



JUDICIAL SYSTEM MONITORING PROGRAMME

PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

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Controversy between judges of Baucau District Court about “Court of Appeal Decision No. 80/CO/2011/TR”

On 23 February 2012 the Baucau District Court conducted a trial in a case of serious maltreatment against a spouse which was registered as Case Number:72/Crm.C/2011/TDB. This crime was allegedly committed by the defendant JMX against his wife PX. It is alleged that the incident occurred on 2 March 2011 in Lebenei Sub-Village, Letemumo Village, Quelequai Sub-District, Baucau District.

The trial was conducted by a panel of judges led by Ângela Faria Belo (presiding judge) who was accompanied by Afonso Carmona and José Gonçalves. The Public Prosecution Service was represented by Adérito Tilman and the defendant was represented by Marçal Ximenes Guterres, a lawyer from ECM.

Based on JSMP monitoring, there was a difference of opinion or controversy between Judge Angela Freita Belo and Judge Afonso Carmona. When Judge Afonso Carmona had an opportunity to question the victim the judge refused to do so, because he believed that before the victim could be asked a question the victim should have been given an opportunity to choose to testify or refuse to testify in accordance with Article 125.1 (a) and (b) of the Criminal Procedure Code.

On the other hand, Judge Angela explained that Decision No. 80/CO/2011/TR issued by the Court of Appeal is jurisprudence that must be applied in cases involving domestic violence, and that the victim took an oath before providing testimony and therefore was obliged to provide information that was true, otherwise the said person could be held criminally responsible in accordance with Article 118.1 of the Code of Criminal Procedure.

Previously on 5 October 2011 the Court of Appeal as the highest court in Timor-Leste issued a “Decision” to hear a request for an appeal that was lodged by the Dili District Prosecution Unit against a decision of the Dili District Court regarding the application of Article 125 of the Criminal Procedure Code in a case involving a family member in the context of domestic violence.

The Executive Director of JSMP, Luis de Oliveira Sampaio, *said that JSMP has the utmost respect for the sovereignty and independence of judges in regards to every legal act that they perform, however JSMP encourages the judges to be sensitive/in touch with the social reality in respect to cases involving domestic violence.*

JSMP fully understands that the judges have individual competence and capacity to assess and take legal action in specific cases based on the facts and the applicable law. However, JSMP believes that cases of domestic violence occur in specific circumstances and have a complex nature. Therefore JSMP encourages the formal justice sector to approach case of domestic violence by considering the complex circumstances that are present in such cases and this approach must be pursued in a specific manner.

Based on JSMP monitoring, it is evident that there is a difference of interpretation and understanding between judges regarding the ‘Decision’ that was issued by the Court of Appeal to oblige victims in cases of domestic violence to provide their testimony in relation to facts involving their partners who are being charged as the defendant.

JSMP believes that it is necessary to have uniformity regarding those legal provisions in the Criminal Procedure Code that are in conflict with each other, and as the highest court in Timor-Leste the Court of Appeal can intervene. This is important to prevent the negative implications for those seeking justice and to ensure that the judicial institutions truly carry out their role and are the place where justice is dispensed, not the place where ‘injustice is upheld, just because of a culture that uses legal approach that is overly legalistic.

JSMP believes that *“Decision issued No. 80/CO/2011/TR by the Court of Appeal”* is a solution that has been offered to resolve the inconsistency and confusion regarding the application of Article 125 of the Criminal Procedure Code which has led to injustice for victims of domestic violence.

For this reason, JSMP believes that actually there is a solution regarding this controversial Article 125 of the Criminal Procedure Code, which can be specifically found in Articles 12 and 321 of the Criminal Procedure Code. According to Article 12.1 (c) *“The Supreme Court has the competence to standardize jurisprudence pursuant to the provisions set out in Article 321 and other articles”*.

Also, Article 322.3 of the Criminal Procedure Code states that *“appeals to establish jurisprudence are binding on all of the courts of Timor-Leste after publication in the State Gazette”*.

Despite the aforementioned difference of opinion or controversy, JSMP continues to encourage and urge the court actors to endeavor to pay close attention to this issue and to pursue a realistic approach and especially to avoid any implications that are unjust and counterproductive regarding the functions and role of the court in ensuring and guaranteeing justice for all in accordance with the law.

In relation to the aforementioned controversy or difference of opinion, JSMP recommends to the Court of Appeal to immediately publish *Decision No. 80/CO/2011/TR* in the State Gazette of Timor-Leste as prescribed in Article 322.3 of the Criminal Procedure Code to ensure that this ‘Decision’ can have positive implications for victims of domestic violence.

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