

**Law No. 7/2009
of 15 June**

ESTABLISHING THE CIVIL SERVICE COMMISSION

The intention to establish a Civil Service Commission has been expressed ever since the approval of the Programme for the IV Constitutional Government.

The Government expects the Commission, as an independent entity, to be able to ensure a civil service that is politically unbiased and impartial, based on merit and on high standards of professionalism and capable of providing quality services to the State and the population of Timor-Leste.

In order for it to be effective, the Civil Service Commission it shall retain a series of functions insofar as civil service is concerned. Such functions shall either be exercised by itself or through delegations of power to the main leaders of Public Sector bodies.

Such functions shall include, *inter alia*, making decisions, providing guidelines, establishing parameters, developing policies and procedures, applying penalties and reviewing appeals on issues relating to public sector. The Commission shall also act as an adviser to the Government to enable the latter to obtain the highest efficiency and efficacy in the Public Sector and in the management and development of the respective human resources.

Thus, pursuant to article 92 and article 95.1 of the Constitution of the Republic, the National Parliament enacts the following to have the force of law:

**Article 1
Object**

1. The present law establishes the Civil Service Commission, hereinafter referred to as Commission, a personalized service of the State under the superintendence of the Prime Minister and with administrative, financial and technical autonomy.

2. The Commission shall be the organ responsible for guaranteeing a public function that is politically unbiased and impartial, based on merit and

on high standards of professionalism, enabling it to provide quality services to the State and the people of Timor-Leste.

3. The objective of the Commission shall be to strengthen the performance of the Public Sector by ensuring adherence to the principles set forth in Law No. 8/2004 of 16 June (Statute of the Civil Service).

Article 2 **Definitions**

For the purposes of the present law:

- a) Public Administration Organ shall mean an entity pertaining to the direct or indirect administration of the State, under the tutelage of the organs of sovereignty and whose workers are civil servants or agents of Public Administration covered by the Statute of the Civil Service;
- b) Chairperson shall mean the Chairperson of the Civil Service Commission;
- c) Leader shall mean the Director-General, the national director, or the highest administrative authority of any entity pertaining to the Public Sector;
- d) Public Sector shall mean the set of civil servants, agents of the Public Administration as well as other workers who, irrespective of the labor link, are at the service of the State Administration, excluding the entrepreneurial sector of the State;
- e) Commission shall mean the Civil Service Commission;
- f) Commissioner shall mean the Member of the Commission;
- g) Worker shall mean any person employed by the State, irrespective of the respective labor link, except political appointees;

- h) Political appointment shall mean appointment for an office resulting from an election or nomination pursuant to the Constitution or a law and not covered by the Statute of the Civil Service;
- i) Remuneration shall mean the salary as a retribution for the work done plus supplements provided for in pertinent legislation;
- j) Secretariat shall mean the secretariat of the Commission;
- k) Secretary shall mean the highest person in charge of the Secretariat.

Article 3 Scope

Decisions of the Commission shall apply to all civil servants, agents of the Public Administration and other workers, irrespective of the labor link with the State, except entities pertaining to the entrepreneurial sector of the State.

Article 4 Objectives of the Commission

The objectives of the Commission shall be:

- a) To ensure an impartial Public Sector based on merit and on high standards of professionalism and integrity;
- b) To ensure that the Public Sector provides quality services to the State and the People of Timor-Leste;
- c) To ensure an efficient, effective and economic performance of the Public Sector;
- d) To ensure a fair and adequate treatment for civil servants, agents of Public Administration as well as other workers of the Public Sector;

- e) To ensure the development of the leaderships and the innovation of the Public Sector.

Article 5
Functions and competences

1. It shall incumbent upon the Commission as regards the entire Public Sector:
 - a) To ensure that the recruitment of workers takes place in the framework of a selective process based on merit;
 - b) To promote the respect for the code of ethics provided for in the Statute of the Civil Service;
 - c) To promote a culture of on-going improvement and management of performance;
 - d) To improve the management and administration of planning, organizational performance and the practices of manpower;
 - e) To ensure skills development and professional training;
 - f) To develop and implement strategies for the management and planning of manpower;
 - g) To review issues relating to the management and performance of services pertaining to the Public Sector;
 - h) To initiate, conduct and decide on disciplinary proceedings and apply the respective penalties;
 - i) To decide on appeals and on rehabilitation processes;
 - j) To advise the Government on the remuneration and the terms of employment and conditions and respective benefits;
 - k) To advise holders of the organs of the State on issues relating to the Public Sector.

- 1) To undertake other activities as provided for by law.
2. The following are also competences of the Commission:
 - a) To carry out recruitments, appointments and promotions in the public sector, with the possibility to delegate pursuant to the present law;
 - b) To establish guidelines on employment and management in the public sector;
 - c) To convene civil servants and agents of the Public Sector to appear before the Commission;
 - d) To request the information and documents deemed necessary from the leaders in order to establish procedures and conduct investigations of the Commission;
 - e) To refer issues to the consideration of the Provider of Human Rights and Justice, to the Prosecutor-General, to the Inspector-General and to other competent entities;

Article 6 **Guidelines of the Commission**

1. It shall be incumbent upon the Commission to issue guidelines and make decisions which, after publication in the Official Gazette, shall be mandatorily complied with by the public sector.
2. Such guidelines and decisions shall refer to:
 - a) Recruitment and selection processes;
 - b) Training and development of skills;
 - c) Appointments in cases of substitution;
 - d) Professional qualification;
 - e) Classification of functions;

- f) Terms of employment and conditions;
- g) Public sector administrative and management practices;
- h) Disciplinary offences, appeals and labor conciliation;
- i) Other issues relating to the competences of the Commission as established by the present law.

Article 7 **Delegation of competences**

1. The Commission may delegate its competences, in writing, by indicating the Leader to whom the competences are delegated as well as the object of the delegated competence.
2. Delegation may include the power to sub-delegate to the organs hierarchically subordinated on the Delegate, with the indication of the object of the delegated competence.
3. The Commission may at any time resume delegated competences as well as modify or revoke them.
4. No competence may be delegated to recruit, appoint or terminate the work relation of leaders.

Article 8 **Composition of the Commission**

1. The Commission shall be composed by five members, two of whom shall be elected by the National Parliament pursuant to its respective Rules of Procedure, with the other members being nominated by the Government, which shall also nominate its Chairperson.
2. The members of the Commission shall be sworn in before the Prime Minister.

3. The Commissioners shall be appointed on an exclusive or partial basis for a five-year term, renewable for an equal period of time, and the respective statute shall be regulated by the Government.
4. In case of permanent impediment of, or of cessation of functions by, a commissioner, the vacant office shall be fulfilled pursuant to paragraphs 1 and 2 of the present article.
5. In case of absence or impediment of the Chairperson of the Commission for a period longer than 30 days, the Prime Minister shall nominate a commissioner to act as interim Chairperson.

Article 9

Conditions for appointing Commissioners

1. The following shall be required for a person to be appointed as a Commissioner:
 - a) Timorese nationality;
 - b) Integrity of character;
 - c) Knowledge and experience in areas such as public policies, management, public administration, law, industrial relations and employment.
2. The following may not be appointed as Commissioners:
 - a) The President of the Republic;
 - b) The members of the National Parliament;
 - c) The members of the Government;
 - d) Working judicial magistrates and public prosecutors;
 - e) Candidates running for elective offices;
 - f) Working public sector civil servants;

- g) Leaders of political parties.

Article 10

Cessation of functions of the commissioners

Commissioners shall cease exercising their functions:

- a) Following express, written renunciation;
- b) Following appointment to or election for another office;
- c) Following lack of attendance to three consecutive meetings of the Commission without the consent of the latter.

Article 11

Forfeiture of mandate

1. The Prime Minister may dismiss any commissioner if he or she notes that:
 - a) Except in case of temporary illness, the commissioner is incapable of adequately exercise his or her functions;
 - b) The commissioner has been sentenced by a final judgment to effective imprisonment;
 - c) The commissioner has been found guilty, in the framework of a proceeding, for misconduct in the exercise of his or her functions.
2. In case of forfeiture of mandate of a commissioner elected by the National Parliament, such forfeiture of mandate shall be communicated to the National Parliament, which shall elect a new commissioner pursuant to the law;

3. Misconduct shall mean an action committed by a commissioner which, where he or she was a civil servant, would have represented:

- a) a violation to the provisions of the Civil Service Code of Ethics;
- b) a violation implying a disciplinary action pursuant to the Statute of the Civil Service.

Article 12

Relation with the Government

1. In the exercise of their functions and competences, the Commission:

- a) Shall act with independence;
- b) Shall not be subject to the guidance of the Government or of any of its members.

2. On decisions relating to a worker or to a candidate to a public sector, the Commission, leader or any person to whom the Commission has delegated competences:

- a) Shall act with independence, impartiality and fairness; and
- b) Shall not subject himself or herself to the authority of the members of Government.

Article 13

Secretariat of the Commission

1. The Commission shall appoint the respective Secretary as well other staff necessary to the exercise of the respective functions and competences.

2. The Secretary and the workers shall be recruited pursuant to the legislation on Public Service.

3. The Secretary shall lead the Secretariat and, for all purposes, shall be equivalent to a Director-General;

4. The Secretary shall be accountable before the Chairperson of the Commission insofar as the management and the performance of the staff of the Commission is concerned.

Article 14

Meetings of the Commission

1. The Commission shall meet ordinarily six times per year and extraordinarily whenever so convened.

2. It shall be incumbent upon the Chairperson or the majority of the commissioners to convene the meetings;

3. It shall be incumbent upon the Commission to approve its own Internal Regulation.

4. Decisions of the Commissions shall be approved by majority, with the presence of a minimum of three commissioners.

Article 15

Competence of the Chairperson

It shall be incumbent upon the Chairperson:

- a) To convene and preside over the meetings of the Commission;
- b) To assign functions to the commissioners and the secretariat;
- c) To monitor the appointment of leaders;

- d) To have a casting the vote in case of a draw in the votes of the Commission;
- e) To take on the responsibility for the performance of the Commission.

Article 16

Assignment of functions of the Commission

1. The Chairperson may, with the consent of the Commission, assign functions of the Commission to a Commissioner, to the Director-General or to the Secretariat.
2. Delegation of competences shall be subject to the limitations and conditions as determined by the Chairperson.
3. The Chairperson may modify or revoke the delegation of competence at any time and shall keep a permanent registration of the delegations, their objective as well the limits to it.

Article 17

Appeals in the public sector

1. Without prejudice to the provisions of the Code of Administrative Procedure as approved by Decree-Law No. 32/2008 of 27 August, hierarchical appeals against decisions relating to the public sector and respective terms and conditions of employment shall be reviewed and decided on by the Commission.
2. Procedures relating to procedural steps of appeals shall, *mutatis mutandis*, follow the regime provided for in the statute referred to in the preceding paragraph.

Article 18

Termination of work relation

1. Save where there is delegation of competence, it shall be incumbent upon the Commission to decide on the termination of the work relation pursuant to the legislation on Civil Service.
2. Where it is the competence of a leader to decide on the termination of the work relation of a worker, the Commission shall accept the recommendation to that effect, except where:
 - a) The recommendation is unlawful or inadequate;
 - b) The Commission has accepted the appeal filed.
3. The Commission shall not consider the recommendation so long as the worker does not exercise, or dispenses with, his right to an appeal.
4. The commissioner in charge of the appeal against the recommendation of the leader shall not take part in the decision-making process of the Commission regarding the case.

Article 19

Sense and scope of the merit

1. For the purposes of the present law and the Statute of Civil Service, the merit shall be in relation to the recruitment and promotion of workers in the public sector.
2. In determining the merit, the Commission, or whoever it delegates competences, shall consider:

- a) The dimension of competences, aptitudes, qualifications, knowledge, experience and personal qualities deemed relevant for accomplishing the obligation of the functions in the public sector;
- b) Where it is understood to be relevant, it shall consider:
 - i) The performance in previous employments or jobs;
 - ii) The results of previous performance evaluations;
 - iii) The demonstrated potential for personal development.

Article 20

Recruitment and appointment of leaders

1. It shall be incumbent upon the Chairperson to supervise the recruitment or appointment of leaders undertaken by the Commission.
2. The terms and specific conditions for each competition and appointment shall be approved by the Commission in accordance with a proposal by the holders of organs of the State.
3. Before recommending the Commission any recruitment of appointment, the Chairperson shall provide the holder of the organ of the State or any other authority nominated by the latter the evaluation made to the candidates considered to be in condition to be recruited or appointed.
4. The Chairperson, together with the recommendation, shall provide the Commission with all evaluations made and provided to the holders of the organs of the State or their representatives.
5. The Commission shall take into account the considerations presented by the holders of organs of the State or their representatives.

Article 21

Report

Up until the last of the month of March of each year, the Commission shall provide the Plenary of the National Parliament with a report of its activities relating to the preceding year.

Article 22

Revocation

Any legislation contrary to the present law is hereby revoked.

Article 23

Entry into force

The present law shall enter into force 30 days after its publication.

Approved on 22 May 2009.

The Speaker of the National Parliament,

Fernando La Sama de Araújo

Enacted on 3 July 2009.

For publication.

The President of the Republic,

Dr José Ramos-Horta