



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Justice Update

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**RESTRICTIVE MEASURE, PRE-TRIAL DETENTION, PAROLE AND SUSPENSION OF
THE EXECUTION OF A PRISON SENTENCE**

Aiming to clarify a few juridical concepts in order to improve public information, JSMP, Women's Justice Unit whose main objective is to analyze legal matters, particularly those related to domestic violence and sexual assault, is committed to explain to the public, in simple words, the meaning of this concepts according to Timor-Leste's laws particularly the Penal Procedural Code.

Why is that the suspect, the defendant or the convict may be free from prison ?

The answer to this question is the main subject of this short up-date.

1.- PRE-TRIAL DETENTION Article 194, PPC

The Judge may apply pre-trial detention as a restrictive measure. Restrictive measures are applicable for example when the Judge thinks that the defendant may commit a new crime or scape before or during the judging process.

When we speak about pre-trial detention, we are referring to two hypothesis:

We say that the process has not started yet and the subject who is in pre-trial detention has not been processed.

We say that the process has already started but has not finished yet, meaning that the Judge has not dictated the sentence.

For the Judge to be able to apply a restrictive measure, such as pre-trial detention, the PPC establishes general requirements as per Article 183 and special requirements as per Article 194.

As Article 217 establishes, the person under detention must be brought to court in an expedited proceeding or presenting that person to the Judge for his or her first hearing (judicial questioning). If the person has not been detained she or he may also be summoned to present itself before the Judge for the first hearing.

On the opportunity of the first judicial questioning the Judge may impose restrictive measures, pre-trial detention or any other measure considered suitable, for example the obligation to periodically appear before competent authority (the person has to periodically appear before the court, but is still free, the status is of a defendant), prohibition on travel, prohibition against leaving residence . The Judge may not apply any restrictive measure, but this does not mean that the person will not be processed and judged.

The suspect has not been convicted to prison, eventually but not always may be under pre-trial detention.

Concluding we notice that pre-trial detention and other restrictive measures are applied before a convicted decision is rendered final, see article 203 line d).

2.- PAROLE Articles 331 to 333 CPP.

TITLE IV, ON EXECUTION, Chapter II, On the execution of a prison sentence.
When we speak about Parole there is already a sentence (rendered final) that convicts a person to prison penalty. In order to be able to apply Parole:

- 1.The sentence convicting to prison must exceed six years.
- 2.Half of the sentence must have been served.

Parole is granted by requirement, by Judge decision and always hearing the Prosecutor. Granting Parole is compulsory after the convict has served fifth-sixth of the sentence Parole may be conditioned to the fulfillment of the same restrictive measures that conditions the suspension of the execution of the sentence, the person has to periodically appear before the court or the prison's guards. Parole may be revoked, then the person must return to prison and serve the rest of the sentence.

3.- SUSPENSION OF THE EXECUTION OF A PRISON SENTENCE. Article 298, PPC.

An appeal lodged against a final convicting sentence has a suspensive effect for the execution of the sentence until the end of the appeal process, that is until the sentence rendered final.

If the sentence is ratified at the end of the appeal period, the person must serve the sentence. The time for the execution of the sentence starts to count from the sentence rendered final, discounting the time expended in pre-trial detention.

The person has been convicted to prison but **the sentence has been suspended during the appeal process.**

The Judge may maintain the restrictive measure, such as prohibition against leaving residence or change it to any restrictive measure, for instance pre-trial detention during the period between the appealed sentence and the sentence rendered final.

The execution's suspension period of the sentence extends between the appealed conviction sentence and the sentence rendered final. As the article 300, Penal Procedural Code states, the appeal shall be lodged within fifteen days of notification of the decision or the date which it should be considered as having been noticed and must be lodge on substantial grounds. Appeals are part of what is called "good process" and applies for a better justice.

If the person convicted by the sentence does not lodge an appeal, the appeal is out of substantial grounds or presented out of time meaning not within 15 days then the sentence is executed.

4.- SUSPENSION OF THE EXECUTION OF A PRISON SENTENCE. Penal Code Project, Penalty.

When the sentence states that the prison's penalty is less than 3 years, the Judge may decide to suspend the sentence's execution, if the convicted person shows good behavior, and agrees upon fulfilling some requirement imposed by law or by the Judge itself, such as to appear weekly in court or before the prison's guard services.

The convicted person with suspended execution of the sentence may return to prison if he/she fails to fulfill the commitments established by the sentence then he/she will have to serve the imposed convicting sentence.

Therefore a person:

1.- May be free but **under restrictive measures**, during the trial, always before the sentence rendered final. Restrictive measure may be prohibition to leave residence.

2.- May be free, **already convicted by sentence, but having lodged an appeal**, the effects of the sentence has been suspended. May be under restrictive measures such as the obligation to periodically appear before competent authority.

3.- May be free **under Parole**, because he/she already served half of the prison sentence, and is free but under the obligation to periodically appear before the prison's authorities.

4.- May be free, because **having been convicted to prison for less or equal to three year period**, the execution of the sentence has been suspended. The Judge understood that the person has shown strong capacity and willingness to readapt to society, but has to appear periodically before the authority.

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