



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Press Release

Period: June 2009

Issue: June 2009

**28 APRIL CASE RELATING TO DAMAGE TO PROPERTY
ADJOURNED AGAIN**

On 22/06/2009 the Dili District Court experienced a slight interruption in a criminal case that was due to be tried by a panel of judges because the new Penal Code needs to be applied to this case. Based on court monitoring conducted by JSMP, before opening the hearing the presiding Judge Jacinta Correia explained that the trial of case No. 88/c.ord/2009/TDD could not be continued because of the new Penal Code which entered into force on 8 June 2009. Article 3 of the new Penal Code states that “The law subsequent to the commission of the crime shall apply to previous misdemeanors where it proves to be actually more favorable to the perpetrator and, in the case of a final decision, if a benefit can still be obtained”.

The judges in this case did just rely on this reason only, but they focused on the legal principle of ‘*Lex Posteriori Legi Priori*’. For the aforementioned reason, the panel of judges decided to send the case back to the competent court in accordance with standard procedure by issuing a new decision requiring the case to be tried by a single judge based on the aforementioned decision. The presiding judge told the defendant OML about the implementation of the new Penal Code.

In accordance with the general principle mentioned above, the new provisions are very favorable to the defendant facing criminal charges carrying a sentence of 15 years or more. This means that the shortest sentence is the most favorable and therefore the law to be applied in this case is the law that formed the basis of the charges, namely the Indonesian Penal Code.

JSMP notes that Article 189.3 of the new Penal Code carries a sentence of 2-5 years imprisonment. This means that this article relates to the previous charge, namely Article 160 of the Indonesian Penal Code which the public prosecutor used to charge the defendant, which carries a sentence of six years and a fine of Rp 4.500.

The application of this general principle is correct and normal in this case, however JSMP believes that the contents of the original article applied in the case (Article 160 of the Indonesian Penal Code) and Article 189 of the new Penal Code have not been

harmonized, meaning that the criminal act committed by the defendant does not match the elements of the two aforementioned articles even though the application of the aforementioned principle is justifiable.

The decision to allocate this case to a single judge did not set a date for hearing. The presiding judge told all of the parties who have been cooperating well with each other to date to comply with any summons they receive and attend the court to have this matter retried.

For further information please contact:

Luis de Oliveira Sampaio

Executive Director JSMP

Email: luis@jsmp.minihub.org

Landline: 3323883