Legal opinion on the legality of Parliament and Government resolutions

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This analysis was produced by an institution knowledgeable about Timor-Leste law and governance. Although it is not being circulated officially, La'o Hamutuk is making it publicly available to help people interested in the independence of Timor-Leste's judiciary understand the issues more fully. Other documents and analyses are online at http://www.laohamutuk.org/Justice/2014/14Judges.htm.

Introduction

This opinion discusses the legality of the following resolutions of the National Parliament and Government:

- Parliament Resolution 11/2014, of 24 October 2014 (the Parliamentary Resolution);
- Government Resolution 29/2014, of 24 October 2014 (the First Gov't Resolution); and
- Government Resolution 29/2014 of 31 October 2014 (the Second Gov't Resolution).

(Together, the Resolutions)

The content and effect of the Resolutions

The Parliamentary Resolution

The Parliamentary Resolution explains Parliament's perception of a weakness in the justice system of Timor-Leste. It identifies the various taxation cases brought by international oil companies as an example of cases revealing the weakness of the legal system. It then goes on to refer to incidents of "legal irregularities", both substantive and procedural, that have allegedly contaminated those cases and, in turn, exposed the country to external threats relating to its sovereignty and subsequent national security. It then goes on to criticise international professionals working as judges, and as advisors in the public prosecutor's office and anti-corruption commission. It specifically alleges that these judges and advisors have revealed a lack of technical capacity to attain the purposes for which they have been hired. It also alleges that the Anti-Corruption commission has failed to act in line with criminal evidence that allegedly been presented to it (by whom it is not clear). Citing authority under Article 92 of the Constitution, the resolution then goes on to instruct the government to (inter alia):

- 1. Undertake an in-depth technical audit of the justice system, and report the results of this audit to the National Parliament in 2015; and
- 2. Immediately terminate the contracts of international advisors, including the respective international advisors exercising duties in the Courts, Public Prosecutor's office, in the public Defender's office, in the Anti-Corruption Commission as well as in the Legal Training Centre. The basis for cancellation is described as *force majeure* and national interest.

The First Gov't Resolution

The First Gov't resolution implements the instructions from the Parliamentary Resolution. It cites authority for the Government to take the steps it is instructed to in the Parliamentary Resolution under Article 115(1)(I), and (o), Article 115(3) and Article 116(c) of the Constitution.

The effect of the Parliamentary Resolution and First Gov't Resolution

Following the First Government Resolution, the Ministry of Justice notified its cancellation of its contracts with international judges. It is not clear the extent to which the Ministry of Justice has the contractual

authority to cancel the employment contracts of the international judges. AS I understand the situation, the employment of international judges in Timor-Leste is established under a complex arrangement involving the Government of Timor-Leste, the Superior Council of the Judiciary of Timor-Leste, the Government of Portugal, and various international organisations. I will need to examine the documents relating to this arrangement before forming any opinion as to the effect of any notification by the Ministry of Justice concerning the cancellation of any contracts. However, in a practical sense, the notification from the Ministry of Justice constituted notification by the Government of dismissal of the international Judges. This was also how it was interpreted by the President of the Court of Appeal, who, on 28 October 2014, issued a directive advising the international justices that the Government's decision to dismiss them was invalid and instructing them to continue with their duties.

The Second Gov't Resolution

On 31 October 2014, the Government issued a second resolution, relying on the Parliamentary Resolution and First Gov't Resolution, instructing the Immigration Service that, on the basis of the cancellation of their employment contracts, the work permits and special stay visas of the international judges and advisors were revoked. Relying on Article 63(a),(b) and (c) and Article 64(1) of the Immigration and Asylum Act (Law 9/2003), it further instructs the Immigration Service to notify the affected parties of the cancellation of their visas and to order them to leave the territory of Timor-Leste within 48 hours. Finally, it instructs the Police and Immigration Service to ensure compliance with the order in the event that the relevant people did not leave the country.

The Second Gov't Resolution specifically names five judges, two advisors in the Public Prosecution Service and one advisor in the Anti-Corruption Commission to whom the resolution applies.

The effect of the Second Gov't Resolution

Following the second resolution, the international judges named in the Second Gov't Resolution left the territory of Timor-Leste, presumably to pre-empt any action being taken by the Police and immigration authorities acting on the instruction of the Government. This was reportedly done on the instruction of the Superior Council for the Judiciary of Portugal. The Second Gov't Resolution therefore had the practical effect of physically removing the judges from their positions, despite the President of the Court of Appeal directing that such an action was unconstitutional and invalid.

The advisor in the Anti-Corruption Commission and the Prosecutors referred to in the Second Gov't Resolution have also now left Timor-Leste.

Due to time constraints, I have focussed this opinion on the legality of the Resolutions as they apply to the international judges.

The Resolutions are contrary to the Constitution and invalid

The effect of the Resolutions was to dismiss the international judges

The practical effect of the Resolutions was to dismiss the international judges, first by directing the cancellation of their employment contracts, and then by causing them to leave the territory of Timor-Leste by invoking the relevant provisions in the Immigration and Asylum Act, which in turn constituted a threat to their personal liberty.

The Government may argue that the Resolutions simply deal with a contractual matter, and that the Government was in its right to notify its cancellation of its employment agreement with the international judges. However, the relationship between the Government and the international judges is not purely contractual. The international judges are not merely *employed*, but *appointed* according to the Constitution and the law.

In 2008, the Court of Appeal heard a case challenging the legality of a decision of the Superior Council of the Judiciary not to renew the contract of an international judge on the basis that it violated Article 121(2) of the Constitution¹ (the **Justice Rosa Case**). In that case, the SCJ argued that, as the relationship between the SCJ and international judges is contractual, the SCJ was legally entitled to execute its contractual right to not renew the contract. However, the Court disagreed:

The interpretation of article 111, no. 2 [of the Statute of Judicial Magistrates (Law 8/2002)] in the sense that this provision permits the SCJ, without just cause not to renew the contract in those cases where the continuance of the judge in question is both necessary and convenient violates the principle of immovability of judges foreseen in article 6 of the justice's statutes and article 121, no. 2 of the Constitution.

Such an interpretation will allow the exercise of judicial functions by international judges to become vulnerable to pressures and persecutions of various kinds, namely, of a political nature, and that the international judges will remain under permanent danger of not seeing their contracts renewed in case they make decisions contrary to interests with influence with the Superior Council for the Judiciary (in case this body is influenced by such interests).

This would be totally contrary to the intended objective of the cited article 111 which allows that Timor-Leste have recourse to non-national judges to maintain the proper and regular functioning of its judicial system, the functioning of which is necessarily dependent on the independence and impartiality of judges who work in the Timorese courts.

It follows that it is legitimate for an international judge whose contract term has come to an end to have a legal expectation that his or her contract would be renewed, if the need and convenience for him or her to remain in the Timorese judicial system continues.

In any event, the Second Gov't Resolution clearly amounted to a dismissal of the international judges, by forcing them to leave the country.

The National Parliament does not have the competence to pass laws dismissing judges under the Constitution

According to article 2(3) of the Constitution, the validity of the laws and other actions of the state depends on their compliance with the Constitution. Furthermore, laws that do not contravene the constitution, or the principles contained therein, must not be applied by the courts. Accordingly, if the Resolution is deemed not to comply with the constitution it is invalid and unenforceable.

Primacy of the separation of powers

The principle of the separation of powers essentially requires that the organs of state operate independently of one another and observe a strict separation of their roles. The separation of powers is also directed at creating a balance of power between the various organs of state so that ultimate power cannot be exercised by any one branch of government. The principle is usually interpreted as particularly requiring the independence of the Courts, as it is the Courts that provide the greatest check on the power of the legislature and executive to act other than in accordance with the Constitution and the Law. This is particularly the case in countries where the Courts have the power to review the constitutionality of legislation, as they can in Timor-Leste.

The principle of the separation of powers is one of the principles upon which the state of Timor-Leste is founded, according to the preamble of the constitution. Further support for the primacy of the principle of separation of powers comes from Article 156(1)(d) of the Constitution, which specifically prohibits amendments to the Constitution that do not respect this principle. Article 156(1)(e) also prevents any amendment to the constitution that does not respect the independence of the Courts.

Because of the primacy of the separation of powers and the independence of the Courts, the Constitution must be interpreted in such a way as to give effect to these two principles.

¹ Court of Appeal Proc No. 01/P.Cautelar/2008

Specific articles establishing the separation of powers and independence of the Courts

The Constitution also includes a specific provision providing for the separation of powers and the independence of the Court:

Article 69: Separation of Powers

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

...

Article 119: Independence

Courts are independent and subject only to the Constitution and the law.

•••

Article 121: Judges

- 1. Jurisdiction lies exclusively with the judges installed in accordance with the law.
- 2. In performing their functions, judges are independent and owe obedience only to the Constitution, the law and to their own conscience.
- 3. Judges have security of tenure and, unless otherwise provided for by law, may not be transferred, suspended, retired or removed from office.
- 4. To guarantee their independence, judges may not be held liable for their judgments and decisions, except in the circumstances provided for by law.
- 5. The law shall regulate the judicial organisation and the status of the judges of the Courts of law.

Article 121(3) is particularly important as it provides that judges cannot be removed from office

The Constitution contains a large number of provisions that give effect to the principle of the separation of powers and independence of the Courts. For example, the courts must not "apply laws that contravene the Constitution or the principles contained therein" (Article 120). The Supreme Court of Justice has specific powers in this area:

Section 126: Electoral and Constitutional Competence

- 1. It is incumbent upon the Supreme Court of Justice, on legal and constitutional matters:
 - a) To review and declare the unconstitutionality and illegality of normative and legislative acts by the organs of the State;
 - To provide an anticipatory verification of the legality and constitutionality of the statutes and referenda;
 - c) To verify cases of unconstitutionality by omission;

Separation of powers in the legislative process

There are also examples of the separation of powers between the other branches of government, for example between the President and the National Parliament. In particular, the constitution provides a strict separation of power in the legislative process to ensure that neither the Government nor the Parliament can enact law without the assent of the President. This will be discussed further below.

The Supreme Council for the Judiciary

Article 128 of the Constitution also establishes the Supreme Council of the Judiciary (SCJ):

1. The Superior Council for the Judiciary is the organ of management and discipline of the judges of the courts and it is incumbent upon it to appoint, assign, transfer and promote the judges.

- 2. The Superior Council for the Judiciary shall be presided over by the President of the Supreme Court of Justice and shall have the following members:
 - a) One designated by the President of the Republic;
 - b) One elected by the National Parliament;
 - c) One designated by the Government;
 - d) One elected by the judges of the courts of law from among their peers
- 3. The law shall regulate the competence, organisation and functioning of the Superior Council for the Judiciary.

The constitution clearly envisages that the SCJ shall be the organ of state responsible for decisions regarding the appointment and dismissal of judges. It also provides for the separation of powers through its composition, by including members designated from each of the four organs of government. It is clear that the Constitution intends that the only influence the organs of government shall have on the management and discipline of the judiciary should be through their right to appoint a member of the SCJ.

This is further supported by the statute passed by Parliament pursuant to Article 128(3) that regulates the SCJ – Law 8/2002 (as amended by Law 11/2004), which will be discussed below.

Article 96(c) of the Constitution

Article 96(c) of the Constitution appears to limit the principle of the separation of powers by providing Parliament with the power to authorise the Government to make laws regulating the organisation of the Judiciary and the status of magistrates.

However, this article must be interpreted in a way that is consistent with the balance of the Constitution (achieving internal consistency is a key principle of legal interpretation). Accordingly, Article 96(c) cannot be interpreted in such a way as to breach the principle of the separation of powers, the independence of the judiciary, or the power granted to the SCJ as the organ responsible for the management and discipline of the judiciary.

It is possible to interpret 96(c) in a way that is consistent with the balance of the constitution. For example 96(c) can allow the Parliament to authorise the Government to make laws concerning the following:

- Remuneration and benefits available to judges;
- The number and location of courts;
- The establishment of courts with special jurisdiction (e.g. a Planning Law Court, an Employment Court, a Youth Court);

The reference to laws regarding the "status" of magistrates also needs to be interpreted alongside other provisions in the Constitution which allow Parliament to pass laws regarding the status of other state officials. For example, Article 95 of the Constitution allows Parliament to pass laws regarding the "Status of Member of the National Parliament" (95(2)(j)) and the "Status of office holders in the organs of State" (95(2)(k)). Clearly however, the Constitution does not allow Parliament to, for example, dismiss MPs or the President, otherwise than in accordance with the specific provisions set out in the Constitution. It is particularly clear that the Constitution does not grant a power to either Parliament or the Government to dismiss, for example, the President merely by passing a resolution. This would give an absurd result, whereby the National Parliament would hold absolute power, which is exactly the situation that the principle of the separation of powers seeks to avoid.

In any event, as is evident from Article 122 of the Parliamentary Rules of Procedure, Article 96(c) of the constitution is directed to the authorisation of Decree Laws, and not the authorisation of Government Resolutions or other government actions that contravene the Constitution and the Law.

The Resolutions do not comply with superior law and are unenforceable

Hierarchy of Laws

Under the Timorese legal system, influenced as it is by the European civil law system by way of Portugal and (indirectly through Indonesia) the Netherlands, there is a doctrine of a hierarchy of laws². The hierarchy is generally accepted to be as follows:

- 1. The Constitution.
- 2. International conventions ratified by the National Parliament and incorporated into the law of Timor-Leste by Article 9 of the Constitution.
- 3. Parliamentary Laws.
- 4. Government Decree Laws, passed in accordance with either:
 - a) Article 96 of the Constitution and Article 112 of the Parliamentary Rules of Procedure, regarding the delegation of legislative authority from the National Parliament to the Government; or
 - b) Article 115(3) regarding the inherent power of the Government to legislate on matters concerning its own organisation and functioning.
- 5. Other non-legislative legal instruments, including:
 - a) Presidential Decrees;
 - b) Government Decrees;
 - c) Ministerial Orders;
 - d) Resolutions of the National Parliament;
 - e) Resolutions of the Government; and
 - f) Public Instructions and Regulations.

Under the doctrine, the hierarchy applies regardless of the time in which a law is made. For example, an earlier Law of Parliament will out-rank a later Decree Law. In applying the law, the Courts have responsibility for resolving any conflicts between of laws. In doing so, the Courts will have regard to the hierarchy of the form of laws referred to above. Therefore, in order to be enforceable, lower forms of law generally need to be able to be applied in a way that is consistent with higher forms of law.

The hierarchy of laws is reflected in the requirements for the enactment of each different form of law, as defined in the constitution and Parliamentary Rules of procedure:

- Amendments to the Constitutions require a two-thirds majority vote in the National Parliament.
- International conventions and treaties require ratification by the National Parliament and authorisation for publication by the President.
- Parliamentary laws require a simple majority vote in the National Parliament and the assent of the President.
- Government Decree laws need to be authorised, either under the inherent jurisdiction of the Government to pass laws regulating its own function under Article 115(3) of the Constitution, or specifically authorised by the National Parliament under Article 96 of the Constitution and Article 122 of the Parliamentary Rules of Procedure.
- Parliamentary resolutions appear to only require a majority vote in the National Parliament to pass and do not require input from other organs of government.

² The exact nature of this hierarchy does not, itself, appear to be set out in the constitution or any higher law, however, it is a commonly accepted doctrine of law in Civil law jurisdictions.

• Similarly, Government Resolutions can be published by the Government acting alone.

Accordingly, the hierarchy of laws is intimately bound up in the concept of the separation of powers. Generally, the more weight the form of law has, the more checks and balances are involved in its enactment.

In the present case, the Resolutions contradict a number of higher laws. Most relevantly, the Resolutions contradict the Constitution and the Statutes of the Judicial Magistrates (Law 2/2008, as amended by Law 11/2009). On my initial review, the Resolutions also appear to contradict the Statutes of the Public Prosecution Service (Law 14/2005), the Labour Code (Law 4/2012), the Immigration and Asylum Act (Law 9/2003) and the Decree Law on Administrative Procedure (Decree Law 32/2008) (although these have not yet been formally analysed in this document).

To the extent that the Resolutions conflict with these higher forms of law, they would not be enforceable in Court.

Statutes of the Judicial Magistrates (Law 2/2008, amended by Law 11/2009)

The Statute of the Judicial Magistrates is the law that sets out the regime for the SCJ in managing the judiciary. It is specifically authorised by Article 128(3) of the Constitution. It is the authoritative law establishing the process for the appointment, management, evaluation, discipline and dismissal of judges.

Application to International Judges

The Statutes of the Judicial Magistrates specifically applies to international judges (Article 111(2)).

This is also supported by the decision of the Justice Rosa Case, where the Court held as follows:

In all, article 111, no. 2 of the Judiciary's Statutes states that provisions of this statute are applied to all international judges exercising their functions in the Timor-Leste judicial structure, with appropriate adaptations.

This means that, putting aside those provisions that by their very nature will only apply to national judges, the provisions of the statutes also apply to international judges exercising functions in the Timorese judicial structure.

The fact of the contract establishing a time duration for the judge to remain an international judge in the Timorese judicial structure when there is a continuing need and convenience for the judge and there is no other reason of impossibility for his continuance (such as the judge himself or herself not being interested in continuing or not being able to obtain the authorization from his service of origin to continue to remain or there not being any funds to pay for him).

...

The interpretation of article 111, no. 2 in the sense that this provision permits the SCJ, without just cause not to renew the contract in those cases where the continuance of the judge in question is both necessary and convenient violates the principle of immovability of judges foreseen in article 6 of the justice's statutes and article 121, no. 2 of the Constitution.

The provisions aimed at and guaranteeing the independence and impartiality of the judges apply necessarily to the international judges.

More concretely the provisions of article 6 of the statutes that says that "judges cannot be transferred, suspended, promoted, removed, dismissed or in any other way be subject to a change in position, unless it is in the cases foreseen in this statute" also applies to international judges with the appropriate adaptations.

This is to say that international judges can only be suspended, dismissed or in any other way removed from their position in the circumstances foreseen by the law; namely that they cannot be terminated from exercising their functions by force of the expiration of the term of the contract, if it is the case that need and convenience continue for him or her to remain within the Timorese judicial structure, otherwise it would be violating the principle of immovability.

Independence, Non-liability and Tenure

The law mirrors the provisions in the Constitution regarding judicial independence and security of tenure.

Article 4: Independence

Judicial magistrates shall adjudicate in accordance with the Constitution, the law and their conscience and they shall not be subject to orders, instructions or directions, except for the duty of lower courts to obey to decisions awarded by higher courts on cases appealed against.

Article 5: Non-liability

Judicial magistrates shall not be made liable for their judgments and decisions, except in cases specifically provided for by law.

Article 6: Security of tenure

Judicial magistrates shall not be reassigned, suspended, promoted, made to retire, removed from office or otherwise have their situation changed, unless in cases provided for by these Statutes.

Importantly Article 6 makes it clear that a judge cannot be removed from office except in cases provided for within the Statute of Judicial Magistrates (i.e. no other law applies).

The law also reinforces that it is the SCJ that is responsible for appointment and dismissal and discipline of judges and other judicial officers. It is also responsible for conducting any inquiries or investigations into Courts.

Article 15: Competencies of the Superior Council for the Judiciary

- 1. It shall be incumbent upon the Superior Council for the Judiciary:
 - a) to appoint, assign, re-assign, promote, dismiss and appreciate professional merits of, exercise disciplinary action over, and generally conduct all acts of a similar nature regarding, judicial magistrates;
 - to appreciate professional merits of, and exercise disciplinary action over, judicial officers, without prejudice to disciplinary competencies given to judges;
 - c) to appoint the Council Secretary, judicial inspectors, accounting inspectors and inspection secretaries;
 - d) to order the conduction of special inspections, investigations and inquiries into courts;

Judicial evaluation, inspection and disciplinary proceedings

The Statute of the Judicial Magistrates sets out very specific procedures and requirements for the SCJ to follow when conducting inspections of the judiciary, evaluating judges, and making decisions about the dismissal of judges, including the following:

Article 17 Forms of decision

Decisions of the Superior Council for the Judiciary shall be in the form of resolution or instruction and, where these are related to the appointment, posting, reassignment, promotion or removal of a judicial magistrate or to the application of sentences of suspension from office, removal from active duty, compulsory retirement or dismissal of judicial magistrates, or where the Council so deliberates, shall be published in the Official Gazette.

CHAPTER III: Judicial Inspection

Article 22: Structure

- 1. Judicial Inspection shall function within the Superior Council for the Judiciary.
- 2. Judicial Inspections services shall comprise judicial inspectors, accounting inspectors and inspection secretaries.
- 3. The staffing table of judicial inspectors, accounting inspectors and inspection secretaries shall be determined by an instruction of the Minister of Justice, following a proposal of the Superior Council for the Judiciary.

- 4. Judicial inspectors shall be appointed from among first class state judges with "Very Good" rating;
- 5. Accounting inspectors shall be appointed from among judicial secretaries with at least "Good" rating.

Article 23: Competencies

- 1. It shall be incumbent upon Judicial Inspection to inform the Superior Council for the Judiciary on the status, needs and deficiencies of judicial services so that the Council may take required action.
- 2. It is also incumbent upon Judicial Inspection to gather information regarding performance, merits and professional integrity of judicial magistrates and judicial officers.
- 3. Inspection intended to gather information regarding performance, merits and professional integrity of judicial magistrates may not be conducted by an inspector holding a position that is equal or lower than that of the judicial magistrate being inspected.
- It shall also be incumbent upon judicial inspectors to conduct inspections, inquiries, investigations and to initiate disciplinary cases regarding judges, as may be ordered by the Superior Council for the Judiciary.
- It shall be incumbent upon accounting inspectors to monitor accounting and treasury services.

Article 24 Inspection report

- 1. Once an inspection has been completed, the Inspector shall prepare a detailed report in which he or she shall necessarily address the following issues:
 - a) Court organization;
 - b) Functioning and status of services;
 - c) Service premises;
 - d) Difficulties encountered by persons inspected;
 - e) Merits and demerits of persons inspected.
- 2. The inspection report shall give general indications aimed to overcome difficulties encountered by persons inspected, without directly interfering with the service.

Article 56: Evaluation of judicial magistrates

State judges and assistant judges shall be evaluated by the Superior Council for the Judiciary in accordance with their merit of 'Very Good', 'Good', 'Passable' and 'Failed'.

Article 57: Criteria and effects of evaluation

- 1. Evaluation shall take into consideration the way judicial magistrates exercise their functions, especially their technical knowledge, intellectual ability, detachment, moral and civic reputation.
- 2. 'Failed' result shall lead to suspension from functions and initiation of an inquiry for unfitness for the function.
- 3. Where in a disciplinary case initiated on the basis of an inquiry it is concluded that a judicial magistrate no longer qualifies as such but it is possible for him or her to remain in the public service, penalties of compulsory retirement or resignation may, at the request of the interested party, be replaced by resignation.
- 4. For situations provided for under the preceding item of this Article, the case, along with a substantiated advice, shall be referred to the President of the Superior Council for the Judiciary for endorsement and assignment of the interested party to a position in keeping with his or her qualifications.
- 5. Endorsement of the advice by the President of the Superior Council for the Judiciary shall entitle the interested party to occupy a compatible position in another State service.

Article 58: Elements to be considered for evaluation

- 1. Elements to be considered for evaluation shall be results of previous inspections, inquiries, investigations or disciplinary cases, time of service, published works in the area of law, annual reports and any other additional elements in the possession of the Superior Council for the Judiciary.
- Workload in charge of the judicial magistrate and working conditions shall also be taken into account.
- 3. It shall be mandatory to hear the judicial magistrate on the inspection report and he or she may provide elements as he or she may consider convenient.
- 4. Considerations that the inspector may subsequently produce on the replies of the inspected person should be made known to the inspected person and may not refer to new facts to his or her disadvantage.

Article 70: Penalty of compulsory retirement and penalty of dismissal

- 1. A penalty of compulsory retirement shall consist of the imposition of retirement and shall imply immediate separation from service.
- 2. A penalty of dismissal shall consist of the definitive removal of the judicial magistrate, with cessation of any links to his or her functions, and shall imply the loss of the status of judicial magistrate, but shall not imply the loss of the right to retirement, under the terms and conditions provided for by law, nor shall it prevent the magistrate from being appointed for public office or other offices that may be exercised, as long as he or she meets the conditions of dignity and trust necessary to the office from which he or she was dismissed.
- 3. Penalties of compulsory retirement and of dismissal shall be applicable where the judicial magistrate:
 - a) Reveals permanent incapacity to adapt him or herself to the requirements of his or her functions;
 - b) Reveals dishonesty, serious insubordination, or has an immoral or dishonoured conduct;
 - c) Reveals professional incompetence;
 - d) Has been sentenced for a crime committed in flagrante delicto and for serious abuse of his or her function, or for a clear and serious violation of the duties inherent therein.
- 4. Dereliction of duty shall always correspond to a penalty of dismissal.

It is clear from the above sections that Parliament intended for there to be strict criteria governing the evaluation and dismissal of judges. Furthermore, Articles 78 – 102 set out a strict regime for disciplinary proceedings, which guarantee judges the following rights of due process:

- · The right to be informed of the charges against them;
- The right to legal counsel;
- The right to examine the case against them;
- The right to be heard and to offer a defence to the charges;
- The right to notified of the decision, including reasons.

If the SCJ fails to provide the judge with an opportunity to be heard and offer a defence, the disciplinary case is a nullity. Article 104 also provides a right to an appeal to the Supreme Court of Justice.

Administrative Procedure Act

The right to due process is also reflected in the law governing administrative decisions by state entities (Decree Law 32/2008), which sets out similar requirements for any state body exercising an administrative function, which applies to the Government and the relevant Minister when making decisions and carrying out acts relating to the employment of officials.

Conclusions

- The Resolutions are contrary to the Constitution as they contravene the principles of the separation of power and the independence of the judiciary. As a result, they are invalid and unenforceable.
- The Resolutions purport to enact law on a matter over which neither the National Parliament nor the Government has competence under the Constitution and are therefore invalid and unenforceable.
- The Resolutions are unenforceable because they are inconsistent with superior laws.
- The notification by the Ministry of Justice purporting to cancel the employment contracts of the international judges may in fact be of no legal effect, depending on the nature of the contractual arrangement governing their employment. The notification may also be invalid as a matter of contract law.
- Because of the invalidity of the Parliamentary Resolution and the First Gov't Resolution, and doubts around the validity of the purported cancellation of the international judges' employment agreements, the Second Government Resolution is also invalid. Accordingly, any action taken by the Immigration Service or the Police to enforce the Second Gov't Resolution may also be subject to a legal challenge.