

THE LEGAL CONDITIONS AND PROCEDURES OF ENTRY, PERMANENCE, DEPARTURE AND REMOVAL OF FOREIGNERS AND ADAPT REAL OF THE DEMOCRATIC REPUBLIC OF TIMOR- LESTE.

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ABSTRACT

Introduction: The Universal Declaration of Human Rights in Article 13 (2) provides that "Everyone has the right to leave the country in which he is, including his own, and the right to return to his country", so that today all people are free to leave their country. Human movement is a current situation that all developed countries are developing. State of Timor-Leste is one of the Asian States that has the main focus on the economy, as well as attracting many people to emigrate to the country, especially in search and seeks an improvement of life through investment, and this contributes to the economic development of the country.

Objectives: to analyze the legal conditions and procedures of entry, departure, stay and removal of foreigners adapt read in Timor-Leste.

Discussion: In terms of international levels, in accordance with public international law, the State of Timor-Leste, through a bilateral or diplomatic relationship, establishes rules of control of citizens. In the future, Timor-Leste will establish the "Greenlets" policy for countries with a high possibility of terrorism, and is currently in agreement with the CPLP (Community of Portuguese-speaking Countries) from countries about mobility in these countries.

Conclusion: Most citizens are unaware of the issues of access andalusites to address the realities that are not in accordance with the above-mentioned legislation, identifying and trying to raise the questions about the efficiency and implementation of this Law in Timor-Leste in the future, that the key point is very fundamentals cited by (Corte Real AG & Tilman CB, 2023).

KEYWORDS: Legal procedures for entry, residence, removal and stay of the day in Timor-Leste.

INTRODUCTION

Nationality is the personal quality in which a politically organized society is. This situation makes this person become part of the people in the country, and as a consequence enjoy the rights and subject himself to the duties arising from him. According to Pontes de Miranda, cited by Morales (2014), nationality is the Legal-Political bond of public, internal law, which makes the person one of the elements of components of the personal dimension of the state. The Democratic Republic of Timor-Leste assigns its citizens the right of nationality based on Article 3 of the Constitution of the Republic as a basic right to define the identity of a citizen. However, under Article 3 (4) of this fundamental Law, the State of Timor-Leste, by the competence of the National Parliament, created Law No. 9/2002, of November 5, on Nationality, which presents the conditions of attribution acquisition and loss achievement of Timorese nationality. Similarly, governor or government created Decree-Law No. 1/2004 of February, which defines the Regulation and Nationality Law, is very important cited by (Corte Real AG & Tilman CB, 2023).

Generally, the State has assigned two types of nationality to its citizens: original nationality and acquired nationality. The original nationality may stem from consanguinity, where the citizens of Timor-Leste are considered, those who have been born in national territory: a) Children of father or mother born in Timor-Leste; (b) children of unknown parents, stateless or of unknown nationality; c) Children of foreign father or mother who, being over seventeen years old, declare, by themselves, to want to be Timorese. Pursuant to Article 8(9/2002 of 5 November) it provides that, even if children of Timorese fathers or mothers are born in foreign territory. In the meantime, the State also allows a wide possibility for citizens to exercise their rights to be Timorese, through the modality of acquired nationality, provided that they reveal conditions and manifestations of will of individu-

als or citizens, by the following factors considered: affiliation, adoption, marriage and naturalization, which also exists in the country according to permit temporary stay and longtime cited by (Corte Real AG & Tilman CB, 2023).

Objective: To provide the legal conditions and procedures for entry, exit, stay and removal of foreigners and stateless persons in Timor-Leste.

THEORITICAL ENQUDRATION

Acquisition of Nationality

According to the Nationality Law No. 9/2002 of 5 November and the Decree-Law on the Regulation of the Nationality Law No. 1/2004 of February, the nationality acquired is considered as a secondary criterion by which, in addition to the original nationality, the citizen can acquire the right of nationality by affiliation, adoption, marriage and naturalization. Moreover, it provides in Article 9 (1). 9/2002 of 5 november, the acquisition of nationality on the grounds of affiliation is granted to minor children, of a father or mother with acquired Timorese nationality, provided that the parents request it.

As for acquisition by adoption, it is possible to acquire Timorese nationality when foreign children are fully adopted by some Timorese citizens and, in fact, it is said by full adoption when the binding relationship with the natural family of proof with the registered official documents and validity is extinguished all in order by the State of Timor-Leste regulation in the implementation just clear cited by (Corte Real AG & Tilman CB, 2023).

In the acquisition by marriage, the foreigner married to a Timorese national, can acquire the nationality of the Husband or wife Timorese, provided that he/she requires it and, on the date of the application, presents some cumulative conditions allowed, namely married, living in national territory for at least 2 years and know how to speak one of the official languages of Timor-Leste. The

acquisition of the nationality of Timorese by naturalization is usually granted by the Ministry of Justice to the foreigner who requires it by the cumulative conditions considered from point (a) to point (f) of Article 12 (1) of the Nationality Law. In addition, the State through the National Parliament may grant Timorese nationality to foreign citizens by naturalization due to high and relevant services, such as Max Stahl (international journalist) where the State of Timor-Leste assigned him nationality for his contribution to Timor-Leste's independence, in the country's long-standing resistance struggle cited by (Corte Real AG & Tilman CB, 2023).

Foreign Nationals and Stateless Persons

Basically, the doctrine conceptualizes citizenship as a legal and political bond that connects with an individual to a State. The meaning "individual" is considered as "citizen", originating and acquired. The original citizenship which is assigned by birth effect, and while the acquired citizenship is obtained by the foreign person. According to Article 3 of the Annotated Council of the Democratic Republic of Timor-Leste (CRDTL). The original Timorese citizenship is verified by a traditional combination of the criteria of *ius soli* and *ius sanguinis*; the first says it is related to the very origin of the birth (birth on Timorese soil) of the individual himself, that is, the naturalness of a citizen, according to the Law cited by (Corte Real AG & Tilman CB, 2023).

According to Migration and Asylum Act No 11/2017 of 24 May, stateless persons who are not nationals of the State are stateless, i.e. those who do not represent their identity as a nationality. In view of this, as defined in the International Convention, the term "stateless" will designate any person who is not considered by any State, according to its legalization, as its national (United Nations General Assembly – UNGA 1954). Accordingly, the special situation of the status of the stateless ness of the special law, in particular administrative assistance (Article

25 of the 1954 Convention) and the identity and travel documents (Articles 27 and 28 of the 1954 Convention). Moreover, the documents stipulate that treatment at least as favourable as that agreed upon by nationals should be given to stateless persons in relation to religious freedom (Article 4 of the 1954 Convention) and public education (Article 22 of the 1954 Convention) role application in Nation and other regulation rfelected cited by (Corte Real AG & Tilman CB, 2023).

Therefore, stateless persons are persons who have no legal ties to their State because they do not present their nationality, in accordance with the legal regimes of each State. However, they still enjoy the law of international protection and the internal law of each country, in the case of Timor-Leste, provided for in article 3(b), Article 3(2) of the CRDTL- for stateless persons found in Timor-Leste, their children are considered as original citizens, i.e. they are Timorese as long as they are born within the national territory. By casting the CRDTL annotation, citizenship is defined as the link that translates the belonging of a citizen to a political community and which represents a simultanied of a status and the right to participate in legal and political life, namely in the participation of civil and political law in the sphere of fundamental rights. Citizens do not deviate from their basic rights. So, they are the main top of that right exists and are purposes to which the right through the State ends up responding, according to their requirements, and by will of good implementation is very important for nation cited by (Corte Real AG & Tilman CB, 2023).

However, the right to citizenship sheds light on political and civil distinctions about access to fundamental rights by nationals, foreigners and stateless persons. According to the circulations within the national territory and state, nationals have the right not to be expelled or expatriates from the national territory, in accordance with (Article 35 (4) of the CRDTL) and are reserved for the originating citizens the right to leave the national territory freely

and to its very return, (n°. (2) of Article 44 of the CRDTL), the right and duty to integrate the armed forces, (Article 146 (1) of the CRDTL), the right to join the Supreme Court of Justice (Article 127 (1) of the CRDTL), the right to protection of the State abroad (Article 22 of the CRDTL) and the right to private ownership of land, (Article 54 (4) of the CRDTL). In sum, in part II of the Annotated Constitution of the Democratic Republic of Timor-Leste, there is a judgment of the Court of Appeal that advocates the application of fundamental law exercises that are exclusive to nationals and there are those that are classified by expressions such as "the citizen", "citizens" and "all citizens". However, there are still some restrictions, before foreign citizens, in particular political and civil rights, as in the reserve of original citizens and including the participation of being elected and voting, Article 75 CRDTL, it was clear the nature of application in field study and field jobs need in Timor-Leste cited by (Corte Real AG & Tilman CB, 2023).

REVIEW OF LITERATURE

Legal conditions and procedures for the free movement of Persons

In view of the implications of the global world on the movement of persons, goods and capital, border posts are held high to control their entry and have a broad task of preventing the entry of illegal products, traffic act, criminal goods, weapons, counter-trafficking, human trafficking, drug trafficking, etc. And, more recently, to control viral diseases such as the corona virus (Covid-19). By the legal procedure of free movement of people in Timor-Leste, this is a sensitive issue to the country since it can affect the national security of the country. The State, therefore having been created Migration and Asylum Law, 11/2017 of 24 May, which adopts the regulation UNTAET 2000/9 on the border regime to strengthen the control system on the subject of the movement of citizens in the national territory. The Law considers the international zone as a means where the State can do document-

tary control through the area of the territory with control between the points embarkation-disembarkation and the place where the checkpoints of ports and airports and the area between foreign territory and the posts of documentary control of persons at the borders, (Article 1 of the Migration and Asylum Act 2017). Pursuant to Article 10 of the Migration and Asylum Act, it stresses that the entry and exit from the national territory is carried out exclusively by the border posts empowered for purpose and during the hours of their operation, of the border service delivery is good action cited by (Corte Real AG & Tilman CB, 2023).

It allows all citizens to have the right to cross the border of Timor-Leste, provided that, by submitting identity documents issued by the State authorities of the RDTL or provided that they prove to be a national, or being a foreigner, they present documents that meet the requirements of Law 11/2017. For entry and exit from national territory, all are subject to presentation of travel documents and documents replacing them, thus, according to Article 12 (1) of the Migration and Asylum Act, for entry and exit from national territory, nationals and foreigners are holders of travel documents recognised as travel authorisation within border areas, issued under the agreement between RDTL and the Indonesian Republic on boarding pass authorisation at land border crossing points. In addition to the documents submitted, for entry into the national territory, foreigners must be holders of a valid visa, suitable for the purpose according to their travel, except; 1) those who are entitled with a valid residence permit or identity card granted to diplomatic personnel, 2) those who are entitled with special state authorization, 3) those who provide work for the United Nations or for any of its agencies accredited in national territory and 4) those exempted from the visa requirement by a bilateral or multilateral agreement, such as in Indonesia by Government Resolution are exempted from the tourist visa (Government Resolution No. 25/2019 of

18 September), is the important point of implementation real situation base on the regulation need and adapted for situation have cited by (Corte Real AG & Tilman CB, 2023).

Departure and Entry of National citizens

Freedom of movement contains a fundamental right of citizens enshrined in Article 44 of the Constitution of the Democratic Republic of Timor-Leste, being a right of movement, namely the right to leave abroad and to return to the country for necessary reasons. Any person who, upon presentation of identity documents issued by the authorities of the RDTL, proves to be national, and has the right to leave all persons on whom no order or restriction issued under the law (Article 11 of the Migration and Asylum Act) is entitled to entry into national territory. As for the exit, it is necessary to present the passport, because it is considered as the only documents authorized and allowed to identify a citizen when entering a country, as defined in Article 1 of Decree Law 2/2002, 20 September of the Legal Regime of passports, which says; the passport is "an individual or family travel document, which allows its holders to enter and leave the national territory, as well as the territory of other States that recognise it for that purpose". A visa is required when entering a foreign country, except those having a bilateral agreement with the State of the RDTL, such as Indonesia and England. And being exempted from visas upon returning to your country.

Entry, Permanence and Exit of Foreigners in the Territory

Timor-Leste, due to globalization, and under the Migration and Asylum Act enacted in 2017, opened a wide opportunity for foreigners to move around its territory and have access to the activities allowed by entry and stay. However, foreigners who are in the national territory of Timor-Leste enjoy the same rights, freedoms and guarantees as nationals and are subject to the same duties

enshrined in the constitution of the RDTL (Article 3 of the Migration and Asylum Law). Foreigners are admitted in a national territory, with or without visa requirement during their entire stay, except for exceptional and duly reasoned conditions, being obliged to show a valid travel document that must be displayed by the country of the foreigner, whenever it is requested by any police or judicial authority to enter the national territory (article 4(23) of the Migration and Asylum Act) , from Timor-Leste exists to implementation clear in the procedures and administration systems in home country cited by (Corte Real AG & Tilman CB, 2023).

According to Article 20 of the Migration and Asylum Act, exceptional cases of entry authorization become; situations that have relevance to the national interest or which, for urgent humanitarian reasons, imply an entry to foreigners who do not meet the legal requirements for their entry into the territory with a maximum validity of residence permits for 30 days with a minimum of equal successive periods, regardless of the right of asylum. The Migration and Asylum Law also regulates the entry and exit of minors, so that the country refuses entry to minors and foreign citizens accompanying them, when these persons do not prove, by documents with full evidential force, the status of legal representative and when their legal representative is not admitted to national territory. In the event that the foreign minor is not admitted to national territory, the entry of the foreigner citizen accompanying him at that time shall be refused in accordance with the requirements laid down in Article 19 (3,4,5) and 6 of the Migration and Asylum Act.

According to Article 55 of the Migration and Asylum Act, there is a temporary residence permit and permanent residence permit. The State issues a temporary residence permit to foreigners residing in a national territory, in which the foreigner may reside in a national territory for a period of two years, an authorization that is renewable for equal periods issued for: (i) the exercise of profes-

sional activity, (ii) the foreign citizen married for more than two years and less than five years with a national citizen, (iii) the effect of family reunification, (iv) victims of trafficking in persons or those victims of networks to assist the immigration of persons and (v) for exceptional reasons with requirements that count in paragraphs. Article 60 and 2 of the Migration and Asylum Act.

As for the permanent authorization, that is, submitted by an application contained in Article 65 of the Migration and Asylum Act, to foreigners who have been legal residents in national territory for at least 10 consecutive years, minor children or dependent on a national, a foreign citizen married to a national for more than 5 years, that is, holder of a temporary residence permit for at least 6 years. It also applies to those who during the period of residence, have not been convicted of criminal offenses in penalty or sentences that cumulatively exceed 1 year of effective imprisonment or who have maintained over the period of residence in national territory the appropriate means of accommodation and subsistence, the purpose of obtaining permanent residence declared in the application that is not contradictory with the documents submitted or with the statements provided, during their stay in Timor-Leste, have made a positive contribution to the country's economy or social well-being. The State facilitates an admission of Safe Conduct issued by the public service which is intended to permit the departure of a national territory and is valid for a single trip before Article 12(3) (b) which concerns foreigners who show the difficulty or impossibility of leaving the national territory because they do not have a travel document and do not have travel documents that are the subject of a measure removal. This is issued when there is a guarantee that the authority of the country to which the foreigner wishes to travel to him/her will be admitted.

Timor-Leste in daily life, being a country with foreign

policy relations having strengthened its bilateral and multilateral relationship with other countries in various sectors, the country issues a **Courtesy Visa** by the Ministry of Foreign Affairs to foreigners entering for service or official characteristic and the visa referred to is valid for 1 year, allowing a period of stay of up to 30 days (Article 33 of the Migration and Asylum Act). In addition to this type of visa the State also considers other types of visas such as; transit visa, which is very rare to happen because it does not have much possibility of transit, but is regulated with a maximum duration of 72 hours to foreigner who intends to enter a national territory traveling to another country (Article 34 of the Migration and Asylum Act), Tourism Visa; Airport Stop over Visa; Work visa, Business visa classes I and II; Temporary Stay Visa and Residence Visa in the country that one point fundamental in administration systems and role cited by (Corte Real AG & Tilman CB, 2023).

METHODOLOGICAL

This investigation is a search of bibliographic references. Throughout the research and documentary analysis of knowledge of science and argumentative both legal and literary.

DISCUSSION

Generally, the removal of foreign citizens is a measure to prevent illegal entry and illegal residence, including the risks to the national security of the state. The New Migration and Asylum Act, No. 11/2017, 24 May of its Chapter VII, provides in Article 73 that the removal from national territory may only apply to non-national citizens who remain illegally in the territory of Timor-Leste; acting against national security, public order or public health, and that their presence or activity (profitable or unprofitable) threatens the dignity of the RDTL and the public health their citizens, that any unviability under applicable law is known, that they commit acts of serious crime for certain reasons or intend to commit such acts.

Based on the previous reasons for removal, the law allows administrative system and judicial removal measures. In the administrative removal is due to a decision of the administrative act, that is the decision of administrative expulsion, and since the judicial removal occurs by the decision of the court is legal and take actions cited by (Corte Real AG & Tilman CB, 2023).

Furthermore, as for expulsion on grounds of public policy, i.e. of ordination, the State imposes fines for the transport of foreigners prohibited from entering the national territory (Article 142 Migration and Asylum Act), in which its application covers legal persons or other entities, in the regulation of the exercise of unauthorized professional activities (Article 143 of the Migration and Asylum Act), the use of illegal labour, the non-renewal of the residence permit and the lack of registration of accommodation and, among others, provided for in Law No 11/2017 on Migration and Asylum. Thus, infringements of recidivism which entail a consequence of a fine increased to double in implementation apply.

The Ministry of the Interior and the competent identity for the preparation and practical implementation of migration issues in the Democratic Republic of Timor-Leste. Under the preamble to Decree-Law No. 14/2019 of 10 July, which establishes the organic of the Ministry of the Interior, the government defines in its program quite clearly, the concrete public policy measures that will be implemented in the area of Internal Security, so that the general population, investors and all those who visit Timor-Leste feel safe and confident that their rights and their legitimate interests have adequate protection. As well as point j, n°. Article 3 (1) of that decree provides for the assignment of the Interior Ministry in its competence to control the movement of persons at borders, the entry, residence and residence, the removal and removal of foreigners from the national territory.

The Migration service thus provides the opportunity to develop the organization oriented to professional services and migration activities. Having the general responsibility provided for in the Migration and Asylum Law, to control the movements of people during arrivals and departures from the country, including the monitoring of the presence of foreigners in national territory (paragraph 2 and 3 of the preamble to the Decree-Law, no. 30/2009, 18 November). Similarly, Article 14 of Decree-Law No. 14/2019, of July 10, concerning the Organic of the Interior Ministry, defines that the Migration Service, abbreviated SM, is a security service that is rightly subordinated to the Minister of the Interior, who, in the case of internal security policy and under the Migration and Asylum Law, has as fundamental objectives to control the movement of people at borders and the permanence and activities of foreigners in national territory. The Migration Service is also designated as a criminal police body for the purposes of the Criminal Law and acts in the criminal and criminal procedural law and in migration matters that result in acts of criminal consequence (Article 1 and 3 of the Organic Law of the Migration Service). In order to facilitate access for the services provided by the State, according to Ministerial Decree 47/GAB/SES/2010, the migration service has allocated the creation of a territorial delegation, in particular the responsibility for exclusive control at border posts, in particular the autonomous region of Oecusse (Sakato and Bobometo) including the others cited by (Corte Real AG & Tilman CB, 2023).

According to Article 42 of the Migration and Asylum Act, for the application for a Courtesy Visa, Temporary Stay Visas, Work Visas, Business Visas, Airport Stopover Visas and Residence Fixation Visas, are the competences of the diplomatic or consular missions of the RDTL abroad. In addition to diplomatic access, applications can be submitted right to the Migration Service, except for the courtesy visa. As for the granting of visas, on the basis of Article 44 of the Migration and Asylum

Act, it is appropriate to end up with the member of the Government that oversees foreign affairs to grant the Visa courtesy According to current law No. 11/2017, migration and asylum, work visas must be submitted diplomatically in foreign countries before the foreigner enters the national territory, but unfortunately this means is not feasible in the face of the conditions of embassies not being sufficient to deal with the Visas. Nevertheless, on the basis of the same order, it requires that after the authorisation of the visa application are issued at the agreed border post. This affects that, the interested have to enter twice to obtain the work visa and it follows that the migration service of Ministry Interior has limited competence, that is, only deals with the issues of revocation of Work Visas, for people working in Timor-Leste cited by (Corte Real AG & Tilman CB, 2023).

CONCLUSION

It is considered that the care and procedures of public services are considered as a problem faced by foreigners in the requirement to obtain work visas and requires that the foreigner, is in a situation too demanding and bureaucratic before the application for a work visa. Therefore, a systematic review of the processes to organise the concentration of visa issuing services should be set up in order to avoid the existence of cases of administrative infringements, as well as corruption and falsification of documents. It is noteworthy that the competent authorities for issuing visas must ensure application of Law No. 11/2017, of 24 May, Law, Migration and Asylum that is in force, the employees of the competent authorities must have predomance of the respective Migration and Asylum Law, because they are the ones who deal with this situation every day. On the other hand, Timor-Leste is in a way where its economy still depends on other countries, as well as economic development in the investment sector. Therefore, the country must always be open to other countries to enter, investment and work with the

Timorese people, to joint resource investment the long-time stay cited by (Corte Real AG & Tilman CB, 2023).

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