

Capacity Of The President Of The Republic In Relation To The National Parliament And The Government Of Timor-Leste (2024).

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ABSTRACT

Introduction: *The President of the Republic is the Head of State, symbol and guarantor of national independence, the unity of the state and the regular functioning of democratic institutions under the terms of paragraph 1 of article 74 of the CRDTL, the President of the Republic through his constitutional powers provided for in clause F) of article 86 of the CRDTL, with the President of the Republic to dissolve the National Parliament in the event of a serious constitutional crisis that does not allow the formation of the government or the non-approval of the General State Budget.*

Objectives: *to facilitate public understanding of the capacity of the President of the Republic in relation to the national parliament and government.*

Methodology: *used in the research and elaboration phase, the deductive method was applied, the method of analysis and description for data collection and notes, there was the support of references from books by several authors duly cited in the bibliography, that is, it was only through documentary sources: books, magazines, legal documents, electronic media files.*

Conclusion: *The competences of the President of the Republic before the National Parliament and the Government respect the principle of separation of powers in the sense that each power has its sphere of preponderant action, without being able to enter the hegemonic sphere of action of another power provided for in article 69 of the CRDTL. In addition to strict separation, this is also a principle of interdependence of powers with the mutual control of checks and balances in order to avoid the abuse of power cited by (Corte Real AG & Francisco S., 2024).*

Keywords: Capacity of the President of the Republic RDTL, National Parliament of the RDTL, Government and Functioning of Democratic Institutions.

INTRODUCTION

Democratic right that is exercised by the state is limited by the constitution; it is a concept that designates any state that applies itself based on respect for constitutional norms. Fundamental guarantees, through the establishment of legal protection. State comes from Latin *status*, which means situation, condition, and way of being. The state is an entity with sovereign power to govern a people within a delimited territorial area, the state has three sovereign powers: legal power, executive power, and legislative power. It consists of three elements: the Territory, the people and sovereignty, present respectively in articles 2, 3, and 4 of the CRDTL. According to the CRDTL law "Democracy is a system in which the people of a country can practice in political life and this participation can take place through elections, plebiscites and referendums. Within a democracy, people have freedom of expression and expression of their opinions. The democratic rule of law upholds people's fundamental rights, as well as political, social, economic and other rights. Under the democratic rule of law, no action by rulers should go against the laws established in that territory. The principle of territoriality geographically delimits the scope of legal validity and application of norms and laws of a state; thus, individuals are subject to laws as a way of living in society, the state also tends to submit to common law by law cited by (Corte Real AG & Franciso S., 2024).

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tablished in that territory. The principle of territoriality geographically delimits the scope of legal validity and application of norms and laws of a state; thus, individuals are subject to laws as a way of living in society, the state also tends to submit to law. One of the fundamental characteristics of the democratic rule of law is how the state can impose wills that are not provided for by law and cannot act against existing norms. The State of Timor-Leste has its fundamental objectives, which are to defend and guarantee the Sovereignty of the country, guarantee and promote the Fundamental Rights and Freedoms of the citizen and respect for the principle of the Democratic Rule of Law and others that are provided for in paragraphs a) to J) of article 6 of the CRDTL.

Political pluralism is the pluralism of ideas, pluralism of beliefs, it is a consequence of democracy as a regime of government, precisely because we adopt the pluralism of divergence of ideas that has as its consequence multipartism. In Timor-Leste it guarantees freedom of expression, freedom of organization and freedom of choice, in view of this, in representative democracy several political parties of different ideological matrices coexist. "Political pluralism is close to the idea of a strategy adopted by certain subjects (ministers, parties, governments, groups) to solve certain problems in the community. Political pluralism refers to the equitable representation of different streams of expression or opinion and to the access (active or passive) of ideological groups and various political parties, including minority ones. It is customary to confuse the term political pluralism with the idea of several political parties, but this matter is called multi-

party or multi-party, which is a repercussion of political pluralism. The Timorese State values the contributions of political parties to the organized expression of the popular will and to the democratic participation of the citizen in the governance of the country, provided for in paragraph 2 of article 7 of the CRDTL.

The Democratic Rule of Law, when established by our constitution, sought to ensure the exercise of social and individual rights, and the power exercised by the people through elected representatives should be based on political pluralism through universal, free, equal, direct, secret and periodic suffrage by virtue of paragraph 1 of article 7 of the CRDTL. thus, enshrining the participation of all in the political process of the nation. In Timor-Leste, there are two thoughts of political pluralism, which are: inclusion (participation) and competition. Participation refers to the political participation of the population of a state or nation, competition refers to the existence of power struggles within that society. In this way, political pluralism is one of the most important features of modern democracy, in which small political parties are also heard and have the right to vote. Political pluralism as the basis of the democratic rule of law points to the recognition that society is made up of several groups, therefore composed of a multiplicity of various centers of power in different sectors cited by (Corte Real AG & Francisco S., 2023).

Objectives: To facilitate public understanding of the competences or capacity of the President of the Republic in relation to the National Parliament and the Government of Timor-Leste.

METHODOLOGY

Used in the research and elaboration phase, the deductive method was applied, the method of analysis and description for data collection and notes, there was the support of references from books by several authors duly cited in the bibliography, that is, it was only through documentary sources: books, magazines, international articles, legal documents, electronic media files.

THEORETICAL FRAMEWORK

The organ sovereignty constitutes the exclusive right of a supreme authority over a group of people usually in a nation, and a superior authority that cannot be restricted by any other power, consequently, constitutes the absolute power of legitimate action in the political and legal sphere of a society. "To possess the quality of the organs of sovereignty, we have two criteria:

- Criterion of State Power: it is an organ of sovereignty, the organ that is part of a juridical-public function;
- Criterion of co-acting decision: a sovereign body is the body that produces binding acts.

Article 67 of the Constitution of the Republic of Timor-Leste states that the sovereign organ of the President of the Republic, the National Parliament, the Government and the Courts are the organs of sovereignty. Instead of the conception of the pure separation of powers, as powers of functions, the full exercise of the functions of the powers that compose it depends on the conditions that the Timorese State has at its disposal. The sovereign body that guarantees national independence, unity and symbol of the state is the President of the Republic. is elected by universal suffrage, the term of office lasts five years, and ceases to hold office with the inauguration of the new President-elect

provided for in article 74 et seq. of the CRDTL. The National Parliament and Government in interdependence with the organ of sovereignty together with the exercise of its applications. The National Parliament is elected by universal, free, direct, equal, secret and personal suffrage, and the term of office is five years provided for in paragraphs 1 and 4 of article 93 of the CRDTL. The Government, under normal conditions, is linked to the duration of each legislature, since it is formed as a result of the composition of the Assembly of the Republic at the time of election, which corresponds to five years According to paragraph 1 of article 106 of the CRDTL in the application cited by (Corte Real AG & Francisco S., 2024).

- Legislative power, to assign to the parliament and government, according to which legislative acts would be issued;
- Executive power, which translated into the capacity of the internal and external administration of the state, to be developed by the President of the Republic and the Government;
- Judicial power is the power by which the law would be applied, handed over to the Courts

The essence of this theory is affirmed in the principle that the three powers that make up the state (Legislative, Executive and Judiciary) must act in a separate, independent and harmonious manner, maintaining, however, the characteristics of the power of being one, indivisible and non-delegable. Consequently, in the organs of sovereignty, in their reciprocal relations and in the exercise of their functions, they observe the principle of separation and interdependence of powers established in the constitution by virtue of Article 69 of the CRDTL. It is up to the executive to administer the state in accordance with the rules in force in the country, in

addition to governing the people, executing laws, proposing action plans, and administering public interests. Acts of the Head of State who exercises the responsibility for international relations, this power is exercised by the President of the Republic, together with the Ministers appointed by them. It belongs to the government when it takes over political and economic relations. At the state level, the executive power is concentrated in the Government. The legislature is responsible for legislating (i.e., creating and approving laws) and overseeing the executive, both of which are equally important. On the other hand, it exercises functions of political, administrative and budgetary control. By the first control, it is up to the analysis of the management of the state, and may even question acts of executive power, by the second control, approve or disapprove public accounts. This power is exercised by the Members of the National Parliament.

The judiciary's function is to interpret laws and judge offices in accordance with constitutional rules and laws created by the legislature, applying the law to a specific case that is presented to it as a result of a conflict of interest. And the judiciary is represented by judges, ministers and judges. On the other hand, in the positive dimension, the functions of the state must be assigned by the most appropriate bodies to exercise their function, thus, it outlines the ordering and organization of the constituted powers of the sovereign body, in short, it constitutionally imposes democratic legitimacy, directly or indirectly, as happens directly with the President of the Republic or National Parliament and indirectly with the Government that answers to the National Parliament and President of the Republic, in the case of the judiciary, the legitimacy of its action is otherwise guaranteed by the constitution cited by (Corte Real AG & Francisco S., 2024).

The constitutional legal treatment of the President of the Republic was located by CRDTL in the first of the titles dedicated to the organs of sovereignty, attributing to him some fundamental tasks provided for in paragraphs 1 and 2 of article 74 of the CRDTL, which presented the definition "the President of the Republic is the head of the State, symbol and guarantor of national independence, the unity of the state and the regular functioning of democratic institutions" then adding that "the President of the Republic is the Supreme Commander of the Armed Forces." These constitutional tasks placed on the function of the Head of State, in essence, the summary of the competences at his disposal, in the context of a system of semi-presidential government. The active electoral capacity is quite limited, which includes "Timorese citizens, of both sexes, on the condition that they are, citizens of origin, over thirty-five years of age and in full use of their capacities. The President of the Republic is elected by the people through free, direct, secret and personal suffrage by virtue of paragraph 1 of article 76 of the CRDTL. The candidacies of the President of the Republic are personal, not institutional or at least to run for him by the political party, depending on the will of the candidate, imposing, however, the requirement of a proposal by a minimum of 5000 voters, establishing in article 7 of the Presidential Election Law abbreviation LEPR. The President of the Republic is the sole proprietorship. He serves a five-year term of office and is not allowed to be re-elected for a third, consecutive or interpellated term, according to paragraphs 2 and 3 of article 75 of the CRDTL.

It is also the competence of the President of the Republic to order the publication of resolutions of the National Parliament approving agreements and

ratifying international treaties. It is also incumbent upon the President of the Republic to appoint and swear in the Prime Minister nominated by the party or alliance with the most votes with a parliamentary majority, after hearing the political parties represented in the National Parliament, the dual responsibility of the Institutional Government before the President of the Republic and politics before the National Parliament is expressed here. Assigning to the President of the Republic the call for a referendum if there are issues relevant to the national interests, the final decision on its convening, by deliberation of two-thirds, and a proposal by one-third of the Deputies or a reasoned decision by the Government. In the space of political leadership of the President of the Republic, the constitutional qualification as Supreme Commander of the Armed Forces stands out, under the terms of no. 2, article 74, and line b) of article 85 of the CRDTL. It is up to the President of the Republic to decree the state of execution, if it is used to suppress the democracy of a state, which are a state of siege or a state of emergency, it can be in cases of war or great calamity, they also need the approval of the National Parliament, after hearing the council of the state, the Government and the superior council of Defense and Security. The application of the power of clemency, through pardon and commutation of sentences and under the terms of Article 85 (j), the President of the Republic has the power to confer honorary titles, decorations and distinctions on the individual or organization.

The National Parliament may legislate on all matters of article 95 of the CRDTL, except those relating to the organization and functioning of the Government "The National Parliament has a generic competence that, if it does not affect the constitution, international conventions and the Rules of

Procedure, but does not affect the organization and functioning of the Government. In addition, the initiative and competence for the revision of the constitution are exclusive to the National Parliament, although it has the general competence to legislate on the basic issues of the country's domestic and foreign policy according to paragraph 1 of article 95 of the CRDTL. The National Parliament is the collegiate body, of parliamentary type, composed of a minimum limit of fifty-two deputies and a maximum of sixty-five deputies, the members of the National Parliament correspond to the duration of the five-year legislature provided for in paragraphs 2 and 4 of article 93 of the CRDTL and paragraph 1 of article 2 of the National Parliament Election Law. The legislative session begins on 15 September and ends on 14 September of the following year According to Article 44 of the Rules of Procedure of the National Parliament, abbreviation RPN in the implementing rules cited by (Corte Real AG & Francisco S., 2024).

The formation of the Government comes from the results of the elections that focus on the formation of the majorities of the National Parliament, the Prime Minister is nominated by the party with the most votes or by the alliance of parties with a parliamentary majority and appointed by the President of the Republic, after hearing the political parties represented in the National Parliament According to paragraph 1 of article 106 of the CRDTL. The term of office of the members of the Government is not predetermined, depending on the situations surrounding the appointment of a new Government. The termination of the Government's functions must be seen collectively or individually, with the Prime Minister thus occurring in his dismissal, with the inauguration of a new Prime Minister appointed. Ministers in their dismissal, similar

to the dismissal of the Prime Minister, who automatically ceases the function of the Ministers. Secretary of State in his dismissal, as well as in the dismissal of the Prime Minister and his Ministers, which automatically implies the termination of the functions of the Secretary of State in accordance with the law cited by (Corte Real AG & Francisco S., 2024).

The constitutional status of the exercise of the Government's own powers provided for in article 115 of the CRDTL, "there are three fundamental nuclei, namely legislative powers, political powers and administrative powers. The legislative competences imply the constitutional economy, the Government is a legislative body, such as the National Parliament, even if exercising this competence in less expressive sectors, issuing the draft law and the corresponding decree-laws, provided for in paragraph 2 al. a) of article 115 of the CRDTL, which are its exclusive competence, its own organization and functioning, as well as direct and indirect administration of the state According to paragraph 3 of art.115 of the CRDTL. The administrative powers are the most intense of all, the Government is the highest organ of the public administration According to article 103 of the CRDTL, it is responsible for presenting and executing the plans and the budget of the state, making the regulations for the execution of the laws provided for in paragraph 1 all'd) of article 115 of the CRDTL, directing the services and the direct administrative activity, conduct in the indirect administration and supervise the autonomous administration, perform acts relating to civil servants and agents of the public administration by virtue of paragraph 1 all'd) of article 96 of the CRDTL.

DISCUSSION

The competence of the President of the Republic has a constitutional basis, to be attributed by law, in relation to the National Parliament and the Government, in a system of co-responsibility and interdependence, but respecting the principle of the typicality of competences of the organs of political power. In the context of the interconnection of the constitutional competences of the President of the Republic before the National Parliament and the Government, they recognize, "the exclusive competence is attributed to a single body, concurrent competence is attributed the same title to several bodies, and the framework competences are attributed as to the definition of basis or principle to one body and as to the particularizing densification to another. The exclusive competence of the President of the Republic before the National Parliament and the Government is to promulgate legislative acts and order the publication of resolutions of the National Parliament approving agreements and ratifying international treaties and conventions. To appoint and swear in the Prime Minister nominated by the party or alliance of parties with a parliamentary majority, after hearing the political parties represented in the National Parliament. Declare a state of siege or state of emergency, declare war and make peace, with the authorization of the National Parliament, after hearing the Government, the Council of State and the Superior Council of Defense and Security, According to Article 85 (a) (d) (g) and (h) of the CRDTL cited by (Corte Real AG & Francisco S., 2024).

The concurrent constitutional powers of the President of the Republic also "lie in the control of the actions of the National Parliament and Government. It comprises the following, in accordance with the law, setting the day of the elections for the

President of the Republic and for the National Parliament. Dissolve the National Parliament, in the event of a serious institutional crisis that does not allow the formation of the Government or the approval of the general state budget for a period of more than sixty days, with prior hearing of the political parties that sit in it and have heard the Council of State, under penalty of the legal inexistence of the act of dissolution, taking into account the provisions of article 100 of the CRDTL. Dismiss the Government and dismiss the Prime Minister, when his programmed has been rejected for the second time in a row by the National Parliament. Appoint, swear in and dismiss the members of the Government, on the proposal of the Prime Minister, under the terms of paragraph 2 of article 106 of the CRDTL, accumulating in paragraph c), d), f), g), h), m) of article 86 of the CRDTL cited by (Corte Real AG & Francisco S., 2024).

The central position of the President of the Republic in the complex of powers of the semi-presidential system of government is also revealed in the relationship with other powers. The President of the Republic recognizes a generic power of influence guaranteed by his democratic legitimacy in the direct conduct of the State. The Constitutional Legal Power of the President of the Republic to make a decision before the Government and the National Parliament regarding the non-approval of the State Budget is characterized in two main aspects: dismissing the Prime Minister when it is necessary to ensure the normal functioning of democratic institutions, after hearing the Council of State by virtue of no. 2 article 112 of the CRDTL, "the resignation of the Prime Minister carries with it the resignation of the Government as a whole. It allows the State to dissolve the National Parliament, when the non-approval of the State Budget

exceeds sixty days, with the prior hearing of the political parties that sit in it and hearing the state council according to a new f) of article 86 of the CRDTL, however, under penalty of legal limits of the act of dissolution provided for in article 100 of the CRDTL. The reason for this restriction is procedural economy and the prestige of the national parliament. It is assumed that, in the same legislative session, the Government will not present again on its proposals for the State Budget law rejected by them, therefore, it would be a form of obstruction of its normal activity, "the inability of the National Parliament to generate a stable Government performs its dissolution. To know whether the judgment of the President of the Republic the assessment of the existence of a serious institutional crisis, in the autonomous sense of his own assessment or evaluation, the President of the Republic can dissolve the National Parliament, but on the basis of the law in force cited by (Corte Real AG & Francisco S., 2024).

CONCLUSION

The competences of the President of the Republic before the National Parliament and the Government respect the principle of separation of powers in the sense that each power has its sphere of preponderant action, without being able to enter the hegemonic sphere of action of another power provided for in article 69 of the CRDTL. In addition to strict separation, this is also a principle of interdependence of powers with mutual checks and balances in order to prevent abuse of power. The Government, after taking office, must prepare the draft law of the general state budget plan and subject it to the approval of the minister council to be presented in the National Parliament by October 15 of each economic year. Then, the approved bills must be distributed in order by the President of the Na-

tional Parliament. Therefore, subject to consideration by the committees and scheduling, which is made by the President of the National Parliament, after hearing the Conference of Representatives of the Parliamentary Benches for discussion and voting in general and specialty in plenary, approved in detail, the proposals of the law are submitted to a final global vote that allows the deputies to make a decision, for the non-approval or approval of the General State Budget, however, it may not exceed the period determined in Article 86 (f) of the CRDTL.

The dissolution of the National Parliament is implied when the judgment of the President of the Republic is in the assessment of the existence of a serious institutional crisis, which consists of the non-approval of the proposal for the General State Budget within a period of more than sixty days, with a prior hearing of the political parties that sit in it and hearing the Council of State, under penalty of legal inexistence of the act of dissolution according to al.f) of article 86, xv, article 100 of the CRDTL. On the basis of the problem of the non-approval of the proposal of the law of the General State Budget that gives effect to the dissolution of the National Parliament. The President of the Republic is the Head of State, the Supreme Holder of Political Power, which is based on the dependence of all State activity. It is the body that guarantees the unity of the state and the regular functioning of democratic institutions for the search for a new parliamentary composition. Thus, the winning parliamentary majority party or alliance may nominate the new Prime Minister, and it is exclusively up to the President of the Republic to dismiss the previous Government because of the existence of the beginning of the new legislature According to Article 112 (a) of the CRDTL. Subsequently, with the

inauguration of the new Prime Minister-designate, made by the President of the Republic by virtue of Article 85 (d) of the CRDTL. Finally, in order to prevent these situations, the Legislators, namely the members of the National Parliament, should revise the CRDTL, to provide for clearer rules regarding the competence of the President of the Republic interconnected with the National Parliament and the Government for the purposes of not approving the General State Budget within sixty days, to ensure the normal functioning of democratic institutions and to avoid the unconstitutionality of the functioning of the organs of sovereignty expect judicial organ in this case, and follow the rules for the stability of the constitutional transmissions of the separation and interdependence of the powers of interconnections by law in provided for cited by (Corte Real AG & Francisco S., 2024).

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