



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Press Release

17 May 2007

APPEAL DECISION IN CASE OF ROGERIO TIAGO LOBATO

On 10 May 2007, the East Timor Court of Appeal handed down a final decision carrying the full force of the law against Rogerio Tiago Lobato (the convicted person) in the case of murder and illegal distribution of weapons to civilians. The Panel of Judges consisting of Judges Claudio Ximenes, Jose Luis da Goia and Maria Natercia Gusmao Pereira examined the respective grounds for appeal lodged by the legal representative of the convicted person and the Public Prosecutor.

The Panel decided to uphold the decision of the Dili District Court and rejected the appeals raised by the legal representative of the convicted person and the prosecutor and found them be without sufficient grounds to revoke the decision of the Dili District Court.

The appeal raised by the Appellant Rogerio Tiago Lobato basically claimed that he had not committed a criminal act and the legal process and decision issued by the court were the result of a political process. Also the appellant challenged the application of Article 338 of the Indonesian Penal Code.

On the other hand, the Public Prosecutor challenged the length of sentence handed down by the Dili District Court against Rogerio Lobato for being too lenient in comparison with the recommended sentences for each of the charges.

Article 338 of the Indonesian Penal Code states that *“any person who takes the life of another shall be charged with manslaughter, which carries a maximum sentence of 15 years”*. Whereas Article 4.7. of UNTAET Reg. 5/2001 states that *“any person who without lawful authority imports into East Timor any firearm, ammunition or explosive with the intent to disrupt public order, or who uses any firearm, ammunition or explosive in the disruption of public order is guilty of a criminal offence and shall be punished by a fine not to exceed fifty thousand U.S. dollars (USD 50,000) or a term of imprisonment not to exceed twenty years, or both”*.

In this appeal case, the Panel of Judges from the Court of Appeal decided that:

- The Court of Appeal found insufficient grounds in the appeals lodged respectively by Rogerio Tiago Lobato and the Public Prosecutor against the decision issued by the Dili District Court.

- The Court of Appeal upheld the decision of the Dili District Court which sentenced Rogerio Tiago Lobato to 6 years imprisonment for the crime of murder, in violation of Article 338 of the Indonesian Penal Code, and 4 years imprisonment for violating Section 4.7. of UNTAET Regulation 5/2001, however after applying the principle of subsidiarity, Rogerio Tiago Lobato was sentenced to 7 years and 6 months imprisonment.

Article 338 of the Indonesian Penal Code carries a maximum sentence of 15 years imprisonment, whereas Section 4.7 of UNTAET Regulation 5/2001 carries a maximum sentence of 20 years and a maximum fine of US\$ 50.000. However, Article 65 of the Indonesian Penal Code applies the principle of subsidiarity, resulting in a single sentence of 7 years and 6 months imprisonment.

JSMP believes that Article 338 of the Indonesian Penal Code is irrelevant to this case, and should not have been considered by the Dili District Court and the Court of Appeal in sentencing, as the juridical facts indicate that the convicted person was not directly involved in the commission of murder (the convicted person was not the legal subject in the murders that took place in Tibar and other locations according to witness testimony provided to the court). The shootings (murders) that took place in several locations in 2006 were committed by other legal subjects and the convicted person had limited involvement in supporting these events. Article 338 of the Indonesian Penal Code explicitly states that any person who deliberately commits a murder shall be charged under Article 338 of the Indonesian Penal Code.

JSMP has observed that the convicted person has adhered to the sentence issued by the court and has been serving his sentence in the Becora prison since 10 May 2007.

In relation to the aforementioned case, JSMP recommends that any judicial actor involved in the decision making process at any level should refer to the juridical facts and the law setting out the criminal acts applicable to a person.

For further information, please contact:

Leonidio Marques

Legal Researcher, JSMP

E-mail: nidio@jsmp.minihub.org

Or contact:

JSMP Director, Timotio de Deus,

E-mail: timotio@jsmp.minihub.org

Landline: +670 3323883