as Case Number: 0003/19. LASIC involving the same public defender as the previous case, and the court again had to adjourn the matter after the parties were left waiting for two hours. The court adjourned the trial of this matter until 16 January 2020.

In these two cases the aforementioned public defender ignored his responsibilities because public defenders are obliged to provide legal aid to defendants in all proceedings based on their mandate in accordance with the law. *Article 68 (b) of the Criminal Procedure Code states that a public defender must provide a defendant with assistance from the time the indictment is presented until such a time as a decision is rendered final, particularly in lodging an appeal.* This is further reinforced in Article 62 (b) of Decree-Law 10/201, Statute of the Office of the Public Defender that refers to “*performing the functions of a public defender with diligence and care*”.

Normally when judges, prosecutors or public defenders do not attend a scheduled hearing, they need to provide justification for their non-attendance. This prior justification can provide each institution with some time to find another person to substitute the court actor who is unable to attend, so that the trial process can continue, and thus uphold it is possible to uphold the principle of conducting simple trials at the court that are speedy, affordable and accessible.

JSMP again recommends for public defenders to arrive at court before scheduled hearings commence to deal with any changes and to talk to their clients which will help them provide a defence in the best interests of the client.

In relation to facilities that are available to support the work of public defenders, JSMP has observed that public defenders to date have lacked operational vehicles, printers are not working, there are no ink cartridges for printing and there is not enough operational fuel, which severely undermines the ability of public defenders to provide proper assistance to clients. For example, the Office of the Public Defender in Suai District has three public defenders but only 1 operational vehicle to facilitate their main duties, such as attending trials in court as well as participating in the mobile court and participating in meetings.

* Competencies of the Superior Council of Public Defenders, Article 35 (a) of Decree-Law 10/2017 on the the new Statute for Public Defenders.

Also, the operational vehicle is more than 10 years old, and it often breaks down on the road. Also, when the Oekusi District Court recently conducted a mobile court, the vehicle belonging to the public defender broke down on the road because it is very old and there is no money for maintenance.

Therefore, JSMP demands for the Ministry of Justice to provide enough operational transport to the Office of the Public Defender, as well as funds for maintenance, machinery, ink cartridges for printing as well as other facilities to assist the work of public defenders.

The two cases that were adjourned were presided over by judge Florencia Freitas and judge José Quintão Soares Celestino and the Public Prosecution Service was represented by Remizia de Fatima da Silva. The defendants were represented by José Maria Caetano Guterres from the Office of the Public Defender who was absent.

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