

## Government cannot legislate on the remuneration status of judges because it is unconstitutional and constitutes a setback in the consolidation of the Democratic Rule of Law

- The Government of Mozambique decided to institute the Single Salary Table (TSU) with the aim of unifying the various existing salary tables in the civil service. This process has had several advances and setbacks due to the gross mistakes made by the TSU itself, and the difficulty in managing the approximately 400,000 existing civil servants.



As a result, several professional classes have revolted against the TSU, notably teachers, doctors, police, employees of the Ministry of Economy and Finance, judges, and public prosecutors.

In addition to all these complaints, judges have stood out for recurrently rebelling against TSU not because of their framework, but rather because they consider that the As-

sembly of the Republic has the prerogative to establish the remuneration status of judges.

Mozambique is a democratic rule of law<sup>1</sup>, which is why the State is subordinated to the Constitution of the Republic and is based on legality<sup>2</sup>. Being a rule of law means that the state's political power materially submits to the law and that the latter effectively contains the respective power.

The idea of the Rule of Law represented an abysmal break with the dictatorial past, revealing itself to be a strong orientation against the royal arbitrariness, reigning in the Absolute State, in which decisions practically corresponded to the pure exercise of power, without a minimum of material parameterization.

With the idea of the Rule of Law, a giant

<sup>1</sup> Article 3 of the Constitution of the Republic

<sup>2</sup> Number 3 of article 2 of the Constitution of the Republic

leap was made in the structuring of political power, which became subject to a decision-making measure, in a double formal and material sense, which calibrates its effects and prevents it from being dependent on the whimsical wishes of their holders. According to the general idea of the limitation of political power proper to the Rule of Law, it should be noted that any society in which the guarantee of rights is not assured, nor the separation of powers established, does not have a Constitution.

The conception of the theory of the separation of powers is due to Charles Louis Secondat, Baron of Brede, and Montesquieu, who, adopting a material separation of the functions of the State, referred that it would numerically equate the existence of three powers, namely the legislative, the executive and the judicial.

The principle of separation of powers was accepted by the Mozambican constitutional legislator<sup>3</sup>, having also instituted the idea of interdependence between the powers of the State.

Despite the traditional commitment of the power to legislate only to Parliament, the Constitution of the Republic<sup>4</sup> allowed the parliament to delegate to the Government the power to legislate on certain matters that are not the exclusive competence of the legislative body par excellence, the Assembly of the Republic.

From an organic point of view, the legislative function ceased to be a parliamentary monopoly and began to be shared, in various ways, by the executive branch, thus highlighting the modalities of authorized, complementary, and necessary competencies. Determining reasons were (i) the greater technicality that the law began to demand, in certain terms incompatible with parliamentary production, and (ii) the speed with which legislative production had to be faced.

Despite all these transformations, the Assembly of the Republic always maintains the primacy of legislative competence, which makes it, in the exercise of this function of the State, the most important body in the constellation of those who admit to the respective division. There are several reasons for this primacy: from the mere historical remnant to the fact that the legislative procedure is public, passing through the direct democratic legitimacy they enjoy. A sure sign of the



primacy of the legislative function is the legislative reserve assigned to the Assembly of the Republic in the most important matters for society provided for in the Constitution.

One of these matters that the Assembly of the Republic has exclusive competence to legislate is the Statute of Judges, since they are holders of a sovereign body that is the courts<sup>5</sup>.

Sovereignty bodies are bodies that, by developing one or more of the public powers, assume the role of producing decision-making acts. The jurisdictional function exercised by the courts completes the arc of legal-public functions and designates the application of previously defined law from bodies endowed with independence and impartiality, resolving disputes that are brought to their decision. This definition of the jurisdictional function derives from the general orientation according to which the administration of justice is the exclusive responsibility of the courts, emerging as a unique institution in the organization of constitutionally relevant public power.

For this very reason, they are assigned a special status due to their importance in functioning justice. The constitutional principles<sup>6</sup> of Independence, impartiality, irresponsibility, and immovability of judges constitute a guarantee of the maintenance of the Democratic Rule of Law.

Only the Assembly of the Republic can le-

gislate on matters related to the Statute of Judges, including in that matter, naturally, the question of their salaries, hence the decrees of the Council of Ministers that deal with the remuneration statute of judges are manifestly unconstitutional for violation of absolute reservation<sup>7</sup> of legislating by the Assembly of the Republic in this matter.

Incidentally, this is the only way to ensure that there is a strong judicial power, as much, as it is well known that the Assembly of the Republic is a representative body of all Mozambicans, the discussion on the remuneration status of judges would be democratic and could go through the scrutiny of the various parliamentary benches as well as public consultation, unlike what happens in the Government where the decrees of the Council of Ministers are not subject to this democratic debate.

On the other hand, it is well known that currently, due to most of the party in power - Frelimo, the Assembly of the Republic is coupled to the Government letting everything else pass, verifying that the true separation of powers exists only between these two and the judiciary.

Hence, allowing the Government to establish the remuneration regime for judges will constitute a death sentence to the principle of separation of powers in Mozambique due to the subalternation and subjugation of the judicial power by the executive power.

<sup>3</sup> Article 133 of the Constitution of the Republic

<sup>4</sup> Number 3 of article 178 of the Constitution of the Republic

<sup>5</sup> Article 133 of the Constitution of the Republic

<sup>6</sup> All provided for in article 216 of the Constitution of the Republic

<sup>7</sup> Line q) of number 2 of article 178 of the Constitution of the Republic



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