



JUDICIAL SYSTEM MONITORING PROGRAMME
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Court of Appeal hands down sentence of 4 years and 6 months to defendant in a case involving the crime of passive corruption for an unlawful act

On 10 April 2012 the Court of Appeal read out its final decision in a case involving passive corruption for an unlawful act as well as aggravated forgery in Case No. 89/C.O/2011/TR. The applicant in this case was José Gomes (former court clerk at the Court of Appeal) which relates to the act of forging a written decision of the court to close a case of murder involving the convicted person Guilhermino dos Santos Belo (former PNTL officer) for personal gain.

The hearing to read out the decision was led by a panel of judges comprising Maria Natércia Gusmão (presiding), and two international judges, namely Rui Penha and Orlando Geraldo. On the other hand the Public Prosecution Service was represented by José Ximenes, and the defendant was represented by public defender Laura Valente Lay.

With the announcement of the aforementioned decision the Court of Appeal sentenced the defendant to 4 years and 6 months imprisonment for two crimes, namely passive corruption for an unlawful act that carry a sentence of 4 years imprisonment and the crime of aggravated forgery that carries a sentence of 2 years and 6 months imprisonment.

According to the Executive Director of JSMP, Luis de Oliveira Sampaio, *the Court of Appeal has taken a positive step forward for the people of Timor-Leste by granting public access to the appeal trial and by announcing this decision in a hearing open to the public and JSMP hopes that practices like these will continue in the future, unless there is a provision in the law that prohibits public participation, in order to avoid the public having a negative perception about the transparency and accountability of the Court of Appeal.*

Based on JSMP's observation, the sentence handed down by the Court of Appeal against the convicted person was far more lenient than the sentence handed down by the Dili District Court, which was an accumulative sentence of 12 years imprisonment for the crime of passive corruption for an unlawful act that carried a sentence of 3 to 15 years imprisonment and the crime of aggravated forgery which carries a sentence of 2 to 6 years imprisonment. This decision

was made as the result of a trial to examine new evidence that took place on 23 and 27 March 2012.

The convicted person José Gomes in his testimony on 20 March 2012 stated that he had forged the aforementioned decision because Guilhermino visited his house with a pistol with the aim of intimidating him. Therefore, the convicted person José Gomes prepared a forged decision and gave it to Guilhermino.

Previously on 27 March 2012 the Court of Appeal conducted a hearing to examine new evidence with the aim of hearing the testimony of Guilhermino dos Santos Belo and the witnesses Jvl, LSQ and MB.

Guilhermino dos Santos testified that he gave USD 3,000 to the convicted person José Gomes, so he could provide a forged decision to shut the case of murder in which he had been charged, which did not match the Court of Appeal's decision to uphold the decision of the Dili District Court whereby Guilhermino had been sentenced to 12 years imprisonment. According to the testimony of the three witnesses summoned by the Court of Appeal, the convicted person José Gomes had provided a forged decision and accepted money from Guilhermino, as payment for his forgery.

After hearing from all of the parties the Court of Appeal reached its decision that included a ruling on evidence that had been proven and evidence that had not been proven.

The Court of Appeal concluded that the convicted person José Gomes was guilty of preparing and handing over a forged decision that did not match the decision issued by the Court of Appeal to uphold the decision of the Dili District Court with the aim of accepting money for personal benefit.

The panel of judges from the Court of Appeal believed that this act violated the provisions of Article 292.1(a) of the Penal Code on passive corruption for an unlawful act. In relation to the crime of aggravated forgery the Court of Appeal also concluded that the convicted person José Gomes was guilty of committing this crime.

However, regarding the charge of aggravated fraud the Court of Appeal believed that this crime had not been proven.

JSMP continues to encourage the Court of Appeal to carry out its duty in a professional manner and convict the guilty in accordance with the applicable law. In this case JSMP is very proud because the court was able to process one of its own employees in a fair manner because the actions of the convicted person have tarnished the reputation and credibility of the courts and have undermined public confidence towards the honorable duty of the courts, because the convicted person was a former court clerk at the Court of Appeal who had dedicated himself to serve the public by strengthening the administration of justice in an effective manner for all people.

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