

DECREE-LAW No. 1/2006

of 21 February 2006

ON APPROVAL OF THE CIVIL PROCEDURE CODE

***Note:** Timor-Leste's Civil Procedure Code is a legal diploma with more than 200 pages and 919 articles. It was mentioned in the Memorandum on the Foreign Trade Regime because of its Chapter VII, on Precautionary Proceedings, which refers to Articles 254 to 256 and, in turn, article 407. As such, articles 254 to 256, Chapter VII, and article 407 have been informally translated for the purpose of the supporting documentation submitted to the WTO Secretariat. To recall that the Civil Code has been submitted in English.*

**SECTION III
INCIDENTS OF THE INSTANCE**

**SUBSECTION I
GENERAL PROVISIONS**

**Article 254
General Rule**

In the absence of special regulations, any incident occurring in the course of a case shall be subject to the provisions of this section.

**Article 255
Indication of evidence and opposition**

1. In the application initiating the incident and in the opposition, the parties shall offer the list of witnesses and request the other means of evidence.
2. Opposition shall be filed within ten days.
3. Failure to object within the legal timeframe shall, as regards the matter of the incident, the production of the commencement effect which is in force in the cause of the incident.

**Article 256
Limit on the number of witnesses and recording of testimonies**

1. A party may not produce more than three witnesses on each fact, nor shall the total number of witnesses for each party exceed eight.
2. Testimonies given in advance or by letter shall be taped or recorded.
3. Where testimony given in an incident which is not to be investigated and tried together with the matter of the incident shall be taped or recorded if, including the decision to be given in the ordinary appeal, one of the parties has requested the recording.
4. The application provided for in the preceding paragraph shall be filed together with the application and opposition referred to in the preceding articles.
5. After the evidence has been presented, the judge shall declare which facts he deems to be proven and not proven, observing, with the necessary adaptations, the provisions of article 407, paragraph 2.

CHAPTER VII
PRECAUTIONARY PROCEEDINGS

SECTION I
COMMON PRECAUTIONARY PROCEDURE

Article 305

Scope of non-specified precautionary measures

1. Where someone shows well-founded fear that someone else will cause serious damage to his or her right which is difficult to repair, he or she may apply for the appropriate protective or anticipatory measure to ensure the effectiveness of the right threatened.
2. The interest of the applicant may be based on an existing right or on an emerging right of a decision to be given in a constitutive action, already proposed or to be proposed.
3. The measures referred to in paragraph 1 shall not apply if the risk of injury specially prevented by any of the measures described in the following section is to be safeguarded.
4. Any repetition of an order which has been deemed unjustified or has expired shall not be admissible on the same cause.

Article 306

Urgency of precautionary proceedings

1. Precautionary proceedings shall always be of an urgent nature, and any other non-urgent judicial service shall precede the respective acts.
2. Proceedings brought before the court with the decision at first instance shall be taken within two months or, if the defendant has not been served, within fifteen days.

Article 307

Relationship between the precautionary procedure and the main action

1. The precautionary procedure is always dependent on the cause based on the right to be safeguarded and may be initiated as a preliminary or declaratory or executive action.
2. Claimed before the action is brought, it is the procedure attached to the case file as soon as the action is brought; and if the action is brought in another court, the appended thereto shall be remitted and the judge of the action shall have exclusive jurisdiction for the terms subsequent to the referral.
3. Claimed in the course of the proceedings, the procedure shall be instituted in the court seized and joined unless the proceedings are pending on appeal; in that case, the case shall be joined only when the proceedings have been concluded or when the documents relating to the main action have been dropped at first instance.
4. Neither the judgment on the facts nor the final judgment handed down in the pre-trial proceedings shall have any bearing on the outcome of the main proceedings.
5. In cases where, according to international conventions to which the Timorese State is a party, the precautionary proceeding is dependent on a cause of action that has already been or will be brought in a foreign court, the applicant shall prove on the record of the precautionary proceeding that the main cause of action is pending by means of a certificate issued by the respective court.

(…)

(...)

Article 308

Processing

1. With the petition, the applicant shall offer summary proof of the right threatened and justify the fear of injury.
2. It shall always be permissible to establish, in accordance with civil law, a penalty payment which is appropriate to ensure the effectiveness of the measure decreed.
3. The provisions of Articles 254 to 256 shall apply subsidiarily to precautionary proceedings.

Article 309

Defendant's adversarial procedure

1. The court shall hear the defendant unless the hearing would seriously jeopardize the end or effectiveness of the measure.
2. Where the defendant is heard before the order is granted, he shall be served with citation to lodge opposition, and the citation shall be substituted for service with notice when he has already been served with citation for the principal cause of action.
3. No summons shall be served and the judge shall dispense with the defendant's hearing when he is satisfied that personal service is not feasible.
4. Default by the defendant who has been served shall have the effects specified in the ordinary declaration procedure.
5. Where the defendant is not heard and the order is made, he shall not be served with the decision ordering it until after it has been effected, the provisions on service being applied.
6. If the action is brought after the defendant has been served with the protective order, the action shall be effective against him as from the lodging of the application.

Article 310

Final hearing

1. At the end of the opposition period, where the defendant has been heard, the evidence requested or voluntarily determined by the judge shall be produced, where necessary.
2. The final hearing may be postponed only once in the event of the absence of a representative of one of the parties and shall be held within five days thereafter.
3. The absence of any person summoned and whose testimony is not dispensed with, as well as the need to carry out any probationary proceeding during the hearing, shall only lead to the suspension of the hearing at the appropriate time, and the date for its continuation shall be designated.
4. The testimony given shall always be taped or recorded when the defendant has not been heard before the injunction has been ordered.

Article 311

Acceptance and replacement of the order

1. The measure shall be decreed provided that there is a serious likelihood of the existence of the right and that the fear of its injury is sufficiently well founded.

2. The order may nevertheless be refused by the court where the resulting damage to the defendant considerably exceeds the damage which the plaintiff wishes to avoid with it.
3. The order may be replaced by appropriate security, at the request of the defendant, where the security offered, after hearing the applicant, is sufficient to prevent the injury or to make good the injury in full.
4. Replacement by security shall be without prejudice to the right to appeal against the order which has been ordered to replace the order, or to the right to object to it, in accordance with the following Article.

Article 312

Contradictory following the enactment of the providence

1. When the defendant has not been heard before the decree is made, the defendant shall be deemed to have been heard.

In the absence of a notification under Article 309(5), the Member State concerned shall be entitled to take the measures necessary to comply with the provisions of this Article:

- (a) to appeal, in general terms, against the order which issued it, if it considers that, in the light of the facts established, it should not have been granted;
 - (b) to lodge an opposition, if he intends to allege facts or to produce evidence not taken into account by the court and which may set aside or reduce the grounds for the order, the provisions of Articles 310 and 311 being applied *mutatis mutandis*
2. In the case referred to in subparagraph (b) of the preceding paragraph, the judge shall decide whether to maintain, reduce or revoke the previously decreed measure, and an appeal shall lie against this decision, which shall be complementary to and an integral part of that initially issued.

Article 313

Expiry of the providence

1. The precautionary procedure shall be extinguished and, when decreed, the order shall lapse:
 - (a) if the applicant does not bring the action on which the order is dependent within 30 days of the date on which the decision ordering the action was notified to him, without prejudice to the provisions of paragraph 1.
 - (b) if, as a result of the negligence of the applicant, the proceedings are stopped for more than thirty days;
 - (c) if the proceedings are dismissed by a final decision;
 - (d) if the defendant is acquitted of the proceedings and the applicant does not bring a new action in time to benefit from the effects of the previous action;
 - (e) if the right of the applicant to be protected has expired.
2. If the defendant has not been heard before the order is issued, the time limit for bringing the action on which the order is based shall be ten days from service on the applicant of the notification provided for in Article 309(5).
3. Where the protective order has been replaced by a security, it shall be null and void in the same manner as the replaced order would have been null and void, and the order shall be revoked.

4. The extinction of the procedure and the lifting of the order shall be determined by the judge, with prior hearing of the applicant, as soon as it is shown in the file that the extinctive event has occurred.

Article 314

Liability of the claimant

1. If the order is considered unjustified or lapses due to an act attributable to the claimant, the claimant shall be liable for the culpable damage caused to the defendant if he has not acted with normal prudence.
2. Where he considers it appropriate in the circumstances, the judge may, even without a hearing of the defendant, make the granting of the measure conditional upon the lodging of an adequate security by the applicant.

Article 315

Criminal guarantee of the providence

The crime of qualified disobedience shall be punishable by the penalty of any person who infringes a protective order decreed, without prejudice to the appropriate measures for its enforcement.

Article 316

Subsidiary application to specified procedures

1. With the exception of Article 311(2), the provisions of this Section shall apply to the precautionary procedures regulated in the following Section in all matters not specifically provided for therein.
2. The provisions of Article 314(2) shall apply only to seizure and embargo of new works.
3. The court shall not be bound by the order specifically requested and the judge may adopt the appropriate procedure for the application.

SECTION II

SPECIFIED PRECAUTIONARY PROCEDURES

SUBSECTION I

PROVISIONAL RETURN OF OWNERSHIP

Article 317

In what cases is the provisional return of possession to the holder?

In the case of violent squandering, the possessor may request that it be temporarily returned to his possession, alleging the facts constituting possession, squandering and violence.

Article 318

Terms on which restitution is ordered

If the judge recognizes, on examination of the evidence, that the applicant was in possession of it and was violently seized, he shall order its return, without summons or hearing the seizer.

Article 319

Defense of possession by unspecified order

A possessor who is boiled down or disrupted in the exercise of his right without the circumstances provided for in Article 317 being invoked, shall be provided with a common precautionary procedure in general terms.

(...)

Article 407

Judgment

1. The judgment shall begin by identifying the parties and the subject-matter of the dispute and shall set out the issues for the court to resolve.
2. The grounds are set out below and the judge is required to itemize the facts he considers to be established and to indicate, interpret and apply the corresponding legal rules, concluding with the final decision.
3. In the grounds of the judgment, the judge shall take into account the facts admitted by agreement, proved by documents or by a written admission and those which the collective court has given as proved, making a critical examination of the evidence of which it is responsible.
4. If the legal aspect of the case has been discussed orally, the judgment may be immediately drawn up in writing or entered in the minutes.

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