

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

DECREE-LAW NO. 4/2005

OF

**SPECIAL REGIMES WITHIN THE CRIMINAL PROCEDURE FRAMEWORK
FOR CASES OF TERRORISM, VIOLENT OR HIGHLY ORGANIZED CRIME**

There are presently growing demands by Timorese citizens for an effective protection of their rights, liberties and guarantees, and the State has to be able to effectively duly correspond to the identified needs.

On the other hand, the serious consequences deriving from new criminal realities force States to take on its responsibilities and contribute to the efforts being undertaken with a view to preventing such phenomena.

In the fight against very serious forms of crime, such as terrorism and violent or highly organized crime, the need was felt to ensure the existence of instruments that are capable of responding to facts considered by society as deserving special prevention, combat, and punishment measures.

It is therefore incumbent upon the State to provide its institutions with adequate legal means to enable them face such challenges.

The present decree-law also takes into account factors considered to be essential for the justice system such as celerity, efficiency, ability and effectiveness, including the maintenance of an equilibrium constitutionally claimed.

Thus, for certain cases of terrorism and violent or highly organized crime, the present decree-law provides for special norms of criminal procedure to allow the conduct of home searches, checks, seizures and detentions outside of *flagrante delicto* without prior judicial authorization.

Pursuant to article 3 of Law. No. 15/2005 of 16 September and to article 96 of the Constitution, the Government enacts the following to have the force of law:

CHAPTER I GENERAL PROVISIONS

Article 1 Object

The objective of the present statute is to define special regimes in the area of criminal procedure to allow, without prior judicial authorization, the conduct of home searches, checks, seizures and detentions outside of *flagrante delicto*, as well as provide a special regime for the control of communications, in cases of terrorism and violent or highly organized crime.

Article 2 Legal definition

For the purpose of the present statute, it can only be considered terrorism and violent or highly organized crime the conducts that:

- a) Integrate crimes of terrorism, terrorist organization, or criminal association;
- b) Are intentionally directed against the life, physical integrity, or liberty of persons and are punished with a maximum penalty equal to, or higher than, eight years;
- c) Integrate crimes of serious drug trafficking, active and passive corruption, abuse of power, peculation, money laundering, unjust enrichment, and trafficking of persons or trafficking of arms, as long as the crime is committed in an organized way; or
- d) Integrate crimes against the Rule of Law, coercion against constitutional organs, service or collaboration with enemy armed forces, acts of sabotage against national defence, and violation of State secrets or of diplomatic loyalty, as long as the crime is committed in an organized way.

CHAPTER II SPECIAL REGIMES

Article 3 Detention outside of *flagrante delicto*

1. The Public Prosecution Service and the police authorities or their equivalent may also order detention outside of *flagrante delicto* in cases of terrorism and violent or highly organized whenever:
 - a) There is well grounded circumstantial evidence of an imminent commitment of a crime that puts at risk the life or the physical integrity of any person; and

- b) It is not possible, given the situation of urgency and of danger in the delay, to wait for the intervention of a judge.
2. In the cases referred to in the preceding paragraph, the measure taken shall be immediately communicated to the competent judge who shall examine it with a view to its validation.

Article 4 **Home searches**

1. The Public Prosecutor Service may also order home searches in case of terrorism or violent or highly organized crime whenever there is well grounded circumstantial evidence of the imminent commitment of a crime that puts at risk the life or the physical integrity of any person.
2. In the cases referred to in the preceding paragraph, the home search operation shall be immediately communicated to the competent judge who shall examine it with a view to its validation, on pain of the home search being considered null and void.

Article 5 **Checks**

1. The Public Prosecution Service and the police authorities may also order checks in cases of terrorism or violent or highly organized crime whenever there is well grounded circumstantial evidence of the imminent commitment of a crime that puts at risk the life or the physical integrity of any person.
2. Police organs may also conduct checks without prior authorization or order in the circumstances referred to in the preceding paragraph.
3. In the cases referred to in the preceding paragraphs, the check operation shall be immediately communicated to the competent judge who shall examine with a view to its validation, on pain of the check operation being considered null and void.

Article 6 **Seizures**

1. The Public Prosecution Service and the police authorities may also order seizures in cases of terrorism or violent or highly organized crime whenever there is grounded circumstantial evidence of the imminent commitment of a crime that puts at risk the life or the physical integrity of any person.
2. The organs of police may also conduct seizures without prior authorization or order in the circumstances referred to in the preceding paragraph.
3. In the cases referred to in the preceding paragraphs, the seizure shall be immediately communicated to the competent judge who shall examine it with a view to its validation, on pain of the seizure being considered null and void.

Article 7
Control of conversations or communications

In cases of terrorism or violent or highly organized crime, the order or authorization referred to in article 177.1 of the Code of Criminal Procedure may be requested to the judge of the places where the conversation or communication may eventually take place, or to the judge from the headquarters of the competent entity for the criminal investigation.

CHAPTER III
FINAL PROVISIONS

Article 8
Special protection measures

The protection of witnesses and other participants in the criminal procedure against forms of threat, pressure or intimidation, namely in the cases of terrorism or violent or highly organized crime, is regulated in a specific statute.

Article 9
Entry into force

The present statute shall enter into force on the day after its publication.

Approved at the Council of Ministers on 6 December 2005.

The Prime Minister

[signed]
(Mari Bim Amude Alkatiri)

The Senior Minister for Foreign Affairs and Cooperation.

[signed]
José Ramos-Horta

The Senior Minister and Minister for State Administration
[signed]

Ana Pessoa Pinto

The Minister for Planning and Finance
[signed]

Maria Madalena Brites Boavida

The Vice-Minister of Interior and Minister *ad interim*
[signed]

Alcino de Araújo Baris

The Minister of Justice

[signed]

Domingos Maria Sarmiento

Promulgated on 3 February 2006.

For publication

The President of the Republic

[signed]

Kay Rala Xanana Gusmão