

JESUS T. TANCHANCO AND ROMEO R. LACSON, PETITIONERS, VS. THE HONORABLE SANDIGANBAYAN (SECOND DIVISION), RESPONDENT.

G.R. Nos. 141675-96. November 25, 2005

Ponente: TINGA, J.

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TINGA, J.:

The Court's duty to enforce the law takes on greater imperative when in so doing, it compels the execution of commitments made by the State to its citizens. However the modality a right or privilege is granted by the State to a person—whether under the Constitution, a statute or a mere contract—recognition thereof is required by the government and, if need be, mandated by this Court.

Presently for consideration is what appears to be a broken covenant by the State, made particularly by the Presidential Commission on Good Government (PCGG) to former National Food Authority (NFA) Administrator Jesus Tanchanco (Tanchanco), one of the petitioners at bar. Granted, it is a covenant that should not be lightly undertaken, involving as it does the grant of criminal immunity. Notwithstanding, the legal order has never subscribed to the notion that promises are meant to be broken.

We begin with the facts.

Tanchanco served as NFA Administrator from 1972 to 1986, during the presidency of Ferdinand Marcos. His co-petitioner Romeo Lacson (Lacson) was the Deputy Administrator of the NFA when he was the Administrator.

On 6 May 1988, Tanchanco and the PCGG entered into a Cooperation Agreement,[1] occasioned by the desire of Tanchanco to cooperate with the Philippine government in connection with the latter's efforts in the location and pursuit of government properties "purloined" by Ferdinand and Imelda Marcos, their agents and others who hold property on their behalf. In the Cooperation Agreement, the parties stipulated as follows:

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties agree as follows:

- Tanchanco shall cooperate with any and all Philippine Government investigations or prosecutions pursuant to Executive Order No. 1.

- "Cooperation" means that Tanchanco shall provide complete, candid and absolutely truthful disclosures, in response to any and all questions and inquiries that may be put to him/her in connection with the Philippines' investigations, civil actions, criminal prosecutions, or any other proceedings whether in the Philippines, the United States or elsewhere. Further, upon the request of the Philippines, Tanchanco will offer such cooperation in investigations and proceedings brought by other governments, including but not limited to the United States and Switzerland.

Cooperation also means a disgorgement of assets, if any, acquired in violation of Philippine laws, rules and regulations. Cooperation further means a full disclosure of assets and liabilities, beneficially owned by

Tanchanco. Any assets not therein listed as Tanchanco's personal property, and thereafter discovered to be in Tanchanco's name or under his/her legal or beneficial control, directly or indirectly, as of the date of this Agreement, shall become the property of the PCGG.

- Should any of Tanchanco's statements or testimonies be false, misleading or materially incomplete, or should Tanchanco knowingly fail to act with total honesty and candor in any such matters, the Philippines shall no longer be bound by any of its representations contained herein. Immunities and other considerations granted in reliance thereof, shall be null and void.

In return for the above, the Philippines hereby represents and agrees as follows:

(1) At a time to be mutually agreed upon between Tanchanco and the Philippines, the Philippines shall move to dismiss all actions that are presently pending against Tanchanco before the Sandiganbayan and any such other courts;

(2) The Philippines shall lift any sequestration orders against Tanchanco's properties, if any, and rescind hold orders it may have issued against his/her actions;

(3) The Philippines shall not bring any additional civil or criminal charges against Tanchanco, arising from:

(A) Service in or for the Marcos government;

(B) Any other actions revealed by Tanchanco pursuant to his/her cooperation as defined in this Agreement.

Except as expressly set forth herein, there is no understanding or agreement of any kind between the Philippines or its counsel, and Tanchanco, concerning the possible use(s) of his/her liability for criminal or civil prosecution by the Philippines, or any other jurisdiction.

Nothing in this Agreement between the Philippines and Tanchanco is conditioned on the result of any proceedings that might be brought or have been brought against Ferdinand or Imelda Marcos or others in connection with the information provided or to be provided. Thus none of the obligations or undertakings described above are in any way dependent upon a jury's or court's verdict at any trial, or the success of any criminal or civil prosecution.[2]

Significantly, Tanchanco was called upon as one of the witnesses for the prosecution in the case filed against Imelda Marcos in New York for violation of the so-called RICO Act. It appears that his testimony was elicited concerning the transfer of P10,000,000.00 rebate obtained by the NFA from the Philippine National Lines to the Security Bank, as well as the matter of the use of discretionary and/or intelligence funds by the Marcos administration involving the funds of the NFA during Tanchanco's administration.[3]

Nonetheless, a criminal case, docketed as Criminal Case No. 16950, was filed in 1991 against Tanchanco with the Sandiganbayan for malversation of public funds in the amount of P10,000,000.00 from the Philippine National Bank. Tanchanco filed a Motion for Reinvestigation, wherein he argued that the case should be dismissed as he had been granted immunity from the said suit by the PCGG. Eventually, the Sandiganbayan First Division agreed with Tanchanco and in a Resolution dated 27 October 2000, the case was ordered dismissed.[4]

However, Criminal Case No. 16950 proved to be only just one of several attempts of the government to prosecute Tanchanco. In 1997, a total of 22 Informations were filed with the Sandiganbayan against Tanchanco. He was charged with 21 counts of Malversation of Public Funds under Article 217 of the Revised Penal Code, and one count of Failure of Accountable Officer to Render Accounts under Article 218 of the same Code.[5] Lacson was charged as a co-defendant in four of the informations for Malversation of Public Funds.[6] These cases were consolidated and raffled to the Sandiganbayan Second Division. On 2 September 1997, Tanchanco and Lacson pleaded not guilty to all of the charges.[7]

On 26 November 1997, Tanchanco and Lacson filed a Motion to Quash and/or Dismiss all 22 cases, citing as

basis the Cooperation Agreement which was said to have granted immunity to Tanchanco from criminal prosecution. They likewise presented an affidavit executed by former Vice-President Emmanuel Pelaez, who was serving as Philippine Ambassador to the United States at the time of the New York trial of Imelda Marcos. In his affidavit, Ambassador Pelaez relevantly stated:

- During my incumbency as Ambassador, I had the privilege to assist the Philippine Government thru the Presidential Commission on Good Government (PCGG) in obtaining the full cooperation of Mr. Jesus Tanchanco relative to its investigation on the transfer of TEN MILLION PESOS (P10,000,000.00) rebate obtained by the National Food Authority (NFA) from the Philippine National Lines (PNL) to the Security Bank. The scope of investigation also encompassed the controversial use of discretionary and/or intelligence funds by the Marcos Administration particularly involving the funds of NFA during the administratorship of Mr. Tanchanco.
- In this regard, sometime May 1990, I invited Mr. Jesus Tanchanco, on behalf of PCGG, to my office in Washington, D.C. to have an investigative meeting with Atty. Severina Rivera and Atty. Labella, both of whom presented PCGG in cases against the Marcoses in the U.S. On this occasion, it was explained to Mr. Tanchanco that his disclosure/testimony on the adverted P10M fund transfer and the matter of discretionary and intelligence funds of the NFA were indispensable to the Philippine Government's case against the Marcoses. I urged him to cooperate with the Government and he signified his willingness to do so.
- After a time of reflection, Mr. Tanchanco obliged, and he thereafter had lengthy question and answer sessions with Attys. Rivera and Labella on the aforesaid major and other collateral issues.[8]

Still, the motion was denied by the Sandiganbayan Second Division in a Resolution dated 5 March 1999.[9] The Sandiganbayan examined Section 5 of Executive Order (E.O.) No. 14, which empowered the PCGG to grant immunity from criminal prosecution, and ruled that the grant of immunity by the PCGG pertained only to offenses which may arise from the act of a person testifying or giving information in connection with the recovery of supposed ill-gotten wealth.

Respondent court declared that the charges of malversation and failure to render an accounting could not be considered as falling within the immunity granted to Tanchanco as the offenses were not related or connected to the testimony or information furnished by Tanchanco in a proceeding concerning the recovery of the purported ill-gotten wealth of the Marcoses. The Sandiganbayan opined that the PCGG could not have intended the grant of immunity to extend to any other crime which Tanchanco may have committed while serving the Marcos Administration, "such as bribery and rape," since such was beyond the scope of the PCGG to bestow. To construe the grant of immunity so broadly, held the Sandiganbayan, would violate the equal protection clause of the Constitution, as well as the due process clause.[10]

The Sandiganbayan likewise concluded that even assuming the immunity granted by the Cooperation Agreement covered the offenses charged against Tanchanco, the same could not benefit Lacson, as he was not a party to the immunity agreement.[11]

A Motion for Reconsideration filed by Tanchanco and Lacson was denied in a Resolution dated 28 December 1998, the Sandiganbayan declaring therein that the crimes to which petitioners were charged "are beyond the authority and mandate of the PCGG." [12]

Petitioners now argue before this Court that the grant of immunity under the Cooperation Agreement encompassed the subject charges. They note that Tanchanco had given testimony in the United States regarding the intelligence fund of the NFA, which was used by President Marcos for his own personal benefit. Petitioners advert to the affidavit attesting to such testimony by Ambassador Pelaez. It is argued that Tanchanco had complied with all his commitments made in the Cooperation Agreement, and it would be the height of "gross

distortion of justice and both moral and legal outrage for the government now to welch on the said Agreement" after Tanchanco had already testified against the Marcoses. Petitioners likewise cite the relevant jurisprudence concerning the grant of immunity from criminal prosecution by the PCGG.

The Office of the Special Prosecutor, on behalf of the People of the Philippines, cites the comment filed by the PCGG to the Motion to Quash and/or Dismiss before the Sandiganbayan, wherein it alleged that contrary to the terms of the Cooperation Agreement, Tanchanco had not yet provided the PCGG "a full disclosure of assets and liabilities beneficially owned by Tanchanco." [13] This claim is countered by petitioners, who assert before this Court that he had already submitted such disclosure to the PCGG even prior to the execution and signing of the Cooperation Agreement. [14]

The Office of the Solicitor General (OSG), representing respondent Sandiganbayan, provides a different argument against petitioners. The OSG reiterates the position of the Sandiganbayan that the 22 charges against Tanchanco were not covered by the immunity granted by the PCGG, which pertained only to offenses which may arise from his act in testifying or giving information in connection with the recovery of ill-gotten wealth. [15]

Before delving into the merits, we make two preliminary qualifications. First, the general rule under Rule 117 of the Rules of Criminal Procedure is that the accused may move to quash the complaint or information at any time before entering his plea and the failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information shall be deemed a waiver of any objection. [16] In this case, Tanchanco and Lacson had pleaded not guilty in all the subject cases on 2 September 1997, two months before they filed the instant Motion to Quash and/or Dismiss in November of 1997. Nonetheless, Section 9 of Rule 117 expressly qualifies that the failure to timely raise the objection of lack of jurisdiction over the offense charged cannot be waived, [17] and may be raised or considered *motu proprio* by the court at any stage of the proceedings or on appeal. [18] Such objection could be raised through a motion to dismiss when it is no longer timely to file a motion to quash. [19] We have no doubt that a claim of immunity from prosecution arising from an immunity statute or agreement is a jurisdictional question. A statutory grant of immunity enjoins the prosecution of a criminal action and thus deprives the court of jurisdiction to proceed. [20]

Accordingly, the invocation of immunity may have been the proper subject of petitioners' instant motion, and properly cognizable by the Sandiganbayan even after the plea had been entered. We need not belabor this point further, especially since none of the parties, and certainly not the Sandiganbayan, have either raised or considered this aspect of the case.

Second, we note that different circumstances obtain between Tanchanco and Lacson, the latter being evidently not a party to any immunity agreement with the Philippine government. Thus, it is proper to treat their cases separately. We first rule on Tanchanco's claim of immunity.

The Plain Meaning of the Cooperation Agreement

Our first point of reference understandably is the Cooperation Agreement. Therein, we note that the grant of immunity to Tanchanco is deliberately broad. It is stipulated that the government "shall not bring any additional civil or criminal charges against Tanchanco arising from: (a) service in or for the Marcos government; and (b) any other actions revealed by Tanchanco pursuant to his/her (sic) cooperation as defined in this Agreement." [21]

The undertakings expressed by the Philippine government through the PCGG in the Cooperation Agreement are quite clear-cut, even if broad in scope. Facially, it seemingly encompasses three classes of actions committed by Tanchanco: those committed while he was in the service of the Marcos government; those committed in behalf of

the Marcos government; and any other act revealed by him in the course of his cooperation with the PCGG.

Especially telling are the segregations made in the classification of the acts covered by the grant of criminal immunity. First, the distinction is laid, as signified by the conjunctive "or", between those acts committed by Tanchanco arising from service in the Marcos government and those committed for or in behalf of the Marcos government. The difference between those two classes of acts is crucial, for if the agreement is construed plainly, the immunity covers not only those acts committed by Tanchanco for the benefit or under the instruction of the Marcoses, but even those acts of Tanchanco which may not have been tinged with the involvement of Marcos or his government yet which nevertheless occurred during Tanchanco's term as NFA Administrator.

On the face of the document, we cannot simply say that the clause should be read as covering only those acts of Tanchanco which he committed for the Marcos government while he was in service as NFA Administrator. The use of the word "or" signifies the joinder of two distinct concepts: "service in" and "service for", and it is our conclusion that the PCGG and Tanchanco, in forging the Cooperation Agreement purposively intended to segregate acts arising from "service in" and acts arising from "service for" the Marcos government.

The Cooperation Agreement also utilizes a distinction between these acts arising from "service in or for the Marcos government", and "any other actions revealed by Tanchanco pursuant to [his] cooperation as defined in the Agreement." This qualification is again crucial, as it is the contention of the OSG that the scope of immunity is limited only to those offenses which may arise from his act in testifying or giving information in connection with the recovery of ill-gotten wealth. Immunity from criminal prosecution arising from those acts elicited from Tanchanco in the course of his cooperation falls squarely within the second ground for immunity, "any other actions revealed by Tanchanco pursuant to [his] cooperation." If indeed, as the OSG suggests, the scope of immunity is limited to those offenses that arise from Tanchanco's act in testifying or giving information, then why the provision of the first ground of immunity under the Cooperation Agreement, for acts arising from "service in or service for the Marcos government"? The provision is there to effectuate what it declares.

Other provisions of the Cooperation Agreement likewise indicate that the intent of the PCGG, as representative of the Philippine government, was to offer Tanchanco broad protection from criminal prosecution. The Second Whereas Clause expresses that both Tanchanco and the PCGG "are desirous of resolving their differences and settling all litigation between them".^[22] Moreover, it is stipulated that "none of the obligations or undertakings described [herein] are in any way dependent upon a jury's or court's verdict at any trial, or the success of any criminal or civil prosecution."^[23]

We thus cannot accept the conclusion that the intent of the parties to the Cooperation Agreement was to limit the scope of immunity to cover only offenses arising from the testimony or information given by Tanchanco pursuant to his cooperation; or that said agreement pertains only to those offenses committed by Tanchanco in behalf of the Marcos government. Such limited construction is belied by the clear terms of the Cooperation Agreement.

The reasons or motives of the PCGG in agreeing to so broad an immunity agreement are not evidently determinable, yet ultimately excluded from the scope of judicial inquiry. In *Mapa v. Sandiganbayan*,^[24] the Court was asked to rule on the range and power of the courts to review the exercise of discretion of the PCGG in granting immunity pursuant to Section 5 of E.O. No. 14. The Court, speaking through now Senior Associate Justice Reynato S. Puno, ruled that such review "can go no further than to pass upon [the immunity grant's] procedural regularity", and is especially limited to the questions of "(a) whether the person claiming immunity has provided information or testimony in any investigation conducted by the PCGG in the discharge of its functions; (b) whether in the bona fide judgment of the PCGG, the information or testimony given would establish the unlawful manner in which the respondent, defendant or accused has acquired or accumulated the property or

properties in question; and (c) whether in the bona fide judgment of the PCGG, such information or testimony is necessary to ascertain or prove the guilt or civil liability of the respondent, defendant or accused." [25]

The ruling in Mapa, which was ignored by the Sandiganbayan, establishes several principles that govern this case as seen in our subsequent discussion. But the first integral point which we now invoke is that the reasons or motives of the PCGG in granting broad criminal immunity to Tanchanco are beyond the scope of judicial review. The more appropriate legal question now lies as to whether the PCGG, in entering into the Cooperation Agreement, acted within the scope of its statutory authority to extend immunity in the first place? Does such authority encompass the broadly granted immunity as so plainly expressed in the Cooperation Agreement?

Statutory Authority of PCGG

To Extend Criminal Immunity

Before we examine the particular statutory authority of the PCGG to extend criminal immunity, it is useful to recall the unique nature and mandate of the PCGG itself. The seminal case of *BASECO v. PCGG* [26] explained the background behind the creation of the PCGG through E.O. No. 1.

The impugned executive orders are avowedly meant to carry out the explicit command of the Provisional Constitution, ordained by Proclamation No. 3, that the President — in the exercise of legislative power which she was authorized to continue to wield "(u)ntil a legislature is elected and convened under a new Constitution" — "shall give priority to measures to achieve the mandate of the people," among others to (r)ecover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts."

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Executive Order No. 1 stresses the "urgent need to recover all ill-gotten wealth," and postulates that "vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad." Upon these premises, the Presidential Commission on Good Government was created, "charged with the task of assisting the President in regard to . . . (certain specified) matters," among which was precisely — ". . . The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship."

In relation to the takeover or sequestration that it was authorized to undertake in the fulfillment of its mission, the PCGG was granted "power and authority" to do the following particular acts, to wit:

1. "To sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task."

"2. "To provisionally take over in the public interest or to prevent the disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.

"3. "To enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate or otherwise make ineffectual the efforts of the Commission to carry out its task

under this order."

So that it might ascertain the facts germane to its objectives, it was granted power to conduct investigations; require submission of evidence by subpoenae ad testificandum and duces tecum; administer oaths; punish for contempt. It was given power also to promulgate such rules and regulations as may be necessary to carry out the purposes of . . . (its creation)."

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Executive Order No. 2 gives additional and more specific data and directions respecting "the recovery of ill-gotten properties amassed by the leaders and supporters of the previous regime." It declares that:

1) ". . . the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former Ferdinand E. Marcos, and/or his wife Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;" and

2) ". . . said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world."

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A third executive order is relevant: Executive Order No. 14, by which the PCGG is empowered, "with the assistance of the Office of the Solicitor General and other government agencies, . . . to file and prosecute all cases investigated by it . . . as may be warranted by its findings." All such cases, whether civil or criminal, are to be filed "with the Sandiganbayan, which shall have exclusive and original jurisdiction thereof." Executive

Order No. 14 also pertinently provides that "(c)ivil suits for restitution, reparation of damages, or indemnification for consequential damages, forfeiture proceedings provided for under Republic Act No. 1379, or any other civil actions under the Civil Code or other existing laws, in connection with . . . (said Executive Orders Numbered 1 and 2) may be filed separately from and proceed independently of any criminal proceedings and may be proved by a preponderance of evidence;" and that, moreover, the "technical rules of procedure and evidence shall not be strictly applied to . . . (said) civil cases." [27]

Executive Order No. 14, as amended by E.O. No. 14-A, defines "the jurisdiction over cases involving the ill-gotten wealth of former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, members of their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees." [28] It is Section 5 thereof, as amended, which authorizes the PCGG to grant immunity from criminal prosecution, in the following manner:

Sec. 5. The Presidential Commission on Good Government is authorized to grant immunity from criminal prosecution to any person who provides information or testifies in any investigation conducted by such Commission to establish the unlawful manner in which any respondent, defendant or accused has acquired or accumulated the property or properties in question in any case where such information or testimony is necessary to ascertain or prove the latter's guilt or his civil liability. The immunity thereby granted shall be continued to protect the witness who repeats such testimony before the Sandiganbayan when required to do so

by the latter or by the Commission.[29]

From these premises, we can draw useful conclusions. Section 5 is worded in such a manner as it does not provide any express limitations as to the scope of immunity from criminal prosecution that the PCGG is authorized to grant. The qualifications that Section 5 do provide relate to the character of the information or testimony before the PCGG of the grantee of immunity, namely, that it "establish[es] the unlawful manner in which any respondent, defendant or accused has acquired or accumulated the property or properties in question in any case where such information or testimony is necessary to ascertain or prove the latter's guilt or his civil liability."

While there is no doubt that the information or testimony of the grantee must pertain to the manner of acquisition of ill-gotten wealth by the Marcoses, their close relatives and associates, the question now before us is whether the available immunity from criminal prosecution relates only to the prosecution of the grantee in like minded cases. The Sandiganbayan opined in the affirmative, declaring that "[t]he charges of malversation and failure to render an account cannot be considered within the purview of the immunity granted to Tanchanco by the PCGG, since the offenses are not related to or connected with the testimony or information furnished by Tanchanco in a proceeding concerning the recovery of the purported ill-gotten wealth of the former President, his relatives and associates." [30] We are constrained to disagree.

The Court has been called upon before to construe Section 5 of E.O. No. 14-A. As earlier noted, the Court in Mapa [31] held that the power of the Sandiganbayan to review such grant of immunity by the PCGG could "go no further than to pass upon its procedural regularity." In Chavez v. PCGG, [32] the Court reiterated that the conditions under which the PCGG may grant criminal immunity were: "(1) the person to whom criminal immunity is granted provides information or testifies in an investigation conducted by the Commission; (2) the information or testimony pertains to the unlawful manner in which the respondent, defendant or accused acquired or accumulated ill-gotten property; and (3) such information or testimony is necessary to ascertain or prove guilt or civil liability of such individual." [33]

The Court in both cases adverted to the same characterization of criminal immunity under Section 5. Notably, the Court did not affirm the belief that the scope of criminal immunity was limited to any class of criminal acts, offenses, or cases—understandable considering that Section 5 does not make any such qualification. Moreover, our ruling in Mapa went as far as to squarely characterize the witness under Section 5 of E.O. No. 14-A as "completely immunized from prosecution." [34] In the same case, the Court even upheld the immunity granted to petitioners Mapa and Vergara despite the fact that the PCGG subsequently reversed track and acceded to the prosecution of the said petitioners.

To be certain, the Sandiganbayan's conclusion in this case is not entirely off-base. We have recognized in this jurisdiction that American common law generally recognizes two kinds of statutory criminal immunity available to a witness: transactional immunity and the use-and-derivative-use immunity. [35] Transactional immunity is broader in the scope of its protection. By its grant, a witness can no longer be prosecuted for any offense whatsoever arising out of the act or transaction to which the testimony relates. In contrast, by the grant of use-and-derivative-use immunity, a witness is only assured that his or her particular testimony and evidence derived from it will not be used against him or her in a subsequent prosecution. [36]

Applying the broader standard of "transactional immunity", it might be argued that the immunity which the PCGG is authorized to grant to Tanchanco should pertain only to those acts or offenses which are the subject of the information or testimony given by him. Considering though that the applicable law at hand does not make such a qualification, the adoption of that view would force us into a concession that the legislative authority to grant criminal immunity is limited to transactional or use-and-derivative-use immunity. We cannot accept the

proposition.

Transactional immunity derives from common-law tradition, which gives greater deference to the weight of judicial precedents since the codification of laws by the legislature is atypical in practice. In our jurisdiction though, the definition of crimes and provision of criminal penalties are ineluctably within the sole province of the legislative branch of government. It thus follows that this prerogative necessarily empowers the legislative to enact conditions under which a class of persons may be immune from criminal or civil prosecution. Since the legislature possesses sole discretion to enact statutes to such effect, it is not obliged to conform with judge-made standards, or even traditional modalities concerning the grant of criminal immunity. The solitary limitation on legislative grant of immunity, as with all other legislative acts, is adherence to the Constitution.

Another consideration impels us to sustain this broad application of immunity under Section 5 of E.O. No. 14-A. We cannot ignore the special circumstances under which the PCGG was created, and the extra-ordinary powers with which it was vested. The Freedom Constitution itself, under which regime the body was created, recognized the need "to [r]ecover ill-gotten properties amassed by the leaders and supporters of the [Marcos] regime". It has been acknowledged that the PCGG is "charged with the herculean task of bailing the country out of the financial bankruptcy and morass of the previous regime and returning to the people what is rightfully theirs." [37] For this reason, the PCGG was granted quasi-judicial functions [38] encompassing special investigatory and prosecutorial powers, among them, the power to grant immunity.

In tracing and recovering the colossal sums of "ill-gotten wealth", the PCGG would inevitably collide with powerful interests. Persons who would be able to assist in the prosecution of cases of ill-gotten wealth may understandably be hesitant to cooperate with the PCGG without the assurance of some protection, or perhaps corresponding benefit on their part. There may be some inherent unease with the notion that persons may acquit themselves of their own criminal culpability by striking a deal with the government, yet the process of compromise has long been allowed in our jurisdiction, and in the jurisdiction of other states as well. [39] This holds especially true in the prosecution of ill-gotten wealth cases, which not only involve monumental amounts, but have also ineluctably acquired immense symbolic value.

The overwhelming need to prosecute the ill-gotten wealth cases is entrenched in statute and public policy. The stakes being as they are, the need is apparent for a highly conducive environment under which witnesses may be induced to cooperate with the PCGG in the prosecution of the ill-gotten wealth cases. The authorization of the PCGG to broadly extend criminal immunity, as is apparent in the language of Section 5, is attuned to such aims. Certainly, Section 5 as constructed leads to a reasonable conclusion that the scope of criminal immunity which the PCGG may offer need not be limited to prosecution relating to the information or testimony offered by the witness. And it is apparent on the face of the Cooperation Agreement with Tanchanco that the PCGG understood just as well that it had the power to grant criminal immunity even over such acts which did not directly bear on the information or testimony.

Our conclusion is also supported by the fact that based on the PCGG immunity agreements which have come before this Court, the scope of offered immunity has proven variable. For example, the grant of immunity accorded by the PCGG to Jose Yao Campos and his family was qualified only by reference to Section 5 of E.O. No. 14 [40]. On the other hand, the immunity received by Placido Mapa and Lorenzo Vergara was limited over "any offense with reference to which [their] testimony and information are given, including any offense and commission of which any information, directly or indirectly derived from such testimony or other information is used as basis thereof, except a prosecution for perjury and/or giving false testimony." [41] In Tanchanco's case, his entitlement to criminal immunity applies to three determinate circumstances: for acts committed while he was in the service of the Marcos government; acts committed in behalf of the Marcos government; and any other act

revealed by him in the course of his cooperation with the PCGG.

These variances are indicative of the fact that the PCGG has the discretion to vest appropriate levels of criminal immunity according to the particular witness. There are several factors that may affect this choice, which may include the relative importance of the witness to the prosecution of ill-gotten wealth cases, the degree of culpability of such cases, or even the conditions expressed by the witness as sufficient to induce cooperation. Given the language of Section 5, we do not doubt the latitude afforded to the PCGG in determining the extent of criminal immunity it can afford the cooperative witness. Such is conformable to the unprecedented power of the PCGG to grant criminal immunity. We made the following pertinent observations in Mapa:

We observe that in contrast to our other laws on immunity, section 5 of E.O. No. 14, as amended, confers on the PCGG the power to grant immunity alone and on its own authority. The exercise of the power is not shared with any other authority. Nor is its exercise subject to the approval or disapproval of another agency of government. The basic reason for vesting the power exclusively on the PCGG lies in the principles of separation of power. The decision to grant immunity from prosecution forms a constituent part of the prosecution process. It is essentially a tactical decision to forego prosecution of a person for government to achieve a higher objective. It is a deliberate renunciation of the right of the State to prosecute all who appear to be guilty of having committed a crime. Its justification lies in the particular need of the State to obtain the conviction of the more guilty criminals who, otherwise, will probably elude the long arm of the law. Whether or not the delicate power should be exercised, who should be extended the privilege, the timing of its grant, are questions addressed solely to the sound judgment of the prosecution. The power to prosecute includes the right to determine who shall be prosecuted and the corollary right to decide whom not to prosecute. In reviewing the exercise of prosecutorial discretion in these areas, the jurisdiction of the respondent court is limited. For the business of a court of justice is to be an impartial tribunal, and not to get involved with the success or failure of the prosecution to prosecute. Every now and then, the prosecution may err in the selection of its strategies, but such errors are not for neutral courts to rectify, any more than courts should correct the blunders of the defense. For fairness demands that courts keep the scales of justice at equipoise between and among all litigants. Due process demands that courts should strive to maintain the legal playing field perfectly even and perpetually level.[42]

Certainly, especially since nothing in Section 5 mandates a minimum standard of criminal immunity, the PCGG was not obliged to grant Tanchanco so broad an exemption. Yet the extent to which it did is permissible under E.O. No. 14-A, and we are wont to uphold the broad grant, especially as it favors a criminal defendant. Ambiguities in immunity agreements must be construed against the State,[43] and any question of interpretation must be resolved in favor of the defendant,[44] following the underlying fundamental principle that all doubts must be resolved in favor of the accused.

We are not in accord with the behavior of both the government and the Sandiganbayan in this case. We have reviewed the pertinent memoranda prepared respectively by the Commission on Audit and the Office of the Special Prosecutor which eventually served as the basis for the institution of the cases. From these documents, it is clear that no consideration was given to the possible effects of the Cooperation Agreement on the viability of prosecuting Tanchanco. The attitude of the investigators and prosecutors appears to have been to pretend that the Cooperation Agreement did not exist at all. This fact weakens the believability of belated claims, raised in opposition to the instant motion to quash/dismiss, that Tanchanco had actually violated portions of the Cooperation Agreement. The indications are that the prosecutors, prior to the institution of the case, had not considered such agreement at all as a factor, despite the clear language therein.

If indeed the government had known as a fact that Tanchanco had violated his obligations under the Cooperation Agreement, the very least it could have done was to notify him of such violations, or of its intent to rescind the Cooperation Agreement. Vested rights were at stake which affected the liberty of a person, and any deprivation or

revocation therein could not be effected in so blithe a fashion as that which occurred in this case.

Neither does it appear that the Sandiganbayan had given careful consideration to the Cooperation Agreement when it ruled on the motion to quash/dismiss. It resorted to generalizations such as "the offenses are not related to or connected with the testimony or information furnished by Tanchanco"[45] or "the subject matter of the informations are NFA funds and the records do not indicate that they have any relation whatsoever to the ill-gotten wealth of the Marcoses or their cronies."[46]

Yet from the results of the investigations that led to the institution of the charges, it is clear that the cases against Tanchanco arose from the following acts or irregularities: (1) the transfer of NFA funds either to Tanchanco's personal account, the account of "Oplan Wag-Wag", or a private institution; (2) the failure to account for several classes of funds received by Tanchanco, including discretionary funds, amounts contributed to the Food Production and Nutrition Fund, and other donations. From the Pelaez affidavit, it is clear that the PCGG had precisely investigated the anomalous transfer of NFA funds during the Marcos Administration, particularly the use of discretionary or intelligence funds of the NFA, and that Tanchanco had given information relating to such investigation.

Faced with these facts, the conclusion of the Sandiganbayan that the subject informations bore no relation either to the acquisition of ill-gotten wealth or the investigations of the PCGG is questionable. It may be within the realm of possibility that at least some of the charges against Tanchanco pertain to acts he performed for his own personal benefit, without regard to the scheme implemented for the acquisition of ill-gotten wealth. Still, neither the Sandiganbayan nor the prosecution appears to have seriously considered or laid down such a distinction. And besides, as earlier stated, the scope of the Cooperation Agreement itself precludes the prosecution of Tanchanco under the subject charges.

We should observe that the Sandiganbayan First Division, in a different case, had also considered the application of the Cooperation Agreement in the criminal prosecution of Tanchanco. The disposition of the instant motion to quash and/or dismiss of the Sandiganbayan Second Division pales in comparison to the judicious deliberation of the First Division, through the late Presiding Justice Francis Garchitorena. Particularly admirable was how the First Division had applied this Court's precedents on the authority of the PCGG to grant criminal immunity, especially Mapa. The First Division cited the threefold test laid down in Mapa on the parameters under which the Sandiganbayan could review the grant of immunity, and arrived at the following crucial conclusions, namely: (i) that Tanchanco had cooperated with the PCGG in obtaining information on the Marcos wealth; and (ii) that the PCGG exercised bona fide judgment in deciding to grant immunity to Tanchanco. In contrast, the Sandiganbayan Second Division, without considering Mapa and other relevant precedents, rashly concluded without palpable basis that the Cooperation Agreement did not cover the subject charges.[47]

We thus hold that the Cooperation Agreement, validly undertaken between the PCGG and Tanchanco as it was, precludes the prosecution of Tanchanco under the subject charges. The Sandiganbayan acted with grave abuse of discretion in refusing to dismiss the charges despite its lack of jurisdiction to continue hearing the cases against Tanchanco. The present petition, insofar as it relates to Tanchanco, must be granted. It goes without saying though that this ruling does not shield all grantees under Section 5 of E.O. No. 14-A from all kinds of criminal prosecution. The extent of immunity available to each particular grantee depends on their respective immunity agreements with the PCGG and the surrounding facts.

Lacson Not Entitled To Immunity

A different result must obtain for petitioner Lacson. There is no legal basis that would preclude his prosecution under the subject informations. The reason is simple. There is no subsisting agreement by virtue of which the

State granted any kind of immunity from criminal prosecution to Lacson. Certainly, Lacson could not inveigh that Tanchanco's Cooperation Agreement also applies as to him since he was not a party thereto. Nor is there, on the face of the Cooperation Agreement, any evident intention on the part of the PCGG and Tanchanco to extend the grant of immunity to other persons as well. Besides, even if there was such intent, it may be of doubtful validity since the authority of the PCGG to grant immunity under Section 5-A of E.O. No. 14-A is limited to "person[s] who provide information or testif[y] in any investigation conducted by [the PCGG]."[48]

Criminal immunity must be specifically granted.[49] We cannot uphold a grant of criminal immunity to a person whom the State never intended to exempt from prosecution, or who performed no act to the benefit of the State that may have served as basis for a possible grant of exemption. It should be emphasized that the grant of immunity to Tanchanco did not have the effect of obviating all consequential culpabilities arising from Tanchanco's acts. Only Tanchanco's own criminal liability was extirpated, for the reason that the government saw a higher social value in eliciting information from him rather than engaging in his prosecution. No correlative tradeoff occurred as to Lacson, so we do not see any reason in law or in equity to exempt him as well.

It may seem unsettling to some that Lacson will have to endure criminal prosecution while Tanchanco would be discharged, or that Tanchanco will need not answer for whatever culpable acts of his during his service in the Marcos government. Yet the Court is not the guarantor of karmic warrants, but only of legal ones. The Cooperation Agreement, entered into in the judgment of the State that it would serve a higher end of justice, is a valid document, enforceable as to Tanchanco before this Court and other courts of the land.

WHEREFORE, the petition is GRANTED IN PART. The Court hereby orders the DISMISSAL of the SUBJECT CRIMINAL CASES INsofar AS PETITIONER JESUS TANCHANCO IS CONCERNED. No pronouncement as to costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur.
Chico-Nazario, J., on leave.

[1] Rollo, pp. 104-106.

[2] Ibid. Emphasis supplied.

[3] Rollo, p. 16.

[4]Id. at 231-246. The Resolution was penned by Presiding Justice F. Garchitorena, and concurred in by Justices C. Castañeda and G. Ong.

[5]Id. at 37-99.

[6] With respect to the other informations, Tanchanco was either charged alone, or with Cesar Aquino, Director of the Department of Accounting and Budget of the NFA, with the exception of one information, wherein Tanchanco and Lacson were charged together with Jacobo Clave, former Ambassador to Italy.

[7] See Rollo, pp. 100-102.

[8]Id. at 103.

[9] Id. at 27-32. Resolution penned by Justice A. Gustillo, concurred in by Justices E. Sandoval and G. Legaspi.

[10] Id. at 30-31.

[11] Id. at 31.

[12] Id. at 33-35.

[13] Id. at 178.

[14] Id. at 182.

[15] Id. at 204-206.

[16] See Sections 1 and 9, Rule 117, Rules of Criminal Procedure.

[17] See Section 9, Rule 117, Rules of Criminal Procedure.

[18] See F. REGALADO, II REMEDIAL LAW COMPENDIUM (9th ed., 2001), at 442. See also *Suy Sui v. People*, 92 Phil. 684, 686-687 (1953); *Uy v. Court of Appeals*, G.R. No. 119000, 28 July 1997, 276 SCRA 367.

[19] See *People v. Paderna*, 130 Phil. 317, 320 (1968).

[20] See *People v. King*, 66 Cal. 2d 633, 58 Cal. Rptr. 571, 427 P.2d 171 (1967).

[21] *Supra* note 2.

[22] *Rollo*, p. 104.

[23] Id. at 105.

[24] G.R. No. 100295, 26 April 1994, 231 SCRA 783.

[25] Id. at 802-803.

[26] G.R. No. 75885, 25 May 1987, 150 SCRA 181.

[27] Id. at 201-205.

[28] See also *Republic v. Sandiganbayan*, G.R. No. 84895, 4 May 1989, 173 SCRA 72, 80.

[29] Prior to its amendment, Section 5 of E.O. No. 14 read: "The Presidential Commission on Good Government is authorized to grant immunity from criminal prosecution to any person who testifies to the unlawful manner in which any respondent, defendant or accused has acquired or accumulated the property or properties in question in cases where such testimony is necessary to prove violation of existing laws." However, since the amendatory executive order took effect on 18 August 1986, or before the Tanchanco immunity agreement was executed, there is no need to apply the original Section 5.

[30] *Rollo*, p. 30.

[31] *Supra* note 24.

[32] 360 Phil. 133 (1998).

[33] Id. at 169.

[34] *Mapa v. Sandiganbayan*, *supra* note 24 at 799.

[35] Id. at 797.

[36] Id. at 797-798.

[37] *PCGG v. Peña*, G.R. No. L-77663, 12 April 1988, 159 SCRA 556, 565.

[38] See PCGG v. Peña, id. at 564; PCGG v. Nepumuceno, G.R. No. 78750, 20 April 1990, 184 SCRA 449, 459.

[39] Mapa v. Sandiganbayan, supra note 24 at 795-797, provides a lengthy history of the grant of criminal immunity in the Philippines.

[40] See Republic v. Sandiganbayan, supra note 28 at 83. The immunity clause read: "The [PCGG] has decided and agreed [t]o grant to Mr. Jose Y. Campos, his family, Mariano K. Tan and Francisco de Guzman immunity from criminal prosecutions, as provided in Section 5 of Executive Order No. 14."

[41] Mapa v. Sandiganbayan, supra note 24 at 790-791.

[42] Id. at 802.

[43] See State v. Howington, 907 S.W. 2d 403 (Tenn. 1995).

[44] See State v. Anderson, 612 P.2d 778 (Utah 1980).

[45] Rollo, p. 30.

[46] Id. at 35.

[47] Supra note 10.

[48] Supra note 29.

[49] Republic v. Sandiganbayan, supra note 28 at 83.

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