



Press Release
The Dili Court of First Instance
7 August 2024

JSMP considers that the acquittal of the defendant LRTM in a case of prohibited weapons does not reflect the facts, is unjust and violates the principles of sentencing in the Penal Code

On 30 July 2024 the Dili Court of First Instance announced its decision and acquitted the defendant LRTM from the crime of prohibited weapons.

This acquittal, in principle, is extremely lenient, and the judge relied on two grounds; 1) the court considered that the defendant was the former Prosecutor General of the Republic, the Former Commissioner of the Timor-Leste National Police (PNTL), former Minister of the Interior, etc., and the court believed that the defendant had no intention to misuse these prohibited weapons, and 2) the act of keeping these prohibited weapons did not endanger or threaten the life of another person.

“This decision is not in accordance with the law because the defendant clearly violated Article 211 of the Penal Code with the new wording according to Law No. 5/2017 on prohibited weapons (including bladed weapons). This article does not state that a former Commissioner of the PNTL or person who previously held a public position has the right to possess weapons and that this possession does not constitute a crime when there is no danger to a person’s life. The reasoning of the court is outside the logic of justice, is not in accordance with the law, and has no legal validity”, said Ms. Ana Paula Marçal, Executive Director of JSMP.

JSMP believes the Public Prosecution Service will lodge an appeal against this decision because the acquittal of the defendant from this case of prohibited weapons is not an appropriate and fair decision because the sense of public justice has been offended and the general principles of sentencing in the Penal Code have been violated, for which the judges have the moral and institutional responsibility to defend.

The general principles in the Timor-Leste Penal Code establish the basic conditions or requirements as rules of exemption for conviction for the following reasons:

- 1) Exemption from criminal liability by reason of age, and
- 2) Exemption from criminal liability by reason of insanity (mental illness)¹.

Also, the Penal Code sets out the circumstances in the norms of penal law that serve as the grounds for excluding unlawfulness and guilt, because of;

- 1) exclusion of unlawfulness;
- 2) legitimate defence;

¹ Article 20 and Article 21 of the Penal Code.

- 3) state of justifying need; and
- 4) conflict of duties².

This means that the penal law allows the perpetrator or defendant to be given an exemption or exclusion from a penalty or punishment even though it has been proven that he has committed a crime, when these general principles have been fulfilled as well as the circumstances established by the penal law.

The principles and norms on sentencing, both for convicting and acquitting, that are set out in the penal law have been established to ensure that a court decision must have reasoning and be based on the law and must be legally rational and logical. A court decision must be based on evidence that has established objectively during the examination of evidence during a court trial.

In this case, JSMP does not see any basis-reasoning that has reflected a need to provide a pathway for the court to acquit the defendant. Because during the trial the defendant himself completely acknowledged the charges against him and the court also admitted that the prohibited weapons were in the possession of the defendant, a therefore the court decided to have them handed over to the State. This means that the charges of the Public Prosecution Service against the defendant were proven, as an act that constitutes a crim or an illegal act because he clearly violated Article 211 of the Penal Code on prohibited weapons. These facts should be observed and assessed independently from the other circumstances regarding the reasoning of the court that these weapons did not endanger or threaten the life of another person

On the other hand, JSMP has observed that for similar crimes involving ordinary citizens the courts tend to almost always convict the defendants, however in this case the court acquitted the defendant even though it was proven that he had hidden prohibited weapons at his residence.

From cases noted by JSMP between 2016 -2019, there were at least four (4) cases where the courts convicted the defendants with a range of sentences. These cases were Case No. 0049/18.BCSIC, where the court sentenced the defendant to 3 years in prison, suspended for 3 years. Case No. 0152/16.OESIC, where the court sentenced the defendant to 2 years in prison, suspended for 2 years. Case No. 0420/13.PDDIL, where the court sentenced the defendant to 1 year in prison, suspended for 1 year. Case No. 0034/12 DISIC, where the court imposed an admonishment against the defendant³.

JSMP has observed that the Court has not done its utmost, has not assessed nor properly and carefully considered each of the facts alleged by the prosecutor.

² Articles 43-36 of the Penal Code and Articles 48-50 of the Penal Code as well as Article 283 of the Criminal Procedure Code.

³ JSMP Case Summary; 1).Baucau District Court - April 2019: <https://jsmp.tl/wp-content/uploads/Sumariu-Kazu-Tribunal-Distrital-Baukau-Abril-2019.pdf>; 2). Dili District Court - September 2018: https://jsmp.tl/wp-content/uploads/SumariuKazuTribunalDILI_Tetum-1.pdf; 3). Oecusse District Court – October 2018: https://jsmp.tl/wp-content/uploads/SumariuKazuTribunalOEKUSI_TETUM-1.pdf; 4). Dili District Court – May 2016: https://jsmp.tl/wpcontentuploads/2016/02/SumariuKazuTribunalDILI_Tetum.pdf.

“JSMP is convinced that actually the defendant in this case should not have been total acquitted – at the very least the defendant should have been simply convicted for possessing, using or bearing firearms which is punishable with up to 2 years imprisonment or a fine, as set out in the provisions of point 3) of Article 211 of the Penal Code. Because there are many facts that show that the defendant did in fact possess prohibited weapons (munitions) at his residence”, said Ms. Ana Paula Marçal, the Executive Director of JSMP.

JSMP understands that these facts have sufficient probative value to convict the defendant because in accordance with the law the defendant should have handed in his guns and munitions when his mandate ended. However, on the contrary, the defendant continued to keep them at his residence. What is worse, when the police authorities conducted a search and seizure, they discovered that the defendant had hidden these objects in the ceiling, not in a place that is open and accessible. This shows that the defendant intended to appropriate these objects and to use them when necessary.

Therefore, the total acquittal without any conditions handed down to the defendant in this case will establish the possibility and jurisprudence in legal practice so that in the future other civilians who hold important positions in security and defence institutions or other relevant institutions will have a way to keep and/or use prohibited weapons when their mandate expires. This tendency has a high probability of posing a risk to the security of communities and national stability when each individual is free to keep and use these weapons illegally.

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