COURT OF APPEAL

Proc. No 01/CONST/2011/TR

Judgment of the Judges of the Court of Appeal, Claudio de Jesus Ximenes, José Luís da Goia and José Manuel Barata Penha:

The President of the Republic is asking the Court of Appeal under Article 149 and Article 164 of the Constitution of the Democratic Republic of Timor-Leste, prior assessment of the constitutionality of National Parliament Decree no. 45/II which approves the General State budget of the Democratic Republic of Timor-Leste for 2011.

He bases this claim on the following:

CREATION OF SPECIAL FUNDS

1. The Timorese legal system governing the establishment of funds through the Article 145.2 of the Constitution and Article 32.1 of law No. 13/2009 of 21 October, which deals with Budget and Financial Management.

2. Article 145.2 of CRDTL provides that "The Budget law shall provide, based on efficiency and effectiveness, a breakdown of revenue and breakdown of the expenditures and avoid the existence of secret appropriations and funds."

3. Article 32.1 of the Budget and Financial Management Law, in turn, provides that "The Minister of Finance may, when authorized by law, establish special funds that are not part of the consolidated fund"

4. From a simple examination of the constitutional provision and of the regulation, it can be concluded that there are two conditions for the creation of special funds, namely, (1) the approval by law and (2) transparency / specification of the expenditures that fund is intended to cover.

(1) Approval by Law

5. In truth, interpret the provision in Article 145, paragraph 2 of CRDTL, it is clear that the Constitution itself allows the creation of funds through the Budget Law, as it does not allow the budget law to create secret funds, leads to the conclusion there is no fence if funds are not secret.

6. But this reference of the Constitution allows them to raise another issue: although the piece of legislation approved by the National Parliament, which has been submitted to the enactment of the President, has the nature of law, can ask whether the creation of Funds for Infrastructure and Development of Human

Capital, provided for in Article 9 and following the Decree of the National Parliament No. 45/II, should not have been the subject of law itself.

7. There are good reasons to argue that yes, given the constitutional principle of separation of budgetary matters, other matters of financial legislation, requiring framework laws and not of immediate and particular item.

(2) Transparency / specification of the expenditures to the fund is intended to cover.

8. Further, it is necessary to examine as to the transparency of the Funds for Infrastructure and Human Capital Development set out in statute approved by the National Parliament in order to identify whether it fulfills the minimum requirements in terms of specification of expenditures as required in paragraph 2 of Article 145 of CRDTL.

9. Such a requirement specification of the expenditures to the fund refers is intended to monitor the Government's actions against the budget powers that were conferred on the National Parliament on.

10. That said, and analyzing the numbers 2 and 4 of Article 9 of the statute enacted by the National Parliament and the proposal submitted by the Government as a whole, it appears that they did not meet the requirements of transparency required by Article 145, paragraph 2 of CRDTL, in that are not identified point by point, specifically, what expenses will be covered by funds allocated to these funds.

11. Paragraph 2 of Article 9 of the 2011 state budget provides only vague and areas of government where spending can be generated, such as telecommunications, for example, in h) of the cited provisions that have become available including resources for Infrastructure Fund earmarked for the acquisition, construction and development of "other infrastructure that promote the strategic development."

12. In truth, the entire statute and its annexes approved has no description of actual expenses should be covered by the Fund for Infrastructure.

13. That is, it can be argued that the government received a "blank check" from the National Parliament to use the resources allocated to the fund according to your convenience, contrary to the provisions of Article 95. 2(q) of the Constitution, which empowers the National Parliament the power to legislate on budgetary arrangements, and in Article 115(d) of the Constitution, which gives the government the power to implement the budget as approved by the National Parliament.

14. The same argument applies to Article 9.4 of the budget law which provides that the Human Capital Development Fund is intended to fund projects and programs of training of human resources, without discriminating which programs and projects, but only as giving example "programs to increase the training of Timorese professionals in key sectors of development such as justice, health, education, infrastructure, agriculture, tourism, petroleum management and financial management, among others ..."

15. There is also in this case no specification of how the resources allocated will be spent in the background, leading to a total lack of oversight and transparency on the activities of executive government.

16. And enjoying a very similar situation on the constitutionality of Articles 1 and 2 of Law No. 12/2008 of 5 August, which approved the amendment to Law No. 10/2007 of 31 December, which established the 2008 State Budget, creating the Economic Stabilization Fund, the Court of Appeal confirmed the following understanding:

"... Being approved by the Budget Act of the Parliament, without specifying the cost, makes the Government, which is who has the power to execute, can alter it as you wish. In this respect Teixeira Ribeiro teaches lessons in Public Finance: However, in approving the budget, the Assembly set the amount of expenditures as total expenditure on each chapter and each function and sub function. Hence, in principle, be prohibited from transferring funds to the Government of chapters and sub-function or sub-function to function and to cover claims which result in increased total expenditure of the budget or the expenditure of any chapter and any function or sub-function "

In turn, Sousa Franco, Studies in the Constitution of Finance 1976-1982, No 510, says: The budget may be amended, whilst respecting the original form: legislative initiative of the Government (due to its exclusive jurisdiction and delegated in this area) and change the law review.

Thus, once approved the Budget the Government is bound by its own lower levels of specification of

that document with respect to organic rankings, chapters and functional. "

17. Further, the Court of Appeal concluded on the absence of breakdown of expenditures contained in the Economic Stabilization Fund, then approved by the National Parliament:

"... to give the Government the allocation in question,

National Parliament has given him a blank check in the amount of two hundred and forty million U.S. dollars, leaving the executive discretion in a large area on the budget expenditure.

It is, therefore, a power that the Government cannot have and that the National Parliament cannot confer on the Government.

... a breakdown of expenditure required by the Constitution ... has as its foundation the truthfulness, accuracy, transparency, accuracy, precision and freedom of political commitment and the corresponding administrative ties. "

18. Moreover, besides the lack of appropriate breakdown of expenditures to be covered by their funds, paragraph 6 of Article 9 of the statute in a commentary states that "The Boards are responsible for effecting the amendments to the appropriations allocated to programs within the limits of the budget approved by parliament and met their goals ", violating thus the constitutional division of powers laid down in Articles 95, paragraph 2, al. q) and 115 °, al. d) of the Constitution.

19. Another was not the opinion of the Court of Appeal in the case mentioned above:

"The National Parliament shall not authorize the Government to amend the budget. This constitutional principle of division of powers between Parliament and the budgetary government translates necessarily give Parliament the power to decide the options politically significant in budgetary matters: volume of overall expenditure and income, options for expenditure, allocating, according with certain political criteria, the appropriations for each heading. Parliament cannot delegate its power in the government as such points cannot renounce the exercise of those powers, leaving the government more or less discretionary powers. "

20. Finally, it is worth noting the opinion prepared by the Commission of Economy, Finance and Anti-Corruption of the National Parliament (Commission C) regarding the creation of special funds under examination.

21. In accordance with the provisions of the above document "The proposal of the funds listed in Appendices 2B and 2C has not discriminated against in relation to revenue and expenditure, as required by art. 145.2 of the Constitution. Nor were submitted to Parliament estimates of revenue and expenditure of special funds for this financial year 2011 as required by art. 32.6 of Law No. 13/2009. "

22. Also according to the same document, with regard to the recommendations of the Commission C of the National Parliament, this adds "Parliament should not approve the funds without first receiving the information the government can take to enable a reasoned decision. The approval should be dependent on the commitment legally established that funds in the documents submitted to the Parliament of the State Budget will actually perform as expected unless the parliament approves the allocation of funds. "

23. Therefore, we conclude that the normative guidelines criticized in 2011 OGE hurt the constitutional provisions that were subsequently summoned to criticism.

TRANSFER OF AMOUNTS OF PETROLEUM FUND FOR OGE EXCEED ESTIMATED THE SUSTAINABLE INCOME

24. The draft law now under examination discloses in its preamble a summary of the budget of the State Budget for fiscal year 2011, approved by the National Parliament.

25. From the brief reading of the final part of the above documents, as well as the annexes contained in it, it appears that the value corresponding to the fiscal deficit of state budget 2011 amounts to $ 1.196 billion, with $ 1.055 billion to be financed from the Fund.

25. The report prepared by Deloitte ToucheTomatsu determines the estimated sustainable income of the Petroleum Fund for the year 2011 amounting to $ 734 million.

26. In accordance with the provisions of Article 4 of the proposal approved by Parliament notes that the Government intends to finance the state budget 2011 in the amount of $ 1.055 billion through the

Petroleum Fund and the transfer of the amount of $ 734 million Americans, corresponding to the estimated sustainable income from the Petroleum Fund, made after compliance with Article 8 of Law No. 9 / 2005 of 3 August (Petroleum Fund) and transfer the amount of $ 321 million of U.S. dollars, an amount that exceeds the sustainable income to be made after completion of paragraphs "a", "b" and "c" of Article 9 of the Act previously cited.

28. The Petroleum Fund Act establishes strict criteria for transfers from the Petroleum Fund both with respect to the amount comprised within the estimated sustainable income, and regarding the amount that exceeds this parameter (Friends 8 and 9 respectively).

29. The above mentioned Article 9 provides:

"Article 9

Transfers Exceeding the Estimated Sustainable Income

There shall be no transfer of the Petroleum Fund that exceeds the Estimated Sustainable Income for the Fiscal Year unless the Government has made 'Parliament:

a) the reports referred to in subparagraphs a) and b) of the preceding;

b) a report estimating the amount by which the Estimated Sustainable Income for fiscal year following the fiscal year to which the transfer is made will be reduced as a result of the transfer of the Petroleum Fund an amount greater than the Estimated Sustainable Income for Fiscal Year which the transfer is made;

c) an auditor's report certifying the estimates of reduction in the estimated sustainable income referred to in paragraph b) of this Article;

d) detailed explanation of the reasons why he considers to be in the interest of Timor-Leste in the long term that a transfer in an amount greater than the Estimated Sustainable Income. "

30. Under article above transcript, it appears that in addition to the mandatory reporting by the Government to the National Parliament of the reports contained in paragraphs "a, b and c, which are authorized for shipments that exceed the Estimated Sustainable Income, it is essential to compliance by the Government of subparagraph "d" from above. Article, namely, the "detailed explanation of the reasons why he considers to be in the interest of Timor-Leste in the long term that a transfer in an amount greater than the Estimated Sustainable Income."

31. Accordingly doubt as to the prior and sufficient explanation of the Government to Parliament in accordance with the provisions of subparagraph "d" of Article 9 of the Petroleum Fund Law, as under Article 4 of the act now under examination, the Government refers only to compliance with the provisions of paragraphs "a", "b" and "c" of Article 9 of the Petroleum Fund Act, excusing itself from compliance with the "d" of that section.

32. This question has been examined by the Court of Appeal in the decision published in the Official Gazette on November 26, 2011, which dismissed the petition for subsequent abstract review of constitutionality of Articles 1 and 2 of Law No. 12/2008 5 August, which approved the amendment to Law 10/2007 of 31 December (the State Budget for the Year 2008) and dismissed the unlawful violation of that statute by the legislative process; criticized:

"... The Commission's Report and Opinion Economics and Finance, placed in the file, it appears that the Government, when submitting the draft law to amend the State Budget did not provide the requirements of paragraph d) of art . 9 of Act 9 / 2005, that is the detailed explanation in the interest of Timor-Leste in the long term. The file does not, well, neither the agency issuing the rule was added a detailed explanation about the reasons why he considers to be in the interest of Timor-Leste in the long term that a transfer in an amount greater than the Estimated Sustainable Income. "

33. Moreover, it is the Court of Appeal (See decision published in the Official Gazette on November 26, 2008) which recognizes that the Petroleum Fund Act a law of superior force, and therefore could not speak up on repeal of the law later, namely the Law on State Budget:

"In any case, these criteria will have to take into account the stated language of the Constitution itself. Article 139 n.2 not a factor sufficient to warrant the conclusion that the constitutional system, the Petroleum Fund Act, benefits from a superior force. Indeed, the prediction that the establishment of mandatory financial reserves should be made in accordance with law, the constitution contains this reference in various other provisions.

Thus, the linguistic utterance does not follow that the Petroleum Fund is material foundation of validity of any other law, or which has a special ability or derogatory of protection against its exemption by subsequent law. However, even without any specific indication in the letter of the Constitution, making a teleological interpretation, we believe that the Petroleum Fund Act is a law "constitutionally required" in the sense that it fits define a legal framework on the use of natural resources due the special role assigned to it by the Constitution and the importance it represents for the country in terms of present and future.

It is also true that the Constitution does not postulate any self-binding system of Parliament to the legal use of natural resources, but in any case we can speak of a self-binding Parliament resulting from the ordinary law, binding itself, which was aimed at create a safe model for the joint use of natural resources.

Indeed, the text of the Petroleum Fund Act - Article 4-Results clearly the idea that the National Parliament devoted a self-binding relationship between this law and the law of the budget.

Thus, there is no doubt that the Petroleum Fund is in the nature of law to "stronger force". "

34. Therefore, also in the 2011 State Budget Law of the same is true vice of illegality for violation of the legislative process.

CONCLUSIONS

A. The creation of Funds for Infrastructure and Human Capital Development, referred to in Article 9 and following of Decree No. 45/II National Parliament through the State Budget 2011, and not by specific law, infringes Article 145 / 2 of the Constitution;

B. The creation of Funds for Infrastructure and Human Capital Development, referred to in Article 9 and following the Decree of the National Parliament No. 45/II, so as not to identify specific expenditures which will be covered by money allocated to these funds infringes transparency requirements in the specification of expenditure requested by paragraph 2 of Article 145 of the Constitution.

C. The transfer of the amount of $ 321 million U.S. dollars, an amount that exceeds the sustainable income, without a detailed explanation about the reasons why he considers to be in the interest of Timor-Leste in the long term as a transfer, infringes Article 9 of the Petroleum Fund Law, which has stronger force.

Notified of the request, the National Parliament and Ms. Attorney General's Office expressed their position on the request.

The National Parliament defends the constitutionality of Articles 4 and 9 of Decree of the National Parliament No. 45/II, alleging the following:

I - *The creation of Special Funds*

1. Regarding the creation of special funds, it must, therefore, distinguish two levels: the principles and general rules on budgetary matters embraced in the Constitution and applicable to the budget in all its "extension" and the rules relating to the creation of such special funds.

2. Article 145. ° paragraph 2 of the Constitution embodies a general principle in budgetary matters, the breakdowns of revenues and expenses applicable to the entire budget in its *entire extent* and is not directed in particular to funds.

3. A different issue is the terms and conditions under which funds may be established, governed by Law No 13/2009 of 21 October on Budget and Financial Management.

4. The Constitution of the Republic, in its article 95 paragraph 2, point q), assigns to the National Parliament the power to legislate on budgetary framework.

5. Under the constitutional provision, the National Parliament approved Law No 13/2009 of 21 October, it establishes the legal framework applicable to the State Budget.

6. That statute, pursuant to Article 32, authorizes the establishment, by law, the Special Funds.

7. As follows from that above it says, facing the Timor-Leste legal system nothing prevents the creation of funds provided that a) are approved by law - in accordance with Article 32 of Law No 13/2009 of 21 October and b) comply with the constitutional principle of breakdown upheld in paragraph 2 of Article

145 of the Constitution of the Republic.

II - *Approval by Law*

8. Regarding this issue, namely the question whether the creation of special funds should be subject to its own law, that is, whether you need a diploma solely dedicated to creating a fund, only and only for that purpose there can be no doubt about the answer.

9. Nowhere is expected to need a law to create its own funds, nor is in any legal, constitutional or infra-constitutional, any foothold regulation required to legally underpin this thesis.

10. In fact, to admit it would also allow a compression of the powers constitutionally assigned to Parliament and Government on legislative matters, that nothing in the Constitution allows us to accept.

11. Moreover, the usefulness of such a rule is not apparent, from the standpoint of safeguarding the constitutional values in the budget.

12. On the other hand, considering the eminent financial and budgetary nature of such special funds, do not see why it could not be established in the law approving the state budget.

13. The funds now being discussed and which correspond, in financial terms, to a *line* in the budget tables (or attachments) is a mere instrument of public financial management, not even having legal personality.

14. Thus, the law approving the State Budget, which covers all revenue and expenditure, is not only a possible venue as the natural place for the creation of such a fund, whose budget, moreover, it also contains in that budget.

15. Moreover, the norms of the Decree of the National Parliament No 45/II relating to the fund have immediate financial implications.

16. There can, therefore, from a legal standpoint - constitutional, criticized for the inclusion in the budget law of rules that create and endow the fund in question, even more so not existing in our legislation any provision expressly prohibiting the inclusion of non-budget rules in the budget law.

17. Rather, the law of the fiscal framework (Law No 13/2009 of 21 October) provides for that possibility, saying in his article 25 °, the budget law, in addition to containing a) approval of the budget tables, b) the approval of authorization for the transfer of the Petroleum Fund, c) the approval of funds whose management is handled by the Ministry of Finance, and d) approval of funds to be allocated to local authorities, may also include e) other items deemed necessary.

18. Moreover, the expression “any legislative instrument” contained in paragraph 4 of Article 32 of Law No 13/2009 of 21 October, concluded that the funds of this type can be created in any law.

19. Article 9 of Decree of the National Parliament No 45/II is to do just that, establishing funds, defining their objectives, establishing the authority responsible for its operations and its reference to regulation by government resolution, other matters .

20. First, given the wording of the provision contained in Article 9, it is not possible to sustain a violation of Article 145. ° paragraph 2, concerning the existence of secret appropriations.

21. From what has been said, can once again say that the law of the state budget is a proper place and proper, though not exclusively, for the creation of such funds.

22. Moreover, it is not known, neither the constitution nor in the doctrine, the principle of separation of materials from other budgetary matters of financial legislation, referred to in paragraph 7 (seven) of the petition.

23. I cannot see, so what the possible scope of what is said here or what the relevance of that proposition to the discussion which now occupies us.

24. Nor is there reason to argue the unconstitutionality, much less under an alleged “principle of separation of budgetary matters of other financial matters of law, requiring law - and not under the immediate and particular item” a principle that is not enshrined in any constitutional provision, nor under

Article 145. ° paragraph 2 of the Constitution.

III - ***Transparency / specification of the expenditures to the fund is intended to cover***

25. The Basic Law, in Article 145. ° paragraph 2, establishes the principle of breakdown based on income and expenditure budget.

26. The level of disaggregation is should be enough to know which areas, objectives or types of expenditure that will be spent in the budget approved by the National Parliament.

27. The breakdown of revenue and expenditure is not unlimited, being guided by criteria of common sense and reasonableness, under penalty of Parliament to replace the government in exercising executive, steering through the government, thus violating the principle of separation powers.

28. In turn, Article 7 of Law No 13/2009 of 21 October, establishes the rule specifying the income and expenditure, its corollary principle of breakdown that must be satisfied the budget.

29. Under this article, the budget must specify enough expected revenues and expenses therein.

30. In the case of services without financial and administrative autonomy, Article 26 of the same law has been implement this rule, giving a possible criterion for assessing the sufficiency of the specification, allowing to use the words of the author's request, *identify* if a particular case and under the law, *were not fulfilled the minimum requirements in terms of statement of expenditure, as required in Article 145.2 of the Constitution of the Republic.*

31. As for the special funds of the kind now being discussed, there is no explicit provision in the law regarding the level of specification required for the respective appropriations.

32. The criterion has to be found in the doctrinal underpinnings of the rule of specification - the financial rationality and political control - but especially in the case of such funds, the rationale of the relevant constitutional standard, whose main objective is to avoid the existence of secret appropriations and funds.

33. In the Decree of the National Parliament No 45/II approving the State Budget for 2011, and in relation to the funds raised there, the level of specification is identical to that applied to the remaining budget contained in Annex II (Appropriation for 2011) the decree in question, this same level, at least, to all State budgets adopted during the term.

34. It is important here to describe, with accuracy and objectivity, the reality underlying legal issues raised in the request, so they can assess their compliance with the Constitution and the Law.

35. And, as we have set out in Decree of the National Parliament No 45/II, the Infrastructure Fund and Human Capital Development Fund respect the constitutional and legal requirements, whilst enabling the exercise of political control of parliament in the seat of budget execution.

36. Indeed, we are concerned that funds are created i) by law, in a separate article (Article 9 of National Parliament Decree No 45/II), under an express legislative provision (Article 32 Law No 13/2009 of 21 October), stating ii) the purposes for which they are established (Article 9 paragraphs 1, 2 and 4), and iii) the entity responsible for its operations (Article 9 paragraphs 3 and 5).

37. Thus, Article 9 of Decree of the National Parliament No 45/II which set out the rules in accordance with the law, must be contained in the instrument maker.

38. Obviously it would be a useless exercise and play redundant instrument that all other provisions of Law No 13/2009 of 21 October, and in particular Article 32. Or all that, by its legislative scope, should apply to these funds.

39. Obviously, the set of rules on public finances, including, naturally, of Law No 13/2009 of 21 October, will apply to the extent of their reach, the management of those funds .

40. With regard to the specification, we cannot agree with the observations in paragraphs 10 to 12 of the petition.

41. In the budget law, and annexed Tables, the specification of the expenditure, in relation to organic ranking breaks down into two levels, namely State agencies / ministries and their departments and, with regard to economic classification, it the level of the grouping by category of expenditure: wages and salaries, goods and services, transfers, minor capital and development capital.

42. For funds, the level of disaggregation is applied is identical to the rest of the state budget: funds are broken down by programs and subprograms. Here, the organic classification was replaced by a functional classification, as might be due to the nature of the funds, and by grouping expenditures by category.

43. Indeed, to monitor compliance with the requirements of transparency required by Article 145.2 of the Constitution, i.e. to what extent they are not identified or point by point, specifically, what expenses will be covered

43. Indeed, to monitor compliance with the requirements of transparency required by Article 145.2 of the Constitution, i.e. to what extent they are not identified or point by point, specifically, what expenses will be covered the resources allocated to these funds, should not look up to in paragraphs 2 and 4 of Article 9. but rather to d) and e) of Article 2 of Decree of the National Parliament No 45/II.

44. These provisions approving Annexes IV and V to the budget law, and its components, and where they are broken down and specified expenses to be covered by allocation to these funds, with the level of breakdown similar to the other budget lines, as has previously been stated.

45. Annexes referred to in the preceding paragraph are referenced in the petition as Exhibits 2B and 2C, also according to the name in the proposal submitted by the Government which came to be changed, as a venue for discussion on the details to, respectively, Annex IV and V due to the adoption of Amendment No 28, which is annexed (Annex I). The same applies to Annex II paragraph 33 above, whose original name, 2A, came to be changed to II, through the adoption of that amendment No 28.

46. In this context, the statement in paragraph 11 and 14 of the petition in relation to paragraph 2 of Article 9 of decree of the National Parliament No 45/II makes no sense, considering that on the one hand, Article 9 is in force beyond the budget period, and the areas therein are those in which the present - those specified in Annexes IV and V - and future projects - the necessity include in future budgets - will be financed from the funds, and that, on the other hand, the proper place in the specification are the tables (Annexes IV and V).

47. That is to say, any possible future programs and strategic projects - as part of the infrastructure or human capital development - it is planned to come to finance in the coming financial years, from the appropriations of funds, accounting for public expenditure will necessarily be subject to parliamentary approval in place of future budgets.

48. And for this reason that, for example, in telecommunications, is not specified in the relevant budget table (Annex IV) that no projects in this area but could be included in a future budget and is funded by appropriation or by remaining in that budget that Parliament will decide to give it.

49. It is also why in h) of paragraph 2 to include “other infrastructure that promote the strategic development” and paragraph 4 of that article includes the words “among others.”

50. Funds being extended for several years, would not be possible nor desirable to anticipate of fixing a priori and categorically, absolutely closed, and the areas or projects that can later be found to be necessary for the development of the country

51. Is that the rule applies to the specification, one can only apply to tables, i.e. appropriations specifically provided for in the budget tables and not to the articles.

52. In this case, looking at the tables (Annexes IV and V), it is easily verified that the funds allocated to projects actually approved, they obey the rule of the specification, as mentioned above.

53. Indeed, it identified the category of expenses that fits the budget and expenditure broken down properly in titles and chapters, in terms similar to what happens in the table (Attachment) II for services that lack the administrative and financial autonomy of accordance with the provisions of Article 26 of Law No 13/2009 of 21 October.

54. Thus, it is at all inappropriate transcription of excerpts from the Judgment of the Court of Appeals in Proc. 04/2003, published in the Official Gazette Series I No 44, November 26, 2008, the author makes in paragraphs 16, 17 and 19 of the petition, because the situations are not similar.

55. In this regard, we should also note that a single decision, a single case, does not, by itself, create jurisprudence without having had other decisions in the same sense that the Court has reiterated the same understanding for similar cases.

56. Not at issue here, any way the powers conferred on parliamentary point q) of Article 95 of the Constitution of the Republic, since it refers, in essence, the passage of the Budget and Financial Management Law and not to approving the annual budget.

57. Nor is concerned the constitutional division of powers established in Articles 95 paragraph 2, point 1) and 115 of the Constitution of the Republic.

58. Indeed, Parliament is merely exercising its powers and politically meaningful choices when deciding on budgetary matters, as the volume of expenditure and the allocation of funds to each item, according to certain criteria of political expediency, not by judicial action.

59. As is shown, it is not true to claim that "... the Government has received a blank check from the National Parliament to use the resources allocated to the fund according to your convenience ...", since the appropriations are clearly established.

60. With regard to paragraphs 18 and 19 of the petition, the author is also wrong.

61. In fact, as is clear from the parliamentary decree approving the state budget for 2011, and considering the structure of the funds raised there, there can be no transfers of funds to different categories of expenditure, much less for different services.

62. This means that in all cases, any transfers that will be held pursuant to paragraph 6 of Article 9 of Decree No 45/II, will always be made within the same fund within the same expenditure category within the limits of the total appropriation authorized in the same scope of programs and strategic projects and subject to, therefore, the purpose for which the appropriations were approved.

63. With regard to what is stated in paragraph 22 of the petition, it should be noted that, in complete accordance with the requirements in the Report of the Parliamentary Commission on Economy and Finances, the Parliament when it decided it did so fully informed, at that time being able to "take a reasoned decision."

64. Furthermore, the Report of the Commission on Economy and Finances is but one among many, of the information and analysis available to Parliament to support decision making.

65. In fact, to give Parliament, beyond all the information in the explanatory memorandum of the law and annexed tables, possess a set of six Support books, as follows: Book I - Budget Overview, Book 2 - Annual Action Plans, Book 3 - Districts, Books 4A and 4B - Line Budget, Books 5 - and 6 Development Partners - Infrastructure Fund and Human Capital Development Fund, together in an annex (Annex 2 and 7, respectively).

IV - Transfers of amounts from the Petroleum Fund to the state budget that exceeds the estimated sustainable income

66. Unlike what seems to be suggested in point 27 of the petition in terms of the proposed State Budget Law for 2011, submitted by Government to the National Parliament - PPL No 42/II, which is annexed - the amount to withdraw from the Petroleum Fund this year was $ 734 million, an amount that is within the limit of the Estimated Sustainable Income for that financial year, according to the Independent Auditor's Report, the Deloitte Touche Tohmatsu (See Annex 8).

67. Therefore it is not the case, at that moment, the prediction of Article 9 of law No 9/2005 of 3 August, the Petroleum Fund Act and is therefore not required the submission by the Government of any of the elements as mentioned in paragraphs a), b), c) and d) that legal provision.

68. Thereafter, the Government is legally unable to submit to Parliament any amendments, is on that aspect is, only participating in the parliamentary debate and to justify the submitted proposal and respond to

questions or requests for clarification that the Deputies understand place.

69. Following the proposals to amend paragraphs 43, 44, 84, 114, 126 and 127, which join (Annex 9), endorsed and submitted by the initiative of several Members of this Parliament, as a means for discussion on the details of PPL No 42/II, which came to be adopted, the total state budget for 2011 rose to $ 1.306 billion and the amount to be withdrawn from the Petroleum Fund of $ 1.055 billion.

70. This naturally implies a transfer from the Petroleum Fund that exceeds the value of Estimated Sustainable Income.

71. The Petroleum Fund Law, as noted above, does not include cases where the initiative comes of Deputies.

72. However, the presentation of these proposals represents the exercise of a power of its own Members, which is their right, as recognized by procedural rules that this point is a result of material relating to the constitutional parliamentary mandate.

73. The Government, however, is not allowed to submit any amendments to an initiative admitted to the Parliamentary legislative process. Thereafter, only Members can do so.

74. The legislative process is what results from the application of constitutional and procedural processes and, from these, the Government will submit the budget proposal and it is up to the National Parliament to approve the budget and approve the proposed amendments made to the proposal.

75. Accordingly, and in the circumstances, it does not make sense to include the requirement in the legal text of another body - the Government – to provide a detailed explanation about the motivations of proposals that did not and moreover after the decision.

76. Given the letter of the law and in these circumstances, does it make sense to require that the Government anticipate, or provide later, to "explain in detail the reasons why it considers to be in the long-term interest of Timor-Leste in the to transfer an amount exceeding the estimated sustainable income "?

77. Since it was not the Government that had proposed that the value in question, cannot claim that the Government knows the motivations for the initiative of Deputies, embodied in the proposed amendment above.

78. Considering that this legal requirement is intended to justify to the Parliament the Government's request – a request that this case did not exist - enabling it to make politically informed decisions.

79. What it is here, under the law, is to support a request by that which cannot be understood merely as a justification of a political nature.

80. Is that the assessment of whether a budget proposal that involves withdrawing amounts above the estimated sustainable income from the Petroleum Fund, or is not in the long-term interest of Timor-Leste, cannot fail to have an eminently political, subjective, and not to that extent received mandate.

81. This is not the case of the information referred to in paragraphs a), b) and c) of Article 9 of the Petroleum Fund Law, and an objective relating to specific aspects and financial variables that matter to Parliament and to Deputies to know, even retrospectively.

82. In relation to these elements, an objective and measurable also outside the strict policy, taken by Parliament to be submitted by the Government even after it has been considered politically justified and formally approved the withdrawal of an amount exceeding the Petroleum Fund Estimated sustainable Income.

83. Given the facts described above, and the particular case, in legal terms - that provision of formal d) of said Article 9 is inapplicable, because it was not foreseen.

84. So the author's assertion in paragraph 32 of the petition makes no sense, because, as noted above, the situation is not even similar.

85. Anyway, during the parliamentary debate, to be discussed the proposed revisions to its budget and the global amount to be transferred to the Petroleum Fund , the Deputies proposing the amendment had the opportunity to justify to the other Deputies, and the Government had an opportunity to react.

86. As it was, indeed, with all amendments to the budget introduced on the initiative of Deputies during the Parliamentary debate, all of which are presented and justified by their proponents and all of them also discussed at length in the Plenary of the National Parliament (see Annex 10).

87. Those proposals having been voted for by Parliament, and approved by a clear majority, it should be understood that the transferring from the Petroleum Fund above the estimated sustainable income, resulting from the adoption of those proposals were deemed justified or explained in sufficient detail the reasons which lead us to conclude the transfer in an amount greater than the Estimated Sustainable Income to be in the long term interest of Timor-Leste.

88. You can then claim to be fulfilled to the extent possible, the legal requirement on justification, especially since the law itself does not require a specific justification for this.

89. Moreover, as the Petroleum Fund Law is neither more nor less than a law, it may, in general terms, be subject to revocation or waiver, in whole or in part, in the budget law or in any other parliamentary law.

90. Is that a question is what should or could be, in terms of the right to form, another, very different from that which is in accordance with established law.

V – There is no stronger force of the Petroleum Fund Law

91. It is the Constitution which confers stronger force on certain laws. It is merely because under the Constitution that certain laws may possess such nature.

92. Since it is not assigned by the Constitution, the Petroleum Fund Law does not have, nor can the constitutional framework have, *stronger force.*

93. This reflects that this law does not require a qualified majority for its approval and is not a compulsory legal prerequisite to other laws.

94. If it could, it would fall into the absurd to claim, for a law that was passed by simple majority, the qualified majority required for their possible revision or amendment.

95. This would be a self-binding of Parliament that no constitutional rule that authorizes and contradicts the principles of law, and may even, even, eventually lead to a constitutional revision, outside the mechanisms provided for the purpose in the Constitution itself.

96. Moreover, the Petroleum Fund Law may not, in any case, be regarded as compulsory legal prerequisites of the budget law because it does not contain any device that somehow or conditional rules and structure that will govern the budget law.

97. The Petroleum Fund Law, as indeed happens with the Tax Law, is relevant solely to the State Budget Law as one of several sources of budgetary revenue and does not constitute a legal parameter allowing judge its perfection only in relation to amount to be withdrawn from the Petroleum Fund to finance public expenditure.

98. That is, to refer to the Judgment of the Court of Appeal nos 4/2003, published in the Official Gazette, Series I No 44, November 26, 2008, reproduced in the request, *the Constitution does not leave sufficient evidence to warrant the conclusion that under the constitutional system the Petroleum Fund Law enjoys stronger force*.

99. That Judgment also says, *the statement language that does not follow that the Petroleum Fund Law is the material foundation of validity of any other law, or has been given a special capacity for protection against derogation or exemption by subsequent law.*

100. And *it is also true that the Constitution does not postulate any system of self-binding resolution to the legal regime of natural resources, as it says later in the same Judgment.*

101. Nothing is more certain.

102. Indeed, our constitutional framework, does not mean that article 4 of the Petroleum Fund Law as laying down a self-binding to Parliament, what happens, could not be considered unconstitutional because it represents a limitation of the powers and competencies of Parliament without any support in the

constitutional text.

103. So here there is neither any unconstitutionality or even illegality.

104. Also on the procedural or legislative process there is no vice that undermines the validity of National Parliament decree No 45/II, having scrupulously fulfilled all the constitutional, legal and regulatory requirements.

Conclusions

A - The creation of Funds for Infrastructure and Human Capital Development, referred to in Article 9 of National Parliament decree No 45/II approving the 2011 State Budget, fully respects the requirements of Law No 13/2009 of 21 October that requires its establishment by law and not by specific law. It does not violate any constitutional provision.

B - The appropriations allocated to programs and projects included in the Funds for Infrastructure and Human Capital Development, referred to above, meets the constitutional and legal requirements regarding the transparency in the specification of expenditure and do not violate paragraph 2 of Article 145 of the Constitution.

C – The transfer from the Petroleum Fund of $ 321 million U.S. dollars, exceeding the estimated sustainable income, does not involve the presentation by the Government, in this case, of a detailed explanation of the reasons to consider this as being in long term interest of Timor-Leste in that the Government was not proposing that amount. Thus, National Parliament Decree No 45/II, in particular Article 4 thereof, does not violate the Constitution or the law.

D - The Petroleum Fund Law does not have stronger force because the Constitution does not confer this value because it is not necessary to have a super-majority to amend it, and also for not constitute compulsory legal prerequisites of other laws.

The Public Prosecutor shall decide the unconstitutionality of the statute under review, the following grounds:

Specification

1. Article 145 of the Constitution of the Democratic Republic of Timor-Leste states in paragraph 2 that "the budget law should provide, based on efficiency and effectiveness, a breakdown of revenue and breakdown of the expenditures and avoid the existence of secret appropriations and funds."

This is an important rule in all matters of the budget, requiring that they make a clear breakdown of expenditures and revenues in order to ensure transparency and accountability in the management of public funds.

The revenues and public spending should be sufficiently individualized, impeding its presentation in large aggregates that do not facilitate a clear understanding of expected revenues and expenses that are authorized by the budget.

"The rule of the specification tells us that the budget should specify individually or sufficiently *each receipt and each expenditure.*

The specification rule is based on a need for clarity and the very objectives of the budget institution, which would be defrauded without that requirement" (Sousa Franco, Public Finance and Financial Law, 4th Ed, p. 353).

In a standard note to the Portuguese Constitution identical to the constitutional provision in question, and Gomes Canotilho and Vital Moreira wrote that "the state budget itself should contain a **breakdown of respective revenues and expenses.** This means first that the budget should include all revenue and expenditure, there can be no outside income and expenditure outside the budget or (principle of universality). This is the horizontal dimension of the budgetary framework. But in addition, the budget must show the revenue and total expenditure sufficiently unbundled in accordance with certain criteria. It is the vertical extent of the budgetary framework."

A little further they add that this principle prevents "(...) the existence of secret appropriations and

funds, which is only possible if the specification is sufficiently detailed (...)".

The issue is particularly important in the case of budget expenditure. The answer results from, among other things, the constitutional function of the budget, which is to function as the state financial plan approved by the AR [National Parliament], requiring not only because the specification of each source of income but also expenditure sufficiently detailed to allow decision of AR and public scrutiny to be effective (the Annotated Portuguese Constitution, 4th ed, Vol I, p. 1109).

Is because the imperatives of transparency and control that require the specification in detail (Paulo Trigo Pereira, Economics and Public Finance, Theory to Practice, 2nd ed, p. 125) of revenues and expenditures in the General State budget.

2. In turn, the Budget and Financial Management Law - Law No 13/2009 of 21 October - establishes in its article 7.1 that "the state budget should sufficiently specify revenues and expenses set out therein."

It is glaringly obvious that this law considers that the specification is a fundamental principle of the budget, noting that the specification should sufficiently distinguish public expenditure and revenue as well.

It is a law that fits the entire system of preparing and implementing the state budget, and we believe that there can be no doubt that this is a law of superior force (Jorge Miranda, Manual of Constitutional Law, Volume V, p . 360; See also Profs. Gomes Canotilho and Vital Moreira, CRP, Annotated,4th ed., Volume II, p. 56, 57, 61, 316), and we understand why the violation creates an indirect unconstitutionality (See Jorge Miranda, for whom, "in that the specific force of law derives from constitutional norms, the violation of law involves enhanced value of unconstitutionality. But it is indirect unconstitutionality - such as the contradiction between a domestic law and treaty or between regulation and law "- Manual, V, p. 357).

3. Looking closely at the art. 9 of the Decree approving the 2011 State Budget we find that, both with regard to the Infrastructure Fund and the Human Development Fund there is no clear definition of authorized expenditure.

With respect to the Infrastructure Fund, paragraph 2 of art. 9 includes several individual expenses, but allows the fund to support "other infrastructure that promotes strategic development," which does not facilitate a clear understanding about the expenditures that will be paid by the fund.

Concerning the Human Development Fund, the blurring of expenditure is not less because, according to paragraph 4 of art. 9, the statement of expenditure is merely illustrative, as indeed the very Annex V will eventually confirm to satisfy when it mentions "other training."

It should also take into account the provisions of this art. 9.4, according to which "the advice of Administrations competent to carry out the changes in appropriations for programs within the limits of the total appropriation authorized by the National Parliament to meet their respective objectives."

But this means that these administrative organs may amend the appropriations however they please, giving no value to any specific authorization of Parliament for expenditure. And so it ignores the principle of specification and the reasons justifying it.

It seems to us that these provisions of the Decree approving the state budget for 2011 do not conform to specification requirements.

4. We cannot fail to note that according to information contained in various documents, the Government's proposal allocated $342.3 million to these funds and surprisingly, the in the Decree of Parliament that amount rises to $624 million.

It seems clear to us that without the Government's proposal, the National Parliament cannot increase, at its pleasure that amount, since the initiative on the budget rests with the Government, the Parliament cannot encroach on the competency of this under penalty of violating the principle of separation of powers.

The approval of this amount requested by the Government violates the Constitution, specifically art. 115. 1(d).

Creation of special funds for the Budget Law.

5. Another issue raised relates to the admissibility of constitutional creation of special funds in the

budget law itself.

And the question is particularly relevant when it applies to "(...) these special funds intended to fund programs and annual projects," according to paragraph 1 of Article 9.

Resulting from art. 145.2 of the Constitution, the budget is a document which provides revenue and expenditure and does not foresee any role for this instrument, including the creation of associations, foundations or funds and their organs.

If the constitutional legislator wanted to award it any other function it certainly would have said so, and clearly regulated.

Just as the Constitution has not assigned to the budget the task of defining crimes and their sentences, it should be considered unacceptable that this instrument is converted into a statute or statutory law of any association or foundation or special fund.

The Constitution only pointed to the role of budget in predicting revenue and expenditures (We believe that we would not be possible between the "passengers budget" mentioned by Professor Sousa Franco in his lessons. Cf. Public Finance and Financial Law, 4th Ed, p. 401), so we do not believe that it is constitutionally legitimate, to use the budget law for the creation and presentation of the Statute of any special funds by regulating their bodies, the administrative supervision and all other details.

6. Moreover, it would be strange to allow a lasting institution to be created by a law for one annual period.

"The first of classic fiscal rules is annuality, which has the effect of the budget is an act whose validity is annual. The annual nature implies two requirements: annual vote by the Political Assembly and implementing the annual budget by the Government and Public Administration." "From a political viewpoint, the annual nature finds its basis the need to ensure that Parliament's control on the management of public funds is done with regularity and in a timeframe that does not allow to frustrate the fundamentals of budget authorizations. From an economic point of view, the year has proved a good natural period for the economic calculations, at least for current management "(Sousa Franco, Public Finance and Financial Law, 4th Ed, p. 347).

However, it is known that one of the traditional rules of budgetary law is annuality, so if you want to create an institution that lasts for periods beyond the budget period, the best is to be created by a specific law and not by the budget law which is annual.

Without a better understanding, we do not think that makes much sense to create, in the annual law, an institution intended to be lasting or for multiple years. If that is created in the budget law, it will have to be recreated in successive budget laws, otherwise it will disappear.

7. Finally we do not believe that the standard of art. 32 of the Law on Budget and Financial Management, which refers to the "law" or "any legislative instrument" can be interpreted as the Budget law, as in all its wording, when it wants to refer to the budget, it does so explicitly without any circumlocution. It seems to us that in this article, the word "law" was used in the sense of a specific law.

For all the foregoing we believe that the above constitutional provision does not authorize the budget law shall be used to create special funds, associations or foundations.

Transfers from the Petroleum Fund

8. The last issue raised relates to the authorization of transfer to the 2011 state budget of an amount that exceeds the estimated sustainable income.

According to the information together, the estimated sustainable income of the Petroleum Fund for 2011 stands at $734 million, providing the art. 4.2 "(...) the possibility of transferring an amount that exceeds the Estimated Sustainable Income, after the entry into force of this law."

The Petroleum Fund Law - Law No. 9/2005 of August 3 - under the heading of 'transfer exceeding the estimated sustainable income" states that:

There shall be no transfer of the Petroleum Fund that exceeds the Estimated Sustainable Income for each fiscal year unless the Government has submitted to Parliament:

a) The reports referred to in subparagraphs a) and b) of the preceding article;

b) A report estimating the amount by which the Estimated Sustainable Income for fiscal year following the fiscal year for which the transfer is made will be reduced as a result of the transfer of the Petroleum Fund an amount greater than the Estimated Sustainable Income for Fiscal Year which the transfer is made,

c) An independent auditor's report certifying the estimated reduction in the estimated sustainable income referred to in paragraph b) of this Article;

d) A detailed explanation of why it is in the long term interest of Timor-Leste to transfer an amount greater than the Estimated Sustainable Income.

The operative part of Article 4 of the Decree approving the 201state budget, transcribed above, makes no mention as to the requirement of paragraph d) of Art. 9 of the Petroleum Fund Law, nor does it show that this standard has been met. Failure to comply with the requirement specified in this paragraph constitutes an illegality.

Only, this law, for the reasons pointed out judiciously in the Court's Ruling, profusely cited in the petition, is a law of superior force, and noncompliance which generates, in our view, an indirect unconstitutionality.

For all the foregoing we conclude that:

a) The funds should be established by specific law;

b) There is a breach of art. 145. 2 and 115.1(d) of the Constitution.

II. After collecting legal views, we must consider and decide.

1. Previous question:

In her opinion the General Prosecutor is invoking another ground of unconstitutionality of the decree under consideration, namely, the constitutionality of the amendment by the Deputies of the budget proposal submitted by the Government to the National Parliament.

This Court finds that the General Prosecutor has no jurisdiction to require the review of the constitutionality of documents sent to the President for promulgation. Article 149 of the Constitution grants that power exclusively to the President. The General Prosecutor's Office has jurisdiction to apply the abstract review and only "on the basis of suppression by the courts in three specific cases of deemed unconstitutionality" (Article 150(c) of the Constitution).

In principle, the subject of review of constitutionality is limited by the request of the President, regardless of what the Court knows only the questions raised by this (Gomes Canotilho, in Constitutional Law, the Constitutional Theory, "Almedina, Coimbra, 4th ed., 2000, pg. 996).

But the Court also has the power on its own to consider issues of unconstitutionality that it becomes aware of and therefore will not fail also address the issue raised under this power, as it relates to one of the grounds of unconstitutionality raised by the President the Republic.

2. We have to consider and decide here:

a) If the creation of Funds for Infrastructure and Human Capital Development for the 2011 Budget Law for submitted for promulgation, and not by specific law, violates Article 145.2 of the Constitution;

b) If the creation of the Funds for Infrastructure and Human Capital Development in the decree sent

for promulgation violates the disclosure requirements for the specification of expenditure made by Article 145.2 of the Constitution, not to identify the specific manner in which expenses will be covered by the resources allocated to these funds;

c) If the decree sent for promulgation suffers from unconstitutionality by transferring from the Petroleum Fund to the State Budget in excess of the sustainable income, without an explanation of the grounds to consider the excess as being in the long term interests of Timor-Leste; and

d) If the decree sent for promulgation becomes unconstitutional because the Parliament changed the value of the state budget proposed by the Government.

2.1. If the creation of Funds for Infrastructure and Human Capital Development for the 2011 Budget Law for submitted for promulgation, and not by specific law, violates Article 145.2 of the Constitution

In the petition for preventive constitutional review, the President of the Republic said that *"a simple examination of the constitutional provision and of the regulation, it can be concluded that there are two conditions for the creation of special funds, namely, (1) the approval by law and (2) transparency / specification of the expenditures that the fund is intended to cover."* He asks *"whether the creation of Funds for Infrastructure and Human Capital Development, referred to in Article 9 and subsequent articles of National Parliament Decree No. 45/II, should not have been the subject of a separate law," taking into account the constitutional principle of separation of budgetary matters, other matters of financial legislation, which require a framework law."*

The National Parliament answered that *"Nowhere is expected to need a specific law to create funds, nor is in any legal, constitutional or infra-constitutional regulation required to legally underpin this thesis. "The funds (...) constitute a mere instrument of public financial management, not even having legal personality" and therefore "the law approving the State Budget, which covers all revenue and expenditure, is not only a place but is the natural place for the creation of such a fund."*

The public prosecutor has written about the impossibility of creating funds, claiming that *"the Constitution only pointed to the role of budget in predicting revenue and expenditure, so we do not believe that it is constitutionally legitimate, to use the budget law for the creation and presentation of Statutes of any special funds, regulating their organs, the administrative supervision and all other details,"* adding that *"this would allow a lasting institution to be created by a law of one annual period."*

By Article 32.1 of the Budget and Financial Management Law (Law No. 13/2009 of 21 October), the Minister of Finance may, when authorized by law, establish special funds that are not part of the Consolidated Fund.

As is now clear from the wording of that rule, and is recognized by the President of the Republic in his petition, nothing prevents the approval of the special funds by law. What is questioned by the S.E. President's statement that such approval is made in the State Budget Law.

This is the question of "constitutional principle of separation of budgetary matters of other financial matters of law."

This question had some dimension in Brazilian doctrine, which was divided as to whether the "prior legislative authorization for the creation of autonomous funds needed a specific law or could be contained in general or sector law, as mentioned by Osvaldo Sanchez Maldonado," Federal funds: origins, evolution and current situation in the federal administration," in" Journal of Public Administration (Rap / FGV), "Jul. /

Aug. 2002, Fundacao Getulio Vargas (Brazilian School of Public Administration), Rio de Janeiro, pg. 13. On the other hand, it refers to the legitimacy problem of so-called *budget riders* (as specified in the ruling of the Constitutional Court of Portugal, 11-11-1992, No. 358/92, rapporteur Antonio Vitorino, published in the Official Gazette of Portugal Series I-A, of 26-1-1993), that is, the budget will not be the ideal instrument for exercising constitutionally by the National Parliament of other competencies.

In some jurisdictions this issue has a specific constitutional response, which translates into the precise definition of standards of what could be inserted in the budget law (see Article 110.4 of *Grundgesetz* of the Federal Republic of Germany) or the prohibition of inscribing provisions of a certain type with a certain range (see Article 81, paragraph 3, of the Italian Constitution).

Other jurisdictions, however, have no similar express provision, by which "it is not constitutionally questionable to include in the budget law a rule without immediate financial impact or a "non-budgetary" rule, a procedure we can understand better as it must be to overcome a purely "formal" concept of that law (see JM Cardoso da Costa, ["On the powers of legislation in the Budget Law"], pp. 19 et seq, and A. Lobo Xavier, "Budget Framework in Portugal: Some problems," in Journal of Law and Economics, Year IX, 1983, pp. 242 et seq) (mentioning the ruling of the Constitutional Court of Portugal).

Sousa Franco (in "Public Finance and Financial Law," Almedina, Coimbra, 1995, pg. 336), defines budget "in Public Finance, as a prediction, an annual rule, of expenditure to be undertaken by the state and processes to cover it, incorporating the authorization of the Financial Administration to collect revenue and incur expenditures and limiting the financial powers of the Administration in each year." See the aforementioned ruling of the Court of Appeal of 10-27-2008, delivered in Case No. 4/2008, Rapporteur Ivo Rosa, published in Official Gazette No. 44, Series I, 26-11-2008 .

This notion has led some doctrines to see the budget law as a "law bound (legally and constitutionally), a type of 'non-free legislation,' given the inability of the budget law to repeal pre-existing material laws (cf. Jellinek, Gesetz und Verordnung, Tubingen, 1887, pg. 203, and Orlando Principii di Diritto Constitutional, Firenze, 1913, pg. 165, cited in the ruling of the Constitutional Court of Portugal, 11-11-1992,).

This concept, however, has evolved so that today, the predominant understanding is that "the Budget Law has the value of a special law programming state economic and financial activity, whose development and approval is part of the function of exercising political direction of State directly through participation of parliamentary institutions, which are based on evaluations of political, economic and social importance of explaining the "expansive force" of the budget statute and inevitable supersede their traditional rôle as a mere framework accounting of revenues and expenses tied entirely to the implementation of existing law" (cited in the ruling of the Constitutional Court of Portugal, 11-11-1992, which reports detailed the form of development of doctrine on the matter of the nature and function of the Budget Law).

It follows that one cannot speak today in the aforementioned principle, before being recommended that the budget law would cover all matters concerning fiscal policy and tax for the year to which it relates (the principle of full budget). Notwithstanding this there are cases, like Italy for example, where the law approving the budget cannot establish new taxes and new expenditures (Article 81 of the Italian Constitution), as stated above.

The Budget Law is now considered a substantive law and not merely formal, nothing in principle preventing it from creating new institutions, or amending or repealing existing substantive laws. This only becomes illegal if the law amended or repealed is an "enhanced" law (Gomes Canotilho, "The Budget law on the theory of law", in "Studies in Tribute to Professor Teixeira Ribeiro", "Bulletin of Faculty of Law

Coimbra, Vol. II, 1990, pg. 558). In this connection see also the above-mentioned ruling of the Court of Appeal of 27-10-2008.

On the subject in question and even on the issue of annuality invoked by the prosecutor, we add Gomes Canotilho and Vital Moreira (in the Annotated Portuguese Constitution," Coimbra Editora, Coimbra, 4th ed. Journal, 2007, pp. 1112-1113)" the budget law can include legislative authorizations (...). While it may contain powers of legislation, can also directly regulate the same matters. (...) Assuming that the budget law may contain non-budgetary matters, then you cannot fail to understand that in these matters the budget law must be regarded as a *common law*, in order to be amended in general terms, and not subject to the rule of one annual period and the exclusive government legislative initiative, and may continue in force even after the replacement of the budget, unless otherwise indicated." Also Jorge Miranda supports this understanding by stating "in this context, the commitments in question are of an instrumental or subordinate virtue of its inclusion in the budget laws and did not require an express indication as to duration of use", and the permissibility of such commitments based on a constitutional custom *praeter legem* (in "Functions, and Acts of the State Organs," Faculty of Law, University of Lisbon, 1990, pg. 480 and 481). In the same Sense JM Cardoso da Costa, "On the Commitments of the Legislative Budget Law", in a reprint of the special issue of the Bulletin of the Faculty of Law of Coimbra, "Studies in Tribute to Professor. Dr. José Joaquim Ribeiro Teixeira, Coimbra, 1983, pg. 415. That is, the principle of yearly budget will only be violated if a certain forecast of revenue or expense budget has allocated a multi-term (Judgment of the Constitutional Court of Portugal (Plenum) of 31-5-1988, Case No. 108 / 88 Rapporteur Raul Mateus, published in the Republic of Portugal, Series I, No. 145, 25-6-1988).

There is nothing in Timor-Leste's law or constitution that requires the creation of funds be made by its own law or that the law approving the budget cannot create funds.

Thus, we conclude the possibility of creating special funds under the State Budget Law, which, incidentally, is well outlined by the National Parliament in its response, one can consider having legal support expressed in Article 25(c) the Budget and Financial Management Law.

We accept that the creation of special funds in the budget law, while too artificial, cannot allow setting with clarity of the contours of the funds and above all their specific purposes and the consequent allocation of money transferred. But this issue is already a matter of whether substantive legality, or lack thereof, and not of formal review of the constitutionality of the creation of funds through the budget law. To this regard, and bearing in mind that this Court of Appeal is only here to assess compliance with the rules of the constitution and laws (here dealing with the Budget and Management Law), also did not see any irregularity in Article 9 of the Decree of the National Parliament in the analysis. Indeed, it meets the minimum requirements set out in Article 32.4, Budget and Financial Management Law, given that the article in question provides for subsequent regulations, in conformity with paragraph 1 of the latter article, in respect of relevant matters which were not included in the State Budget. That is, the National Parliament itself decided to minimally regulate creation of special funds, leaving the Government with the additional task of regulating them. It is actually intended to create the funds, and not to regulate them comprehensively. In the same way, with regard to a similar question, see Fernando Guimarães Vernalha, "The constitutionality of the system of guarantees to the private partner provided by the General Law of Public-Private Partnership - in particular, the hypothesis that fund of funds", in "Revista Legal - Official Publication of the University Center Curitiba (UNICURITIBA)," No. 23, Curitiba, 1981, pg. 40.

We share an understanding of the President that the comprehensive regulation of the funds would know clearly and unequivocally the actual reasons for their existence and to avoid possible situations of large off-budget amounts, but what is certain is that from the point of view, the solution adopted does not

violate the Constitution nor cited Law 15/2009. The constitutional court has, largely as an object, to determine the constitutionality of the "political", but does not become a "political court" and must always decide in accordance with the substantive rules and principles laid down in the constitution. Consequently, only when there are legal and constitutional parameters for the political behavior the Court may consider the violation of these parameters (Canotilho Gomes, in "Theory of Constitutional Law And constitution," Almedina, Coimbra, 4th ed., 1998, pg. 1264). "The unconstitutionality (...) means the court identifying the incompatibility between the Constitution and the active or passive behavior of the legislator who will sometimes or, in some cases, be the administrator and also the magistrate" (Andre Ramos Tavares, in "Treatise on arguing a fundamental precept, Law No. 9.868/99 and Law No. 9.882/99," Saraiva, São Paulo, 2001, pg. 175).

In short, the creation of the Funds for Infrastructure and Human Capital Development by the 2011 Budget Law, and not by specific law, does not violate Article 145.2 of the Constitution.

2.2 If the creation of the Funds for Infrastructure and Human Capital Development in the decree sent for promulgation violates the disclosure requirements for the specification of expenditure made by Article 145.2 of the Constitution, not to identify the specific manner in which expenses will be covered by the resources allocated to these funds

The President of the Republic says that *"analyzing the numbers 2 and 4 of Article 9 of the statute enacted by the National Parliament and the proposal submitted by the Government as a whole, it appears not to meet the requirements of transparency required by Article 145.2 of CRDTL, in that are not identified point by point, specifically, what expenses will be covered by money allocated to these funds."*

For its part the Prosecutor maintains that: *"Looking closely at Article 9's Decree approving the 2011 state budget we find that, both with regard to the Fund for Infrastructure, and the Human Development Fund there is no clear definition of authorized expenditures."*

In its response, the National Parliament opposes it: *"The breakdown of revenue and expenditure is not unlimited, being guided by criteria of common sense and reasonableness, under penalty of Parliament to replace the government in exercising executive, governing through Government, thus violating the principle of separation of powers."*

First of all we must clarify the following: to argue that the creation of Funds for Infrastructure and Human Capital Development in Article 9 and following of the decree sent for promulgation violates the disclosure requirements in the specification of expenditure requested by Article 145.2 of the Constitution, by not identifying the specific way that expenses will be covered by resources allocated to these funds, the President of the Republic quoted excerpts from the Court of Appeal Decision of 27-10-2008 reported by Judge Ivo Rosa in case no. 04/2008. However, the said ruling refers to a budget appropriation, and not to the type of Infrastructure and Development of Human Capital Funds under discussion here. In the Decision of the Court of Appeal of 14-8-2008 case No. 3/2008, whose rapporteur was Claudio Ximenes, had already decided that the entitled "Economic Stabilization Fund" was not an autonomous fund but an appropriation of the State Budget. In the ruling reported by Judge Ivo Rosa, the Court of Appeal spoke of the lack of breakdown of a budget, a problem that does not exist and was not raised in this case, by the budget allocations are properly allocated, instead, the President asks in his petition to breakdown or lack of specification of expenditure that the funds for Infrastructure and Human Capital Development and would not cover the lack of breakdown or specification of appropriations the state budget. Therefore, the understanding adopted by the Court of Appeal in Judge Ivo Rosa reported above cannot be applied, any more, to this case, because this is a different legal reality from what was discussed in that case.

We pass to the need to clarify the question of funds.

The state budget seeks to achieve the satisfaction of collective needs through investments that ensure adequate infrastructure and human resources needed for social and economic development of the country. This objective can only be fully achieved through multi-annual plans and long-term development programs. Hence the need for special programs, the global and permanent, for the implementation of goals, in which the resources, once programmed, cannot be restricted or lost to the point of jeopardizing the entire project.

Special funds are "proceeds of specified revenues that by law they are bound to achieve certain goals or services, provided the adoption of specific norms of application" (Article 71 of Federal Law (Brazilian) no 4.320/64, 17-3-1964). Special Funds are public funds, disconnected or not from the budget, to satisfy these autonomous projects in the framework of investment in their specific functions, as special programming. "The Special Funds are mechanisms that the government agency uses to apply its resources efficiently and thereby effect its participation in the development and socioeconomic growth" (Heraldo da Costa Reis, in "Special Funds: a new form of management public resources IBAM, Rio de Janeiro, 1993, p. 16). That is, the special fund is associated with the identification of actions deemed relevant in the context of public administration. "The regularity of the flows of financial resources directed at certain segments of public spending can be considered positive as it protects certain sectoral policies, whose results depend on financial support in the long term, from short-term policy decisions. Moreover, it contributes to achieving greater efficiency in public spending while protecting investments in progress from losses caused by an interruption of cash flows required for completion of programs and producing results" (Mauro Santos Silva," Linkages of revenue not financial affordability of the Union", in "VIII International Congress of CLAD del Estado y la Reforma de la Administración Pública," Panama, 2003, page 2).

This problem has been felt globally, as was noted by José Reis ("State, Institutions and Economics: Public expenditure in Portugal", in "Critical Review of Social Science", No. 44, Coimbra, 1995, p. 25), "the state has less direct spending and is increasing transfers to other entities, public or private but mostly public, but with characteristics different from itself. This is why, moreover, it becomes increasingly difficult to define what is the state, even as unit. Even leaving aside the issue of "off-budget," the state reveals itself as an entity that "overflows" out of itself through entities which receive transfers and manage themselves." And precisely the Autonomous Funds are the major instrument of the state to make investments.

The problem that arises, as we have seen left, is off-budget, a problem that is raised by the President in his petition.

The principle of budgetary unity requires the budget to breakdown state revenue and expenditure of all income and all expenses (Sousa Franco, "A review of the economic constitution", in "Revista da Ordem dos Advogados de Portugal" year 42, September-December, 1982, Lisbon, pg. 622). On this issue this Court has already ruled extensively in the case of 27-10-2008.

The President of the Republic argues that *"Article 9.2 of the 2011 State Budget provides only vague areas of government which can generate expenditures,"* without *"any description of actual expenses should be covered by the Infrastructure Fund*," and also the Human Capital Development Fund.

As for specific purposes of the fund, regardless of the legislation which brought it into being, it would appear that these have to be further detailed in the decree under review. The question of the description of the expenditure does not necessarily imply that the real purpose of the fund is in line with them.

Already on the breakdown of expenditure, measures to reduce or eliminate off-budget spending

resulting from the allocation of expenditure to autonomous funds, putting the autonomous funds and services under the orbit of the state budget is a growing concern in international doctrine, which is elaborated in the judgment of 27-10-2008.

But it also shows the difficulty of accurate budgeting of expenditures, with comprehensive breakdown of various items, once it comes to expenses arising from circumstances not yet fully defined and predictable, and the case of plans that go beyond the annual budget.

As the National Parliament rightly noted, it means finding a balance between "criteria of good sense and reasonableness."

It is precisely why these funds are created, instead of inscribing the above-mentioned expenditures in the budget of the respective ministries (a question also raised by the National Parliament). "The essential difference with regard to services that have only administrative autonomy, is that the autonomous services and funds choose their applications and resources" (José Manuel Pereira de Araujo, in "The Implementation of the Official Public Accounts and the Sector Plans Autonomous Services Central Administration: Study and Analysis ", University of Minho, Braga, 2005, pg. 14).

We do not perceive that the Government has received a "blank check" with the decree was sent for promulgation, or that that it creates a secret fund that the Government can manage at their pleasure, without any control.

Parliament has set a maximum limit of expenses to be borne by the Funds, even having limited spending by sectors, or functions.

Indeed in Annexes IV and V of the Decree of the National Parliament under analysis, includes a forecast of expenditure, with a breakdown that seems possible.

Although Article 145.2 of the RDTL Constitution affirms the principle of breakdown of revenues and expenditure, the truth is that it does not specify what level of breakdown should be the budget. On this subject see the ruling of the Constitutional Court of Portugal (Plenum) of 29-11-1988, Case No. 267/88, reporter Raul Mateus in www.tribunalconstitucional.pt.

There are two elements that define the essence of the budget: on the one hand, this is a predictable, time-limited, set of revenue and expenditure, on the other hand, it authorized how the first are raised and the second implemented (Braz Teixeira, Introduction to Financial Law, pg. 33, cited in this ruling of the Constitutional Court of Portugal 29-11-1988). As highlighted by Guilherme d'Oliveira Martins (in "Public Finance, vol. V, Minerva Foundation, Lisbon, 2007/2008, pg. 18) "in the case of autonomous funds and services, the specification should also be ensured according to national particulars."

That is, "the special fund is not a legal entity or budget organ but rather a special type of financial management of resources linked to achieving certain objectives defined by law, and whose acts of revenues and expenses should be individualized in the Accounting system of the organ it is linked to" (Osvaldo Maldonado Sanchez, "Federal funds: Origins, evolution and current situation in the federal administration ", in "Journal of Public Administration (Rap / FGV)," Jul./Aug. 2002, Foundation Getúlio Vargas (Brazilian School of Public Administration), Rio de Janeiro, page 13).

It is not logical nor rational to require that in Timor-Leste to make a breakdown or specification of expenditure of autonomous funds to a higher level than that which normally required in other developed countries that have mechanisms and means of forecasting and budgeting that our country still does not have.

Moreover, under the said Article 145.3 of the Constitution and Articles 42 to 45 of the Budget and

Financial Management Law, the implementation of the state budget, including funds, is overseen by the High Administrative Tax and Audit Court and by Parliament.

The review by the Court of the Government's budget execution and funds must also be made based on effectiveness and efficiency referred to in Article 145.2.

The President of the Republic also argues *that "... besides the lack of appropriate breakdown of expenditures to be covered by their funds, Article 9.6 of the statute in a commentary states that "The Administrative Boards are responsible for effecting changes in appropriations for programs within the limits the budget approved by parliament with respect to their respective goals," thus violating the constitutional division of powers laid down in Articles 95. 2(q) and 115(d) of the Constitution."*

The Prosecutor agrees with the President of the Republic on this understanding.

The National Parliament said in its response that "in all cases, any transfers that will be held pursuant to Article 9.6 of Decree No 45/II will always be made within the same Fund within the same category of expenditure within the limits of the total appropriation authorized in the same scope of programs and strategic projects and subject to, therefore, the purpose for which the appropriations were approved."

As highlighted by Teixeira Ribeiro (in "Lessons from public finance", 2nd ed., 1984, Coimbra Editora, Coimbra, p. 97.) "By approving the budget, the Assembly fixed the maximum amount not only of the total expenditure as the expenditure of each chapter and each function and sub function. Hence, in principle, the Government is prohibited from transferring funds from chapter to chapter and from function to function or sub-sub-function to function." However, it follows that the remaining transfers are allowed.

The Budget and Financial Management Law itself allows transfers of funds within the constraints laid down in Article 38, including up to 20% of the budget on the budget for services (No. 1), and the category of development capital within the same budget category.

That is, beyond that level of detail of revenue and expenditure, as the Government may make changes which, obviously, can never exceed quantum of expenditures specified, because in that case, the jurisdiction already belongs exclusively to parliament. See Guilherme d'Oliveira Martins, op. cit., pg. 28.

This was the interpretation given by the National Parliament to the said Article 9.6 of the National Parliament Decree under examination, when they state "fulfilled its purposes." In any event, the important thing to remember is that the aforementioned provision is not tainted by it unconstitutionality or illegality. What may be illegal is the possible future transfer of funds in violation of article 38 of the Budget and Financial Management Law.

Thus, we conclude that the rule in question does not violate the rule of budget specification, and therefore not tainted with unconstitutionality, directly or indirectly.

In short, there is no reason to conclude that the creation of Funds for Infrastructure and Human Capital Development violates the disclosure requirements in the specification of expenditures requested by Article 145.2 of the Constitution, by not identifying specific expenses will be covered by resources allocated to these funds.

2.3. If the decree sent for promulgation becomes unconstitutional because the Parliament changed the value of the state budget proposed by the Government

Finally the President of the Republic argues that the statute sent for publication violates Article 9 of

the Petroleum Fund Law, arguing that: *"In accordance with the provisions of Article 4 of the proposal approved by Parliament it is clear that the Government intends to finance the state budget 2011 in the amount of $ 1.055 billion through the Petroleum fund, with a transfer of $ 734 million, corresponding to the estimated sustainable income from the Petroleum Fund, made after compliance with the provisions of Article 8 of Law No. 9/2005 of 3 August (Petroleum Fund Law) and transfer the amount of $ 321 million, an amount that exceeds the sustainable income to be made after compliance with in "a", "b" and "c" of Article 9 of the aforementioned Act." "The Government refers only to compliance with the provisions of paragraphs "a," "b" and "c" of Article 9 of the Petroleum Fund Law, excusing itself from compliance with the "d" of that section."*

The Prosecutor agrees with the President of the Republic on this understanding.

The National Parliament answered this question that the total amount of the budget resulted from the amendments endorsed and submitted by the initiative of several Members of Parliament during the debate of the GSB, as a venue for discussion on the details of PPL No. 42/II, and that were adopted, so that the total state budget for 2011 rose to $ 1.306 billion and the amount to be withdrawn from the Petroleum Fund of $ 1.055 billion, when the initial proposal from Government was $ 734 million, an amount that is within the limit of the Estimated Sustainable Income.

On this matter, the Prosecutor also points out, we should closely follow the written ruling in No. 4/2008 of 27-10-2008.

As they state the question that arises now is to know the relationship between the Petroleum Fund Law and the Budget Law, or if there is an binding relationship of the second relative to the first, or whether, instead, the Budget Law being an ordinary law of equal formal value can contradict and prevail by being a later law. Indeed, as indicated above, the Budget Law is now considered a substantive law and not merely formal, nothing in principle prevents it from amending or repealing existing substantive laws.

However, as is alluded to above, taking into account the content of the Petroleum Fund Law, it appears that it imposes financial obligations on the state which bind the state budget, and as that law implements the constitutional principle on the use of natural resources, enshrined in Article 139.2 of the constitution, there is the possibility that this common law is specifically binding.

This has, incidentally, is recognized by the National Parliament to accept the binding of the Government and itself to the precepts of the Petroleum Fund Law. That is, as long as the National Parliament itself does not amend or repeal the Petroleum Fund Law, it cannot fail to consider itself bound by it.

It is true, as contended by the National Parliament in its response and stated in this ruling that the RDTL Constitution does not recognize the laws of nature of stronger force, but that does not prevent us from considering certain laws binding.

That is, in the absence of an explicit definition, the stronger force of laws (regardless of the legal consequences of such a purely doctrinal qualification) results from the combination of two essential criteria: its functional prominence as a substantive foundation to validate other acts with its negative strength, while possessing a special protection against being overridden by subsequent law.

Referring to the theme, Gomes Canotilho ("Budget Law in the Theory of Law", mentioned above, pg. 559) wrote that "considering the possibility that the budget law may contain material innovations, it seems that the problem will not already a simple implementation of the principle of legality, but the relationship

between the two legislative acts at the same level from a formal point of view, and one that is raised to a level of functional and organizational superiority. The setback or failure of the budget law by a stronger law, as is the law of the financial framework, would constitute a phenomenon of illegal laws or, in a different perspective, indirect unconstitutionality."

We are quite aware that the State Budget Law is also considered under doctrine of superior force (see Marcelo Rebelo de Sousa in "Annotated Portuguese Constitution", Lex, Lisboa, 2000, pg. 218). However, the clarification referred to above, do not cease to reaffirm held in Case 27-10-2008.

We now examine the consequences of failure to comply with the provisions of subparagraph d) of Article 9 of the Petroleum Fund Law.

In this regard the National Parliament has provided documentation showing that the excess revenue to the budget through transfers from the Petroleum Fund, exceeding the Estimated Sustainable Income, resulted from the proposals to amend paragraphs 43, 44, 84, 114, 126 and 127 together in Annex 9 of the proposal, endorsed and submitted by the initiative of several Members of Parliament, during the discussion on the specifics.

Thus, one cannot require the Government to present the justification expected by Article 9(d) of the Petroleum Fund Law.

Indeed, the requirement that the Government explain in detail the reasons why it is in the long-term interests of the country to make a transfer that exceeds the Estimated Sustainable Income refers to the need to explain itself to the National Parliament, as an entity which must authorize the need to carry out such transfer. It is the Parliament and not any other entity, the recipient of such an explanation (which incidentally is not of any particular form and can be provided even during the debate on the budget proposal).

Resulting in exceeding the value of Estimated Sustainable Income from the National Parliament's own initiative during the debate and approval of the national budget, as well examined by Parliament in its response, is devoid of any sense alluded to the requirement of Article 9(d) of the Petroleum Fund Law. It would make no sense that the Government had to explain (or justify) to the deputies a decision taken by them.

As highlighted in the response, the same does not apply to other requirements outlined in Article 9 above. Indeed, this is the interpretation of the information which is the fundamental means of monitoring and analyzing the impact of the measure on the Petroleum Fund, which is of particular relevance in financial management and to this same.

In any event, the absence of justification does not harm the Decree in question of illegality, just preventing any execution of the budget, since the result is that it will be impossible to transfer beyond the Estimated Sustainable Income until justification for the excess is shown.

In conclusion, the decree sent for promulgation does not suffer from illegality or indirect unconstitutionality by violation of paragraph d) of the Petroleum Fund Law.

2.4. If the decree sent for promulgation becomes unconstitutional because Parliament changed the value of the State budget proposed by the Government

In the documents submitted in response by the National Parliament recognized that the state budget originally proposed by the Government, of $342.3 million was raised to $624 million as a result of proposals by Members and determination by Parliament.

Given that the Prosecutor argues in her opinion a violation of the Constitution, in particular its Article 115, arguing that *"without the Government's proposal, the National Parliament cannot increase, at its pleasure that amount, since the initiative on the budget rests with the Government, the Parliament cannot encroach on its jurisdiction of without threatening the violation of the principle of separation of powers."*

In the manner the Prosecutor seems to agree with the ruling of the Constitutional Court of Portugal, 19-11-1986, No. 317/86, rapporteur Martins da Fonseca, in www.tribunalconstitucional.pt ("Such legislative power, if any , would open the possibility of introducing imbalance in the powers of the state, against which posits precisely the principle of separation and interdependence (...) It is not intended that the National Assembly is bound to the amendment made by the Government. It can accept it or reject it. It can increase revenue, as proposed, or raise them in a different percentage than desired. It also cannot reduce expenditures or decreases by less than intended. You cannot make changes is that beyond the scope of the proposal).

This is not, however, the clear understanding the majority of doctrine.

It is important here to recall the nature and function of the aforementioned State Budget Law to conclude with the ruling of the Constitutional Court of Portugal, 11-11-1992, Case No. 358/92, rapporteur Antonio Vitorino, published in the Official Gazette Series I of Portugal, of 26/01/1993 that: "The criterion of the nature and function of the budget law at the present stage of evolution of the social state of law has thus been significantly checked with the principle of reservation of Parliament for its approval (Parlamentsvorbehalt), not only, as noted in the classical perspective to assure rights and freedoms of citizens but also (perhaps primarily) as an expression of the function of directing state policy, or put another way, an important aspect of parliamentary function is to be involved in the State's policy."

Hence, we have to conclude that, in the case of an annual forecast of a financial plan, which includes global spending and state revenues, it is appropriate that Parliament should not only discuss all that the Government suggests, but has the initiative to amend the proposal whenever it sees fit, provided it observes the principle of balanced budgets.

"The fundamental idea included in the Constitution regarding the division of powers between Parliament and the government in financial matters, explaining the solutions found by it in this field, is to give the [National Parliament] a broad decision-making freedom in the debate of Budget Law (JM Cardoso da Costa, "On the Commitments of the Legislative Budget Law" cited above, pg. 14).

In the same vein Gomes Canotilho and Vital Moreira (in "Annotated Constitution of the Portuguese Republic," cited above, pg. 1118) add that the National Parliament "cannot delegate its power to approve the budget to government, but also cannot approve it without a previous initiative from the Government. However, it is not limited to approving or rejecting the government's proposal and may introduce amendments thereto. Members and parliamentary groups are not prevented from making amendments." Provided that there are no constitutional limits to these legal changes.

Rather, as argued by the National Parliament in its response, can defend itself before the Government which is forbidden to make any amendments to an initiative admitted to the parliamentary legislative process. Thereafter, only Deputies can do so. This is called the law of the brake, which, however, is not enshrined in the Timorese legal framework (Constitution and Budget and Financial Management Law).

Thus we conclude that the decree sent for promulgation does not violate the Constitution, in particular Article 115, because the Parliament changed the value of the state budget submitted by the Government.

III. Conclusion:

For these reasons, the judges of the Court of Appeal have deliberated that the Decree of the National Parliament No 45/II approving the 2011 State budget submitted to the President of the Republic does not violate Articles 145 2, and 115 of the Constitution, nor Article 9 of Law 9/2005 of 3 August (on the Petroleum Fund).

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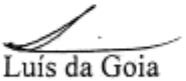
- Notify the President of the Republic, the National Parliament in the person of its President and Government in the person of the Prime Minister.

- Timely publish in the Official Gazette and archive.

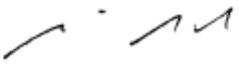
Dili, February 11, 2011

Judges of the Court of Appeal

Cláudio de Jesus Ximénes – Presidente e Relator



José Luís da Goia



Rui Manuel Barata Penha