



JUDICIAL SYSTEM MONITORING PROGRAMME
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Oecusse District Court imposes an effective prison sentence of six months against a defendant for the crime of domestic violence

The Oecusse District Court ordered the defendant JL to serve an effective prison sentence of six months after he was found guilty of committing the crime of simple offences against physical integrity characterized as domestic violence against his wife. The sentence was announced on 26 July 2017 at the Oecusse District Court.

Previously, on 21 October 2015, the Oecusse District Court sentenced the defendant to serve a prison sentence of 9 months, suspended for 1 year, after he was found guilty of committing the same crime (simple offences against physical integrity characterized as domestic violence against his wife).

“According to the law, before investigating the new crime the prosecutor should have requested to the court to revoke the suspended sentence that was imposed against the defendant in a previous case, namely a prison sentence of 9 months that was suspended for a period of 1 year,” said Luis de Oliveira Sampaio, Executive Director of JSMP.

Article 72 of the Penal Code states that “If, during the period that the prison sentence is suspended, the convict fails to perform the duties imposed or is tried and convicted of another crime, the court may, taking circumstances into account, amend the initially established suspended execution, alter the duties imposed or solemnly admonish the convict, according to circumstances of the case.”

Article 73.2 of the Penal Code on revocation of a suspension states that “Suspension shall always be revoked if, during its period of duration, the convict commits a crime of intent for which the same is punishable with an effective prison sentence”.

In this case, the prosecutor failed to adhere to the provisions in Article 73 of the Penal Code. Therefore the Court ignored the final recommendations of the prosecutor which referred to the sentence imposed in a previous case (suspended sentence) that was imposed on the defendant. Based on the court's understanding of this case, if during the investigative process the prosecutor found that the defendant was still serving a suspended sentence, then the prosecutor should have immediately make a request to the Court to revoke the suspended sentence and apply an effective

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sentence against the defendant before processing the new case. For this reason, the court judged this case independently from the previous case, considering that the period of suspension ended in January 2017.

The public prosecutor alleged that on 28 November 2016, at approximately 10pm, the defendant punched the victim once above her left eye, punched the victim twice in the head and punched the victim once in the forehead. This assault caused the victim to suffer pain, swelling and redness. A medical report from Pradet was also attached to this case, together with photographs from the Vulnerable Persons Unit of the PNTL.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity as well as Articles 2, 3 (a) and 35 (b) of the Law Against Domestic Violence.

During the trial the defendant confessed all of the facts set out in the indictment, the defendant also stated that he regretted his actions, has reconciled with victim and promised not to reoffend against the victim.

After hearing the statement of the defendant and because the defendant confessed all of the facts set out in the indictment, the public prosecutor requested for the court to disregard the victim's statement that was given previously to the Public Prosecution Service.

In his final recommendations, the prosecutor stated that the defendant had been found guilty of committing the crime against the victim based on the facts set out in the indictment and the defendant's regret for his actions. The prosecutor also considered that previously on 21 October 2015 the Court sentenced the defendant to 9 months in prison, suspended for 1 year, and the defendant again committed a crime against the victim. Therefore the prosecutor requested for the court to revoke the suspended sentence and add it to a prison sentence of six months for the new crime committed by the defendant, thus resulting in a cumulative sentence of 1 year 3 months in prison, for both the recent crime and the previous crime.

The public defender stated that the defendant confessed all of the facts in the indictment and has two children. Therefore he requested for the court to apply a suspended sentence of 5 years as well as rules of conduct to periodically report to the police once a month so that the defendant can continue to provide for his family.

The court found the defendant guilty of committing further crimes against his wife. The Court also considered that the defendant did not show regret whilst he was serving the suspended sentence imposed by the court for the crime of domestic violence that he committed against his wife. Therefore, the Court concluded the matter and imposed an effective sentence of six months in prison against the defendant.

This case was registered with the court as Case No. 0224/16.OESIC. The hearing was presided over by João Ribeiro. The public prosecution service was represented by Mateus Nesi and the defendant was represented by public defender Defeza Marcelino Marques Coro.

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