UNOFFICIAL TRANSLATION

COURT OF APPEAL

Case no. 02/ACC/2007

Ruling by the Panel of Judges of the Court of Appeal composed of Cláudio Ximenes, Jacinta Correia da Costa and Maria Natércia Gusmão Pereira:

I. His Excellency the President of the Republic requested the Court of Appeal to undertake an anticipatory verification of the constitutionality of the Law of the National Parliament no. 68/I/5 "On Truth and Measures of Clemency for Diverse Offences"[*] that was sent to him for promulgation pursuant to articles 149 and 164 of the Constitution. In his request, His Excellency the President of the Republic expressed doubts about the constitutionality of the provisions in articles 1, 2, 8 and 14 and presented the following arguments:

(a) "The arbitrary establishment of a specific time frame for the amnesty may constitute a violation of the principle of equality, for the proposed law will handle identical criminal circumstances in different ways, before and after the dates being proposed";
(b) "Moreover, an amnesty law that exhibits a considerable number of legal flaws may also infringe the principle of equality, for it will allow for numerous interpretations and an uneven application of its provisions, depending of the viewpoint of different legal actors";
(c) "A serious distortion of the notion of *res judicata* may also be considered a violation of the principle of equality. For a case in which there has been a final ruling may be later revoked by way of an initiative undertaken by private persons. And hence the proposed law will establish an unreasonable distinction between the moments when such matters should be handled in the courts and outside the courts; moreover, the proposed law exhibits an interference of the legislative body in judicial matters, for it deals with fixed limits to certain cumulative sentences and extenuating circumstances";
(d) "The choice of certain criminal offences to be amnestied, in the specific case of this law, may not abide by a criterion of homogeneity, as it includes in its scope cases that are identical in terms of their seriousness to other that are not contemplated by the proposed law";
(e) "And there is a clear case of unequal treatment with respect to disciplinary infringements in the military and police forces."

The National Parliament was informed of the request but no reply was provided.

[*] [Translator's note: quoting from an unofficial English translation of this draft decree available at http://www.eastimorlawjournal.org]

II. The Court of Appeal has to decide on this matter.

The issues at stake in the case are the following:

(a) Whether the Law of the National Parliament no. 68/I/5 "On Truth and Measures of Clemency for Diverse Offences" that was sent for promulgation violates the principle of equality by awarding clemency measures only to offences committed between 20 April 2006 and 30 April 2007, excluding from its scope any offences committed before said period;
(b) Whether the Law of the National Parliament violates the principle of equality by "[exhibiting] a considerable number of legal flaws" and thus allowing for numerous interpretations and an uneven application, depending on the viewpoint of different legal actors;
(c) Whether article 14 of the Law of the National Parliament violates the principle of equality by allowing *res judicata* to be annulled by way of an initiative undertaken by private persons, and whether items 6 and 7 represent an interference of the legislative body in judicial matters.
(d) Whether the Law of the National Parliament violates the principle of equality by excluding from the set of offences to be amnestied, others whose seriousness or nature is similar to that of the offences that come under its scope;
(e) Whether there is a violation to the principle of equality in the treatment dispensed to military and police members regarding amnesty of disciplinary transgressions;
(f) Whether the provisions of articles 2 and 8 of the Law of the National Parliament violate the Constitution.

A – **Whether the Law of the National Parliament no. 68/I/5 "On Truth and Measures of Clemency for Diverse Offences" that was sent for promulgation violates the principle of equality by awarding clemency measures only to offences committed between 20 April 2006 and 30 April 2007, excluding from its scope any offences committed before said period**

On this matter, the request for an anticipatory verification of the constitutionality of the Law of National Parliament states that:

> *"9. The first criticism that can be brought against such law concerns the proposed time frame, between 26 April 2006 and 30 April 2007. The time frame seems to be too localized in time, too specific, identifying only a certain period in the disturbances that affected public life in Timor-Leste, without raising above particular circumstances to the adequate level of abstraction that is convenient when courts are asked to decide.*
> *10. Indeed, by bringing together events that have taken place in a specific period of time, the proposed law identifies and singles out those who were involved in such events, thus running contrary to the principles of generality and common interest and begetting controversy.*
> *11. Hence, the amnesty will become a political tool, while on the contrary it should be a contribution to and a gesture of clemency in public life. As such, the original intention of the amnesty law may be considered as being in infringement of the constitutional notion of amnesty itself. In other words, a law with the features of this instrument is not*

permissible because the Constitution provides for clemency measures only as remedies for special social circumstances.

12. Thus, it would be preferable if the amnesty law was to contemplate all criminal offences committed and sentences handed out before 30 April 2007. Such an approach would warrant the necessary degree of abstraction and generality that is typical of a clemency measure which is to be applied without discrimination and should be equal for all.

13. Even so, and for the abovementioned reasons, the language of article 1 raises doubts about its constitutionality, when contrasted with article 16 of the Constitution that provides for the equality of all citizens before the law. Indeed, it is the amnesty law itself that establishes a differential framework to deal with similar acts, for there is no difference between the acts typically committed during the time period defined in said law and other acts committed before that time.

14. And the argument that, in any case, the establishment of a time frame for any amnesty law causes an identical discrimination, for it is equally arbitrary, does not hold. As with the notion of res judicata*, a time limit has to be set for the presentation of arguments so that the law can be applied.*

15. There are good grounds to set 30 April 2007 as the reference date, for it relates to the motives that are behind the granting of an amnesty and enables its practical implementation. Under such an arrangement, there would be no unequal handling of identical cases, for any future cases would no longer come under the clemency legislation and would therefore be dealt by the law in different ways.

16. The situation would be different if the nature of the crimes to be amnestied between 26 April 2006 and 30 April 2007 was to be considered distinct. During said period, the country went through a crisis in the course of which the authority of the State, and of the police forces in particular, was exerted to a very limited extent. Such circumstances facilitated the commitment of specific offences that cannot be compared with those committed, in general, under the regular operation of democratic institutions.

17. It is true, however, that many crimes where committed in a spirit of self-protection. Although this should be condemned, first and foremost because it led to an escalation of the violence, such circumstances link them to particular types of crimes.

18. The selection of crimes to be amnestied should reflect the nature of the social upheaval that occurred during the time period referred to. But that does not happen with the amnesty law under consideration".

Article 16(1) of the Constitution provides that *"All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties"*.

The principle of equality enshrined in this provision encompasses equality in the drafting of laws, equality in the application of laws and equality of opportunities. Equality in the application of laws signifies that laws shall be applied irrespective of particular individuals; equality of opportunities implies a policy aimed at achieving social justice, implementing the constitutional provisions concerning economic, social and cultural rights, and offsetting unequal opportunities; and equality in the drafting of laws, which is the issue that is at stake here, implies that laws be universal and abstract so as to achieve material equality. Lawmakers should refrain from exercising their arbitrary power when drafting laws, in the sense that they would be arbitrarily

violating the principle of equality if they were to handle comparable circumstances in an unequal way without serious, legitimate and reasonable grounds to do so.[†]

Article 1 of the Law of the National Parliament no. 68/I/5 "On Truth and Measures of Clemency for Diverse Offences" provides that offences shall be amnestied insofar as they have been committed between 20 April 2006 and 30 April 2007. The article excludes from the scope of the amnesty any offences committed before 20 May 2006. This means that whoever has committed any of the offences listed in said article within the defined time frame shall benefit from a measure of clemency, but those having committed such offences before the time period referred to shall not benefit from it.

Although it is not specifically mentioned in the request submitted by His Excellency the President of the Republic, article 7, item 1 of the abovementioned decree also grants total or partial pardon to penalties related to offences committed between 20 April 2006 and 30 April 2007, again excluding from its scope those sentenced for offences committed before said period.

It is manifest that such provisions would result in an unequal handling of individuals who face similar circumstances, without there being any serious, legitimate and reasonable grounds to do so. On the contrary, the Law's preamble equates the crisis of 2006 with those of December 1975 and September 1999, stating that 2006 "was also a year in which all of us experienced weeks of anxiety recalling us of the violence that we went through in December 1975 and September 1999". Moreover, the measures of clemency being proposed will not be granted solely to offences directly related to the crisis that the country went through during a limited period of time.

The absence of any serious, legitimate and reasonable grounds for the unequal handling of perpetrators of offences committed during the abovementioned time period and the perpetrators of offences committed before said period makes the unequal treatment conspicuous, intolerable and lays bare a violation of the principle of equality.

Thus, articles 1 and 7, item 1 of the Law sent for promulgation, by restricting the measures of clemency to the offences committed between 20 April 2006 and 30 April 2007 and excluding from their scope the offences committed before said period, are declared unconstitutional on the grounds that they violate the principle of equality enshrined in article 16, item 1 of the Constitution.

B – Whether the Law of the National Parliament violates the principle of equality by "[exhibiting] a considerable number of legal flaws" and thus allowing for numerous interpretations and an uneven application, depending of the viewpoint of different legal actors

On this matter, the request for an anticipatory verification of the constitutionality of the Law of the National Parliament argues that:

> *"19. The proposed Law may also be at variance with the Constitution as long as its technical flaws are not corrected. For example, the Law makes reference to legal notions*

[†] JJ Gomes Canotilho – Direito Constitucional e Teoria da Constituição, Almedina, 4th edition, pages 417-420.

that have not been the object of any legislation. Moreover, the conformity of such notions with those of Timorese law is problematic. And there are also mistaken cross-references between articles.

20. Beyond a certain level, the presence of such flaws and incongruities will make the application of the law on amnesty problematic and could lead to the handling of specific cases in dissimilar ways, both qualitative- and quantitatively.

21. What is here at stake is the constitutional principle of equality, which requires that what is equal shall be treated equally.

22. In this regard, an extended list of legal errors can be noted, viz.:

(a) The reference in article 1(a) to article 55 of the Penal Code touches on the notion and modalities of participation in punishable acts. The intent and scope of this reference are unclear, but it generates uncertainty about the set of crimes to be amnestied.

(b) On the other hand, it doesn't make sense to leave out of the scope of the amnesty certain criminal offences and not others, depending on the degree of involvement of the beneficiary in the perpetrating the crime..

(c) The reference in article 1(l) to crimes committed by negligence or dolus eventualis *incongruously combines elements that relate to the type of crime committed with subjective elements that concern the deed itself: negligence is one type of crime,* dolus eventualis *refers to the state of mind and intent of the perpetrator.*

(d) Thus, whereas the amnesty envisaged for culpable crimes seems clear enough, and indeed represents a classical solution in amnesty laws, dolus eventualis *points to each and every other criminal offence. The combination of these two notions extends the scope of the amnesty to each and every crime under the law.*

(e) Meanwhile, the reference in article 1(m) to crimes committed by negligence, where such crimes are punishable with a prison sentence of more than one year, with or without a fine, has no scope for application, owing to the fact that item (l) provides for an amnesty of all the punishable crimes by negligence and not only those crimes that are punished by sentences under one year.

(f) Article 2(5) provides that where the value of the compensation has not been exactly determined, the judge, upon a request from the Public Prosecution Services or the defendant, to be submitted within the deadline referred to in item (2), shall establish such amount equitably, having undertaken all the necessary steps, through an order from which no appeal shall lie. However, the Criminal Procedure Code establishes a system of compensation of its own motion, without the need for the victim to submit a request.

(g) The use of such notions as assistant to the prosecution[‡] *and summary declaratory proceedings in article 6 hamper the application of the rules governing civil liability suits related to the cases that have been amnestied.*

(h) Similarly, notions such as those of habitual delinquents or habitual alcoholics (article 8) have not been taken in by the criminal legislation in force nor the legal instruments regulating it.

(i) Finally, no explanation is provided for the reference to 31 July 2006 in articles 12 and 13, whereas the amnesty concerns offences committed between 20 April 2006 and 30 April 2007.

23. The significance and the frequency of these errors makes the law an instrument of inequality and legal insecurity, which is contrary to the promotion and respect of the common good as provided for by the Constitution".

[‡] [Translator's note: translated as "private prosecutor" in the unofficial English translation mentioned above.]

The Court of Appeal acknowledges that the Law that was sent for promulgation contains several obvious technical flaws. Most of them area apparently due to a lack a familiarity with notions of criminal law, as well as with the criminal code and criminal procedure code currently in force in Timor-Leste.

However, such flaws do not constitute, whether from a formal, material and procedural viewpoint, a violation of a constitutional principle or provision. The existence of technical flaws in a legal instrument does not constitute a direct violation of the principle of equality, contrary to what is argued in the request submitted by His Excellency the President of the Republic. At most, the presence of such technical flaws may hamper the interpretation of the law and, in some instances, give rise to situations where individuals under similar circumstances will be treated differently. But the risk of interpreting laws in such a way that specific cases are handled differently and the possibility of producing situations of inequality exist with every law, even those that are technically flawless. It is the responsibility of whoever has to apply the law, to interpret it in each specific case, to fill in the gaps that may exist and to overcome possible technical errors made by lawmakers, in accordance with the general principles of law. The greater or lesser degree of technical flawlessness of a law, or the greater or lesser possibility of technical flaws leading to divergent interpretations of the law does not constitute, in itself, a violation of the principle of equality or of any other constitutional principle or provision.

Thus, the presence of technical flaws in the Law that was sent for promulgation, such as those relating to articles 1(a), 1(l), 1(m), 2(5), 6, 8, 12 and 13 does not make them unconstitutional on the grounds that they violate the principle of equality or any other constitutional principle or provision.

C – Whether article 14 of the Decree of the National Parliament violates the principle of equality by allowing *res judicata* to be annulled by way of an initiative undertaken by private persons, and whether items 6 and 7 represent an interference of the legislative body in judicial matters

On this matter, the request for an anticipatory verification of the constitutionality of the Decree of National Parliament argues that:

> *"32. Article 14 raises serious doubts (besides those related to the technical flaws therein): although perhaps no reservations are justified regarding the non-observance of the principle of* res judicata *(for it has not been laid down, in writing, as a constitutional right, despite being a well-established constitutional principle), the solutions for an amnesty being proposed must nevertheless abide by the principle of equality in this respect as well.*
> *33. Thus, admitting the respect for the notion of* res judicata *and the principle of equality as two constitutional directives that shall guide the drafting of any legal instrument aimed at a constitutional amnesty, it follows that no arbitrariness should exist in the selection of the court rulings to be reviewed.*
> *34. But that is not what is being proposed in article 14 regarding the amnesty. First, the initiative has to come from private persons (and therefore will be requested on a case-by-case basis), and will depend on the differential power and skills that come with*

the social and economic backgrounds of different applicants. And then, there is an illogical use of the court system to deal with such matters.

35. Indeed, the waiting for a court ruling is inexplicable and a hindrance to the amnesty process, for once the ruling has the force of res judicata*, it can be revoked upon request by the interested party!*

36. There seems to be a clear inverse disrespect of the notion of res judicata*, which surfaces only to be destroyed out of courts – and the interference with the courts persistently remains in the provisions that refer to the amount imposed for the extenuating circumstances referred to on item 7 and on the measure of the* ex lege *sentence in case of multiple convictions, as described on item 6".*

Article 14 of the Parliament's Law provides that:

"1. So long as there is a criminal proceeding on trial hearing at a first instance court or on appeal against any party interested in applying the measures of clemency and amnesty provided for in the present law, the legal timeframe for the request of the application of such measures shall be extended up to ten days after the final decision becomes final.

2. The criminal procedure of each and every proceeding under investigation by the police or the public prosecution relating with the matter of fact and matter of law dealt with in the present law shall be extinct.

3. Where a proceeding is in the phase of investigation, or in the phase of accusation by the public prosecution, or in trial phase, amnesty can only be requested by any defendant within 20 days after the reading out of the sentence or ten days after the sentence has become final.

4. For the purposes of the present law, beginning of investigation process shall refer to cases under criminal investigation which have not yet been the object of a decision by the public prosecution or the competent court.

5. From the moment amnesty is requested, the execution of the applied penalty shall be suspended.

6. Whether or not there is accumulation of penalties, no single penalty higher than six years of imprisonment or ten thousand dollars of fine shall be applied to any of the crimes committed as a consequence of the crisis occurred between 20 April 2006 and 30 April 2007 and to those provided for in articles 324 to 361 of the Criminal Code in force or to the crimes provided for in UNTAET Regulation No. 5/2001 of 23 April.

7. Where strong mitigating factors exist, the penalty may be further reduced to one-half and its execution suspended up to the same number of years.

8. Participation in the National Liberation Struggle, as well as inexistence of previously committed crimes and good civic and social behavior shall constitute mitigating factors, to be considered on an individual basis."

Items 1 to 5 in this article seem to be aimed at regulating the effects of the clemency measures and at conditioning, in certain cases, its concession to the request of the parts interested in such benefit. But it does so in an incomplete manner with no rigorous criteria, which demonstrates once again the lack of domain over the penal legislation and the penal procedures applicable in the country as well as the whole amnesty concept.

Item 1 extends the deadline for requesting the application of clemency measures to offences for which there are criminal proceedings on trial hearings at a first instance court or on appeal in up to ten days after the final decision is announced. However, the issue regulated by this item is also regulated, although under slightly different terms, in item 3, which extends the deadline for requesting the application of clemency measures to offences for which the proceeding is in the phase of investigation, or in the phase of accusation by the public prosecution, or in trial phase in up to 20 days after the reading out of the sentence or ten days after the sentence has become final.

Upon establishing that the criminal procedure of each and every proceeding under investigation shall be extinct, item 2 seems to automatically grant clemency measures to offences whose criminal proceedings are under investigation, regardless of the need for placing a request for such measures.

Item 4 establishes, for the purposes of the Law, as being in the beginning of investigation process the cases which have not yet been the object of a decision by the public prosecution or the competent court.

Item 5, which establishes the suspension of the sentence imputed “from the moment amnesty is requested”, and item 3, which establishes that “where a proceeding is in the phase of investigation, or in the phase of accusation by the public prosecution, or in trial phase, amnesty can only be requested by any defendant within 20 days after the reading out of the sentence or ten days after the sentence has become final”, both condition the applicability of the amnesty to, at least, the production of its expected results upon the party’s request; and this last item seems to restrain or cease the deployment of amnesty or the production of its expected results after the timeframe for the amnesty request. But the Decree does not mention what the results of the clemency measures are in regards to the offences for which there are no criminal proceedings, nor does it establish whether the party’s request is required and, if it is, it does not mention the timeframe to be observed.

We don’t think it is a good alternative to subject the application of amnesty measures to the request of the beneficiary; we understand it is completely useless to move forward with the penal proceedings until such time when the sentence is announced just to go and grant amnesty to the offender at that time instead of doing so right away. For amnesty is, by nature, a legal measure of “erasing” or “forgetting” the consequences of the crime, which by itself is contrary to the principle of the criminal proceeding or the execution of the sanction; therefore, it would make more sense to grant amnesty right away regardless of the beneficiary’s requesting it or not, with no damage to the possibility of conditioning such measure to certain conditions to be established by the legislator, if that is the case.

All that aside, it cannot be said that the aforementioned articles of the Law violate any constitutional principle or norm. The observance of the universality principle and the abstract nature of the law is clear in this document and there is nothing that would allow one to state that they directly impose unequal treatment for individuals in similar conditions without sound, legitimate and reasonable substantiation.

As previously mentioned, the technical flaws do not constitute a violation of a constitutional norm or principle on their own. Facing these flaws, it is the legislator’s responsibility to, by

means of his/her own interpretation powers, find the most correct sense of the law in each case and overcome eventual gaps or technical mistakes it may bear, in accordance with the general legal principles.

This Court, in the exercise of its competence in the constitutional matter, is not in the position of making statements concerning flaws in the legislation that are not related to the constitutionality or about options that fit within the legislator's freedom of interpretation.

We do not accept the notion stated in the request that, by allowing any interested party to file for amnesty up to 10 days after the announcement of the final decision, article 14 would open a door to arbitration in choosing which sentences to review and consequently breeching the egalitarian principle. This article is not about reviewing sentences or choosing which sentences to review. Granting amnesty due to any party's request does not require a review of the sentence but the extinction of the sentence itself. It is not possible to say that there is any arbitrary intent, let alone inequality, when the law allows each amnesty-eligible offender to request this benefit to be applied and enables this request to be presented up to 10 days after the final decision is announced.

We also don't share the view portrayed in the request that items 6 to 8 in article 14 represent an interference with the competence of the courts. Such items simply establish in a very general and abstract manner the maximum limit of the decision to be made by the courts to certain crimes and extenuating facts the court has to take into account when considering a sentence reduction. Such items are a competence of the legislator and do not belong in the Court's competence. Therefore, they do not constitute an interference with the alleged competence of the courts at all.

In summary, article 14 does not impose a violation to the equality principle or any interference with the judicial competence, let alone a violation of any constitutional principle or norm.

D –Whether the Law of the National Parliament violates the principle of equality by excluding from the set of offences to be amnestied, others whose seriousness or nature is similar to that of the offences that come under its scope

As of this matter, the request states:

> *"24. Further on, the amnesty law has flagrant flaws regarding the equality principle by ignoring crimes of the same nature and similar gravity as the ones that are eligible for amnesty, or by granting the possibility of amnesty to crimes which should be treated just like the other crimes that are not eligible to amnesty, such is their nature and level of gravity.*
> *25. Here are the facts: crimes against property such as damage to property are not eligible to amnesty, although they are classified as the same level of gravity as theft and fraud which are eligible to amnesty when there is a pardon by the victim; any person engaged in bribing public servants and judges (but not other authorities) is eligible to amnesty; crimes such as slander and libel are not eligible to amnesty, whereas more serious and socially-disturbing crimes are; thefts followed by assault resulting in collateral damages are eligible to amnesty, whereas other offences associated with the death of the victim are not.*

26. The pardon by the victim is only referred to items a) and c) in article 1.0 while other crimes could, in a similar manner, also be eligible to a pardon by the victim.
27. All of the road offences committed under the influence of alcohol (DUI) or when the victim is abandoned in the vicinity are not eligible to amnesty or pardon, although we fail to see the rationale behind these exceptions facing the habits and circumstances of traffic (article 8, item 2, sub item c).
28. On the other hand, anyone convicted of fraud, crimes against the economy, fiscal crimes and embezzlement is not eligible to amnesty when these crimes are committed by means of document forgery, but at the moment there is no offender that has been convicted on these grounds: amnesty or pardon would never determine social unrest in this case, which is also the situation for the previous item.
29. The opinion is however the opposite when it comes to offenders convicted for sexual abuse involving minors (under 14 years old) or any other type of sexual abuse (the current estimate on inmates under this classification is 17%): it is justified in the first place that any restriction is applied both to the amnesty and the pardon but when it comes to this type of crime, specially when the victim is a minor, the exclusion can be justified due to the high percentage observed.
30. Article 8 (item 2, sub item b) is aimed at excluding any behavior that should be punished according to the International Law from the amnesty decree. However, its design presents raises questions regarding its reach and namely the exclusion of acts of torture which, according to the International Law, fit within the application of this law.
31. Lastly, for parity reasons, it is recommended that the offences punished with short sentences such as offences against the public order or the authority of the State are also eligible to amnesty."

As mentioned previously, when observing the principles of universality and abstract nature of the law, there shall only be inequality when unequal treatment is dispensed to individuals in similar situations without a serious, legitimate and reasonable base.

It is not possible to say that some of the situations mentioned in the request involve individuals in the exact same situations to which unequal treatment is applied. We can argue the options made but we cannot impose the inclusion of a certain type of crime to the legislator because he/she has decided to grant amnesty to another crime of the same nature or gravity. Amnesty as an act of clemency entails an option of the State over which crimes it intends to provide amnesty to. Such choice is a prerogative of the Legislator, and sits well within its freedom to legislate upon the matter. One can say that the freedom the Legislator has when determining what crimes to grant amnesty to is equivalent to the freedom it has to decide which facts must be defined as crimes.

Therefore, we shall conclude that there is no violation to the principle of equality when the Law excludes from the group of offences that are eligible to amnesty certain offences with the same gravity or nature as the ones included in this group.

E – Whether there is a violation to the principle of equality in the treatment dispensed to military and police members regarding amnesty of disciplinary transgressions.

As of this matter, the request states:

"37. Lastly, there is a notorious discrepancy as of the respect to the principle of equality of treatment in identical situations when the topic is amnesty to disciplinary transgressions provided for by the legislation of the RDTL or put into effect by employees or agents with a special mandate, except when the facts constitute a crime or when it does not refer to the primary defendant, although the case of military and police disciplinary offences refers only to the exclusion of amnesty to the disciplinary arrest sentences, which don't even exist in the PNTL or higher ranked charts.
38. Therefore, the inequality in the confrontation PNTL/F-FDTL is quite meaningful, as well as it also is between the first and second functional levels since nothing can guarantee that offences which also constitute crimes or that have been committed by non-primary defendants will not be punished with a sentence lower than the disciplinary arrest."

As of the disciplinary offences, the Law sent to promulgation states that amnesty shall be applied to:

"p) Disciplinary offences punishable by the Disciplinary Regulations approved by Decrees and Decree-laws of the RDTL directly or by remission, when the sentence that has been applied or is applicable is not higher than the suspension and, similarly, the offences committed by employees or agents with special mandates in such institutions, except when the facts constitute criminal offence or when the offender has previously been submitted to verbal reprimand or stricter punishment;
q) Disciplinary military and police offences when punished with a sentence no higher than home detention."

There is no doubt that the legal provision observes the principles of universality and abstract nature of the law. It is also not possible to distinguish unequal treatment of individuals in similar situations without any sound, legitimate and reasonable substantiation. It is the Legislator's prerogative to distinguish (or not) the treatment to be assigned to the disciplinary offences committed by military and policemen, as well as the disciplinary offences committed by other state employees and agents. That on itself does not mean the legislator is more severe on the treatment dispensed to those agents, for discipline is the key element within the institutions these elements work in. Even if the home detention, which excludes the amnesty possibility, is provided for only for military members (not for policemen), one cannot state that the Decree imposes an unequal treatment; at the most, people shall incur in the technical error of referring to disciplinary imprisonment regarding policemen when in fact there is no legal provision that imposes such disciplinary punishment; however, such technical error does not involve any unjustified treatment inequality and shall be easily corrected by the enforcer by means of interpretation, which shall be performed according to de general legal principles.

III. Summary

In order to summarize the main arguments in A, B, C, D and E, we consider that articles 1 and 7, item 1 of the Law of the National Parliament n. 68/I/5 sent for promulgation are unconstitutional, since they violate the equality principle by granting clemency measures only to offences committed between 20 April 2006 and 30 April 2007, excluding the period prior to that; however, articles 2, 8 and 14 do not violate any norm or principle of the Constitution.

On the subject, the Judges that constitute the Panel of Judges of the Court of Appeal:

(a) Declare that articles 1 and 7, item 1 of the Law of the National Parliament n. 68/I/5 sent for promulgation are unconstitutional, since they restrict the measures of clemency to offences committed between 20 April 2006 and 30 April 2007, excluding the period prior to that, and consequently violating the principle of equality enshrined in article 16, item 1 of the Constitution;
(b) Declare that articles 2, 8 and 14 of the same Law do not violate any norm or principle of the Constitution, namely the principle of equality enshrined in article 16, item 1 of the Constitution.

By means of a copy of this document, let His Excellency the President of the Republic, as well as the National Parliament duly represented by His Excellency the President of the National Parliament be notified.

Dili, 16 August 2007.

The Panel of Judges of the Court of Appeal

Claudio Ximenes (signed)

Jacinta Correia da Costa (signed)

Maria Natercia Gusmão Pereira (signed)