



**Press Release**

**Dili Court of First Instance**

**07 February 2025**

**Prosecutors and judges still don't use appropriate articles in cases characterized as domestic violence**

Prosecutors and judges still don't use appropriate articles in cases characterized as domestic violence. JSMP already remarked on this issue in its observations in December 2024 and January 2025, at the Dili Court of First Instance, in a case of simple offence against physical integrity characterized as domestic violence (DV), Case No. 0003/24.DIMTN, and at the Oecusse Court of First Instance, in a case of the same type and nature, namely Case No. 0312/23.OESIC.

In Case No. 0003/24 DIMTN, even though the defendant committed the crime only once, the defendant hit the injured party or victim in the head with a wooden chair, namely an object that could definitely kill or at least cause serious consequences to the life of the injured party. In this case, in addition to using a wooden chair, the target or part that was struck was the head which is fragile/vulnerable when hit with a heavy object. This was proven because this act caused the injured party to suffer an injury and bleeding to the head and the injured party received treatment at a health centre and received thirteen (13) stitches in her head.

JSMP believes that the acts of the defendant were serious and really threatened the life of the injured party, however the prosecutor only charged the defendant with Article 145 of the Penal Code (PC) on simple offences against physical integrity. In this case the court also did not thoroughly assess or examine the facts that were produced during the trial to consider if the charges were truly relevant and appropriate to the article on simple offences or if there was a need to amend the charge to apply a more relevant article. And because there was no thorough assessment, in the end the court only ordered the defendant to pay a fine of US\$45.00.

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Meanwhile, in Case No. 0312/23.OESIC, the public prosecutor alleged that the defendant punched the injured party twice on her left cheek which caused an injury, bruising, swelling and pain. Also, the defendant struck her once in the nose and caused an injury, bleeding and pain. Also, the defendant pulled the hair of the injured party and choked her which caused pain. The defendant then kicked the injured party twice in the stomach which caused pain and she fainted and fell to the ground because the incident occurred when the injured party was five months pregnant.

The charges stated that the incident occurred when the injured party asked the defendant for US\$20.00 to buy rice, therefore the defendant and the injured party argued and the defendant committed the aforementioned assault against the injured party.

Given that the injured party was five months pregnant, and the defendant committed many assaults, we can imagine that the injured party was being threatened, or her life was at risk. What is worse, the defendant kicked the injured party in her stomach, which did not only risk the life of the injured party but also the baby who was in the womb of the injured party. Unfortunately, the prosecutor only charged the defendant with simple offences against physical integrity and once again the court did not assess these facts, and therefore the court only imposed a prison sentence of one (1) year, suspended for one (1) year and one (1) month.

“JSMP believes that Article 145 of the PC on simple offences against physical integrity is not relevant and not appropriate when applied to acts that are so serious that they threaten the life of the injured party and forms of maltreatment. JSMP believes that to reduce the number of cases of domestic violence in the territory, the Public Prosecution Service and the courts need to charge a defendant with the appropriate article and apply a sentence that matches the seriousness of the crime committed by a defendant”, said Ms. Ana Paula Marçal, Executive Director of JSMP.

Article 154 of the PC does not expressly state that there is a requirement to prove that there has been repetition. Prosecutors and judges need to interpret ‘mistreatment’ as an physical or psychological act or offence against the injured party in a manner that is cruel and inhumane, not a repeated act or offence. For example, the two cases above indicate that the defendants acted cruelly towards their respective spouses (partners) and this does not necessarily require proof of repetition in order to charge and convict a defendant with the crime of mistreatment.

In the Manual on Investigating Gender Based Violence Offences for the Public Prosecution Service, on page 33, that was produced in May 2024, it is clearly advised that ‘mistreatment’ can constitute physical and psychological mistreatment and this does not need or require a repetitive act against the injured party to fulfil the elements of

the crime of mistreatment that is set out in Article 154 of the PC. Therefore, JSMP suggests that when drafting charges, the guidelines adopted by the Public Prosecution Service need to be followed. JSMP considers that Article 154 of the PC on mistreatment of a spouse is more appropriate based on the acts committed by the defendants against the injured parties.

JSMP believes that these two crimes are serious because these acts have serious/cruel implications and threatened the lives of the injured parties. For this reason, the formal justice system needs to have the power to protect women and children in the family and prevent similar crimes from occurring in the future through the indictments prepared by the Public Prosecution Service and the decisions issued by the courts.

Based on JSMP's observations to date on decisions in cases characterized as domestic violence and analysis of the provisions of Article 145 and Article 154 of the PC, it is evident that there the interpretation and application of the provisions in these two articles is not uniform. Most court actors consider an act to be a crime of mistreatment when the act is repeated or occurs more than once, or regularly. These different interpretations and applications have an impact on the sentences that are imposed, as they are not fair and are unproportional (not balanced) based on the seriousness of each crime and the circumstances. The problem of how these articles are not interpreted and applied in a uniform manner, or in a dissimilar manner, has an impact on justice, especially on the parties who are seeking justice. This is because often the courts issue different penalties in cases that are of the same nature and seriousness.

A prosecutor must choose the appropriate provisions for crimes of DV based on the seriousness of each case and its circumstances to ensure that each crime is punished in a way that proportionally reflects the actions of the defendant.

It is essential to evaluate the elements and nature of each crime based on its complexity and the potential risks of each case based on thorough assessment before determining the type of crime, and therefore a proportional and fair sentence can be imposed on a defendant.

JSMP believes that with the capacity, experience and guidelines on the legal provisions that exist, prosecutors will be able to conduct meticulous investigations and prepare appropriate charges to help the courts apply sentences that are proportional and fair.

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