

LAW NO. /2005
Law ON THE COUNCIL OF STATE

The Council of State is the political advisory body to the President of the Republic, directly established by the Constitution (articles 90 and 91 of the Constitution of the Democratic Republic of Timor-Leste).

The Constitution confers upon the President extraordinary powers to solve situations of extreme gravity, both domestically and internationally, which might impact the normal democratic conviviality or threaten national independence or the unity of the State.

Considering the extraordinary character of these circumstances, the Constitution determines that any presidential decision be preceded by consultation with the Council of State, in such cases as provided for by the Constitution.

By fulfilling now the constitutional responsibility of defining the “organisation and functioning of the Council of State” (subsection 91.3 of the Constitution of the Democratic Republic of Timor-Leste), the finishing touch of the constitutional edifice, a decisive phase in the construction of the democratic state based on the rule of law has been accomplished.

Pursuant to subsections 95.1 and 91.3 of the Constitution of the Republic, the National Parliament enacts the following, to have the force of law:

CHAPTER I
Nature and Composition

Article 1
Definition

The Council of State shall comprise:

- (a) former Presidents of the Republic who were not removed from office;
- (b) the Speaker of the National Parliament;
- (c) the Prime Minister;
- (d) five citizens elected by the National Parliament in accordance with the principle of proportional representation and for the period corresponding to the legislative term, provided that they are not members of the organs of sovereignty;
- e) five citizens designated by the President of the Republic for the period corresponding to the term of office of the President, provided that they are not members of the organs of sovereignty.

CHAPTER II

Competencies

Article 3

Competencies

1. It is incumbent upon the Council of State to:
 - (a) advise the President of the Republic in the exercise of his or her functions, as requested by the President;
 - (b) express its opinion on the dissolution of the National Parliament;
 - (c) express its opinion on the dismissal of the Government;
 - (d) express its opinion on the declaration of war and the making of peace;
 - (e) express its opinion on the declaration of the state of siege and of the state of emergency;
 - (f) approve and amend its rules of procedure;
 - (g) perform all acts provided for in its rules of procedure and in this law

CHAPTER III

Organisation and Functioning

Article 4

Meetings

1. The Council of State is presided over by the President of the Republic, who convenes meetings and sets their respective agenda.
2. Meetings shall be convened on at least a 3 days' notice, except in the case of emergency; and such written notice shall indicate the date, time and venue for the meetings, as well as their respective agenda.
3. The Council of State shall always function at plenary meetings.
4. The Council of State may not meet without the attendance of the President of the Republic.

Article 5

Quorum

Once the first notice has been served, the Council of State shall function with the majority of its members in full exercise of their functions in attendance or, where the meeting is not held on grounds of lack of quorum, with any number of its members in attendance, once a second notice has been served.

Article 6

Voting

1. Decisions by the Council of State are taken by an absolute majority of votes.
2. Voting is always in the form of roll call.
3. Abstentions are not permitted.

Article 7

Minutes

1. Minutes of all issues raised at Council of State meetings are recorded in a specific notebook, the opening and closing terms of which shall be signed by the President of the Republic.
2. The draft minutes of each meeting shall be prepared by the Secretary, who shall submit them to the members of the Council of State for approval at the beginning of the following Council meeting, except where the Council decides to prepare and approve the minutes at the same meeting.
3. Once the minutes have been recorded in the notebook, they shall be signed by both the Secretary and the President of the Republic.

Article 8

Support Service

1. The Secretary of the Council of State is appointed by the President of the Republic, and is responsible for providing secretarial services at meetings, ensuring working papers and liaising with the services of the Office of the President of the Republic with respect to the administrative support required for the smooth running of the Council of State.
2. The support services of the Council of State are ensured by the Office of the President of the Republic, which shall make available to the Council of State adequate means for that purpose.

CHAPTER IV

Publicity

Article 9

Duty of Secrecy

1. Council of State meetings are not open to the public.
2. Council of State members and the secretary have the duty of secrecy with respect to the object and contents of the meetings and with respect to the decisions taken.
3. The President may, with the endorsement of the Council, issue a press release on the content of any meeting at the end of such meeting, where publication is not compulsory.

Article 10

Publication

1. Any decisions taken in the exercise of the competencies provided for under paragraphs (b), (c), (d) and (e) of article 3 must be published in the Official Gazette.
2. The publication of the decisions referred to in the previous subarticle shall be concurrent with the performance of the corresponding acts.

3. Where, for exceptional reasons, the President of the Republic deems it justified, full or partial access to and release of Council minutes may be ensured through the support services.

CHAPTER V

Status

Article 11

Commencement and Termination of Functions

1. The functions of Council of State members commence upon their swearing in before the President of the Republic, and terminate once their successors have been sworn in, as in the cases provided under article 2.
2. The functions of Council of State members may also cease by means of resignation, death, permanent disability, suspension or subsequent incompatibility.
3. The Council of State members referred to in paragraphs (d) and (e) of article 2 may resign by means of a written statement addressed to the President of the Republic.
4. Permanent disability is declared by the Council of State, upon exam conducted by a medical team specifically designated by the Council, and takes effect as from the date of its publication in the Official Gazette.
5. The suspension of a Council of State member, declared under the terms of subarticles 12.3 and 12.4, takes effect as from the date of its publication in the Official Gazette.

Article 12

Immunities

1. Council of State members are not civilly, criminally or disciplinarily liable for any votes cast or opinions issued while performing their functions.
2. Council of State members may not be arrested or detained without authorization from the Council, except in the case of *flagrante delicto* in connection with the commission of an act punishable by a term of imprisonment exceeding two years.
3. In the case of a definitive indictment of a Council of State member for an offence punishable by a term of imprisonment exceeding two years, such Council member may be suspended from his or her functions, by decision of the Council, in order that prosecution may proceed.
4. The decision provided under the previous subarticle is taken by secret ballot, without the participation of the member concerned.
5. Council of State members may not act as experts, witnesses or declarants in legal proceedings without authorisation.

Article 13

Rights and Benefits

The rights and benefits of Council of State members include:

- (a) free access to public places with restricted access, while performing their functions or in connection with such functions;

- (b) obtention, from any public entity, of the official publications deemed useful for the exercise of their functions;
- (c) special ID, in a format to be determined in the rules of procedure, for the duration of their respective term of office.
- (d) subsistence allowance in such amount as determined for Cabinet members, granted in connection with one or more consecutive days of attendance at a Council meeting, plus two.

Article 14

Expenses

Expenses arising from the application of this law shall be paid from state budget appropriations to the Office of the President of the Republic.

Article 15

Entry into Force

This law shall come into force on the day subsequent to the date of its publication in the Official Gazette.

Approved on 17 January 2005.

The Speaker of the National Parliament

[Signed]
(Francisco Guterres “Lu-Olo”)

Promulgated on 3 February 2005

To be published.

The President of the Republic

[Signed]
(Kay Rala Xanana Gusmão)