

though it is true under proper circumstances that some aid may be derived from legislative or executive construction of statutes, it is ultimately the court's province and duty to construe in good faith laws enacted by the legislature. To declare what real law is or has been is a judicial power; to declare what the law shall be is legislative. It is the duty of the courts to construe statutes for the purpose of determining whether a particular act done or omitted falls within the intended inhibition or commandment of such statutes, and in general for the purpose of enabling the enforcement of the statutes with reasonable certainty. However, in accordance with the general rule that the province of a court is to decide real controversies, and not to discuss or give opinions on abstract propositions or moot questions, a court will not construe provisions of a statute other than those in the case before it.<sup>16</sup>

Ultimately therefore, it would be the Supreme Court which will have the final say as to the legal effects of the lifting of Martial Law on the power of the incumbent President to legislate.

As J. B. L. Reyes had put it, "There is only one Supreme Court from whose decision all other courts should take their bearings."<sup>17</sup>

This statement reminds me of what our Remedial Law Professor usually said in class: If an inferior court commits an error, the case goes up to the Court of Appeals; if the Court of Appeals commits an error, the case goes up to the Supreme Court; if the Supreme Court commits an error, it becomes part of the law of the land!<sup>18</sup>

#### BIBLIOGRAPHY

1. American Jurisprudence
2. Issues of Bulletin Today and Times Journal
3. New Civil Code
4. Presidential Decree No. 1737
5. Statutory Construction, Felimon G. Alvendia  
Philaw Publishing Company
6. Supreme Court Reports Annotated
7. The 1973 Philippine Constitution A Reviewer-Primer  
Joaquin Bernas S. J.

<sup>16</sup>50 Am Jur Section 219.

<sup>17</sup>Albert v. CFI G.R. No. L-26364, May 21, 1968 citing People v. Aquino, G.R. No. L-1857, January 19, 1949.

<sup>18</sup>New Civil Code, Article 8.

## HIGHLIGHTS OF THE NATIONAL SECURITY CODE\*

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The advent of Proclamation No. 2045 "Proclaiming the Termination of the State of Martial Law Throughout the Philippines" last January 17, 1981 significantly was a great leap towards normalization process insofar as our present governmental system is concerned. Inevitably, however, a close scrutiny of the decrees, orders, instructions and proclamations is in point considering the provision of paragraph 2 Section 3, Article XVII of the New Constitution which we quote:

"All proclamations, orders, decrees, instructions and acts promulgated issued or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding and effective even after lifting of martial law or the ratification of this Constitution unless modified, revoked or superseded by subsequent proclamations, orders, decrees instructions or other acts of the incumbent President or unless expressly and explicitly modified or repealed by the regular National Assembly" (Underscoring Supplied).

In the light of the above-mentioned provision, we deem it necessary to provide our readers with an overview and our observations of the National Security Code, one of the more, if not the most, significant legislation of the President aside from the Public Order Act, which will basically and substantially affect the present government's normalization and liberalization process, not to mention, our fundamental rights.

The National Security Code is a compilation of all Decrees, General Orders, Letters of Instructions and policies as they pertain to National Security and Public Order.

#### GENERAL PROVISIONS

The concept on national security has been broadened to encompass national strength not only in the politico-military but also in the socio-economic sense. As a matter of policy, the State is now geared towards the promotion and development of a stable and enduring economy with the ultimate effort to stamp out and counteract smuggling, tax evasion and other financial schemes and activities that undermine the national interest and security (Sec. 2).

An advisory body which will assist the President of the Philippines in formulating and coordinating overall policies on matters relating to national security is created to be known as the National Security Council with the President as the Chairman (Sec. 3). Likewise created is the National Intelligence and Security

\*PD No. 1498. As amended

Authority which will take charge of the direction, coordination and integration of government activities involving national intelligence and security (Sec. 6).

The Armed Forces of the Philippines Intelligence Community which is responsible for positive intelligence on subversion, insurgency and other forms of armed threats; the Civil Intelligence and Security Agency responsible primarily for counterintelligence and shall exercise functional supervision and control over civil security units of the national and local government agencies and offices; and the Finance Ministry Intelligence and Investigation Bureau responsible for finance intelligence. The foregoing are the like primary intelligence agencies recognized for purposes of the National Security Code (Secs. 7, 8, 12).

Security units shall in the same manner be established in all national and local government offices, agencies and instrumentalities (Sec. 9).

#### CRIMES, OFFENSES AND ACTS WHICH ADVERSELY AFFECT OR UNDERMINE NATIONAL SECURITY

This Chapter contains a listing of the crimes, offenses and acts which adversely affect or undermine National Security, not to mention the so-called miscellaneous offenses which are likewise of the same effect.

Notably, the list of offenses covers almost all conceivable crimes already provided and penalized under the Revised Penal Code and by special laws such as, but not limited to, engaging in rallies, demonstrations, strikes, picketing and other forms of groups actions; violation of any decree or orders promulgated by the President personally or upon his direction; and operating any medium of mass communication without the certificate of authority duly signed by the President of the Philippines as provided under Sections 28, 29 and 30 of the aforementioned Code.

Of great significance is the amendment of RA 1700 otherwise known as the Anti-Subversion Law which substantially redefined "subversive organizations" as provided under Section 14 (a) of the Code so to state:

"Any association, organization, political party or group of persons organized for the purpose of overthrowing the Government of the Republic of the Philippines or for the purpose of removing from the allegiance to said Government or its laws the territory of the Philippines or any part thereof, with the *open or covert assistance or support of a foreign power or the open or covert support from a foreign source* of any association, group or person whether public or private, by force, violence, terrorism, arson, assassination, deceit or other illegal means shall be considered and is hereby declared a subversive organization (Underscoring Supplied).

Conversely, as can be gleaned from the abovementioned definition, an organization with equally the same purpose if not supported by a foreign power cannot be considered as a subversive one.

The provisions of Section 14 (c) of the aforementioned Code include a list of acts which shall constitute *prima facie* evidence of membership in any subversive

association. The ruling in the case of *People v Ferrer*,<sup>1</sup> which explicitly states that mere membership in subversive organization is not punished as the prosecution is duty bound to prove performance of overt acts, to the contrary notwithstanding, a cursory reading of the abovementioned Section logically points out the fact that if an individual is not a "member" of a subversive organization he is not liable for subversion thus, mere membership is being punished.

It is interesting to note that the two-witness rule heretofore provided in RA 1700 otherwise known as the Anti-Subversion Act is abrogated and the accused may be convicted on the testimony of one witness if sufficient under the rules of evidence or on his confession given in open court [Section 14 (g)].

A similar listing of miscellaneous offenses also considered as adversely affecting or undermining national security includes, but is not limited to, illegal possession of deadly weapon, firearms or bladed pointed or blunt weapon; rumor-mongering and spreading false information; illegal use of sirens and similar gadgets on vehicles; illegal telephone connections; unlawful publications and allied offenses; use of high-powered inboard and/or outboard engine in watercrafts (Section 15) as well as malicious dissemination of false information or the willful making of any threat concerning bombs, explosives or any similar device or means of destruction.

#### CONTROL MEASURES

For the duration of a national emergency, the President of the Philippines shall govern the nation and direct the operation of the entire Government including all its agencies and instrumentalities (Section 17).

The continued operation of the various government branches, departments agencies and instrumentalities is guaranteed although the Judiciary is deprived of jurisdiction to try cases falling within the exclusive jurisdiction of the Military Tribunals as provided in Section 63 and the following cases (Section 18):

(1) Those involving the validity, legality or constitutionality of Proclamation No. 1081 dated September 21, 1972 or any decree, order or acts issued, promulgated or performed by the President or by his duly designated representative pursuant to said proclamation.

(2) Those involving the validity, legality or constitutionality of any rule, order or act issued promulgated or performed by public servants, pursuant to decrees, orders, rules and regulations issued and promulgated by the President or his duly representative pursuant to Proclamation No. 1081, dated September 21, 1972;

(3) Those involving crimes against national security and the law of nations;

(4) Those involving crimes against the fundamental law of the State;

(5) Those involving crimes against public order;

(6) Those crimes involving usurpation of authority, rank, title, and improper use of names, uniforms and insignia;

<sup>1</sup>48 SCRA 382 (1971)

(7) Those involving crimes committed by public officers.

Section 20 of the Code provides for summary proceedings against government officers and employees where, in administrative cases against such officials and employees, no formal investigation is required and the respondent may be immediately removed or dismissed if any of the following circumstances is present;

- (a) When the charge is serious and the evidence of guilt is strong;
- (b) When the respondent is a recidivist or has been repeatedly charged and there is a reasonable ground to believe that he is guilty of the present charge;
- (c) When the respondent is notoriously undesirable.

Whether such provision will run counter to the fundamental guarantee of procedural due process is at the moment has no definite pronouncement.

As to the resignation of presidential appointees, government officials and employees who were required to tender their resignations as provided under Sections 21 and 22, be it noted that the provisions of said Sections do not apply to officials holding positions provided in the Constitution, namely: the Chief Justice and Associate Justices of the Supreme Court, the Auditor General and the Chairman and members of the Commission on Elections.

The omission, advertently or inadvertently, by the aforementioned Section of the constitutional office of the Civil Service Commission with its officers deserves serious consideration. Seemingly, the constitutional guarantee of security of tenure of civil service officials and employees is more of an illusion than a reality.

The provisions on control of mass media under Sections 24, 28 and 30 of the Code is rendered moot by the passage of Presidential Decree No. 1784 dated January 15, 1981 abolishing the Broadcast Media Council and the Print Media Council of the Philippines, duly created under PD No. 576, as the self-regulatory bodies of the print and broadcast industry although Section 26 of the same Code empowers the President to order the sequestration of the property or assets of any person or entity engaged in the mass media who or whose owners, principal officers and key personnel is/are engaged or found/known to have engaged in subversive activities against the government and its duly constituted authorities or in a conspiracy to overthrow the Government or allowed the use of any of its facilities, wittingly or unwittingly, in the broadcast or dissemination of subversive materials and of deliberately slanted and exaggerated news stories and scurrilous statements which are patently inimical to the security of the State.

Anyone now, may establish newspapers and operate a radio or television station provided they register with the Securities and Exchange Commission or apply for frequency assignments with the National Telecommunications Commission, respectively.

The provisions of Section 36 allowing Government takeover of steel mills

of private corporations led to the takeover of the Iligan Integrated Steel Mills Incorporated by the government.

For the duration of a national emergency and until otherwise ordered by the President or his duly designated representative, Section 46 provides that all rallies, demonstrations and other forms of group actions by persons within the geographical limits of the Philippines, including strikes and picketing in vital industries such as in companies engaged in the manufacture or processing as well as in the distribution of fuel, gas, gasoline, and fuel lubricating oil, in companies engaged in the production or processing of essential commodities or products for export and in companies engaged in banking of any kind as well as in hospitals and in schools and colleges are strictly prohibited.

General Order No. 66 dated September 13, 1980 as amended by General Order No. 67 establishes checkpoints in big establishments, places of amusements and other public and private buildings or places where people congregate, meet or transact business for the purpose of inspecting bags, luggages and other personnel, belongings or persons entering the premises of said buildings or establishments and to apprehend, detain and file charges against any person who shall, contrary to law, be found to be carrying firearms, explosives or any material used in the manufacture of firearms or explosives. Persons detained pursuant to said order shall not be released until ordered released by the President. In like manner, a person refusing to be searched pursuant to the aforementioned Orders shall be arrested and detained for his refusal and possible involvement in subversive activities for a period not exceeding seventy-two hours.

Section 10 and 11 of the Supplement to the Code provide for rewards and incentives to government witnesses and informant and immunity from criminal prosecution of government witnesses subject to the conditions listed thereunder.

Of outmost significance is P.D. 1737 dated September 12, 1980 otherwise known as the Public Order Act which is now incorporated in the Code as Section 12 of the Supplement and which we substantially reproduce for the benefit of our readers:

#### Section 12 – Extraordinary Control Measures

For the preservation of public order and the protection of individual rights and liberties during periods of emergency:

- a. The President/Prime Minister, *whenever in his judgment* there exists a grave emergency or a threat or imminence thereof, may issue such orders as he may deem necessary to meet the emergency including but not limited to, preventive detention, prohibiting the wearing of certain uniforms and emblems, restraining or restricting the movement and other activities of persons or entities with a view to preventing them from acting in a manner prejudicial to national security or the maintenance of public order, directing the closure of subversive publications or other media of mass communication, banning or regulating the holding or entertainment or exhibition detrimental to the national interest, controlling admission to educational institution whose operations are found prejudicial to national security, or authorizing the taking of measures to prevent any damage to the viability

of the economic system. The violation of orders issued by the President/Prime Minister pursuant to this Decree, unless the acts are punishable with higher penalties under the Anti-Subversion Act, the Revised Penal Code or other existing laws shall be punishable by imprisonment for not less than 30 days but not exceeding one (1) year (Underscoring Supplied).

The President/Prime Minister may authorize the Minister of National Defense to issue, in accordance with such regulations as he may prescribe, search warrants for the seizure of any document or property subject of the offense or used or intended to be used as the means of committing the offense pursuant to this section."

Extraordinary as it is termed to be so, the above-quoted provisions is all encompassing as to strengthen the power of the President to impose control measures. The exercise of such power is duly mandated in Amendment No. 6 of the New Constitution which says:

"Whenever in the judgment of the President (Prime Minister) there exists a grave emergency or a threat or imminence thereof, or whenever the Interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may in order to meet the emergency issue the necessary decrees, orders or letters of instructions which shall form part of the law of the land."

#### ARREST AND DETENTION

The Minister of National Defense, as duly designated representative of the President, shall have the power to arrest or order the arrest of such persons by virtue of an Arrest, Search and Seizure Order (ASSO) for acts, crimes and offenses provided under Section 17 of the Supplement to the Code which include as earlier stated almost all of the felonies and offenses punishable by the Revised Penal Code and the related special laws. But such power of the Minister of National Defense to issue an ASSO shall be generally limited to offenses over which the military tribunals have exclusive jurisdictions as limited in Chapter VII of the Code and shall not likewise be issued without prior clearance of the President/Prime Minister (Section 54 in connection with Section 13 Supplement).

Such person arrested or taken into custody pursuant to the abovementioned exercise of the power to issue an ASSO shall be held for the duration of the emergency until ordered released by the President or by the Minister of National Defense as his duly designated representative (Section 56).

Without prejudice to Art. 125 of the Revised Penal Code providing for periods of detention as six (6) hours for crimes or offenses punishable by light penalties; nine (9) hours for crimes or offenses punishable by correctional penalties; and eighteen (18) hours for crimes or offenses punishable by afflictive or capital penalties, the President may in the interest of national security and public order authorized by Executive Order, longer periods, which in no case shall exceed 30 days or for as long as in the determination of the President necessary prior to the filing of the necessary information before the civil courts for crimes or offenses therein enumerated (Section 58).

Any person arrested pursuant to an ASSO may either be released temporarily,

during trial for humanitarian reason or for such other grounds as determined by the Minister of National Defense or permanently upon acquittal or upon dismissal or upon final disposition of the case against him without conviction except when he is detained for some other valid ground (Section 60).

The Office for Detainee Affairs headed by the Deputy Minister of Home Defense shall continue to assist the Minister of National Defense in the supervision and control of the Command for the Administration of Detainees.

Apparently now, those detained at the different military detention centers have been transferred to the National Penitentiary under the administration of the Bureau of Prisons.

It is worthwhile to note that the President or the Minister of National Defense upon order of the former may, even during the present period of normalization, cause the arrest and detention of a person by virtue of an Arrest, Search and Seizure Order (ASSO).

#### MILITARY TRIBUNALS

The Chief of Staff of the Armed Forces of the Philippines shall have the power to create military tribunals to try and decide cases involving military personnel and civilians, in cases falling under its jurisdiction as provided under Sections 64, 67, 68 and 69. Those cases therein mentioned will be tried and heard by the tribunals duly created. Such other offenses not therein mentioned shall fall under the exclusive jurisdiction of the civil courts. In cases such as, but not limited to, crimes committed by public officers, violations of Anti-Graft and Corrupt Practices Act, violations of Dangerous Drugs Act and such other offenses listed under Section 65 of the Code shall be within the concurrent jurisdiction of the military tribunal and the civil courts.

The Military tribunals which may be created are the Military Commissions and the Provost Courts. The Military Commission shall be composed of at least five (5) members one of whom shall act as a law member. A provost court is composed of one (1) officer designated as provost court officer (Section 71).

The Military Commission shall have trial jurisdiction over all cases involving offenses where the range of punishment that may be imposed is confinement for at least six (6) years and one (1) day or a fine of not less than P2,000.00 [Sec. 75(a)]. A preliminary investigation is conducted for the purpose of determining whether or not there is *prima facie* evidence warranting referral to a military commission for trial. [Section 77(1)(a)]. The charges are then formally filed and may in certain cases grant bail. Trial proper is conducted without substantial difference than that held in a regular court of justice. An interesting feature is the finality of ruling on admissibility of evidence and on all interlocutory question of the law member to whom objections to such questions are referred to. Sentence rendered by military commissions are immediately executory except those which are required to be reviewed by the Court of Military Appeals and/or the President of the Philippines

under Sections 84 (b) (1) and (c). The accused may file with the Supreme Court a petition for review or certiorari of a decision of the Court of Military Appeals referred to in Section 84 (b) (2). Such review shall be limited to questions of law, although in cases of offenses punishable by death or life imprisonment questions of facts may be considered in addition to question of law [Section 86 86 (f)].

The Provost Courts shall have jurisdiction over offenses punishable by confinement of not more than 6 years or a fine less than P2,000.00 or illegal possession of firearms and explosives and offenses related to it as long as the penalty and fine imposed falls under its jurisdiction. A summary investigation as that of the military commission shall be conducted unless the offense is punishable by a penalty of less than six (6) months of imprisonment and for fine of less than P200.00. After trial, no sentence of the provost court shall be executed unless the same is approved and ordered executed by the President of the Philippines. In like manner, decisions of the provost court may be reviewed by the Court of Military Appeals [Sections 75 (b): 80: 84 (b)].

The Court of Military Appeals hereinabove mentioned shall likewise have the power to review every record of trial by General Courts Martial [Section 87 (d)].

#### AMNESTY

An amnesty may be decreed by the President from time to time as he may deem warranted by circumstances. An amnesty commission is created to carry out the purposes of Section 89. Amnesty has been declared so far in certain offenses committed in certain provinces of Mindanao and Sulu; for violation of RA 1700 otherwise known as the Anti-Subversion Acts; for Filipino Muslims; to ranking leaders of the Communist Party of the Philippines; to political expatriates and to such other persons qualified and who have complied with the conditions of such grant (Sections 88; 89; 94; 96 and 98) as provided in Chapter VIII of the Code.

#### CONCLUSION

Incidentally, Section 102 of the National Security Code on Amendments provides that the Code shall be subject to such modifications, alterations or revocations as the President/Prime Minister may from time to time deem necessary.

The discussions above are geared towards providing a working knowledge of one of the major Presidential legislative acts, the National Security Code. As to how the code, with its related implementing rules, will substantially affect our fundamental rights remains to be seen.

## RIGHTS AND STATUS OF COMMON LAW SPOUSES UNDER PHILIPPINE LAW AND JURISPRUDENCE

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The existence in our society of the so-called "common-law marriages" which is brought about when a man and woman having capacity to marry, live together as husband and wife without the benefit of marriage, is a fact that cannot be denied. Their union is not accepted from the moral viewpoint and neither is it sanctioned by law. Yet, various questions arise as a result of attempts of parties to marry, and yet avoid some of the consequences of marriage, or to enjoy some of the rights of marriage without being married. Foremost among these is the question of what rights is a common-law spouse entitled to under our various laws.

In the United States, while many states have since rejected the doctrine, a marriage contracted pursuant to its requirements, in states continuing to recognize common law marriages, is just as effective and valid as a ceremonial marriage contracted in full compliance with applicable statutes. A common-law marriage carries with it the same rights and incidents as a ceremonial marriage.<sup>1</sup> In *Catlett v. Chestnut*,<sup>2</sup> a U.S. court said that it approved the principle that the only difference between a formal marriage under license and a common-law marriage is in the method of expressing consent. "A common-law marriage is an agreement between a man and woman that they thereby do then and there take each other as husband and wife. It differs from a ceremonial marriage only in the respect that the agreement does not have to be in the presence of witnesses or pronounced by an official having legal authority to perform marriage ceremonies."

In England, however, by the ancient common law, common-law marriages although binding and indissoluble, would not entitle the parties to all those legal privileges they would enjoy if married according to the forms required by statute or ecclesiastical law. The ecclesiastical courts had exclusive jurisdiction to determine the question of the legality of a marriage, and held that the wife of a common-law marriage was not entitled to any inheritance and the children of the marriage were illegitimate. The husband and wife of such a marriage could be

<sup>1</sup>52 AM JUR 2d 899

<sup>2</sup>Catlett v. Chestnut 107 FLA 498