



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

PRESS RELEASE

30 March 2007

The perpetrators of a shooting that occurred in the *Jardim* IDP camp in 2006 are acquitted

On 28 March 2007 the Dili District Court acquitted two defendants charged with a shooting that occurred at the *Jardim* IDP camp in September 2006. The defendants in this case were Xavier Freitas and Gastão Piedade. The hearing was conducted by a panel of judges consisting of Judge Ivo Nelson (International judge), Judge Antoninho Gonçalves and Judge Guilherme Gonçalves. The prosecution was represented by Baltazar B. (International prosecutor) and the two defendants were represented by the lawyer Benevides Correia Barros (Liberta) and Pedro Aparicio (legal advisor).

In accordance with the court schedule, the hearing was conducted for the purpose of examining the witnesses (and victim) presented by the prosecution, however the witnesses, who had been properly summoned by the court, failed to attend the hearing, and thus the prosecutor requested for the court to adjourn the hearing for a continuation of the examination of witnesses.

Based on the observations of JSMP, the legal advisors of the defendants implicitly agreed to an adjournment in order that witnesses could be presented. However the request of the prosecution was rejected by the court and the hearing proceeded whereby the court promptly delivered its decision.

In the indictment the prosecution charged the defendants under Article 53 (1) of the Indonesian Penal Code which relates to an attempt to commit a crime, Article 170 of the Indonesian Penal Code which relates to committing violence against another person in collaboration and in public, as well as Article 338 of the Indonesian Penal Code which relates to murder. In addition to the aforementioned articles of the Indonesian Penal Code, the defendants were also accused of violating Section 4.4 of UNTAET Regulation No. 05/2001 which states that it is a criminal act to be carrying firearms/dangerous weapons to a public meeting or demonstration.

In his recommendation of sentence, the prosecutor stated that it had been proven legitimately that the defendants had used a firearm (pistol) to shoot and injure several victims located at the *Jardim* camp. These allegations are based on witness statements taken when the victim and witnesses spoke to the police (preliminary investigation phase).

In their final plea, the legal counsel for the defendants rejected the indictment and recommendation for sentencing made by the prosecution and claimed that these allegations had no factual or legal basis. The legal counsel for the defendants referred to Article 267 (1) of the Criminal Procedure Code which basically sets out that statements made during the investigation phase can not be used in court. In addition, the contents of

JSMP

Address: Rua Setubal, Kolmera, Dili, Timor-Leste, **Mailing address:** P.O. Box 275 Dili, East Timor
Phone: +670 332 3883, **E-mail:** info@jsmp.minihub.org, **Website:** <http://www.jsmp.minihub.org>

the indictment could not be proven by the prosecution in the trial as the prosecutor had failed to present evidence, witnesses or a victim to support the indictment.

After hearing the prosecutor's recommendation of sentence and the final plea from the defence, the panel of judges overseeing this case decided to fully acquit both the defendants as the prosecution had failed to prove during the trial that the crime had been committed by the defendants (there were no witnesses or evidence).

Nevertheless, the public prosecutor announced his intent to lodge an appeal against this decision on the grounds that the court should have adjourned the hearing so that witnesses could be presented to the court to provide testimony and reveal the legal facts relating to the criminal act committed by the two defendants.

JSMP believes that the court could have granted the request of the public prosecutor to adjourn the hearing so that the witnesses could be presented, with reference to:

- a) Article 141 (2) of the Criminal Procedure Code which states that where the witnesses are not present, a date shall be set for that purpose,
- b) Article 250 (4), b of the Criminal Procedure Code which states that the judge orders the interruption of the hearing after it has started if it is absolutely necessary to produce further evidence, which is unavailable at the time the hearing is in progress.
- c) Article 251 (2) of the Criminal Procedure Code which states that the absence of procedural participants before the hearing has started may result in a postponement.
- d) Article 261 (1) of the Criminal Procedure Code which states that the absence of the aggrieved person (witness) may justify the postponement of the hearing only if the court believes that his or her presence is essential for the discovery of the truth and that the presence of the absentee on the new date to be set for the hearing is likely to be ensured.

The only way to prove or disprove the prosecutor's allegations that the defendants were involved in a crime legal is to reveal the legal facts through the testimony of the witnesses (and the victim). It is possible that the testimony of the witnesses and victim could give rise to new legal facts, for example it may be revealed that the two defendants were not actually the perpetrators of shooting that occurred in September 2006 in the *Jardim* IDP camp, but in fact the actual perpetrators have not been identified by the authorities handling this matter, namely the police and the prosecution unit.

For further information please contact:

Leonidio Marques. S. H

Legal Researcher (National)

Email: nidio@jsmp.minihub.org

Or the Director of JSMP

Timotio de Deus

Email: timotio@jsmp.minihub.org

JSMP

Rua Setubal, Kolmera, Dili – Timor Lorosa'e
Mailing address: P.O. Box 275 Dili, East Timor
Phone: +670 (390) 323-883

E-mail: info@jsmp.minihub.org - Internet: www.jsmp.minihub.org