

that there being no substantial distinction between an ordinary rank-and-file employee and a confidential employee and there being sufficient affinity and unity of interests between them, the confidential employee must necessarily belong to the bargaining unit where the other rank-and-file employees belong.

And considering that the "collective bargaining agreement lies at the very heart of labor-management relations³⁴", the determination of the scope of the bargaining unit as the first crucial stage in the collective bargaining process is, therefore, indubitably infused with public interest³⁵. In this light, the government, through the Bureau of Labor Relations, upon submission of the bargaining agreement for its certification³⁶, must not passively defer to an absolute determination by the employer and the union of the scope of the bargaining unit, especially where confidential employees and other employees situated like them are excluded therefrom, and must instead secure from the employer and the union the reasons for the exclusion of such employees from the unit, and must act affirmatively, upon the parties' default or unsatisfactory reasons, in enjoining the parties to include such employees into the unit. This is one means by which the State can assure the right of these employees to collective bargaining.

³⁴Pambujan Sur United Mine Workers v. Samar Mining Co., Inc., L-5694, 94 Phil. 932, 937.

³⁵The Civil Code, in its Art. 1700 provides in part that "The relation between capital and labor are not merely contractual. They are impressed with *public interest* that labor contracts must yield to the common good.

³⁶see Art. 231, Labor Code

THE LEGAL EFFECTS OF THE LIFTING OF MARTIAL LAW ON THE POWER OF THE PRESIDENT TO LEGISLATE

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INTRODUCTION

September 21, 1972 was not an ordinary day. Neither was January 17, 1981. The former referred to the day when Martial Law was proclaimed by virtue of Proclamation No. 1081 while the latter referred to the day when it was lifted by virtue of Proclamation No. 2045.

When Martial Law was terminated by Proclamation No. 2045, several questions arose as to its possible legal implications and consequences.

One of those which legal minds and keen observers cannot help but ask is the possible legal effects of the lifting of Martial Law on the power of the incumbent President to legislate.

Prior to Proclamation No. 2045, it had been ruled by the Supreme Court that —

As Commander-in-Chief and enforcer or administrator of Martial Law, the incumbent President of the Philippines can promulgate proclamations, orders, and decrees during the period of Martial Law essential to the security and preservation of the Republic, to the defense of the political and social liberties of the people and to the institution of reforms to prevent the resurgence of rebellion or insurrection or secession or the threat thereof as well as to meet the impact of a worldwide recession, inflation or economic crisis which presently threatens all nations including highly developed countries.¹

Not only was the President empowered to legislate. He could also propose amendments to the Constitution. Thus, the Supreme Court had the occasion to rule that —

Would it then be within the bounds of the Constitution and of the law for the President that constituent power of the Interim National Assembly vis-a-vis his assumption of that body's legislative functions? The answer is yes. If the President has been legitimately discharging the legislative functions of the Interim National Assembly, there is no reason why he cannot validly discharge the function of that Assembly to propose amendments to the constitution, which is but adjunct, although peculiar, to its gross legislative power.²

¹Aquino v. Enrile L-40004, January 31, 1975.

²Sanidad v. Comelec L-44640, October 12, 1976.

The question now arises as to whether or not the incumbent President may still legislate despite the fact that Martial Law has already been lifted.

DIVERGENCE OF VIEWS ON THE MATTER

The answer to the above query would necessitate an analysis and proper construction of Amendment No. 5 and 6 of the New Constitution.

Amendment No. 5 provides that "The incumbent President shall continue to exercise legislative powers until Martial Law shall have been lifted."

Amendment No. 6 provides that —

Whenever in the judgement 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 judgement requires immediate action, he may in order to meet the exigency, issue the necessary decrees, orders or letters of instructions, which shall form part of the law of the land.

According to one view,³ the authority of the President to exercise legislative powers ended totally upon the lifting of Martial Law.

On the other hand, there are those who espouse the position that the President can still legislate under certain conditions.

ARGUMENTS IN FAVOR OF THE FIRST VIEW

The proponents of the first view present a number of arguments in support of such a view which may be stated as follows:

First of all, according to them, Amendment No. 5 is controlling. It clearly delineates the duration of the President's power to legislate. It specifically states that he shall exercise the same "until Martial Law shall have been lifted". In other words, they claim that the authority of the President to legislate existed only during the duration of Martial Law and even in such a case, it could only be exercised when any of the conditions mentioned in Amendment No. 6 occurred. Such being the case, with the lifting of Martial Law, "Amendment No. 5 lost its life and its twin brother, Amendment No. 6 died with it".⁴

Secondly, they contend that "if Amendment No. 6 were to be taken independently of Amendment No. 5, then the Prime Minister — whoever be 20 years or more from now — could legislate *ad in finitum*, regardless of the existence of the Regular Assembly".⁵

³This was the view of Assemblyman Marcial R. Pimental in his article entitled "Post Martial Law Question Is Raised: Has President Lost Power to Legislate" published in Bulletin Today — January 19, 1981, p. 7.

⁴Ibid.

⁵Ibid.

Lastly, if we were to accept the proposition that the President may still legislate despite the termination of Martial Law, "then the lifting of Martial Law would be meaningless".⁶ So, to give meaning to the lifting of Martial Law, necessarily, the power of the incumbent President to legislate must be abrogated.

ARGUMENTS IN FAVOR OF THE SECOND VIEW

Several arguments could also be interposed in support of the second view.

First and foremost is the cardinal principle of statutory construction to the effect that "if the statute is plain, certain and free from ambiguity, a bare reading suffices and interpretation is unnecessary".⁷ According to the proponents of this view, this principle is appropriate in the construction of Amendment No. 5 and 6. These amendments are clear enough and devoid of any ambiguity which would require technical and rigid rules of interpretation.

To put it in simpler terms, Amendment No. 5 is the general rule and Amendment No. 6 provides for the exceptions; that with the lifting of Martial Law, the power of the President to legislate terminated but he could still do so when 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 on any matter for any reason that in his judgment requires immediate action.

Secondly, the President/Prime Minister issued Presidential Decree No. 1737⁸ which provides "for the preservation of public order and preservation of individual rights and liberties during periods of emergency and exercise of extra-ordinary executive powers".

Section 2 of the decree provides that —

Whenever in the judgment of the President/Prime Minister there exist a grave emergency or a threat or imminence thereof, he may issue such orders 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 the national security or maintenance of public order, directing the closure of subversive publications or other media of mass communications, banning or regulating the holding of entertainment or ex-

⁶Ibid.

⁷Statutory Construction, Felicisimo G. Alvendia, Philaw Publishing Company, p. 6.

⁸Section 3 of this decree was a "questionable" section because it provided that "The Incumbent President/Prime Minister, any Cabinet Member or any other public officer shall not be held responsible in any civil, criminal or other proceeding for any act or order issued or performed while in office pursuant to the provisions of this Act. There was a move in the Batasang Pambansa to repeal this immunity clause because "this practically places officialdom above the law and is for all intents and purposes, an advance blanket amnesty for official excesses performed in the guise of pursuing the objectives of the decree.

hibitions detrimental to the national interest, controlling admission to educational institutions whose operations are found prejudicial to the 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 thirty (30) days but not exceeding one year.

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.

Proponents of the second view claim that this decree was issued as an enabling law to implement Amendment No. 6 of the Constitution. Such being the case, the issuance of such decree bolsters their position that even after the lifting of Martial Law, the incumbent President may still legislate.

In fact very recently, the Minister of Justice in an interview made a public pronouncement to the effect that "the President may still exercise legislative powers under Amendment No. 6".⁹ Though such a pronouncement is not binding upon our courts, still the fact remains that it has a strong persuasive effect considering the fact that there is no decided case yet on the matter.

REPEALING POWER OF THE BATASANG PAMBANSA

Another issue worthy of consideration is the power of the Batasang Pambansa to repeal and modify the proclamations, orders, decrees, instructions and acts promulgated, issued or done by the incumbent President. This legal controversy arose because of the existence of conflicting constitutional provisions.

Article XVII Section 3 (2) provided that —

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 the lifting of Martial Law or the ratification of this constitution, unless modified, revoked, or superceded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly (repealed) and explicitly modified or repealed by the *Regular National Assembly*.

Amendment No. provided that —

The Interim Batasang Pambansa shall have the same powers and its members shall have the same functions, responsibilities, rights, privileges and disqualifications as the Interim National Assembly and the *Regular National Assembly* and the members thereof. However, it shall not exercise the power provided for in Article VIII, Section 14 (1) of the Constitution.

On the basis of Article XVII Section 3 (2), it was apparent that the Batasang Pambansa had no power to repeal and modify the proclamations, orders, decrees

⁹Issue of the Times Journal, February 7, 1971, Front page.

and acts promulgated, issued or done by the incumbent President because only the *President himself* or the *Regular National Assembly* could do so.

Under Amendment No. 2 however, the Batasang Pambansa is given the *same powers*, functions, rights and privileges as the *Regular National Assembly*. And since the latter has the prerogative of repealing, modifying or superceding proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President, it is but logical to concede that the Batasang Pambansa could also do so.

Again, there are conflicting views on the matter. One group maintains that the Batasang Pambansa does not have the prerogative to repeal or modify the proclamations, orders, decrees, instructions and acts promulgated, issued or done by the incumbent President. Another group claims the contrary.

The first group contends that "Amendment No. 2 is a general provision which under the elementary rules of constitutional construction *can not prevail* over the particular provision of Article XVII Section 3 (2) of the Constitution."¹⁰

And from this legal viewpoint, the only logical conclusion would be this: the incumbent President may still exercise legislative powers for the purpose of modifying or repealing his previous acts, instructions, decrees, orders and proclamations.

On the other hand, the other group claims that —

The rule of Statutory construction that a general provision does not repeal a specific provisions *does not apply* when a contrary intention clearly appears. If the intention of the Amendment was only to vest in the Batasang Pambansa the powers of the Interim National Assembly, it would not have added the word *Regular National Assembly*. The Legislative intent therefore was for the Batasang Pambansa to have powers not enjoyable by the Interim National Assembly but enjoyed by the *Regular National Assembly*.¹¹

And since the *Regular National Assembly* has the right to repeal and modify all proclamations, orders, decrees, instructions and acts promulgated, issues, or done by the incumbent President, this group concludes that there is no reason to deny the Batasang Pambansa also of such power.

PERSONAL VIEW OF THE AUTHOR

After a thorough analysis and consideration of the legal question in issue, the author is of the opinion that strictly speaking, *from the legal point of view*, the incumbent President is still empowered to exercise emergency legislative powers on the basis of Amendment No. 6 as implemented by P.D. 1737.

¹⁰Statement given by the ranking delegates of the 1971 Constitutional Convention, Bulletin Today, Issue of January 29, 1981, Front Page.

¹¹Statement given by the KBL specifically Assemblyman Arturo M. Tolentino, Issue of Bulletin Today, Front page.

In support of such a position, American Jurisprudence has this to say:

The legislative is one of the three main departments of government and under the principle of the separation of governmental powers, the legislative power of the state is vested on the state legislature. That body is vested with the whole of the legislative power of the state and has authority to deal with any subject within the scope of civil government, *except in so far as it is restrained by the constitutional provisions, whether state or federal.*¹²

It makes no sense therefore to stretch our imagination too far and to claim that Amendment No. 6 can not be taken independently of Amendment No. 5. We are not at liberty to interpret constitutional provisions devoid of any obscurity erroneously just for the sake of giving meaning to the lifting of Martial Law.

Mr. Justice Moreland, speaking for the Supreme Court of the Philippines, once said:

The first and fundamental duty of the courts in our judgement is to *apply the law*. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them. They are the very last functions which a court should exercise. The majority of the laws need no interpretation or construction. They require only application, and if there were more applications and less construction, there would be more stability in the law, and more people would know what the law is.

Besides, "the object or purpose of all construction or interpretation is to ascertain the intention of the lawmakers, and to make it more effective".¹³ "In the construction and interpretation of statutes, the intent of the legislature is of supreme importance".¹⁴

Question: What could have been the possible legislative intent when Amendment No. 5 and 6 were introduced? (Incidentally, these amendments were introduced by the President himself.)

The author's view is that it was really the intention of the incumbent President to continue exercising legislative powers despite the lifting of Martial Law when any of the conditions mentioned in Amendment No. 6 occurred. This intention on the part of the President could be discerned from the fact that when he issued P.D. 1737 which, as stated previously, is an enabling law to implement Amendment No. 6. If the intention of the President were otherwise, he would not have issued said Presidential Decree.

With the legal conclusion stated above, does it mean therefore that the lifting of Martial Law has really no legal effect in so far as the power of the President to legislate is concerned?

¹²11 Am Jur Section 191.

¹³Alvencia, page 6 citing Crawford Section 158.

¹⁴Ibid, page 11, citing Crawford Section 159.

Not really.

With the lifting of Martial Law, the power of the President was abrogated as a rule in accordance with Amendment No. 5 of the Constitution. By way of exceptions, he could still exercise emergency legislative powers even after the lifting of Martial Law provided any of the conditions mentioned in Amendment No. 6 occurred.

This only means that the incumbent President under present law is no longer authorized to issue laws other than those which could issue when there exists a grave emergency or a threat or imminence thereof, or, whenever the Interim Batasang Pambansa fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action. And as to whether or not there really existed any of these conditions which would justify the President to exercise emergency legislative powers is for the courts to determine.

It is clear, therefore, that the lifting of Martial Law has the effect of *limiting or restricting* to a certain extent the power of the incumbent President to legislate. If one is still not contented with this result, the remedy is a constitutional amendment and not an erroneous interpretation of constitutional provisions.

Having this legal framework in mind, it would now be very easy to dispose of the second question posed in this article – whether or not the Batasang Pambansa had the prerogative to repeal and modify proclamations, decrees, instructions, orders and acts promulgated, issued or done by the incumbent President.

If we were to accept the proposition that the President could only issue laws in times of emergency contemplated in Amendment No. 6, then, necessarily, the Batasang Pambansa must have the repealing power.

Besides, the author is of the opinion that it is really the intention of Amendment No. 2 to vest to the Batasang Pambansa powers and prerogatives (not) enjoyed by the Regular National Assembly. However, be that as it may, to avoid possible legal complications in the future, the author proposes that a constitutional amendment be made expressly empowering the Batasang Pambansa to repeal and modify all proclamations, decrees, instructions, orders, and acts of the incumbent President.¹⁵

CONCLUSION

The function of interpreting and construing laws belonged to the judiciary. In this respect, it had been said that –

The judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of the government. Al-

¹⁵This was also the solution proposed by the ranking delegates of the 1971 Constitutional Convention.

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.¹⁶

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."¹⁷

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!¹⁸

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¹⁸New 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