



JUDICIAL SYSTEM MONITORING PROGRAMME

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Press Release

Dili District Court

15 December 2015

Issue of immunity hampers trial of the Secretary of State for Arts and Culture

On 23 November 2015 the Dili District Court failed to conduct a hearing against the accused Secretary of State for the Arts and Culture, Isabel Ximenes, because the National Parliament has not yet issued a resolution suspending her immunity.

Isabel Ximenes is charged with negligent mismanagement under Article 275 of the Penal Code, embezzlement under Article 295 and abuse of power under Article 297.

The trial should have commenced on 23 November, but the Dili District Court adjourned the trial because the defendant is the Secretary of State for the Arts and Culture and, therefore, National Parliament needs to remove her immunity before the Court can hear the case against her.

However, Article 113(1) of the RDTL Constitution states that, where a member of the Government is charged with a criminal offence punishable with a sentence of imprisonment for more than two years, he or she shall be suspended from his or her functions so that the proceedings can be pursued. In this case, the maximum penalty is greater than two years, so the defendant's immunity is automatically suspended. The Court does not need to wait for National Parliament to remove immunity.

“JSMP asks the Court to recognise that immunity in this case is automatically removed, pursuant to Article 113(1) of the Constitution. In cases involving serious charges against members of the Government, issues of immunity should not obstruct the trial or the obligation of the accused to promptly respond to the charges against them,” said the Executive Director of JSMP, Luis de Oliveira Sampaio.

When a member of Government commits a crime that carries a maximum penalty of two years or less, pursuant to Article 113 (2) of the Constitution, the National Parliament shall decide whether or not that member's immunity shall be suspended so that the criminal proceedings can proceed.

In contrast, the wording of Article 113(1) of the Constitution clearly states that National Parliament does not have this discretion when a member of Government is charged with committing a crime that carries a penalty of greater than two years in prison. In such cases the

immunity of the Government member is automatically suspended because the charge relates to a serious crime. This does not require a resolution from the Parliament to take effect.

In relation to the criminal offences allegedly committed by the defendant Isabel Ximenes, each of the crimes carries a different penalty. The crime of negligent mismanagement carries a maximum penalty of one year in prison, embezzlement carries a maximum penalty of ten years in prison and the crime of abuse of power carries a maximum penalty of four years in prison. The latter two crimes carry a penalty that is greater than two years in prison, which means that the immunity of the defendant is automatically removed.

JSMP requests that the Dili District Court commence the trial of this case without further undue delay. The defendant must respond to the charges against her at the Dili District Court. This issue relates to the fundamental principle of the rule of law. This means that all people, including the State and its agents, are equal in the eyes of the law, are treated with in the same way and are subject to an independent trial, which are basic principles of justice, peace and democracy.

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