

EN BANC

G.R. No. 197930 – EFRAIM C. GENUINO, ERWIN F. GENUINO and SHERYL G. SEE, *petitioners* v., HON. LEILA M. DE LIMA, in her capacity as Secretary of Justice, and RICARDO V. PARAS III, in his capacity as Chief State Counsel, CRISTINO L. NAGUIAT, JR. and the BUREAU OF IMMIGRATION, *respondents*.

G.R. No. 199034 – MA. GLORIA MACAPAGAL-ARROYO, *petitioner* v., HON. LEILA M. DE LIMA, as Secretary of the Department of Justice and RICARDO A. DAVID, JR., as Commissioner of the Bureau of Immigration, *respondents*.

G.R. No. 199046 – JOSE MIGUEL T. ARROYO, *petitioner* v. HON. LEILA M. DE LIMA, as Secretary of the Department of Justice and RICARDO V. PARAS III, as Chief State Counsel, Department of Justice and RICARDO A. DAVID, JR., in his capacity as Commissioner, Bureau of Immigration, *respondents*.

Promulgated:

April 17, 2018

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SEPARATE OPINION

LEONEN, J.:

I concur that Department of Justice Circular No. 41, series of 2010, is unconstitutional. The Department of Justice is neither authorized by law nor does it possess the inherent power to issue hold departure orders, watchlist orders, and allow departure orders against persons under preliminary investigation.

However, I have reservations regarding the proposed doctrine that the right of persons to travel can only be impaired by a legislative enactment as it can likewise be burdened by other constitutional provisions.

The pertinent Constitutional provision on the right to travel is Article III, Section 6, which states:

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. *Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.* (Emphasis supplied)

The right to travel, as a concept, was directly tackled in *Marcos v. Manglapus*,¹ an early case decided under the 1987 Constitution. It dealt specifically with the right of former President Marcos to return to the Philippines. In resolving the case, this Court distinguished between the right to return to one's country and the general right to travel. The right to return to one's country was treated separately and deemed excluded from the constitutionally protected right to travel.²

In my view, the right to travel should not be given such a restrictive interpretation. In the broad sense, the right to travel refers to the "right to move from one place to another."³ The delimitation set in *Marcos* effectively excludes instances that may involve a curtailment on the right to travel within the Philippines and the right to travel to the Philippines. This case presents us with an opportunity to revisit *Marcos* and abandon its narrow and restrictive interpretation. In this regard, the constitutional provision should be read to include travel within the Philippines and travel to and from the Philippines.

Undeniably, the right to travel is not absolute. Article III, Section 6 of the Constitution states that any curtailment must be based on "national security, public safety, or public health, as may be provided by law."

In interpreting this constitutional provision, the *ponencia* proposes that only a statute or a legislative enactment may impair the right to travel.

Respectfully, I disagree. In my view, the phrase "as may be provided by law" should not be literally interpreted to mean statutory law. Its usage should depend upon the context in which it is written. As used in the Constitution, the word "law" does not only refer to statutes but embraces the Constitution itself.

The Bill of Rights is replete with provisions that provide a similar phraseology. For instance, both the due process clause and the equal protection clause under Article III, Section 1 of the Constitution contain the word "law," thus:

¹ 258 Phil. 489 (1989) [Per J. Cortes, En Banc].

² Id. at 497-498.

³ *Mirasol v. Department of Public Works and Highways*, 523 Phil. 713, 752 (2006) [Per J. Carpio, En Banc].

Article III
BILL OF RIGHTS

Section 1. No person shall be deprived of life, liberty or property without *due process of law*, nor shall any person be denied the *equal protection of the laws*. (Emphasis supplied)

However, the application of the due process and the equal protection clauses has not been limited to statutory law. These two (2) principles have been tested even against executive issuances.

In *Ynot v. Intermediate Appellate Court*,⁴ the due process clause was deemed to have been violated by an executive order which directed the outright confiscation of carabaos transported from one province to another. In declaring the executive order unconstitutional, this Court held:

[T]he challenged measure is an invalid exercise of the police power because the method employed to conserve the carabaos is not reasonably necessary to the purpose of the law and, worse, is unduly oppressive. Due process is violated because the owner of the property confiscated is denied the right to be heard in his defense and is immediately condemned and punished. The conferment on the administrative authorities of the power to adjudge the guilt of the supposed offender is a clear encroachment on judicial functions and militates against the doctrine of separation of powers. There is, finally, also an invalid delegation of legislative powers to the officers mentioned therein who are granted unlimited discretion in the distribution of the properties arbitrarily taken. For these reasons, we hereby declare Executive Order No. 626-A unconstitutional.⁵

In the same manner, this Court in *Corona v. United Harbor Pilots Association of the Philippines*⁶ invalidated an administrative order that restricted harbor pilots from exercising their profession. The administrative order, which required harbor pilots to undergo an annual performance evaluation as a condition for the continued exercise of their profession, was considered a “deprivation of property without due process of law.”⁷

In *Biraogo v. Truth Commission*,⁸ the creation of the Philippine Truth Commission by virtue of an executive order was deemed unconstitutional for violating the equal protection clause. The classification under the executive order, according to this Court, was unreasonable, thus:

Executive Order No. 1 should be struck down as violative of the equal protection clause. The clear mandate of the envisioned truth

⁴ 232 Phil. 615, 631 (1987) [Per J. Cruz, En Banc].

⁵ Id. at 631.

⁶ 347 Phil. 333 (1997) [Per J. Romero, En Banc].

⁷ Id. at 344.

⁸ 651 Phil. 374 (2010) [Per J. Mendoza, En Banc].

commission is to investigate and find out the truth "concerning the reported cases of graft and corruption during the *previous administration*" only. The intent to single out the previous administration is plain, patent and manifest. Mention of it has been made in at least three portions of the questioned executive order. Specifically, these are:

WHEREAS, there is a need for a separate body dedicated solely to investigating and finding out the truth concerning the reported cases of graft and corruption during the **previous administration**, and which will recommend the prosecution of the offenders and secure justice for all;

SECTION 1. *Creation of a Commission.* — There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION," which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the **previous administration**; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.

SECTION 2. *Powers and Functions.* — The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the **previous administration** and thereafter submit its finding and recommendations to the President, Congress and the Ombudsman. [Emphases supplied]

In this regard, it must be borne in mind that the Arroyo administration is but just a member of a class, that is, a class of past administrations. It is not a class of its own. Not to include past administrations similarly situated constitutes arbitrariness which the equal protection clause cannot sanction. Such discriminating differentiation clearly reverberates to label the commission as a vehicle for vindictiveness and selective retribution.⁹ (Citations omitted)

In this regard, it is inaccurate to say that the right of persons to travel to and from the Philippines can only be impaired by statutory law. It is also inaccurate to say that the impairment should only be limited to national security, public safety, or public health considerations for it to be valid.

⁹ Id. at 461-462.

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For instance, the assailed department order in *Philippine Association of Service Exporters, Inc. v. Drilon*¹⁰ was not founded upon national security, public safety, or public health but on the state's policy of affording protection to labor.¹¹ The department order was deemed a valid restriction on the right to travel.¹²

The term "law" in Article III, Section 6 can refer to the Constitution itself. This can be understood by examining this Court's power to regulate foreign travel of court personnel and the nature and functions of bail.

The power of this Court to regulate the foreign travel of court personnel does not emanate from statutory law, nor is it based on national security, public safety, or public health considerations. Rather, it is an inherent power flowing from Article III, Section 5(6) of the Constitution, which grants this Court the power of administrative supervision over all courts and court personnel.¹³

The nature and object of this Court's power to control the foreign travel of court personnel were further explained in *Leave Division, Office of Administrative Services – Office of the Court Administrator v. Heusdens*,¹⁴ thus:

With respect to the power of the Court, Section 5 (6), Article VIII of the 1987 Constitution provides that the "Supreme Court shall have administrative supervision over all courts and the personnel thereof." This provision empowers the Court to oversee all matters relating to the effective supervision and management of all courts and personnel under it. Recognizing this mandate, Memorandum Circular No. 26 of the Office of the President, dated July 31, 1986, considers the Supreme Court exempt and with authority to promulgate its own rules and regulations on foreign travels. Thus, the Court came out with OCA Circular No. 49-2003 (B).

Where a person joins the Judiciary or the government in general, he or she swears to faithfully adhere to, and abide with, the law and the corresponding office rules and regulations. These rules and regulations, to which one submits himself or herself, have been issued to guide the government officers and employees in the efficient performance of their obligations. When one becomes a public servant, he or she assumes certain duties with their concomitant responsibilities and gives up some rights like the absolute right to travel so that public service would not be prejudiced.

¹⁰ 246 Phil. 393 (1988) [Per J. Sarmiento, En Banc].

¹¹ Id. at 404-405.

¹² Id.

¹³ CONST., art. VIII, sec. 5(6) provides:

Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

¹⁴ 678 Phil. 328 (2011) [Per J. Mendoza, En Banc].

As earlier stated, with respect to members and employees of the Judiciary, the Court issued OCA Circular No. 49-2003 to regulate their foreign travel in an unofficial capacity. *Such regulation is necessary for the orderly administration of justice. If judges and court personnel can go on leave and travel abroad at will and without restrictions or regulations, there could be a disruption in the administration of justice. A situation where the employees go on mass leave and travel together, despite the fact that their invaluable services are urgently needed, could possibly arise. For said reason, members and employees of the Judiciary cannot just invoke and demand their right to travel.*

To permit such unrestricted freedom can result in disorder, if not chaos, in the Judiciary and the society as well. In a situation where there is a delay in the dispensation of justice, litigants can get disappointed and disheartened. If their expectations are frustrated, they may take the law into their own hands which results in public disorder undermining public safety. In this limited sense, it can even be considered that the restriction or regulation of a court personnel's right to travel is a concern for public safety, one of the exceptions to the non-impairment of one's constitutional right to travel.¹⁵ (Citations omitted, emphasis supplied)

A person's right to bail before conviction is both guaranteed and limited under the Constitution. Article III, Section 13 states:

Section 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

Courts have the jurisdiction to determine whether a person should be admitted to bail. This jurisdiction springs from the Constitution itself, which imposes limitations on the right to bail. However, the discretion of courts is not restricted to the question of whether bail should be granted to an accused as Courts have the inherent power "to prohibit a person admitted to bail from leaving the Philippines."¹⁶ Regional Trial Courts, in particular, are empowered to issue hold departure orders in criminal cases falling within their exclusive jurisdiction.¹⁷ Persons admitted to bail are required to seek permission before travelling abroad.¹⁸

¹⁵ Id. at 341-342.

¹⁶ *Manotoc v. Court of Appeals*, 226 Phil. 75, 82 (1986) [Per J. Fernan, En Banc].

¹⁷ OCA Circular No. 39-97, Guidelines in the Issuance of Hold-Departure Orders (1997):

In order to avoid the indiscriminate issuance of Hold-Departure Orders resulting in inconvenience to the parties affected the same being tantamount to an infringement on the right and liberty of an individual to travel and to ensure that the Hold-Departure Orders which are issued contain complete and accurate information, the following guidelines are hereby promulgated:

1. Hold-Departure Orders shall be issued only in criminal cases within the exclusive jurisdiction of the Regional Trial Courts;

2. The Regional Trial Courts issuing the Hold-Departure Order shall furnish the Department of Foreign Affairs (DFA) and the Bureau of Immigration (BI) of the Department of Justice with a copy each of the Hold-Departure Order issued within twenty-four (24) hours from the time of issuance and through the fastest available means of transmittal;

Similar to the power of this Court to control foreign travel of court personnel, the power to restrict the travel of persons admitted to bail is neither based on a legislative enactment nor founded upon national security, public safety, or public health considerations. The power of courts to restrict the travel of persons on bail is deemed a necessary consequence of the conditions imposed in a bail bond.¹⁹ In *Manotoc v. Court of Appeals*²⁰ this Court explained:

Rule 114, Section 1 of the Rules of Court defines bail as the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance.

"Its object is to relieve the accused of imprisonment and the state of the burden of keeping him, pending the trial, and at the same time, to put the accused as much under the power of the court as if he were in custody of the proper officer, and to secure the appearance of the accused so as to answer the call of the court and do what the law may require of him."

The condition imposed upon petitioner to make himself available at all times whenever the court requires his presence operates as a valid restriction on his right to travel. As we have held in *People v. Uy Tuising*[:]

". . . the result of the obligation assumed by appellee (surety) to hold the accused amenable at all times to the orders and processes of the lower court, was to prohibit said accused from leaving the jurisdiction of the Philippines, because, otherwise, said orders and processes will be nugatory, and inasmuch as the jurisdiction of the

3. The Hold-Departure Order shall contain the following information:

- a. The complete name (including the middle name), the date and place of birth and the place of last residence of the person against whom a Hold-Departure Order has been issued or whose departure from the country has been enjoined;
- b. The complete title and the docket number of the case in which the Hold-Departure Order was issued;
- c. The specific nature of the case; and
- d. The date of the Hold-Departure Order.

If available a recent photograph of the person against whom a Hold-Departure Order has been issued or whose departure from the country has been enjoined should also be included.

4. Whenever (a) the accused has been acquitted; or (b) the case has been dismissed, the judgment of acquittal or the order of dismissal shall include therein the cancellation of the Hold-Departure Order issued. The courts concerned shall furnish the Department of Foreign Affairs and the Bureau of Immigration with a copy each of the judgment of acquittal promulgated or the order of dismissal issued within twenty-four (24) hours from the time of promulgation/issuance and likewise through the fastest available means of transmittal.

All Regional Trial Courts which have furnished the Department of Foreign Affairs with their respective lists of active Hold-Departure Orders are hereby directed to conduct an inventory of the Hold-Departure Orders included in the said lists and inform the government agencies concerned of the status of the Orders involved.

¹⁸ *Leave Division, Office of Administrative Services – Office of the Court Administrator v. Heusdens*, 678 Phil. 328 (2011) [Per J. Mendoza, En Banc].

¹⁹ *Manotoc v. Court of Appeals*, 226 Phil. 75, 82 (1986) [Per J. Fernan, En Banc].

²⁰ 226 Phil. 75 (1986) [Per J. Fernan, En Banc].

courts from which they issued does not extend beyond that of the Philippines they would have no binding force outside of said jurisdiction."

Indeed, if the accused were allowed to leave the Philippines without sufficient reason, he may be placed beyond the reach of the courts.

"The effect of a recognizance or bail bond, when fully executed or filed of record, and the prisoner released thereunder, is to transfer the custody of the accused from the public officials who have him in their charge to keepers of his own selection. Such custody has been regarded merely as a continuation of the original imprisonment. The sureties become invested with full authority over the person of the principal and have the right to prevent the principal from leaving the state."²¹ (Citations omitted)

Although *Manotoc* was decided under the 1973 Constitution, the nature and functions of bail remain essentially the same under the 1987 Constitution.²² Hence, the principle laid down in *Manotoc* was reiterated in *Silverio v. Court of Appeals*²³ where this Court further explained that:

Article III, Section 6 of the 1987 Constitution should by no means be construed as delimiting the inherent power of the Courts to use all means necessary to carry their orders into effect in criminal cases pending before them. When by law jurisdiction is conferred on a Court or judicial officer, all auxiliary writs, process and other means necessary to carry it into effect may be employed by such Court or officer.

....

... Holding an accused in a criminal case within the reach of the Courts by preventing his departure from the Philippines must be considered as a valid restriction on his right to travel so that he may be dealt with in accordance with law.²⁴ (Citation omitted)

Moreover, the power of courts to restrict the travel of persons out on bail is an incident of its power to grant or deny bail. As explained in *Santiago v. Vasquez*:²⁵

Courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the

²¹ Id. at 82-83.

²² *Silverio v. Court of Appeals*, 273 Phil. 128, 134 (1991) [Per J. Melencio-Herrera, Second Division].

²³ 273 Phil. 128 (1991) [Per J. Melencio-Herrera, Second Division].

²⁴ Id. at 134.

²⁵ 291 Phil. 664 (1993) [Per J. Regalado, En Banc].

power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Therefore, while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has the power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction. Hence, demands, matters, or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.

Furthermore, a court has the inherent power to make interlocutory orders necessary to protect its jurisdiction. Such being the case, with more reason may a party litigant be subjected to proper coercive measures where he disobeys a proper order, or commits a fraud on the court or the opposing party, the result of which is that the jurisdiction of the court would be ineffectual. What ought to be done depends upon the particular circumstances.

Turning now to the case at bar, petitioner does not deny and, as a matter of fact, even made a public statement that she had every intention of leaving the country allegedly to pursue higher studies abroad. We uphold the course of action adopted by the Sandiganbayan in taking judicial notice of such fact of petitioner's plan to go abroad and in thereafter issuing *sua sponte* the hold departure order, in justified consonance with our preceding disquisition. To reiterate, the hold departure order is but an exercise of respondent court's inherent power to preserve and to maintain the effectiveness of its jurisdiction over the case and the person of the accused.²⁶

The Department of Justice is neither empowered by a specific law nor does it possess the inherent power to restrict the right to travel of persons under criminal investigation through the issuance of hold departure orders, watchlist orders, and allow departure orders. Its mandate under the Administrative Code of 1987 to "[i]nvestigate the commission of crimes [and] prosecute offenders"²⁷ cannot be interpreted so broadly as to include the power to curtail a person's right to travel. Furthermore, Department Order No. 41, series of 2010 cannot be likened to the power of the courts to restrict the travel of persons on bail as the latter presupposes that the accused was arrested by virtue of a valid warrant and placed under the court's jurisdiction. For these reasons, Department of Justice Circular No. 41, series of 2010, is unconstitutional.


²⁶ Id. at 679-680.

²⁷ 1987 ADM. CODE, Title III, sec. 3(2).

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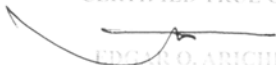
Parenthetically, I agree that the right to travel is part and parcel of an individual's right to liberty, which cannot be impaired without due process of law.²⁸

The *ponencia* mentions *Rubi v. Provincial Board of Mindoro*.²⁹ In my view, *Rubi* should always be cited with caution. In *Rubi*, the Mangyans of Mindoro were forcibly removed from their habitat and were compelled to settle in a reservation under pain of imprisonment for non-compliance.³⁰ Although the concepts of civil liberty and due process were extensively discussed in the case,³¹ this Court nevertheless justified the government act on a perceived necessity to “begin the process of civilization” of the Mangyans who were considered to have a “low degree of intelligence” and as “a drag upon the progress of the State.”³²



MARVIC M.V.F. LEONEN
Associate Justice

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Clerk of Court En Banc
Supreme Court

²⁸ *Ponencia*, pp. 16–17.

²⁹ 39 Phil. 660 (1919) [Per J. Malcolm, En Banc].

³⁰ *Id.* at 666–669.

³¹ *Id.* at 703–707.

³² *Id.* at 718–720.