



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

RDTL

**TRIBUNAL DISTRIAL de DILI
SECÇÃO CRIMES GRAVES**

Case No.19/2001 The Public Prosecutor vs. Abilio Mendez Correira.

Before:
Judge Sylver Ntukamazina

Case No.19/2001

**The Public Prosecutor
Versus
Abilio Mendez Correira**

**Decision to the application for release of the accused Abilio Mendez
Correira**

For the Prosecutor:
Charles Nsabimana

For the Defence:
Alan Gutman

Procedural background

- 1 On 12 May 2003, the Defence filed a motion under Section 27.2 of the Transitional Rules of Criminal Procedure, UNTAET Regulation 2000/30, as amended by Regulation 2001/25, to apply for the immediate release of the accused Abilio Mendez Correira or, in the alternative, the imposition of substitute restrictive measures.
- 2 The Defence funds the right of the accused to have his detention reviewed on Section 6.3 (k) of the mentioned Transitional Rules of Criminal Procedure.
- 3 The Defence also submitted a written declaration of the accused to be considered as an assurance that he will remain in the jurisdiction of the Court and submit himself voluntarily to all further legal proceedings in case of being released.
- 4 The Prosecution did not submit a written response to the Defence's counsel application but replied orally to the submissions of the Defence during the hearing.
- 5 On 29 May 2003 the Court deemed necessary to hold a detention review hearing in the 9 June 2003 to decide on the request filled by the Defence. In the same decision the Court decided the postponement *sine die* of the beginning of the trial hearing, initially scheduled for 9 June 2003, by waiting for a new schedule of all the cases pending before the Special Panels.

Submissions of the parties

- 6 On 12 May 2003 the Defence Counsel for the accused Abilio Mendez Correira filed an application for the release of the accused on the ground that there are new delays in the proceedings, which he submits it is sufficient to persuade the Court that the accused should be released. The Defence Counsel does not repeat any of the arguments raised at previous bail applications, save to state that the same factual circumstances apply.
- 7 During the detention review hearing held on 9 June 2003 the Defence Counsel asked the Court to admit two new documents:
 - a) A letter from the Village Chief (*chief do Suco*) of Pukelara, Salvador da Costa Alves Correia, declaring that "the community of

Pukelara are ready and willing to accept Abilio in accordance with our customary law. The community is willing to accept Abilio in order that he can reunite with his wife and children". The letter also states that the Chief is happy to support the accused in meeting all conditions (for release) laid down by the Court.

b) A declaration by Rafel Alves Correia, family member of one of the victims, stating that he himself was willing to accept Abilio Mendez Correia back in the Pukelara Village.

- 8 The Defence proposed that, should the Court consider that there were reasonable grounds for detention under Section 20.8, it should deal with the case under Section 21 UNTAET Regulation 2001/25, which provides substitute restrictive measures as an alternative to an order of detention.
- 9 The Public Prosecutor acknowledged that the accused spent a long period in prison, agreed with the new guarantees offered by the Defence Counsel and declared his intention not to oppose the release of the accused. The Public Prosecutor solicited the Court to ask the accused for some guarantees that will assure that the accused is available for the Court when the Court wants him to appear.

With respect to the request for release

- 10 The accused was arrested on the 7 May 2001 and has been held in detention to date. On 24 September 2001 the Prosecutor filed an indictment against him where Abilio Mendez Correia is charged with three counts of crimes against humanity.
- 11 Following the Preliminary Hearing held on the 1st February 2002 the Court decided on the grounds of detention for the duration of the trial. In its decision, the Court extended the detention of the accused for the duration of the trial. The Court agrees with the parties that the previous grounds for detention and the same factual circumstances apply, except the new delay in the proceedings. The Court also admits into evidence the new documents provided by the Defence Counsel.
- 12 The jurisprudence of the Special Panel shows that an excessive length of the pre-trial detention can be considered as a new ground to revisit previous detention decisions. This has been the opinion of the

Panel or of the individual Judges, *inter alia*, in the cases *The Public Prosecutor vs. Jose Cardoso*¹, *The Public Prosecutor vs. Lino De Carvalho*², and *The Public Prosecutor vs. Damiao Da Costa Nunes*³. However, the Court would like to emphasize that there is not a concrete time limit, exceeding which, it can be automatically considered that this new ground appears. It is a matter for the Court to consider in a case-by-case basis and in light of several factors that may account for the length of detention. The Court does not need to revisit the grounds already taken into consideration in the previous decisions.

- 13 Pursuant to Section 6 UNTAET Regulation 2000/30, the accused has the right to be tried without undue delay. That means that criminal proceedings must be started and completed within a reasonable time. As already decided in the case *The Public Prosecutor vs. Carlos Soares*⁴, in matters of detention, the principle is the liberty and the detention the exception.
- 14 In the present case, the length of the pre-trial detention constitutes an exceptional ground to review previous decisions. The accused person has been under detention for a period of 25 months. During this period the trial of the case has been postponed in several occasions. According to international human rights standards a period of pre-trial detention exceeding the two years cannot be justified except in specific circumstances.
- 15 According to this Court one of these circumstances could be the imminent opening of the trial. The Court had scheduled the beginning of the Trial Hearing for yesterday, the 9 of June 2003 but has been postponed by waiting a new schedule of all the cases waiting before this Court. Although the Special Panels are already complete, after the swearing in of new judges, considering the caseload of cases pending before the Court, the Court cannot assure that the beginning of the trial will be scheduled within this month. Therefore the proximity of the trial cannot be considered as a ground to keep the accused person under detention.

¹ The Public Prosecutor v. Jose Cardoso, decision of 27 April 2002

² The Public Prosecutor v. Lino De Carvalho, decision of 28 October 2002

³ The Public Prosecutor v. Damiao Da Costa Nunes, decision of 3rd June 2003

⁴ The Public Prosecutor v. Carlos Soares, decision on the application for the imposition of restrictive measures, 18 October 2002.

With respect to the substitute Restrictive measures

- 16 The Defence submitted that the accused is ready to comply with any substitute restrictive measures, which the Court deems appropriate, including but not limited to the following conditions:
- a) Residence at Dato Village, Pukelara Sub-Village, Liquiça District or some other place deemed appropriate by the Court;
 - b) A written assurance that the Defendant will remain in East Timor and will submit himself to the Court as and when required to do so;
 - c) Reporting to the nearest Police Station three times per week, or as often as the Court deems necessary;
 - d) Not to contact directly or indirectly any prosecution witness;
 - e) Not to leave the area deemed appropriate by the Court.
- 17 The Public Prosecutor didn't oppose the substitutive measures proposed by the Defence Counsel but requested some guarantees for the appearance of the accused before the Court when necessary.
- 18 By analyzing the substitute measures, this Court will consider the measures provided in Section 21 of UNTAET Regulation 2001/25 and any other lawful measure it deems relevant for the necessity of the case taking into account the submissions of each party with respect to the necessity of the measure. Section 21.1 provides that:
- “ As an alternative to an order for detention, the Investigating Judge may order one or more of the following substitute restrictive measures, if he or she believes it is necessary to ensure the integrity of evidence related to the alleged crime or the safety or security of the victims, witnesses and other persons related to the proceedings:*
- (a) house detention of the suspect, alone or under the custody of another person;*
 - (b) the submission of the suspect to the care or supervision of a person or an institution;*
 - (c) a regime of periodical visits of the suspect to an agency or authority designated by the Investigating Judge;*
 - (d) the prohibition of the suspect from leaving an area designated by the Investigating Judge;*
 - (e) the prohibition of the suspect from appearing at identified places or meeting a named individual; or*
 - (f) the prohibition of the suspect from staying in the family home, if the alleged crime is related to domestic violence”.*

- 19 This Court has already stated in previous decision, *inter alia*, *The Prosecutor v. Carlos Soares*, and *The Public prosecutor v. Lino Do Carvalho*, that all the measures regarding any liberty restriction are governed by the principle of legality. Therefore the Court has to follow the alternative measures to an order of detention that are provided in section 21 Section.1. However, the Court is also entitled to impose any measure it believes necessary to ensure the integrity of evidence related to the alleged crime or the safety or security of the victims and witnesses, but only if such measures are necessary and lawful.
- 20 The Court finds convenient that the accused resides in East Timor, and in particular in the sub-village of Pukelara. The declaration of the Sub-Village Head of Pukelara expressing the willingness of the community to accept the accused person reassures the Court and dissipate the doubts that the Court could have of the risk for the peace of the village that the release of the accused person could pose.
- 21 The Court notes that the accused has already provided a written assurance that he will remain in the jurisdiction of East Timor and submit himself voluntarily to all further legal proceedings in this matter. The Court believes that such an assurance explicitly show the willingness of the accused not to flee the jurisdiction of this Court. The Court admits the declaration as an "*ex ante*" compliance to the measures proposed by the Defence.
- 22 The Court also accepts the proposal of the Defense for the accused reports regularly to the local police authorities. The Defence proposed three times per week. This Court deems enough that the accused reports once a week.
- 23 The Court finds reasonable in order to avoid pressure, manipulation or endanger the safety of witnesses, to forbid the accused from contacting, directly or indirectly, any prosecution witness.
- 24 The Court also considers reasonable to order the accused person to remain in a limited area, namely the District of Liquiça except when otherwise authorized by the Court.

- 25 Finally, and as requested by the Public Prosecutor, the Court recalls the accused that he has to be present for the trial of his case and that in the case he is voluntary absent the proceedings may continue until their conclusion.

Therefore, the Court:

- 26 Orders the substitute restrictive measures as an alternative to an order of detention of the accused Abilio Mendez Correira.
- 27 Decides the following substitute measures:
- a) That the accused resides in East Timor, and in particular in the sub-village of Pukelara.
 - b) That the accused reports once a week to the local police authorities.
 - c) That the accused directly or indirectly be prohibited from contacting any prosecution witness.
 - d) That the accused remains within the limits of the District of Liquiça except when otherwise authorized by the Court.
 - e) That the accused has to be present for the trial of his case and that in the case he is voluntary absent the proceedings may continue until their conclusion.

Dili, 10th June, 2003

Judge Sylver NTUKAMAZINA