

240-2000

CONSTITUTIONAL CHAMBER OF THE SUPREME COURT OF JUSTICE; San Salvador, at twelve hours and forty five minutes of the sixth of November of two thousand

This constitutional habeas corpus has been initiated by Juan Jose Castro Galdamez, in favor of Jose Raul Santos Linares, against orders of the Judge of Instruction of Mejicanos.

I. - The petitioner stated in his letter that Mr. Santos Linares' freedom is being restricted unlawfully by the examining Judge of Instruction of Mejicanos, as having been definitively dismissed, he underwent remedial measures but the fact is that the psychiatrist has said in the last opinion that Santos Linares can have outpatient medical treatment for full recovery; thus, the safety measure has fulfilled its objective and to continue the detention is a restriction on his freedom.

II. - The Executing Judge asserts in her report that the decision of the Judge, did not unlawfully restricted the freedom of the accused because it is in accordance with law, and that such decree of remedial measures, not only took into account his health status and the refusal of his brother to take charge of his psychiatric control, but also the mandate of the Constitution in articles 65 and 70, as the accused is a person with mental problems who needs healing.

III. - This Chamber has analyzed the criminal proceedings it has before it, the final dismissal ordered by the Judge and added to pages 92 and 93, where the trial Judge imposed on the accused the remedial measures of the derogated article 114 Pn.; due to chronic mental disorder or insanity of the accused.

Subsequently, new psychiatric expertise was practiced, which lie in pages 103, 104, 109, 110 and 111 of the criminal case; and in them, the accused was diagnosed with "undifferentiated schizophrenia", that is to say, longstanding with many residual signs, no evidence of psychotic activity prominent; thus, he can handle outpatient treatment provided that a member of his family is willing to take him to the Psychiatric Hospital for control and to provide the drug. Given the refusal of his family to take care of his psychiatric control, the trial Judge ordered indefinitely remedial measures contained in the article 114 Pn., ordering change in the quality the wrongly accused had continued after his being dismissed.

The indeterminacy of the remedial measures is regulated by article 114, which may cease by judicial decision, after consulting experts, because the person is sick and needs healing; hence, even when it is free of criminal responsibility to be unfit to plead, his illness and the danger to those around him, it is imperative to be given proper treatment.

For these reasons, it should be understood that such detention, even though it is a deprivation of liberty, this is not illegal or arbitrary as regarding the

medical diagnosis and family conditions typical of the accused, so that if the medical expertise varies and the family status changes, the Judge could decide whether or not the accused may leave that hospital.

It is important to clarify which are the ordinary Judges, based on a favorable medical opinion and given the other conditions provided by law, who decide whether a person in their order should or should not leave the hospital, making its decision necessarily and rationally, leaving only this Chamber, ruling on the deprivation of liberty, unlawfully or arbitrarily, when all the requirements are filled and if the expertise is favorable, the Judge refuses to grant freedom.

Remedial measures cannot be regarded as penalties as they are enacted as a result of dismissal and not a condemnation; they serve rather the delicate state of health of the patient and the citizen protection, to which the social conglomerate is entitled, as a "longstanding schizophrenic" on the streets means a potential danger.

About indeterminate remedial measures, as this Chamber ruled in a similar case, to the habeas corpus No. 44-2000 of 22-III-2000, where it was said: "The remedial measures are security measures that cannot be regarded as penalties in any case, since sometimes imposed, along with it or when it has been dismissed -as in the present case-. There is no room to speak of it because there is no condemnation but a remedial measure requiring psychological and/or psychiatric treatment due to his mental illness. Thus, when the Constitution of the Republic states in the second paragraph of article 27 that there will be life imprisonment, it should not be seen in them remedial measures of the repealed article 114 Pn. (...)".

In this case, there is no violation of the constitutional rights of Mr. Santos Linares, as what the Judge has done is to comply with the law by applying such measures in a reasoned decision, because he was responsible for the freedom or the ingress of the accused to a hospital for healing, so having that Judge acted correctly, it is appropriate to continue the cause according to its state, as provided in article 54 of the Constitutional Procedures Act and; consequently, the accused must continue under the remedial measures imposed.

Therefore, the Chamber hereby decides: a) Mr. Jose Raul Santos Linares shall continue in fulfilling of the remedial measures imposed; b) certify this resolution and refer the criminal case, the Instruction Judge of Mejicanos; c) notifies and filed this constitutional habeas corpus .--- J.E. TENORIO --- HERNANDEZ VALIENTE --- MARIO SOLANO --- ENRIQUE ACOSTA --- DELIVERED BY THE MAGISTRATES WHO SIGN --- A.E. CADER CAMILOT .--- initialed.

HS024000.00