



**Press Release**  
**The Dili District Court**  
**29 October 2021**

## **The court and the prosecution need to consider new facts that emerge during the examination of evidence**

The court and the prosecution need to consider new facts that emerge during the examination of evidence pursuant to Article 275 of the Criminal Procedure Code (CPC) on the substantial amendments to the facts of an indictment, in subsection 1 which states that if during the production of proof facts that are not contained in the indictment arise, which amount to imputing to the defendant a more serious crime or the aggravation of the maximum limit of the applicable penalty, the court shall, on a discretionary basis or at request, report such facts to the public prosecutor and the defender. In the absence of an agreement to conduct a trial with or without new facts, the notice of amendments is given to the public prosecutor which is equated with an advice for him or her to proceed in accordance with the new facts (subsection 4).

JSMP makes this request in relation to a case of attempted sexual abuse against a victim aged 7 that was tried by the Dili District Court on 8 October 2021. During the trial of this case new facts emerged based on the statement of the victim that the defendant did not only commit acts against the victim but also against the younger sister who at that time saw the defendant's acts against the victim. Even though there were new facts, the court continued with the trial without asking the public prosecution service and the defence about their thoughts regarding the new facts. In this case the public prosecutor alleged that the defendant violated Article 23 and Article 177.2 of the Penal Code on attempted sexual abuse of a minor that carries a maximum penalty of 5-15 years in prison.

"Pursuant to Article 275 of the CPC, when new facts emerge during the examination of evidence the court must ask the public prosecution service and the defence about their thoughts concerning these new facts, to decide whether to conduct the trial with the new facts or separately. However in the aforementioned case the court did not do so,

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therefore JSMP believes that the court and the public prosecution service did not properly analyse this case and did not consider that the crime involved minors, and that cases involving sexual violence are serious. JSMP believes that if the public prosecution service and the court analysed this case properly then their decisions would have been reflected the seriousness of this case”, said Ms. Ana Paula Marçal, Executive Director of JSMP.

During the trial the defendant confessed to all of the facts and also stated that he committed these acts on three occasions against the victim. Meanwhile, the victim confirmed the facts set out in the indictment and stated that the victim also committed sexual abuse against her younger sister.

In the indictment the prosecutor said that the defendant had caused physical distress to the victim and the defendant needs psychological treatment because he likes small children. Therefore, the public prosecution service requested for the court to sentence the defendant to 18 years in prison. The public defender stated that the defendant's committed the acts against young children, therefore the defence had nothing to say and asked for the court to issue a fair penalty.

After evaluating all of the facts the court found the defendant guilty of committing the crime of attempted sexual abuse against the victim. Based on the facts that were proven and consideration of the mitigating circumstances, namely that the defendant confessed, regretted his actions, and was a first time offender, the court concluded this case and imposed a prison sentence of 8 years against the defendant.

JSMP believes that if the courts and the prosecution thoroughly analyse the facts, and the courts hand down an appropriate sentences with the consideration that any crime involving the sexual abuse of a minor is a serious matter, then this will have a positive impact on deterrence.

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