



JUDICIAL SYSTEM MONITORING PROGRAMME  
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

**Press Release**

**The Oekusi and Baucau District Courts**

**11 March 2019**

**Extending the suspended sentence of defendants who repeat their behaviour whilst serving a suspended sentence is not in compliance with the provisions of the penal code**

**JSMP: The courts must comply with obligations set out in the penal code**

Crimes of domestic violence make up the majority of cases dealt with by the courts in Timor-Leste, and therefore court decisions need to include effective coercive measures for these types of crimes.

JSMP has observed two cases characterised as domestic violence where the courts have continued to apply a suspended prison sentence even though the defendant was found guilty of committing the same crime during the period of suspension. JSMP believes that these decisions have no deterrent effect against defendants and do not educate the community in general. These decisions also show that the courts have failed to apply provisions of the Penal Code consistently and effectively.

“The law allows for revoking a suspended sentence and replacing it with an effective prison sentence when a defendant repeats his behaviour during the suspension period because the defendant is considered to have shown no remorse for his actions. Extending the suspended sentence for a defendant who commits a crime during the period of suspension, as well as failing to include additional obligations against the defendant, will not effectively deter a defendant, and this is a violation of the obligations set out in the law,” said Luis de Oliveira Sampaio, Executive Director of JSMP.

On 27 February 2019 the Oekusi District Court imposed a prison sentence of 3 years, suspended for 4 years, after finding a defendant guilty of committing the crime of maltreatment against his wife whilst he was serving a suspended sentence. Previously the defendant DC was given a prison sentence of 9 months, suspended for 1 year, after being

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found guilty of committing the crime of simple offences against the physical integrity of his wife, registered as Case No. 0150/17.OESIC.

In addition, on 22 January 2018, the Baucau District Court sentenced the defendant AFX to 1 year in prison, suspended for 1 year and six months, and ordered him to pay court costs of US\$40.00 after he was found guilty of committing the crime of simple offences against the physical integrity of his wife whilst serving a suspended sentence. Previously, the Court imposed a prison sentence of 2 months, suspended for 1 year, against the defendant AFX, after finding him guilty of committing the crime of simple offences against the physical integrity of his wife. This case was registered as Case No. 0125/18.BCBCV.

Article 72 of the Penal Code states that “If, during the period that the prison sentence is suspended, the convict fails to perform the duties imposed or is tried and convicted of another crime, the court may, taking circumstances into account, amend the initially established suspended execution, alter the duties imposed or solemnly admonish the convict, according to circumstances of the case”.

Article 73.2 of the Penal Code on revocation of a suspension states that “suspension shall always be revoked if, during its period of duration, the convict commits a crime of intent for which the same is punishable with an effective prison sentence”.

The prosecutors presenting the charges to the court need to ensure that when they initiate an investigation into a new crime, and if there is knowledge that the defendant is serving a suspended sentence, it is compulsory according to the law to request for the court to revoke the suspended sentence that had been imposed by the court against the defendant in a previous case. Unfortunately in these two cases the prosecutors did not make such a request.

The prosecutors failed to adhere to the provisions set out in Article 73 of the Penal Code. Therefore, even though the prosecutors mentioned during the presentation of charges that the defendants showed no remorse and repeated their actions whilst serving a suspended sentence, the court ignored this argument because it considered that the prosecutors did not immediately present a request to the court to revoke the suspended sentences that the defendants were serving. However, the courts as a matter of procedure can actually revoke the suspended sentence and apply an effective prison sentence if the court is aware that the defendant has committed this crime whilst serving a suspended sentence.

Also, JSMP praises the Dili District Court\* for last month sentencing the defendant JdC to an effective prison sentence with the consideration that the defendant committed the crime of simple offences against physical integrity and mistreatment and spat on the victim in front of their child even though the defendant did not commit a crime whilst serving a suspended sentence and/or had no prior criminal record.

JSMP encourages the court to continue to ensure justice for crimes characterised as domestic violence by imposing sentences based on the nature and seriousness of each crime as well as trends occurring in society, to further strengthen confidence in formal justice.

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\* Complete information is available in JSMP Press Release <http://jsmp.tl/wp-content/uploads/PrKazuViolensaiDomestikaPenaEFativatinaniDA.pdf>;