



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Press Release
The Dili District Court
12 April 2021

Prosecutors include request for civil compensation in their indictments for cases of rape
JSMP considers this to be positive progress and requests for consistency in other cases

Prosecutors have included requests for civil compensation in the indictments for two cases involving rape that were monitored by JSMP. In Rape case No. 0127/20.DIBCR the prosecutor requested civil compensation of US\$5,000.00 and in Rape case No. 0002/20.MFALS the prosecutor requested civil compensation of US\$1,500.00.

A request for civil compensation for damage suffered by victims is the responsibility of the Public Prosecution Service as provided for in Article 72.3 of the Criminal Procedure Code on procedural positions¹. Point 3 of the aforementioned article states that the Public Prosecution Service is responsible for including the elements necessary for compensation in the indictment regarding civil liability for a crime Therefore the Public Prosecution Service has the duty to define how the actions of the defendant have caused the victim to suffer harm and damage and to provide evidence and set a value for the harm and damage suffered.

“JSMP praises the prosecution for including requests for civil compensation in their indictments in these two cases of rape. JSMP considers this to be positive progress in the work carried out by the prosecution. However, JSMP asks that requests for compensation need to be consistent in other rape cases and cases involving gender based violence as most indictments do not include a request for civil compensation,” said Ms. Ana Paula Marçal, Executive Director of JSMP.

¹ Article 72.3 states that where the aggrieved party becomes known before the investigation comes to a close, the public prosecutor shall, acting on behalf of the former, include in the indictment the elements required for determining civil liability.

Victims who suffer violence, including sexual violence, are entitled to civil compensation, where the victim needs to recover from the psychological and physical suffering endured and this right is set out in the Criminal Procedure Code and Civil Code and also educates defendants and society to deter the commission of such crimes in the future.

The Criminal Procedure Code and the Civil Code clearly provide for the right of a victim to obtain civil compensation from a defendant. Article 430 of the Civil Procedure Code states that when a victim's suffering relates to violence, civil compensation must be provided. Therefore, for certain crimes, especially those characterized as rape, defendants must be ordered to pay civil compensation to victims. This article does not provide an option to decide to include civil compensation or not, but states that civil compensation must be included.

Also, the Public Prosecution Service issued Circular No.02/PGR/2017² on request for civil compensation within the scope of criminal investigations. Article 5.1 of this circular states that for crimes characterized as sexual violence and other serious crimes it is mandatory for the Public Prosecution Service to request civil compensation. These crimes are: *(a) all types of homicide; (b) serious offences against physical integrity; (c) abduction; (d) slavery; (e) human trafficking; (f) torture or other cruel, degrading and inhuman treatment; (g) rape; (h) crimes of sexual exploitation as set out in Chapter II Section III of the Penal Code; and (i) the crime of sexual abuse. Although it is mandatory to request civil compensation, in most indictments prosecutors do not request compensation.*

JSMP recommends for all prosecutors to use this circular as a guideline when drafting indictments so that requests for civil compensation can be consistent in cases characterized as sexual violence, gender based violence and other serious crimes.

For more information, please contact:

Ana Paula Marçal
Executive Director of JSMP
Email: ana@jsmp.tl
Telephone: (+670) 33238883 | 77040735
Website: <https://jsmp.tl>
info@jsmp.tl

² The full contents of the aforementioned Circular are available from the Public Prosecution Service under the title of “The Public Prosecution Service and the Protection of the Family and Minors in the East Timor Context” [O Ministério Público e a proteção da Família e Menores no Contexto Timorense]. This booklet was launched on 9 October 2020 to celebrate the 20 year anniversary of the Public Prosecution Service.