

**PUBLIC INTEREST CENTER, INC., LAUREANO T. ANGELES AND  
JOCELYN P. CELESTINO, PETITIONERS, VS. MAGDANGAL B. ELMA,  
AS CHIEF PRESIDENTIAL LEGAL COUNSEL AND AS CHAIRMAN OF  
THE PRESID...**

*G.R. No. 138965. March 05, 2007*

Ponente: CHICO-NAZARIO, J.

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**CHICO-NAZARIO, J.:**

For consideration is the Omnibus Motion, dated 14 August 2006, where respondent Magdangal B. Elma sought: (1) the reconsideration of the Decision in the case of Public Interest Center, Inc., et al. v. Magdangal B. Elma, et al. (G.R. No. 138965), promulgated on 30 June 2006; (2) the clarification of the dispositive part of the Decision; and (3) the elevation of the case to the Court en banc. The Solicitor General, in behalf of the respondents, filed an Omnibus Motion, dated 11 August 2006, with substantially the same allegations.

Respondent Elma was appointed as Chairman of the Presidential Commission on Good Government (PCGG) on 30 October 1998. Thereafter, during his tenure as PCGG Chairman, he was appointed as Chief Presidential Legal Counsel (CPLC). He accepted the second appointment, but waived any remuneration that he may receive as CPLC. Petitioners sought to have both appointments declared as unconstitutional and, therefore, null and void.

In its Decision, the Court declared that the concurrent appointments of the respondent as PCGG Chairman and CPLC were unconstitutional. It ruled that the concurrent appointment to these offices is in violation of Section 7, par. 2, Article IX-B of the 1987 Constitution, since these are incompatible offices. The duties of the CPLC include giving independent and impartial legal advice on the actions of the heads of various executive departments and agencies and reviewing investigations involving heads of executive departments. Since the actions of the PCGG Chairman, a head of an executive agency, are subject to the review of the CPLC, such appointments would be incompatible.

The Court also decreed that the strict prohibition under Section 13 Article VII of the 1987 Constitution would not apply to the present case, since neither the PCGG Chairman nor the CPLC is a secretary, undersecretary, or assistant secretary. However, had the rule thereunder been applicable to the case, the defect of these two incompatible offices would be made more glaring. The said section allows the concurrent holding of positions only when the second post is required by the primary functions of the first appointment and is exercised in an ex-officio capacity. Although respondent Elma waived receiving remuneration for the second appointment, the primary functions of the PCGG Chairman do not require his appointment as CPLC.

After reviewing the arguments propounded in respondents' Omnibus Motions, we find that the basic issues that were raised have already been passed upon. No substantial arguments were presented. Thus, the Court denies the respondents' motion for reconsideration.

In response to the respondents' request for clarification, the Court ruled that respondent Elma's concurrent

appointments as PCGG Chairman and CPLC are unconstitutional, for being incompatible offices. This ruling does not render both appointments void. Following the common-law rule on incompatibility of offices, respondent Elma had, in effect, vacated his first office as PCGG Chairman when he accepted the second office as CPLC.[1]

There also is no merit in the respondents' motion to refer the case to the Court en banc. What is in question in the present case is the constitutionality of respondent Elma's concurrent appointments, and not the constitutionality of any treaty, law or agreement.[2] The mere application of constitutional provisions does not require the case to be heard and decided en banc. Contrary to the allegations of the respondent, the decision of the Court in this case does not modify the ruling in *Civil Liberties Union v. Executive Secretary*. It should also be noted that Section 3 of Supreme Court Circular No. 2-89, dated 7 February 1989 clearly provides that the Court en banc is not an Appellate Court to which decisions or resolutions of a Division may be appealed.

WHEREFORE, the Court denies the respondents' motion for reconsideration and for elevation of this case to the Court en banc.

SO ORDERED.

Ynares-Santiago, (Chairperson), and Austria-Martinez, JJ., concur.

Callejo Sr., on leave.

Nachura, J., no part. filed pleading as Solicitor General.

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[1] *Quinson v. Ozatea*, 98 Phil. 705, 709 (1956).

[2] Section 4 (par. 2), Article VIII of the 1987 Constitution provides that:

(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

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