



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL
PROGRAM PEMANTAUAN SISTEM JUDISIAL

Press Release

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Mentally Ill Defendant Sent to Prison

The Dili District Court heard testimony on 18 February and 17 March 2008 from the defendant, victim and an expert on mental illness in a case of attempted murder.

The trial was presided over by a panel comprising international judge Vitor Hugo Pardal and two national judges, Deolindo dos Santos and Antonino Gonçalves. The prosecution was represented by Felismino Cardoso (international) and the defendant by public defender Olga Nunes Barreto (national).

The public prosecutor had laid charges under Article 53 (2) of the Indonesian Penal Code, alleging attempted murder, the intended victim being the defendant's own wife.

The defendant was kept in pre-trial detention at the Becora Corrections Facility from 11 May 2007. In his testimony to the court, the defendant admitted slashing the victim three times with a machete but claimed his actions were not premeditated. The court also received information that the defendant was receiving medical treatment due to signs that he was suffering from a mental illness.

To provide another perspective on the defendant's state of mind, the court heard from expert witness Dr. Chamilou Selsel. Dr. Selsel stated his examination of the defendant had found no conclusive evidence of mental illness.

The defendant's wife, and the target of his violence, also testified. She stated that since 1999 the defendant would often sit alone and talk to himself. At other times, he would scream abuse and strike her without warning.

The panel of judges, in its final decision, acquitted the defendant from all charges on the grounds of mental illness, pursuant to Article 44 (2) of the Indonesian Penal Code, which allows a judge to order committal and/or probation on mental health grounds. Accordingly, the defendant is to be held in protective custody at the Becora Correctional Facility for a period of one year, to be reviewed after six months.

The court indicated that protective custody was needed to prevent the defendant from posing any danger to himself or to the community. It was noted that the defendant was not convicted, but rather was ordered to undergo mental health treatment. As the court was unable to identify any facilities in Timor-Leste able to suitably house a potentially unstable patient, this period of treatment is to be undertaken at the Becora prison.

It appears the panel of judges gave considerable weight to the testimony of the victim, whereas the findings of expert witness Dr. Selsel were rejected.

Article 165 of the Timor Leste Criminal Procedure Code states that “the court shall freely assess the result of the proof obtained by means of recognition”. Judges are hence able to come to their own assessment of the facts. Furthermore, Article 121 (2) of the RDTL Constitution states “in performing their functions, judges are independent and owe obedience only to the Constitution, the law and to their own conscience”. This suggests that the testimony of expert, and other, witnesses may be balanced according to the judges’ own appraisal of circumstance, in keeping with these factors alone.

On the issue of expert opinion, Article 162 (2) of the Timor Leste Criminal Procedure Code states “where the conviction of the judge diverges from the judgment contained in the expert reports, the judge shall substantiate the reasons for his or her dissenting opinion”. The court’s rationale for an acquittal on the basis of mental illness, against expert testimony, has not been made entirely clear in this matter.

JSMP is concerned about the placement of the defendant in the Becora Corrections Facility for treatment, particularly considering the defendant was kept there for almost a year in pre-trial detention. It is uncertain what therapeutic value this environment will provide. Additionally, a failure to sufficiently distinguish between criminals and the mentally ill adds to an already worrying stigma.

The lack of appropriate public facilities for the mentally ill is not only a matter of public health but one also of social justice. JSMP calls on the government to respond to this issue not only with legislation and policy statements, but also a practical commitment to providing dedicated infrastructure.

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