

PRESIDENT OF THE REPUBLIC VETOES DECREE-LAW ON LEGAL REGIME FOR EPIDEMIOLOGICAL AND HEALTH SURVEILLANCE ON GROUNDS OF UNCONSTITUTIONALITY

Presidência da República de Timor-Leste

Nicolau Lobato Presidential Palace, Dili, 27 July 2020

On 17 June 2020, the Council of Ministers approved the Decree-Law on the Legal Regime for Epidemiological and Health Surveillance, based on articles 6(b) and 115(1)(b) and (o) of the Constitution and articles 10 and 11 of Law no. 10/2004 of 24 November (Health System Law). The Government claimed there was a need for more comprehensive regulation of public health protection and promotion measures in the specific field of infectious diseases.

The decree was sent for promulgation on 25 June 2020. The President of the Republic had reservations about several of the articles in this decree and petitioned the Court of Appeal to preventively review their constitutionality under articles 85(e) and 149(1), in conjunction with articles 164 and 126(1)(b) of the Constitution of the Democratic Republic of Timor-Leste.

The issues identified by the President of the Republic referred to the surveillance of contacts in the community provided for in article 16 (due to vagueness of the measure of ‘social restriction’); the ordinary health surveillance measure of mandatory treatment provided for in article 25; the extraordinary health surveillance measures provided for in article 27 (mandatory home confinement restricted to affected areas; mandatory confinement of groups of people to places, buildings, or means of transport; sanitary fences; civil requisition of goods, facilities, services, and health care professionals); the declaration of serious public health emergency provided for in article 28; and the measure restricting road traffic that may accompany confinement and sanitary fences as provided for in article 29 of the government decree in question. The President of the Republic argued that these measures establish restrictions on the fundamental rights, freedoms, and guarantees of individuals and those matters fall within the legislative competence of the National Parliament; therefore, the government cannot legislate on restrictions on fundamental rights, freedoms, and guarantees.

The Court of Appeal, in its decision issued on 22 July 2020, also held that the decree-law in question intends to introduce restrictions in the sphere of fundamental rights, freedoms, and guarantees of individuals and stated that it is not for the government to legislate on these matters through a decree-law. Restrictions on fundamental rights, freedoms, and guarantees are matters of legislative competence of the National Parliament. It is up to parliament to legislate on these matters through acts of parliament.

On the basis of this decision, the President of the Republic, under article 88(4) and article 149(3) of the Constitution, legally vetoed (on the grounds of unconstitutionality) the decree-law in question. On 24 July 2020, the vetoed decree-law was returned to the government for reformulation in accordance with the decision of the Court of Appeal.

The President of the Republic believes it to be essential that the government promotes and adopts the necessary measures to protect and guarantee public health, taking into account the circumstances of serious risk to which our country is subject in view of the ongoing COVID-19 pandemic.

PR MEDIA.