

PANFILO LACSON, MICHAEL RAY B. AQUINO AND CESAR O. MANCAO, PETITIONERS, VS. SECRETARY HERNANDO PEREZ, P/DIRECTOR LEANDRO MENDOZA, AND P/SR. SUPT. REYNALDO BERROYA, RESPONDENTS.

G.R. No. 147780. May 10, 2001

Ponente: MELO, J.

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MELO, J.:

On May 1, 2001, President Macapagal-Arroyo, faced by an "angry and violent mob armed with explosives, firearms, bladed weapons, clubs, stones and other deadly weapons" assaulting and attempting to break into Malacañang, issued Proclamation No. 38 declaring that there was a state of rebellion in the National Capital Region. She likewise issued General Order No. 1 directing the Armed Forces of the Philippines and the Philippine National Police to suppress the rebellion in the National Capital Region. Warrantless arrests of several alleged leaders and promoters of the "rebellion" were thereafter effected.

Aggrieved by the warrantless arrests, and the declaration of a "state of rebellion," which allegedly gave a semblance of legality to the arrests, the following four related petitions were filed before the Court-

(1) G.R. No. 147780 for prohibition, injunction, mandamus, and habeas corpus (with an urgent application for the issuance of temporary restraining order and/or writ of preliminary injunction) filed by Panfilo M. Lacson, Michael Ray B. Aquino, and Cesar O. Mancao; (2) G.R. No. 147781 for mandamus and/or review of the factual basis for the suspension of the privilege of the writ of habeas corpus, with prayer for a temporary restraining order filed by Miriam Defensor-Santiago; (3) G.R. No. 147799 for prohibition and injunction with prayer for a writ of preliminary injunction and/or restraining order filed by Rolando A. Lumbao; and (4) G.R. No. 147810 for certiorari and prohibition filed by the political party Laban ng Demokratikong Pilipino.

All the foregoing petitions assail the declaration of a state of rebellion by President Gloria Macapagal-Arroyo and the warrantless arrests allegedly effected by virtue thereof, as having no basis both in fact and in law. Significantly, on May 6, 2001, President Macapagal-Arroyo ordered the lifting of the declaration of a "state of rebellion" in Metro Manila. Accordingly, the instant petitions have been rendered moot and academic. As to petitioner's claim that the proclamation of a "state of rebellion" is being used by the authorities to justify warrantless arrests, the Secretary of Justice denies that it has issued a particular order to arrest specific persons in connection with the "rebellion." He states that what is extant are general instructions to law enforcement officers and military agencies to implement Proclamation No. 38. Indeed, as stated in respondents' Joint Comments:

[I]t is already the declared intention of the Justice Department and police authorities to obtain regular warrants of arrests from the courts for all acts committed prior to and until May 1, 2001 which means that preliminary investigators will henceforth be conducted.

(Comment, G.R. No. 147780, p. 28; G.R. No. 147781, p. 18; G.R. No. 147799, p. 16; G.R. No. 147810, p. 24)

With this declaration, petitioners' apprehensions as to warrantless arrests should be laid to rest.

In quelling or suppressing the rebellion, the authorities may only resort to warrantless arrests of persons suspected of rebellion, as provided under Section 5, Rule 113 of the Rules of Court, if the circumstances so warrant. The warrantless arrest feared by petitioners is, thus, not based on the declaration of a "state of rebellion."

Moreover, petitioners' contention in G.R. No. 147780 (Lacson Petition), 147781 (Defensor-Santiago Petition), and 147799 (Lumbao Petition) that they are under imminent danger of being arrested without warrant do not justify their resort to the extraordinary remedies of mandamus and prohibition, since an individual subjected to warrantless arrest is not without adequate remedies in the ordinary course of law. Such an individual may ask for a preliminary investigation under Rule 112 of the Rules of court, where he may adduce evidence in his defense, or he may submit himself to inquest proceedings to determine whether or not he should remain under custody and correspondingly be charged in court. Further, a person subject of a warrantless arrest must be delivered to the proper judicial authorities within the periods provided in Article 125 of the Revised Penal Code, otherwise the arresting officer could be held liable for delay in the delivery of detained persons. Should the detention be without legal ground, the person arrested can charge the arresting officer with arbitrary detention. All this is without prejudice to his filing an action for damages against the arresting officer under Article 32 of the Civil Code. Verily, petitioners have a surfeit of other remedies which they can avail themselves of, thereby making the prayer for prohibition and mandamus improper at this time (Sections 2 and 3, Rule 65, Rules of Court).

Aside from the foregoing reasons, several considerations likewise inevitably call for the dismissal of the petitions at bar.

G.R. No. 147780

In connection with their alleged impending warrantless arrest, petitioners Lacson, Aquino, and Mancao pray that the "appropriate court before whom the informations against petitioners are filed be directed to desist from arraigning and proceeding with the trial of the case, until the instant petition is finally resolved." This relief is clearly premature considering that as of this date, no complaints or charges have been filed against any of the petitioners for any crime. And in the event that the same are later filed, this court cannot enjoin criminal prosecution conducted in accordance with the Rules of Court, for by that time any arrest would have been in pursuance of a duly issued warrant.

As regards petitioner's prayer that the hold departure orders issued against them be declared null and void ab initio, it is to be noted that petitioners are not directly assailing the validity of the subject hold departure orders in their petition. They are not even expressing intention to leave the country in the near future. The prayer to set aside the same must be made in proper proceedings initiated for that purpose.

Anent petitioner's allegations *ex abundante ad cautelam* in support of their application for the issuance of a writ of habeas corpus, it is manifest that the writ is not called for since its purpose is to relieve petitioners from unlawful restraint (*Ngaya-an v. Balweg*, 200 SCRA 149 [1991]), a matter which remains speculative up to this very day.

G.R. No. 147781

The petition herein is denominated by petitioner Defensor-Santiago as one for mandamus. It is basic in matters relating to petitions for mandamus that the legal right of the petitioner to the performance of a particular act which is sought to be compelled must be clear and complete. Mandamus will not issue where the right to relief is clear at the time of the award (*Palileo v. Ruiz Castro*, 85 Phil. 272). Up to the present time, petitioner Defensor-Santiago has not shown that she is in imminent danger of being arrested without a warrant. In point of fact, the authorities have categorically stated that petitioner will not be arrested without a warrant.

G.R. No. 147799

Petitioner Lumbao, leader of the People's Movement against Poverty (PMAP), for his part, argues that the declaration of a "state of rebellion" is violative of the doctrine of separation of powers, being an encroachment on the domain of the judiciary which has the constitutional prerogative to "determine or interpret" what took place on May 1, 2001, and that the declaration of a state of rebellion cannot be an exception to the general rule on the allocation of the governmental powers.

We disagree. To be sure, section 18, Article VII of the Constitution expressly provides that "[t]he President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion..." thus, we held in *Integrated Bar of the Philippines v. Hon. Zamora*, (G.R. No. 141284, August 15, 2000):

xxx The factual necessity of calling out the armed forces is not easily quantifiable and cannot be objectively established since matters considered for satisfying the same is a combination of several factors which are not always accessible to the courts. Besides the absence of testual standards that the court may use to judge necessity, information necessary to arrive at such judgment might also prove unmanageable for the courts. Certain pertinent information necessary to arrive at such judgment might also prove unmanageable for the courts. Certain pertinent information might be difficult to verify, or wholly unavailable to the courts. In many instances, the evidence upon which the President might decide that there is a need to call out the armed forces may be of a nature not constituting technical proof.

On the other hand, the President as Commander-in-Chief has a vast intelligence network to gather information, some of which may be classified as highly confidential or affecting the security of the state. In the exercise of the power to call, on-the-spot decisions may be imperatively necessary in emergency situations to avert great loss of human lives and mass destruction of property. xxx

(at pp. 22-23)

The Court, in a proper case, may look into the sufficiency of the factual basis of the exercise of this power. However, this is no longer feasible at this time, Proclamation No. 38 having been lifted.

G.R. No. 147810

Petitioner Laban ng Demokratikong Pilipino is not a real party-in-interest. The rule requires that a party must show a personal stake in the outcome of the case or an injury to himself that can be redressed by a favorable decision so as to warrant an invocation of the court's jurisdiction and to justify the exercise of the court's remedial powers in his behalf (*KMU Labor Center v. Garcia, Jr.*, 239 SCRA 386 [1994]). Here, petitioner has not demonstrated any injury to itself which would justify resort to the Court. Petitioner is a juridical person not subject to arrest. Thus, it cannot claim to be threatened by a warrantless arrest. Nor is it alleged that its leaders, members, and supporters are being threatened with warrantless arrest and detention for the crime of rebellion. Every action must be brought in the name of the party whose legal right has been invaded or infringed, or whose legal right is under imminent threat of invasion or infringement.

At best, the instant petition may be considered as an action for declaratory relief, petitioner claiming that its right to freedom of expression and freedom of assembly is affected by the declaration of a "state of rebellion" and that said proclamation is invalid for being contrary to the Constitution.

However, to consider the petition as one for declaratory relief affords little comfort to petitioner, this Court not having jurisdiction in the first instance over such a petition. Section 5[1], Article VIII of the Constitution limits the original jurisdiction of the Court to cases affecting ambassadors, other public ministers and consuls, and over

petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.

WHEREFORE, premises considered, the petitions are hereby DISMISSED. However, in G.R. No. 147780, 147781, and 147799, respondents, consistent and congruent with their undertaking earlier adverted to, together with their agents, representatives, and all persons acting for and in their behalf, are hereby enjoined from arresting petitioners therein without the required judicial warrant for all acts committed in relation to or in connection with the May 1, 2001 siege of Malacañang.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Mendoza, Panganiban, and Gonzaga-Reyes, JJ., concur.

Vitug, J., see separate opinion.

Kapunan, and Sandoval-Gutierrez, JJ., see dissenting opinion.

Pardo, J., join the dissent of J. Kapunan.

Quisumbing, Buena, Ynares-Santiago, and De Leon, Jr., JJ., on leave.

SEPARATE OPINION

VITUG, J.:

I concur insofar as the resolution enjoins any continued warrantless arrests for acts related to, or connected with, the May 1[st] incident but respectfully dissent from the order of dismissal of the petitions for being said to be moot and academic. The petitions have raised important constitutional issues that, in my view, must likewise be fully addressed.

DISSENTING OPINION

KAPUNAN, J.:

The right against unreasonable searches and seizure has been characterized as belonging "in the catalog of indispensable freedoms."

Among deprivation of rights, none is so effective cowing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government. And one need only briefly to have dwelt and worked among a people possessed of many admirable qualities but deprived of these rights to know that the human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unheralded search and seizure by the police.[1]

Invoking the right against unreasonable searches and seizures, petitioners Panfilo Lacson, Michael Ray Aquino and Cezar O. Mancao II now seek a temporary restraining order and/or injunction from the Court against impending warrantless arrests upon the order of the Secretary of Justice.[2] Petitioner Laban ng Demokratikong Pilipino (LDP), likewise, seeks to enjoin the arrests of its senatorial candidates, namely, Senator Juan Ponce-Enrile, Senator Miriam Defensor-Santiago, Senator Gregorio B. Honasan and General Panfilo Lacson.[3] Separate petitioners were also filed by Senator Juan Ponce Enrile,[4] Former Ambassador Ernesto M. Maceda,[5] Senator Miriam Defensor-Santiago,[6] Senator Gregorio B. Honasan,[7] and the Integrated Bar of the Philippines (IBP).[8]

Briefly, the order for arrests of these political opposition leaders and police officers stems from the following facts:

On April 25, 2001, former President Joseph Estrada was arrested upon the warrant issued by the Sandiganbayan in connection with the criminal case for plunder filed against him. Several hundreds of policemen were deployed to effect his arrest. At the time, a number of Mr. Estrada's supporters, who were then holding camp outside his residence in Greenhills Subdivision, sought to prevent his arrest. A skirmish ensued between them and the police. The police had to employ batons and water hoses to control the rock-throwing pro-Estrada rallyist and allow the sheriffs to serve the warrant. Mr. Estrada and his son and co-accused, Mayor Jinggoy Estrada, were then brought to Camp Crame where, with full media coverage, their fingerprints were obtained and their mug shots taken.

Later that day, and on the succeeding days, a huge gathered at the EDSA Shrine to show its support for the deposed President. Senators Enrile, Santiago, Honasan, opposition senatorial candidates including petitioner Lacson, as well as other political personalities, spoke before the crowd during these rallies.

In the meantime, on April 28, 2001, Mr. Estrada and his son were brought to the Veterans Memorial Medical Center for a medical check-up. It was announced that from there, they would be transferred to Fort Sto. Domingo in Sta. Rosa, Laguna.

In the early morning of May 1, 2001, the crowd at EDSA decided to march to Malacañan Palace. The Armed Forces of the Philippines (AFP) was called to reinforce the Philippine National Police (PNP) to guard the premises of the presidential residence. The marchers were able to penetrate the barricades put up by the police at various points leading to Mendiola and were able to reach Gate 7 of Malacañan. As they were being dispersed with warning shots, tear gas and water canons, the rallyists hurled stones at the police authorities. A melee erupted. Scores of people, including some policemen, were hurt.

At noon of the same day, after the crowd in Mendiola had been dispersed, President Gloria Macapagal-Arroyo issued Proclamation No. 38 declaring a "state of rebellion" in Metro Manila:

Presidential Proclamation No. 38

DECLARING STATE OF REBELLION IN THE NATIONAL CAPITAL REGION

WHEREAS, the angry and violent mob, armed with explosives, firearms, bladed weapons, clubs, stones and other deadly weapons, in great part coming from the mass gathering at the EDSA Shrine, and other armed groups, having been agitated and incited and, acting upon the instigation and under the command and direction of known and unknown leaders, have and continue to assault and attempt to break into Malacañang with the avowed purpose of overthrowing the duly constituted Government and forcibly seize power, and have and continue to rise publicly, shown open hostility, and take up arms against the duly constituted Government for the purpose of removing from the allegiance to the government certain bodies of the Armed Forces of the Philippines and the Philippine National Police, and to deprive the President of the Republic of the Philippines, wholly and partially, of her powers and prerogatives which constitute the continuing crime of rebellion punishable under Article 134 of the Revised Penal Code;

WHEREAS, armed groups recruited by known an unknown leaders, conspirators, and plotters have continue (sic) to rise publicly by the use of arms to overthrow the duly constituted Government and seize political power;

WHEREAS, under Article VII, Section 18 of the Constitution, whenever necessary, the President as the Commander-in-Chief of all armed forces of the Philippines, may call out such armed forces to suppress the rebellion;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, by virtue of the powers vested in me by law hereby recognize and confirm the existence of an actual and on-going rebellion compelling me to declare a state of rebellion;

In view of the foregoing, I am issuing General Order No. 1 in accordance with Section 18, Article VII of the Constitution calling upon the Armed forces of the Philippines and the Philippine National Police to suppress and quell the rebellion.

City of Manila, May 1, 2001.

The President Likewise issued General Order No. 1 which reads:

GENERAL ORDER NO. 1

DIRECTING THE ARMED FORCES OF THE PHILIPPINES AND THE PHILIPPINE NATIONAL POLICE TO SUPPRESS THE REBELLION IN THE NATIONAL CAPITAL REGION

WHEREAS, the angry mob and violent mob, armed with explosives, firearms, bladed weapons, clubs, stones, and other deadly weapons, in great part coming from the mass gathering at the EDSA Shrine, and other armed groups, having been agitated and incited and, acting upon the instigation and under the command and direction of known and unknown leaders, have and continue to assault and attempt to break into Malacañang with the avowed purpose of overthrowing the duly constituted Government and forcibly seize political power, and have continue to rise publicly, show open hostility, and take up arms against the duly constituted Government certain bodies of the Armed Forces of the Philippines and the Philippine National Police, and to deprive the President of the Republic of the Philippines, wholly and partially, of her powers and prerogatives which constitute the continuing crime of rebellion punishable under Article 134 of the Revised Penal Code;

WHEREAS, armed groups recruited by known and unknown leaders, conspirators, and plotters have continue (sic) to rise publicly by the use of arms to overthrow the duly constituted Government and seize political power;

WHEREAS, under Article VII, Section 18 of the Constitution, whenever necessary, the President as the Commander-in-Chief of all armed forces of the Philippines, may call out such armed forces to suppress the rebellion;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, by virtue of the powers vested in me under the Constitution as President of the Republic of the Philippines and Commander-in-Chief of all armed forces of the Philippines and pursuant to Proclamation No. 38, dated May 1, 2001, do hereby call upon the armed Forces of the Philippines and the Philippine national police to suppress and quell the rebellion.

I hereby direct the Chief of Staff of the Armed Forces of the Philippines and the Chief of the Philippine National Police and the officers and men of the Armed Forces of the Philippines and the Philippine National Police to immediately carry out the necessary and appropriate actions and measures to suppress and quell the rebellion with due regard to constitutional rights.

City of Manila, May 1, 2001.

Pursuant to the proclamation, several key leaders of the position were ordered arrested. Senator Enrile was arrested without warrant in his residence at around 4:00 in the afternoon. Likewise arrested without warrant the following day was former Ambassador Ernesto Maceda. Senator Honasan and Gen. Lacson were also ordered arrested but the authorities have so far failed to apprehend them.

Ambassador Maceda was temporarily released upon recognizance while Senator Ponce Enrile was ordered released by the Court on cash bond.

The basic issue raised by the consolidated petitions is whether the arrest or impending arrest without warrant, pursuant to a declaration of "state of rebellion" by the President of the above-mentioned persons and unnamed other persons similarly situated suspected of having committed rebellion is illegal, being unquestionably a deprivation of liberty and violative of the bill of rights under the Constitution.

The declaration of a "state of rebellion" is supposedly based on Section 18, Article VII of the Constitution which reads:

The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the president, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts or agencies over civilians where the civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

During the suspension of the privilege of the writ any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

Section 18 grants the President, as Commander-in-Chief, the power to call out the armed forces in cases of (1) lawless violence, (2) rebellion and (3) invasion.[9] In the latter two cases, i.e., rebellion or invasion, the President may, when public safety requires, also (a) suspend the privilege of the writ of habeas corpus, or (b) place the Philippines or any part thereof under martial law. However, in the exercise of this calling out power as Commander-in-Chief of the armed forces, the Constitution does not require the President to make a declaration of a "state of rebellion" (or, for that matter, of lawless violence or invasion). The term "state of rebellion" has no legal significance. It is vague and amorphous and does not give the President more power than what the Constitution says, i.e, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. As Justice Mendoza observed during the hearing of this case, such a declaration is "legal surplusage." But whatever the term means, it cannot diminish or violate constitutionally-protected rights, such as the right to due process,[10] the rights to free speech and peaceful assembly to petition the government for redress of grievances,[11] and the right against unreasonable searches and seizures,[12] among others.

In *Integrated Bar of the Philippines vs. Zamora, et al.*,[13] the Court held that:

x x x [T]he distinction (between the calling out power, on one hand, and the power to suspend the privilege of the writ of habeas corpus and to declare martial law, on the other hand) places the calling out power in a different category from the power to declare martial law and the power to suspend the privilege of the writ of habeas corpus, otherwise, the framers of the Constitution would have simply lumped together the three powers and provided for their revocation and review without any qualification. *Expressio unius est exclusio alterius*.

x x x

The reason for the difference in the treatment of the aforementioned powers highlights the intent to grant the president the widest leeway and broadest discretion in using the "calling out" power because it is considered as the lesser and more benign power compared to the power to suspend the privilege of the writ of habeas corpus and the power to impose martial law, both of which involve the curtailment and suppression of certain basic civil rights and individual freedoms, and thus necessitating affirmation by Congress and, in appropriate cases, review by this Court.

On the other hand, if the motive behind the declaration of a "state of rebellion" is to arrest persons without warrant and detain them without bail and, thus, skirt the Constitutional safeguards for the citizens' civil liberties, the so-called "state of rebellion" partakes the nature of martial law without declaring it as such. It is a truism that a law or rule may itself be fair or innocuous on its face, yet, if it is applied and administered by public authority with an evil eye so as to practically make it unjust and oppressive, it is within the prohibition of the Constitution.[14] In an ironic sense, a "state of rebellion" declared as a subterfuge to effect warrantless arrest and detention for an unbailable offense places a heavier burden on the people's civil liberties than the suspension of the privilege of the writ of habeas corpus and the declaration of martial law because in the latter case, built-in safeguards are automatically set on motion: (1) The period for martial law or suspension is limited to a period not exceeding sixty days; (2) The President is mandated to submit a report to Congress within forty-eight hours from proclamation or suspension; (3) The proclamation or suspension is subject to review by Congress, which may revoke such proclamation or suspension. If Congress is not in session, it shall convene in 24 hours without need for call; and (4) the sufficiency of the factual basis thereof or its extension is subject to review by the Supreme Court in an appropriate proceeding.[15]

No right is more fundamental than the right to life and liberty. Without these rights, all other individual rights may not exist. Thus, the very first section in our Constitution's Bill of Rights, Article III, reads:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

And to assure the fullest protection of the right, more especially against government impairment, Section 2 thereof provides:

SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Indeed, there is nothing in Section 18 which authorizes the President or any person acting under her direction to make unwarranted arrests. The existence of "lawless violence, invasion or rebellion" only authorizes the President to call out the "armed forces to prevent or suppress lawless violence, invasion or rebellion."

Not even the suspension of the privilege of the writ of habeas corpus or the declaration of martial law authorizes the president to order the arrest of any person. The only significant consequence of the suspension of the writ of

habeas corpus is to divest the courts of the power to issue the writ whereby the detention of the person is put in issue. It does not by itself authorize the President to order the arrest of a person. And even then, the Constitution in Section 18, Article VII makes the following qualifications:

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

In the instant case, the president did not suspend the writ of habeas corpus. Nor did she declare martial law. A declaration of a "state of rebellion," at most, only gives notice to the nation that it exists, and that the armed forces may be called to prevent or suppress it, as in fact she did. Such declaration does not justify any deviation from the Constitutional proscription against unreasonable searches and seizures.

As a general rule, an arrest may be made only upon a warrant issued by a court. In very circumscribed instances, however, the Rules of Court allow warrantless arrests. Section 5, Rule 113 provides:

SEC. 5. Arrest without warrant; when lawful. - A police officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

xxx

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail shall be proceeded against in accordance with section 7 of the Rule 112.

It must be noted that the above are exceptions to the constitutional norm enshrined in the Bill of Rights that a person may only be arrested on the strength of a warrant of arrest issued by a "judge" after determining "personally" the existence of "probable cause" after examination under oath or affirmation of the complainant and the witnesses he may produce. Its requirements should, therefore, be scrupulously met:

The right of a person to be secure against any unreasonable seizure of his body and any deprivation of his liberty is a most basic and fundamental one. The statute or rule which allows exceptions to the requirement of warrants of arrests is strictly construed. Any exception must clearly fall within the situations when securing a warrant would be absurd or is manifestly unnecessary as provided by the Rule. We cannot liberally construe the rule on arrests without warrant or extend its application beyond the cases specifically provided by law. To do so would infringe upon personal liberty and set back a basic right so often violated and so deserving of full protection.[16]

A warrantless arrest may be justified only if the police officer had facts and circumstances before him which, had they been before a judge, would constitute adequate basis for a finding of probable cause of the commission of an offense and that the person arrested is probably guilty of committing the offense. That is why the Rules of Criminal Procedure require that when arrested, the person "arrested has committed, is actually committing, or is attempting to commit an offense" in the presence of the arresting officer. Or if it be a case of an offense which has "just been committed," that the police officer making the arrest "has personal knowledge of facts or circumstances that the person to be arrested has committed it."

Petitioners were arrested or sought to be arrested without warrant for acts of rebellion ostensibly under Section 5 of Rule 113. Respondent's theory is based on *Umil vs. Ramos*,^[17] where this court held:

The crimes of rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof or in connection therewith constitute direct assault against the State and are in the nature of continuing crimes.^[18]

Following this theory, it is argued that under Section 5(a), a person who "has committed, is actually committing, or is attempting to commit" rebellion and may be arrested without a warrant at any time so long as the rebellion persists.

Reliance on *Umil* is misplaced. The warrantless arrests therein, although effected a day or days after the commission of the violent acts of petitioners therein, were upheld by the Court because at the time of their respective arrests, they were members of organizations such as the Communist Party of the Philippines, the New Peoples Army and the National United Front Commission, then outlawed groups under the Anti-Subversion Act. Their mere membership in said illegal organizations amounted to committing the offense of subversion^[19] which justified their arrests without warrants.

In contrast, it has not been alleged that the person to be arrested for their alleged participation in the "rebellion" on May 1, 2001 are members of an outlawed organization intending to overthrow the government. Therefore, to justify a warrantless arrest under Section 5(a), there must be a showing that the persons arrested or to be arrested has committed, is actually committing or is attempting to commit the offense or rebellion.^[20] In other words, there must be an overt act constitutive of rebellion taking place in the presence of the arresting officer. In *United States vs. Samonte*,^[21] the term "in his [the arresting officer's] presence" was defined thus:

An offense is said to be committed in the presence or within the view of an arresting officer or private citizen when such officer or person sees the offense, even though at a distance, or hears the disturbance created thereby and proceeds at once to the scene thereof; or the offense is continuing, or has not been consummated, at the time the arrest is made.^[22]

This requirement was not complied with particularly in the arrest of Senator Enrile. In the Court's Resolution of May 5, 2001 in the petition for habeas corpus filed by Senator Enrile, the Court noted that the sworn statements of the policemen who purportedly arrested him were hearsay.^[23] Senator Enrile was arrested two (2) days after he delivered allegedly seditious speeches. Consequently, his arrest without warrant cannot be justified under Section 5(b) which states that an arrest without a warrant is lawful when made after an offense has just been committed and the arresting officer or private person has probable cause to believe based on personal knowledge of facts and circumstances that the person arrested has committed the offense.

At this point, it must be stressed that apart from being inapplicable to the cases at bar, *Umil* is not without any strong dissents. It merely re-affirmed *Garcia-Padilla vs. Enrile*,^[24] a case decided during the Marcos martial law regime.^[25] It cannot apply when the country is supposed to be under the regime of freedom and democracy. The separate opinions of the following Justices in the motion for reconsideration of said case^[26] are apropos:

FERNAN, C.J., concurring and dissenting:

Secondly, warrantless arrests may not be allowed if the arresting officers are not sure what particular provision of law had been violated by the person arrested. True it is that law enforcement agents and even prosecutors are not all adept at the law. However, erroneous perception, not to mention ineptitude among their ranks, especially if it would result in the violation of any right of a person, may not be tolerated. That the arrested person has the "right to insist during the pre-trial or trial on the merits" (Resolution, p. 18) that he was exercising a right which the arresting officer considered as contrary to law, is beside the point. No person

should be subjected to the ordeal of a trial just because the law enforcers wrongly perceived his action.[27] (Underscoring supplied)

GUTIERREZ, JR., J., concurring and dissenting opinion

Insofar as G.R. No. 81567 is concerned, I join the other dissenting Justices in their observations regarding "continuing offenses." To base warrantless arrest on the doctrine of continuing offense is to give a license for the illegal detention of persons on pure suspicion. Rebellion, insurrection, or sedition are political offenses where the line overt acts and simple advocacy or adherence to a belief is extremely thin. If a court has convicted an accused of rebellion and he is found roaming around, he may be arrested. But until a person is proved guilty, I fail to see how anybody can jump to a personal conclusion that the suspect is indeed a rebel and must be picked up on sight whenever seen. The grant of authority in the majority opinion is too broad. If warrantless searches are to be validated, it should be Congress and not this Court which should draw strict and narrow standards. Otherwise, the non-rebels who are critical, noisy, or obnoxious will be indiscriminately lumped up with those actually taking up arms against the Government.

The belief of law enforcement authorities, no matter how well-grounded on past events, that the petitioner would probably shoot other policemen whom he may meet does not validate warrantless arrests. I cannot understand why the authorities preferred to bide their time, await the petitioner's surfacing from underground, and ounce on him with no legal authority instead of securing warrants of arrest for his apprehension.[28] (Underscoring supplied)

CRUZ, J., concurring and dissenting:

I submit that the affirmation by this Court of the Garcia-Padilla decision to justify the illegal arrests made in the cases before us is a step back to that shameful past when individual rights were wantonly and systematically violated by the Marcos dictatorship. It seems some of us have short memories of that repressive regime, but I for one am not one to forget so soon. As the ultimate defender of the Constitution, this Court should not gloss over the abuses of those who, out of mistaken zeal, would violate individual liberty in the dubious name of national security. Whatever their ideology and even if it be hostile to ours, the petitioners are entitled to the protection of the Bill of Rights, no more and no less than any other person in this country. That is what democracy is all about.[29] (Underscoring supplied)

FELICIANO, J., concurring and dissenting:

12. My final submission, is that, the doctrine of "continuing crimes," which has its own legitimate function to serve in our criminal law jurisprudence, cannot be invoked for weakening and dissolving the constitutional guarantee against warrantless arrest. Where no overt acts comprising all or some of the elements of the offense charged are shown to have been committed by the person arrested without warrant, the "continuing crime" doctrine should not be used to dress up the pretense that a crime, begun or committed elsewhere, continued to be committed by the person arrested in the presence of the arresting officer. The capacity for mischief of such a utilization of the "continuing crimes" doctrine, is infinitely increased where the crime charged does not consist of unambiguous criminal acts with a definite beginning and end in time and space (such as the killing or wounding of a person or kidnapping and illegal detention or arson) but rather of such problematic offenses as membership in or affiliation with or becoming a member of, a subversive association or organization. For in such cases, the overt constitutive acts may be morally neutral in themselves, and the unlawfulness of the acts a function of the aims or objectives of the organization involved. Note, for instance, the following acts which constitute prima facie evidence of "membership in any subversive association:"

a) Allowing himself to be listed as a member in any book or any of the lists, records, correspondence, or any other document of the organization;

b) Subjecting himself to the discipline of such or association or organization in any form whatsoever;

c) Giving financial contribution to such association or organization in dues, assessments, loans or in any other forms;

xxx

f) Conferring with officers or other members of such association or organization in furtherance of any plan or enterprise thereof;

xxx

g) Preparing documents, pamphlets, leaflets, books, or any other type of publication to promote the objectives and purposes of such association or organization;

xxx

k) Participating in any way in the activities, planning action, objectives, or purposes of such association or organization.

It may well be, as the majority implies, that the constitutional rule against warrantless arrests and seizures makes the law enforcement work of police agencies more difficult to carry out. It is not our Court's function, however, and the Bill of Rights was not designed, to make life easy for police forces but rather to protect the liberties of private individuals. Our police forces must simply learn to live with the requirements of the Bill of Rights, to enforce the law by modalities which themselves comply with the fundamental law. Otherwise they are very likely to destroy, whether through sheer ineptness or excess of zeal, the very freedoms which make our policy worth protecting and saving.[30] (underscoring supplied)

It is observed that a sufficient period has lapsed between the fateful day of May 1, 2001 up to the present. If respondents have ample evidence against petitioners, then they should forthwith file the necessary criminal complaints in order that the regular procedure can be followed and the warrants of arrest issued by the courts in the normal course. When practicable, resort to the warrant process is always to be preferred because "it interposes an orderly procedure involving 'judicial impartiality' whereby a neutral and detached magistrate can make informed and deliberate determinations on the issue of the probable cause." [31]

The neutrality, detachment and independence that judges are supposed to possess is precisely the reason the framers of the 1987 Constitution have reposed upon them alone the power to issue warrants of arrest. To vest the same to a branch of government, which is also charged with prosecutorial powers, would make such branch the accused's adversary and accuser, his judge and jury.[32]

A declaration of a state of rebellion does not relieve the State of its burden of proving probable cause. The declaration does not constitute a substitute for proof. It does not in any way bind the courts, which must still judge for itself the existence of probable cause. Under Section 18, Article VII, the determination of the existence of a state of rebellion for purposes of proclaiming martial law or the suspension of the privilege of the writ of habeas corpus rests for which the President is granted ample, though not absolute, discretion. Under Section 2, Article III, the determination of probable cause is a purely legal question of which courts are the final arbiters.

Justice Secretary Hernando Perez is reported to have announced that the lifting of the "state of rebellion" on May 7, 2001 does not stop the police from making warrantless arrests.[33] If this is so, the pernicious effects of the declaration on the people's civil liberties have not abated despite the lifting thereof. No one exactly knows who are in the list or who prepared the list of those to be arrested for alleged complicity in the "continuing" crime of "rebellion" defined as such by executive fiat. The list of the perceived leaders, financiers and supporters of the "rebellion" to be arrested and incarcerated could expand depending on the appreciation of the police. The coverage and duration of effectivity of the orders of arrest are thus so open-ended and limitless as to place in

constant and continuing peril the people's Bill of Rights. It is of no small significance that four of the Petitioners are opposition candidates for the Senate. Their campaign activities have been to a large extent immobilized. If the arrests and orders of arrest against them are illegal, then their Constitutional right to seek public office, as well as the right of the people to choose their officials, is violated.

In view of the transcendental importance and urgency of the issues raised in these cases affecting as they do the basic liberties of the citizens enshrined in our Constitution, it behooves us to rule thereon now, instead of relegating the cases to trial courts which unavoidably may come up with conflicting dispositions, the same to reach this Court inevitably for final ruling. As we aptly pronounced in *Salonga vs. Cruz Paño*:^[34]

The Court also has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. It has the symbolic function of educating bench and bar on the extent of protection given by constitutional guarantees.

Petitioners look up in urgent supplication to the Court, considered the last bulwark of democracy, for relief. If we do not act promptly, justly and fearlessly, to whom will they turn to?

WHEREFORE, I vote as follows:

- (1) Give DUE COURSE to and GRANT the petitions;
- (2) Declare as NULL and VOID the orders of arrest issued against petitioners;
- (3) Issue a WRIT OF INJUNCTION enjoining respondents, their agents and all other persons acting for and in their behalf from effecting warrantless arrests against petitioners and all other persons similarly situated on the basis of proclamation No. 38 and General order No. 1 of the President.

SO ORDERED.

[1] Dissenting Opinion, J. Jackson, in *Brinegar vs. United States*, 338 U.S. 2084 (1949). [2] G.R. No. 147780, for Prohibition, Injunction, Mandamus and Habeas Corpus.

[3] G.R. No. 147810, for Certiorari and Prohibition.

[4] G.R. No. 147785, for Habeas Corpus.

[5] G.R. No. 147787, for Habeas Corpus.

[6] G.R. No. 147781, for Mandamus.

[7] G.R. No. 147818, for Injunction.

[8] G.R. No. 147819, for Certiorari and Mandamus.

[9] *Integrated Bar of the Philippines vs. Zamora, et al.* G.R. No. 141284, August 15, 2000.

[10] CONSTITUTION, ARTICLE III, SECTION 1.

[11] CONSTITUTION, ARTICLE III, SECTION 4.

[12] CONSTITUTION, ARTICLE III, SECTION 2.

[13] G.R. No. 141284, *supra*.

[14] See *Yick Wo vs. Hopkins*, 118 U.S. 356.

[15] *Id.*, at Article VII, SECTION 18.

[16] *People vs. Burgos*, 144 SCRA 1, 14 (1986).

[17] 187 SCRA 311 (1990).

[18] *Id.*, at 318.

[19] 187 SCRA 311, 318, 321, 323-24. (1990).

[20] Under Article 134 of the Revised Penal Code, these acts would involve rising publicly and taking up arms against the Government: (1) to remove from the allegiance of the Government or its laws, the entire, or a portion of Philippine territory, or any body of land, naval or other armed forces, or (2) to deprive the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

[21] 16 Phil 516 (1910).

[22] *Id.*, at 519.

[23] G.R. No. 147785.

[24] 121 SCRA 472 (1983).

[25] See Note 396 in BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, p. 180.

[26] *Umil vs. Ramos*, 202 SCRA 251 (1991).

[27] *Id.*, at 274.

[28] *Id.*, at 279.

[29] *Id.*, at 284.

[30] *Id.*, at 293-295.

[31] LAFAVE, *I SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT* (1987), pp. 548-549. Citations omitted.

[32] *Presidential Anti-Dollar Salting Task Force vs. CA*, 171 SCRA 348 (1989).

[33] Manila Bulletin issue of May 8, 2001 under the heading "Warrantless arrest continue" by Rey G. Panaligan:

Justice Secretary Hernando Perez said yesterday the lifting of the state of rebellion in Metro Manila does not ban the police from making warrantless arrest of suspected leaders of the failed May 1 Malacañang siege.

In a press briefing, Perez said, "we can make warrantless arrest because that is provided for in the Rules of Court," citing Rule 113.

[34] 134 SCRA 438 (1985).**DISSENTING OPINION****SANDOVAL-GUTIERREZ, J.:**

The exercise of certain powers by the President in an atmosphere of civil unrest may sometimes raise constitutional issues. If such powers are used arbitrarily and capriciously, they may degenerate into the worst form of despotism.

It is on this premise that I express my dissent.

The chain of events which led to the present constitutional crisis are as follows:

On March 2, 2001, the Supreme Court rendered the landmark decision that would bar further questions on the legitimacy of Gloria Macapagal-Arroyo's presidency.[1] In a unanimous decision, the Court declared that Joseph Ejercito Estrada had effectively resigned his post and that Macapagal-Arroyo is the legitimate President of the Philippines. Estrada was stripped of all his powers and presidential immunity from suit.

Knowing that a warrant of arrest may at any time be issued against Estrada, his loyalists rushed to his residence in Polk Street, North Greenhills Subdivision, San Juan, Metro Manila. They conducted vigil in the vicinity swearing that no one can take away their "president."

Then the dreadful day for the Estrada loyalists came.

On April 25, 2001, the Third Division of the Sandiganbayan issued warrants of arrest against Estrada, his son Jinggoy, Charlie "Atong" Ang, Edward Serapio, Yolanda Ricaforte, Alma Alfaro, Eleuterio Tan and Delia Rajas.[2] Emotions ran high as an estimated 10,000 Estrada loyalists, ranging from tattooed teenagers of Tondo to well-heeled Chinese, gathered in Estrada's neighborhood.[3] Supporters turned hysterical. Newspapers captured pictures of raging men and wailing women.[4] When policemen came, riots erupted. Police had to use their batons as well as water hoses to control the rock-throwing Estrada loyalists.[5]

It took the authorities about four hours to implement the warrant of arrest. At about 3:30 o'clock in the afternoon of the same day, Philippine National Police (PNP) Chief, Director General Leandro R. Mendoza, with the aid of PNP's Special Action Force and reinforcements from the Philippine Army and Marines, implemented the warrant of arrest against Estrada.[6]

Like a common criminal, Estrada was fingerprinted and had his mug shots taken at the detention center of the former Presidential Anti-Organized Task Force at Camp Crame. The shabby treatment, caught on live TV cameras nationwide, had sparked off a wave of protest all over the country. Even international news agencies like CNN and BBC were appalled over the manner of Estrada's arrest calling it "overkill." In a taped message aired over radio and television, Estrada defended himself and said, "I followed the rule of law to the letter. I asked our people now to tell the powers to respect our constitution and the rule of law."

Being loyal to the end, the supporters of Estrada followed him to Camp Crame. About 3,000 of them massed up in front of the camp. They were shouting "Edsa Three! Edsa Three!" They vowed not to leave the place until Estrada is released. When asked how long they planned to stay, the protesters said, "Kahit isang buwan, kahit isang taon." [7]

At about 6:00 o'clock in the afternoon, also of the same day, the PNP's anti-riot squads dispersed them. Thus,

they proceeded to the Edsa Shrine in Mandaluyong City where they joined forces with hundreds more who came from North Greenhills.[8] Hordes of Estrada loyalists began gathering at the historic shrine.

On April 27, 2001, the crowd at Edsa begun to swell in great magnitude. Estrada loyalists from various sectors, most of them obviously belonging to the "masses," brought with them placards and streamers denouncing the manner of arrest done to the former president.[9] In the afternoon, buses loaded with loyalists from the nearby provinces arrived at the Edsa Shrine. One of their leaders said that the Estrada supporters will stay at Edsa Shrine until the former president gets justice from the present administration.[10]

An estimated 1,500 PNP personnel from the different parts of the metropolis were deployed to secure the area.[11] On April 28, 2001, the PNP and the Armed Forces declared a "nationwide red alert." [12] Counter-intelligence agents checked on possible defectors from the military top officials. Several senators were linked to an alleged junta plot.

During the rally, several Puwersa Ng Masa candidates delivered speeches before the crowd. Among those who showed up at the rally were Senators Miriam Defensor-Santiago, Gregorio Honasan, Juan Ponce Enrile, Edgardo Angara, Vicente Sotto and former PNP Director General Panfilo Lacson and former Ambassador Ernesto Maceda.[13]

On April 30, 2001, the government started to prepare its forces. A 2,000-strong military force backed up by helicopter gunships, Scorpion tanks and armored combat vehicles stood ready to counter any attempt by Estrada loyalists to mount a coup. And to show that it meant business, the task force parked two MG-520 attack helicopters armed to the teeth with rockets on the parade ground at Camp Aguinaldo, Quezon City. Also deployed were two armored personnel carriers and troops in camouflage uniforms.[14] Over 2,500 soldiers from the army, navy, and air force were formed into Task Force Libra to quell the indignant Estrada loyalists.[15]

On May 1, 2001, at about 1:30 o'clock in the morning, the huge crowd at Edsa started their march to Malacañang.[16] Along the way, they overran the barricades set up by the members of the PNP Crowd Dispersal Control Management.[17]

Shortly past 5:00 o'clock in the morning of the same day, the marchers were at the gates of Malacanang chanting, dancing, singing and waving flags.[18]

At around 10:00 o'clock in the morning, the police, with the assistance of combat-ready soldiers, conducted dispersal operations. Some members of the dispersal team were unceasingly firing their high-powered firearms in the air, while the police, armed with truncheons and shields, were slowly pushing the protesters away from the gates of Malacañang. Television footages showed protesters hurling stones and rocks on the advancing policemen, shouting invectives against them and attacking them with clubs. They burned police cars, a motorcycle, three pick-ups owned by a television station, construction equipment and a traffic police outpost along Mendiola Street.[19] They also attacked Red Cross vans, destroyed traffic lights, and vandalized standing structures. Policemen were seen clubbing protesters, hurling back stones, throwing teargas under the fierce midday sun, and firing guns towards the sky. National Security Adviser Roilo Golez said the Street had to be cleared of rioters at all costs because "this is like an arrow, a dagger going all the way to (Malacanang) Gate 7." [20]

Before noontime of that same day, the Estrada loyalists were driven away.

The violent street clashes prompted President Macapagal-Arroyo to place Metro Manila under a "state of rebellion." Presidential Spokesperson Rigoberto Tiglao told reporters, "We are in a state of rebellion. This is not an ordinary demonstration." [21] After the declaration, there were threats of arrests against those suspected of instigating the march to Malacañang.

At about 3:30 o'clock in the afternoon, Senator Juan Ponce Enrile was arrested in his house in Dasmariñas Village, Makati City by a group led by Reynaldo Berroya, Chief of the Philippine National Police Intelligence Group.[22] Thereafter, Berroya and his men proceeded to hunt re-electionist Senator Gregorio Honasan, former PNP Chief Panfilo Lacson, former Ambassador Ernesto Maceda, Brig. Gen. Jake Malajakan, Senior Superintendents Michael Ray Aquino and Cesar Mancao II, Ronald Lumbao and Cesar Tanega of the People's Movement Against Poverty (PMAP).[23] Justice Secretary Hernando Perez said that he was "studying" the possibility of placing Senator Miriam Defensor - Santiago "under the Witness protection program."

Director Victor Batac, former Chief of the PNP Directorate for Police Community Relations, and Senior Superintendent Diosdado Valeroso, of the Philippine Center for Transnational Crime, surrendered to Berroya. Both denied having plotted the siege.

On May 2, 2001, former Ambassador Ernesto Maceda was arrested.

The above scenario presents three crucial queries: First, is President Macapagal-Arroyo's declaration of a "state of rebellion" constitutional? Second, was the implementation of the warrantless arrests on the basis of the declaration of a "state of rebellion" constitutional? And third, did the rallyists commit rebellion at the vicinity of Malacanang Palace on May 1, 2001?

The first and second queries involve constitutional issues, hence, the basic yardstick is the 1987 Constitution of the Philippines. The third query requires a factual analysis of the events which culminated in the declaration of a state of rebellion; hence, an examination of Article 134 of the Revised Penal Code is in order.

On May 7, 2001, President Macapagal-Arroyo issued Proclamation No. 39, "DECLARING THAT THE STATE OF REBELLION IN THE NATIONAL CAPITAL REGION HAS CEASED TO EXIST", which in effect, has lifted the previous Proclamation No. 38.

I beg to disagree with the majority opinion in ruling that the instant petitions have been rendered moot and academic with the lifting by the President of the declaration of a "state of rebellion".

I believe that such lifting should not render moot and academic the very serious and unprecedented constitutional issues at hand, considering their grave implications involving the basic human rights and civil liberties of our people. A resolution of these issues becomes all the more necessary since, as reported in the papers, there are saturation drives (sonas) being conducted by the police wherein individuals in Metro Manila are picked up without warrants of arrest.

Moreover, the acts sought to be declared illegal and unconstitutional are capable of being repeated by the respondents. In *Salva v. Makalintal* (G.R. No. 132603, Sept. 18, 2000), this Court held that "courts will decide a question otherwise moot and academic if it is 'capable of repetition, yet evading review'"

I & II- President Macapagal-Arroyo's declaration of a "state of rebellion" and the implementation of the warrantless arrests premised on the said declaration are unconstitutional.

Nowhere in the Constitution can be found a provision which grants upon the executive the power to declare a "state of rebellion," much more, to exercise on the basis of such declaration the prerogatives which a president may validly do under a state of martial law. President Macapagal-Arroyo committed a constitutional short cut. She disregarded the clear provisions of the Constitution which provide:

"Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not

exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual bases of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released."^[24]

Obviously, the power of the President in cases when she assumed the existence of rebellion is properly laid down by the Constitution. I see no reason or justification for the President's deviation from the concise and plain provisions. To accept the theory that the President could disregard the applicable statutes, particularly that which concerns arrests, searches and seizures, on the mere declaration of a "state of rebellion" is in effect to place the Philippines under martial law without a declaration of the executive to that effect and without observing the proper procedure. This should not be countenanced. In a society which adheres to the rule of law, resort to extra-constitutional measures is unnecessary where the law has provided everything for any emergency or contingency. For even if it may be proven beneficial for a time, the precedent it sets is pernicious as the law may, in a little while, be disregarded again on the same pretext but for evil purposes. Even in time of emergency, government action may vary in breath and intensity from more normal times, yet it need not be less constitutional.^[25]

My fear is rooted in history. Our nation had seen the rise of a dictator into power. As a matter of fact, the changes made by the 1986 Constitutional Commission on the martial law text of the Constitution were to a large extent a reaction against the direction which the Supreme Court took during the regime of President Marcos.^[26] Now, if this Court would take a liberal view, and consider that the declaration of a "state of rebellion" carries with it the prerogatives given to the President during a "state of martial law," then, I say, the Court is traversing a very dangerous path. It will open the way to those who, in the end, would turn our democracy into a totalitarian rule. History must not be allowed to repeat itself. Any act which gears towards possible dictatorship must be severed at its inception.

The implementation of warrantless arrests premised on the declaration of a "state of rebellion" is unconstitutional and contrary to existing laws. The Constitution provides that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizure of whatever nature and for any purpose shall

be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized." [27] If a state of martial law "does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians, where civil courts are able to function, nor automatically suspend the privilege of the writ," [28(a)] then it is with more reason, that a mere declaration of a state of rebellion could not bring about the suspension of the operation of the Constitution or of the writ of habeas corpus.

Neither can we find the implementation of the warrantless arrests justified under the Revised Rules on Criminal Procedure. Pertinent is Section 5, Rule 113, thus:

"Sec. 5. Arrest without warrant, when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it; and

x x x."

Petitioners cannot be considered "to have committed, is actually committing, or is attempting to commit an offense" at the time they were hunted by Berroya for the implementation of the warrantless arrests. None of them participated in the riot which took place in the vicinity of the Malacañang Palace. Some of them were on their respective houses performing innocent acts such as watching television, resting, etc.. The sure fact however is that they were not in the presence of Berroya. Clearly, he did not see whether they had committed, were committing or were attempting to commit the crime of rebellion. But of course, I cannot lose sight of the legal implication of President Macapagal-Arroyo's declaration of a "state of rebellion." Rebellion is a continuing offense and a suspected insurgent or rebel may be arrested anytime as he is considered to be committing the crime. Nevertheless, assuming *ex gratia argumenti* that the declaration of a state of rebellion is constitutional, it is imperative that the said declaration be reconsidered. In view of the changing times, the dissenting opinion of the noted jurist, Justice Isagani Cruz, in *Umil v. Ramos*, [28] quoted below must be given a second look.

"I dissent insofar as the ponencia affirms the ruling in *Garcia-Padilla vs. Enrile* that subversion is a continuing offense, to justify the arrest without warrant of any person at any time as long as the authorities say he has been placed under surveillance on suspicion of the offense. That is a dangerous doctrine. A person may be arrested when he is doing the most innocent acts, as when he is only washing his hands, or taking his supper, or even when he is sleeping, on the ground that he is committing the 'continuing' offense of subversion. Libertarians were appalled when that doctrine was imposed during the Marcos regime. I am alarmed that even now this new Court is willing to sustain it. I strongly urge my colleagues to discard it altogether as one of the disgraceful vestiges of the past dictatorship and uphold the rule guaranteeing the right of the people against unreasonable searches and seizures. We can do no less if we are really to reject the past oppression and commit ourselves to the true freedom. Even if it be argued that the military should be given every support in our fight against subversion, I maintain that that fight must be waged honorably, in accordance with the Bill of Rights. I do not believe that in fighting the enemy we must adopt the ways of the enemy, which are precisely what we are fighting against. I submit that our more important motivation should be what are we fighting for."

I need not belabor that at the time some of the suspected instigators were arrested, (the others are still at-large), a long interval of time already passed and hence, it cannot be legally said that they had just committed an offense.

Neither can it be said that Berroya or any of his men had "personal knowledge of facts or circumstances that the persons to be arrested have committed a crime." That would be far from reality.

III - The acts of the rallyists at the vicinity of Malacañang Palace on May 1, 2001 do not constitute rebellion.

Article 134 of the Revised Penal Code reads:

"ART. 134. Rebellion or insurrection - How committed. - The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives." (As amended by RA No. 6968, O.G. 52, p. 9864, 1990)

From the foregoing provisions, the elements of the crime of rebellion may be deduced, thus: first, that there be (a) public uprising and (b) taking arms against the government; second, that the purpose of the uprising or movement is either (a) to remove from the allegiance to said government or its laws (1) the territory of the Philippines or any part thereof; or (2) anybody of land, naval or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives.[29]

Looking at the events on a magnified scale, I am convinced that the two elements of the crime of rebellion are lacking.

First, there was no "taking of arms " against the government. To my mind, "taking arms" connotes the multitude's deliberate and conscious resort to arms or weapons for the purpose of aiding them in accomplishing any of the purposes of rebellion. Admittedly, the Estrada loyalists pelted the policemen with rocks and stones and attacked them with sticks and clubs, but such was merely a result of the heightening tension between opposite camps during the period of dispersal. The stones, rocks, sticks, clubs and other improvised weapons were not deliberately resorted to by the Estrada loyalists to further any of the purposes of rebellion. They availed of them, at the precise moment of dispersal (this explains why their weapons were those which could be easily gathered on the street) and only for the purpose of stopping the policemen from dispersing them. In this age of modernity, one who intends to overthrow the government will not only settle for stones, woods, rocks, sticks or clubs as means to disable the government. It will be extremely pathetic and the result will only be in vain. Unlike a true rebellion which is organized, what happened at the vicinity of Malacañang was merely a riot, a mob violence, or a tumultuous uprising. At this juncture, it bears stressing that the crime of rebellion is a vast movement of men and a complex net of intrigues and plots.[30] It must be distinguished from riot and offenses connected with mob violence. In rebellion/insurrection, there is an organized and armed uprising against authority.[31]

Second, the purpose of the Estrada loyalists was neither (a) to remove from the allegiance to the government or its laws (1) the territory of the Philippines or any part thereof; or (2) any part of land, naval or other armed forces; nor (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives. I looked at the chronology of events, and one thing surfaced - the Estrada loyalists mainly demanded that their beloved "president" should not be incarcerated. The crowd at Edsa swelled in great magnitude on April 25, 2001, the day Estrada was arrested. In fact, when they followed Erap at Camp Crame, they were shouting "Edsa! Edsa! and they vowed not to leave until Estrada is released." [32]

One must not be swayed by the theory of respondents that the purpose of those people who gathered in Edsa and marched to Malacañang was to commit rebellion. For sure, there were a thousand and one reasons why they proceeded to Edsa. In determining their purpose, one must trace the roots, -- what prompted them to go to Edsa? They were the Estrada loyalists who wanted him to be freed. If indeed there were minorities who advocated another cause, the same should not be considered as the prevailing one in the determination of what crime was

committed. Facts should not be stretched just to build a case of rebellion. This runs counter to the principle of due process.

As a final word, I subscribe to the principle that the rule of law implies the precept that similar cases be treated similarly. Men can not regulate their actions by means of rule if this precept is not followed. Edsa I, Edsa II and Edsa III are all public uprisings. Statements urging people to overthrow the government were uttered in all these occasions. Injuries were sustained, policemen were attacked, standing structures were vandalized... in all these scenarios, one cannot be said to be extremely away from the other. The only difference is that the first two succeeded, while the last failed. This should not result to an unbridled or unlimited exercise of power by the duly constituted authorities. It is during these trying times that fealty to the Constitution is strongly demanded from all, especially the authorities concerned.

WHEREFORE, I vote to give DUE COURSE to the petitions and GRANT the same and to enjoin the respondents from arresting the petitioners in G.R. Nos. 147780, 147781, and 147799 without the corresponding warrants.

SO ORDERED.

[1] G.R. Nos. 146710-15; G.R. No. 146738, *Estrada v. Desierto et al.*; Manila Bulletin, March 3, 2001, Vol. 339, No. 3, p. 1, column 3.

[2] Manila Bulletin, April 26, 2001, p. 13.

[3] inq7.net, April 26, 2001, p. 1.

[4] Manila Bulletin, April 26, 2001, p. 14.

[5] inq7.net, April 25, 2001, p. 1.

[6] Manila Bulletin, April 26, 2001, p. 1.

[7] Philippine Daily Inquirer (PDI), April 26, 2001, p. A15.

[8] PDI, April 26, 2001, p. A15.

[9] Manila Bulletin, April 27, 2001, p. 8.

[10] Ibid.

[11] Ibid.

[12] Philippine Daily Inquirer, April 28, 2001, p. 1.

[13] Ibid., April 29, 2001, p. 1.

[14] inq7.net, April 30, 2001, p. 1.

[15] philstar.com, May 1, 2001, p. 2.

[16] inq7.net, May 2, 2001, p.1.

[17] Ibid., pp. 1-2.

[18] Ibid., p. 3.

[19] inq7.net, May 2, 2001, p. 1.

[20] Inq7.net, May 2, 2001, p. 1.

[21] inq7.net, May 2, 2001, p. 1.

[22] inq7.net, May 1, 2001.

[23] inq7.net, May 1, 2001, p. 1.

[24] Section 18, Article VII of the 1987 Constitution.

[25] Smith/Cotter, Powers of the President During Crises, 1972, p. 13.

[26] Bernas, S.J., The 1987 Constitution of the Republic of the Philippines, 1996 Edition, p. 789.

[27] Article III, Section 2, 1987 Constitution.

28(a) Article VII, Section 18 (par. 4), Id.

[28] 187 SCRA 311 (1990).

[29] Reyes, The Revised Penal Code, Book II, Thirteenth Edition, 1993, p. 73.

[30] Ibid., p. 74.

[31] 46 CJS, section 1, p. 1058.

[32] Philippine Daily Inquirer, April 26, 2001, p. A15.

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