



## JUSTICE UPDATE

*Period: 4 – 9 November*

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### COURT OF APPEAL OVERTURNS DECISION OF ACQUITTAL OF THE SPSC

On 4 November the Court of Appeal overturned the decision of acquittal of the Special Panel for Serious Crimes (SPSC) and convicted the defendant, Paulino de Jesus, to twelve years imprisonment for murder. Judge Claudio Ximenes was the presiding judge. Judge Antunes and Judge Jacinta composed the rest of the panel. In November 2003, the SPSC, composed by Judge Dora, Judge Florit and Judge Helder had by majority acquitted the accused of the charges of murder and attempted murder. So far the SPSC has only delivered three decisions of acquittal and this is the first acquittal to be overturned by the Court of Appeal.

On the same day, the Court of Appeal held three more hearings, which are discussed below, one also originating from a decision of the SPSC and two others concerning ordinary crimes under the jurisdiction of the Dili and the Baucau District Courts. The hearings commenced an hour late and there were various problems with simultaneous translations.

#### *Paulino de Jesus – Case No. BO-086-99-SC*

Paulino de Jesus was charged with murder and attempted murder in June 2002 for acts that he allegedly committed in September 1999 as a member of the Indonesian military (TNI). The accused remained in pre-trial detention from May 2002 to November 2003, when the SPSC acquitted him of the charges against him. He is believed to be currently in West Timor. The acquittal decision was based on the statements of witnesses who claimed to have been with the accused at the moment the acts were committed thus giving him an alibi. The SPSC considered that the statements of the victim's parents, who were present when the crime was committed, had several contradictions throughout the different stages of the process and therefore could not be used as enough evidence to conclude that the accused had committed the crimes.

On 4 November, the Court of Appeal overturned this decision considering that there was enough evidence to prove the accused committed the facts of which he was accused. According to the Court of Appeal there are statements of witnesses that prove beyond reasonable doubt that the accused committed the crimes. The Court acknowledged the statements of the other witnesses that stated the accused was at another place at the time the crime was committed but had doubts in supporting this version of the events. The Court considered the statements of the witnesses who claimed to have been with the accused to be so precise that there were reasons to doubt their veracity. The statements of these witnesses

not only referred to where the accused was at the time but also gave very precise information as to the time the witnesses had been with the accused. The Court pointed out that one of the witnesses had even been able to state to have been with the accused at a quarter past a given time. For these reasons, the Court of Appeal found the accused to be guilty of murder with premeditation, a crime punished by article 340 of the Indonesian Penal Code for which he was sentenced to thirteen years imprisonment. The Court also found the accused guilty of the crime of attempted murder for which he was sentenced to five years imprisonment. The accused was convicted to a total of twelve years imprisonment. The Court will issue an arrest warrant according to this decision.

The written decision was released on 9 November. This decision contests the decision of first instance on the grounds that the statements of the victim's parents may have had some 'apparent' contradictions but that were all together solid and proved the accused was the perpetrator of the crime. The Court of Appeal considers these statements to be in themselves enough to establish the responsibility of the accused, even if it was not so, there were two more witnesses confirming the victim's parents statements. The Court of Appeal's decision refers to the fact that the SPSC also took into account the statements of witnesses who claim to have been with the accused at the relevant time but does not rebut them directly.

#### **Augusto Asameta Tavares - Appeal No. 33/2001**

The accused, Augusto Tavares, was found guilty of murder and sentenced to sixteen years imprisonment by the SPSC in September 2001. The accused appealed of the decision. During the hearing conducted before the Court of Appeal, both the Prosecution and the Defence presented their allegations.

The Defence made its oral allegations in Tetum. The Defence had to interrupt its allegations several times due to problems with the simultaneous interpretation mechanism. Eventually, Judge Ximenes decided to continue the hearing without simultaneous translation and asked the interpreter to sit with the Prosecution and translate into English. There was no translation into Portuguese, the only language used by Judge Antunes. After the conclusion of the Defence's allegations, Judge Ximenes made a brief summary into Portuguese. The Court will deliver its decision on the appeal on the 24 November.

#### **Antonio da Silva Lemos – Appeal No. 36/2001**

Antonio da Silva Lemos is facing charges of assault before the Dili District Court. JSMP was unable to ascertain if the decision appealed was a final or an interlocutory one. At the appeal hearing only the Defence was present and no reason was given for the Prosecution's absence. The hearing took place in Tetum without any translation into Portuguese. The Court will deliver its decision on 24 November.

#### **Cristovao de Sousa Freitas – Appeal 32/2001**

Cristovao de Freitas is accused of an ordinary crime before Baucau District Court. JSMP was unable to ascertain whether the appeal was an interlocutory appeal or an appeal of a final decision. Neither the Prosecution nor the Defence were present at the hearing. The Court of Appeal decided nevertheless to hold the hearing with the accused present. All proceedings were carried out in Tetum without translation into Portuguese for the Portuguese Judge. After being asked by the Presiding Judge for how long he had been in jail the accused replied 'since

2001'. During the hearing, Judge Antunes left the courtroom for some minutes although the hearing was not interrupted. After deliberation the Court decided to release the accused without conditions. The Court further informed the accused that he had to be present at the next hearing which was scheduled for 10 December.