COURT OF APPEAL

Dili, 11 November 2008
I mean, 13 November 2008

Excellency,

I attach herewith the decision of the Court of Appeal relating to Proceeding No. 04/2003: Abstract Review of Constitutionality and Legality of Law No. 12/2008.

Please accept, Excellency, my most respectful compliments.

[signed]

Ivo Nelson de Caires Batista Rosa
Acting President of the Court of Appeal

H.E. Member of the National Parliament

Proceeding No. 04/2008

The judges of the Court of Appeal decided on the following:

REPORT

On 29 August 2008, pursuant to subparagraph e) of article 150 of the Constitution, a group of sixteen National Parliament Members in full exercise of their functions filed a petition with this Court in which they requested an ex-post abstract review of constitutionality of articles 1 and 2 of Law No. 12/2008 of 5 August, which approved the amendment to Law No. 10/2007 of 31 December on the State Budget for the year 2008. The afore-mentioned National Parliament Members also requested that Law No. 12/2008 be declared illegal on the grounds that it violates the legislative process.

In summary, the afore-mentioned National Parliament Members premised their petition on the following considerations:

1 - The IV Constitutional Government, through the National Parliament Members of the so-called Parliamentary Majority Alliance (AMP), approved Law No. 12/2008 of 5 August (that approves the amendment to Law No. 10/2007 of 31 December, which in turn approved the State Budget). Law No. 12/2008 of 5 August is best known as the Rectifying Budget Law and was published in Series I, No. 33, of the Official Gazette;

2 - In its Articles 1.1, 1.2, 2.2 and 2.3, the Constitution of the Democratic Republic of Timor-Leste expressly enshrines the principles of constitutionality and legality as fundamental principles of our State, which it [the Constitution] defines as a democratic State based on the rule of law;

3 - Every activity of the State must therefore be subject first and foremost to the Constitution and, as determined by the Constitution itself, the State itself must be subject to the laws;

4 - The State Budget is a forecast of public expenditures and revenues for each financial year and it is prepared by means of a law of the National Parliament setting the limits of the financial powers of the Government and the public administration;

4 - It is incumbent upon the National Parliament to approve the State Budget under the form of a specific law. The National Parliament is also the State organ with the responsibility to supervise the execution of the State Budget;

5 - In any democratic regime, the parliamentary process of debating the State Budget is one of the most complex and politically important processes. Actions undertaken by the Government and the public administration in any given year, including the process of consolidation of the other organs of sovereignty, namely the President of the Republic, the National Parliament, and the Courts, are contingent upon such debate, for the absence of appropriate budgetary allocations compromises both the regular functioning of these institutions and the balance and separation of powers among them;

6 – In view of the importance of the law on the State Budget for the national political life, the Rules of Procedure of the National Parliament provides for a special process, with specific deadlines, considered to be indispensable to a rigorous analysis of such a legal rule;

8 - As a matter of fact, the drafter of the Rules of Procedure decided to introduce different deadlines for the budgetary debate. Such deadlines reflect first and foremost a compromise among the interest of the Government in approving the State Budget as soon as possible, the constitutional obligation of the National Parliament to supervise and follow-up the activity of the executive branch, the right of citizens to political participation through their democratically elected representatives (article 46 of the Constitution) and, finally, the right of citizens to experience a responsible citizenship that is guaranteed by the right to information, in this case, the right to information on the State Budget (article 40 of the Constitution);

9 - The Members of the National Parliament from the opposition were unable to prevent the Government from interfering in the normal functioning of the National Parliament because the Government did not present the draft law on the State Budget on time. This forced National Parliament Members from the opposition to unanimously agree on the extension of the first legislative session beyond its normal calendar so as to prevent the violation by the Government of the deadlines from becoming an obstacle to the Parliament’s rigorous scrutinising function;

10 - Under no circumstance can the scrutinising function of the National Parliament and its Members, particularly those from the opposition, be affected by the Government's non-compliance with the legal deadlines. In so doing, we would be violating not only the right to political participation (articles 46 and 63), but also and simultaneously the right to democratic opposition that we are entitled to pursuant to Article 70 of the Constitution of the Republic;

11 - Legitimacy in the preparation of legal rules is ensured by strictly observing the provisions contained in the National Parliament's Rules of Procedure, and any decision contrary to its Article 175 is null;

12 - Notwithstanding the agreement established on the methodology to be applied for debating the rectifying budget under analysis, as contained in the guidelines approved by the heads of the parliamentary benches and the Plenary, and despite successive calls made by the Parliament Members from the opposition, what remains true is that the Parliament's Rules of Procedure have not been complied with;

13- The Government, availing itself of its parliamentary majority, imposed the violation of the deadlines provided for in the Parliament's Rules of Procedure, thereby violating the fundamental principle of separation and interdependence of powers as it disregarded the previously agreed to calendar which established a period of three days as the minimum period of time for the general debate of the law under analysis;

14 - Votes were taken during the specific debate without however such voting being preceded by a debate as required by the Parliament's Rules of Procedure (article 102). The voting took place amid protests from Parliament Members from the opposition and before a total absence of modesty on the part of the CHAIR;

15 - The Parliament Members have been prevented from intervening in the debate, which is against the Parliament's Rules of Procedure (article 9.3(a)). Contrary to the Rules of Procedure, they have been prevented by the CHAIR to take the floor;

16 - During the general debate the Parliament Members from the opposition were not allowed to intervene more than once in the same daily session and were only allowed to take the floor twice during the two-and-a-

half days of the general debate. The Parliament Members who managed to take the floor during the days of general debate were only allowed to speak for five minutes in their first intervention, and for three minutes in their second intervention;

17 - The CHAIR went to the point of refusing to give the floor to FRETILIN parliamentary bench member Osório Florindo who had never taken the floor despite the fact that his name was on the list to take the floor and not withstanding his protests;

18 - The Rules of Procedure which, irrespective of being approved by law or by resolution, is a ***strengthened law***[1] in nature as advocated by the best doctrine[2], provides as a basic principle to be observed in the legislative process that there should be a full and equitable participation of the Parliament Members in all legislative activities (article 175(a);

19 - The Chair, particularly the Speaker of the National Parliament, who has the responsibility to preside over the Plenary meetings by virtue of his power to conduct the works, cannot exercise such power in order to violate the afore-mentioned basic principle or any rule contained in the Rules of Procedure;

20 - The power of the Chair to conduct the works is intended to ensure that the Rules of Procedure are complied with and to give the floor to the Parliament Members, and not the contrary (subparagraphs a), b), c) and d) of Article 18.2 of the Parliament's Rules of Procedure), which is exactly what occurred when, devoid of any legal ground, the CHAIR refused to give the floor to a Member of Parliament from the opposition at a time when the same Member of Parliament had not had the opportunity to take the floor, as was his right, in the general debate of the Rectifying Budget Law (article 9.3 of the Rules of Procedure);

21- Just as the approved guide, the Parliament's Rules of Procedure clearly provides that, in each day of general debate of the Rectifying Budget Law, National Parliament Members wishing to take the floor may do so

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[1] (***Lei reforçada*** in Portuguese, meaning a law that is in between a constitutional law and an infra-constitutional or ordinary law). Note of the translator.

twice on two distinct occasions (article 155, with reference to Article 53.1(b) and article 54.1 of the Rules of Procedure);

22 - To determine that whoever took the floor on the first day of the debate, or on any day subsequent to the general debate, could only do it once and for three minutes, as the CHAIR did, notwithstanding protests from the opposition, constitutes a violation to the Rules of Procedure;

23 - Section III of the Parliament's Rules of Procedure, which deals with the taking of the floor by Parliament Members, clearly states in its Article 53 that the floor is granted to Parliament Members to enable them to participate in debates. It also states that the floor is granted in accordance with the order of registration;

24 - It is therefore crystal clear that Parliament Members may always participate in debates whenever debates are in progress and that, where necessary, they can take the floor in two consecutive times, the first time for 5 minutes and the second time for three minutes;

25 - The CHAIR has grossly violated multiple Rules of Procedure and prevented Parliament Members from exercising the right to democratic opposition, recognized to them in Article 70.2 of the Constitution of the Democratic Republic of Timor-Leste;

26 - The Parliament Members who, by using the minimum speaking time provided for in the Rules of Procedure (three days), could have intervened six times, in a total of 24 minutes (i.e., eight minutes per day), ended up speaking only for eight minutes, without a right to speak in at least one, if not in two, out of the three days allotted for general debate. Also, there were Parliament Members to whom no time was granted for them to be able to intervene, a situation that amounts to a clear violation of Articles 9.3, 53.1(b), and 155.1 of the Parliament's Rules of Procedure, and article 70 of the Constitution of the Democratic Republic of Timor-Leste;

27 - The foregoing amounts to a negation of the right to yield the floor, a negation of the right to democratically intervene in the debate, a negation of the right of opposition (article 70 of the Constitution of the Democratic Republic of Timor-Leste), a negation of the right to inform through the debate about what a State Budget means, what a rectifying

budget means, and what is at stake in a rectifying budget (article 40 of the Constitution);

28 - On acting in the manner in which it acted, the CHAIR violated a whole set of norms contained in the Rules of Procedure intended to guarantee principles and rights enshrined in the Constitution of the Republic, namely the principle of legality and the principle of the democratic State based on the rule of law (article 2.2 of the Constitution), the right to democratic opposition (article 70.2 of the Constitution), the right to political participation (article 70.1 of the Constitution), the right to inform and to be informed (article 40 of the Constitution);

29 - The violation of this set of rules results in an irreparable nullity of the Law on the State Budget which is why it cannot be considered a law since it grossly and systematically violates the legislative process. It is an irreparable nullity as provided for in Article 175 of the Rules of Procedure;

30 - Law No. 12/2008 of 5 August also contains another type of violations to constitutional rules, namely a violation to the principle of legality and to the constitutional requirement to present a detailed breakdown of expenditures and revenues and to preclude the existence of secret funds or appropriations, pursuant to article 145.2, with reference to articles 2.2 and 97.2 of the Constitution of the Republic;

31 - At the time of presenting the Rectifying Budget at the Commission C for public hearing, when inquired about the lawfulness of the forecast of the Economic Stabilisation Fund, the Minister of Finance informed the Parliament that the rule establishing it had just been approved by the Council of Ministers and was awaiting promulgation by the President of the Republic;

32 - Apart from stating that “the Economic Stabilisation Fund, hereinafter referred to as Fund, is hereby established with the Ministry of Finance”; that the Fund is financed by the State Budget; and that the Fund itself shall contain expenditures and revenues to be determined by a specific rule which would approve the procedures to be observed for financings to be granted by the Fund, the Government does not say much in the decree law;

33 - The Economic Stabilisation Fund was eventually registered under code 13019 and was integrated in Annex II as expenditures for the Ministry

of Finance as though it was yet another program of the Ministry where there is no discrimination of revenues and expenditures, thereby allowing the existence of a parallel *budget*, a *slush fund* within the State Budget itself, in absolute violation to the constitutional rule established in Article 145.2 as follows: *The Budgetary Law shall provide, based on efficiency and effectiveness, a breakdown of the revenues and expenditures of the State, as well as preclude the existence of secret appropriations or funds*.";

34 - Meanwhile, and since it is incumbent upon the National Parliament to supervise the activity of the executive branch, it is the understanding of the Parliament Members who filed the present petition that it is not only worthwhile, but also imperative, by virtue of Article 145.2 of the Constitution, to clearly itemise and indicate the purpose of the modest amount of US$ 240,000,000 (two hundred and forty million American dollars), on pain of unconstitutionality. Allocating 240 million American dollars without exactly knowing what such an amount is intended for is clearly unconstitutional;

35 – The Economic Stabilisation Fund was allocated an amount of US$ 240,000,000 (two hundred forty million American dollars), eventually integrated in the Ministry of Finance with budget line code 130119, rendering the Ministry of Finance the responsible entity for the implementation of US$ 332,028,000 (three hundred thirty two million and twenty eight thousand American dollars) out of a total of US$ 788,312,000 (seven hundred eighty eight million three thousand and twelve American dollars);

36 – 88% of the *rectified* State Budget is funded by the Petroleum Fund and the remainder is funded by other non-oil revenues, namely the proceeds from the sell of rice;

37 - The Government expects to collect US$39.4 million (thirty-nine million four hundred thousand American dollars, which represents more than 50% of the estimates of non-oil revenues, projected to be US$79,5 million (seventy-nine million five hundred thousand American dollars);

38 - The Government intends to directly fund the purchase of rice, part of which the Government will sell to the population at Government established prices, with the remainder to be freely distributed among civil servants as well as PNTL and F-FDTL members;

39 - No clarification was obtained as to how many tons would be freely distributed and how many tons would be sold and at what prices;

40 - The Petroleum Fund, established by Law No. 9/2005 of 3 August, absorbs revenues resulting from the direct exploration of oil resources as well as revenues obtained from application of funds that are made with a portion of the oil resources within the precise limits established by law;

41 - The Petroleum Fund is the conversion into cash of revenues obtained from direct exploration of oil resources and from financial applications of a portion of previously obtained capitals into profitable investments which reproduce the initially made investment;

42 - The Petroleum Fund does allow, as it should be expected, that part of its revenues may be utilised to finance the State Budget as long as the rules of a sound, transparent and prudent management are respected (articles 1, 7, 8, 9 and 10 of the Petroleum Fund). This is so because the Fund intends to ensure the availability of income to enable the State to satisfy the needs of the current and future generations as well as to ensure the sustainable development of the national economy;

43 - As clearly laid down in article 4 of Law No. 9/2005 of 3 August, in the event of any conflict, the provisions of the Petroleum Fund Law shall prevail over the law on budget, and never the contrary;

44 - The Petroleum Fund Law shall prevail over the law on budget and financial management, because: *"This Law establishes a Petroleum Fund which seeks to meet the constitutional requirement laid down in Article 139 of the Constitution of the Republic. Pursuant to this provision, petroleum resources shall be owned by the State, be used in a fair and equitable manner in accordance with national interests, and the income derived therefrom should lead to the establishment of mandatory financial reserves."* And the preamble of the law is even more clarifying when, at one point, it states that, and we quote: *"The Petroleum Fund is to be coherently integrated into the State Budget, and shall give a good representation of the development of public finances. The Petroleum Fund shall be prudently managed and shall operate in an open and transparent fashion, within the constitutional framework."*;

45 - Funding the State Budget with revenues from the Petroleum Fund is lawful as long as the requirements of the Petroleum Fund Law itself are met and as long as it takes place within the constitutional framework;

46 - Since the State Budget may in principle be funded from the Petroleum Fund, the law requires that certain requirements be met, namely those contained in a set of rules regulating transfers, as provided for in its articles 7, 8, 9 and 10;

47 - The law, that has an entire chapter dealing with investment and protection of the Petroleum Fund, requires expressly the following: "*The Petroleum Fund shall be managed prudently in accordance with the principle of good governance for the benefit of current and future generations.*";

48 - What happens however is that the Government intends to transfer the amount of US$686,800,000 (six hundred eighty six million eight hundred thousand American dollars) from the Petroleum Fund to finance the State Budget, thus exceeding the Estimated Sustainable Income by US$290,700,000 (two hundred ninety million seven hundred thousand American dollars);

49 - The funding of the *rectifying* State Budget can only be considered lawful and constitutional where it is done to a maximum amount of US$396,100,000 (three hundred ninety six million one hundred thousand American dollars), pursuant to articles 139.1 and 139.2 of the Constitution of the Democratic Republic of Timor-Leste, with special reference to articles 9(d), 11 and 25 of the Petroleum Fund Law;

50 - The State has the obligation to use the natural resources of the country with fairness and in an equitable manner, in accordance with national interests;

51 - By imposing the mandatory establishment, by law, of financial reserves resulting from the exploration of such resources, precisely to prevent the depredation of the national wealth and to guarantee intragenerational justice, the Constitution of the Republic goes beyond a mere enunciation of equity and social justice to be observed by the State in the management of natural resources;

52 - It was in complying with this constitutional rule that the I Government prepared, with the broadest participation of society, the draft law that the National Parliament approved during the I Legislative Term, thereby establishing the Petroleum Fund through Law No. 9/2005 of 3 August;

53 - The State, through its executive branch, which is the Government, has therefore the obligation to explore the hydrocarbons as well as any other natural resource found in the soil and the territorial sea, for the benefit of everybody, investing the money resulting from such exploration in a fair manner. This Government as well as any other Government has the special obligation to respect, maintain and increase the mandatory reserves pursuant to the law;

54 - The Constitution determines the establishment of mandatory financial reserves in order to ensure the sustainable development of the country and this is what determined the establishment of the Petroleum Fund;

55 - Under no circumstance can the Government intend to transfer financial resources from the Petroleum Fund that exceed the amount considered acceptable in the Estimated Sustainable Income under the pretext of the food crisis and in an inconsistent and non-transparent manner, thereby dilapidating mandatory financial reserves which, according to the Constitution, must be preserved;

56 - The Petroleum Fund, which was established after more than one year of public debate and extensive consultations with the entire civil society in a transparent, inclusive and protracted process, has created the mechanisms necessary to the monitoring and follow up of the utilisation of the money in such a manner that the wealth resulting from the oil exploration can benefit the current generation without however compromising the future generations;

57 - The Petroleum Fund Law defines the legal framework in which the value of oil and gas is converted into monetary mass, into capital to be managed and invested in a transparent manner, and also, where applicable, to fund the State Budget;

58 - The Petroleum Fund represents a source of wealth for Timor-Leste because its revenues are deposited in a Fund that is intrinsically linked to the oil resources which, pursuant to the law, cannot be squandered;

59 - The Constitution dictates the establishment of mandatory financial reserves that should not be tempered with, unless under very exceptional circumstances and this is exactly why, according to the law, the Government must demonstrate to the National Parliament that the transfer of monies in amounts exceeding the Estimated Sustainable Income not only should not have a negative impact on future generations, but should also correspond to the interests of Timor-Leste in the long-term;

60 - The Government did not even bother to argue, much less to demonstrate, that the amount exceeding the Estimated Sustainable Income in an amount of US$290,700,000 (two hundred ninety million seven hundred thousand American dollars), which it intends to transfer, are for the benefit of the country in the long-term because, once again, it counted on the vote of the National Parliament Members of the so-called Parliamentary Majority Alliance;

61 - The Government violated subparagraph d) of article 9 of Law No. 9/2005 of 3 August, the Petroleum Fund Law, with the total complicity of the AMP Parliamentary Bench and, in violating the law, the Government violated the Constitution of the Democratic Republic of Timor-Leste (article 139, in combination with articles 1 and 2);

63 – Moreover, the transparency and legality of the public expenditures have not been ensured and guaranteed since such expenditures have not been itemised in a detailed manner as provided for in the Constitution of the Republic (article 145.2);

64 - The Government allocates itself 97% of the total of the Rectifying Budget, reserving 1,4% for the National Parliament, 0,6% for the President of the Republic, 0,3% for the Courts, 0,2% for the National Electoral Commission, and 0,07% for the Provedor of Human Rights and Justice;

65 - The Rectifying Budget is undoubtedly completely unbalanced and it attempts against the balance of powers which must exist among the

organs of sovereignty pursuant to articles 67 and 69 of the Constitution and which are thus violated by the law under analysis;

66 - The Rectifying Budget approved by Law No. 12/2008 of 5 August and whose constitutionality is now contested is unbalanced in the manner in which it allocates appropriations among the different organs of sovereignty and it is also unbalanced in the manner in which it allocates appropriations among the different financial categories;

67 - The Budget is extremely pro-spending and, at a time when there should be restraint and rigour in the utilisation of public revenues and in spending, there should actually be seriousness and concern in mitigating the negative impact of the inflation and of the proclaimed world food crisis by helping the most disadvantaged segments of the population, a situation that is not reflected in the budget under review;

68 - For the Category of Salaries and Wages, the appropriations made represent 7.6% of the total State Budget; for Goods and Services, the appropriations made represent 57,8% of the total State Budget; for Minor Capital, the appropriations made represent 5% of the total State Budget; for Capital Development, the appropriations made represent 15% of the total State Budget; and finally for Transfers and Personal Payments, the appropriations made represent 14,5% of the total State Budget;

69 – Thus, it violates article 139 of the Constitution of the Republic which establishes that "*The resources of the soil, the subsoil, the territorial waters, the continental shelf and the exclusive economic zone, which are essential to the economy, shall be owned by the State and shall be used in a fair and equitable manner in accordance with national interests*".;

70 - The Government lacks an investment programme and a coherent perspective for the sustainable economic development of the country by intending to transfer US$290,700,000 from the Petroleum Fund, an amount that exceeds what is sustainable and legally allowed because it wants to do it to fund a pro-spending budget which does not respond to the major priorities nor does it solve the national problems. The Government has no valid reason to ask for a reinforcement of financial resources considering its low capacity to execute the budget. In fact, and as can be better seen in documents 8 and 9, the Government does not lack money. Rather, it lacks the capacity to plan and execute the previously approved budget, and it makes no sense to

sacrifice the mandatory financial reserves when, after all, the Government was not even able to spend the budget previously approved by Law No. 10/2007 of 31 December and which should therefore prevail.
The afore-mentioned National Parliament Members conclude by stating that Law No. 12/2008 of 5 August, published in Series I, No. 33 of the Official Gazette, which approves the First Amendment to Law No. 10/2007 of 31 December on the 2008 State Budget, suffers from multiple defects in its form and substance. It also suffers from violations to rules and rules pertaining to the Constitution and the National Parliament's Rules of Procedure, and request that:

a) The present petition be granted and that, as a result, LAW NO. 12/2008 of 5 August BE DECLARED ILLEGAL since it systematically and grossly violates the rules that govern the legislative process of the National Parliament (article 9.3(a), article 53, article 54, article 102, article 155.1 and article 175 of the National Parliament's Rules of Procedure), resulting in an irreparable nullity of the law under review in such a manner that it cannot be considered as a law;

b) Even where, hypothetically speaking, the present petition is not accepted, it should however be granted insofar as the violation of principles and constitutional rules are concerned, namely articles 1.1, 2, 40, 46, 63, 69, 70, 92, 95, 96.2, 97.2(q), 139, and 145.2 of the Constitution of the Republic, and, as a consequence, **the UNCONSTITUTIONALITY** of the rule laid down in articles **1** and **3** of Law No. 12/2008 of 5 August should be declared and, cumulatively, all the normative group of this rule. The declaration of unconstitutionality should be mandatory and general in nature, and the revoked rules should be repristinated.

The Speaker of the National Parliament having been invited to make representations in his capacity as the author of the legislative act, pursuant to article 126.1(a) of the Constitution of the Democratic Republic of Timor-Leste, did not say anything.

RECITAL

Since there is nothing preventing this Court from examining the petition of the applicants, we shall identify, in summary, the issues raised by them:

1 – Validity of Law No. 12/2008 of 5 August for violating rules contained in articles 40, 46, 63 and 70 of the Constitution of the Democratic Republic of Timor-Leste as well as rules contained in articles 9.1, 53, 54, 155 and 175 of the National Parliament's Rules of Procedure (violation of the legislative process);

2 – Conformity of the provisions of articles 1 and 2 of Law No. 12/2008 of 5 August vis-à-vis the provisions of article 145.2 with reference to article 2.2 and article 97.2 of the Constitution of the Democratic Republic of Timor-Leste (non-itemisation of public expenditures);

3 – By concentrating over 50% of the budget in the appropriations under the responsibility of the Prime Minister and the Ministry of Finance, with the Government retaining 97% of all budget appropriations, the Law compromises the principle of the separation of powers.

As regards the other State organs, the Rectifying Budget Law does not allocate enough appropriations that enable them to fully exercise their competences.

4 – Conformity of Law No. 12/2008 of 5 August with the provisions of article 139 of the Constitution of the Democratic Republic of Timor-Leste and with articles 1, 7, 8, 9 and 10 of Law No. 9/2005 of 3 August (funding of the budget through the Petroleum Fund).

It therefore behoves us to examine these judicial questions.

Before entering into the merits of the petition, it behoves us to state that it is incumbent upon the Courts, particularly the Court of Appeal, in the framework of its functions of reviewing the constitutionality and legality of legislative acts, to ensure that democracy works on the basis of the primacy of the Constitution, the law, and the guarantee of the fundamental rights of the citizens.

Such a task may present itself as a particularly delicate and difficult to handle because, in order to ably undertake it in the framework of constitutional justice, the Court of Appeal has to assume itself as the judge of the law, as the judge of the parliamentary majority, and as the judge of the remaining courts, as suggestively mentioned by some authors.

Thus, it is not the responsibility of the Courts to interfere, either directly of indirectly, in the competences of other organs, namely the legislative and the executive organs. In other words, saved where they act on the basis of imperatives of a constitutional nature, Courts are not supposed to reproach the political options of the legislative and executive organs, for such political options pertain to domains reserved to other organs of sovereignty. For this very reason, Courts cannot, and are not willing to, invade such reserved domains. In any democratic State based on the rule of the law, it is the responsibility of the people, through their right to vote, to put the political options on trial.

On the other hand, jurisdiction, particularly the constitutional jurisdiction, is neither the venue nor the adequate means for settling political differences. Therefore, the continuation of the political debate should not be referred to the Courts, more precisely the Courts of Appeals, since the Courts do not wish to assume a role that does not belong to them.

The impeached rules

The rules impeached by the group of National Parliament Members who filed the petition are the following:

Article 1 of Law No. 12/2008 of 5 August.

1 – The State Budget for 2008, as approved by Law No. 10/2007 of 31 December and rectified by the Declaration of Rectification No. 1/2008 of 16 January, is amended both in the tables contained in Annexes I, II and III to that Law and in the terms of the following articles.

2 – The amendment referred to in the preceding paragraph is contained in the tables of Annexes I, II and III of Law No. 10/2007 of 31 December.

3 – Articles 4 and 8 of Law No. 10/2007 of 31 December now read as follows:

"Article 4"

Under the terms and for the purposes set out in article 7 of Law No. 9/2005 of 3 August, the amount of the petroleum fund transfers for 2008 will not exceed 686.8 million United States dollars.

"Article 8"

o) Economic Stabilisation Fund.

Article 2

Addenda to the General State Budget for 2008-11-18

Articles 2-A and 9-A are added to Law no. 10/2007 of 31 December, with the following wording:

"Article 2-A
Multi-year investment programmes

1 – The multi-year investment programmes involve large-scale projects, to be carried out over a number of budgetary years.

2 – The spending set out for the 2008 financial years in regard to the programmes contained in Annex IV to the present law is approved, without prejudice to the total expenses set out in Annex II.

"Article 9-A
Economic Stabilisation Fund

The Economic Stabilisation Fund, created by decree law no. 22/2008 of 6 July, is administered by the Ministry of Finance."

MERITS OF THE PETITION

Let us then start by the first judicial question raised.

1 – Legality of Law No. 12/2008 of 5 August, for violating the National Parliament's Rules of Procedure.

First and foremost, it behoves to state that the Timorese Constitution does not expressly provide for the process of review of legality of laws. As

a matter of fact, articles 149 to 152 only refer to review of constitutionality of legislative acts and rules.

The process of reviewing the constitutionality of rules is intended to guarantee the Fundamental Law as a juridical and political order pertaining to the domain of a sovereign State and composed of principles and rules vested with a hierarchy superior to all the other rules.

In its turn, the control of legality of laws comprises a stricter and modest object as compared to the control of constitutionality for it consists in reviewing the conformity of rules contained in ordinary, simple legislative acts with strengthened laws. Thus, where there is an antinomy or contradiction between an ordinary law and another ordinary law in relation to which one considers that the first one has a qualified status which determines an imposition of respect in its favour, such antinomy or contradiction shall be settled by invalidating the first one and considering it unlawful.

What unconstitutionality and illegality have in common are relations of disconformity between one particular rule and another rule considered to be the reference rule to which the former is subordinated to or owes respect. The distinction between the two is found in the hierarchy of the normative parameter that has been violated.

Although the Constitution does not expressly provide for the review of legality, it appears that those who wrote the Constitution did accommodate the process under review. In fact, as regards the constitutional and electoral competence of the Supreme Court of Justice, subparagraphs a) and b) of article 126.1 of the Fundamental Law provides that ***it is incumbent upon the Supreme Court of Justice, on legal and constitutional matters, to review and declare the unconstitutionality and illegality of normative and legislative acts by the organs of the State; and to provide an anticipatory verification of the legality and constitutionality of the rules and referenda.***

Moreover, article 2.2 of the Constitution states that ***the State shall be subject to the Constitution and the law.*** This translates a clear affirmation of the principle of constitutionality and legality. Thus, on pain of being considered unconstitutional or illegal, each and every action must be undertaken solely by the entity with the competence to undertake it, must observe the form and comply with the process provided for in the

Constitution, and their respective contents must respect constitutional precepts and principles.

In order to guarantee the efficacy of such principles, there must be mechanisms intended to protect the Constitution against constitutional offences, i.e., there must be a system for reviewing the constitutionality and legality of legislative acts and other normative acts.

It results clear from the above that the Supreme Court of Justice, in this case the Court of Appeal, by virtue of article 164 of the Constitution of the Democratic Republic of Timor-Leste, also has the competence to review the legality of legislative acts of the organs of the State.

As a matter of fact, considering that the Constitution must be interpreted in such a manner as to avoid contradictions among its rules, and that these rules are not isolated and dispersed but, on the contrary, they constitute a set of precepts integrated in an internal system of rules and principles, and considering also that constitutional rules must be interpreted in such a manner that offers it the highest efficacy, one concludes that the system of reviewing the legality of laws is implicit in the constitutional framework.

Thus, we can agree that the system of reviewing the legitimacy of rules, as provided for in the Constitution, comprises the two legal institutes of control: control of constitutionality of rules and control of legality of laws.

However, for one to be able to speak of legality of laws, the need arises to identify a binding relation between a materially interposed law and the legislative acts bound to such law.

In accordance with the *Dicionário Universal da Língua Portuguesa* (Portuguese Language Universal Dictionary), the word “Law” comes from the Latin word “*lege*”, which means a rule of an imperative character, imposed on human beings, which governs their action and which implies an obligation of obedience as well as a sanction for violating it (positive law); a precept or a set of mandatory precepts emanating from the sovereignty authority of a society, the legislative power; it can also mean a set of juridical rules established by the legislator (among other definitions).

The Constitution does not define what are and which are the normative acts that compose the juridical order of Timor-Leste, nor does it define the principle of the hierarchy of the sources, much less the principle of typicity of the laws. The Constitution also does not establish a rule on the normative sources and the effects of the normative acts constitutionally typified. We therefore lack a rule that concretizes the constitutional binding of the legislator vis-à-vis the production of legal rules, with such a task being left in the hands of the ordinary legislator.

Notwithstanding, as far as the identification of sources is concerned, the constitutional text makes several references to laws and other acts of the State and the local government (article 2.2); International Law (article 9); constitutional laws – Laws of constitutional review (article 154). It also establishes the hierarchical relation between various types of legislative acts: laws authorizing the Government to legislate on matters of the competence of relative reserve of the Parliament and defining the object, the direction and the scope of the authorization (article 96); basic laws – laws that establish the general bases of the juridical regimes (article 95.2(l) and (m) – general bases of education, health and social security.

In its turn, the ordinary legislator, through Law No. 1/2002 of 7 August, expressly indicated the meaning of legislative acts and normative acts.

In accordance with the Constitution and Law No. 1/2002, legislative acts are laws and decree-laws, which are identical in value, with exception of the decree-laws published in the framework of use of legislative authorization and of those that develop the general bases of the juridical regimes.

Having arrived thus far, the issue at stake now is to get to know whether, in accordance with the applicable juridical order, there are laws with strengthened value and, where this is the case, which laws may be classified as having such status.

Laws with strengthened value are therefore ordinary laws that impose or presuppose their non derrogability by subsequent ordinary laws.

As a matter of fact, no Constitutional provision expressly defines the concept of law of strengthened value. Therefore, the criteria or elements

characterizing and distinguishing the determination of such type of rules will have to be found in the doctrine and jurisprudence.

Initially one would state that those who wrote the Constitution did not accommodate the nature of laws with "strengthened value" since no generic definition has been approved regarding laws with strengthened value which would grant a general typifying character to laws that could benefit from such a special normative value. In fact, the Constitution does not indicate which laws constitute a normative requirement for other laws or which laws must be respected by other laws. Nevertheless, when reading the Constitutional text, one finds some references to the relation between two legislative aspects that are uncoordinated from the formal viewpoint and where one of them is projected to a superior functional and organic plan. As a matter of fact, considering the competences provided for in the Constitution of the Democratic Republic of Timor-Leste for the National Parliament and the Government, one can state that no doubts persist as to the strengthened value of the laws that constitute themselves a basis for other laws, as is the case of the Basic Laws and the Authorization Laws. Moreover, from the reading of article 97.2 of the Fundamental Law, one concludes that the legislator granted the Budgetary Law a status of strengthened value since it says the following: *There shall be no submission of bills, draft legislation or amendments involving, in any given fiscal year, any increase in State expenditure or any reduction in State revenues provided for in the Budget or Rectifying Budgets*. The Democratic Republic of Timor-Leste as consecrated what Gomes Canotilho refers to as the principle of budgetary precedence or the principle of inalterability of the budget by the government.

As a matter of fact, several distinguished legal thinkers point criteria for determining the laws with strengthened value. For Gomes Canotilho (CRP anotada, 1998), such laws are heterogeneous laws, having a parametric value (they benefit from a judicial review system intended to ensure such same value), serving as material basis to the normative discipline of other legislative acts. They are hierarchically superior (they have derogatory capacity, in addition to their own value), and have both procedural form and specificity. For Gomes Canotilho, laws of strengthened value are laws regulating the production of other laws and setting limits to other laws.

For Professor Marcelo Rebelo de Sousa (CRP comentada, Lex 2000 pages 226 et al), the characteristics are almost the same, although by

different words and methodology, for such rules benefit from certain particularities in the regime for their approval (they are approved by a two-third majority) and constitute the basis for other rules. As a residual criterion, Professor Manuel Rebelo de Sousa (ob citada), further states that laws with strengthened value are laws that must be respected by other laws.

A minority doctrine, adopted by Professor Carlos Blanco de Morais (in Justiça Constitucional2 Ed pág 151), refers only to the procedure and the sole criterion for determining a law with a strengthened value. Let us examine closely what Gomes Canotilho says (in "Direito Constitucional", 5 Edição, Coimbra, 1991, pages 874 and 875), where he points to the following criteria for identifying the "material delimitation of laws with strengthened value:

"The criterion of parametricity guaranteed by a judicial review process": "Criterion extensive to all strengthened laws", which allows to "ensure the parametric value of such laws" and "to enable the disapplication or elimination" of those laws that are not in conformity with them;

"The criterion of the material basis of the normative validity": "A law is considered to be a strengthened law in relation to another law or to other laws when such law establishes a content of a parametric nature that must serve as material prerequisite to the normative discipline established by these other legislative acts";

"The criterion of derogatory capacity": "A law is considered to be a strengthened law in relation to another law when such law is capable of derogating the other law without however the latter being liable of derogation by the first";

"The criterion of the form and procedural specificities": "The criterion of the form and procedural specificity translates the idea according to which a law is to be considered a strengthened law when, in constitutional terms, such law is considered as constitutional, thereby benefiting from special form and procedure also constitutionally established. This is what occurs to organic laws".(…) "Their strengthened character serves to underscore the "total reserve" of competence of the Assembly of the Republic and the specific form and procedure of the exercise of such competence.

For his part, Jorge Miranda (in "Funções, Órgãos e Actos do Estado", Lisboa, 1990, page 286 and subsequent pages), starting from a criterion based on a "position of prominence – a functional and non-hierarchical position – in relation to other legislative acts", a position that is "translated into a specific negative formal force, i.e., in the impossibility of such laws to be affected by subsequent laws that are not vested with a similar function, with a removal of the general principle of *lex posterior…*", refers to ordinary strengthened laws as opposed to common ordinary laws.

Starting from here, Jorge Miranda defines the binding links between formal laws, separating the subordination of a specific character (i.e., between certain ordinary laws and certain other laws) from the subordination of a general character (i.e., when no ordinary law may collide with other certain and specific law). Between the binding links of a specific character, Jorge Miranda includes those that occur between laws of legislative authorization and decree-laws, and between laws establishing the general basis of the juridical regimes and the respective decree-laws developing them.

Thus, in the absence of a clear definition, the strengthened value will have to stem from the combination of two essential criteria, i.e., **the criterion of its functional prominence as the material basis of normative validity of other acts and the criterion of its negative formal force as a carrier of a special protection vis-à-vis its derogatory effects produced by a subsequent law**. Both criteria will have to always operate on the basis of the linguistic enunciations contained in the Constitution itself.

Thus, whether one premises the characteristic trait of the "laws with strengthened value" on the position of prominence of a functional nature as translated into a specific formal force, or whether one starts from the idea that one is presented with laws conforming the production of other laws or of laws establishing limits to other laws, such laws, in addition to certain procedural requirements for their approval, are vested with a "relative superiority" vis-à-vis other legislative acts, which derives from their content and which and is a material conditioning factor for the rules to be established by statutes to be published under their direct dependence.

This being the case, the disconformity of the laws or other legislative acts vis-à-vis the strengthened laws, such as the Budgetary Law, would place

us before a phenomenon of unlawful laws or, seen from a different perspective, of indirect unconstitutionality.

Having arrived so far, we can conclude that, although the constitutional text does not refer to laws of "strengthened value", the drafter of the Constitution has established conditions of admissibility for the existence of laws with such value. As a matter of fact, it would be senseless to provide for the possibility of a review of the legality of legislative acts and rules without talking about laws of "strengthened value".

In accordance with the authors of the petition under review, the alleged violation of the law with strengthened value would consist, according to them, in the following:

The drafter of the National Parliament's Rules of Procedure has decided to introduce distinct deadlines for the budget debate. Such deadlines reflect first and foremost a compromise between the interest of the Government in approving the State Budget as soon as possible, the constitutional obligation of the National Parliament to supervise and follow-up the activity of the executive branch, the right of citizens to political participation through their democratically elected representatives (article 46 of the Constitution) and, finally, the right of citizens to experience a responsible citizenship that is guaranteed by the right to information, in this case, the right to information on the State Budget (article 40 of the Constitution);

The opposition Parliament Members have not been able to prevent the Government from interfering in the normal functioning of the National Parliament because the Government did not present the draft law on the State Budget within the temporal limits, thereby forcing the opposition Parliament Members to unanimously agree on the extension of the first legislative session beyond the normal calendar so as to prevent the violation of the deadlines by the Government from becoming an obstacle to the parliamentary rigorous scrutiny;

Can one conclude that the National Parliament's Rules of Procedure currently in force possesses the characteristics allowing it to be considered as a "law with strengthened value"?

First and foremost, it behoves us to examine the juridical nature of the National Parliament's Rules of Procedure.

Pursuant to article 1.1 of the Constitution, the "Democratic Republic of Timor-Leste `is a democratic, sovereign, independent and unitary State based on the rule of law, the will of the people and the respect for the dignity of the human person".

A State based on the rule of law is a State in which, in order to guarantee the rights of the citizens, the division of powers is juridically established and the respect for legality is considered a criterion of action for the ruling authorities.

In its turn, paragraph 2 of article 2 of the Constitution states that: "the State shall be subject to the Constitution and the laws, and paragraph 3 of the same article provides that: "the validity of the laws and other actions of the State and local Government depends upon their compliance with the Constitution.

It follows clearly from here that the Constitution is the fundamental law of the Democratic State based on the Rule of Law which contains the guiding lines of the juridical order of the State, assuming itself as its basis of validity and as the limit to the exercise of the powers established therein.

Thus, both the organs of power and the acts produced by them are subject to constitutional legality, which translates the affirmation of the principle of constitutionality intended to the public-juridical acts.

In modern Democratic States, the establishment of the judicial review of the constitutionality of laws and other normative acts undertaken by the organs of State is one of the greatest instruments of control for complying with, and observing, constitutional rules.

The Timorese Constitution does not individualise the acts subject to principal control of unconstitutionality. Article 126.1(a) states that: it is incumbent upon the Supreme Court of Justice, on legal and constitutional matters, to review and declare the unconstitutionality and illegality of normative and legislative acts by the organs of the State.

Thus, the object of judicial review shall be all rules, irrespective of their nature, form, source or hierarchy.

In order to integrate the concept of "rule" contained in articles 126 and 152 of the Constitution and, clearly, for purposes of review of constitutionality, one cannot start from the classic concept of rule, namely the concept to which the characteristics of generality and abstraction are attached.

Thence, and according to that approach, the need arises to identify a concept of rule that is functionally adequate to the system of review of constitutionality enshrined in the Fundamental Law and is in consonance with its justification and sense.

Such a system however did not target the entire set of activities of the public powers, but only those the objective of which is to "issue rules of conduct", "criteria for decision", or "standards for behaviour valuation".

Anyway, it appears to be certain for us that the "regulation" establishing the rules necessary to the functioning and organisation of the National Parliament, as inserted in its internal competence in conformity with the rule contained in article 95.4(c) of the Constitution, does meet the characteristics of a true rule.

In fact, one has to ponder that the National Parliament's Rules of Procedure contains multiple rules governing the organization and functioning of the National Parliament and provides for rights and duties for National Parliament Members, parliamentary groups, Government Members, and even citizens.

On the other hand, one should not ignore that the National Parliament's Rules of Procedure contains several rules dealing directly with the powers and rights of National Parliament Members, parliamentary groups and political parties represented in Parliament, and that these are powers and rights expressly enshrined in the Constitution.

This being the case, in face of the statutory characteristics of the National Parliament's Rules of Procedure and the possibility that such rules refer directly to clear constitutional rules for the organisation and functioning of that organ of sovereignty, one would have to conclude that

the word “Rules of Procedure” alone cannot lend itself to exonerating its rules from the nature of normative acts and, as such, liable to constitutionality review where applicable.

As a matter of fact, one should look at it as a specific or *sui generis* normative act (although not a legislative act), an expression of internal normative autonomy (see Gomes Canotilho e Vital Moreira, *Constituição da República Portuguesa Anotada, 2ª ed., pp. 225 e 236,* and Jorge Miranda, *Estudos sobre a Constituição,* 1º vol., p. 294).

Once concluded that the National Parliament’s Rules of Procedure constitutes a real normative act, the problem now is to find out whether there is any illegality in Law No. 12/2008 of 5 August for violating provisions of the National Parliament’s Rules of Procedure.

The authors of the petition allege that the rules referring to the specific deadlines relating to the process of debate and approval of the General State Budget have not been complied with, which led to a violation, by the parliamentary majority, of the rights of political participation as provided for in articles 43 and 63 of the Constitution of the Democratic Republic of Timor-Leste, but also the right to democratic opposition enshrined in article 70 of the Constitution.

It is the understanding of the opposition Parliament Members that, using its parliamentary majority, the Government violated the National Parliament’s Rules of Procedure which would otherwise guarantee a serious and transparent legislative process for approving the budget.

The opposition Parliaments Members also state that several deadlines contained in the Rules of Procedure were violated, particularly the minimum deadline of 3 days for the general debate, and that the debate was prevented from occurring since the Chair did not give the floor to the opposition Parliament Members for the period of time provided for in the Rules of Procedure.

A relevant issue at this point is to find out whether there is any illegality in Law No. 12/2008 of 5 August for violating provisions contained in the National Parliament’s Rules of Procedure. In other words, whether the National Parliament’s Rules of Procedure constitutes itself a rule of “strengthened value”.

On this regard, Carlos Blanco Morais, *in Justiça Constitucional 2 Ed. Page 151,* states that: "it is worth elucidating that formal unconstitutionality derives solely from the conformity of the formation of an act with the rules relating to its production and revelation as reflected in the Constitution.

If the normative act affronts the rules relating to its formation contained in "*interna corporis*" rules, such as governmental or parliamentary rules of procedure, no unconstitutionality shall result from such fact since such atypical rules segregated by the political function "*strictu sensu*" do not posses an imperative character. Rather, they possess an ordering character in their relation with the rules produced pursuant to them".

This being the case, notwithstanding the fact the National Parliament's Rules of Procedure constitute a normative act directly executing a constitutional command, its violation does not amount to a case of illegality subject to jurisdictional control.

In any case, as regards the question relating to the fact that the Government did not present the rectifying budget proposal within the temporal limits, it behooves us to state that the authors of the petition themselves allege that, in the face of the delay, a decision was made by all the parliamentary groups to extend the legislative session for the period deemed necessary in order to comply with the provision contained in the National Parliament's Rules of Procedure for debating the budget.

For such reasons, no violation is found here insofar as the National Parliament's Rules of Procedure is concerned.

As regards the other provisions of the National Parliament's Rules of Procedure that were violated, i.e., the non-observation of the agreement established insofar as the methodology to be used in the debate of the law is concerned; that the debate only lasted two-and-a-half days when it was anticipated that it should last three days; that no opportunity was granted to the opposition National Parliament Members during the debate, with the Chair preventing them from taking the floor; that votes were taken in the specific debate without a previous debate having taken place; that the Chair made an incorrect interpretation of the National Parliament's Rules of Procedure and the debate guide, thereby preventing the opposition Parliament Members from taking the floor for the number of times actually provided for in the National Parliament's Rules of Procedure and in the

debate guide; and the unlawfulness of the conduct of the Speaker of the National Parliament during the debate and approval works of the Budgetary Law.

Now, in the face of these irregularities, what the National Parliament Members should have done was to file an appeal with the Plenary on the decisions made by the Speaker or the Chair, as provided for in article 62 of the Parliament's Rules of Procedure, and not raise such a question with the Court of Appeal. It is true that the situation may amount to a limitation of the monitoring activity of the opposition. However, such a question is not to be settled by this Court. On matters of constitutionality, it is not the responsibility of this Court to monitor the other organs of sovereignty, but only their legislative and normative acts.

This being the case, here again the request of the authors of the petition is dismissed.

Let us now move on to the second question raised by the authors of the petition.

2 – Conformity of the provisions of articles 1 and 2 of Law 12/2008 of 5 August vis-à-vis the provisions of article 145.2 with reference to articles 2.2 and 97.2 of the Constitution of the Democratic Republic of Timor-Leste (non-discrimination of public expenditures).

As regards this issue, the authors of the petition allege, in summary, that:

- A Fund was established "with" the Ministry of Finance, financed by the State Budget. Such Fund is autonomous and no detailed itemization exists insofar as its revenues and expenditures are concerned;

- The Budgetary Law allocated US$240,000,000 to the Fund without however indicating its purpose, thereby allowing the existence of a parallel budget within the State Budget itself.

- The afore-mentioned amount (US$240,000,000) is not duly itemized and this renders the Ministry of Finance accountable for the execution of US$332,028,000 from a total of US$788,312,000, or 42% of the total of the rectified State Budget.

Now,

The need arises first and foremost to identify a constitutionally adequate concept for "budget". Essentially, and based on the criteria provided by both the juridico-constitutional and the juridico-financial doctrine, this concept will move around the nature of the Budgetary Law, the scope of its normative contents, and the limitations related to its preparation and approval.

Sousa Franco (in "Finanças Públicas…" cit, page 336), defines Budget in terms of Public Finance as the anticipation, usually on an annual basis, of the expenditures to be incurred by a State as well as of the processes for covering such expenditures, including the authorization granted to the Financial Administration to collect revenues and incur expenditures while at the same time limiting the financial powers of the Administration in every given year".

This notion, taken separately, inculcates the idea that the Budget is but a mere accounting framework, a forward-looking accounting of revenues and general State charges, including those charges originating from commitments previously undertaken by the State either.

On its part, António Lobo Xavier ("O Orçamento como lei", I Parte, in "Boletim de Ciências Económicas" of the Coimbra Law School, volume XXXIII, 1990, page 258), states that "the financial competences of Parliaments are no longer focused essentially by the angle of their garantistic role – and are no longer models of political affirmation. What essentially singles out is their organizatory aspect. In other words, normative acts dealing with essential elements of taxes or that express the budgetary decision are, the competence of the City Councils, not because, in so doing, they would limit the power of the Executive for the benefit of the freedom and property of citizens, but because the most relevant domains for the life of the democratic State requires the position of the Parliament as an institution." This author therefore distinguishes two different historical moments as regards the juridico-political meaning of budget: "one therefore finds a "budget essentially concerned at registering the revenues and expenditures and setting limits, and a "budget essentially reflecting a programme-type budget" as an instrument that characterizes the modern financial activity. Likewise, we can separate the time when the principle of

legality meant self-taxation from the time when such principle meant essentially a mere aspect of the functional organization of democratic finances".

Confronted with such a proposal however, the Parliament is called to formulate an intrinsic valuation on the respective merit and to jointly assume or reject the political options contained therein – in such a manner that the political options merge with the Parliament's decision to express that "concertation" between the powers of the State already referred to by Montesquieu as a necessary requirement of the separation of powers. This therefore means that, by voting the proposals put forward by the Executive, the Parliament makes a political decision of an undeniable "material" character.

Before such a framework of analysis, the same author concludes therefore that "the Budgetary Law is not a mere "authorization law", a law that approves or controls the budget. Rather, it incorporates or translates really substantial politico-normative decision. By approving the budget, the Parliament does not limit itself to allowing the Government to prepare the budget, but it also participates in its definition and, ultimately, the Parliament itself determines the fundamental guidelines of the policy to be pursued through the implementation and execution of such an important document. In summary, more than a mere authorization, what the Budgetary Law incorporates is the (parliamentary) definition of a global framework, expected to be coherent, of the financial, even economic-financial, policy to be adopted in a given year." (op. cit, pages 422-423).

Underscoring the same aspect of this issue, Sousa Franco ("Finanças Públicas…"cit., page 339) states that "the Budget is a political authorization aimed at achieving two orders of effects, as follows:

a) A guarantee of the fundamental rights: it is ensured through budgetary discipline that private property is only taxed insofar as it is consented by the representatives of the owners (the National Parliament Members); in a less liberal perspective, it guarantees that incomes shall only be taxed in order to cover public expenditures against a decision by the representatives of the holders of such incomes – workers, owners, capitalists (who, as citizens, are represented by the National Parliament Members);

b) A guarantee of the checks and balances, since through the the political authorization mechanism at the responsibility of the Parliamentary Assembly, the latter is granted an important financial role".

In the face of the afore-mentioned doctrinary positions on a constitutional text that is very similar to the Timor-Leste's Constitution, we may then conclude that, based on the Constitution currently in force in this country, the Budgetary Law is a special material law, not confined in its contents to the mere accounting framework of revenues and expenditures, approved pursuant to the political and legislative competences of the National Parliament.

Thus, the Budgetary Law does not have a mere financial-accounting character (i.e., simply confined to anticipation and programming of State revenues and expenditures). Rather, it consists in a fundamental and determining instrument for the integrated definition of the entire economic and financial policy for a given economic year.

Article 145.1 of the Constitution of the Democratic Republic of Timor-Leste provides that the State Budget shall be prepared by the Government and approved by the National Parliament.

Paragraph 2 of the same article states that the Budget law shall provide, based on efficiency and effectiveness, a breakdown of the revenues and expenditures of the State, as well as preclude the existence of secret appropriations and funds.

On this subject matter, Sousa Franco, in Finanças Públicas e Direito Económico, 1995, page 353, states the following:

The rule of the specification tells us that the Budget must sufficiently specify or itemize each and every revenue and expenditure.

The basis of the rule of specification lies on the need of clarity and on the very objectives of the budgetary institution, which would not be met without observing this requirement.

Still on this subject matter, Teixeira Ribeiro, in Lições de Finanças Públicas, 5 edição, page 60, states that: “Nevertheless, if the revenues and the expenditures were to be anticipated globally and not in an itemized manner, the budget would not indicate to us the several sources from where the State obtains its resources nor the several expenditures to be incurred by each and every public service. In other words, we would not have a real statement of the financial plan”.

From reading article 145 of the Constitution, one concludes that, as far as Timor-Leste is concerned, the Constitution expressly imposes the need to itemize the revenues and the expenditures in order to prevent the establishment of secret funds.

In accordance with the opposition Parliament Members, this rule would have been violated since the possibility alone of the Government to dispose of US$240,000,000 without the respective justification would jeopardize the itemization of the budgeted expenditures.

With the approval of the State Budget, the National Parliament authorizes the undertaking of expenditures provided therein and, on the other hand, it opens credits with a view to undertaking such expenditures.

Article 95.2(q) of the Constitution states that it is incumbent upon the National Parliament to make laws on the budget system.

In its turn, article 115(d) states that it is incumbent upon the Government to prepare the State Plan and the State Budget and execute them following their approval by the National Parliament.

It is therefore incumbent upon the Parliament to approve the document that anticipates the annual revenues and expenditures as duly authorised and it is the responsibility of the Executive not only to present the respective proposal, but also to execute the approved Budget.

Thus, while it is the responsibility of the National Parliament to approve the Budget, the responsibility for its execution lies with the Government.

Several conclusions can be drawn from this essential principle, the most important of which are the following:

- It is a must for the Budget approved by the National Parliament to meet the minimum requirements in terms of specifying the revenues and expenditures;

- The National Parliament cannot authorize the Government to amend the Budget.

- Such constitutional principle of sharing competences between the Parliament and the Government is translated necessarily into granting the Parliament the competence to decide on the politically meaningful options on budgetary matters: volume of global revenues and expenditures, options in terms of expenditures and distribution in accordance with certain political criteria, and appropriations of each budget line. The Parliament cannot delegate its competence on these issues to the Government, nor can it renounce its exercise of this competence, leaving the Government with more or less discretionary powers.

Now, approving the budget in the form of a law by the National Parliament without specifying the expenditures allows the Government to execute and amend it in the manner it finds fit. In this regard, Teixeira Ribeiro in Lições deFinanças Públicas teaches us that, by approving the Budget, the Parliament determines not only the total amount of expenditures but also the total amount of the expenditures for each and every chapter and each and every function and sub-function. That is why the Government is in principle prevented from transferring appropriations from chapter to chapter and from a function to a function or from a sub-function to a sub-function, including from covering credits resulting in an increase of the total amount of expenditures of the Budget or of the expenditures of any chapter and of any function or sub-function".

In his turn, Sousa Franco, in Estudos Sobre a Constituição Financeira de 1976-1982, n. 510, states that ***The Budget may be amended as long as its initial form is respected: Government's legislative initiative (due to its exclusive and undelegatable competence in this domain) and amendment through a revision law.***

Thus, once the Budget has been approved, the Government becomes bound by the inferior levels of specification of that document insofar as the organic, the chapters and functional classifications are concerned.

Having arrived so far, the need arises now, based on the constitutional framework, to know whether the establishment of the budget line **Economic Stabilisation Fund**, article 1.3 of Law No. 12/2008, violates the constitutional norms relating to the principles of discrimination of expenditures, provided for in article 145.2 of the Constitution of the Democratic Republic of Timor-Leste, and whether the National Parliament, by instituting such figure and allocating it that amount, failed in the full exercise of its own and exclusive competence and whether it unduly delegated budgetary competences to the Government.

Now, by allocating the amount at stake in the map of expenditures, to the Ministry of Finance, without such map of budgetary expenditures expressing a real allocation of revenues by several expenditures, the National Parliament is granting the Government, more precisely the Ministry of Finance, a competence to decide on an extensive area of the expenditures budget.

The relation of expenditures anticipated in the maps approved by the Parliament may be significantly amended by the Government. And no one can argue that such a possibility does not exist, since the Economic Stabilisation Fund is provided for in Decree-Law No. 22/08 of 16 July and its objectives are defined therein. In fact, no one can identify which amounts are for what expenditures. In order to materialize the contents of such statute and taking into account the amount contained in the expenditures map, the Government should have indicated the amounts contained in its proposal relating to each and every item provided for in article 2 of the Decree-Law mentioned above.

Unless this is done, no one can know the objectives of the Fund and what amounts the Government intends to allocate to each item.

With such a budget line, particularly taking into account the amount included in the expenditures map and the global amount of the State Budget, the competence exclusively reserved to the National Parliament on budgetary matters is invaded by the Government. In other words, in addition to the task of executing the Budget, the Government acquires another

competence, that of deciding on the Expenditures Budget, thereby intervening also in the concretization of a dimension of the very budget plan.

No one can argue against this conclusion with the fact that it was the National Parliament itself which approved the budget line at stake and respective budget allocation. Similarly, no one can argue that, in the execution of the Budget, a certain area of discretionarity will have to be involved.

As we already stated, the Expenditures Budget's main function is to limit expenditures for each and every budget line, without however implying a real obligation of expenditures unless it stems from a law or a contract. As a matter of fact, the Government may, for this reason, make savings by not depleting the budgeted credits. What **it cannot do** is to amend the very budgetary allocations.

Thus, by granting the Government the allocation under review, the National Parliament gave the Government a"blanc cheque" in an amount of two hundred forty million American dollars, thereby providing the Executive with a discretionary power in an extensive area insofar as the Expenditures Budget is concerned.

It is therefore a power that the Government cannot have and that the National Parliament cannot confer to the Government.

Now, if, on one hand, the power vested on the Executive may be perceived as an increased management rationality, on the other hand it leads to major difficulties of practical concretization in terms of political and administrative control, including difficulties for the global planning.

Thus, the itemization of expenditures required by the Constitution is grounded on veracity, exactness, transparency, rigour, freedom and precision of the political authorization and the corresponding administrative binding.

As stressed by the Economy, Finance and Anti-Corruption Commission, one can assert that the allocation of funds of the State Budget to the Economic Stabilisation Fund "implies an exercise of disbudgeting (a blanc cheque), because the Parliament grants the Government the possibility to expend such funds in the manner it finds fit, does not keep any control

over possible revenues, i.e., exempts the Parliament from exercising the functions ascribed to it by the Constitution.

Therefore, one has to conclude that there was a violation to the constitutional rule regarding the specification of expenditures provided for in article 145.2 of the Constitution.

There is also a violation to the constitutional rules defining the budgetary competence of the Parliament and the Government contained in articles 95.1(q) and 115(d) of the Constitution.

Let us now analyse the third issue raised by the applicants.

3 – By concentrating over 50% of the budget in the appropriations under the responsibility of the Prime Minister and the Ministry of Finance, with the Government retaining 97% of all budget appropriations, isn't the Law compromising the principle of the separation of powers?

Does the Rectifying Budget Law provide the other State organs with budgetary appropriations enabling them to fully exercise their competences?

On this issue, the applicants allege, in summary, that the manner in which the appropriations have been distributed through the different organs of sovereignty does not lead to a balance among the executive, legislative and judicial branches of power since it does not ensure, particularly for the Presidency of the Republic and the Courts, the financial conditions for their institutional development.

They also allege that the budget under review compromises the separation and interdependence of powers since it does not allow the materialisation of their respective programmes and activities nor the exercise of their constitutional functions.

Let us now find out whether this is actually the case.

The principle of separation of powers is enshrined in article 69 of the Constitution and it states that: The organs of sovereignty, in their reciprocal

relationship and in the exercise of their functions, shall observe the principle of separation and interdependence of powers established in the Constitution.

The Timorese Constitution enshrined the principle of separation of organs of sovereignty as a fundamental principle of the State based on the rule of law, which translates a sharing of legislative, executive and jurisdictional functions and their distribution to different organs, i.e., the National Parliament, which is the adequate organ to legislate, the Government, to execute and administer, and the Courts, to exercise jurisdictional functions.

A violation to the principle of separation of powers exists whenever an organ of sovereignty grants itself a competence to exercise functions that are essentially conferred to another, different organ of sovereignty outside of the cases expressly allowed or imposed by the Constitution.

Taking into account the organic and functional classification of the Rectifying Budget Law, there may be somebody, as is the case of the authors of the present petition, who may think that, on the moral or political plan, the decision of the legislator to favour the Government to the detriment of other organs of sovereignty of the State is censurable, but this is not the case on the juridical-constitutional plan, where the Constitution recognizes the legislator to have a wide margin of manoeuvre in the normative densification of the applicable principles.

One has to take into account that the Constitution does not contain any provision relating to amounts due for each and every organ or function of the State or to the manner in which such amounts should be calculated. Article 145.2 of the Constitution states that: "The Budget Law shall provide, based on efficiency and effectiveness, a breakdown of the revenues and expenditures…". The Constitution therefore does not contain any constitutional imposition vis-à-vis the ordinary legislator as regards the sharing of public resources among the different organs of the State. Although the Constitution does not state the manner in which such sharing is to be calculated, one should infer that such sharing cannot be reduced to such an amount that would prevent the efficiency and efficacy in the sharing of public resources and compromise the essential core of the functions of each and every organ of sovereignty of the State. But no one can talk of a given amount guaranteed constitutionally, in each and every economic year, for each and every organ or function.

It also behoves to say that the constitutional principle of efficiency and efficacy relating to the revenues and expenditures depends, to a large extent, on the densification left at the discretion of the legislator, who has the responsibility to define the criteria for sharing the revenues and expenditures. This being the case, the function of the Court of Appeal on constitutional matters will essentially be a function of "controlling the limits" of the action of the legislator. In other words, it is not incumbent upon this Court to establish whether the manner in which the distribution of revenues is the most adequate way to ensure the distribution of public resources among the different organs of the State, for such options result exclusively from the forum of political options.

It is inferred from the above-mentioned background that the Constitution allowed the ordinary legislator a wide margin of manoeuvre in the normative densification of the contents of the criteria presiding its determination as well as the type of variation of the amount resulting thereof.

Since there is no constitutional imposition as regards the concrete amount of the State Budget for any given organ or function of the State in each economic year, no one can anticipate that the amounts under review put at stake the constitutional principles referred to by the opposition National Parliament Members.

As Gomes Canotilho puts it (Direito Constitucional page 1160), the Constitution is the "*supreme law of the land*". It establishes and sets limits to the State political power which, in this manner, is not an unconditioned power, but rather a power constitutionally conformed". Gomes Canotilho also states that the judicial control of the decisions made by politically accountable organs can only be acceptable (and possible) where the constitutional text, i.e., the genetic element of interpretation ("the will of the founding fathers") and the constitutional delimitation of competence enable to deduce a clear "rule" that serves as a safe parameter to the idea of constitutionality."

What would amount to a violation of the principle of separation of powers would be to allow the Court of Appeal to interfere in the free determination of the budgetary amounts to be distributed in the framework of the State Budget. The political options are to be reviewed by its proper instance, i.e., by the popular sovereignty.

Thus, the request of the opposition National Parliament Members on this subject matter is dismissed.

Let us now look at the last issue raised by the authors of the petition.

4 – Conformity of Law No. 12/2008 of 5 August with the provisions of article 139 of the Constitution of the Democratic Republic of Timor-Leste and articles 1, 7, 8, 9 and 10 of Law No. 9/2005 of 3 August (funding of the budget through the Petroleum Fund).

As regards this issue, they say, in summary, the following:

That the State Budget if financed in 88% by the Petroleum Fund;

That the Government intends to transfer the amount of US$686,800,000, thus exceeding the Estimated Sustainable Income by US$290,700,000;

That funding of the State Budget can only be considered lawful and constitutional where is done to a maximum amount of US$396,100,000;

That the Constitution determines the establishment of mandatory financial reserves in order to ensure the sustainable development of the country and that such reserves may not be tempered with except under very exceptional circumstances;

That, pursuant to the Law, the Government must demonstrate to the Parliament that the transfer of an amount exceeding the Estimated Sustainable Income not only should not have a negative impact on future generations, but should correspond to the interest of Timor-Leste in the long-term;

They conclude by stating that the Government did not demonstrate that the exceeding amount, US$290,700,000, will benefit the country in the long-term, thereby violating articles 1, 2 and 139 of the Constitution of the Democratic Republic of Timor-Leste, as well as subparagraph d) of article 9 of Law No. 9/2005 of 3 August.

Decision

Let us examine the provisions at stake.

Article 139 of the Constitution of the Democratic Republic of Timor-Leste.

1 – The resources of the soil, the subsoil, the territorial waters, the continental shelf and the exclusive economic zone, which are essential to the economy, shall be owned by the State and shall be used in a fair and equitable manner in accordance with national interests.

2 – The conditions for the exploitation of the natural resources referred to in item 1 above should lend themselves to the establishment of mandatory financial reserves, in accordance with the law.

3 – The exploitation of the natural resources shall preserve the ecological balance and prevent destruction of the ecosystems.

Article 4 of Law No. 9/2005 of 3 August.

For the purposes of this Law, in the event of any inconsistency between the provisions of this Law and the provisions in the law of Timor-Leste on budget and financial management, or between the provisions of this Law and the terms of a Petroleum Authorisation, the provisions of the present Law shall prevail.

Article (transfers)

1 – Subject to article 6.3, the only debits permitted to the Petroleum Fund are electronic transfers made in accordance with present article, as well as articles 8 to 10, to the credit of a single State Budget account.

2 – The total amount transferred from the Petroleum Fund for a Fiscal Year shall not exceed the appropriation amount approved by Parliament for the Fiscal Year.

3 – Subject to articles 8 to 10, transfers from the Petroleum Fund by the Central Bank in the Fiscal Year shall only take place after publication of the budget law, or any subsequent changes thereto, in the Official Gazette, confirming the appropriation amount approved by Parliament for that Fiscal Year.

Article 9 (transfers exceeding the Estimated Sustainable Income)

No transfer shall be made from the Petroleum Fund in a Fiscal Year in excess of the Estimated Sustainable Income for the Fiscal Year unless the Government has first provided Parliament with:

a) the reports described in paragraphs 8(a) and 8(b);

b) a report estimating the amount by which the Estimated Sustainable Income for Fiscal Years commencing after the Fiscal Year for which the transfer is made will be reduced as a result of the transfer from the Petroleum Fund of an amount in excess of the Estimated sustainable Income of the Fiscal Year for which the transfer is made;

c) a report from the Independent Auditor certifying the estimates of the reduction in Estimated Sustainable Income in paragraph (b) above; and

d) a detailed explanation of why it is in the long-interest of Timor-Leste to transfer from the Petroleum Fund an amount in excess of the Estimated Sustainable Income.

Article 4 of Law No. 10/2007 of 31 December (Budget Law) had the read as follows:

Pursuant to, and for the purposes of, article 7 of Law No. 9/2005 of 3 August, the amount of the transfers from the Petroleum Fund for 2008 shall not exceed US$ 294 million and is only made upon compliance with article 8 and 9 of the aforementioned law.

As we noticed above with regard to the issues raised by the applicants, the system of monitoring the legitimacy of norms also comprises the control of legality of laws.

Thus, the question now is to find out what is the relation between the Law on the Petroleum Fund and the Rectifying Budget Law, i.e., whether there is a binding relation between the second in relation to the first or, inversely, the Rectifying Budget being an ordinary law of equal formal value, it can contradict and prevail on account of being a *lex posterior*.

According to Gomes Canotilho, the Budget Law is considered today to be a material law and not a mere formal law and, in principle, nothing prevents it from altering or revoking existing material laws. It will only amount to na illegality where the altered or revoked law is a "strengthened" law – Professor Gomes Canotilho "A lei do Orçamento na teoria da lei, Estudos em Homenagem ao Prof. Teixeira Ribeiro "Boletim da Faculdade de Direito de Coimbra II, pág. 558.

For one to be able to speak of illegality of the Rectifying Budget Law for not observing the rules contained in the Petroleum Fun Law, one will have to conclude that this Law was elevated to a standard of control of legality of other rules that disrespect it, having, therefore, a standardizing status.

Taking into account the contents of the Petroleum Fund Law, one notices that this law generates obligations of a financial nature imposed to the State and binding the State Budget, and as a law that materializes the constitutional principle relating to the use of natural resources, consecrated in article 139.2 of the Constitution, it appears that it is an ordinary law of a specific binding nature.

To strengthen this idea let us look at the contents of the preamble of that Law: "*This Law establishes a Petroleum Fund which seeks to meet with the constitutional requirement laid down in article 139 in the Constitution of the Republic. Pursuant to this provision, petroleum resources shall be owned by the State, be used in a fair and equitable manner in accordance with national interests, and the income derived therefrom should lead to the establishment of mandatory financial reserved.*"

…The Petroleum Fund is to be coherently integrated into the State Budget, and shall give a good representation of the development of public finances. It shall prudently managed and shall operate in an open and transparent fashion, within the constitutional framework."

Where this is the case, the contents of article 4 of the Rectifying Budget may amount to an illegality based on its violation of a law with strengthened value since its changes the amount of the Estimated Sustainable Income to be transferred to the State Budget in the present fiscal

year thereby altering and neutralizing, in this part, the rules of the Petroleum Fund Law.

Although the Constitution does not recognize the nature of laws with "strengthened value", the drafting of article 95.2(l) and (m), article 97.2, article 126.1(a) point to the fact that such a strengthened value may be recognized to other legislative acts that violate these other laws. See the case of the State Budget the strengthened value of which is expressly recognized in article 97.2 of the Constitution.

Jorge Miranda (Funções, Órgãos e Actos pág 278), in respect to strengthened ordinary laws, states that: such laws are attached to a position of prominence of a functional nature, other than of a hierarchical nature, which is translated into a specific negative formal force. Such laws cannot be affected by posterior laws that do not posses the same function and, therefore, in such cases, the principle "*lex posterior lex anterior derrogat*" (a posterior law shall be construed to repeal an anterior one) cannot be applied.

In this framework, can the Petroleum Fund Law, for the present purposes, i.e., its confrontation with the Rectifying Budget Law, be considered as a "law of strengthened value?".

In the absence of a clear definition, as we already saw above, the strengthened value will have to derive from the combination of two essential criteria, i.e., the criterion of the functional prominence as material basis of normative validity of other acts and the criterion of its negative formal since it carries a special protection in the face of the derogatory effects produced by a posterior law.

In any case, such criteria will have to take into account the linguistic expression of the Constitution itself. Article 139.2 does not constitute a sufficient element to enable to conclude that, in the constitutional system, the Petroleum Fund Law benefits from a strengthened law. As a matter of fact, the provision according to which the establishment of mandatory financial reserves is to take place pursuant to the law, the Constitution contains such reference in several other precepts.

Thus, nothing derives from the linguistic expression that the Petroleum Fund Law constitutes a material basis of validity of any other law,

or that it benefits from a special derogatory capacity, or from protection in the face of its derogation by a posterior law. However, even in the absence of a specific indication in the letter of the Constitution, by making a teleological interpretation, it is our understanding that the Petroleum Fund Law is a "constitutionally necessary" law in the sense that it has the responsibility to define a legal framework on the utilization of the natural resources by virtue of the special function granted to it by the Constitution and of the importance for the country in current and future terms.

It is also certain that the Constitution does not postulate any system of self-binding of the Parliament to the juridical regime of utilization of natural resources. However, in any case, we can talk of a self-binding of the Parliament resulting from the ordinary law itself, having in sight the establishment of a model of guarantee in relation to the fair utilization of the natural resources.

As a matter of fact, it is clear from the text of the Petroleum Fund Law – article 4 – that the National Parliament consecrated a self-binding insofar as the relations between this Law and the Budget Law.

This being the case, there are no doubts that the Petroleum Fund is a "law with a strengthened value" in nature.

It results clear from the studies cited by the distinguished Members of Parliament, as well as from the combination with the revoked article 4 of Law No. 10/2007 of 31 December and Law 12/2007 of 5 August, that the amount of transfers from the Petroleum Fund for the fiscal year 2008 exceed the amount of the Estimated Sustainable Income for this year. In fact, from the opinion of the Petroleum Fund Consultative Board, the report of Delloite Touche Tomatsu, and the opinion of the Economy, Finance and Anti-Corrpution Commission, attached to the records, the calculation of the Estimated sustainable Income for the Fiscal Year 2008 is US$ 396.1 million, whereas the amount to be transferred is US$ 686.8 million.

It now remains to find out whether the mandatory requirements and those of cumulative verification provided for in articles 8 and 9 of the Petroleum Fund have been complied with and, if not, what would be the consequences.

From the reading of that Law and in combination with article 139 of the Constitution, we notice that, as contained in the Report and Opinion of the Economy, Finance and Anti-Corruption Commission, attached to the records, its main objective has to do with the wise management of the oil resources in such a manner that the current and future generations may benefit from such resources in the long-term.

Both the legislator of the Constitution and the ordinary legislator were careful in the utilization of the natural resources of Timor-Leste since they reveal a concern, not only with the present, but also with the quality of life of the future generations. Thus, the natural resources of Timor-Leste, particularly the oil resources, must be utilized in such a manner as to ensure a sustainable development where an economic growth that is friendly to environment and to people is guaranteed, where the factors of social cohesion and equity based on the solidarity among generations are incremented. The utilization of the Natural Resources will only benefit the current and future generations if the measures that ensure a balance between the economy, society and nature are incremented.

Now, looking at Law No. 12/2008 of 5 August, which gave a new drafting to article 4 of Law No. 10/2007 of 31 December by altering not only the value of the transfers from the Petroleum fund to an amount exceeding the Estimated Sustainable Income for the current fiscal year, thereby enabling that such transfers be made without observing the requirements provided for in articles 8 and 9 of the Petroleum Fund Law, and considering further the "strengthened value" of the referred Law, it results that Law No. 12/2008 suffers from the defect of illegality where it determines that the transfers from the Petroleum Fund exceed the Estimated Sustainable Income.

Moreover, the Report and Opinion of the Economy, Finance and Anti-Corruption Commission states that, at the time of presenting the draft law on the alteration of the State Budget, the Government did not meet the requirements contained in subparagraph d) of article 9 of Law No. 9/2005, i.e., detailed explanation in the interest of Timor-Leste in the long-term. The same report also states that the Government did not provide a detailed explanation on the reasons that lead to consider that it is in the interest of Timor-Leste in the long-term that such transfer in an amount exceeding the Estimated Sustainable Income is being undertaken.

Therefore, one should conclude that rule no. 3 of article 1 of Law No. 12/2008 of 5 August is unlawful in that part where it determines the amount of the transfer from the Petroleum Fund Law for 2008 in an amount exceeding US$396,100,000 (three hundred million one hundred thousand American dollars).

5 – Effects of the declaration of unconstitutionality and illegality with general binding effect.

Having arrived here, it behooves us to find out the effects of the declaration of the afore-mentioned unconstitutionality and illegality.

No rule is found in the Constitutional text that regulates the effects of the declaration of unconstitutionality with general binding effect nor of the illegality of legislative acts.

The declaration of unconstitutionality with general binding effect means, first and foremost, the binding of the very legislator to the decision of the Court of Appeal, i.e., he or she cannot re-edit rules deemed to be unconstitutional or neutralize or contradict the declaration of unconstitutionality or of illegality.

Moreover, decisions of the Court of Appeal declaring, in an abstract manner, the unconstitutionality or illegality, have a general binding effect because they bind all constitutional organs, all the courts and all administrative authorities.

The declaration of unconstitutionality with a general binding effect of a rule implies the invalidation of the same rule and causes it to disappear from the juridical order, i.e., its effects date back to the commencement of its entry into force (article 153 of the Constitution of the Democratic Republic of Timor-Leste).

Thus, as a matter of rule, the declaration of unconstitutionality with a general binding effect yields effects from the date of entry into force of the rule declared to be unconstitutional and it is intended with it to also materialize an idea of justice. However, as stated by Oliveira Ascenção (O Direito – Introdução e Teoria Geral p. 166)" if justice is blindly pursued, without attending to security matters, the instability of social life will annul whatever is theoretically obtained".

Thus, one will have to combine the value of justice with that of juridical or legal security, which is why, in certain cases, it would be advisable to limit the effects of a declaration of unconstitutionality.

Such limitation will have to be understood as a means to mitigate the risks of uncertainty and insecurity that a declaration of unconstitutionality with a general binding effect would entail, particularly in a case like the one under review.

Thus, taking into account the teachings of Guilherme Moura in Instituições de Direito Civil Vol I p 70 when he states that: "the Confidence in the existing laws, the certainty that they will produce the effects …the facts undertaken in harmony with its prescriptions, the respect for the interests created under the guarantee of the law, form the genuine basis of authority and the binding force of the laws and, through them, of the social order", it is our understanding that the effects resulting from the decision of this Court are to be limited.

As a matter of fact, we cannot refrain from taking into account the fact that the rules to be declared unconstitutional and unlawful by this Court of Appeal have general binding effects as well as a direct financial and budgetary incidence. For this reason, on grounds of certainty and juridical security, it is all the more prudent that we limit the effects of that declaration so as to prevent the financial and budgetary operations already undertaken in the framework of such rules from ceasing suddenly to have legal coverage.

In the face of the above, a decision is made to limit the effects of the declaration of unconstitutionality and illegality in order to safeguard the acts of a financial or budgetary nature undertaken up to the date on which the present decision is communicated to the National Parliament.

DECISION

Thus, in consideration of the above, the Court of Appeal:

a) declares the unconstitutionality of article 1.3(o) of Law no. 12/2008 of 5 August in what refers to the allocation of US$240 million to the Economic Stabilisation Fund, and that such declaration shall be mandatory and general in nature;

b) declares the illegality of article 1.3 of Law no. 12/2008 of 5 August in what refers to the setting of the amount to be transferred from the Petroleum Fund in 2008 in excess of 396,100,000 (three hundred million [*sic*] and one hundred thousand American dollars);

c) does not declare the unconstitutionality of the remaining provisions included in the petition submitted by the Members of Parliament, and that such declaration shall be mandatory and general in nature;

d) does not declare the illegality of the remaining provisions included in the petition submitted by the Members of Parliament, and that such declaration shall be mandatory and general in nature;

e) sets limits to the effects of the declaration of unconstitutionality and illegality in order to safeguard the financial and budgetary decisions already made up to the date of publication of this decision.

To be published in the Official Gazette pursuant to article 153 of the Constitution of the Democratic Republic of Timor-Leste and article 5.2(k) of Law no. 1/2002 of 7 August.

Dili, 27 October 2008

The Judges of the Court of Appeal

[signed]
Ivo Nelson de Caires Batista Rosa
(rapporteur)

[signed]
Cláudio Ximenes

[signed]
José Luís da Goia