



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

PRESS RELEASE

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The Oecusse District Court convicts one defendant for manslaughter and acquits a separate defendant on charges of rape

On 14 August 2007, the Oecusse District Court handed down separate decisions in a murder case and a rape case. The hearings were presided over by a Panel of Judges comprising Victor Hugo (international judge), Antonio Helder do Carmo and Constancio Basmery (national judges). The Prosecution unit was represented by the Public Prosecutor Domingos Bareto and the defendants were both represented by João Ndun, a private lawyer from FFSO.

The first case involved a killing that took place on 14 December 2005. During the examination phase of the trial the defendant, Johanes Elo, admitted all of his actions and stated that he had killed the victim, named Petrus. The defendant had injured the victim and, and after sustaining these injuries, the victim died in the Oecusse hospital. The incident related to a debt between the defendant and the victim whereby it was alleged that the victim was unable to repay his debt to the defendant within the agreed time limit.

The Panel found that the defendant was responsible for the death of another, in violation of the laws of Timor Leste. The panel took into consideration that the defendant had not intended to kill the victim but had rather attacked and wounded him. Accordingly, the Oecusse District Court convicted the defendant under Article 338 of the Indonesian Penal Code, which states *“whoever deliberately takes the life of another person shall be guilty of manslaughter and sentenced to a maximum term of imprisonment not exceeding 15 years.”*

Announcing the decision, the Panel explained, in accordance with Article 282 of the Criminal Procedure Code, that in passing sentence the court shall specify the grounds on which the choice and extent of the penalty applied are based, indicating where applicable when and how the sentence is going to be served. It was also noted that other duties imposed upon the convict, as well as any restrictive measures, must be made clear for the record.

The Panel decided to sentence the defendant to four years imprisonment after considering that he had co-operated during the trial, had no prior convictions and had pleaded guilty.

After reading out its sentence, the Court informed the convicted person that he shall remain out of custody awaiting the outcome of any appeal that must be submitted by his counsel or the public prosecutor within 15 days. If no appeal is lodged within the prescribed time limit, then the convicted person shall serve his term of imprisonment in accordance with the Court's decision.

Leonidio Marques, a Legal Researcher from JSMP who observed the trial, is quite concerned about the flight risk posed by the convicted person. Given his residence is in Indonesia he may easily abscond beyond the jurisdiction of the Court if he does not wish to appear before the authorities in 15 days time.

In a separate case heard on the same day, the Oecusse District Court decided to fully acquit the defendant in a rape case given doubts about the facts established during the trial. The panel explained that the facts in evidence indicated that the defendant and the victim did actually engage in sexual intercourse, but that the defendant did not use any force against the victim. In the absence of what the Panel determined to be conclusive evidence of rape, the case was decided in accordance with the principle of '*in dubio pro reo*' – doubt favours the accused.

As a result of their union, the victim gave birth to a baby who she is looking after. JSMP believes that although the defendant has now been acquitted, the victim may still pursue civil action under Article 72(2)a: *“the victim can file a civil request separately, if he or she expressly declares his or her intention to do so”*, in relation to liability for the child’s maintenance and education, as the defendant has admitted that he is the father.

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