

5/2000

UNITED NATIONS



NATIONS UNIES

ETTA

East Timorese Transitional Administration

**DISTRICT COURT of DILI**

**SPECIAL PANEL for SERIOUS CRIMES**

**Case n. 05/2000 The General Prosecutor v. Joseph Leki**

**Hearing of 20.02.2001**

THE COURT

**1) ON THE ISSUE OF THE DETENTION OF THE ACCUSED**

Considering the warrant of arrest of Joseph Leki issued by this Court on 12.01.2001;

Considering the Court decision on 18/01/2001 about the extension of detention of Joseph Leki for the duration of the trial;

Considering the Decision No.2001/1 issued on 18. 02.2001 by the Court of Appeal which alter the decision pronounced by this Court on 12.02.2001;

Considering the decision No.03/2001 issued by the ordinary panel of Dili District Court on 14/01/2001, that the said decision was taken by an incompetent panel of judges, but was not appealed;

Considering Section 29.5 of UNTAET Regulation 2000/30 about the power of this Court to assess the necessity of the detention of the accused;

Considering the hearing of the case against Joseph Leki on 20 February 2001, the request of extension of detention of Joseph Leki made by the Public Prosecutor, and the response of the defense;

Considering that there are reasons to believe that the crime of murder have been committed on 25 and 26/09/1999, and that there is sufficient evidence to support a reasonable believe that Joseph Leki was the perpetrator;

Considering that these offences ( counts 1 and 2) carry a maximum sentence of twenty five years of imprisonment under UNTAET Regulations;

But considering that there is no reasonable grounds to believe that Joseph Leki will flee to attempt to avoid criminal proceedings;

Considering that there is grounds to issue substitute measures as an alternative to an order of detention to ensure the integrity of the witnesses Jose Cardoso, Juliana Moniz and Fransisco Amaral;

**DECIDES:**

To release the accused Joseph Leki.

To order, as substitute restrictive measures, that Joseph Leki stays at home detention, under the supervision of the local civpol, with the exception of the trials days.

To order CIVPOL to bring the accused to Dili for the trial.

To strictly prohibit Joseph Leki to talk with the witnesses.

To order the court clerk to notify the present decision to CIVPOL and to the Prison Manager.

**2) ON THE ISSUE OF WITNESSES**

Considering the hearing of the case No. 05/2000 The general Prosecutor against Joseph Leki on the 20<sup>th</sup> February 2001, during which the witnesses of the parties were absent because of the problem of witness expenses;

Considering that both parties , the Public Prosecutor and the defense asked for an extra time to make a request for witnesses expenses to UNTAET and to bring the witnesses before the Court;

DECIDES:

To postpone the case No.5 The general Prosecutor against Joseph Leki on 18/05/2001 to allow the parties to have enough time to manage how to bring the witnesses before the court.

Dili, 21/01/2001

Sylver Ntukamazina

Luca Ferrero

Maria Natércia



## ETTA

East Timorese Transitional Administration

## DILI DISTRICT COURT

SPECIAL PANEL for SERIOUS CRIMES

Case n. 5/2000

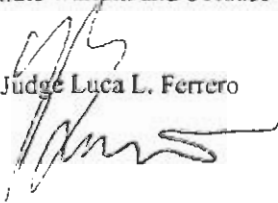
DISSENTING OPINION

The decision taken today by this panel is not unanimous. Because I am in the minority in part and because detention of the accused before conviction is such an important matter, I decided to write and file my dissenting opinion.

I agree on the fact that Joseph Leky has to be released, but I cannot agree on the reasons of the decision taken by the majority of the Panel:

- the above mentioned accused is detained on the base of the warrant of arrest that was issued by this Court on 12.01.01 and was declared a nullity by the Court of Appeal on 14.02.2001,
- to review the detention based on that order is therefore against the order of the appellate Court (to this Panel) to release the accused, unless there is another valid order of detention,
- in this case there is no other valid order of detention (the accused was arrested on 15.02.00 and the detention order, if not extended, expires and the detention, automatically, becomes illegal),
- the extension of the detention issued by the Ordinary Panel on the 14.01.2001 was from 11.11.2000 to the date of the submission of the indictment, which, by chance, had already been submitted by the Public Prosecutor on 24.11.2000,
- this Panel, on 18.01.2001 already decided that there were all the substantial grounds to confirm the arrest and to extend the detention; since that day the legal basis of the detention didn't change and therefore I can't understand why the decision of the majority of the Panel do,

The only decision according to the law and to the order of the Court of Appeal should have been to release Joseph Leky because he was detained on the basis of the appellate warrant and because there was no other valid order of detention.



Judge Luca L. Ferrero

Dili, 21.02.2001