

1LT. JULIUS R. NAVALES, 1LT. EMERSON L. MARGATE, 2LT. RYAN H. QUISAI, TSG. ELMER D. COLON, CAPT. JULIUS W. ESPORO, SGT. NOLI FORONDA, SGT. GIL P. LOZADA, SGT. RAYMUND DUMAGO AND...*G.R. No. 162318. October 25, 2004*

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-162318/>**CALLEJO, SR., J.:**

Before the Court are two petitions essentially assailing the jurisdiction of the General Court-Martial to conduct the court-martial proceedings involving several junior officers and enlisted men of the Armed Forces of the Philippines (AFP) charged with violations of the Articles of War (Commonwealth Act No. 408, as amended) in connection with their participation in the take-over of the Oakwood Premier Apartments in Ayala Center, Makati City on July 27, 2003.

In G.R. No. 162341, Roberto Rafael Pulido, a lawyer, filed with this Court a Petition for Habeas Corpus seeking the release of his clients, junior officers and enlisted men of the AFP, who are allegedly being unlawfully detained by virtue of the Commitment Order^[1] dated August 2, 2003 issued by General Narciso L. Abaya, Chief of Staff of the AFP, pursuant to Article 70 of the Articles of War. Under the said commitment order, all the Major Service Commanders and the Chief of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) were directed to take custodial responsibility of all the “military personnel involved in the 27 July 2003 mutiny” belonging to their respective commands. This included all the junior officers and enlisted men (hereinafter referred to as Capt. Reaso,^[2] et al.) who are subject of the instant petition for habeas corpus. The commitment order, however, expressly stated that LtSG. Antonio F. Trillanes, LtSG. James A. Layug, Capt. Garry C. Alejano, Capt. Milo D. Maestrecampo, Capt. Gerardo O. Gambala, and Capt. Nicanor E. Faeldon would remain under the custody of the Chief of the ISAFP.^[3]

In G.R. No. 162318, the petitioners (hereinafter referred to as 1Lt. Navales, et al.), seven of the detained junior officers and enlisted men, filed with this Court a Petition for Prohibition under Rule 65 of the Rules of Court seeking to enjoin the General Court-Martial from proceeding with the trial of the petitioners and their co-accused for alleged violations of the Articles of War.

Named as respondents in the two petitions are General Narciso Abaya who, as Chief of Staff of the AFP, exercises command and control over all the members and agencies of the AFP, and Brigadier General Mariano Sarmiento, Jr., the Judge Advocate General of the AFP and officer in command of the Judge Advocate General Office (JAGO), the agency of the AFP tasked to conduct the court-martial proceedings.

Background^[4]

At past 1:00 a.m. of July 27, 2003, more than three hundred junior officers and enlisted men, mostly from the elite units of the AFP – the Philippine Army’s Scout Rangers and the Philippine Navy’s Special Warfare Group (SWAG) – quietly entered the premises of the Ayala Center in Makati City. They disarmed the security guards and took over the Oakwood Premier Apartments (Oakwood). They planted explosives around the building and in

its vicinity. Snipers were posted at the Oakwood roof deck.

The soldiers, mostly in full battle gear and wearing red arm bands, were led by a small number of junior officers, widely known as the Magdalo Group. The leaders were later identified as including Navy LtSG. Antonio Trillanes IV, Army Capt. Gerardo Gambala, Army Capt. Milo Maestrecampo, Navy LtSG. James Layug, and Marine Capt. Gary Alejano.

Between 4:00 to 5:00 a.m., the soldiers were able to issue a public statement through the ABS-CBN News (ANC) network. They claimed that they went to Oakwood to air their grievances against the administration of President Gloria Macapagal Arroyo. Among those grievances were: the graft and corruption in the military, the sale of arms and ammunition to the “enemies” of the State, the bombings in Davao City which were allegedly ordered by Brig. Gen. Victor Corpus, Chief of the ISAFP, in order to obtain more military assistance from the United States government, and the “micro-management” in the AFP by then Department of National Defense (DND) Secretary Angelo Reyes. They declared their withdrawal of support from the chain of command and demanded the resignation of key civilian and military leaders of the Arroyo administration.

Around 9:00 a.m., Pres. Arroyo gave the soldiers until 5:00 p.m. to give up their positions peacefully and return to barracks. At about 1:00 p.m., she declared the existence of a “state of rebellion” and issued an order to use reasonable force in putting down the rebellion. A few hours later, the soldiers again went on television reiterating their grievances. The deadline was extended twice, initially to 7:00 p.m., and later, indefinitely.

In the meantime, a series of negotiations ensued between the soldiers and the Government team led by Ambassador Roy Cimatú. An agreement was forged between the two groups at 9:30 p.m. Shortly thereafter, Pres. Arroyo announced that the occupation of Oakwood was over. The soldiers agreed to return to barracks and were out of the Oakwood premises by 11:00 p.m.

The Filing of Charges

Under the Information[5] dated August 1, 2003 filed with the Regional Trial Court (RTC) of Makati City, the Department of Justice (DOJ) charged 321 of those soldiers who took part in the “Oakwood Incident” with violation of Article 134-A (coup d’etat) of the Revised Penal Code.[6] Among those charged were petitioners 1Lt. Navales, et al. (G.R. No. 162318) and those who are subject of the petition for habeas corpus Capt. Reaso, et al. (G.R. No. 162341). The case, entitled *People v. Capt. Milo Maestrecampo, et al.*, was docketed as Criminal Case No. 03-2784 and raffled to Branch 61 presided by Judge Romeo F. Barza.

On September 12, 2003, several (243 in number) of the accused in Criminal Case No. 03-2784 filed with the RTC (Branch 61) an Omnibus Motion praying that the trial court:

- [A]ssume jurisdiction over all the charges filed before the military tribunal in accordance with Republic Act No. 7055; and
- Order the prosecution to present evidence to establish probable cause against 316 of the 321 accused and, should the prosecution fail to do so, dismiss the case as against the 316 other accused.[7]

While the said motion was pending resolution, the DOJ issued the Resolution dated October 20, 2003 finding probable cause for coup d’etat[8] against only 31 of the original 321 accused and dismissing the charges against the other 290 for insufficiency of evidence.

Thus, upon the instance of the prosecution, the RTC (Branch 61), in its Order[9] dated November 14, 2003, admitted the Amended Information[10] dated October 30, 2003 charging only 31 of the original accused with the crime of coup d’etat defined under Article 134-A of the Revised Penal Code.[11] Only the following were

charged under the Amended Information: CPT. MILO D. MAESTRECAMPO, LTSG. ANTONIO F. TRILLANES IV, CPT. GARY C. ALEJANO, LTSG. JAMES A. LAYUG, CPT. LAURENCE LUIS B. SOMERA, CPT. GERARDO O. GAMBALA, CPT. NICANOR FAELDON, CPT. ALBERT T. BALOLOY, CPT. SEGUNDINO P. ORFIANO, JR., CPT. JOHN P. ANDRES, CPT. ALVIN H. EBREO, 1LT. FLORENTINO B. SOMERA, 1LT. CLEO B. DUNGGA-AS, 1LT. SONNY S. SARMIENTO, 1LT. AUDIE S. TOCLOY, 1LT. VON RIO TAYAB, 1LT. REX C. BOLO, 1LT. LAURENCE R. SAN JUAN, 1LT. WARREN LEE G. DAGUPON, 1LT. NATHANIEL N. RABONZA, 2LT. KRISTOFFER BRYAN M. YASAY, 1LT. JONNEL P. SANGGALANG, 1LT. BILLY S. PASCUA, 1LT. FRANCISCO ACEDILLO, LTSG. MANUEL G. CABOCHAN, LTSG. EUGENE LOUIE GONZALES, LTSG. ANDY G. TORRATO, LTJG. ARTURO S. PASCUA, JR., ENS. ARMAND PONTEJOS, PO3 JULIUS J. MESA, PO3 CESAR GONZALES, and several JOHN DOES and JANE DOES. Further, the said Order expressly stated that the case against the other 290 accused, including petitioners 1Lt. Navales, et al. and those who are subject of the petition for habeas corpus, Capt. Reaso, et al., was dismissed. In another Order dated November 18, 2003, the RTC (Branch 61) issued commitment orders against those 31 accused charged under the Amended Information and set their arraignment.

Meanwhile, 1Lt. Navales, et al. and Capt. Reaso, et al., who were earlier dropped as accused in Criminal Case No. 03-2784, were charged before the General Court-Martial with violations of the Articles of War (AW), particularly: AW 67 (Mutiny), AW 97 (Conduct Prejudicial to Good Order and Military Discipline), AW 96 (Conduct Unbecoming an Officer and a Gentleman), AW 63 (Disrespect to the President, the Secretary of Defense, etc.) and AW 64 (Disrespect Towards Superior Officer).[12] On the other hand, Capt. Maestrecampo and the 30 others who remained charged under the Amended Information were not included in the charge sheets for violations of the Articles of War.

Thereafter, Criminal Case No. 03-2784 was consolidated with Criminal Case No. 03-2678, entitled *People v. Ramon Cardenas*, pending before Branch 148 of the RTC of Makati City, presided by Judge Oscar B. Pimentel.

On February 11, 2004, acting on the earlier Omnibus Motion filed by the 243 of the original accused under the Information dated August 1, 2003, the RTC (Branch 148) issued an Order, the dispositive portion of which reads:

WHEREFORE, premises considered, in view of the Orders dated November 14 and 18, 2003 of Judge Romeo Barza, the Omnibus Motion to: 1) Assume jurisdiction over all charges filed before the Military Courts in accordance with R.A. 7055; and 2) Implement the August 7, 2003 Order of the Court requiring the prosecution to produce evidence to establish probable cause are hereby considered MOOT AND ACADEMIC and, lastly, all charges before the court-martial against the accused (those included in the Order of November 18, 2003) as well as those former accused (those included in the Order of November 14, 2003) are hereby declared not service-connected, but rather absorbed and in furtherance to the alleged crime of coup d'état.[13]

In the Notice of Hearing dated March 1, 2004, the General Court-Martial set on March 16, 2004 the arraignment/trial of those charged with violations of the Articles of War in connection with the July 27, 2003 Oakwood Incident.

The present petitions were then filed with this Court. Acting on the prayer for the issuance of temporary restraining order in the petition for prohibition in G.R. No. 162318, this Court, in the Resolution dated March 16, 2004, directed the parties to observe the status quo prevailing before the filing of the petition.[14]

The Petitioners' Case

In support of the petitions for prohibition and for habeas corpus, the petitioners advance the following arguments:

- UNDER REPUBLIC ACT NO. 7055, THE RESPONDENTS AND THE GENERAL COURT-MARTIAL ARE WITHOUT ANY JURISDICTION TO FURTHER CONDUCT PROCEEDINGS AGAINST THE

PETITIONERS AND THEIR COLLEAGUES BECAUSE THE REGIONAL TRIAL COURT HAS ALREADY DETERMINED THAT THE OFFENSES ARE NOT SERVICE-RELATED AND ARE PROPERLY WITHIN THE JURISDICTION OF THE CIVILIAN COURTS;[15] and

- THE RESPONDENTS HAVE NO AUTHORITY TO FURTHER DETAIN THE JUNIOR OFFICERS AND ENLISTED MEN AS THE CHARGES FOR COUP D'ETAT BEFORE THE REGIONAL TRIAL COURT HAVE BEEN DISMISSED FOR LACK OF EVIDENCE UPON MOTION OF THE DEPARTMENT OF JUSTICE.[16]

Citing Section 1[17] of Republic Act No. 7055,[18] the petitioners theorize that since the RTC (Branch 148), in its Order dated February 11, 2004, already declared that the offenses for which all the accused were charged were not service-connected, but absorbed and in furtherance of the crime of coup d'etat, the General Court-Martial no longer has jurisdiction over them. As such, respondents Gen. Abaya and the JAGO have no authority to constitute the General Court-Martial, to charge and prosecute the petitioners and their co-accused for violations of the Articles of War in connection with the July 27, 2003 Oakwood Incident. The petitioners posit that, as a corollary, there is no longer any basis for their continued detention under the Commitment Order dated August 2, 2003 issued by Gen. Abaya considering that the charge against them for coup d'etat had already been dismissed.

In G.R. No. 162318, the petitioners pray that the respondents be enjoined from constituting the General Court-Martial and from further proceeding with the court-martial of the petitioners and their co-accused for violations of the Articles of War in connection with the Oakwood Incident of July 27, 2003. In G.R. No. 162341, the petitioner prays that the respondents be ordered to explain why the detained junior officers and enlisted men subject of the petition for habeas corpus should not be released without delay.

The Respondents' Arguments

The respondents, through the Office of the Solicitor General, urge the Court to dismiss the petitions. The respondents contend that the Order dated February 11, 2004 promulgated by the RTC (Branch 148), insofar as it resolved the Omnibus Motion and declared that the charges against all the accused, including those excluded in the Amended Information, were not service-connected, is null and void. They aver that at the time that the said motion was resolved, petitioners 1Lt. Navales, et al. and Capt. Reaso, et al. (as movants therein) were no longer parties in Criminal Case No. 03-2784 as the charge against them was already dismissed by the RTC (Branch 61) in the Order dated November 14, 2003. Thus, 1Lt. Navales, et al. and Capt. Reaso, et al. no longer had any personality to pursue the Omnibus Motion since one who has no right or interest to protect cannot invoke the jurisdiction of the court. In other words, the petitioners were not "real parties in interest" at the time that their Omnibus Motion was resolved by the RTC (Branch 148).

The respondents further claim denial of due process as they were not given an opportunity to oppose or comment on the Omnibus Motion. Worse, they were not even given a copy of the Order dated February 11, 2004. As such, the same cannot be enforced against the respondents, especially because they were not parties to Criminal Case No. 03-2784.

The respondents, likewise, point out a seeming ambiguity in the February 11, 2004 Order as it declared, on one hand, that the charges filed before the court-martial were not service-connected, but on the other hand, it ruled that the Omnibus Motion was moot and academic. According to the respondents, these two pronouncements cannot stand side by side. If the Omnibus Motion was already moot and academic, because the accused who filed the same were no longer being charged with coup d'etat under the Amended Information, then the trial court did not have any authority to further resolve and grant the same Omnibus Motion.

The respondents maintain that since 1Lt. Navales, et al. and Capt. Reaso, et al. were not being charged with coup

d'état under the Amended Information, the trial court could not make a finding that the charges filed against them before the General Court-Martial were in furtherance of coup d'état. For this reason, the declaration contained in the dispositive portion of the February 11, 2004 Order - that charges filed against the accused before the court-martial were not service-connected -cannot be given effect.

Similarly invoking Section 1 of Rep. Act No. 7055, the respondents vigorously assert that the charges against 1Lt. Navales, et al. and Capt. Reaso, et al. filed with the General Court-Martial, i.e., violations of the Articles of War 63, 64, 67, 96 and 97, are, in fact, among those declared to be service-connected under the second paragraph of this provision. This means that the civil court cannot exercise jurisdiction over the said offenses, the same being properly cognizable by the General Court-Martial. Thus, the RTC (Branch 148) acted without or in excess of jurisdiction when it declared in its February 11, 2004 Order that the charges against those accused before the General Court-Martial were not service-connected, but absorbed and in furtherance of the crime of coup d'état. Said pronouncement is allegedly null and void.

The respondents denounce the petitioners for their forum shopping. Apparently, a similar petition (petition for habeas corpus, prohibition with injunction and prayer for issuance of a temporary restraining order) had been filed by the petitioners' co-accused with the Court of Appeals, docketed as CA-G.R. SP No. 82695. The case was resolved against the petitioners therein.

The respondents pray that the petitions be dismissed for lack of merit.

Issue

The sole issue that needs to be resolved is whether or not the petitioners are entitled to the writs of prohibition and habeas corpus.

The Court's Ruling

We rule in the negative.

We agree with the respondents that the sweeping declaration made by the RTC (Branch 148) in the dispositive portion of its Order dated February 11, 2004 that all charges before the court-martial against the accused were not service-connected, but absorbed and in furtherance of the crime of coup d'état, cannot be given effect. For reasons which shall be discussed shortly, such declaration was made without or in excess of jurisdiction; hence, a nullity.

The trial court's declaration was made when the Omnibus Motion had already been rendered moot and academic with respect to 1Lt. Navales, et al. and Capt. Reaso, et al. by reason of the dismissal of the charge of coup d'état against them

The Order dated February 11, 2004 was issued purportedly to resolve the Omnibus Motion, which prayed for the trial court to, inter alia, acquire jurisdiction over all the charges filed before the military courts in accordance with Rep. Act No. 7055. The said Omnibus Motion was filed on September 12, 2003 by 243 of the original accused under the Information dated August 1, 2003. However, this information was subsequently superseded by the Amended Information dated October 20, 2003 under which only 31 were charged with the crime of coup d'état.

In the November 14, 2003 Order of the RTC (Branch 61), the Amended Information was admitted and the case against the 290 accused, including 1Lt. Navales, et al. and Capt. Reaso, et al., was dismissed. The said Order became final and executory since no motion for reconsideration thereof had been filed by any of the parties.

Thus, when the RTC (Branch 148) eventually resolved the Omnibus Motion on February 11, 2004, the said motion had already been rendered moot by the November 14, 2003 Order of the RTC (Branch 61) admitting the Amended Information under which only 31 of the accused were charged and dismissing the case as against the other 290. It had become moot with respect to those whose charge against them was dismissed, including 1Lt. Navales, et al. and Capt. Reaso, et al., because they were no longer parties to the case. This was conceded by the RTC (Branch 148) itself as it stated in the body of its February 11, 2004 Order that:

Now, after going over the records of the case, the Court is of the view that the movants' first concern in their omnibus motion, i.e., assume jurisdiction over all charges filed before military courts in accordance with R.A. 7055, has been rendered moot and academic by virtue of the Order dated November 14, 2003 dismissing the case against TSg. Leonel M. Alnas, TSg. Ramon B. Norico, SSg. Eduardo G. Cedenio, et al. and finding probable cause in the Order dated November 18, 2003 against accused Cpt. Milo D. Maestrecampo, LtSg. Antonio F. Trillanes IV, et al., issued by Judge Barza.

In view of the Order of Judge Barza dated November 14, 2003 dismissing the case against aforesaid accused, the Court, therefore, can no longer assume jurisdiction over all charges filed before the military courts and this Court cannot undo nor reverse the Order of November 14, 2003 of Judge Barza, there being no motion filed by the prosecution to reconsider the order or by any of the accused.[19]

Accordingly, in the dispositive portion of the said Order, the RTC (Branch 148) held that the Omnibus Motion was considered "moot and academic." And yet, in the same dispositive portion, the RTC (Branch 148) still proceeded to declare in the last clause thereof that "all the charges before the court-martial against the accused (those included in the Order of November 18, 2003) as well as those former accused (those included in the Order of November 14, 2003) are hereby declared not service-connected," on its perception that the crimes defined in and penalized by the Articles of War were committed in furtherance of coup d'etat; hence, absorbed by the latter crime.

As earlier explained, insofar as those whose case against them was dismissed, there was nothing else left to resolve after the Omnibus Motion was considered moot and academic. Indeed, as they were no longer parties to the case, no further relief could be granted to them. 1Lt. Navales, et al. and Capt. Reaso, et al. could be properly considered as strangers to the proceedings in Criminal Case No. 03-2784. And in the same manner that strangers to a case are not bound by any judgment rendered by the court,[20] any rulings made by the trial court in Criminal Case No. 03-2784 are no longer binding on 1Lt. Navales, et al. and Capt. Reaso, et al. The RTC (Branch 148) itself recognized this as it made the statement, quoted earlier, that "in view of the Order of Judge Barza dated November 14, 2003 dismissing the case against aforesaid accused, the Court, therefore, can no longer assume jurisdiction over all charges filed before the military courts and this Court cannot undo nor reverse the Order of November 14, 2003 of Judge Barza there being no motion filed by the prosecution to reconsider the order or by any of the accused." [21]

Thus, 1Lt. Navales, et al. and Capt. Reaso, et al., who are no longer charged with coup d'etat, cannot find solace in the declaration of the RTC (Branch 148) that the charges filed before the General Court-Martial against them were not service-connected. The same is a superfluity and cannot be given effect for having been made by the RTC (Branch 148) without or in excess of its jurisdiction.

Such declaration was made by the
RTC (Branch 148) in violation of

Section 1, Republic Act No. 7055

Section 1 of Rep. Act No. 7055 reads in full:

Section 1. Members of the Armed Forces of the Philippines and other persons subject to military law, including members of the Citizens Armed Forces Geographical Units, who commit crimes or offenses penalized under the Revised Penal Code, other special penal laws, or local government ordinances, regardless of whether or not civilians are co-accused, victims, or offended parties which may be natural or juridical persons, shall be tried by the proper civil court, except when the offense, as determined before arraignment by the civil court, is service-connected, in which case the offense shall be tried by court-martial: Provided, That the President of the Philippines may, in the interest of justice, order or direct at any time before arraignment that any such crimes or offenses be tried by the proper civil courts.

As used in this Section, service-connected crimes or offenses shall be limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended.

In imposing the penalty for such crimes or offenses, the court-martial may take into consideration the penalty prescribed therefor in the Revised Penal Code, other special laws, or local government ordinances.

The second paragraph of the above provision explicitly specifies what are considered “service-connected crimes or offenses” under Commonwealth Act No. 408 (CA 408), as amended, also known as the Articles of War, to wit:

Articles 54 to 70:

- Art. 54. Fraudulent Enlistment.
- Art. 55. Officer Making Unlawful Enlistment.
- Art. 56. False Muster.
- Art. 57. False Returns.
- Art. 58. Certain Acts to Constitute Desertion.
- Art. 59. Desertion.
- Art. 60. Advising or Aiding Another to Desert.
- Art. 61. Entertaining a Deserter.
- Art. 62. Absence Without Leave.
- Art. 63. Disrespect Toward the President, Vice-President, Congress of the Philippines, or Secretary of National Defense.
- Art. 64. Disrespect Toward Superior Officer.
- Art. 65. Assaulting or Willfully Disobeying Superior Officer.
- Art. 66. Insubordinate Conduct Toward Non-Commissioned Officer.
- Art. 67. Mutiny or Sedition.
- Art. 68. Failure to Suppress Mutiny or Sedition.
- Art. 69. Quarrels; Frays; Disorders.
- Art. 70. Arrest or Confinement.

Articles 72 to 92

- Art. 72. Refusal to Receive and Keep Prisoners.
- Art. 73. Report of Prisoners Received.
- Art. 74. Releasing Prisoner Without Authority.
- Art. 75. Delivery of Offenders to Civil Authorities.
- Art. 76. Misbehavior Before the Enemy.
- Art. 77. Subordinates Compelling Commander to Surrender.
- Art. 78. Improper Use of Countersign.
- Art. 79. Forcing a Safeguard.

- Art. 80. Captured Property to be Secured for Public Service.
- Art. 81. Dealing in Captured or Abandoned Property.
- Art. 82. Relieving, Corresponding With, or Aiding the Enemy.
- Art. 83. Spies.
- Art. 84. Military Property. – Willful or Negligent Loss, Damage or Wrongful Disposition.
- Art. 85. Waste or Unlawful Disposition of Military Property Issued to Soldiers.
- Art. 86. Drunk on Duty.
- Art. 87. Misbehavior of Sentinel.
- Art. 88. Personal Interest in Sale of Provisions.
- Art. 88-A. Unlawfully Influencing Action of Court.
- Art. 89. Intimidation of Persons Bringing Provisions.
- Art. 90. Good Order to be Maintained and Wrongs Redressed.
- Art. 91. Provoking Speeches or Gestures.
- Art. 92. Dueling.

Articles 95 to 97:

- Art. 95. Frauds Against the Government.
- Art. 96. Conduct Unbecoming an Officer and Gentleman.
- Art. 97 General Article.

Further, Section 1 of Rep. Act No. 7055 vests on the military courts the jurisdiction over the foregoing offenses. The following deliberations in the Senate on Senate Bill No. 1468, which, upon consolidation with House Bill No. 31130, subsequently became Rep. Act No. 7055, are instructive:

Senator Shahani. I would like to propose an addition to Section 1, but this will have to be on page 2. This will be in line 5, which should be another paragraph, but still within Section 1. This is to propose a definition of what “service-connected” means, because this appears on line 8. My proposal is the following:

“SERVICE-CONNECTED OFFENSES SHALL MEAN THOSE COMMITTED BY MILITARY PERSONNEL PURSUANT TO THE LAWFUL ORDER OF THEIR SUPERIOR OFFICER OR WITHIN THE CONTEXT OF A VALID MILITARY EXERCISE OR MISSION.”

I believe this amendment seeks to avoid any confusion as to what “service-connected offense” means. Please note that “service-connected offense,” under this bill, remains within the jurisdiction of military tribunals.

So, I think that is an important distinction, Mr. President.

Senator Tañada. Yes, Mr. President. I would just want to propose to the Sponsor of this amendment to consider, perhaps, defining what this service-related offenses would be under the Articles of War. And so, I would submit for her consideration the following amendment to her amendment which would read as follows: AS USED IN THIS SECTION, SERVICE-CONNECTED CRIMES OR OFFENSES SHALL BE LIMITED TO THOSE DEFINED IN ARTICLES 54 TO 70, ARTICLES 72 TO 75, ARTICLES 76 TO 83 AND ARTICLES 84 TO 92, AND ARTICLES 95 TO 97, COMMONWEALTH ACT NO. 408 AS AMENDED.

This would identify, I mean, specifically, what these service-related or connected offenses or crimes would be.

The President. What will happen to the definition of “service-connected offense” already put forward by Senator Shahani?

Senator Tañada. I believe that would be incorporated in the specification of the Article I have mentioned in the Articles of War.

SUSPENSION OF THE SESSION

The President. Will the Gentleman kindly try to work it out between the two of you? I will suspend the session for a minute, if there is no objection. [There was none.]

It was 5:02 p.m.

RESUMPTION OF THE SESSION

At 5:06 p.m., the session was resumed.

The President. The session is resumed.

Senator Tañada. Mr. President, Senator Shahani has graciously accepted my amendment to her amendment, subject to refinement and style.

The President. Is there any objection? [Silence] There being none, the amendment is approved.[22]

In the same session, Senator Wigberto E. Tañada, the principal sponsor of SB No. 1468, emphasized:

Senator Tañada. Section 1, already provides that crimes of offenses committed by persons subject to military law ... will be tried by the civil courts, except, those which are service-related or connected. And we specified which would be considered service-related or connected under the Articles of War, Commonwealth Act No. 408.[23]

It is clear from the foregoing that Rep. Act No. 7055 did not divest the military courts of jurisdiction to try cases involving violations of Articles 54 to 70, Articles 72 to 92 and Articles 95 to 97 of the Articles of War as these are considered “service-connected crimes or offenses.” In fact, it mandates that these shall be tried by the court-martial.

Indeed, jurisdiction is the power and authority of the court to hear, try and decide a case.[24] Moreover, jurisdiction over the subject matter or nature of the action is conferred only by the Constitution or by law.[25] It cannot be (1) granted by the agreement of the parties; (2) acquired, waived, enlarged or diminished by any act or omission of the parties; or (3) conferred by the acquiescence of the courts.[26] Once vested by law on a particular court or body, the jurisdiction over the subject matter or nature of the action cannot be dislodged by any body other than by the legislature through the enactment of a law. The power to change the jurisdiction of the courts is a matter of legislative enactment which none but the legislature may do. Congress has the sole power to define, prescribe and apportion the jurisdiction of the courts.[27]

In view of the clear mandate of Rep. Act No. 7055, the RTC (Branch 148) cannot divest the General Court-Martial of its jurisdiction over those charged with violations of Articles 63 (Disrespect Toward the President etc.), 64 (Disrespect Toward Superior Officer), 67 (Mutiny or Sedition), 96 (Conduct Unbecoming an Officer and a Gentleman) and 97 (General Article) of the Articles of War, as these are specifically included as “service-connected offenses or crimes” under Section 1 thereof. Pursuant to the same provision of law, the military courts have jurisdiction over these crimes or offenses.

There was no factual and legal basis for the RTC (Branch 148) to rule that violations of Articles 63, 64, 67, 96, and 97 of the Articles of War were committed in furtherance of coup d’etat and, as such, absorbed by the latter crime. It bears stressing that, after a reinvestigation, the Panel of Prosecutors found no probable cause for coup d’etat against the petitioners and recommended the dismissal of the case against them. The trial court approved the recommendation and dismissed the case as against the petitioners. There is, as yet, no evidence on record that the petitioners committed the violations of Articles 63, 64, 96, and 97 of the Articles of War in furtherance of coup d’etat.

In fine, in making the sweeping declaration that these charges were not service-connected, but rather absorbed and

in furtherance of the crime of coup d'état, the RTC (Branch 148) acted without or in excess of jurisdiction. Such declaration is, in legal contemplation, necessarily null and void and does not exist.[28]

At this point, a review of its legislative history would put in better perspective the *raison d'être* of Rep. Act No. 7055. As early as 1938, jurisdiction over offenses punishable under CA 408, as amended, also known as the Articles of War, committed by "persons subject to military law" was vested on the military courts. Thereafter, then President Ferdinand E. Marcos promulgated Presidential Decree (PD) Nos. 1822,[29] 1850[30] and 1852.[31] These presidential decrees transferred from the civil courts to the military courts jurisdiction over all offenses committed by members of the AFP, the former Philippine Constabulary, the former Integrated National Police, including firemen, jail guards and all persons subject to military law.

In 1991, after a series of failed coup d'états, Rep. Act No. 7055 was enacted. In his sponsorship speech, Senator Tañada explained the intendment of the law, thus:

Senator Tañada. The long and horrible nightmare of the past continues to haunt us to this present day. Its vestiges remain instituted in our legal and judicial system. Draconian decrees which served to prolong the past dictatorial regime subsist to rule our new-found lives. Two of these decrees, Presidential Decree No. 1822 and Presidential Decree No. 1850, as amended, remain intact as laws, in spite of the fact that four years have passed since we regained our democratic freedom.

The late Mr. Chief Justice Claudio Teehankee enunciated in the case of *Olague vs. Military Commission* No. 34 that "the greatest threat to freedom is the shortness of human memory."

PD No. 1822 and PD No. 1850 made all offenses committed by members of the Armed Forces of the Philippines, the Philippine Constabulary, the Integrated National Police, including firemen and jail guards, and all persons subject to military law exclusively triable by military courts though, clearly, jurisdiction over common crimes rightly belongs to civil courts.

Article II, Section 3 of the 1987 Constitution provides that civilian authority is, at all times, supreme over the military. Likewise, Article VIII, Section 1 declares that "the judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law."

In the case of *Anima vs. The Minister of National Defense*, (146 Supreme Court Reports Annotated, page 406), the Supreme Court through Mr. Justice Gutierrez declared:

The jurisdiction given to military tribunals over common crimes at a time when all civil courts were fully operational and freely functioning constitutes one of the saddest chapters in the history of the Philippine Judiciary.

The downgrading of judicial prestige caused by the glorification of military tribunals ... the many judicial problems spawned by extended authoritarian rule which effectively eroded judicial independence and self-respect will require plenty of time and determined efforts to cure.

The immediate return to civil courts of all cases which properly belong to them is only a beginning.

...

Thus, as long as the civil courts in the land remain open and are regularly functioning, military tribunals cannot try and exercise jurisdiction over military men for criminal offenses committed by them which are properly cognizable by the civil courts. ...[32]

Clearly, in enacting Rep. Act No. 7055, the lawmakers merely intended to return to the civilian courts the jurisdiction over those offenses that have been traditionally within their jurisdiction, but did not divest the military courts jurisdiction over cases mandated by the Articles of War.

Conclusion

The writs of prohibition (G.R. No. 162318) and habeas corpus (G.R. No. 162341) prayed for by the petitioners must perforce fail. As a general rule, the writ of habeas corpus will not issue where the person alleged to be restrained of his liberty is in the custody of an officer under a process issued by the court which has jurisdiction to do so.[33] Further, the writ of habeas corpus should not be allowed after the party sought to be released had been charged before any court or quasi-judicial body.[34] The term “court” necessarily includes the General Court-Martial. These rules apply to Capt. Reaso, et al., as they are under detention pursuant to the Commitment Order dated August 2, 2003 issued by respondent Chief of Staff of the AFP pursuant to Article 70[35] of the Articles of War.

On the other hand, the office of the writ of prohibition is to prevent inferior courts, corporations, boards or persons from usurping or exercising a jurisdiction or power with which they have not been vested by law.[36] As earlier discussed, the General Court-Martial has jurisdiction over the charges filed against petitioners 1Lt. Navales, et al. under Rep. Act No. 7055. A writ of prohibition cannot be issued to prevent it from exercising its jurisdiction.

WHEREFORE, premises considered, the petitions are hereby DISMISSED.

SO ORDERED.

Davide, Jr. C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Azcuna, J., on leave.

[1] Rollo, p. 18. (G.R. No. 162341)

[2] On August 19, 2004, Capt. Ruperto L. Reaso filed with this Court a Motion to Withdraw as One of the Petitioners in G.R. No. 162341 and prayed that the law office of Atty. Pulido be enjoined from representing him.

[3] Rollo, p. 18. (G.R. No. 162341)

[4] The narration of the events that transpired on July 27, 2003 is largely taken from THE REPORT OF THE FACT-FINDING COMMISSION dated October 15, 2003. The Fact-Finding Commission, headed by Retired Senior Associate Justice Florentino P. Feliciano, was created under Administrative Order No. 78 dated July 30, 2003 of President Gloria Macapagal-Arroyo to investigate the “Oakwood Incident.”

[5] Rollo, pp. 18-29. (G.R. No. 162318)

[6] The accusatory portion reads:

That on or about July 27, 2003 or on dates prior and subsequent thereto, in Makati City, a place within the jurisdiction of this Honorable Court, above-named accused, all officers and enlisted men of the Armed Forces of the Philippines (AFP), conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully, feloniously and swiftly attack and seize by means of intimidation, threat, strategy, or stealth the Ayala Center, particularly Oakwood Premier Hotel and its immediate vicinity, a facility needed for the exercise and continued possession of power, and directed against the duly constituted authorities of the Republic of the Philippines, rise publicly and take arms against the Government of the Republic of the Philippines, demanding the resignation of the President and members of her official cabinet and top officials of the AFP and Philippine National Police, for the purpose of seizing and diminishing state power.

CONTRARY TO LAW.

[7] Rollo, p. 100. (G.R. No. 162318)

[8] ART. 134-A. Coup d'etat – How committed. – The crime of coup d'etat is a swift attack, accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications networks, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office or employment, with or without civilian support or participation, for the purpose of seizing or diminishing state power. (As added by RA No. 6968, 86 OG 52, p. 9864 [1990].)

[9] Rollo, pp. 63-66. (G.R. No. 162318)

[10] Id. at 57-62.

[11] The accusatory portion reads:

That on or about July 27, 2003, and on dates prior and subsequent thereto, in Makati City, a place within the jurisdiction of this Honorable Court, above-named accused, all officers and enlisted men of the Armed Forces of the Philippines (AFP), together with several John Does and Jane Does, conspiring, conniving, confederating and mutually helping one another, each committing individual acts toward a common design or purpose of committing coup d'etat, by did then and there, knowingly, willfully, unlawfully, feloniously plan, orchestrate, recruit, instigate, mobilize, deploy and execute said common design or purpose of committing coup d'etat, swiftly attack and seize by means of force, intimidation, threat, strategy, or stealth the facilities of the Ayala Center, particularly Oakwood Premier Hotel and its immediate vicinity, for the exercise and continued possession of power, directed against the duly constituted authorities of the Republic of the Philippines, by did then and there, withdraw support and demand the resignation of PRESIDENT GLORIA MACAPAGAL-ARROYO and members of her official cabinet and top officials of the AFP and the Philippine National Police, for the purpose of seizing or diminishing state power.

CONTRARY TO LAW.

[12] Rollo, pp. 31-51. (G.R. No. 162318)

[13] Id. at 70.

[14] Id. at 72.

[15] Petition in G.R. No. 162318, p. 7; Petition in G.R. 162341, p. 11.

[16] Petition in G.R. No. 162341, p. 13.

[17] *Infra*.

[18] An Act to Strengthen Civilian Supremacy Over the Military by Returning to the Civil Courts the Jurisdiction Over Certain Offense Involving Members of the Armed Forces of the Philippines, Other Persons Subject to Military Law, and the Members of the Philippine National Police, Repealing for the Purpose Certain Presidential Decrees.

[19] Rollo, pp. 68-69. (G.R. No. 162318)

[20] *Orquiola v. Court of Appeals*, 386 SCRA 301 (2002).

[21] *Supra* at 19.

[22] Record of the Senate, Vol. IV, No. 122, May 21, 1990, p. 837.

[23] *Id.* at 839.

[24] *Platinum Tours and Travel, Inc. v. Panlilio*, 411 SCRA 142 (2003).

[25] *Republic v. Estipular*, 336 SCRA 333 (2000).

[26] *Ibid.*

[27] *Zamora v. Court of Appeals*, 183 SCRA 279 (1990).

[28] See *People v. Velasco*, 340 SCRA 207 (2000).

[29] Providing for the Trial by Courts-Martial of Members of the Armed Forces Charged with Offenses Related to the Performance of their Duties (January 16, 1981).

[30] Providing for the Trial by Courts-Martial of Members of the Integrated National Police and Further Defining the Jurisdiction of Courts-Martial over Members of the Armed Forces of the Philippines (October 4, 1982).

[31] Amending Section 1 of P.D. No. 1850 (September 5, 1984).

[32] Record of the Senate, Vol. IV, No. 116, May 9, 1990, pp. 670-671.

[33] *Serapio v. Sandiganbayan*, 396 SCRA 443 (2003).

[34] *Rodriguez v. Bonifacio*, 344 SCRA 519 (2000).

[35] The provision reads:

Art. 70. Arrest or Confinement. – Any person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require; but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer or cadet who breaks his arrest or who escapes from confinement, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be dismissed from the service or suffer such other punishment as a court-martial may direct, and any other person subject of the military law who escapes from confinement or who breaks his arrest, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court-martial may direct.

[36] *Matuguina Integrated Wood Products, Inc. v. Court of Appeals*, 263 SCRA 490 (1996).

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