



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE
RDTL
TRIBUNAL DISTRITAL DE DILI

Special Panel for Serious crimes

Before:
Judge Sylver Ntukamazina

Case no: 9/2000

The Public Prosecutor

Versus

Joni Marques, Manuel da Costa, Joao da Costa, Paulo da Costa, Amelio da Costa, Gonsalo dos Santos, Alarico Fernandes, Mautersa Monis, Gilberto Fernandes and Hilario da Silva

Decision on the application for conditional release of Gilberto Fernandes

For the Prosecution:
Ms. Shyamala Alagendra

For the Defense:
Ms. Veronica Barros
Ms. Beatrix Sanchez
Mr. Sipposami Malunga

A. Procedural background

- 1 On 27 January 2003, the Counsel for Gilberto Fernandes filed an application for release of his client pursuant to Section 43 of UNTAET Regulation 2000/30 as amended by UNTAET Regulation 2001/25. The grounds for the release are outlined in the written application on the file.
- 2 On 11 December 2001, the Special Panel found the convicted person guilty for Torture as a crime against humanity and sentenced him to 5 (five) years of imprisonment.
- 3 The Public Prosecutor was notified of the request for release of the convicted person on 29 January 2003.
- 4 The Court ordered on 4 and 17 February 2003 Becora Prison Manager to provide the Court a report on the conduct of the convicted person. This was done on 26 February 2003.
- 5 Pursuant to Section 43.1 UNTAET Regulation 2000/30, the Court decided to hold a hearing on 28 February 2003 at 9 00AM in order to check whether the requirements for the conditional release of the convicted person are met.
- 6 Gilberto Fernandes was born on 3rd February 1973, in Sarano village, Los Palos District, where his family is living now. His father's name is Manuel Fernandes and his mother's name is Juana Henrique. He is single and does not have children.

B. Submissions of the parties

- 6 During the hearing held on 28 February 2003, the Defense confirmed the written submissions. The Defense bases the request on Section

43.1(a), (b) and (c) UNTAET Regulation 2000/30, and asked the release of the accused on three grounds relating to:

(a) The length of the period of detention of the convict: the defense advanced that the convict has served two-third of his sentence. He was arrested on 9 October 1999 and has been in custody since that date. On 9 February 2003, he has served two-thirds of his sentence.

(b) The good behavior of the convict in prison: The Defense submitted that a favorable report on the conduct of Gilberto Fernandes has been presented to the Court by correctional authorities. According to the Defense, the convict has been behaving and working well in prison while serving his sentence as certified to by Mr. Carlos Freitas Sarmiento, Becora Prison Manager.

(C) The fact that the convict is not a danger to the society: the Defense believes that the convict will not pose any further danger to the safety or security of the public based on the good behavior he has been exhibiting while serving his sentence.

7 The Defense underlined also that the convicted person is also willing to submit to the conditions being attached to his release. He also asked the Court that in the case the order is granted, he would like the order to mention the termination date of the sentence as a reminder for the convicted person. This is for clarity sake so that he knows until which date he is supposed to comply with certain orders.

8 The Prosecutor told the Court that she does not have any objection with respect to the conditional release of the convict. However, the Prosecutor would like to request that the provisional measures stated in Section 43, in particular an order from the Court prohibiting the convicted person from leaving the jurisdiction of the Court without prior authorization of the Court and certainly to ensure that this condition is being fulfilled. The prosecutor also requested that the convicted person be ordered to report to the nearest CIVPOL police station, once every two weeks, and that this condition is to continue until the completion of a full sentence which the convicted person is to serve. The Prosecutor believes that this requirement would ensure the continued good conduct of the convicted person. In this regard, the Prosecutor referred the Court to its previous decisions, especially

in the case of Public Prosecutor Versus Sabino Gouvia Leite where the Court amongst other conditions imposed this condition.

C. Relevant provisions of the law with respect to the composition of the Court and the conditional release

- 8 With respect to the conditional release after trial, Section 43 provides that: " 43.1. Upon request by the convict or his or her legal representative, and after a hearing, a Court may order the conditional release of a convict who has been sentenced to a term of imprisonment where: (a) two thirds of the term of imprisonment has been completed; (b) a favorable report on the conduct of the convict has been presented to the Court by correctional authorities; and (c) the convict poses no danger to public security or safety. 43.2. An order for conditional release under the present section may include any measure that may promote the peaceful integration of the convict into society, including one or more of the following: (a) a prohibition on the convict to appear in specified places; (b) a prohibition on the convict from associating with persons identified in the order; (c) a prohibition on the convict from leaving the jurisdiction of the Court without previous authorization from the Court; or a requirement that the convict appear regularly before the Court or other designated authorities for a certain period of time."
- 9 With respect to the jurisdiction of a single judge, Section 48 relating to the supervision and the execution of prison sentences provides that: " 48.1 All matters relating to the supervision and the execution of a prison sentence shall be decided by the presiding judge of the Panel or the individual judge who pronounced the sentence. In the event that such judge is no longer available or otherwise unable to exercise his or her functions, the judge Administrator will designate a judge to deal with such matters.
- 10 This Court will deal first with the issue of the jurisdiction of a single judge, before going to the substantial matter relating to the conditions for release.

B. The jurisdiction of a single judge.

- 13 There is no issue with respect to the jurisdiction of a single judge to deal with the application of conditional release. The matter on issue in the present case is relating to the supervision and execution of a prison sentence. Pursuant to section 48.1 UNTAET Regulation 2000/30, a single judge shall decide that kind of issue, namely the presiding judge of the Panel or the individual judge who pronounced the sentence. In the event that such judge is no longer available or otherwise unable to exercise his or her functions, the judge administrator will designate a judge to deal with such a matters. In the present case, the Presiding judge of the panel who pronounced the sentence is not available and the judge administrator designated Judge Sylver Ntukamazina to deal with the present matter. The competence of a single judge to deal with this matter is therefore obvious and it conforms to the jurisprudence of this Court¹.

C. With respect to the conditions of release of the convict person

- 11 Pursuant to Sect. 43.1 UNTAET Regulation 2000/30, a convict may be granted conditional release following trial after (a) two-thirds of the term of imprisonment has been completed; (b) a favorable report on conduct; and (c) where there is no danger to public security or safety.
- 12 This Court is of the opinion that those conditions have to be satisfied separately. In enumerating the conditions, Section 43.1 says " *where: (a)...(b)... and (c)*". The reading of the section shows clearly that each and all those conditions have to be fulfilled in order for the Court to order a conditional release.
- 13 It is true that the convicted person has been detained continuously from 9 October 1999 until now. He has therefore served the two-thirds of his term on 9 February 2003. This was clearly shown in

¹ Special Panel for Serious Crimes, Prosecutor Vs. Joni Marques and 9 others, Decision on the application for conditional release of Alarico Fernandes, 17 April 2002. See also the Case No.4 b/2001 the Prosecutor V. Sabino Gouveia Leite, Decision on the application of the conditional release of Sabino Gouveia Leite 17 December 2002.

the judgement of the case and in the report from the prison, which mention that two-thirds of the term of imprisonment was served on 9 February 2003. It is therefore obvious that the first condition for release provided by the law is fulfilled.

- 14 The report of the conduct of Gilberto Fernandes has been submitted to the Court. It says that: "*Since Inmate Gilberto Fernandes arrived to Becora Prison his conduct, behavior and attitude has been of a good standard. He has been cooperating with the prison staff and has worked well during his time in prison(...)*" The Court is convinced that the conduct and the behaviour of the convict person in prison has been until now good. The second condition for release of the convict is also fulfilled.
- 15 With respect to the third condition and as underlined by the Prison Manager, there is no guarantee that the inmate will not pose any danger to public safety or security. It is not possible to determine in advance what will be the future behavior of the convicted person. However, the good behavior the convict has been exhibiting while serving his sentence, would suggest that Gilberto Fernandes will continue to adopt a good behavior once released, and will cause no danger to public security or safety.
- 16 However, as decided in other similar cases, especially in the case the Prosecutor v. Sabino Gouveia Leite, it is necessary, in order to promote the peaceful integration of the convicted person into society, and to prevent any future misconduct, that the court forbid Gilberto Fernandes to commit any other offence and to pose any danger to public safety or security for a period of one year.
- 17 The case of Gilberto Fernandes is a little bite different from Sabino Gouveai Leite's case, since in the latter case it was necessary for the interest of justice to protect witnesses who were still coming to testify in the case of his former co-accused Jose Cardoso. In the present case there is no witness to manipulate or to interfere with.
- 18 In order to ensure the good behavior of the convict after release, the Court will prohibit him to leave the jurisdiction of this Court without prior authorization of the same Court, until the completion of the term of his sentence on 8 October 2004. For the purpose of

facilitating the control of the respect of the condition, the Court will order Gilberto Fernandes to report to the nearest civpol once a month.

- 19 Conditional release shall terminate if the convict commits a crime or violates any of the conditions established in the present order for conditional release, in which case he shall immediately continue his original term of imprisonment.
- 20 For the aforementioned reasons, the Court:
- 21 Decides that the application for conditional release of Gilberto Fernandes is granted with the following conditions valid for a period starting today and expiring on the 8th October 2004, on which date the penalty of imprisonment of the convict person will expire:
 - a) That Gilberto Fernandes does not commit any other offence and not pose any danger to public safety or security.
 - b) That Gilberto Fernandes resides in Sarano village, Los Palos District, not leave the jurisdiction of this Court without prior authorization of the Court, and reports to the nearest CIVPOL once a month.

Dili, 28 February 2003

Judge Sylvek Ntukamazina

