



**JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU**

**Press Release
Dili District Court
11 November 2020**

Mistreatment of a minor is the most specific and appropriate article for acts of physical violence or harm against a minor

On 5 November 2020 the Dili District Court announced its decision and convicted the male defendant JT and the female defendant MR (husband and wife) for committing the crime of physical harm against the victim, their niece, who was aged nine (9).

In this matter the court amended the charges of the prosecutor from the crime of mistreatment of a minor to the crime of simple offences against physical integrity with the reasoning that the defendants did not repeat their actions, therefore the court was of the opinion that the requirements for the crime of mistreatment of a minor as provided for in Article 155 of the Penal Code (PC) had not been met.

“JSMP believes that Article 155 of the Penal Code on mistreatment of a minor is the most appropriate charge for the crime of physical violence or harm against a child/minor if committed by a person who is responsible for the upbringing of the child, if the victim is a relative or in a subordinate position, and it is not necessary to prove that the act was repeated,” said the Executive Director of JSMP, Ms. Ana Paula Marçal.

As reported by JSMP previously¹, JSMP believes that Article 155 of the Penal Code does not mention repetition. This article states any person who provides guardianship of a minor aged less than 17, or is responsible for his/her upbringing, or does so under employment, for example parents, uncles/aunties, grandparents, teachers, and causes harm to the minor’s body of health, then the elements of the crime of mistreatment of a minor have been fulfilled.

In the aforementioned case the male defendant JT is the victim’s uncle, and the victim was economically dependent on the male defendant, because she was living with both of the defendants. The victim was aged 9 and therefore younger than 17 years of age. Based on these circumstances and the legal elements/requirements of Article 155 of the Penal Code, JSMP has not doubt that the defendants’ actions fulfilled the elements of the crime of the mistreatment of a minor.

In this case the prosecutor alleged that the male defendant JT and the female defendant MR violated Article 155.1 (a) and 155.3 of the Penal Code on the mistreatment of a minor² which carries a sentence of 2-6 years in prison and the limits of these

¹ https://jsmp.tl/wp-content/uploads/PR-preokupa-ho-MP-no-tribunál_TETUM.pdf

² Article 155 Mistreatment of a minor

1. Any person who provides guardianship or custody, or is responsible for the upbringing of a minor aged less than 17

penalties shall be increased by one third, as well as Articles 2, 3(a), 35(a) and 36 of the Law Against Domestic Violence.

The charges of the prosecutor were based on the actions of the defendants who hit the victim many times with a plastic pipe and hose, squeezed the victim's fingers, hit the victim with a coat hanger until it broke and slapped the victim until she suffered bleeding from her nose. The victim suffered swelling and redness to her hands, back and legs. The victim's parents are separated, therefore in September 2018, before the victim's father went to England, the victim was brought over to live with the two defendants.

During the trial the defendants partially confessed to the facts in the indictment. Meanwhile, the victim confirmed the alleged facts. When making final recommendations the prosecutor maintained the charges, whereas the public defender requested for the court to amend the charge of mistreatment of a minor to simple offences against physical integrity.³

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years, or does so under employment, and:

a) **Causes harm to the minor's body or health**, or inflicts physical or mental mistreatment or cruel treatment;

3. If the victim is a descendant, **collateral kin, relative or similar to the second degree**, has adopted or been adopted by the perpetrator or a person cohabiting with the perpetrator under similar conditions, the limits to the penalties referred to in the preceding subarticles shall be increased by one third.

³This case was registered at the court as Case Number 0492/19.DICMR and the trial was presided over by a Panel of Judges comprising Albertina Neves, Afonso Carmona and Ercilia de Jesus. The Public Prosecution Service was represented by Nelson de Carvalho and the defendant was represented by Joana Cristina Pinto from the Office of the Public Defender.