

MEDEL RESOLUTION

THE INDEPENDENCE OF JUDICIAL POWER IN EAST-TIMOR

PORTUGUESE JUDGES AND PROSECUTORS WORKING IN EAST-TIMOR

Judges, prosecutors and public defenders, mostly from Portuguese-speaking countries, have formed part of Timor-Leste's judicial system since the restoration of independence in 2002. Others work as judicial advisers in associated bodies like the Anti-Corruption Commission and the Judicial Training Centre. Over time, suitably trained East Timorese have progressively replaced these positions. Some 50 current judicial officers are foreign nationals, including an estimated 12 per cent of judges. International judges are required by law to have five years' experience.

The parliament and the government of East-Timor have decided to expel several Portuguese Judges and Prosecutors who were there because of those agreements (East-Timor parliament Resolution n.º 11/2004 from 24/10 and government Resolutions n. 29/2014 from 24/10 and 32/2014 from 31/10).

Those judges and prosecutors were seconded to East-Timor under an international cooperation agreement but were assuring in full their judicial tasks.

There is deep speculation over the meaning of the resolution, but the response seems to be conflating a number of issues. It should be noted that the resolutions were adopted precisely in the week when a trial should start against high members of the East Timorese Government charged of corruption.

Timor-Leste's Constitution provides guarantees for the separation of powers, and for judicial independence. As in other jurisdictions, judges cannot be dismissed by a simple parliamentary motion. This requires a process of the Superior Council of the Judiciary (*Conselho Superior da Magistratura Judicial*), which has managerial and disciplinary oversight of judicial officers. Such processes are addressed to individual judicial officers accused of misconduct or poor performance.

The SCJ (CSMJ) comprises the president of the Court of Appeal and members appointed respectively by the president, the government, parliament and the legal

profession. This body is charged with regulating the judiciary to minimize the scope for direct government interference.

As MEDEL has repeatedly stated in various moments in the past, it is not for the parliament or the government to remove judicial officers through a resolution. This can only be done in accordance with the law and with total respect for the separation of powers.

Removing judicial officers arbitrarily, whether international or national, threatens the rule of law and a citizen's right to a fair trial in East-Timor.

While the legality of the resolution is being questioned by a range of political and judicial figures, the resolutions from the parliament and the government clearly undermine the principles of an independent judiciary.

This situation is an offense to the principles of autonomy and independence of judges and prosecutors which has been universally proclaimed.

The President of Timor's Court of Appeal (also President of the Superior Council of the Judiciary) issued a directive to all Chief Justices stating the resolutions have no effect and that international judges and court staff shall continue their functions.

Those resolutions were taken without the knowledge and the agreement of East-Timor Judges Superior Council, whose president decided not to accept those decisions and declared them ineffective. The Council has also stated that it is the only organism that has the competence to nominate, transfer or dismiss Judges and also to evaluate their knowledge and to sanction them.

The Portuguese Government, through the Ministry of Foreign Affairs and the Ministry of Justice, decided it will cease the judicial cooperation policies with East-Timor.

Furthermore, in the last days East Timorese Judges have been contacting the Portuguese Judges' Association, giving notice of having been threatened simply because they criticized the decision taken by the political authorities. They transmitted they are even afraid their life or integrity could be put at risk because of that position they have taken.

This situation is totally unacceptable and the authorities of East Timor must put an immediate end to any actions endangering the lives of East Timorese Judges and

Prosecutors, who must be free to express their opinions on such an important issue regarding the Rule of Law.

The International Union of Portuguese speaking judges approved a Timor-resolution on 02.11.2014 and the International Union Central Council of Magistrates on 11.11.2014.

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Given these circumstances, joining the Portuguese Association of Judges (*Associação Sindical dos Juizes Portugueses ASJP*), the International Union of Portuguese speaking judges (*União Internacional dos Juizes de Língua Portuguesa UIJLP*) and IAJ-UIM (Internacional Association of Judges), **MEDEL:**

- condemns the violation of the principle of the separation of powers and of the independence of the courts carried out by resolutions nr. 11/2004 from 24/10, nr. 29/2014 from 24/10, and nr. 32/2014 from 31/10, adopted by the East-Timor government and parliament;

- demands that the East-Timor government and parliament cease immediately any interference in the judiciary;

- gives its total solidarity to the East Timor Judges and Prosecutors and demands total respect for their independence and autonomy and for the safeguard of their lives and integrity;

- appeals to the Secretary-General of the United Nations to express to the East-Timor government and parliament the deep concern about this violation of the independence of the judiciary.