

OCA CIRCULAR NO. 79-2003, June 12, 2003

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TO:

ALL JUDGES OF LOWER COURTS

SUBJECT :

REMINDING JUDGES TO EXERCISE UTMOST CAUTION, PRUDENCE AND JUDICIOUSNESS IN ISSUANCE OF TEMPORARY RESTRAINING ORDERS AND WRITS OF PRELIMINARY INJUNCTIONS

Administrative Circular No. 07-99. issued by the Supreme Court on 25 June 1999, stated, "Despite weil-entrenched jurisprudence and, circulars regarding exercise of judiciousness and care in the issuance of temporary restraining orders (TRO) or grant of writs of preliminary injunction, reports or complaints on abuses committed by triql judges in connection therewith persist. Xxx"

Despite the issuance of said circular, and the passage of several laws prohibiting the issuance of TRO or the grant of writs of preliminary injunctions, complaints against judges with respect to issuance of TROs remain unabated. Records of the Office of the Court Administrator show numerous complaints against judges for arbitrary issuance of TRO and injunctive writ and for violation of the various laws and" Supreme Court circulars that prohibit such issuance. Records likewise show that there judges that were in fact administratively sanctioned for such offense.

Hence, trial judges are once again cautioned regarding the improvident or irregular issuance of TRO or the grant of writs of preliminary injunction, and are reminded to be aware of the cases wherein the issuance of TRO or the grant of preliminary injunction is s proper, as well as the cases wherein they are not.

For the guidance of the trial judges, the following is. a list of cases wherein courts are not allowed to issue TRO or writs of preliminary injunction:

- Labor related cases

Art. 254 of P.D. No. 442, as amended, or the Labor Code of the Philippines, specifically provides:

Art. 254. Injunction prohibited. — No temporary or permanent injunction . or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in Articles 218 and 264 of this Code.[1]

1. 1. Enforcement of decision or awards rendered by the NLRC

In *Kaisahan ng ruga Manggagawa sa La Cabana vs. Sarmiento*, 133 SCRA 221, the Supreme Court declared out.

"xxx

It is therefore crystal clear, that the NLRC which took the place of the defunct CIR has exclusive jurisdiction over all matters and incidents prior to and after a decision has been rendered arising out of and in connection with a labor dispute, thus respondent Court (First Instance (now Regional Trial Court)) cannot enjoin the enforcement of any decision or awards rendered by the Commission."

1.2. Issues involved are interwoven with an unfair labor practices

In *Chan Bros., Incorporated vs. Federacion Obrero de la Industria Tabaquera y Otros Trabajadores de Filipinas*, G.R. No. L-34761, 1974, the Supreme Court said:

"xxx that a complaint for injunction does not course under the jurisdiction of the court of First Instance (now Regional Trial Court) where the issue involved is interwoven with an unfair labor practice case pending before the Court of Industrial Relations (now National Labor Relations Commission of Labor Arbiter), even if such case involves acts of violence, intimidation or coercion. Xxx

Construing this provision, [in relation to section 9 of the same Act], regulating the issuance of injunctions in labor disputes, we have repeatedly held that courts of first instance (RTCs) may not enjoin the picketing staged in connection with such disputes, and that the jurisdiction to entertain a petition to enjoin said picketing and to issue the corresponding writ of injunction is vested exclusively in the Court of Industrial Relations (NLRC or Labor Arbiter), if charges of unfair labor practice in relation to said labor disputes, are pending before the latter court prior to the filing of said petition.

Xxx

We even declared, that when the acts against which the injunction was obtained constitute unfair labor practices,' the application for injunction would be 'exclusively cognizable by the Court of Industrial Relations (NLRC or Labor Arbiter) and beyond the jurisdiction of the ... Court of First Instance', even if no complaint for unfair labor practice had been filed, as yet, with the Court of Industrial Relations (NLRC or Labor Arbiter).

The reason for such exclusive jurisdiction is obvious. Since the picketing and strikes may be mere incidents or consequences of the unfair labor practice, it is but proper that the issuance of injunction be made by the court having jurisdiction over the main case, in order that the writ be issued upon cognizance of all relevant facts." [2] (underscoring supplied)

- 2. Matters involving concessions, licenses and other permits issued by public administrative officials or bodies

Sec. 1 of Presidential Decree 605 provides:

Sec. 1. — No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction in any case involving or growing out of the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever by the proper administrative official or body on concessions, licenses, permits, patents, of public grants of any kind in connection with the disposition, exploitation, utilization, exploration and/or development of the natural resources of the Philippines.

In *Datiles and Company vs. Sucaldito*, 186 SCRA 704 (1990), the Supreme Court ruled that:

"As to the prohibition dictated by PD No. 605, the same pertains to the issuance by courts of injunctions or

restraining orders against administrative acts on controversies which involve facts or exercise of discretion in technical cases, because to allow courts to judge these matters could disturb the smooth functioning of the Y administrative machinery, xxx."

- Dispute or controversy arising from or in connection with application, implementation or interpretation of the laws on agrarian reform

Secs. 55 and 68 of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988 provides that::

Sec. 55. No Restraining Order or Preliminary Injunction. — No court in the Philippines shall have jurisdiction to issue any restraining order, or writ of preliminary injunction against the PARC or any of its duly authorized or designated agencies in any case, dispute or controversy arising from, necessary to, or in connection with the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform.

Sec 68. Immunity of Government Agencies from Undue Interference. - No injunction, restraining order, prohibition or mandamus shall be issued by the lower courts against the Department of Agrarian Reform (DAR), the Department of Agriculture (DA), the Department of Environment, and Natural Resources (DENR), and the Department of Justice (DOJ) in their implementation of the program.

- Foreclosure proceeding initiated by government financial institutions

Sec. 2 of Presidential Decree No. 385 entitled "Requiring Government Financial Institutions to Foreclose Mandatorily All Loan with Arrearages, Including Interest and Charges Amounting to at Least Twenty Percent (20%) of the Total Outstanding Obligation" provides:

Sec. 2. No restraining order, temporary or permanent injunction shall be issued by the court any government financial institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings.

In case a restraining order or injunction is issued, the borrower shall nevertheless be legally obligated to liquidate the remaining balance of arrearages, paying ten percent (10%) of the arrearages outstanding as of the time of foreclosure, plus interest and other charges, on every succeeding thirtieth (30th) day after the issuance of such restraining order or injunction until the entire arrearages have been liquidated. These shall be in addition to the payment of amortizations currently maturing. The restraining order or injunction shall automatically be dissolved should the borrower fail to make any of the above-mentioned payments on due dates, and no restraining or injunction shall be issued thereafter.

All restraining orders and injunctions existing as of the date of this Decree on foreclosure proceedings filed by said government financial institutions shall be considered lifted unless finally resolved by the court within sixty (60) days from date hereof.

- Sale or disposition of assets acquired by the GSIS

Sec 50 of Republic Act No. 8291 (The Government service Insurance System Act of 1997) provides that:

Sec. 50. Development and Disposition of Acquired Assets. - The GSIS shall have the right to develop and dispose of its acquired assets obtained in the ordinary course of its business. To add value to, improve profitability on, and/or enhance the marketability of an acquired asset, the GSIS may further develop/renovate the same either with its own capital or through a joint venture arrangement with private companies or individuals.

The GSIS may sell its acquired assets in accordance with existing Commission on Audit (COA) rules, and regulations for an amount not lower than the current market value of the property. For this purpose, the GSIS shall conduct an annual appraisal, of its property or acquired assets to determine its current market value. All notices of sale shall be published in newspapers of general circulation.

No injunction or restraining order issued by any court, commission, tribunal or office shall bar, impede or delay the sale and disposition by the GSIS of its acquired assets except on questions of ownership and national or public interest.

- Execution and implementation of the infrastructure and natural resources development projects or the operation of public utility by the Government

Section 1 of Presidential Decree No. 1818 provides that:

Sec. 1. No court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute or controversy involving an infrastructure project, or a mining, fishery, forest, or other natural resource development project of the government, or any public utility operated by the government, including among others public utilities for the transport of the goods, or commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or government officials from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation.

- Implementation of the projects of the conversion of military reservations

Republic Act No. 7227, otherwise known as the Bases Conversion and Development Act, provides that:

Sec. 2. Policy. - It is hereby declared the policy of the government to accelerate the sound and balanced conversion into alternative productive uses of the Clark and Subic Military Reservations and their extensions (John Hay Station, Wallace Air Station, OTJonnell Transmitter Station, San Miguel Naval Communications Stations and Capas Relay Station) to raise funds by the sale of portions of military camps and to apply said funds as provided herein for the development and conversion to productive civilian use of the lands covered under the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended.

Xxx

Sec. 21. Injunction and Restraining Order. - The implementation of the projects for the conversion into

alternative productive uses of the military reservations are urgent and necessary and shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

- Orders or Decisions of the PCGG

In the case of *Presidential Commission on Good Government vs. Pena* 159 SCRA 557 (1988), the main issue is whether regional trial courts have jurisdiction over the Presidential Commission on Good Government and the properties sequestered and placed in its custodia legis in the exercise of its powers under Executive Orders Nos. 1, 2 and 14, as amended and whether said regional trial courts may interfere with and restrain or set aside the orders and actions of the Commission. The Court, in this case, held that regional trial courts do not have jurisdiction over the Commission. The Court upheld the primacy of administrative jurisdiction as vested in the Commission and held that jurisdiction over all sequestration cases of ill-gotten wealth, assets and properties under the past discredited regime fall within the exclusive and original jurisdiction of the Sandiganbayan, subject to review exclusively by the Supreme Court. Thus, the Supreme Court declared:

"On the issue of jurisdiction squarely raised, as above indicated, the Court sustains petitioner's stand and holds that regional trial courts and the Court of Appeals for that matter have no jurisdiction over the Presidential Commission on Good Government in the exercise of its powers under the applicable Executive Orders and Article XVIII, section 26 of the Constitution and therefore may not interfere with and restrain or set aside the orders and actions of the Commission. Xxx" (emphasis supplied)

- Orders or Decisions of the Patent Office

In the case of *Kabushiki Kaisha, et. al. vs. San Diego, et. al.*, 16 SCRA 406 (1966), the Supreme Court declared that the Philippine Patent Office and the Public Service Commission are of the same rank or category as Courts of First Instance (now Regional Trial Courts") and reiterated the well settled doctrine that "a writ of injunction or of prohibition or of certiorari may be issued against a court only by another court superior in rank to the former." The Court, thus said:

"The law in this jurisdiction vests upon Us, the authority to review final orders and decisions of the Public Service Commission. In *Iloilo Commercial, etc. vs. Public Service Commission* (56 Phil. 28), in denying jurisdiction to the trial court to issue injunctive relief against the Public Service Commission, We held:

"Any order made by the Commission may be on the application of any person or public service affected thereby, by certiorari in appropriate cases or by petition, to the Supreme Court, and the Supreme Court is given jurisdiction to review any order of the Commission and to modify or set it aside (Sec. 35). Xxx In the absence of a specific delegation of jurisdiction to the Court of First Instance to grant injunctive relief against orders of the Public Service Commission, it would appear that no court, other than the Supreme Court, possesses such jurisdiction."

On the other hand, under Rule 44 on the Revised Rules of Court (now Rule 43) and Section 33 of Republic Act No. 166, as amended, appeals from orders and decisions of the Director of the Patent Office must likewise be taken to us. It is, therefore, undeniable that the Philippine Patent Office (now Bureau of Patents) and the Public Service Commission are similarly situated and that both are, to say the least, of the same rank or category as Courts of First Instance (now Regional Trial Courts). Consequently, no one of the latter has jurisdiction to issue a writ of injunction against them." (emphasis supplied)

- Orders or Decisions of the Social Security Commission

In the case of *Poblete Construction Company & Poblete vs. Social Security Commission*, 10 SCRA 1 (1964), the Supreme Court held that the Social Security Commission, in exercising its quasi-judicial powers, ranks with the Public Service Commission and the Court of First Instance (Regional Trial Court), thus the latter has no jurisdiction to entertain the petition for certiorari filed against the Commission. The Supreme Court said:

"In taking cognizance of the petition filed by Judith Asiais (Case No. 78), the Social Security Commission was exercising its quasi-judicial powers granted by Sec. 5 (a) of Republic Act No. 1161 as amended. Even assuming for the sake of argument, that the claim aforementioned was not within the jurisdiction of the Commission, and it would be proper to issue a writ of certiorari or injunction to restrain it from hearing and deciding the same, a Court of First Instance has no jurisdiction to issue either said writs against the Commission.

It must be observed that in accordance with the provisions of Section 5, paragraphs (a) and (c) of Republic Act no. 1161, as amended, the decisions of said Commission are reviewable both upon law and facts by the Court of Appeals[3], and that if the appeal from its decision is only on questions of law, the review shall be made by Us. It is clear from these provisions that the Commission, in exercising its quasi-judicial powers, ranks with the Public Service Commission and the Court of the First Instance. As the writs of injunction, certiorari and prohibition may be issued only by a superior court against an inferior court, board or officer exercising judicial functions, it necessarily follows that the Court of First Instance of Rizal, where appellants filed their petition for certiorari, had no jurisdiction to entertain the same." (emphasis supplied)

- Orders or Decisions of the Bureau of Forestry

In the case of *Utleig vs. Area*, 40 SCXA 597 (1971), the Supreme Court stressed that:

"Only the Bureau of Forestry has jurisdiction to grant licenses for the taking of forest products, pursuant to Section 1816 of the Revised Administrative Code, which states:

"Jurisdiction of Bureau of Forestry.— The Bureau of Forestry shall have jurisdiction and authority over the demarcation, protection, management reproduction reforestation, occupancy, and use of all public forests and forest reserves and over the granting of licenses for game and fish, and for the taking of forest products, including stone and earth therefrom."

That the authority for the cutting, gathering or removal of forest products shall only be upon license to be issued by the Bureau of Forestry, is further stressed by Section 1831 of the said Code, thus:

"License required for taking or removal of forest products.— Except as herein provided, forest products shall be cut, gathered or removed in or from any forest only upon license from the Bureau of Forestry."

Xxx

Xxx [T]he writ of preliminary injunction issued by the respondent court would allow the respondent corporation to continue cutting, gathering and removing timber from the concession area in question without license duly issued by the Director of Forestry, in violation of the aforementioned provisions of Section 1831 of the Revised Administrative Code. The said writ, being against the law, is null and void. The respondent court, in issuing the writ of preliminary injunction and thus allowing the respondent corporation to conduct logging operations in the timber concession area in question, had in effect arrogated unto itself the jurisdiction of the

Bureau of Forestry xxx. Clearly, it acted without or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction in granting the issuance ; of the writ of preliminary injunction complained of."(emphasis supplied)

- Orders or Decisions of the Bureau-of Customs

In the case of Bureau of Customs and the Economic Intelligence and Investigation Bureau (EBB) vs. Ogario and Montetibano, G. R. No. 138081, March 30, 2000, the Supreme Court held that Regional Trial Courts have no jurisdiction to enjoin forfeiture proceedings in the Bureau of Customs. Thus, the Court declared:

"There is no question that Regional Trial Courts are devoid of any competence to pass upon the Validity or regularity of seizure and forfeiture proceedings conducted by the Bureau of Customs and to enjoin or otherwise interfere with these proceedings. The Collector of Customs sitting in seizure and forfeiture proceedings has exclusive jurisdiction to hear and determine all questions touching on the seizure and forfeiture of dutiable goods. The Regional Trial Courts are precluded from assuming cognizance over such matters even through petitions of certiorari, prohibition or mandamus.

Xxx

The rule that Regional Trial Courts have no review powers over such proceedings is anchored upon the policy of placing no unnecessary hindrance on the government's drive, not only to prevent smuggling and other frauds upon Customs, but more importantly, to render effective and efficient the collection of import and export duties due the State, which enables the government to carry out the functions it has been instituted to perform.

Even if the seizure by the Collector of Customs' were illegal, which has yet to be proven, we have said that such act does not deprive the Bureau of Customs jurisdiction thereon."[4] (emphasis supplied)

- Investigation conducted by the Ombudsman, unless there is prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Ombudsman

Section. 14 of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989 provides that:

Sec. 14. Restrictions. - No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

In the case of Mariano F. Ocampo IV vs. The Honorable Ombudsman, G.R. Nos. 1034-647, August 30, 1993, the Supreme Court said that:

"[T]he courts cannot interfere with the discretion of the fiscal or the Ombudsman to determine the specificity and adequacy of the averments of the offense charged. He may dismiss the complaint forthwith if he finds it to be insufficient in form or substance or if he otherwise finds no grounds to continue with the inquiry; or he may proceed with the investigation if the complaint is, in his view, in due and proper form.

Xxx xxx xxx

[The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant." (emphasis supplied)

- In criminal prosecution and in cases under preliminary investigation or reinvestigation

In the case of *Asutilla vs. Philippine National Bank*, 141 SCRA 40 (1986), the Supreme Court held that:

"xxx It is a long-standing doctrine that injunction will not lie to enjoin a criminal prosecution for the reason that public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society except in specified cases among which are to prevent the strong arm of the law in an oppressive and vindictive manner, and to afford adequate protection to constitutional rights." (emphasis supplied)

The ruling in the *Asutilla* case was reiterated in the case of *P/Insp. Rodolfo Samson, et. al. vs. Hon. Teofisto Guingona*, G.R. No. 123504, December 14, 2000, where the Supreme Court said:

"xxx

The issue is whether or not the Court may enjoin the Secretary of Justice from conducting a reinvestigation of the charges against petitioners, as ordered by the trial court for determination of probable cause.

Xxx

As a general rule, the Court will not issue writs of prohibition or injunction, preliminary or final, to enjoin or restrain, criminal prosecution. With more reason will mmnction not lie when the case is still at the stage of preliminary investigation or reinvestigation. However, In extreme case, we have laid the following exceptions;' (1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused' (2) when it is necessary for the orderly administration of justice or avoid oppression or multiplicity of action; (3) when there is a prejudicial question which is subjudice-(4) when the acts of the officer are without or in excess of authority; (5) where the prosecution is under an invalid law, ordinance or regulation; (6) when double jeopardy is clearly apparent; (7) where the Court has no jurisdiction over the offense; (8) where it is a case of prosecution rather than prosecution; (9) where the charges are manifestly false and motivated by the lust for vengeance; and (10) when there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.

Xxx xxx xxx

We find [petitioners'] plea for writ of injunction or temporary restraining order utterly without merit. As a rule, we do not interfere in the conduct of preliminary investigations and leave to the investigating prosecutor sufficient latitude of discretion in the exercise of determination what constitutes sufficient evidence as will establish probable cause for the filing of information against an offender."

- Any private electric utility or rural electric cooperative exercising the right and authority to disconnect electric service

Sec. 9 of Republic Act No. 7832, otherwise known as "An Act.; Penalizing the Pilferage of Electricity and Theft of Electric Power Transmission Lines/Materials, Rationalizing System Losses by Phasing out Pilferage Losses as a Component Thereof, and for Other Purposes" provides that:

Section 9. Restriction on the Issuance of Restraining Orders or Writs of Injunction. — No writ of injunction or restraining order shall be issued by any court against any private electric utility or rural electric cooperative exercising the right and authority to disconnect electric service as provided in this Act, unless there is prima facie evidence that the disconnection was made with evidence bad faith or grave abuse of authority.

If, notwithstanding the provisions of this section, a court issues an injunction or restraining order, it shall be effective only upon the filing of a bond with the court which shall be in the form of cash bond or cashier's check equivalent to "differential billing", penalties and other charges, or to the total value of the subject matter of the action; Provided, however, That such injunction or restraining order shall automatically be refused or, if granted shall be dissolved upon filing by the public utility of a counterbond similar in form and amount as the above required: Provided finally, That whenever such injunction is granted the court issuing it shall, within ten (10) days from its issuance, submit a report to the Supreme Court setting forth in detail the grounds or reasons for its order."

- Government infrastructure projects

Sees. 3 and 4 of Republic Act No. 8975, otherwise known as the "An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects" provides that:

Sec. 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.— No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, of any of its subdivisions, or any person or entity, whether public or private, acting under the government's direction to restrain, prohibit or compel the following act:

- (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
- (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
- (c) Commencement, prosecution, execution, implementation, operation of any such contract or project;
- (d) Termination or rescission of any such contract/project; and
- (e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may if appropriate under the circumstance, award the contract to the qualified and winning bidder or order a rebidding of the

same, without prejudice to any liability that the guilty party may incur under existing laws.

Sec. 4. Nullity of writs and orders. — Any temporary restraining order, preliminary injunction or preliminary mandatory injunction issued in violation of Section 3 hereof is void and of no force and effect.

- Acts of the Privatization Councils in pursuance of its mandate

Proclamation No. 50-A[6] provides that:

Sec. 31. No Injunctions. — No court w administrative agency shall issue any restraining order or injunction against the Trust in connection with the acquisition, sale or disposition of assets transferred to it pursuant to this Proclamation. Nor shall such order or injunction be issued against any purchaser of assets sold by the Trust to prevent such purchaser from taking possession of any asset purchased by him.

This Circular shall take effect immediately. Strict compliance hereby enjoined.

June 12, 2003.Untitled Document

PRESBITERO J. VELASCO, JR.

Court Administrator

[1]Art 218 enumerates the power and authority of the National Labor Relations Commission which, in part, provides, that:

Art 218. Powers of the Commission. - The Commission shall have the power and authority:

Xxx xxx xxx

(c) To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party. provided, That no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, as only after a finding of fact by the Commission xxx.

Art 264 of the Labor Code on the other hand enumerates the prohibited activities where the Secretary of labor can enjoin and restrain the commission of such acts.

[2] Citing Philippine Association of Free Labor Unions vs. Quicho, 47 SCRA 11 (1972); Philippines vs. Calauag 103 Phil 1032 91958): Reyes, et al. vs. Tan, et al., 99 Phil. 880; Erlanger and Galinger Inc. vs. Erlanger and Galiger Employees Association, 104 Phil., 17 (1958)

[3]Republic Act No. 7902 (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose

Sec. 9 of BP 129, as amended, otherwise known as the Judiciary Reorganization Act of 1980, , provides that:

Sec. 9. Jurisdiction.— The Court of Appeals shall exercise:

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(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of the Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions including the Securities and Exchange Commission, the Social Security Commission, the Employees' Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under PD 412, as amended, the provisions of this Act, and of sub-paragraph (1) of the third paragraph and sub-paragraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948

[4] citing *Jao vs. Court of Appeals*, 249 SCRA, 35, 42-43 (1995)

[5] Under Proclamation No. 50 the President created the Committee on Privitization and Asser Privitization Thrust. Under Republic Act No. 8758, the term of the Committee on Privitization and Apt was extended until December 31, 2000. Then under Executive Order No. 323 dated December 6, 2000, a Privitization Council was created to pursue the mandate of the Committee on Privitization and Asset Privitization Thrust, Article II, Sec. 3 of EO 323 provides that "xxx the Council shall assume all the powers, functionsm duties and responsibilities, all properties, real or personal assets, equipment and records, as well as the obligations, liabilities previously held or exercise by the Committee on Privitization under Proclamation No. 50, as amended, which have been devolved to the National Government pusuant to Republic Act No. 8758." The provisions under Proclamation No. 50 and 50-A, not inconsistent with RA 8758 and EO 323 apply to this new Office (Privitization Council) under the Office of the President as well as the Privitization and Management Office under the Department of Finance.

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