

REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

RDTL

DILI DISTRICT COURT

THE SPECIAL PANELS FOR SERIOUS CRIMES

Before:

Judge Phillip Rapoza, Presiding
Judge Brigitte Schmid
Judge Jose da Costa Ximenes

CASE NO. 27/2003

THE DEPUTY GENERAL PROSECUTOR

-AGAINST-

RUDOLFO ALVES CORREIA aka "ADOLFO"

**DECISION ON THE PROSCUTOR'S MOTION FOR
JUDICIAL NOTICE AND ADMISSION OF EVIDENCE**

For the Deputy General Prosecutor:

Ms. Shyamala Alagendra

For the Defendant:

Mr. Sebastian Appenah

DECISION

Background

The Prosecutor has filed a motion pursuant to Section 27.2 of UNTAET REG. 2000/30 (hereinafter the “Transitional Rules of Criminal Procedure” or “TRCP”) as well as TRCP Sec. 34.1 (admissibility of evidence).

In her motion the Prosecutor requests that this Court take judicial notice of adjudicated facts from other proceedings of the Special Panels relating to matters that are in issue in the present trial.

Specifically, the Prosecutor asks that we take judicial notice of certain factual findings made by the panels that heard the cases of Prosecutor v. Joni Marques (No. 9/2000), Prosecutor v. Sabino Gouveia Leite (No. 4a/2001) and Prosecutor v. Jose Cardoso Ferreira aka Mouzinho (No. 4c/2001).

The Prosecutor states that this Court has the inherent power to take judicial notice of facts previously adjudicated in other cases before the Special Panels. Additionally, the Prosecutor states that such evidence may be admitted pursuant to TRCP Sec. 34.1, as was done in the case of Prosecutor v. Damaio da Costa Nunes (No. 1/2003).

The Prosecutor has also made an oral motion, in the alternative, that this Court admit in evidence the four reports contained in Annex A, which is attached to the indictment in this case.

Discussion


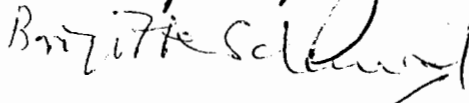
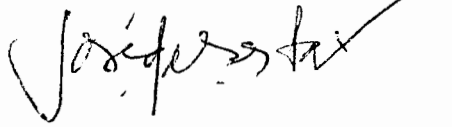
1. There is no specific provision in the TRCP to permit this Panel to take judicial notice of facts previously adjudicated in other proceedings. This is unlike the situation in the International Criminal Tribunal for the Former Yugoslavia (ICTY) where Rule 94 specifically allows such a procedure. Similarly, in other jurisdictions where judicial notice of adjudicated facts is allowed, the practice is permitted pursuant to a rule of court. This is the case, for example, in the United States where Rule 21 of the Federal Rules of Evidence allows such a practice.
2. There is no rule in the Indonesian Code of Criminal Procedure (ICCP) providing for judicial notice of facts previously adjudicated in another proceeding. To the extent that ICCP Article 184 (2) states that “[m]atters which are generally known need not be proved,” we conclude that this provision applies only to facts that require no additional proof beyond common observation or the use of logic. Such generally known facts include the fact that Tuesday follows Monday, that the sun is the brightest object in the daytime sky and that one plus one equals two. The

evidence offered by the Prosecutor in the present case is of an entirely different character and is not admissible as a matter that is “generally known.”

3. In the absence of positive authorization to take judicial notice of adjudicated facts, this Panel declines to do so.
4. The Panel is aware that in the case of the Prosecutor v. Damaio da Costa Nunes (No. 1/2003), another panel of this Court admitted in evidence facts separately adjudicated in previous cases pursuant to TRCP Sec. 34.1, which broadly permits the Court to “admit and consider any evidence that it deems relevant and has probative value with regard to issues in dispute.”
5. Although the admission of previously adjudicated facts in the case of Damaio da Costa Nunes was accomplished pursuant to TRCP Sec. 34.1 and not pursuant to the principle of judicial notice, the result is the same.
6. Nonetheless, this Court notes that the panel in Damaio da Costa Nunes did not state that the action it took was mandatory in the circumstances of that case. Rather, the panel noted that TRCP Sec. 34.1 “permit[s] the Court” to admit in evidence certain parts of previous Court decisions. The Panel nowhere stated that TRCP Sec. 34.1 requires that the Court do so. Indeed, Section 34.1, by its own terms, states that “The Court may admit ...” evidence that is presented, but does not require that it do so.
7. Accordingly, this Court concludes that the application of TRCP Sec. 34.1 as was done in the Damaio da Costa Nunes case remains discretionary with each panel in the circumstances of the case before it. In this case, the Court declines to admit in evidence previously adjudicated facts pursuant to TRCP Sec. 34.1, especially where more direct evidence is available for our consideration.
8. The Prosecutor has alternatively made an oral motion to admit in evidence four documents, being the Report of the International Commission of Inquiry on East Timor, the Report of the Indonesian Commission on Human Rights Violations, the Report on the Situation of Human Rights in ET presented to the UNSG and the Report of the High Commissioner for Human Rights on the human rights situation in ET.
9. The Court concludes that pursuant to TRCP Sec. 34.1 these reports are relevant and have probative value with respect to the charges against the defendant, which include the allegation that the murder of Domingos Nu Nu Alves was committed as part of a widespread or systematic attack against a civilian population. What weight to give to the factual assertions in those reports will, of course, be for the Panel to decide when it deliberates in this matter.

Conclusion

Accordingly, the Prosecutor's written motion for judicial notice and admission of evidence is denied and the Prosecutor's oral motion for admission in evidence of the four reports is allowed, and the four reports shall be marked as exhibits in the present case.

Judge Phillip Rapoza, Presiding 
Judge Brigitte Schmid 
Judge Jose da Costa Ximenes 

Date: 19 July 2004