

LAW No. 17/2005
LEGISLATIVE AUTHORISATION ON CIVIL PROCEDURE MATTERS
Of 16 September

The present law is the outcome of studies and work on the formulation and drafting of the Civil Procedure Code undertaken by a committee comprised of Timorese and international experts.

The legislative authorisation mechanism provided in paragraph 96.1(b) of the Constitution of the Democratic Republic of Timor-Leste, which is therefore in compliance with the provisions of the fundamental law in force in Timor-Leste, has been chosen.

This chosen mechanism provided for in the Constitution will expedite the legislative process exponentially, making it clear that Parliament refrains completely from intervening in the definition of the legislative policy guidelines that will give shape to the final law, entrusting to the Government the task of dealing with and harmonising aspects relating to the legislative technique in full compliance with the directives issued by the National Parliament. The division of duties and responsibilities assigned to the various constitutional organs with respect to the exercise of legislative powers is taken into account.

The contents and scope of the object of this Law on Legislative Authorisation ensures respect for the citizens' fundamental rights, liberties and guarantees in civil procedure matters. It should be noted that this branch of law is of paramount importance to the basic structure of any legal system in that it constitutes the subsidiary procedural paradigm of the various forms of special proceedings contemplated in a concrete system.

Consequently, it seems timely to us that the present Law on Legislative Authorisation be concurrently approved, to the extent possible, with the draft criminal procedure code and substantive criminal legislation. Furthermore, it seems to us that imperatives of the judicial functioning call for an expeditious intervention in the drafting of procedural legislation.

It should also be pointed out that the present Law on Legislative Authorisation proves to be consistent with the legislative drafting process relating to the Civil Code and other complementary legislation currently under preparation.

The approval of the Civil Procedure Code implies that the Indonesian Civil Procedure Code will, in due course, cease to be applicable and that legislation that has come into force after 20 May 2002, which proves to have a bearing on civil procedure matters, will be harmonised accordingly.

Pursuant to paragraph 96.1(b) of the Constitution of the Republic, the National Parliament enacts the following to have the force of law:

Article 1

Object

1. The Government is granted authorisation to approve a Civil Procedure Code and repeal relevant legislation in force.
2. The legislative authorisation that is the subject of the present law also covers the amendment to or the modification of the laws in force containing provisions that need to be harmonised with the principles or precepts of the future Civil Procedure Code.

Article 2

Meaning and scope

1. The Code to be drafted under the present law on legislative authorisation shall observe the constitutional principles and the norms laid down in international instruments that are binding on Timor-Leste.
2. The authorisation referred to in subarticle 2.1 above has the following meaning and scope:
 - (a) set up a procedural system that will allow the competent authorities to achieve, to the extent possible and as quickly as possible, the goals of administering justice, of establishing the primacy of law and the rule of law, and of preserving people's fundamental rights, and social peace;
 - (b) simplify, de-bureaucratise and speed up the handling of proceedings in accordance with the pursuit of the above-mentioned goals;
 - (c) regulate the structuring principles of civil procedure (prohibition of self-defence, access to law, lawsuits initiated by the parties concerned, the adversarial nature of proceedings, and equality between the parties);
 - (d) strictly define the procedural prerequisites in respect of the parties(personality, legal capacity and legitimacy, legal aid, and the jurisdiction of courts;
 - (e) offer guarantees of impartiality through the strict determination of cases where the judge, public prosecutor or court clerk is disqualified, provide that the judge may file a request for excuse and that any of the parties may raise suspicion;
 - (f) regulate procedural acts in general, acts to be performed by the parties, acts to be performed by magistrates, and secretarial acts. Define rules relating to the public character of proceedings and the access thereto;
 - (g) regulate matters relating to the reporting of acts;
 - (h) regulate the nullity of acts;

- (i) regulate the assignment of lawsuits and appeals and establish a system for serving summons and notices;
- (j) regulate litigations with the reaffirmation of the principle of litigations being initiated by the parties concerned and of the principle of stability of litigations. Provide for the possibility of subjective and objective modifications. Characterise the causes for suspending a litigation, the facts leading to the interruption of a litigation, and the causes for dismissing or dropping a litigation; characterise and regulate each of the extraordinary occurrences in a litigation;
- (k) regulate provisional remedies, establishing, together with an ordinary provisional remedy, seven special provisional remedies (provisional restitution of ownership, suspension of corporate deliberations, provisional alimony, provisional reparation arbitration, seizure, construction embargo, and enlisting);
- (l) provide for two forms of declarative lawsuit (ordinary proceedings and special proceedings). Enumerate and regulate in detail the articulated pleadings (a complaint may be rejected beforehand or be the subject of an order calling on the plaintiff to improve it; plea subject to specific rejection, and the possibility of cross-complaint). Regulate in-absentia trials and the penalising effects thereof; provide for defence through rejection, and defence through exception (dilatatory exceptions and peremptory exceptions). Admit a third articulated pleading (answer) limited to cases in which an exception has been adduced, a cross-complaint has been presented or the action is but a negative examination;
- (m) provide for a phase of curative and fact-finding acts, with the possibility of attempting conciliation. Regulate curative acts and organise specifications and questionnaires with the possibility of reference to the articulated pleadings, and waive of specifications and questionnaires in unchallenged or rather uncomplex lawsuits. Regulate the pre-trial investigation of cases with the indication of evidence, the early production of evidence, and the transmission of rogatory letters;
- (n) regulate examining trials by a one-judge court or by a court constituted of more than one judge;
- (o) regulate sentencing, the contents of sentences, conviction limits, flaws, sentence reviews, and sentence effects;
- (p) regulate appeals, making provision for ordinary appeals (appellate review and bill of review) and extraordinary appeals (jurisprudence review and standardisation). Shape the appellate review as an appeal arising from a final sentence and the curative act that determine the grounds of action, and bills of review arising from decisions that may not be appealed against;

- (q) systematise all matters relating to evidence: principles (free examination of evidence, adversary hearing, cooperation in uncovering the truth); burden of proof; presumptions; means of proof (evidence on admission of guilt, witness testimony, documentary evidence, confrontation of witnesses, judicial examination, expert evidence);
- (r) provide for a title on matters relating to costs, fines and compensation for bad-faith litigation;
- (s) regulate in detail a standard execution proceeding only in the form of an ordinary proceeding, with an introductory phase, intervention by a third party, attachment, bankrupt's creditors claims, and payment, and provide that execution debts may be paid in instalments;
- (t) establish and regulate in detail eight special proceedings: prohibitions and disqualifications; reform of records, documents and books; provision of bail; divorce and separation of people; provision of food; review of foreign sentences; inventory; compensation action against magistrates;
- (u) contemplate final and transitional provisions.

Article 3 **Complementary and related legislation**

1. The authorisation granted by this law also covers the drafting of a legislative act that will regulate the procedures and the articulation between administrative authorities and the courts in the execution of procedural acts, namely, summons, citations and orders to appear.
2. Pending a nationwide coverage of the territory of Timor-Leste by the postal services in regard to hand delivery of mail to addressees, a cooperation regime between district and sub-district administrators and the courts regarding the transmission of procedural acts may be established.

Article 4 **Duration**

The duration of the legislative authorisation granted by this law shall be 120 days commencing on the date of its entry into force.

Article 5 **Entry into force**

The present law shall come into force on the day following the date of its publication.

Approved on 26 July 2005.

The Speaker of the National Parliament

[Signed]

Francisco Guterres “Lu-Ólo”

Promulgated on 3 September 2005.

To be published.

[Signed]

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