

IN THE MATTER OF THE PETITION FOR ISSUANCE OF WRIT OF HABEAS CORPUS OF CAMILO L. SABIO, PETITIONER, J. ERMIN ERNEST LOUIE R. MIGUEL, PETITIONER-RELATOR, VS. HONORABLE SENATOR RI...

G.R. NO. 174340. October 17, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Two decades ago, on February 28, 1986, former President Corazon C. Aquino installed her regime by issuing Executive Order (E.O.) No. 1,[1] creating the Presidential Commission on Good Government (PCGG). She entrusted upon this Commission the herculean task of recovering the ill-gotten wealth accumulated by the deposed President Ferdinand E. Marcos, his family, relatives, subordinates and close associates.[2] Section 4 (b) of E.O. No. 1 provides that: "No member or staff of the Commission shall be required to testify or produce evidence in any judicial, legislative or administrative proceeding concerning matters within its official cognizance." Apparently, the purpose is to ensure PCGG's unhampered performance of its task.[3]

Today, the constitutionality of Section 4(b) is being questioned on the ground that it tramples upon the Senate's power to conduct legislative inquiry under Article VI, Section 21 of the 1987 Constitution, which reads:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

The facts are undisputed.

On February 20, 2006, Senator Miriam Defensor Santiago introduced Philippine Senate Resolution No. 455 (Senate Res. No. 455),[4] "directing an inquiry in aid of legislation on the anomalous losses incurred by the Philippines Overseas Telecommunications Corporation (POTC), Philippine Communications Satellite Corporation (PHILCOMSAT), and PHILCOMSAT Holdings Corporation (PHC) due to the alleged improprieties in their operations by their respective Board of Directors."

The pertinent portions of the Resolution read:

WHEREAS, in the last quarter of 2005, the representation and entertainment expense of the PHC skyrocketed to P4.3 million, as compared to the previous year's mere P106 thousand;

WHEREAS, some board members established wholly owned PHC subsidiary called Telecommunications Center, Inc. (TCI), where PHC funds are allegedly siphoned; in 18 months, over P73 million had been allegedly advanced to TCI without any accountability report given to PHC and PHILCOMSAT;

WHEREAS, the Philippine Star, in its 12 February 2002 issue reported that the executive committee of Philcomsat has precipitately released P265 million and granted P125 million loan to a relative of an executive committee member; to date there have been no payments given, subjecting the company to an estimated

interest income loss of P11.25 million in 2004;

WHEREAS, there is an urgent need to protect the interest of the Republic of the Philippines in the PHC, PHILCOMSAT, and POTC from any anomalous transaction, and to conserve or salvage any remaining value of the government's equity position in these corporations from any abuses of power done by their respective board of directors;

WHEREFORE, be it resolved that the proper Senate Committee shall conduct an inquiry in aid of legislation, on the anomalous losses incurred by the Philippine Overseas Telecommunications Corporation (POTC), Philippine Communications Satellite Corporation (PHILCOMSAT), and Philcomsat Holdings Corporations (PHC) due to the alleged improprieties in the operations by their respective board of directors.

Adopted.

(Sgd) MIRIAM DEFENSOR SANTIAGO

On the same date, February 20, 2006, Senate Res. No. 455 was submitted to the Senate and referred to the Committee on Accountability of Public Officers and Investigations and Committee on Public Services. However, on March 28, 2006, upon motion of Senator Francis N. Pangilinan, it was transferred to the Committee on Government Corporations and Public Enterprises.[5]

On May 8, 2006, Chief of Staff Rio C. Inocencio, under the authority of Senator Richard J. Gordon, wrote Chairman Camilo L. Sabio of the PCGG, one of the herein petitioners, inviting him to be one of the resource persons in the public meeting jointly conducted by the Committee on Government Corporations and Public Enterprises and Committee on Public Services. The purpose of the public meeting was to deliberate on Senate Res. No. 455.[6]

On May 9, 2006, Chairman Sabio declined the invitation because of prior commitment.[7] At the same time, he invoked Section 4(b) of E.O. No. 1 earlier quoted.

On August 10, 2006, Senator Gordon issued a Subpoena Ad Testificandum,[8] approved by Senate President Manuel Villar, requiring Chairman Sabio and PCGG Commissioners Ricardo Abcede, Nicasio Conti, Tereso Javier and Narciso Nario to appear in the public hearing scheduled on August 23, 2006 and testify on what they know relative to the matters specified in Senate Res. No. 455. Similar subpoenae were issued against the directors and officers of Philcomsat Holdings Corporation, namely: Benito V. Araneta, Philip J. Brodett, Enrique L. Locsin, Manuel D. Andal, Roberto L. Abad, Luis K. Lokin, Jr., Julio J. Jalandoni, Roberto V. San Jose, Delfin P. Angcao, Alma Kristina Alloba and Johnny Tan.[9]

Again, Chairman Sabio refused to appear. In his letter to Senator Gordon dated August 18, 2006, he reiterated his earlier position, invoking Section 4(b) of E.O. No. 1. On the other hand, the directors and officers of Philcomsat Holdings Corporation relied on the position paper they previously filed, which raised issues on the propriety of legislative inquiry.

Thereafter, Chief of Staff Ma. Carissa O. Coscolluela, under the authority of Senator Gordon, sent another notice[10] to Chairman Sabio requiring him to appear and testify on the same subject matter set on September 6, 2006. The notice was issued "under the same authority of the Subpoena Ad Testificandum previously served upon (him) last 16 August 2006."

Once more, Chairman Sabio did not comply with the notice. He sent a letter[11] dated September 4, 2006 to Senator Gordon reiterating his reason for declining to appear in the public hearing.

This prompted Senator Gordon to issue an Order dated September 7, 2006 requiring Chairman Sabio and

Commissioners Abcede, Conti, Javier and Nario to show cause why they should not be cited in contempt of the Senate. On September 11, 2006, they submitted to the Senate their Compliance and Explanation,[12] which partly reads:

Doubtless, there are laudable intentions of the subject inquiry in aid of legislation. But the rule of law requires that even the best intentions must be carried out within the parameters of the Constitution and the law. Verily, laudable purposes must be carried out by legal methods. (Brillantes, Jr., et al. v. Commission on Elections, En Banc [G.R. No. 163193, June 15, 2004])

On this score, Section 4(b) of E.O. No. 1 should not be ignored as it explicitly provides: No member or staff of the Commission shall be required to testify or produce evidence in any judicial legislative or administrative proceeding concerning matters within its official cognizance.

With all due respect, Section 4(b) of E.O. No. 1 constitutes a limitation on the power of legislative inquiry, and a recognition by the State of the need to provide protection to the PCGG in order to ensure the unhampered performance of its duties under its charter. E.O. No. 1 is a law, Section 4(b) of which had not been amended, repealed or revised in any way.

To say the least, it would require both Houses of Congress and Presidential fiat to amend or repeal the provision in controversy. Until then, it stands to be respected as part of the legal system in this jurisdiction. (As held in *People v. Veneracion*, G.R. Nos. 119987-88, October 12, 1995: Obedience to the rule of law forms the bedrock of our system of justice. If judges, under the guise of religious or political beliefs were allowed to roam unrestricted beyond boundaries within which they are required by law to exercise the duties of their office, then law becomes meaningless. A government of laws, not of men excludes the exercise of broad discretionary powers by those acting under its authority. Under this system, judges are guided by the Rule of Law, and ought to 'protect and enforce it without fear or favor,' 4 [Act of Athens (1955)] resist encroachments by governments, political parties, or even the interference of their own personal beliefs.)

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Relevantly, Chairman Sabio's letter to Sen. Gordon dated August 19, 2006 pointed out that the anomalous transactions referred to in the P.S. Resolution No. 455 are subject of pending cases before the regular courts, the Sandiganbayan and the Supreme Court (Pending cases include: a. *Samuel Divina v. Manuel Nieto, Jr., et al.*, CA-G.R. No. 89102; b. *Philippine Communications Satellite Corporation v. Manuel Nieto, et al.*; c. *Philippine Communications Satellite Corporation v. Manuel D. Andal*, Civil Case No. 06-095, RTC, Branch 61, Makati City; d. *Philippine Communications Satellite Corporation v. PHILCOMSAT Holdings Corporation, et al.*, Civil Case No. 04-1049) for which reason they may not be able to testify thereon under the principle of sub judice. The laudable objectives of the PCGG's functions, recognized in several cases decided by the Supreme Court, of the PCGG will be put to naught if its recovery efforts will be unduly impeded by a legislative investigation of cases that are already pending before the Sandiganbayan and trial courts.

In *Bengzon v. Senate Blue Ribbon Committee*, (203 SCRA 767, 784 [1991]) the Honorable Supreme Court held: "...[T]he issues sought to be investigated by the respondent Committee is one over which jurisdiction had been acquired by the Sandiganbayan. In short, the issue has been pre-empted by that court. To allow the respondent Committee to conduct its own investigation of an issue already before the Sandiganbayan would not only pose the possibility of conflicting judgments between a legislative committee and a judicial tribunal, but if the Committee's judgment were to be reached before that of the Sandiganbayan, the possibility of its influence being made to bear on the ultimate judgment of the Sandiganbayan can not be discounted.

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IT IS IN VIEW OF THE FOREGOING CONSIDERATIONS that the Commission decided not to attend the

Senate inquiry to testify and produce evidence thereat.

Unconvinced with the above Compliance and Explanation, the Committee on Government Corporations and Public Enterprises and the Committee on Public Services issued an Order^[13] directing Major General Jose Balajadia (Ret.), Senate Sergeant-At-Arms, to place Chairman Sabio and his Commissioners under arrest for contempt of the Senate. The Order bears the approval of Senate President Villar and the majority of the Committees' members.

On September 12, 2006, at around 10:45 a.m., Major General Balajadia arrested Chairman Sabio in his office at IRC Building, No. 82 EDSA, Mandaluyong City and brought him to the Senate premises where he was detained.

Hence, Chairman Sabio filed with this Court a petition for habeas corpus against the Senate Committee on Government Corporations and Public Enterprises and Committee on Public Services, their Chairmen, Senators Richard Gordon and Joker P. Arroyo and Members. The case was docketed as G.R. No. 174340.

Chairman Sabio, Commissioners Abcede, Conti, Nario, and Javier, and the PCGG's nominees to Philcomsat Holdings Corporation, Manuel Andal and Julio Jalandoni, likewise filed a petition for certiorari and prohibition against the same respondents, and also against Senate President Manuel Villar, Senator Juan Ponce Enrile, the Sergeant-at-Arms, and the entire Senate. The case was docketed as G.R. No. 174318.

Meanwhile, Philcomsat Holdings Corporation and its officers and directors, namely: Philip G. Brodett, Luis K. Lokin, Jr., Roberto V. San Jose, Delfin P. Angcao, Roberto L. Abad, Alma Kristina Alobba and Johnny Tan filed a petition for certiorari and prohibition against the Senate Committees on Government Corporations and Public Enterprises and Public Services, their Chairmen, Senators Gordon and Arroyo, and Members. The case was docketed as G.R. No. 174177.

In G.R. No. 174340 (for habeas corpus) and G.R. No. 174318 (for certiorari and prohibition) Chairman Sabio, Commissioners Abcede, Conti, Nario, and Javier; and the PCGG's nominees Andal and Jalandoni alleged: first, respondent Senate Committees disregarded Section 4(b) of E.O. No. 1 without any justifiable reason; second, the inquiries conducted by respondent Senate Committees are not in aid of legislation; third, the inquiries were conducted in the absence of duly published Senate Rules of Procedure Governing Inquiries in Aid of Legislation; and fourth, respondent Senate Committees are not vested with the power of contempt.

In G.R. No. 174177, petitioners Philcomsat Holdings Corporation and its directors and officers alleged: first, respondent Senate Committees have no jurisdiction over the subject matter stated in Senate Res. No. 455; second, the same inquiry is not in accordance with the Senate's Rules of Procedure Governing Inquiries in Aid of Legislation; third, the subpoenae against the individual petitioners are void for having been issued without authority; fourth, the conduct of legislative inquiry pursuant to Senate Res. No. 455 constitutes undue encroachment by respondents into justiciable controversies over which several courts and tribunals have already acquired jurisdiction; and fifth, the subpoenae violated petitioners' rights to privacy and against self-incrimination.

In their Consolidated Comment, the above-named respondents countered: first, the issues raised in the petitions involve political questions over which this Court has no jurisdiction; second, Section 4(b) has been repealed by the Constitution; third, respondent Senate Committees are vested with contempt power; fourth, Senate's Rules of Procedure Governing Inquiries in Aid of Legislation have been duly published; fifth, respondents have not violated any civil right of the individual petitioners, such as their (a) right to privacy; and (b) right against self-incrimination; and sixth, the inquiry does not constitute undue encroachment into justiciable controversies.

During the oral arguments held on September 21, 2006, the parties were directed to submit simultaneously their respective memoranda within a non-extendible period of fifteen (15) days from date. In the meantime, per

agreement of the parties, petitioner Chairman Sabio was allowed to go home. Thus, his petition for habeas corpus has become moot. The parties also agreed that the service of the arrest warrants issued against all petitioners and the proceedings before the respondent Senate Committees are suspended during the pendency of the instant cases.[14]

Crucial to the resolution of the present petitions is the fundamental issue of whether Section 4(b) of E.O. No. 1 is repealed by the 1987 Constitution. On this lone issue hinges the merit of the contention of Chairman Sabio and his Commissioners that their refusal to appear before respondent Senate Committees is justified. With the resolution of this issue, all the other issues raised by the parties have become inconsequential.

Perched on one arm of the scale of justice is Article VI, Section 21 of the 1987 Constitution granting respondent Senate Committees the power of legislative inquiry. It reads:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

On the other arm of the scale is Section 4(b) of E.O. No.1 limiting such power of legislative inquiry by exempting all PCGG members or staff from testifying in any judicial, legislative or administrative proceeding, thus:

No member or staff of the Commission shall be required to testify or produce evidence in any judicial, legislative or administrative proceeding concerning matters within its official cognizance.

To determine whether there exists a clear and unequivocal repugnancy between the two quoted provisions that warrants a declaration that Section 4(b) has been repealed by the 1987 Constitution, a brief consideration of the Congress' power of inquiry is imperative.

The Congress' power of inquiry has been recognized in foreign jurisdictions long before it reached our shores through *McGrain v. Daugherty*,^[15] cited in *Arnault v. Nazareno*.^[16] In those earlier days, American courts considered the power of inquiry as inherent in the power to legislate. The 1864 case of *Briggs v. MacKellar*^[17] explains the breath and basis of the power, thus:

Where no constitutional limitation or restriction exists, it is competent for either of the two bodies composing the legislature to do, in their separate capacity, whatever may be essential to enable them to legislate....It is well-established principle of this parliamentary law, that either house may institute any investigation having reference to its own organization, the conduct or qualification of its members, its proceedings, rights, or privileges or any matter affecting the public interest upon which it may be important that it should have exact information, and in respect to which it would be competent for it to legislate. The right to pass laws, necessarily implies the right to obtain information upon any matter which may become the subject of a law. It is essential to the full and intelligent exercise of the legislative function....In American legislatures the investigation of public matters before committees, preliminary to legislation, or with the view of advising the house appointing the committee is, as a parliamentary usage, well established as it is in England, and the right of either house to compel witnesses to appear and testify before its committee, and to punish for disobedience has been frequently enforced....The right of inquiry, I think, extends to other matters, in respect to which it may be necessary, or may be deemed advisable to apply for legislative aid.

Remarkably, in *Arnault*, this Court adhered to a similar theory. Citing *McGrain*, it recognized that the power of inquiry is "an essential and appropriate auxiliary to the legislative function," thus:

Although there is no provision in the "Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the

power of inquiry - with process to enforce it - is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislation body does not itself possess the requisite information - which is not infrequently true - recourse must be had to others who possess it."

Dispelling any doubt as to the Philippine Congress' power of inquiry, provisions on such power made their maiden appearance in Article VIII, Section 12 of the 1973 Constitution.[18] Then came the 1987 Constitution incorporating the present Article VI, Section 12. What was therefore implicit under the 1935 Constitution, as influenced by American jurisprudence, became explicit under the 1973 and 1987 Constitutions.[19]

Notably, the 1987 Constitution recognizes the power of investigation, not just of Congress, but also of "any of its committee." This is significant because it constitutes a direct conferral of investigatory power upon the committees and it means that the mechanisms which the Houses can take in order to effectively perform its investigative function are also available to the committees.[20]

It can be said that the Congress' power of inquiry has gained more solid existence and expansive construal. The Court's high regard to such power is rendered more evident in *Senate v. Ermita*,[21] where it categorically ruled that "the power of inquiry is broad enough to cover officials of the executive branch." Verily, the Court reinforced the doctrine in *Arnault* that "the operation of government, being a legitimate subject for legislation, is a proper subject for investigation" and that "the power of inquiry is co-extensive with the power to legislate."

Considering these jurisprudential instructions, we find Section 4(b) directly repugnant with Article VI, Section 21. Section 4(b) exempts the PCGG members and staff from the Congress' power of inquiry. This cannot be countenanced. Nowhere in the Constitution is any provision granting such exemption. The Congress' power of inquiry, being broad, encompasses everything that concerns the administration of existing laws as well as proposed or possibly needed statutes.[22] It even extends "to government agencies created by Congress and officers whose positions are within the power of Congress to regulate or even abolish." [23] PCGG belongs to this class.

Certainly, a mere provision of law cannot pose a limitation to the broad power of Congress, in the absence of any constitutional basis.

Furthermore, Section 4(b) is also inconsistent with Article XI, Section 1 of the Constitution stating that: "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."

The provision presupposes that since an incumbent of a public office is invested with certain powers and charged with certain duties pertinent to sovereignty, the powers so delegated to the officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officers. Such trust extends to all matters within the range of duties pertaining to the office. In other words, public officers are but the servants of the people, and not their rulers.[24]

Section 4(b), being in the nature of an immunity, is inconsistent with the principle of public accountability. It places the PCGG members and staff beyond the reach of courts, Congress and other administrative bodies. Instead of encouraging public accountability, the same provision only institutionalizes irresponsibility and non-accountability. In *Presidential Commission on Good Government v. Peña*,[25] Justice Florentino P. Feliciano characterized as "obiter" the portion of the majority opinion barring, on the basis of Sections 4(a) and (b) of E.O. No. 1, a civil case for damages filed against the PCGG and its Commissioners. He eloquently opined:

The above underscored portions are, it is respectfully submitted, clearly obiter. It is important to make clear that the Court is not here interpreting, much less upholding as valid and constitutional, the literal terms of Section 4 (a), (b) of Executive Order No.1. If Section 4 (a) were given its literal import as immunizing the PCGG or any member thereof from civil liability "for anything done or omitted in the discharge of the task contemplated by this Order," the constitutionality of Section 4 (a) would, in my submission, be open to most serious doubt. For so viewed, Section 4 (a) would institutionalize the irresponsibility and non-accountability of members and staff of the PCGG, a notion that is clearly repugnant to both the 1973 and 1987 Constitution and a privileged status not claimed by any other official of the Republic under the 1987 Constitution. x x x.

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It would seem constitutionally offensive to suppose that a member or staff member of the PCGG could not be required to testify before the Sandiganbayan or that such members were exempted from complying with orders of this Court.

Chavez v. Sandiganbayan[26] reiterates the same view. Indeed, Section 4(b) has been frowned upon by this Court even before the filing of the present petitions.

Corollarily, Section 4(b) also runs counter to the following constitutional provisions ensuring the people's access to information:

Article II, Section 28

Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

Article III, Section 7

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

These twin provisions of the Constitution seek to promote transparency in policy-making and in the operations of the government, as well as provide the people sufficient information to enable them to exercise effectively their constitutional rights. Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation. In *Valmonte v. Belmonte, Jr.*[27] the Court explained that an informed citizenry is essential to the existence and proper functioning of any democracy, thus:

An essential element of these freedoms is to keep open a continuing dialogue or process of communication between the government and the people. It is in the interest of the State that the channels for free political discussion be maintained to the end that the government may perceive and be responsive to the people's will. Yet, this open dialogue can be effective only to the extent that the citizenry is informed and thus able to formulate its will intelligently. Only when the participants in the discussion are aware of the issues and have access to information relating thereto can such bear fruit.

Consequently, the conduct of inquiries in aid of legislation is not only intended to benefit Congress but also the citizenry. The people are equally concerned with this proceeding and have the right to participate therein in order to protect their interests. The extent of their participation will largely depend on the information gathered and made known to them. In other words, the right to information really goes hand-in-hand with the constitutional policies of full public disclosure and honesty in the public service. It is meant to enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in the government.[28] The cases of

Tañada v. Tuvera[29] and Legaspi v. Civil Service Commission[30] have recognized a citizen's interest and personality to enforce a public duty and to bring an action to compel public officials and employees to perform that duty.

Section 4(b) limits or obstructs the power of Congress to secure from PCGG members and staff information and other data in aid of its power to legislate. Again, this must not be countenanced. In *Senate v. Ermita*,[31] this Court stressed:

To the extent that investigations in aid of legislation are generally conducted in public, however, any executive issuance tending to unduly limit disclosures of information in such investigations necessarily deprives the people of information which, being presumed to be in aid of legislation, is presumed to be a matter of public concern. The citizens are thereby denied access to information which they can use in formulating their own opinions on the matter before Congress - opinions which they can then communicate to their representatives and other government officials through the various legal means allowed by their freedom of expression.

A statute may be declared unconstitutional because it is not within the legislative power to enact; or it creates or establishes methods or forms that infringe constitutional principles; or its purpose or effect violates the Constitution or its basic principles.[32] As shown in the above discussion, Section 4(b) is inconsistent with Article VI, Section 21 (Congress' power of inquiry), Article XI, Section 1 (principle of public accountability), Article II, Section 28 (policy of full disclosure) and Article III, Section 7 (right to public information).

Significantly, Article XVIII, Section 3 of the Constitution provides:

All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

The clear import of this provision is that all existing laws, executive orders, proclamations, letters of instructions and other executive issuances inconsistent or repugnant to the Constitution are repealed.

Jurisprudence is replete with decisions invalidating laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances inconsistent with the Constitution. In *Pelaez v. Auditor General*,[33] the Court considered repealed Section 68 of the Revised Administrative Code of 1917 authorizing the Executive to change the seat of the government of any subdivision of local governments, upon the approval of the 1935 Constitution. Section 68 was adjudged incompatible and inconsistent with the Constitutional grant of limited executive supervision over local governments. In *Islamic Da'wah Council of the Philippines, Inc., v. Office of the Executive Secretary*,[34] the Court declared Executive Order No. 46, entitled "Authorizing the Office on Muslim Affairs to Undertake Philippine Halal Certification," void for encroaching on the religious freedom of Muslims. In *The Province of Batangas v. Romulo*,[35] the Court declared some provisions of the General Appropriations Acts of 1999, 2000 and 2001 unconstitutional for violating the Constitutional precept on local autonomy. And in *Ople v. Torres*,[36] the Court likewise declared unconstitutional Administrative Order No. 308, entitled "Adoption of a National Computerized Identification Reference System," for being violative of the right to privacy protected by the Constitution.

These Decisions, and many others, highlight that the Constitution is the highest law of the land. It is "the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer. No act shall be valid, however noble its intentions, if it conflicts with the Constitution." [37] Consequently, this Court has no recourse but to declare Section 4(b) of E.O. No. 1 repealed by the 1987 Constitution.

Significantly, during the oral arguments on September 21, 2006, Chairman Sabio admitted that should this Court rule that Section 4(b) is unconstitutional or that it does not apply to the Senate, he will answer the questions of the

Senators, thus:

CHIEF JUSTICE PANGANIBAN:

Okay. Now, if the Supreme Court rules that Sec. 4(b) is unconstitutional or that it does not apply to the Senate, will you answer the questions of the Senators?

CHAIRMAN SABIO:

Your Honor, my father was a judge, died being a judge. I was here in the Supreme Court as Chief of Staff of Justice Feria. I would definitely honor the Supreme Court and the rule of law.

CHIEF JUSTICE PANGANIBAN:

You will answer the questions of the Senators if we say that?

CHAIRMAN SABIO:

Yes, Your Honor. That is the law already as far as I am concerned.

With his admission, Chairman Sabio is not fully convinced that he and his Commissioners are shielded from testifying before respondent Senate Committees by Section 4(b) of E.O. No. 1. In effect, his argument that the said provision exempts him and his co-respondent Commissioners from testifying before respondent Senate Committees concerning Senate Res. No. 455 utterly lacks merit.

Incidentally, an argument repeated by Chairman Sabio is that respondent Senate Committees have no power to punish him and his Commissioners for contempt of the Senate.

The argument is misleading.

Article VI, Section 21 provides:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

It must be stressed that the Order of Arrest for "contempt of Senate Committees and the Philippine Senate" was approved by Senate President Villar and signed by fifteen (15) Senators. From this, it can be concluded that the Order is under the authority, not only of the respondent Senate Committees, but of the entire Senate.

At any rate, Article VI, Section 21 grants the power of inquiry not only to the Senate and the House of Representatives, but also to any of their respective committees. Clearly, there is a direct conferral of power to the committees. Father Bernas, in his Commentary on the 1987 Constitution, correctly pointed out its significance:

It should also be noted that the Constitution explicitly recognizes the power of investigation not just of Congress but also of "any of its committees." This is significant because it constitutes a direct conferral of investigatory power upon the committees and it means that the means which the Houses can take in order to effectively perform its investigative function are also available to the Committees.[38]

This is a reasonable conclusion. The conferral of the legislative power of inquiry upon any committee of Congress must carry with it all powers necessary and proper for its effective discharge. Otherwise, Article VI, Section 21 will be meaningless. The indispensability and usefulness of the power of contempt in a legislative inquiry is underscored in a catena of cases, foreign and local.

In the 1821 case of *Anderson v. Dunn*,[39] the function of the Houses of Congress with respect to the contempt

power was likened to that of a court, thus:

...But the court in its reasoning goes beyond this, and though the grounds of the decision are not very clearly stated, we take them to be: that there is in some cases a power in each House of Congress to punish for contempt; that this power is analogous to that exercised by courts of justice, and that it being the well established doctrine that when it appears that a prisoner is held under the order of a court of general jurisdiction for a contempt of its authority, no other court will discharge the prisoner or make further inquiry into the cause of his commitment. That this is the general rule...as regards the relation of one court to another must be conceded.

In *McGrain*,^[40] the U.S. Supreme Court held: "Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed." The Court, in *Arnault v. Nazareno*,^[41] sustained the Congress' power of contempt on the basis of this observation.

In *Arnault v. Balagtas*,^[42] the Court further explained that the contempt power of Congress is founded upon reason and policy and that the power of inquiry will not be complete if for every contumacious act, Congress has to resort to judicial interference, thus:

The principle that Congress or any of its bodies has the power to punish recalcitrant witnesses is founded upon reason and policy. Said power must be considered implied or incidental to the exercise of legislative power. How could a legislative body obtain the knowledge and information on which to base intended legislation if it cannot require and compel the disclosure of such knowledge and information if it is impotent to punish a defiance of its power and authority? When the framers of the Constitution adopted the principle of separation of powers, making each branch supreme within the realm of its respective authority, it must have intended each department's authority to be full and complete, independently of the other's authority or power. And how could the authority and power become complete if for every act of refusal, every act of defiance, every act of contumacy against it, the legislative body must resort to the judicial department for the appropriate remedy, because it is impotent by itself to punish or deal therewith, with the affronts committed against its authority or dignity.^[43]

In *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panlungsod of Dumaguete*,^[44] the Court characterized contempt power as a matter of self-preservation, thus:

The exercise by the legislature of the contempt power is a matter of self-preservation as that branch of the government vested with the legislative power, independently of the judicial branch, asserts its authority and punishes contempts thereof. The contempt power of the legislature is, therefore, *sui generis* x x x.

Meanwhile, with respect to G.R. No. 174177, the petition of Philcomsat Holdings Corporation and its directors and officers, this Court holds that the respondent Senate Committees' inquiry does not violate their right to privacy and right against self-incrimination.

One important limitation on the Congress' power of inquiry is that "the rights of persons appearing in or affected by such inquiries shall be respected." This is just another way of saying that the power of inquiry must be "subject to the limitations placed by the Constitution on government action." As held in *Barenblatt v. United States*,^[45] "the Congress, in common with all the other branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case, the relevant limitations of the Bill of Rights."

First is the right to privacy.

Zones of privacy are recognized and protected in our laws.^[46] Within these zones, any form of intrusion is

impermissible unless excused by law and in accordance with customary legal process. The meticulous regard we accord to these zones arises not only from our conviction that the right to privacy is a "constitutional right" and "the right most valued by civilized men,"[47] but also from our adherence to the Universal Declaration of Human Rights which mandates that, "no one shall be subjected to arbitrary interference with his privacy" and "everyone has the right to the protection of the law against such interference or attacks." [48]

Our Bill of Rights, enshrined in Article III of the Constitution, provides at least two guarantees that explicitly create zones of privacy. It highlights a person's "right to be let alone" or the "right to determine what, how much, to whom and when information about himself shall be disclosed." [49] Section 2 guarantees "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." Section 3 renders inviolable the "privacy of communication and correspondence" and further cautions that "any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

In evaluating a claim for violation of the right to privacy, a court must determine whether a person has exhibited a reasonable expectation of privacy and, if so, whether that expectation has been violated by unreasonable government intrusion.[50] Applying this determination to these cases, the important inquiries are: first, did the directors and officers of Philcomsat Holdings Corporation exhibit a reasonable expectation of privacy?; and second, did the government violate such expectation?

The answers are in the negative. Petitioners were invited in the Senate's public hearing to deliberate on Senate Res. No. 455, particularly "on the anomalous losses incurred by the Philippine Overseas Telecommunications Corporation (POTC), Philippine Communications Satellite Corporation (PHILCOMSAT), and Philcomsat Holdings Corporations (PHC) due to the alleged improprieties in the operations by their respective board of directors." Obviously, the inquiry focus on petitioners' acts committed in the discharge of their duties as officers and directors of the said corporations, particularly Philcomsat Holdings Corporation. Consequently, they have no reasonable expectation of privacy over matters involving their offices in a corporation where the government has interest. Certainly, such matters are of public concern and over which the people have the right to information.

This goes to show that the right to privacy is not absolute where there is an overriding compelling state interest. In *Morfe v. Mutuc*, [51] the Court, in line with *Whalen v. Roe*, [52] employed the rational basis relationship test when it held that there was no infringement of the individual's right to privacy as the requirement to disclosure information is for a valid purpose, i.e., to curtail and minimize the opportunities for official corruption, maintain a standard of honesty in public service, and promote morality in public administration. [53] In *Valmonte v. Belmonte*, [54] the Court remarked that as public figures, the Members of the former Batasang Pambansa enjoy a more limited right to privacy as compared to ordinary individuals, and their actions are subject to closer scrutiny. Taking this into consideration, the Court ruled that the right of the people to access information on matters of public concern prevails over the right to privacy of financial transactions.

Under the present circumstances, the alleged anomalies in the PHILCOMSAT, PHC and POTC, ranging in millions of pesos, and the conspiratorial participation of the PCGG and its officials are compelling reasons for the Senate to exact vital information from the directors and officers of Philcomsat Holdings Corporations, as well as from Chairman Sabio and his Commissioners to aid it in crafting the necessary legislation to prevent corruption and formulate remedial measures and policy determination regarding PCGG's efficacy. There being no reasonable expectation of privacy on the part of those directors and officers over the subject covered by Senate Res. No. 455, it follows that their right to privacy has not been violated by respondent Senate Committees.

Anent the right against self-incrimination, it must be emphasized that this right maybe invoked by the said

directors and officers of Philcomsat Holdings Corporation only when the incriminating question is being asked, since they have no way of knowing in advance the nature or effect of the questions to be asked of them." [55] That this right may possibly be violated or abused is no ground for denying respondent Senate Committees their power of inquiry. The consolation is that when this power is abused, such issue may be presented before the courts. At this juncture, what is important is that respondent Senate Committees have sufficient Rules to guide them when the right against self-incrimination is invoked. Sec. 19 reads:

Sec. 19. Privilege Against Self-Incrimination

A witness can invoke his right against self-incrimination only when a question tends to elicit an answer that will incriminate him is propounded to him. However, he may offer to answer any question in an executive session.

No person can refuse to testify or be placed under oath or affirmation or answer questions before an incriminatory question is asked. His invocation of such right does not by itself excuse him from his duty to give testimony.

In such a case, the Committee, by a majority vote of the members present there being a quorum, shall determine whether the right has been properly invoked. If the Committee decides otherwise, it shall resume its investigation and the question or questions previously refused to be answered shall be repeated to the witness. If the latter continues to refuse to answer the question, the Committee may punish him for contempt for contumacious conduct.

The same directors and officers contend that the Senate is barred from inquiring into the same issues being litigated before the Court of Appeals and the Sandiganbayan. Suffice it to state that the Senate Rules of Procedure Governing Inquiries in Aid of Legislation provide that the filing or pendency of any prosecution of criminal or administrative action should not stop or abate any inquiry to carry out a legislative purpose.

Let it be stressed at this point that so long as the constitutional rights of witnesses, like Chairman Sabio and his Commissioners, will be respected by respondent Senate Committees, it their duty to cooperate with them in their efforts to obtain the facts needed for intelligent legislative action. The unremitting obligation of every citizen is to respond to subpoenae, to respect the dignity of the Congress and its Committees, and to testify fully with respect to matters within the realm of proper investigation.

In fine, PCGG Chairman Camilo Sabio and Commissioners Ricardo Abcede, Narciso Nario, Nicasio Conti, and Tereso Javier; and Manuel Andal and Julio Jalandoni, PCGG's nominees to Philcomsat Holdings Corporation, as well as its directors and officers, must comply with the Subpoenae Ad Testificandum issued by respondent Senate Committees directing them to appear and testify in public hearings relative to Senate Resolution No. 455.

WHEREFORE, the petition in G.R. No. 174340 for habeas corpus is DISMISSED, for being moot. The petitions in G.R. Nos. 174318 and 174177 are likewise DISMISSED.

Section 4(b) of E.O. No. 1 is declared REPEALED by the 1987 Constitution. Respondent Senate Committees' power of inquiry relative to Senate Resolution 455 is upheld. PCGG Chairman Camilo L. Sabio and Commissioners Ricardo Abcede, Narciso Nario, Nicasio Conti and Tereso Javier; and Manuel Andal and Julio Jalandoni, PCGG's nominees to Philcomsat Holdings Corporation, as well as its directors and officers, petitioners in G.R. No. 174177, are ordered to comply with the Subpoenae Ad Testificandum issued by respondent Senate Committees directing them to appear and testify in public hearings relative to Senate Resolution No. 455.

SO ORDERED.

Panganiban, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

Puno and Tinga, JJ., in the result.

Corona, J., no part.

[1] E.O. No. 1 was issued by Former President Aquino in the exercise of her legislative power under the Provisional (Freedom) Constitution. Thus, it is of the same category and has the same binding force as a statute. (Agpalo, Statutory Construction, 1998 citing Legaspi v. Ministry of Finance, 115 SCRA 418 [1982]; Garcia-Padilla v. Ponce Enrile, G.R. No. 61388, April 20, 1983; Aquino v. Commission on Elections, 62 SCRA 275 [1975])

[2] Section 2 (a), Executive Order No.1.

[3] See Presidential Commission on Good Government v. Pena, April 12, 1988, 159 SCRA 558

[4] Annex "E" of the Petition in G.R. No. 174318.

[5]Id.

[6] Annex "F" of the Petition in G.R. No. 174318.

[7] Annex "G" of the Petition in G.R. No. 174318.

[8] Annex "A" of the Petition in G.R. No. 174318.

[9] Petition in G.R. No. 174177 at p. 15.

[10]Annex "B" of the Petition in G.R. No. 174318.

[11] Annex "I" of the Petition in G.R. No. 174318.

[12] Annex "J" of the Petition in G.R. No. 174318.

[13] Annex "D" of the petition in G.R. No. 174318.

[14] En Banc Resolution dated September 21, 2006.

[15] 273 U.S. 135, 47 S. Ct. 319, 71 L. Ed. 580, 50 A.L.R. 1 (1927).

[16] No. L- 3820, 87 Phil. 29 (1950).

[17] 2 Abb. Pr. 30 (N.Y. 1864).

[18]Puno, Lecture on Legislative Investigations and the Right to Privacy, at p. 22.

[19] Bernas S.J., The 1987 Constitution of the Republic of the Philippines, 2003 Ed. at p.737.

[20] Bernas S.J., The 1987 Constitution of the Republic of the Philippines, 2003 Ed. at p.739.

[21] G.R. No. 169777, April 20, 2006.

[22] Watkins v. United States, 354 U.S. 178 (1957), pp. 194-195.

[23]Senate v. Ermita, Id.

[24] De Leon, De Leon, Jr. The Law on Public Officers and Election Law, p. 2.

[25] No. L-77663, April 12, 1988, 159 SCRA 558.

[26] 193 SCRA 282 (1991).

[27] G.R. No. 74930, February 13, 1989, 170 SCRA 256.

[28] Valmonte v. Belmonte, Jr., supra.

[29] 136 SCRA 27.

[30] 150 SCRA 530.

[31] Supra.

[32] Agpalo, Statutory Construction, 1998 citing In re Cunanan, 94 Phil. 534 (1954).

[33] No. L-23825, December 24, 1965, 15 SCRA 569.

[34] G.R. No. 153888, July 9, 2003, 405 SCRA 497.

[35] G.R. No. 152774, May 27, 2004, 429 SCRA 736.

[36] 293 SCRA 141 (1998).

[37] Cruz, Constitutional Law, 2003, p. 4.

[38] A Bernas, S.J., The 1987 Constitution of the Republic of the Philippines A Commentary, p. 678.

[39] 19 U.S. [6 Wheat.] 204 (1821) cited in Justice Puno, Legislative Investigations and Right to Privacy.

[40] Supra.

[41] Supra.

[42] 97 Phil. 358 [1955].

[43] Arnault v. Balagtas, 97 PHIL 358 (1955).

[44] No. L-72492, November 5, 1987, 155 SCRA 421.

[45] 360 U.S. 109 (1959).

[46] Marquez v. Desierto, G.R. No. 135882, June 27, 2001, 359 SCRA 772.

[47] See Morfe v. Mutuc No. L-20387, January 31, 1968, 22 SCRA 424.

[48] Article 12 of the Universal Declaration of Human Rights. See also Article 17 (1) and (2) of the International Covenant on Civil and Political Rights.

[49] Constitutional and Legal Systems of ASEAN Countries, Sison, Academy of ASEAN Law and Jurisprudence, 1990, at 221, citing I.R. Cortes, The Constitutional Foundations of Privacy, 7 (1970).

[50] Burrows v. Superior Court of San Bernardino County, 13 Cal. 3d 238, 529 P.2d 590 (1974). See Katz v. United States (1967), 389 U.S. 347, 350-352, 88 S. Ct. 507, 19 L. Ed. 2d 576; People v. Krivda (1971) 5 Cal. 3d 357, 364, 96 Cal. Rptr. 62, 486 P. 2d 1262; 8 Cal. 3d 623-624, 105 Cal. Rptr. 521, 504 P. 2d 457. INSERT

Herrera's Handbook on Arrest, Search and Seizure.

[51] *Supra*.

[52] 429 U.S. 589 (1977).

[53] Justice Puno, Lecture on Legislative Inquiry and Right to Privacy, p. 60.

[54] 170 SCRA 256 (1989)

[55] Cruz, Constitutional Law, 2003, p. 307.

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