



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

RDTL

**TRIBUNAL DISTRITAL de DILI
SECÇÃO CRIMES GRAVES**

Case No.10/2001 the Public Prosecutor vs. Lino De Carvalho.

Before:

Judge Sylver Ntukamazina, Presiding

Judge Benfeito Mosso Ramos

Judge Maria Natercia Gusmao Perreira

Case No.10/2001

The Public Prosecutor

Versus

Lino de Carvalho

Decision to the application for release of the accused Lino de Carvalho

For the Prosecutor:

Eric Mc Donald

For the Defense:

Sipposami Malunga

Procedural background

- 1 On 25 September 2002, the defense filed a motion under Section 27.2 of the Transitional Rules of Criminal Procedure, to apply for the immediate release of the accused Lino de Carvalho or, in the alternative, the imposition of substitute restrictive measures.
- 2 The defense also underlines the right of the accused to have his detention reviewed under Section 6.3 (k) of the rules.
- 3 The Prosecution responded to the defense's counsel application on 26 September 2002.
- 4 The application was not heard upon its submission since one of the judges involved in the case was not available.
- 5 On 17 October 2002, the Court deemed very urgent to hear the application and decided to hold a review hearing of the detention of Lino de Carvalho on Friday 25th October 2002.
- 6 On the 25th October 2002, a review hearing was held and the Public Prosecutor presented an amended response to the defense's counsel application for the release on restrictive measures of the accused.

Submissions of the parties

- 7 The Defense for the accused Lino De Carvalho applied for immediate release of the accused on the ground that there are new delays in the proceedings, which he submits is sufficient to persuade the Court that the accused should be released. The accused does not repeat any of the arguments raised at previous bail applications, save to state that the same factual circumstances apply (see the written application of the defense for more details).
- 8 For the Defense, if the Court still takes the view that there are 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 Accused agreed to comply with substitute restrictive measures that the Court deems appropriate.
- 10 The Public Prosecutor agreed and requested the Special Panel for Serious crimes to order the release the accused on restrictive measures. He recalled his request made on 30 May 2002 for the release of the accused, which was not heard since no Special Panel could be assembled at that time. The Prosecutor consented to the defense counsel's application and proposed some restrictive measures.

With respect to the request for release

- 11 The accused was arrested on the 28th October 2000 and has been held in detention to date. The trial of the case against the accused commenced on 19 February 2002 and continued on the 12th, 13th and 14th March 2002. The trial was then postponed many times until now for many reasons due to no fault of the accused, the Court, the Prosecution or the defense.
- 12 This Court has already decided on the exceptional grounds of detention for the duration of the trial¹. 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.
- 13 As already decided in the Case the Public Prosecutor v. Jose Cardoso, the Court finds relevant in the present case the submissions of the defense that the additional time passed by the accused in jail since the last order of detention, can be considered as a change in the circumstances of the case. Only the further delay gives the defendant the right to have his custody reviewed under Section 6.3 (k) UNTAET Regulation 2000/30. In Jose Cardoso's case, the Court says: "*In the present case the defense has raised the same grounds as it raised in its previous applications. Only the new delay in the proceedings, the issue of length of time, which is still on going, could be considered as a new ground submitted by the defense*"².
- 48 Also in the present case, the length of the pretrial detention constitutes an exceptional ground to release the accused.

¹ Decision on the 4th May 2001

² The Public Prosecutor v. Jose Cardoso, 27 April 2002

- 49 Pursuant to Article 9 (3) of the International Covenant on Civil and Political Rights, anyone detained on a criminal charge has the right to trial within a reasonable time or to release pending trial: *“anyone arrested and detained on a criminal charge shall be brought promptly before a judge or other officer authorized by the law to exercise judicial power and shall be entitled to trial within a reasonable time or to release”*.
- 50 Pursuant to Section 6 UNTAET Regulation 2000/30, the accused have the right to be tried without undue delay. That means that criminal proceedings must be started and completed within a reasonable time.
- 14 The issue of length of detention as an exceptional circumstance warranting release, and the issue of the right of the accused to be tried without undue delay is to be evaluated on a case-by-case basis and in light of several factors that may account for the length of detention.
- 15 In the present case, it is true that the accused has been detained for 2 years, and that the trial of case has been postponed many times for many reasons. Even now, the Court is not sure, considering the caseload of cases pending before the Court, and the fact that only one panel is functioning, the trial hearing of the case will be held very soon. However, considering all the factors enumerated in the previous decisions of the case, which did not change, this Court still has the opinion that there are reasonable grounds for detention under Section 20.8.
- 16 The court will then order substitute restrictive measures as an alternative to an order for detention, in order to comply with international standards regarding length of detention, while the Court is satisfying itself that the accused will not flee the jurisdiction of the Court, and the integrity of evidence relating to the alleged crime or the safety or security of victims, witnesses and other persons related to the proceedings are protected.

- 17 As already decided in the case the Public Prosecutor against Carlos Soares³, in matters of detention, the principle is the liberty and the detention the exception. Therefore, whenever the substitute restrictive measures reveal sufficient and adequate to fulfill the same ends of the detention, the latter has to stop and be replaced by substitutes measures.

With respect to the substitute Restrictive measures

- 18 The defense 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 in a place deemed appropriate by the Court;
 - b) Reporting to the nearest UNPOL Station three times per week, or as often as the Court deems necessary;
 - c) Not to contact directly or indirectly any prosecution witness;
 - d) Not to leave the area deemed appropriate by the Court
- 19 The Public Prosecutor proposed the following substitutes measures:
- a) That the accused provides to the Court 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 before any release is effectuated;
 - b) That the accused resides in East Timor, and in particular in the sub-village of Lotom;
 - c) That the accused reports at least once a week to the local police authorities;
 - d) That the accused be prohibited from intimidating, harassing, or endangering in any form or way, victims of crimes in 1999 or witnesses of those crimes;
 - e) That the accused and /or any third party acting on his behalf be prohibited from disclosing to the public or any third party, directly or indirectly, any identifying information about any prosecution witnesses, including but not limited to names, addresses, occupations, whereabouts, photographs, sketches, audio or video recording;
 - f) That the accused and /or any third party acting on his behalf be prohibited from disclosing to the public or any third party any

³ The Public Prosecutor v. Carlos Soares, decision on the application for the imposition of restrictive measures, 18 October 2002.

information, directly or indirectly, concerning the content of any witness statements, supporting material or other information concerning a witness;

- g) That the accused directly or indirectly (except his defense counsel for the purpose of preparing his defense) be prohibited from contacting any prosecution witness, or any relative of such person;
- h) Any other restrictive measures considered appropriate to impose.

19 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.

20 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”.*

21 As already decided by this Court in the case the Public Prosecutor v. Carlos Soares, all the measures related to liberty restriction are governed by the principle of legality. Therefore the Court has to follow the alternative measures to an order of detention that is provided in section 21 Section.1. However the Court can also impose any measure it believes necessary to ensure the integrity of evidence

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related to the alleged crime or the safety or security of the victims, witnesses, only if such measures are necessary and lawful.

- 22 The Court agrees with the condition that the accused provides to the Court 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 before any release is effectuated. The Court believes that such a measure agreed on by both parties is of the nature to explicitly show the willingness of the accused not to flee the jurisdiction of this Court. The measure is then necessary and lawful.
- 23 The Court also finds normal that the accused resides in East Timor, and in particular in the sub-village of Lotom. The facts that the Prosecutor, as submitted in his application of 20 May 2002, has been in consultation with the investigation team and the local authorities of the sub-village of Lotom, village Batugade, sub-district of Balibo, District of Bobonaro were the accused would be residing, that restrictive measures can be monitored.
- 24 There is no issue that the accused reports regularly to the local police authorities. The defense proposed three times per week while the Public Prosecutor advances at least once a week. This Court deems enough that the accused reports once a week.
- 25 It is also normal that the accused be prohibited from intimidating, harassing, or endangering in any form or way, victims and witnesses of crimes in this case. The Court will not impose such condition to all the victims and witnesses of crimes committed in 1999 for three reasons: (1) while the accused knows about the victims and the witnesses in his case, he is not supposed to know witnesses and victims in all the cases relating to the crimes committed in 1999; (2) The Court itself has to limit the protection of witnesses and victims within the present case, and not for the other cases it is not dealing with; (3) The spirit of the request is the protection of victims and witnesses and not a general measure of security. Of course it is an offense for anybody to intimidate, harass or endanger anybody else.
- 26 This Court would like also to impose the Accused not to commit offenses or poses a danger to public safety or security.
- 27 This Court finds that it is too restrictive and not necessary to order that the accused and /or any third party acting on his behalf be

prohibited from disclosing to the public or any third party, directly or indirectly, any identifying information about any prosecution witnesses. The identities of the witnesses are not protected and are already mentioned in the indictment, which is public. The parties agreed them on, and the Court admitted a list of them during an open preliminary hearing. Some of the witnesses have been testifying during the trial hearings, which were open to the public. Before testifying they were asked to tell the Court their details publicly. Also it could be of the nature to violate the rights of the accused if the accused was forbidden to speak even to his witnesses with respect to a named prosecution witness. Furthermore, the term "*any third party acting on his behalf*" could mean also the Public defender who does know the rules of ethic of his profession and does not need to be told what he will have to do in the present circumstances.

- 28 The same grounds mentioned in the paragraph above are valid with respect to the proposal that the accused and /or any third party acting on his behalf be prohibited from disclosing to the public or any third party any information, directly or indirectly, concerning the content of any witness statements, supporting material or other information concerning a witness. The defense could need at least to talk some issues relating to the content of those materials with its own witnesses. And here also, "*any third party acting on his behalf*" could mean the Public defender, who knowing the rules of the profession, may probably need to talk about those material with the accused witnesses in order to check the veracity of witness statements.
- 29 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 or any relative of such person. However those relatives have to be close in order for the accused to be able to know them and also for the necessity of the protection. That is why this Court goes only until to the relatives on the second degree. Exception of course is made for his defense counsel for the purpose of preparing his defense. This right is recognized to the Defense by this Panel in the Case the Public Prosecutor against Salvador Soares ⁴

⁴ The Public Prosecutor v. Salvador Soares, Ruling of the Court with respect to the request of the defense relating to the interference of the prosecution with the defense witnesses.

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The Court:

51 Orders the substitute restrictive measures as an alternative to an order of detention of the accused Lino de Carvalho.

52 Decides the following substitute measures:

- a) That the accused provides to the Court a written assurance that he will remain in the jurisdiction East Timor and submit himself voluntarily to all further legal proceedings in this matter before any release is effectuated.
- b) That the accused resides in East Timor, and in particular in the sub-village of Lotom.
- c) That the accused reports once a week to the local police authorities.
- d) That the accused be prohibited from intimidating, harassing, or endangering in any form or way, victims of crimes and witnesses in this case.
- e) That the Accused does not commit offenses or poses a danger to public safety or security.
- f) That the accused directly or indirectly be prohibited from contacting any prosecution witness, or any relative of such person until second degree. Exception is made for his defense counsel for the purpose of preparing the defense.

Dili, October 28, 2002

Judge Sylver NTUKAMAZINA, Presiding

Judge Benfeito MOSSO RAMOS

Benfeito Mossó Ramos (see attached dissenting opinion)

Judge Maria NATERCIA GUSMAO PERREIRA