



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Press Release

Dili District Court

13 June 2016

Revised Version: with input from the Honorable Judge of the Dili District Court

JSMP congratulates the Public Prosecution Service and Courts for their progressive interpretation of Article 154 of the Penal Code

On 8 June 2016, the Dili District Court read out its decision in a case involving the defendant DNC and sentenced the defendant to 3 years, suspended for 5 years, and ordered him to pay court costs of US\$50. In addition, the court also applied rules of conduct in accordance with Article 70 (g) of the Penal Code, namely the obligation to report regularly once a month for 1 year to the court. The defendant was found guilty of committing the crime of mistreatment of a spouse in Dili District.

The court proved that on 16 September 2013 at 17.00 the defendant and the victim were eating and suddenly the defendant threw a plate on the ground and the victim said that the plate had done nothing wrong. Then the defendant stood up and suddenly choked the victim, struck the victim numerous times on her left arm, slapped her many times in the face, yanked her arm and struck her left arm and left leg with a chair and kicked the chair on to the back of the victim. This case allegedly occurred because the defendant was unhappy with the victim admonishing the defendant when he was drinking palm wine at the home of his godfather. The aforementioned actions caused the victim to suffer serious swelling to her left arm and leg, swelling to her neck and she required treatment for one week at the hospital.

The public prosecutor alleged that the defendant violated Article 154 of the Penal Code on the mistreatment of a spouse as well as Article 35 (a) of the Law Against Domestic Violence.

Article 154 of the Penal Code states that any person who inflicts physical or mental mistreatment or cruel treatment upon a spouse or person cohabiting with the perpetrator in a situation analogous to that of spouse is punishable with 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision.

“JSMP congratulates the court on its decision because this is a very progressive interpretation to the application of Article 154 of the Penal Code. JSMP believes that the

problem to date has been that this provision does not clearly prescribe the need for evidence of repeated violence”, said Luis de Oliveira Sampaio, Executive Director of JSMP.

JSMP believes that Article 154 of the Penal Code provides a more specific rule to charge and convict the crime of domestic violence because it involves elements of violence and other general forms of mistreatment and cruel treatment that have the potential to cause physical and psychological harm. JSMP believes that when violence occurs between spouses Article 154 of the Penal Code should be prioritized as it provides for heavier penalties.

JSMP has overserved that since the Law Against Domestic Violence was enacted in 2010, most cases of domestic violence have been charged and heard pursuant to Article 145 of the Penal Code on simple offences against physical integrity.

The JSMP report entitled Law Against Domestic Violence: Three years of implementation and obstacles*, which was launched in 2013, concluded that most cases of domestic violence are charged under Article 145 of the Penal Code. Between July 2010 and June 2013 JSMP observed that 71% of cases were charged under Article 145 of the Penal Code and only 15% were charged for the crime of mistreatment of a spouse, however because there was evidence of repeated violence.

During the trial, the defendant partially admitted the facts in the indictment. When the court cross-checked with the victim regarding these facts the victim only admitted the facts of the crimes that occurred in 2013.

In his final recommendations the public prosecutor considered that all of the facts were proven, and requested for the court to sentence the defendant to 3 years in prison, suspended for 4 years.

The court considered that even though the facts linked to the incidents in 2008 and 2009 were not proven, the court still decided to convict the defendant for the crime of mistreatment of a spouse. The court believed that the attack committed by the defendant against the victim was serious, because he did not give a chance to the victim to defend herself. The act was considered as a cruel act against the victim who was his wife.

In its decision the court also introduced the CEDAW Convention to the defendant, in relation to providing protection in the family context, because of the violence committed by the defendant against the victim. The victim should have been given protection by the defendant, as the home and family should have been a safe place for the victim, but on the contrary it was full of violence.

* Please refer to the full report at http://jsmp.tl/wpcontent/uploads/2012/05/FINAL_Tetum.pdf

The court also clearly cited Article 5 (a) of the CEDAW Convention which states that State Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotypes roles for men and women.

JSMP values the decision of the court because once again it has referred to an international instrument as a consideration in a decision of a case involving a woman.

JSMP believes that this decision will be a good reference for other court decisions, because this decision will reflect the Government of Timor-Leste's compliance with principles of the CEDAW convention and other conventions ratified by the Government of Timor-Leste.

JSMP continues to encourage the judicial actors to understand that repeated attacks at the same time are a crime against a spouse, and it is not necessary to have proof that the crime was committed repeatedly at different times.

This case was registered as Case No. 0392/13.DICMR. The hearing was presided over by judge Jacinta Correia. The public prosecution service was represented by Prosecutor Osorio de Deus and the defendant was represented by Laura Lay from the Office of the Public Defender.

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