



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Press Release
Edition: October 2008

The implication of court costs in the law on civil procedure

Civil law deals with legal complaints between private individuals or companies, as opposed to the criminal law, which covers matters that effect society at large.

Since Timor-Leste became a sovereign nation, two forms of law on civil procedure have been implemented. During the UNTAET period, Indonesian civil procedures were followed. From 2006 onwards, Timor-Leste has had its own civil procedure code, which was largely adapted from the legal systems of countries such as Portugal and Brazil.

Whilst the legal framework for civil process is now in place, access to these mechanisms is limited. Timor-Leste has also applied court costs that are relatively high in comparison with the economic circumstances of community members seeking justice.

In examining the effect of court costs, the Constitution, Civil Procedure Code and Law on Court Costs (Decree Law 15/2003) are necessary reference points for interpretation.

JSMP has learned, through its program of court monitoring and engagement with judicial personnel, that many civil disputes cannot be pursued through the courts because the associated costs are far in excess of the economic capabilities of prospective litigants. A number of cases are known to have been suspended because litigants were unable to fulfil their obligation to pay costs.

Legal authority for court costs derives from Article 43 of Decree-Law 15/2003, which states that new rules on costs shall apply to pending cases or cases that have not yet been decided, both at the District Court level and the Court of Appeal, and also for cases registered or part-heard when law came into force.

Prior to the enactment of this Decree-Law in 2003, all such cases registered would incur a flat fee of seventy-five US dollars without reference to the size of the claim. It became standard practice for litigants to include this amount in their claim for damages.

After the Decree-Law and the Civil Procedure Code were enacted, judges began to send claims back to the parties for modification. This has often resulted in vastly different claims, and subsequent calculation of costs. In some cases, judges have decided to set costs on the basis of their experience alone, and without prior notice to the parties.

In practice, when litigants are unable to pay court costs within the time limits established, then it is likely that the case will be archived (will not be processed until the parties pay court costs). Adding insult to injury, a fine may be imposed, with the prosecution unit to execute its payment.

In establishing the principles of the justice system, Article 26 of the Constitution states that access to courts is guaranteed to all, for the defence of their legally protected rights and interests. Specifically, it states that justice shall not be denied to those with insufficient economic means. The application of Decree-Law 15/2003 and the Civil Procedure Code appear, at least, to be counter to this Constitutional guarantee.

This may not be the only grounds upon which the court costs framework may be challenged. The applicability of the Decree-Law rules to cases registered or part-heard before these two laws came into force arguably contravenes Article 24(2) of the

Constitution, which states that its guarantees are not to be infringed upon by the retroactive enforcement of laws.

JSMP maintains that court costs are obstructing those wishing to pursue justice through civil process. Accordingly, we recommend that Law 15/2003 be reviewed, so at the very least alternatives can be provided for those whose socio-economic status makes court costs an impossible burden. Any such review should be undertaken with a view to safeguarding the guarantee of access to justice made by Article 26 of the Constitution.

For further information please contact;

Roberto da Costa Pacheco

Coordinator Legal Research Unit

Landline: 3323883

Email: bebeto@jsmp.minihub.org