

WCAoS

de Detenção provisória
para extradição Lei 39/19-20



BARLAVENTO RELATIONS COURT

Subject: Promotion of M ° P ° with the District Attorney's Office

The Public Prosecutor's Office at the District Attorney's Office, at this court, came to request the replacement of the coercion measure, provisional detention for extradition, applied to the extradite, ALEX NAIN MORAN SAAB, in Case No. 39/2019/2020, for the obligation to remain in the dwelling, under the terms of articles 272 ° no. 1 al. g) and 279 "-A, of the CPP, as it understands that the 80-day period established in article 52, no. 3 of Law no. 6 / VI11 / 2011 of 29 August has passed.

Refer to in your promotion, as transcribed, q

"N The and the there was definitive pronouncement of

STJ on the decision of the TRB, having in coma the appeal that fell on the city, as well as the appeal filed with the Constitutional Court, which decided it. as can be seen from judgment No. 1/21 of 12 January.

Coercive measures are necessarily precarious, replaceable or revocable. the only way in which at all times to adjust to the purpose they aim at and justify them in the specific case, which results, in a crystalline form, of Article 278 of the CPP. that we refrain from transcribing, in full

A coercive measure was applied to an agent of an illegal act, with the exception of the IRR. only if it proves to be essential for carrying out the investigation of the facts è they must be maintained, and they must be revoked or replaced by less serious ones, provided that there are changes in the circumstances that determined their application

And preventive detention will only be extinguished, in this case, if. since the date of the appeal and after the 80-day period has elapsed, the Supreme Court of Justice has not ruled

on the appeal

The STJ has not yet ruled, in short, there was a constitutional appeal against the decision of that Court, which has already been decided, preventive detention was correctly decreed, but <s / <nã v O and.

therefore, be maintained, since the TC dismissed the complaint, confirming the decision /lo q O u í and admitted the appeal of the STJ.

Handwritten signature and initials



BARLAVENTO RELATIONS COURT

If Checks. like this. excess of the legal term of eighty (80) days of provisional detention, as of the date of filing the appeal for the i ST.

Establishing, as a fundamental principle, our Constitution, the exceptional nature of pre-trial detention, when expressly determining the ex: nationality of any deprivation of liberty (art. 30 ° n ° 1 and 2) and the impossibility of it being maintained always that there may be room for substitution by another measure (art. 272 °, CPP), no longer occur, in casu. the legally required assumptions that justify the maintenance of this measure The coercive preventive detention measure, in accordance with article 31 of the CRCV, as a coercion measure of the last ratio, has an exceptional nature and is subject to time limits provided by law. that were not observed by the STJ and TRB

Thus, considering that the maximum term of pre-trial detention has expired, Mma Judge Judge could subject the extradited

to some or some of the

legally admissible coercion measures provided for in the code of criminal procedure, so we think that a measure to ban the country from leaving (art. 288 °, CPP), with seizure of passport and other valid documents for the saidà of the country, informing us if the SEP, daily periodic presentation before the local police authority, the obligation to remain on the island of Sal (art. 289 °, paragraph 1. point c), of the CPP) and 'security deposit (art ° 283 °, of the CPP) , appear to us as necessary, and are shown to be appropriate and proportionate to the situation, verifying all the assumptions of application

This is because it is evident that the measure requested by the applicant, when requesting release, in the main proceedings.

"no-nonsense turkey obligation in housing," with police surveillance! proximity (art ° 289 ° - A, from

CPP) it seems to be possible

in this situation, e. as can be seen from the interpretation of arl ° 273 °, of the CPPP, are cumulative measures, so that, when the decision to release, there is a minimum time for the communication of the competent authorities, in order to guard against the eminent danger of

escape "

«

As sc follows from the extradition notices u

lo 42/2019/2020, there are requests from the

extraditing, Alcx Saab, in the sense of being a measure of coercion to which he is subject,

28/12/2019



BARLAVENTO RELATIONS COURT

replaced by the coercion measure, obligation to stay in the home. with all the consequential consequences.

However, when filing the application found in the case no. 42/2019/2020, tfs. 771 to 777, requested, *** u release </ > extraditing it so that the latter awaits in freedom, under surveillance, the decision of the extradition process. or, if this is not understood, it requires the extradite's determination and the simi placement of residence under surveillance and security of the Cape Verdean authorities, with xuú / cix * / reres a week, Jim to assure you in particular. medical consultations, visits to health centers, barbers, places to practice des / Mrfos and other basic needs "*,

As provided in Article 52 of the LCJI. Article 52 (3) of the LCJ1, *" Without prejudice to the provisions of Article OJ ". The detention remains in the case of appeal against the judgment of the Supreme Court of Justice, (understand Court of Appeal). Which grants extradition, but cannot continue without dismissing the appeal. . 1 for more than 80 days. from the date of their filing "*, and n "4 of the same article, provides that, ** \ SV there has been an appeal to the Constitutional Court. the detention cannot be extended for more than 3 months from the date of filing of that "*.

Without entering into other considerations, according to the judgment issued by this body regarding the counting of the periods for the extradited detention Ü, to which we refer, if necessary. having the extradited appealed against the decision rendered by the STJ to the Constitutional Court, which under the terms of article 52 "n" 4 la LCJ1, supported the maintenance of the extradited in a situation of detention, understanding that the legislator added 3 more months within the deadlines granted to the TRB and STJ, the term of detention was legal.

So that. having appealed the decision of the S TJ to the TC, an appeal that. however, it was rejected, with a decision for the TC, which, however, was decided on January 12 of this year, by the judgment n / 1/21 (cf. promotion of the MP), rejecting the complaint, confirming the decision of the STJ that did not admit the appeal filed.

Therefore, and once it was decided, I gave the question of nile admission of the appeal nil, the term of provisional detention is not valid at this moment, as it has passed, and it is not legal to maintain the extradited person under provisional detention.

V;

tc



BARLAVENTO RELATIONS COURT

The coercion measure, the obligation to remain in the dwelling, as per promotion, corresponds to the coercion measure which translates into the defendant's duty not to be absent, or to not be absent without authorization, from his own housing or from another at which time reside, or, when justified, in an appropriate institution to provide you with social or health support, if there are lones indications of a criminal offense punishable by imprisonment of more than three

years.

In the specific case, the MP understood that, once the maximum period of pre-trial detention has expired, the extradited person could be subject to some or some of the coercive measures provided for in Article 288. 289 °. No. 1 al. ç). or in Article 2H3. all from the CPP. although it appears that the coercive measure "obligation to remain in housing", with police surveillance of proximity is possible in this situation, which it promoted, in order to guard against the imminent danger of escape.

As already decided in a judgment in this Instance, when the complaint to the collective of Judges of the order that fell on the requests submitted to tis. 763 to 766, 771 to 777 and 779 to 781 of the case No. 42/2019/2020, (to which reference is made), it was understood that the detention was applied *observing the assumptions on which its application depended, having not been applied contrary to the constitutional principles and the legality of the restrictive measures of freedom, thus not constituting a violation of the law. but motivated by facts that the law allows. (...) and that in the current sanitary conditions, the fact of having traveled, in a rented private plane, to Cape Verde, in transit to Iran, constitutes one of the factors that justify the danger of escape, all the more so. at the time, there were no commercial flights, precisely because of the pandemic of CO VID 19. as well as the ability to extradite him to move in large international financial centers, even if he possesses high financial means and specialized financial knowledge and privileged contacts , what.*



BARLAVENTO IELATION COURT

That is. it was decided that maintenance; serious danger of it being lunar serious probability of dyeing the action <provisional sentence exceeds, at least>

by the coercion measure. obligation 1 from delict ~~perpetration~~ understanding other measures foreseen in the provisions prior to article 28'KA of the CPP are inadequate or insufficient.

Article 289 "-A of the CPP stipulates that *"I. If you consider insufficient or inappropriate 'a | | iares o ni: marrows imposed in the provisions anh not to be absent, or not to be absent that currently resides, or. nominated </ lite social or health support punishable by a prison sentence of more than three years; housing ç cumulativelywo. . 1 obligation to remain in the with obrigaçào not to contact. by any means with cumprimento das obligations referred to in 13679088 previous numbers, technical means of remote control can be used. under the terms of the law.*

For the practical effect of this article, the extradited person, as already exposed, and once he has financial possibilities and has already requested it, must qualify a residence for the purposes of his stay, which will be approved by the competent authorities, the criminal police, to safety effects and in order to avoid the serious danger of escape.

The extradited person will be subject. The obligation not to be absent, or not to be absent> in authorization of the hybylation where he will be obliged to remain, and also obliged not to contact, by any means, with other people, other than with the lawyers who assist him.

You will be provided with health support, when necessary and under supervision, we read established, that is. with the authorization of the competent authorities.

This is the measure of the obligation to remain in the dwelling. which is not subject to technical means of control, because it has not yet been implemented ^, it cannot be adapted, otherwise the> assumptions and purposes of its application.



BARLAVENTO RELATIONS COURT

Thus, the extradited Alex Saab, is obliged to remain in the dwelling, under the established terms and in accordance with article 289 - A of the CPP.

Relief warrants immediately after the presentation of adequate housing endorsed by the criminal authorities, and which will remain pending the ongoing extradition process.

Noli stay for that purpose, the defense of the extradited, the extradited, the Public Ministry in this instance and the criminal authorities of the island of Sal.

Mindelo, 21 de janeiro de 2021

- Está conforme -
Mindelo, 21/01/2021





Ministério Público

PROCURADORIA DA REPÚBLICA DE CÍRCULO DE BARLAVENTO
Gabinete do Procurador da República



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 O. f. b. g. n. a. n. a.
 [Signature]

Excellent Juit Judge. of the Court of Appeal from
 Barlavento
 Ex Barracks
 S. Vicente

Amos * Z ^ etmri? Provisória for extradition n. * '42 1 <> - 20

Following an international arrest warrant registered at Interpol, smhcr A_H \ N.AZN SAAB MORAN, best identified in the 184th file, was arrested
 - - 3. d? mo comment. at Cha do Sal, handed over to the District Court of Sal,
 çn- irihdo = * -m detention and decreed the provisional detention order, with a view to the most extreme extradition by the Barlavento Court of Appeal. the competent R-t__ who determined to await the tenents of the preventive detention process.

The ò- de ñriho of 222? the Tribunal da Relação de Barlavento handed down a ruling on its rare visit to the United States of America, with the applicant m.-i— recrcsc to the ST1 Plenary on August 13, 2020, this appeal on the 25th of October, 222 ? and clarification obk'to, on October 2nd, with answer 2 25 of that month.

On 2 November the applicant filed an appeal with the Constitutional Court,
 - request for rejection. the 10th of that month, already sent to that court,

rm matter of passive extradition, provides for the general law that regulates cooperation
 - r-jdica mtemarional n * ó ATI 2'1L óf 29 August, praro and conditions of imprisonment ou detenção.

Mr 52 * 'reports to us, under the heading * Prison of detention ", I am no. 3, that the detainee of the extradited person should be stopped or replaced by another coercive measure
 - cessmi if the ünri decision of the ST] is not rendered within the following days A dm in which fri effective '(n' 1). that * it will not be able to maintain itself, without decision of the appeal, for ms of S? dms counted from the date of its filing "(n" 2) and that "if there has been an appeal to the Ccmstmanonal Court it may be extended for another three months counting d» dm of the mtsrposjection of that '(n * 4).

T »and an aumx reading» of this urn and its number can be concluded that the Supreme 'mru de tsstca tzmi to pronounce on the appeal brought in the maximum of <brawls, and rroif » from the date of entry of the appeal. what effectively aconhxx'u



public ministry

PROCU RADCRY OF THE O REPUBLIC AND THE SARCAVSXTO CIRCLE

Reouib's Attorney's Office here

There was no definitive pronouncement by the STJ on the TRB decision. takes into account the appeal that fell on her, as well as the appeal filed with Tribunz. Constitutional. that decided it already. as can be seen from rd 1 - . January 12th.

Coercive measures are necessarily precarious. replaceable or revocable, the only way to adjust them at any time to the purpose they are aimed at and justify them in the specific case, which results, in a crystalline way. of article TT of Cr F, which we refrain from transcribing, in full.

AND

Now,

A coercive measure applied to an agent of one. fact I urge. with the exception of TLR. it only proves to be essential for carrying out the investigation of the raeros and which they must maintain, and should be revoked or replaced by less severe letters as long as there are changes in the circumstances that determine their application.

And preventive detention will only extinguish, in this case, re. since the date of the appeal and after the SO days have elapsed, the Súrteme Court of Justice has not ruled on the appeal.

The STJ has not yet ruled, definitively, there was a censitutumal appeal against the decision of the Court, which has already been decided, the preventive detention toi was correctly decreed, but it should not. therefore, be maintained, since the TC refused to confirm the decision that did not admit the STJ's appeal.

reclamação.

Thus, it is verified «mrss? you? pmn? Tgu; dr citr.ti (51? dxs dd ánrmtã 'r-octsmu. from the date of the intarporsiqu? of pre and STJ resources.

m

Very well.

Estabelecendo, a nossa Constituição, como princípio fundamental, a natureza excecional da prisão preventiva, ao determinar expressamente a excecionalidade de qualquer privação de liberdade (artº 30º, nº 1 e 2) e a impossibilidade de a mesma ser mantida sempre que puder haver lugar á substituição por outra medida(artº 272º, do CPP), já não se verificam, in casu, os pressupostos legalmente exigidos que justificam a manutenção desta medida.

The preventive detention coercion measure. according to article 3Q of CRCV as a last-rate coercion measure. it has an exoextienal nature and it came within the deadlines foreseen in Jé. that have not been observed by STJ and T The F.

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public ministry

ATTORNEY OF THE REPUBLIC OF CIRCULO DE BARLAVENTO

Office of the Public Prosecutor

So, for if he considers that the maximum term of preventive detention has expired, the appellant judge could subject the extradite to some or some of the measures legally admissible, under the penal procedure code, namely the measure of the country's exit ban (arP 288 " , of the CPP), with the seizure of the passport and other valid documents , daily periodic presentation to the local police authority, the obligation to remain on the island of Sal (arP 289 " , n ° 1, paragraph

c), from the CPP) and surety (arP 283 ' ; from the CPP), which appear to be necessary, and are adequate and proportionate to the situation, verifying all the assumptions of application.

However, it is evident that the measure requested by the applicant, at the time of the request for release, in the main proceedings, "obligation to remain in housing," with police surveillance of proximity (arP 289'-A. of CPP) seems to be possible in this situation „What we promote, so that, when the release decision is made, allow a minimum time for the communication of the competent authorities, in order to guard against the imminent danger of escape.

It is understood, therefore, that the extradited person should be immediately released, which we are promoting now, applying the coercion measure required above, as the eighty-day period provided for in Article 52, paragraph 3, has passed. , from LCJI.

Mindelo, 20 de janeiro de 2021, Feriado.

O Magistrado, na Procuradoria de Circulo de Barlavento

"Visto e revisto pelo signatário" (artº 120º, nº 2, do CPP)

