

PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, represented by PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT through ATTY. ORLANDO L. SALVADOR, Petitioner, vs. HON. ANI...

G.R. No. 145184. March 14, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

The Presidential Ad Hoc Fact-Finding Committee on Behest Loans, (the Committee), representing the Presidential Commission on Good Government (PCGG), through Atty. Orlando L. Salvador (Atty. Salvador) filed this Petition for Certiorari seeking to nullify the September 3, 1999 Resolution[1] of the Office of the Ombudsman in OMB-0-95-0443, dismissing the criminal complaint filed against private respondents, and the June 6, 2000 Order[2] denying its reconsideration.

On October 8, 1992, President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee), which reads:

WHEREAS, Sec. 28, Article II of the 1987 Constitution provides that "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all transactions involving public interest";

WHEREAS, Sec. 15, Article XI of the 1987 Constitution provides that "The right of the state to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel";

WHEREAS, there have been allegations of loans, guarantees, or other forms of financial accommodation granted, directly or indirectly, by government owned and controlled bank or financial institutions, at the behest, command or urging by previous government officials to the disadvantage and detriment of the Philippine government and the Filipino people;

ACCORDINGLY, an "Ad-Hoc FACT FINDING COMMITTEE ON BEHEST LOANS" is hereby created to be composed of the following:

Chairman of the Presidential

Commission on Good Government

- Chairman

The Solicitor General

- Vice-Chairman

Representative from the

Office of the Executive Secretary

- Member

Representative from the

Department of Finance

- Member

Representative from the

Department of Justice

- Member

Representative from the

Development Bank of the Philippines

- Member

Representative from the

Philippine National Bank

- Member

Representative from the

Asset Privatization Trust

- Member

Government Corporate Counsel

- Member

Representative from the

Philippine Export and Foreign

Loan Guarantee Corporation

- Member

The Ad Hoc Committee shall perform the following functions:

- Inventory all behest loans; identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for granting the loans or who influenced the grant thereof;

- Identify the borrowers who were granted "friendly waivers", as well as the government officials who granted these waivers; determine the validity of these waivers;

- Determine the courses of action that the government should take to recover those loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from the date hereof.

The Committee is hereby empowered to call upon any department, bureau, office, agency, instrumentality or corporation of the government, or any officer or employee thereof, for such assistance as it may need in the

discharge of its function.

By Memorandum Order No. 61 dated November 9, 1992, the functions of the Committee were subsequently expanded by including in its investigation, inventory and study all non-performing loans, whether behest or non-behest. It likewise provided for the following criteria which might be utilized as frame of reference in determining a behest loan, to wit:

- It is under-collateralized;
- The borrower corporation is undercapitalized;
- Direct or indirect endorsement by high government officials like presence of marginal notes;
- Stockholders, officers or agents of the borrower corporation are identified as cronies;
- Deviation of use of loan proceeds from the purpose intended;
- Use of corporate layering;
- Non-feasibility of the project for which financing is being sought; and
- Extraordinary speed in which the loan release was made.

Moreover, a behest loan may be distinguished from a non-behest loan in that while both may involve civil liability for non-payment or non-recovery, the former may likewise entail criminal liability.

Several loan accounts were referred to the Committee for its investigation, including the loan transactions between Comptronics Philippines, Inc. (CPI), now Integrated Circuits Philippines (ICPI), and the Development Bank of the Philippines (DBP).

After examining and studying the loan transactions, the Committee determined that they bore the characteristics of a behest loan as defined under Memorandum Order No. 61. Consequently, Atty. Orlando L. Salvador, Consultant of the Committee, and representing the PCGG, filed with the Office of the Ombudsman a sworn complaint^[3] for violation of Section 3(e)(g) of Republic Act (R.A.) No. 3019, or the Anti-Graft and Corrupt Practices Act, against the Concerned Members of the DBP Board of Governors, and Concerned Directors and Officers of ICPI, namely, Querube Makalintal, Ambrosio C. Makalintal, Vicente R. Jayme, Antonio A. Santiago, Edgar L. Quinto, Horacio G. Makalintal, Alfredo F. delos Angeles, Josery D. Ruede, Manuel Tupaz, Alberto T. Perez and Gerardo A. Limjuco (private respondents).

Atty. Salvador alleged that ICPI applied for an industrial loan (foreign currency loan) of US\$1,352,400.00, or P10,143,000.00, from DBP. The loan application was approved on August 6, 1980 under DBP Board Resolution No. 2924. Atty. Salvador claimed that there was undue haste in the approval of the loan. He also alleged that prior to its approval, ICPI was granted an interim loan of P1,786,000.00 to cover the project's initial financing requirement. He added that the ICPI's industrial loan was under-collateralized and ICPI was undercapitalized at the time the loan was granted. ICPI's paid up capital by then was only P3,000,000.00, while the appraised value of the machinery and equipment offered as collaterals was only P5,943,610.00. Atty. Salvador concluded that ICPI was undeserving of the concession given to it, and the approval of the loan constitutes a violation of Section 3(e)(g) of R.A. No. 3019.

On March 13, 1996, Atty. Salvador filed a Supplementary Complaint Affidavit,^[4] to include in his complaint ICPI's interim loan of P1,786,000.00, which he claimed was granted with undue haste and without collateral, except a promissory note and comfort letter signed by DBP Chairman Rafael Sison. He added that the stockholders, officers and agents are identified cronies, since the Chairman of the Board - Querube Makalintal -

was, at the same time, the then Speaker of the Interim Batasang Pambansa. He named Rafael A. Sison, Jose Tengco, Alice Ll. Reyes, and Casimiro Tanedo as the ones responsible for the approval of the loan who should, thus, be charged, along with the officers and directors of ICPI, for violation of R.A. No. 3019.

After evaluating the evidence submitted by the Committee, the Ombudsman issued the assailed Memorandum, finding that:

After going over the record, we find no probable cause to warrant the filing of the instant case in court.

To start with, the cause of action has prescribed.

The loan in [question] was entered into between ICPI and DBP sometime in August 1980, while the complaint was filed on February 17, 1995 only, or after the lapse of almost fifteen years. Under Section 11, RA 3019, offenses committed before March 16, 1982, prescribed in ten (10) years.

The transaction was duly documented and the instruments drawn in support thereof were duly registered and open to public scrutiny, the prescriptive period of any legal action in connection with the said transaction commenced to run from the date the same was registered sometime in 1980.

x x x x

Complainant's allegation that the questioned loans were not covered by sufficient collaterals is negated by the evidence on record. It appears from the Executive Summary attached to the complaint that ICPI loans were secured by the following, to wit: (a) Machinery and Equipment to be acquired valued at P5,943,610.00; (b) The Philippine Export and Foreign Loan Guarantee Corporation guarantee up to 70% of the proposed DBP loan or P7,100,000.00; (c) By the Joint and several signatures with ICPI, Philippine Underwriter Finance Corporation; Atrium Capital Corporation, Mr. Ambrocio and Querube Macalintal. The value of the machineries and equipment and the amount guaranteed by Philippine Export and Foreign Loan Guarantee Corporation have a total amount P13,043,610.00. ICPI's paid up capital in the amount of P3,000,000.00 was also considered as additional security. The aggregate value of ICPI's securities was therefore P16,043,610.00, while the total amount of loans granted was only P10,143,000.00. Clearly, therefore, the loans granted to ICPI were not undercollateralized (sic).

Moreover, ICPI had an authorized capital stock of P10 Million of which P3 Million had been paid up or more than 25% of the authorized capital. It cannot be said that the corporation is undercapitalized.

In fine, the questioned loans were not considered behest loans within the purview of Memorandum Order No. 61, dated November 9, 1992 (Broadening the Scope of the Ad-Hoc Fact-Finding Committee on Behest Loans Created Pursuant to Administrative Order No. 13, dated October 8, 1992).

Finally, the aforesaid Administrative and Memorandum Orders both issued by the President in 1992, may not be retroactively applied to the questioned transactions which took place in 1980 because to do so would be tantamount to an ex post facto law which is proscribed by the Constitution.[5]

Thus, the Ombudsman disposed:

WHEREFORE, premises considered, let the instant complaint be, as the same is hereby, DISMISSED.

SO RESOLVED.[6]

A motion for reconsideration was filed, but the Ombudsman denied the same on June 6, 2000.[7]

Hence, this petition for certiorari.

Before tackling the issues raised by the petitioner, this Court takes notice of a serious procedural flaw. Joseph

Edralin, Roberto Ongpin, Verden Dangilan and Rodolfo Manalo were impleaded as respondents in this petition. However, they were not made respondents in the proceedings before the Ombudsman. Neither was there any allegation in the sworn-complaint and supplementary complaint executed by Atty. Salvador before the Ombudsman that Edralin, Ongpin, Dangilan and Manalo had any participation in, or were responsible for, the approval of the questioned loan. As such, they cannot be made respondents for the first time in this petition. Accordingly, we dismiss the petition as against them.

With the procedural issue resolved, this Court now comes to the issues raised by the petitioner.

Petitioner alleges that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that (i) the offenses subject of its criminal complaint had prescribed; (ii) Administrative Order No. 13 and Memorandum Order No. 61 are ex post facto laws; and (iii) there is no probable cause to indict private respondents for violation under Section 3(e)(g) of R.A. No. 3019.

The computation of the prescriptive period for offenses involving the acquisition of behest loans had already been laid to rest in Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,[8] thus:

[I]t was well-nigh impossible for the State, the aggrieved party, to have known the violations of R.A. No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the "beneficiaries of the loans." Thus, we agree with the COMMITTEE that the prescriptive period for the offenses with which the respondents in OMB-0-96-0968 were charged should be computed from the discovery of the commission thereof and not from the day of such commission.[9]

The ruling was reiterated in Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto,[10] wherein the Court explained:

In cases involving violations of R.A. No. 3019 committed prior to the February 1986 EDSA Revolution that ousted President Ferdinand E. Marcos, we ruled that the government as the aggrieved party could not have known of the violations at the time the questioned transactions were made. Moreover, no person would have dared to question the legality of those transactions. Thus, the counting of the prescriptive period commenced from the date of discovery of the offense in 1992 after an exhaustive investigation by the Presidential Ad Hoc Committee on Behest Loans.[11]

The Sworn Statement filed by Atty. Salvador did not specify the exact dates when the alleged offenses were discovered. However, the records show that it was the Committee that discovered the same. As such, the discovery could not have been made earlier than October 8, 1992, the date when the Committee was created. The complaint was filed on February 17, 1995, less than three (3) years from the presumptive date of discovery. Thus, the criminal offenses allegedly committed by the private respondents had not yet prescribed when the complaint was filed.

Likewise, we do not agree with the Ombudsman's declaration that Administrative Order No. 13 and Memorandum Order No. 61 cannot be applied retroactively to the questioned transactions because to do so would violate the constitutional prohibition against ex post facto laws.

An ex post facto law has been defined as one -- (a) which makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action; or (b) which aggravates a crime or makes it greater than it was when committed; or (c) which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or (d) which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant;[12] or (e) which assumes to regulate civil rights and remedies only, but in effect imposes a penalty or deprivation of a right which when exercised was lawful; or (f) which deprives a person accused of a crime of

some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.[13]

The constitutional proscription of ex post facto laws is aimed against the retrospectivity of penal laws. Penal laws are acts of the legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment.[14]

Administrative Order No. 13 does not mete out a penalty for the act of granting behest loans. It merely creates the Presidential Ad Hoc Fact-Finding Committee on Behest Loans and provides for its composition and functions. Memorandum Order No. 61, on the other hand, simply provides the frame of reference in determining the existence of behest loans. Not being penal laws, Administrative Order No. 13 and Memorandum Order No. 61 cannot be characterized as ex-post facto laws.

Furthermore, in *Estarija v. Ranada*,[15] in which petitioner raised the issue of constitutionality of R.A. No. 6770 in his motion for reconsideration of the Ombudsman's decision, we had occasion to state that the Ombudsman had no jurisdiction to entertain questions on the constitutionality of a law. The Ombudsman, therefore, acted in excess of its jurisdiction in delving into the constitutionality of the subject administrative and memorandum orders.

Now, on the merits of the case.

Private respondents were charged with violation of Section 3(e)(g) of R.A. No. 3019. The pertinent provisions read:

Sec. 3. Corrupt practices of public officers. -- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of officers or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

Petitioner asserts that the loan transaction between DBP and ICPI bore the characteristics of a behest loan. It claims that the loan was under-collateralized and ICPI was under-capitalized when the questioned loan was hastily granted. Petitioner believes that there exists probable cause to indict the private respondents for violation of Section 3(e)(g) of R.A. No. 3019.

Case law has it that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Office of the Ombudsman.[16] The Ombudsman is empowered to determine, in the exercise of his discretion, whether probable cause exists, and to charge the person believed to have committed the crime as defined by law. As a rule, courts should not interfere with the Ombudsman's investigatory power, exercised through the Ombudsman Prosecutors, and the authority to determine the presence or absence of probable cause, except when the finding is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[17]

For one to have violated Section 3(e) of R.A. No. 3019, the following elements must be established: 1) the accused must be a public officer discharging administrative, judicial or official functions; 2) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3) he must have caused undue injury to any party, including the government, or given any private party unwarranted benefits, advantage or preference, in the discharge of his functions.[18] Evidently, mere bad faith or partiality and negligence per se are not enough for one to be held liable under the law. It is required that the act constitutive of bad faith or partiality must, in the first place, be evident or manifest, while the negligent deed should be both gross and inexcusable. Further, it is necessary to show that any or all of these modalities resulted in undue injury to a specified party.[19]

On the other hand, to be liable under Section 3(g), there must be a showing that private respondents entered into a grossly disadvantageous contract on behalf of the government.

Petitioner did not satisfy either criterion.

It is clear from the records that the DBP officers studied and evaluated ICPI's request for an interim loan and an industrial loan, and they were convinced that ICPI was deserving of the grant, considering the viability and economic desirability of its project. Petitioners failed to demonstrate that DBP did not exercise sound business judgment when it approved the loan. Neither was there any proof that the conditions imposed for the loan were specially designed in order to favor ICPI.

The Chapter on Human Relations of the Civil Code directs every person, inter alia, to observe good faith, which springs from the fountain of good conscience.[20] Well-settled is the rule that good faith is presumed. Specifically, a public officer is presumed to have acted in good faith in the performance of his duties.

Mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith.[21] "Bad faith" does not simply connote bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will. It partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.[22] Petitioners utterly failed to show that private respondents' actions fit such description.

Neither was there any convincing proof offered to demonstrate that the contracts were grossly disadvantageous to the Government, or that they were entered into to give ICPI unwarranted benefits and advantages.

Petitioner asserts that ICPI was undeserving of the accommodation given by DBP. To support this allegation, petitioners quoted a portion of the credit evaluation report, which reads:

Investigations conducted by DBP's Credit Department revealed adverse findings on ICPI and Mr. Gene Vicente Tamesis, who until recently, has been the principal stockholder and executive officer of subject Corporation. x x x Mr. Tamesis, however, has since transferred all of his shareholdings to Mr. Ambrosio G. Makalintal. Aware of Mr. Tamesis' unfavorable credit standing, ICPI's management has, further, caused him to yield his position as Chairman of the Board in favor of Mr. Querube C. Makalintal, former Justice of the Supreme Court and presently Speaker of the Interim Batasang Pambansa.[23]

But we note that the said credit investigation report goes further, and states:

With the responsible management of the Makalintals and the conversion of substantial liabilities of ICPI into equity (subject-firm's major creditors, namely, Philippine Underwriters Finance Corporation and Atrium Capital Corporation have both agreed, in principle, to convert their claims into equity), the corporation can now operate on a clean credit slate and stands a good chance of meeting its credit obligations.[24]

There is, thus, no solid basis for petitioners to claim that ICPI did not deserve the concession given by DBP.

Contrary to what petitioner wants to portray, the contracts between ICPI and DBP were not behest loans. ICPI was not under-capitalized and the loan was not under-collateralized at the time of its approval. Likewise, the approval can hardly be depicted as one done with undue haste.

The records show that in 1979, Atrium Capital Corporation and Philippine Underwriter's Corporation agreed on the conversion of their P8,500,000.00 worth of creditor's equity into capital stocks.[25] Then, in 1980, the individual stockholders paid their respective subscriptions amounting to P3,000,000.00, thereby increasing ICPI's paid up capital to P11,500,000.00 as of April 23, 1980.[26] This belies petitioners' claim that, at that time, ICPI was under-capitalized.

Similarly, the industrial loan was sufficiently collateralized at the time of its approval. It was granted on the condition that the assets intended for acquisition by ICPI would serve as collateral. The Philippine Export and Foreign Loan Guarantee Corporation (PEFLGC) also guaranteed 70% of the loan extended. ICPI was further required to assign to DBP not less than 67% of its total subscribed and outstanding voting shares, which should be maintained at all times and should subsist during the existence of the loan. As additional security, ICPI's majority stockholders, namely, Integrated Circuits Philippine, Inc. (ICP) of Philippine Underwriters Finance Corporation, Atrium Corporation (AC), Ambrosio G. Makalintal and Querube Makalintal were also made jointly and severally liable to DBP. DBP was also given the right to designate its comptroller in ICP.[27]

Petitioner's insistence that DBP excluded the joint and several liabilities of the majority stockholders of ICP and AC and of Querube Makalintal has to be rejected. It is true that DBP's Industrial Project Department recommended the amendment of this condition. However, no proof was offered to prove that the DBP Board of Directors approved such recommendation.

Petitioner also points to the alleged non-implementation of the guarantee by PEFLGC to demonstrate that the loan was under-collateralized at the time of its approval. But the evidence[28] presented shows that the PEFLGC approved the guarantee, although the approval lapsed in 1985. Thus, it cannot be gainsaid that, at the time of the approval of the loan, there was a guarantee by PEFLGC. Besides, even if we exclude as security the guarantee of PEFLGC, the loan still had sufficient collaterals at the time of its approval.

The contention that the loan was hastily granted also fails to persuade. The supplemental complaint alleged that the interim loan was granted on April 6, 1980. However, there was no allegation, much less proof, as to when ICPI applied for this interim loan. In the absence of such proof, we cannot conclude that the same was hastily granted.

Neither does the industrial loan appear to have been hastily granted. Admittedly, the interim loan granted on April 6, 1980 formed part of ICPI's application for industrial or foreign currency loan in the amount of US\$1,352,400.00. Logically then, we can assume that ICPI's application was filed earlier than April 6, 1980, the date of the approval of the interim loan. DBP, however, approved the industrial loan only on August 6, 1980. The processing period of more than four months is inconsistent with the claim that the loan was hastily granted.[29]

In sum, petitioner does not persuade us that the contract between ICPI and DBP was a behest loan.

Finally, we note that petitioner did not specify the precise role played by, or the participation of, each of the private respondents in the alleged violation of R.A. No. 3019. No concrete or overt acts of the ICP's directors and officers, particularly of Mr. Querube Makalintal, were specifically alleged or mentioned in the complaint and its supplement, and no proof was adduced to show that they unduly influenced the directors and concerned officials of DBP. Neither were circumstances shown to indicate a common criminal design of either the officers of DPB or ICPI, nor that they colluded to cause undue injury to the government by giving unwarranted benefits to ICPI.

The Ombudsman can hardly be faulted for not wanting to proceed with the prosecution of the offense, convinced that he does not possess the necessary evidence to secure a conviction.

WHEREFORE, the petition is DENIED. The assailed Memorandum and Order of the Ombudsman in OMB-0-95-0443, are AFFIRMED.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, and Leonardo-De Castro, JJ., concur.

[*] Died during the pendency of the case. Hence, in its November 19, 2002 Resolution, this Court dismissed the case against him.

[1] Annex "A," rollo, pp. 26-30.

[2] Annex "B," id. at 31-33.

[3] Id. at 47-50.

[4] Id. at 60-63.

[5] Id. at 28-30.

[6] Id. at 30.

[7] Id. at 31-33.

[8] 375 Phil. 697 (1999).

[9] Id. at 724.

[10] 415 Phil. 723 (2001).

[11] Id. at 729-730.

[12] Chavez v. Romulo, G.R. No. 157036, June 9, 2004, 431 SCRA 534, 565.

[13] Lacson v. Executive Secretary, 361 Phil. 251, 275 (1999).

[14] Orlando L. Salvador v. Placido L. Mapa, et al., G.R. No. 135080, November 28, 2007.

[15] G.R. No. 159314, June 26, 2006, 492 SCRA 652, 665.

[16] Ramiscal, Jr. v. Sandiganbayan, G.R. Nos. 169727-28, August 18, 2006, 499 SCRA 375, 394.

[17] Collantes v. Marcelo, G.R. Nos. 167006-07, August 14, 2007, 530 SCRA 142, 150-151.

[18] Uriarte v. People, G.R. No. 169251, December 20, 2006, 511 SCRA 471, 486; Santos v. People, G.R. No. 161877, March 23, 2006, 485 SCRA 185, 194; Cabrera v. Sandiganbayan, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377, 386.

[19] Collantes v. Marcelo, *supra* note 17, at 153.

[20] Venus v. Desierto, 358 Phil. 675, 697 (1998).

[21] Saber v. Court of Appeals, G.R. No. 132981, August 31, 2004, 437 SCRA 259, 278.

[22] *Mendoza-Arce v. Office of the Ombudsman (Visayas)*, 430 Phil 101, 115 (2002); *Baylon v. Office of the Ombudsman*, 423 Phil. 705, 724 (2001); *Llorente, Jr. v. Sandiganbayan*, 350 Phil. 820, 843 (1998).

[23] *Rollo* (Vol. 1), pp. 98-99.

[24] *Id.* at 99.

[25] *Id.* at 92.

[26] *Id.* at 67.

[27] Minutes No. 31, August 6, 1980, *id.* at 42.

[28] Annex "J," *id.* at 206-208.

[29] See *Presidential Commission on Good Government v. Hon. Aniano Desierto, et al.*, G.R. No. 139296, November 23, 2007.

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