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THE DEMOCRATIC REPUBLIC OF EAST TIMOR

DILI DISTRICT COURT

THE SPECIAL PANELS FOR SERIOUS CRIMES

Before:
Judge Phillip Rapoza

CASE NO. 19/2001

DEPUTY GENERAL PROSECUTOR FOR SERIOUS CRIMES

-AGAINST-

ABILIO MENDES CORREIA

Decision on Defendant's Second Challenge to the Indictment:
Motion to Dismiss Indictment as Insufficient

For the Prosecutor:
Per Halsbog

For the Defendant:
Alan Gutman

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Decision

The Court, having reviewed the Defendant's "Second Challenge to the Indictment: Motion to Dismiss Indictment as Insufficient," and having considered the Prosecution's response, decides as follows:

The first issue presented here is whether the indictment is defective because it repeats verbatim a portion of Sec. 14.3 of UNTAET Reg. 2000/15 without specifying the particular subsection that describes the Defendant's individual criminal responsibility in each count of the indictment. Should the Court consider this to be a defect, the second issue is whether the indictment should be dismissed as the Defendant requests.¹

Section 14.3 of UNTAET Reg. 2000/15 contains numerous provisions describing different modes of individual criminal responsibility, ranging from the actual commission of a crime in Sec. 14.3(a), to ordering, soliciting or inducing another to commit a crime in Sec. 14.3 (b), to aiding and abetting in another's commission of a crime in Sec. 14.3(c). None of those subsections are specified in the indictment and each count of the indictment merely alleges individual responsibility "pursuant to Section 14."

The indictment is not defective and the Defendant is not entitled to the dismissal of the charges against him. The indictment properly states that the Defendant is charged in each count with a different form of criminal conduct (crimes against humanity by reason of murder, inhumane acts, torture). Moreover, it alleges that he bears individual criminal responsibility for the criminal conduct in each count pursuant to Sec.14 of UNTAET Reg. 2000/15.

In citing Section 14 generally, the indictment is not "insufficient" as that term is legally understood. An "insufficient" indictment would be one that fails to indicate whether a person's criminal responsibility is individual (TRCP Sec. 14) or as a commander or superior (TRCP Sec. 16). In the present case, the defendant is informed in each count that he is alleged to be individually responsible as described in Sec. 14 of UNTAET Reg. 2000/15. That is the crucial allegation that must be made. Although the Prosecutor could have chosen to further specify the basis for the defendant's individual criminal responsibility with reference to a particular subsection of the regulation, it is not required that he do so.

The subsections of TRCP Sec. 14.3 are not elements of an offense that must be specifically articulated. Rather, they merely describe the forms of conduct that are incorporated within the concept of individual criminal responsibility set out in TRCP Sec. 14. An indictment is not defective should it fail to specify a particular subsection of

¹ The Court notes that the Defendant also argues in passing that the term "acts or omissions" in the indictment is unduly vague. The Court does not linger on this point, as the term is sufficiently clear as to provide the defendant notice of the charges against him. The indictment itself contains a summary of the facts from which the meaning of the term can be understood.

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TRCP Sec. 14, and individual criminal responsibility can be demonstrated by evidence satisfying any of the subsections in TRCP Sec. 14.3. Consequently, proof that a person conducted himself as described in any one of the subsections in TRCP Sec.14.3 will be sufficient to establish individual criminal responsibility on the count involved.

Accordingly,

The Defendant's Second Challenge to the Indictment: Motion to Dismiss Indictment as Insufficient is DENIED.


Judge Phillip Rapoza
Special Panels for Serious Crimes

Date: 2 March 2004