

Timorese court asks for changes in the law so as not to penalize coalitions

The president of the Court of Appeal (TR) of Timor-Leste today defended changes in the electoral law to clarify the process of candidacy registration and avoid situations that could penalize political parties that want to form a coalition.

Lusa, 15 March 2023 -- "In the future there must be legislative changes to regulate this process clearly, so as not to harm the political forces that want to compete, avoiding conflict of competences between institutions. It has to be the parliament to resolve this issue", said Deolindo dos Santos to Lusa.

"Does the presentation of coalition candidacies need a technical and legal assessment and therefore the election law should directly assign this competence to the TR or is it a matter of merely an administrative assessment, by the CNE, which then refers to the TR? It has to be resolved so as not to harm anyone, to avoid situations like this in the future", he underlined.

An opinion echoed by José Belo, president of the National Elections Commission (CNE), who said that there is a "conflict of competence" between several diplomas, with "some norms that are in conflict".

"It's nobody's fault, it's the situation. But lesson learned. We have to sit down and in the future prevent this situation from happening again", he told Lusa.

The judge and the person responsible for the CNE were referring to the situation involving the only three pre-electoral coalitions for the 21 May legislative elections that the TR plenary failed for not meeting the requirements, and which had been validated by the CNE and published in the Journal of the Republic.

"After the TR's decision, the coalitions that now intend to reconfigure can no longer do so because the deadline has expired", recalled Deolindo dos Santos.

At stake is an apparent conflict of competences between the CNE and the TR, and articles of the law on political parties, the electoral law for parliament and the new law on judicial organization.

"In fact, the parliamentary election law has an article that raises some doubts about its interpretation. But, once the law on judicial organization was approved, it removes this competence from the CNE and attributes it to the plenary of the TR", considers Deolindo dos Santos.

"The CNE alleges that the TR did not notify it of the new law. But any law when published has to be complied with by all and this is particularly important in this case, with regard to the CNE, which is involved in organizing the elections", said the judge.

José Belo told Lusa that the CNE sent a letter to the TR, to understand that "the party can participate in the elections, since it is not the CNE that can decide", and to question whether, having had an early election, this affected or not the law, namely with regard to the obligation to have participated in an electoral act in the previous five years.

"There was no response, there was no notification and so we adhered to the timetable and checked. But the final decision is always by the Court of Appeal and we respect it. After the election, all parties should discuss the rules, so that everything is approved in a timely manner. and for there to be no conflicts of rules", said Belo.

Deolindo dos Santos criticized the way in which the CNE conducted the process, arguing that the electoral body should have sent the candidacies of the coalitions to the Court of Appeal, in a timely manner, in order to verify their eligibility.

The judge invokes the competence that is attributed to the body in the law of judicial organization, of 2021, namely that "it is incumbent upon the plenary of the Supreme Court of Justice [functions are currently exercised by the Court of Appeal], as a court of single instance, in the specific domain of the elections".

The CNE, for its part, claims that its competence emanates from the law on elections to the national parliament -- the most recent version is from the end of 2017 -- which determines that coalitions must be created within the first 20 days after the vote marking.

"For the purposes of this law, the formation of party coalitions for electoral purposes (party coalitions), complies with the provisions of the law governing political parties, being communicated immediately to the CNE (...) The elements referred to in the previous number must be transmitted by the CNE to STAE, which immediately discloses them through a notice published in the Jornal da República", says the law.

Deolindo dos Santos stressed that the law determines that the eligibility assessment is "competence of the plenary" and that the CNE should have sent the proposed candidacies to the TR in time for its appreciation.

"Only after that it should be published. What happened was the CNE approved it, sent it to STAE and published it, without evaluation by the TR. Political parties should not be penalized for the work of the institutions and therefore the TR continued to evaluate, despite the deadline for registration of coalitions having already passed. Unfortunately, afterwards the decision was that they did not meet the criteria", he said.

The judge was particularly critical of a controversial decision by the CNE which, before any registration process and decision by the Court of Appeal, released on February 15 a list of what it said were the 24 parties that could stand as candidates in the May 21 elections.

"The current political parties that will compete in the 2023 parliamentary elections are 24 parties," CNE commissioner Odete Maria Belo told journalists, stating that these political forces met the requirements.

Citing judicial sources, Lusa reported on February 16 that it would be up to the Timorese TR alone and exclusively to determine by the end of March the list of parties or coalitions that could present themselves to the legislatures.

"We have to avoid as much as possible going beyond our competence. And avoid as much as possible disclosing information that was not pertinent and that is not even a final result. This is this case", stated Deolindo dos Santos.

"The list of eligible or non-eligible parties is only made after verification of candidate lists by the plenary of the TR, which decides who is admissible or not. The CNE should not have disclosed this list. It is not the competence of the CNE but of the TR decide whether or not they are eligible. This has happened. We have to prevent this from happening in the future because it only creates confusion for the public," he said.