

COL. ORLANDO E. DE LEON, PN (M), PETITIONER, VS. LT. GEN. HERMOGENES C. ESPERON, JR., (AFP), AND SPECIAL GENERAL COURT MARTIAL NO. 2, RESPONDENTS.

G.R. No. 176394. October 21, 2015

Ponente: JARDELEZA, J.

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JARDELEZA, J.:

These are consolidated petitions for certiorari, prohibition, mandamus and for the issuance of the writ of habeas corpus seeking:

- To annul, reverse and set aside the Memorandum[1] dated November 17, 2006 of the Chief of Staff of the Armed Forces of the Philippines, Lt. Gen. Hermogenes Esperon, Jr. and Letter Order No. 758[2] dated November 24, 2006 signed by the Adjutant General of the AFP, Commodore Paterno Labiano;
- To prohibit Lt. Gen. Esperon, Jr. and the Special General Court Martial No. 2 to desist from further proceeding with the court martial and from otherwise investigating or prosecuting the petitioners under the Articles of War (Commonwealth Act No. 408); and
- To order Lt. Gen. Esperon, Jr. and/or Special General Court Martial No. 2 and/or all persons acting for and in behalf or under their authority to produce petitioners[3] Major Doctolero and Captain Upano, to release them from detention and to forthwith desist from restraining them in any manner of their liberty.

Petitioners also seek the issuance of a temporary restraining order and/or writ of preliminary injunction against the respondents and all persons acting for or under their authority to cease and desist from conducting court martial proceedings and to cease and desist from otherwise prosecuting, investigating or proceeding in any manner against the petitioners relative to their alleged violations of the Articles of War.

The Facts

Prior to February 24, 2006, the military received reports that the units of the Philippine Marine Corps (PMC), First Scout Ranger Regiment and Philippine National Police Special Action Force (PNP SAF) planned to join the protest march of militant groups, the civil society, political opposition and religious sector on the commemoration of the EDSA Revolution to call for the resignation of former President Gloria Macapagal-Arroyo. The plan culminated in a stand-off on February 26, 2006 inside the PMC's headquarters in Fort Bonifacio.[4] Petitioners were among the thirty (30) military officers who joined the stand-off.[5]

As a result of the stand-off, an Ad Hoc Investigating Committee (AHIC) was created to conduct an inquiry on the facts and circumstances that led to the February 24-26, 2006 aborted plan. In an Investigation Report[6] dated July 7, 2006, the AHIC recommended that the petitioners, together with other officers and enlisted personnel, be charged before a General Court Martial for violations of the applicable Articles of War. Thus:

NAME

Articles of War

COL ORLANDO E DE LEON

67, 96 & 97

COL ARMANDO V BAÑEZ

68, 96 & 97

LTCOL ACHILLES S SEGUMALIAN

67, 96 & 97

MAJ JASON LAUREANO Y AQUINO

67, 96 & 97

MAJ JOSE LEOMAR M DOCTOLERO

68, 96 & 97

CPT JOEY T FONTIVEROS

68, 96 & 97

CPT WILLIAM UPANO

68, 96 & 97

1LT ERVIN C DIVINAGRACIA

68, 96 & 97[7]

On July 20, 2006, Col. Nemesio I. Dabal, Judge Advocate General of the Judge Advocate General's Office (JAGO), AFP, issued Office Order No. 14-06[8] constituting a Pre-Trial Investigation Panel (Panel) which would conduct investigation on the cases of all the petitioners.

Thereafter, JAGO furnished the petitioners the charge sheets and amended charge sheets signed under oath by Captain Armando P. Paredes as the accuser and gave them time to submit their respective counter-affidavits.[9] They were also arrested and detained at Camp General Mateo Capinpin, Tanay Rizal. Petitioners were charged with violations of Articles 63,[10] 65,[11] 67,[12] 96[13] and 97[14] of the Articles of War, as follows:[15]

NAME

Articles of War

COL ORLANDO E DE LEON

67 & 96

COL ARMANDO V BAÑEZ

67 & 96

LTCOL ACHILLES S SEGUMALIAN

67, 96 & 97

MAJ JASON LAUREANO Y AQUINO

67 & 96

MAJ JOSE LEOMAR M DOCTOLERO

67 & 96

CPT JOEY T FONTIVEROS

67 & 96

CPT WILLIAM F UPANO

67 & 96

1LT ERVIN C DIVINAGRACIA

67 & 96

On October 25, 2006, the Panel submitted its Pre-Trial Investigation Report (PTI Report)[16] to Lt. Gen. Esperon, Jr. The Panel recommended that petitioners, except for Bañez, Segumalian and Divinagracia, be tried before the court-martial for violation of the applicable Articles of War:[17]

NAME

Articles of War

COL ORLANDO E DE LEON

96

ARMANDO V BAÑEZ

None

ACHILLES S SEGUMALIAN

96 & 97

MAJ JASON LAUREANO Y AQUINO

96

MAJ JOSE LEOMAR M DOCTOLERO

None

CPT JOEY T FONTIVEROS

96

CPT WILLIAM F UPANO

96

1LT ERVIN C DIVINAGRACIA

None

The PTI Report was referred to Col. Pedro G. Herrera-Davila, Staff Judge Advocate for the Chief of Staff of the Armed Forces of the Philippines (CSAFP). In his Pre-Trial Advice[18] dated November 7, 2006, Col. Davila

disapproved the PTI Report and recommended the referral to trial by a General Court Martial of the 37 AFP Officers, including the petitioners, for violations of Articles 96 (for all of the petitioners) and 97 (only for Segumalian). He also recommended that they be tried for violations of other offenses considering that the available evidence established a prima facie case against them. The offenses allegedly committed by the petitioners, as found by Col. Davila, are as follows:

NAME

Articles of War

COL ORLANDO E DE LEON

67 & 96

COL ARMANDO V BAÑEZ

67 & 96

LTC ACHILLES S SEGUMALIAN

67, 96 & 97

MAJ JASON LAUREANO Y AQUINO

67 & 96

MAJ JOSE LEOMAR M DOCTOLERO

67 & 96

CPT JOEY T FONTIVEROS

67 & 96

CPT WILLIAM F UPANO

67 & 96

1LT ERVIN C DIVINAGRACIA

67 & 96[19]

Thereafter, in a Memorandum[20] dated November 17, 2006, Lt. Gen. Esperon, Jr. created and convened a Special General Court Martial to try petitioners' cases and other high-ranking military officers. In Letter Order No. 758[21] dated November 24, 2006, Commodore Paterno E. Labiano, the Adjutant General, designated the officers, to be detailed as the President and members of the Special General Court-Martial No. 2, who will try petitioners' cases.

Hence, these petitions.

In seeking to nullify the Memorandum dated November 17, 2006 and Letter Order No. 758, petitioners allege that the creation of Special General Court Martial No. 2 violates their right to due process under the Constitution and the Articles of War. For one, a Special General Court Martial is not among those allowed by the Articles of War to be created.[22] A special court martial is different from a general court martial. They have different powers and functions.[23] Further, citing Articles 8,[24] 9,[25] 45,[26] and 46[27] of the Articles of War, the petitioners pointed out that Lt. Gen. Esperon, Jr. cannot be the accuser, appointing authority, witness, prosecutor and reviewer of the findings of the Special General Court Martial No. 2 all at the same time.

They also claim that Lt. Gen. Esperon, Jr. already displayed manifest partiality when he openly declared even before the start of the pre-trial investigation that all the accused should be prosecuted before a court martial for their attempt to overthrow the government. He also executed an affidavit against some of the accused officers and expressed his willingness and determination to testify against them. Moreover, despite the PTI Report and the Pre-Trial Advice absolving the accused officers of the charge of attempted mutiny, Lt. Gen. Esperon, Jr. overruled the findings and proceeded to indict them for mutiny. He then immediately ordered the creation of the court martial without even stating the factual and legal bases of the charges. Petitioners argue that Lt. Gen. Esperon, Jr. should have afforded more weight to the PTI Report as the basis for issuing the said Memorandum, the Panel being considered as a trier of facts.[28]

In the PTI Report, the Panel already declared that petitioners cannot be prosecuted for Attempting to Create or Begin a Mutiny under Article 67, but only for Conduct Unbecoming an Officer and Gentleman under Article 96 of the Articles of War, because of clear absence of overt acts which proximately tended to create an intended or actual collective insubordination.

Thus, petitioners argue that their continuing confinement in a maximum security detention facility at Camp General Mateo Capinpin, Tanay, Rizal violates Article 70[29] of the Articles of War because they were never charged with any crime or serious offense defined in the Articles of War when they were placed in confinement in July 2006. Further, they were not restricted to the barracks, quarters or tent as Article 70 mandates, but were placed in confinement in a maximum security detention facility.

Respondents counter, among other things, that Lt. Gen. Esperon, Jr. correctly referred petitioners' charges to Special General Court Martial No. 2 for trial. The ruling of the Panel which recommended the dismissal of the charge for violation of Article 67 of the Articles of War against petitioners was merely recommendatory and thus, not binding on Lt. Gen. Esperon, Jr. Notably, both the AHIC in its Investigation Report and the Staff Advocate General in his Pre-Trial Advice recommended the referral of the charges against petitioners to court martial. Thus, there was a prima facie case against petitioners.[30]

Respondents also maintain that Lt. Gen. Esperon, Jr.'s affidavit and alleged statements that petitioners should be tried before court martial does not make the Memorandum creating Special General Court Martial No. 2 illegal. Lt. Gen. Esperon, Jr. is expressly authorized to convene a court-martial to try the charges against all petitioners. He is not the judge of the charges against petitioners. Even if he approves the findings and sentence imposed by the court-martial, this is still subject to confirmation by the President in certain cases.[31] Lt. Gen. Esperon, Jr. is not the accuser, prosecutor and the judge of the charges against the petitioners. He did not swear to the charges against the petitioners and he was not among the designated prosecutors. There is even no impediment for Lt. Gen. Esperon, Jr. to act as an accuser or prosecutor on the basis of No. 5, paragraph 3, Chapter III, of Executive Order No. 178 (A Manual for Courts-Martial, Armed Forces of the Philippines), which provides in part that: (1) whether the commander who convened the court is the accuser or the prosecutor is mainly to be determined by his personal feeling or interest in the matter; and (2) an action by a commander which is merely official and in the strict line of his duty cannot be regarded as sufficient to disqualify him.

Respondents also argue that the remedies of writs of prohibition and habeas corpus are unavailing. Under Article 8 of the Articles of War and No. 5, paragraph 5, Chapter III, of Executive Order No. 178,[32] Lt. Gen. Esperon, Jr. is authorized to create or appoint a court-martial and to determine the cases to be referred to the court martial for trial. Thus, the Special General Court Martial No. 2 has jurisdiction over the cases filed against petitioners. Petitioners were likewise lawfully arrested and confined as a result of the charges against them for violations of the Articles of War pursuant to Article 70 thereof.[33]

The Court's Ruling

We dismiss the petitions on the ground of mootness.

Pending the resolution of this case, Special General Court Martial No. 2 rendered the following various resolutions finding the petitioners not guilty of the charges against them:

- Partial Ruling or Resolution[34] dated October 16, 2009, cited in the After Trial Report rendered on the same date, adjudging Divinagracia not guilty;
- Resolution[35] dated March 2, 2010 adjudging Bañez not guilty;
- Resolution[36] dated September 28, 2010 adjudging De Leon, Segumalian, Doctolero, and Upano not guilty;
- Resolution[37] dated February 14, 2011 adjudging Aquino and Fontiveros not guilty.

Thus, this case has been rendered moot and academic by these various resolutions.

In *David v. Macapagal-Arroyo*,^[38] we described a moot and academic case as "one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value"^[39] and discussed that "[g]enerally, courts decline jurisdiction over such case, or dismiss it on ground of mootness."^[40]

Any resolution of the petitions to annul the Memorandum dated November 17, 2006 and Letter Order No. 758, to restrain the Special General Court Martial and to order the release of the petitioners from confinement would be of no practical value since as early as 2009, Special General Court Martial No. 2 already absolved the petitioners of the charges under the Articles of War, Special General Court Martial No. 2 has long been dissolved and the petitioners were already released from confinement.

WHEREFORE, the petitions are DISMISSED for having become moot and academic.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Villarama, Jr., and Reyes, JJ., concur.

December 14, 2015

Sirs/Mesdames:

Please take notice that on October 21, 2015 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on December 14, 2015 at 11:33 a.m.

Very truly yours,

(SGD)WILFREDO V. LAPITAN
Division of Clerk of Court

[1] Rollo (G.R. No. 176394), pp. 78-79.

[2] *Id.* at 80-81.

[3] All of the petitioners except for petitioner Major Jason L. Aquino prayed for the issuance of the writ of habeas corpus.

[4] Rollo (G.R. No. 176394), pp. 1604-1605.

[5] Petitioners Major Jose M. Doctolero, Captain Joey T. Fontiveros, Captain William F. Upano, Major Jason L. Aquino, and 1st Lieutenant Ervin C. Divinagracia are officers in the Philippine Army, Armed Forces of the Philippines. Petitioners Colonel Orlando E. De Leon, Colonel Armando V. Bañez, and Lieutenant Colonel Achilles S. Segumalian are officers of the Philippine Navy (Marines), AFP, rollo (G.R. No. 177033), pp. 69-70.

[6] Rollo (G.R. No. 176394), pp. 1604-1645.

[7] Id. at 639-1640.

[8] Id. at 1646.

[9] Id. at 123-127, 142-143, 593-597, 910-913; rollo (G.R. No. 177033), pp. 83-86, 100-103; rollo (G.R. No. 177470), pp. 62-65; rollo (G.R. No. 177471), pp. 76-79.

[10] Article 63. Disrespect Toward the President, Vice President, Congress of the Philippines, or Secretary of National Defense. - Any officer who uses contemptuous or disrespectful words against the President, Vice President, Congress of the Philippines, or Secretary of National Defense, shall be dismissed from the service or suffer such other punishment as a court-martial may direct. Any other person subject to military law who so offends shall be punished as a court-martial may direct. [As amended by RA 242]

[11] Article 65. Assaulting or Willfully Disobeying Superior Officer. - Any person subject to military law who, on any pretext whatsoever, strikes his superior officer or draws or lifts up any weapon, or offers any violence against him, being in the exercise of his office, or willfully disobeys any lawful command of his superior officer, shall suffer death or such other punishment as a court-martial may direct.

[12] Article 67. Mutiny or Sedition. - Any person subject to military law who attempts to create or who begins, excites, causes, or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard, or other command shall suffer death or such other punishment as a court-martial may direct.

[13] Article 96. Conduct Unbecoming an Officer and Gentleman. - Any officer, cadet, flying cadet, or probationary second lieutenant, who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service. [As amended by RAs 242 and 516]

[14] Article 97. General Article. - Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, and all conduct of a nature to bring discredit upon the military service, shall be taken cognizance of by a general or special court-martial according to the nature and degree of the offense, and punished at the discretion of the court.

[15] Rollo (G.R. No. 176394), pp. 123-127, 142-143, 593-597, 910-913; rollo (G.R. No. 177033), pp. 83-86, 100-103; rollo (G.R. No. 177470), pp. 62-65; rollo (G.R. No. 177471), pp. 76-79.

[16] Rollo (G.R. No. 176394), pp. 142-327.

[17] Id. at 324-327.

[18] Id. at 1249-1423.

[19] Id. at 1421-1422.

[20] Id. at 78-79.

[21] Id. at 80-81.

[22] Rollo (G.R. No. 177033), p. 54.

[23] Rollo (G.R. No. 177304), pp. 21-24.

[24] Article 8. General Court Martial. - The President of the Philippines, the Chief of Staff of the Armed Forces of the Philippines, the Chief of Constabulary and, when empowered by the President, the commanding officer of a major command or task force, the commanding officer of a division, the commanding officer of a military area, the Superintendent of the Military Academy, the commanding officer of a separate brigade or body of troops may appoint General Court-Martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by a superior competent authority. x x x

[25] Article 9. Special Courts-Martial. - The commanding officer of a major command, task force, military area, or division, and, when empowered by the President, the commanding officer of a garrison, fort, camp, brigade, regiment, detached battalion or squadron, or other detached command or place, zone or commissioned vessel where troops are on duty may appoint special courts-martial, but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority and may in any case be appointed by superior authority when by the latter deemed desirable. [As amended by RAs 242 and 516]

[26] Article 45. Action by Convening Authority. - Under such regulations as may be prescribed by the President, every record of trial by general court-martial or military commission, or record of trial by special courts-martial in which a bad-conduct discharge has been adjudged and approved by the authority appointing the court, received by a reviewing or confirming authority, shall be referred by him, before he acts thereon, to his staff judge advocate or to the Judge Advocate General. No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer appointing the court or by the officer commanding for the time being; Provided, That no sentence of a special court-martial which includes a bad-conduct discharge shall be carried into execution until, in addition to the approval by the convening authority, the same shall have been approved by an officer authorized to appoint a general court-martial. [As amended by RA 516]

[27] Article 46. Powers Incident to Power to Approve. — The power to approve the sentence of a court-martial shall be held to include:

- The power to approve or disapprove a finding and to approve only so much of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense, when, in the opinion of the authority having power to approve, the evidence of record requires a finding of only the lesser degree of guilt; and
- The power to approve or disapprove the whole or any part of the sentence; and
- The power to remand a case for hearing, under the provisions of article fifty.

[28] Rollo (G.R. No. 177033), p. 53.

[29] Article 70. Arrest or Confinement. - Any person subject to military law charged with a 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 barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. x x x

[30] Rollo (G.R. No. 176394), pp. 1856-1864.

[31] Article 47. Confirmation. - In addition to the approval required by article forty-five, conformation by the President is required in the following cases before the sentence of a court-martial is carried into execution,

namely:

- Any sentence respecting a general officer;
- Any sentence extending to the dismissal of an officer, except that in time of war a sentence extending to the dismissal of an officer below the grade of brigadier general may be carried into execution upon confirmation by the commanding general of the Army in the field;
- Any sentence extending to the suspension or dismissal of a cadet, flying cadet, probationary second lieutenant; and
- Any sentence of death, except in the cases of persons convicted in time of war, of murder, mutiny, desertion, or as spies; and in such excepted cases, a sentence of death may be carried into execution subject to the provisions of article fifty, upon confirmation by the commanding general of the Army in the field.

When the authority competent to confirm the sentence has already acted as the approving authority, no additional confirmation by him is necessary. [As amended by RA 242]

Article 48. Power Incident to Power to Confirm. - The power to confirm the sentence of a court-martial shall be held to include:

- The power to confirm or disapprove a finding, and to confirm so much only of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having the power to confirm, the evidence of record requires a finding of only the lesser degree of guilt;
- The power to confirm or disapprove the whole or any part of the sentence; and
- The power to remand a case for rehearing under the provisions of article fifty.

[32] 5. COURTS MARTIAL - Appointing authorities - a. General courts-martial - x x x

x x x

An officer who has power to appoint a general court-martial may determine the cases to be referred to it for trial and may dissolve it; but he cannot control the exercise by the court of powers vested in it by law. He may withdraw any specification or charge at anytime unless the court has reached a finding thereon.

[33] Rollo (G.R. No. 176394), p. 1871.

[34] Id. at 2540-2542.

[35] Id. at 2462-2478.

[36] Id. at 2479-2522.

[37] Id. at 2523-2539.

[38] G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[39] Id. at 213-214.

[40] Id. at 214.

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