



**JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL**

Press Release
18 June 2007

**COURT CONVICTS DEFENDANT IN DEFAMATION CASE – APPLIES
DIFFERENT ARTICLES TO THOSE CONTAINED IN THE INDICTMENT**

On 15 June 2007, the Dili District Court sentenced the defendant Antonio Aitahan Matak to conditional release in a defamation case that occurred in 2004. The hearing was conducted by a single judge, Maria das Dores (international judge), the prosecution unit was represented by Felismino Cardoso (international prosecutor) and the defendant was represented by his legal counsel Paulo dos Remedies and Nelson de Carvalho (independent lawyer).

The defendant was found guilty by the court for damaging the good name of the RDTL Police Force (the Bobonaro District Police) in 2004 in relation to the shooting of 2 members of CPD-RDTL by a member of the Bobonaro District Police. The two victims were shot dead in 2004, however until now their whereabouts remain unknown. At that time the defendant held a press conference via the print and electronic media and claimed that the Bobonaro District Police had shot the two victims.

For the criminal act described above, the Court sentenced the defendant to 8 months of house arrest. This means that the defendant shall not be imprisoned but will remain under house arrest with the condition that he not engage in any kind of criminal action in violation of the applicable law of Timor Leste during the aforementioned period. If he is found to commit any such criminal action during the prescribed period he will automatically serve one year of imprisonment and will be prosecuted for the additional offence.

In her decision the judge stated that it had been legitimately and convincingly established that the defendant committed the criminal act of damage to reputation in violation of Article 220 and Article 310 of the Indonesian Penal Code. Article 220 of the Indonesian Penal Code states that:

Any person who gives notice or lodges a complaint that a punishable act has been committed, knowing that it has not been committed, shall be punished by a maximum imprisonment of 1 year and four months.

This article can be applied to a person who deliberately makes a false announcement or lodges a complaint to the authorities, for instance about a murder, with knowledge that this announcement is false or untrue.

Article 310 of the Indonesian Penal Code states:

The person who intentionally harms someone's honor or reputation by charging him with a certain fact, with the obvious intent to give publicity therefore, shall, being guilty of slander, be punished by a maximum imprisonment of nine months, if this takes place by means of writings, openly demonstrated or put up, the principal shall, being guilty of libel, be punished by a maximum sentence of 1 year and four months imprisonment.

Article 310 of the Indonesian Penal Code can be applied to a person who commits slander by making an accusation that is subsequently broadcast that a person has committed a particular act, as well as for libel where the accusation is written.

The evidence submitted by the prosecution during the trial, in the form of witness testimony, indicated that the defendant had in fact made a false accusation via the print media (Suara Timor Lorosae) and the electronic media (TVTL).

Based on JSMP's observations, the court did not clearly state if the defamation committed by the defendant was made against a person (individual) or against the police force. The Indonesian Penal Code clearly states that there are six types of defamation, namely: Article 310 (1) on Slander, 310 (2) on Libel, 311 on Calumny, 315 on Simple Defamation, 317 on Deliberate Defamation and 318 on Calumnious Insinuation. If the object of the defamation was not a person but rather an institution that was legitimately carrying out its functions then Article 310 of the Indonesian Penal Code could not be charged or taken into account when convicting the defendant. Article 316 and Article 319 of the Indonesian Penal Code should be applied.

Based on the observations of JSMP, the defendant committed defamation against the PNTL institution. This was not defamation against an individual, therefore the articles charged against the defendant and considered by the court were inappropriate.

After the judge read out the decision, the lawyer of the defendant stated an intention to appeal against the decision. The type of sentence handed down and its duration were not particularly severe, and were quite lenient considering that the defendant was only sentenced to house arrest. However the lawyer of the defendant still decided to appeal against the decision and is legally entitled to do so in accordance with the rights of the defendant to lodge an appeal.

The lawyer of the defendant stated an intention to appeal because the Judge had not paid sufficient attention to the substance of the indictment. In the initial indictment the prosecution charged the defendant with Article 210 and Article 207 of the Indonesian Penal Code, however in her decision the Judge convicted the defendant pursuant to Article 220 and Article 310 of the Indonesian Penal Code. This means that the judge decided this case without paying proper attention to the charges in the indictment and the articles cited by the public prosecutor.

JSMP recommends for judicial actors to describe the facts that constitute a crime or are relevant to sentencing and indicate the substantive articles that apply. They should also correctly apply the relevant articles of the Indonesian Penal Code to actions committed by individuals.

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