



Press Release

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The application of fines in cases characterized as domestic violence should consider the requirements of Article 38 of the Law Against Domestic Violence

The application of fines in cases characterized as domestic violence should consider the requirements set out in Article 38 of the Law Against Domestic Violence (LADV) as specific provisions related to crimes of domestic violence.

“The court must ensure that decisions in cases of domestic violence comply with the articles of the Law Against Domestic Violence and are aimed at deterring domestic violence in the future,” said the Director Executive of JSMP, Luis de Oliveira Sampaio.

In some cases the courts have the option of imposing a fine as the main penalty pursuant to Article 75 of the Penal Code. However in cases involving domestic violence, the application of a fine must consider the requirements of Article 38 of the Law Against Domestic Violence.

This is important to ensure that the courts comply with the provisions in the applicable law and ensure that court decisions have the ability to prevent other crimes in the future and to ensure the well being of society.

Article 38 of the Law Against Domestic Violence on choice and determination of the sentence states that:

(1) The court may substitute the penalty of imprisonment with a penalty of a fine provided the prerequisites provided for in Article 67 of the Penal Code have been met:

- the security of the victim has been guaranteed,
- the perpetrator agrees to undergo treatment or follow-up support services for the victim;
and
- such a measure would benefit the preservation of the family unity.

(2) The defendant may further be sentenced to an additional penalty prohibiting contact with the victim for a maximum period of 3 years whenever it is considered that the application of the principal penalty is insufficient to prevent the repetition of similar acts.

JSMP has observed that in cases of domestic violence where the courts have applied a fine, the courts have not adhered to the requirements set out in Article 38 of the Law Against Domestic Violence. In the current context Timor-Leste does not yet have the conditions to direct defendants “to undergo treatment or follow-up support services for the victim”.

JSMP believes that to date the courts have failed to identify these conditions before deciding to apply a fine against defendants in cases of domestic violence. Therefore the fines that have been imposed by the courts against defendants in cases of domestic violence have not implemented Article 38 of the Law Against Domestic Violence because they have not adhered to the requirements set out in the law.

The Law Against Domestic Violence emphasises the importance of providing protection and security to victims and the relevant circumstances for prevention. Therefore, the courts also need to thoroughly assess the psychological and social circumstances of victims before making a decision and applying the relevant penalty to ensure that the penalty/sentence reflects the needs of the victim.

The victim needs to feel comfortable and safe to continue living together with the defendant/convicted person and the defendant (the convicted person) must promise to the court not to repeat his actions and the defendant needs to fulfil this promise. If the court considers that a fine is the best option, the court needs to comply with the conditions set out in Article 38 of the Law Against Domestic Violence.

JSMP has outlined its concern in its report entitled '**The Application of Alternative Sentences in cases of domestic violence at the Oecusse District Court-2015***' acknowledging that the trial process and sentencing can have different objectives. These include: to ensure the safety of victims; to punish perpetrators; to deter perpetrators from committing similar acts in the future; to deter the community in general from criminal acts; and facilitate rehabilitation and reintegration of perpetrators in the community.

These sentencing principles need to act as guidelines for the courts when they make decisions, and need to be clearly explained to the defendant and the victim. In addition, the Penal Code sets out specific prerequisites for courts when imposing a range of sentences. In particular, when a court decides to substitute a prison sentence with a suspension or fine in a case involving domestic violence, it is important to examine the sentencing principles, specific prerequisites in the Law Against Domestic Violence and the unique circumstances of each case.

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*http://jsmp.tl/wp-content/uploads/2012/05/FINAL_JSMP_Sentensa-alternativa_TDO_Nov-20151.pdf

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