

PRESS RELEASE

East Timor's Court of Appeal Renders Three Further Decisions Applying Portuguese Law

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The Court of Appeal has recently delivered three further appeals applying Portuguese law in East Timor. In each case heard before the Court on Friday last week, the majority of the Court, namely Judge Claudio Ximenes (Presiding) and Judge Jose Antunes (Portuguese International Judge) affirmed their position that the appropriate subsidiary law in East Timor is Portuguese, rather than Indonesian law.

The third member of the Court, Judge Jacinta Correia da Costa delivered a dissenting opinion expressing her view that the correct interpretation of the Constitution of East Timor, taken together with United Nations Regulations 1/1999, is that Indonesian Law should be the subsidiary law in East Timor. In her dissenting judgment, Judge da Costa emphasised that it was Indonesian, and not Portuguese law, which was being applied in East Timor prior to October 1999.

Two of the cases determined last Friday, Joanico Gusmao and Aumerindo Afonso dos Santos, related to pre-trial detentions while the third case, Augustino da Costa, was an appeal against the sentence imposed by the Special Panel for Serious Crimes.

These decisions followed the judgment of the Court of Appeal in the case of Armando dos Santos delivered on Tuesday of last week. In its decision the Court of Appeal considered that Portuguese Law, rather than the Indonesian Law, should be the applicable subsidiary law in East Timor. The decision is of concern to JSMP and other national and international actors working in the justice sector in East Timor because it has created uncertainty regarding what should be the applicable law in this jurisdiction.

" The decisions of the Court of Appeal last Friday shows that there is an urgent need to clarify the application of Portuguese and Indonesian Law in East Timorese Courts. The application of different laws by the different courts in East Timor brings uncertainty not only for the legal profession but to the entire society in East Timor" - said JSMP

JSMP is currently preparing an analysis of the Court of Appeal decision and implications of the Armando dos Santos case.
Ends.