

COURT OF APPEAL

Case File No. 50/03

The Judges of the Court of Appeal have agreed as follows:

I. In the case file No. 12/CE/2003/TD.DIL from the Special Panel for Serious Crimes of the Dili District Court, the Prosecutor appeals to the Court of Appeal against that Panel's decision to reject the indictment presented against Domingos Amati and Francisco Matos and order the release of the Accused.

It is alleged that the first-instance court has misapplied the law (a) when it held that the indictment was deemed to contain no elements that constitute the "mens rea" required for qualifying as a crime of murder; (b) when it held that paragraph 2 of the indictment does not provide any credible basis upon which the Prosecutor could prove that the murder imputed to the accused was premeditated; (c) when it held that there was no credible basis for one to conclude that the accused wanted to kill the victim, as the latter did not succumb immediately to the injuries; (d) when it held that the crime provided for under article 338 of the Indonesian Penal Code falls outside the subject matter jurisdiction of the Special Panel for Serious Crimes; and, in the event the Portuguese Penal Code is considered applicable to this case, when it held that the alleged offence does not constitute a crime of murder (deliberate murder of a person without legal justification).

In the counter-allegations the Accused Domingos Amati defends the confirmation of the appealed decision.

II. It behoves the Court of Appeal to review and decide upon:

1. The facts described in the indictment that has not been admitted by the Court are as follows:

“1. During 1999 António Pinto Soares (aka Charles) was a member of the Aitarak militia in Hera, Metinaro sub-district, Dili district. He was also a clandestine supporter of the pro-independence movement.

2. On or about 5 September 1999 in the late afternoon, Antonio Pinto Soares was cycling past Aitarak militia post in Hera. Militia member Domingos Amati was stationed at the militia post at that time.

3. Domingos Amati and Antonio Pinto Soares had an argument. Domingos Amati then threatened Antonio Pinto Soares with a knife.

4. Antonio Pinto Soares took out his own knife and threw it against Domingos Amati hitting him in the forehead.

5. Domingos Amati together with other militia members began to chase Antonio Pinto Soares towards Hera beach.

6. During the chase Antonio Pinto Soares was confronted by two Indonesian TNI soldiers who stopped him and handed him over to the militia who were chasing him. One of the militia members then forced Antonio Pinto Soares to walk back to the militia post in Hera, a few hundred meters away.

7. Once back to the militia post Antonio Soares was allowed to walk to the beach to clean himself. Domingos Amati and Francisco Matos followed Antonio Pinto Soares to the beach. They were both armed with machetes.

8. Domingos Amati hit Antonio Pinto Soares in the back of the head with his machete. Francisco Matos repeatedly stabbed Antonio Pinto Soares in the back with his machete. Antonio fell in the ground.

9. Some time later Antonio Pinto Soares managed to stagger back up to the militia post. He remained at the militia post, seriously injured and bleeding from his wounds, for a number of hours.

10. In the early morning of 6 September 1999, Hera militia commander Mateus de Carvalho came to the militia post and took Antonio Pinto Soares to the

Dili National Hospital in Bidau by car. Antonio Pinto Soares was treated by a doctor but died after a few hours from his injuries.

11. Antonio Pinto Soares' body was returned to Hera for burial the following day".

2. In the face of these facts, the Special Panel for Serious Crimes of the Dili District Court has rendered the following decision:

"The Sufficiency of the Indictment

10 Article 340 of the Indonesian Penal Code states:

The person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder, be punished...

11 Thus, the mens rea required by the definition of murder under Article 340 requires both the deliberate intent to kill the victim and premeditation. This 'first degree' murder carries a maximum sentence of twenty years.

12 In its Motion, the Defense submits that the indictment alleges insufficient facts to constitute the mens rea and actus reus of murder as defined under Article 340. In particular, the Defense submits that the indictment outlines a situation best described as mutual combat in which the victim strikes the first blow, and that the injury to the victim was serious but not fatal. The Defense contends that the factual situation is best characterised as a crime in Chapter XX of the Indonesian Penal Code.

13. The Prosecutor responds that the indictment is sufficient to satisfy the elements of Article 340. The Prosecutor submits that both of the Accused acted with deliberate attempt to kill the victim, in that they followed the victim from the militia post to the beach where they stabbed the victim in the head and in the chest with machetes.

14. *The Prosecutor also submits that the indictment makes it clear that the attack was premeditated. Further, it is contended that premeditation can be formed in a very short time. On the facts of the case the Prosecutor submits that the premeditation was formed- at the very latest- when the Accused took their machetes and followed the victim to the water.*

15. *In its Rebuttal, the Defense reiterates that the indictment fails to establish a prima facie case for malice aforethought murder under Article 340. It adds that it would not be permissible to find the Accused of a lesser-included offence to murder (such as manslaughter, negligent homicide and other lesser crimes) because this would expand the subject matter jurisdiction of the Special Panel in a manner not included in the enabling legislation of the Special Panel.*

The Power to Conduct a Prima Facie Review of the Sufficiency of the Indictment.

16. *As a preliminary matter, this Court notes that at this state of proceedings, the full merits of the case against the Accused are not yet before the Court. This Court does not enter into a consideration of the evidence that supports the indictment, because this is an issue for trial.*

Therefore, the Court wishes to emphasize that it will not consider the merits of the case against the Accused. Rather, this Court is involved in a preliminary review of whether the indictment is sufficient to form a prima facie case against the Accused.

17 *As a related matter, this Court wishes to take this opportunity to clarify a secondary issue that was raised by the parties in the course of their submissions. The Prosecution has, pursuant to Article 24.2 of UNTAET Regulation 2000/30 (as amended) the obligation to “present to the Court a list describing the evidence that supports the indictment”.*

18 *In the indictment against Domingos Amati and Francisco Matos, Annex A – a list of evidence- has been appended to the Indictment. This Court wishes to clarify that these documents do not form part of the Indictment. The indictment*

has to be sufficient itself. As it was decided in ICTY in the case the Prosecutor v. Dragoljub Kunarac and Radomir Kovac, neither the supporting material nor the witness statements can be used to fill in any gaps in the indictment.

19 *The ability for the Special Panel for Serious Crimes to review the prima facie sufficiency of the indictment derives from the provision in Section 27.1 of UNTAET Regulation 2000/30 (as amended), which provides for preliminary motions that may allege defects in the indictment. As this Article expressly provides for preliminary motions, this forms the basis of an initial consideration of whether the indictment can be considered sufficient. When performing this review, this Court notes the requirements of the indictment established by Section 24.1 of UNTAET Regulation 2000/30.*

20 *Section 24.1 specifies that the indictment shall include:*

- (a) the name and particulars of the accused;*
- (b) a complete and accurate description of the crime imputed to the accused;*
- (c) a concise statement of the facts upon which the accusation is made;*
- (d) a statement identifying the provisions of law alleged to have been violated by the accused;*
- (e) the identification of the victims, unless measures to protect the identity of the victims are being sought; and*
- (f) a request for the trial of the accused.*

21. *These Sections find their equivalent provisions in Rule 72 of the Rules of Evidence and Procedure of the International Criminal Tribunal for the ex-Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Rule 72 provides for, inter alia, pre-trial motions that challenge jurisdiction and alleges defects in the form of the indictment.*

22 *As has been held by the ICTY in relation to the interpretation of pre-trial motions exercising the right to object to the form of an indictment, “A prima facie case on any particular charge exists in this situation where the material facts*

pleaded in the indictment constitute a credible case which would (if not contradicted by the accused) be a sufficient basis to convict him of that charge.”

23 *The possibility of dismissing a case before the trial can be found in Section 27.3 of UNTAET Regulation 2000/30 (as amended), which states:*

“Decisions on motions, except as provided in Sections 123 and 27.4 of the present regulation, are not subject to interlocutory appeal. The granting of a motion to dismiss the case for any reason shall be deemed a final decision in the case and shall be subject to appeal as provided in Part VII of the present regulation.”

The Indictment Against Domingos Amati & Francisco Matos

24 *The provisions of Section 24.1 of UNTAET Regulation 2000/30 make it clear that it is not enough for an indictment to provide a concise statement of the facts upon which the accusation is formed. “A concise statement of the facts”, as held by the ICTY, has been taken to mean “a brief statement of facts but comprehensive in expression”. It must also provide “a complete and accurate description of the crime imputed to the accused.” According to Section 24.1 (b) of UNTAET Regulation 2000/30, in addition to such a statement of the material facts on which the accusation in the indictment is formed, the indictment must also include “a complete and accurate description of the crime imputed to the accused.” In order to be “complete and accurate, such a description of the crime would have to include both the mens rea and actus reus that form the basis of the offence.*

25 *On the facts related in the indictment of the case under discussion, as it currently stands, the Court notes the substantial concerns raised by the Defense that the facts alleged in the indictment do not establish the requisite mens rea for the crime of murder as defined by Article 340 of the Indonesian Penal Code.*

26 *As noted above, the mens rea required by the definition of murder under Article 340 requires both the deliberate intent to kill the victim and premeditation.*

27 *This Court considers that the facts pleaded in the indictment do not constitute a credible case, which would (if not contradicted by the accused) be a sufficient basis to convict him of that charge. In particular, the Court wishes to express its grave doubts on the basis on which the Prosecutor would prove the requisite mens rea for murder. It is therefore clear, as submitted by the Defence, that the Prosecutor's characterization of the gravity of the offence (murder) does not establish a prima facie case for murder under Article 340 of the Indonesian Penal Code.*

28 *Indeed in paragraph 2 of the indictment, the Prosecutor describes a situation of mutual combat between the victim and one of the accused persons, in which the victim first throws his knife at the accused. The facts alleged show that Domingos Amati and Antonio Pinto had an argument. Such facts do not give rise to a credible basis on which the Prosecutor could show that the Accused's killing was premeditated.*

Domingos Amati then threatened Antonio Pinto Soares with a knife. Antonio Pinto Soares took out his own knife and threw it at Domingos Amati, hitting him in the forehead.

29 *In paragraphs 9 ad 10 of the indictment, it is shown that the Accused persons seriously injured the victim, but they did not kill him. Further, he then remained a number of hours at the militia post. Such facts do not give rise to a credible basis on which the Prosecutor could prove that the Accused intended to kill the victim.*

...Antonio Pinto Soares fell to the ground... Some time later Antonio Pinto Soares managed to stagger back up to the militia post. He remained at the militia post, seriously injured and bleeding from his wounds, for a number of hours.

30 *It is therefore not possible to go ahead with the trial when the facts alleged against the accused do not form credible grounds on which to establish the charge in the indictment.*

31 *The Court notes that, pursuant to Section 32.4, “a lesser included offence of an offence which is stated in the indictment shall be deemed to be included in the indictment.” However, such a provision cannot be permitted to allow the Prosecutor to indict people for crimes that fall outside the subject matter jurisdiction of the Special Panels for Serious Crimes (according to Section 1.3 Regulation 2000/15). The inclusion in an indictment of a “a lesser included offence” must not infringe upon Section 12.1 UNTAET Regulation 2000/15 (nullum crimen sine lege), which is underlined by Section 12.2 which states: The definition of a crime shall be strictly construed and shall not be extended by analogy. In the case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.*

32. *For these reasons murder according to Section 8 Regulation 2000/15 cannot include manslaughter and maltreatment resulting in death (Articles 338 and 351 Indonesian Penal Code), which could be prosecuted before an ordinary panel of Dili District Court or within the jurisdiction of a competent District Court (Section 8.1 UNTAET Regulation 2000/11 as amended by Regulation 2001/25).*

33 *The dismissal of the indictment will end any order of detention of the Accused.*

The Court:

34 *For the reasons given above, dismisses the charge in the indictment.*

35 *Orders the release of the Accused Domingos Amati and Francisco Matos.”*

3. In this appeal it behoves the Court of Appeal to decide upon the following issues:
- (a) how the crime of murder (intentional murder, murder with premeditation and manslaughter) is defined by the law (Indonesian and Portuguese)
 - (b) whether the indictment contains the elements that constitute the type of crime of murder (with or without premeditation).
 - (c) whether the Special Panel for Serious Crimes has the authority only to prosecute a crime of murder when committed with premeditation.
4. Let us then address each of these issues.

- (a) **1st Issue** – How the crime of murder (intentional murder, murder with premeditation and manslaughter) is defined by the law (Indonesian and Portuguese).

On the crime of murder, the Indonesian Penal Code contains provisions under articles 338, 340 and 359, with the Indonesian version of which being quoted below:

“Pasal 338: Barangsiapa dengan sengaja menghilangkan jiwa orang lain, dihukum, karena makar mati, dengan hukuman penjara selama-lamanya lima belas tahun.”

“Pasal 340: Barangsiapa dengan sengaja dan direncanakan lebih dahulu menghilangkan jiwa orang lain, dihukum, karena pembunuhan direncanakan (moord), dengan hukuman mati atau penjara seumur hidup atau penjara sementara selama-lama dua puluh tahun. “

“Pasal 359: *Barangsiapa karena salahnya menyebabkan matinya orang dihukun penjara selama-lama lima tahun atau kurungan selama-lamanya satu tahun”.*

Contrary to the view held by the Special Panel for Serious Crimes of the Dili District Court, the crime provided for and punishable under article 338 is not that of manslaughter, but rather of second-degree murder (*homicidio voluntario simples*). It will suffice to read the very text of that article where it defines the elements of the type of crime for one to conclude that this is a crime of intentional murder. The Indonesian version of this article reads: “*Barangsiapa dengan sengaja menghilangkan jiwa orang lain...*”, and the available English version also reads: *The person who with deliberate intent takes the life of another person...*. These expressions would correspond in Portuguese to: “*Quem deliberadamente tirar a vida a outra pessoa ...*” In the Indonesian version the expression “*karena makar mati*” means “as a result of the murder” (obviously, intentional murder, in the face of the expression “dengan sengaja”) – see in this regard R. Soesilo, in “*Kitab Undang-undang Hukum Pidana (KUHP) – Serta Komenta-Komentarnya Lengkap Pasal Demi Pasal*” (Commentary on article 338).

The use of the expression “*manslaughter*” in the English version of that article may only have resulted from a translation error.

In effect, the DUHAIME’S LAW DICTIONARY defines “*manslaughter*” as “*accidental homicide or homicide which occurs without an intent to kill, and which does not occur during the commission of another crime or under extreme provocation*” (see site: <http://www.duhaime.org/dictionary/diction.htm>).

And, on the other hand, unintentional or negligent homicide is expressly provided for and punished under article 359 of the Indonesian Penal Code as quoted above.

The expression that corresponds to the type of crime provided for under article 338 would be “*murder*”, which is defined in that same dictionary as “*intentional homicide (the taking of another person’s life), without legal justification or provocation*”. Since what is defined in that article is a crime of intentional homicide, which obviously

carries the heavy penalty of up to 15 years' imprisonment- a penalty that would be clearly inappropriate in the case of a crime of negligent homicide, taking into account the overall framework of the Indonesian Penal Code itself.

In the Portuguese Penal Code the crime of murder, in what is relevant to this case, is provided for under articles 131, 132 and 137, as quoted below:

Article 131 (Manslaughter)

The person who kills another person is punished with an 8 to 16 years' imprisonment.

Article 132 (First-degree murder)

1- Where a killing occurs under circumstances that reveal particular blame and wickedness, the perpetrator is punished with 12 to 25 years' imprisonment.

2- Likely to reveal the particular blame or wickedness referred to in the previous subsection is, inter alia, the circumstance under which the perpetrator:

- (a) Is related to the victim in the descending or ascending line, has adopted the victim or has been adopted by the victim;
- (b) Commits the act against a particularly defenceless person, by reason of age, disability, illness or pregnancy;
- (c) Employs torture or commits an act of cruelty to increase the suffering of the victim;
- (d) Is motivated by greed, by the pleasure of killing, for excitement or satisfaction of his or her sexual instinct or for any futile or vicious purpose;
- (e) Is motivated by greed, by the pleasure of killing or inducing suffering, for excitement or satisfaction of his or her sexual instinct or for any futile or vicious purpose;
- (f) Is motivated by racial, religious or political hatred;

- (g) Aims to prepare, facilitate, carry out or cover up another crime, facilitate the escape or ensure the impunity of the perpetrator of a crime;
- (h) Uses poison, any other insidious means or any means that leads to the commission of a crime posing common danger;
- (i) Commits the act together with, at least, two more persons or uses a particularly dangerous means or any means that leads to the commission of a crime posing common danger;
- (j) Uses poison or any other insidious means;
- (k) Acts in a cold-blooded manner, conscious of the means being employed or having persisted in the intent to kill for over 24 hours;
- (l) Commits the act against a member of an organ of sovereignty, of the Council of State; a Cabinet member, justice officer, member of an organ of the government of the autonomous regions or of the territory of Macau, Provedor de Justiça, civil governor, member of an organ of the local government or of a service or agency exercising public authority, commander of a public force, member of a jury, witness, lawyer, member of a law-enforcement agency, civil servant, member of the military, a member of a security force or service or a citizen in charge of a public service, teacher or examiner, or a church minister, in the exercise of his or her functions or as a result thereof;
- (m) Is an official and commits an act with serious abuse of authority.

Article 13 (Negligent homicide)

1- The person who kills another person out of negligence is punished with up to 3 years' imprisonment or with a fine.

2- In case of gross negligence, the perpetrator is punished with up to 5 years' imprisonment.

(b) 2nd Issue – Whether the indictment contains the elements that constitute the type of crime of intentional murder (with or without premeditation).

From the simple reading of the indictment we see that the facts alleged therein are enough to constitute the type of crime of intentional murder and to substantiate the conviction of the accused of that crime.

In the indictment one can read the following:

“3. Domingos Amati and Antonio Pinto Soares had an argument. Domingos Amati then threatened Antonio Pinto Soares with a knife.

4. Antonio Pinto Soares took out his own knife and threw it against Domingos Amati hitting him in the forehead.

5. Domingos Amati together with other militia members began to chase Antonio Pinto Soares towards Hera beach.

6. During the chase Antonio Pinto Soares was confronted by two Indonesian TNI soldiers who stopped him and handed him over to the militia who were chasing him. One of the militia members hit Antonio Pinto Soares in the head and another stabbed him in the chest with his knife. The militia members then forced Antonio Pinto Soares to walk back to the militia post in Hera, a few hundred meters away.

7. Once back to the militia post Antonio Soares was allowed to walk to the beach to clean himself. Domingos Amati and Francisco Matos followed Antonio Pinto Soares to the beach. They were both armed with machetes.

8. Domingos Amati hit Antonio Pinto Soares in the back of the head with his machete. Francisco Matos repeatedly stabbed Antonio Pinto Soares in the back with his machete. Antonio fell in the ground.

9. Some time later Antonio Pinto Soares managed to stagger back up to the militia post. He remained at the militia post, seriously injured and bleeding from his wounds, for a number of hours.

10. In the early morning of 6 September 1999, Hera militia commander Mateus de Carvalho came to the militia post and took Antonio Pinto Soares to the Dili National Hospital in Bidau by car. Antonio Pinto Soares was treated by a doctor but died after a few hours from his injuries.

The intent to kill is clearly stated in the indictment where it reads:

“7. Once back to the militia post Antonio Soares was allowed to walk to the beach to clean himself. Domingos Amati and Francisco Matos followed Antonio Pinto Soares to the beach. They were both armed with machetes.

8. Domingos Amati hit Antonio Pinto Soares in the back of the head with his machete. Francisco Matos repeatedly stabbed Antonio Pinto Soares in the back with his machete. Antonio fell in the ground.

9. Some time later Antonio Pinto Soares managed to stagger back up to the militia post. He remained at the militia post, seriously injured and bleeding from his wounds, for a number of hours”.

The causal nexus between the conduct of the Accused and the death of the victim is expressed in the indictment where it reads:

“Antonio Pinto Soares was treated by a doctor but died after a few hours from his injuries”.

It is clear that, in the face of the facts described in the indictment, one cannot say that the murder imputed to the Accused was committed with premeditation. Among these facts one cannot find those which constitute premeditation.

According to both the Indonesian Penal Code and the Portuguese Penal Code, including the civil law system in place in Timor-Leste, the concept of premeditation is not confused with the mere intent or purpose of committing a crime. Article 340 of the Indonesian penal Code states expressly *“Barangsiapa dengan sengaja dan direncanakan lebih dahulu menghilangkan jiwa orang lain... (in the English version: “The person who with deliberate intent and premeditation takes the life of another person...”)* The intentional nature of the crime (that the crime was committed with malice aforethought) is defined by the expression *“dengan sengaja / with deliberate intent”*; the expression *“direncanakan / with premeditation”* translates a circumstance that qualifies the crime, aggravating the corresponding penalty, but does not constitute the type of crime of intentional murder. The Portuguese Penal Code, which in the past expressly used the term

premeditation, now uses in its article 132, item 2, the expression “act in a cold-blooded manner, conscious of the means being employed or having persisted in the intent to kill for over twenty four hours”, to define premeditation.

There can be no premeditation unless between the time the decision to commit the crime is made and the time to carry it out the perpetrator has enough time to think (premeditate means thinking beforehand) about what he or she is going to do and stick to that decision – think whether he or she is really going to commit the crime or not, or think about the best way to do it, etc. The aggravation of the blame which leads to the aggravation of the penalty where a crime is committed with premeditation finds its justification in the perpetrator’s strong willingness to commit the crime, a willingness which persists despite the time that has passed by would be sufficient for another person in the same circumstance to change his or her mind, or is even strengthened by the search for the best way to commit such crime.

According to the Indonesian Penal Code the facts described in the indictment constitute the crime of intentional murder provided for under article 338 and not the one provided for under article 340 as indicated in the indictment. According to the Portuguese Penal Code those facts constitute a crime of first-degree murder, not on the grounds of premeditation but based on the circumstance provided for under article 132, items 1 and 2(g): the use in the commission of the crime by the Accused persons of a machete, which is a particularly dangerous means.

(c) 3rd Issue – Whether the Special Panel for Serious Crimes has jurisdiction over a crime of murder only when committed with premeditation.

As it is clear that article 338 of the Indonesian Penal Code provides for and punishes the crime of intentional murder and that the facts described in the indictment constitute a crime of intentional murder, there is no difficulty saying that the Special Panel for Serious Crimes has exclusive jurisdiction over this crime, by virtue of sections 1.3(d), 1.4 and 2.3 of UNTAET Regulation 2000/15 of 6 June, which are quoted below:

“1.3 The panels established pursuant to Sections 10.3 and 15.5 of UNTAET Regulation No. 2000/11 and as specified under Section 1 of the present regulation, shall exercise jurisdiction in accordance with Section 10 of UNTAET Regulation No. 2000/11 and with the provisions of the present regulation with respect to the following serious criminal offences:

- (a) Genocide;*
- (b) War Crimes;*
- (c) Crimes against Humanity;*
- (d) Murder;*
- (e) Sexual Offences; and*
- (f) Torture.*

1.4 At any stage of the proceedings, in relation to cases of serious criminal offences listed under Section 10 (a) to (f) of UNTAET Regulation No. 2000/11, as specified in Sections 4 to 9 of the present regulation, a panel may have deferred to itself a case which is pending before another panel or court in East Timor.

“2.3 With regard to the serious criminal offences listed under Section 10.1(d) to (e) of UNTAET Regulation No. 2000/11 as specified in Sections 8 to 9 of the present regulation, the panels established within the District Court in Dili shall have exclusive jurisdiction only insofar as the offence was committed in the period between 1 January 1999 and 25 October 1999”.

As stated earlier, in the civil-law system in place in Timor-Leste there is a clear distinction between the intent to commit a crime or malice aforethought, which constitutes the type of crime, and premeditation, which is a qualificative aggravating circumstance of a crime.

Nothing in the law allows one to say that the jurisdiction of the Special Panel for Serious Crimes is confined to crimes of murder with premeditation. The

provisions of sections 1.3(d), 1.4 and 2.3, of UNTAET Regulation 2000/15 of 6 June, as quoted above, lead us to say precisely the opposite.

Even though the conduct of the Accused constitutes second-degree murder (*homicídio voluntário simples*) only, they may be convicted of that crime, which is less serious than the crime of murder with premeditation with which they have been charged, without the need to amend the indictment, in the light of the provision of section 32.4 of UNTAET Regulation 2000/30 of 25 September, as amended by UNTAET Regulation 2001/25 of 14 September.

Therefore, the Special Panel for Serious Crimes has jurisdiction to try the Accused for the facts described in the indictment, whether they constitute a crime of murder with premeditation (as held by the Prosecutor in the indictment), or a crime of murder without premeditation (*crime de homicídio simples*).

5. In this connection, we decide that the appeal should be granted in its totality.

6. The Accused are known to have no sufficient possessions that would enable them to pay for the court costs.

Thus, although they have failed in their appeal they are not required to pay for the appeal costs.

III. Conclusion

For the reasons given above, the judges of the Court of Appeal decide

(a) To reverse the decision by the Special Panel for Serious Crimes of the Dili District Court to reject the indictment;

(b) To order the Special Panel for Serious Crimes of the Dili District Court to admit the indictment and carry on all other terms of the proceeding until trial and the first-instance decision is rendered.

Dili, 9 December 2003

The Judges of the Court of Appeal

[Signed]

Cláudio de Jesus Ximenes – Presiding Judge and Rapporteur

[Signed]

José Maria Calvário Antunes

[Signed]

Jacinta Correia da Costa