

## EN BANC

[ G.R. No. 223505, October 03, 2017 ]

**PHILIPPINE ASSOCIATION OF DETECTIVE AND PROTECTIVE AGENCY OPERATORS (PADPAO), REGION 7 CHAPTER, INC., PETITIONER, VS. COMMISSION ON ELECTIONS (COMELEC) AND/OR ITS COMMITTEE ON THE BAN ON FIREARMS AND SECURITY PERSONNEL (CBFSP), RESPONDENTS.**

### DECISION

#### CAGUIOA, J:

Before the Court is a petition for *certiorari*<sup>[1]</sup> under Rule 65 of the Rules of Court assailing the validity of Section 2(e), Rule III of Commission on Elections (COMELEC) Resolution No. 10015<sup>[2]</sup> (Resolution No. 10015) filed by petitioner Philippine Association of Detective and Protective Agency Operators (PADPAO), Region 7 Chapter, Inc., which is an association of licensed security agencies and company security forces in Region 7 under Republic Act No. 5487<sup>[3]</sup> (RA 5487) or the Private Security Agency Law.

#### The Assailed COMELEC Resolution

Under Resolution No. 9981,<sup>[4]</sup> the COMELEC set the election period for the May 2016 National and Local Elections beginning on January 10, 2016 up to June 8, 2016 (120 days before and 30 days after the election day).<sup>[5]</sup>

On November 13, 2015, the COMELEC promulgated Resolution No. 10015 which provided for the rules and regulations on the ban on bearing, carrying or transporting of firearms and other deadly weapons and the employment, availment or engagement of the services of security personnel or bodyguards during the election period, more commonly referred to as the "Gun Ban." Despite the nomenclature used, it must be noted that the regulation covers not only the subject of firearms, but also the engagement of security services.

Section 1, Rule II of Resolution No. 10015 provides for the prohibited acts during election period:

#### RULE II

#### GENERAL PROVISIONS

##### **SECTION 1. *Prohibited Acts.*** - During the Election Period:

- a. No person shall bear, carry or transport Firearms or Deadly Weapons outside his residence or place of business, and in all public places, including any building, street, park, and in private vehicles

or public conveyances, even if he is licensed or authorized to possess or to carry the same, unless authorized by the Commission, through the CBFSP,<sup>[6]</sup> in accordance with the provisions of this Resolution;

- b. No person shall employ, avail himself or engage the services of security personnel or bodyguards, whether or not such security personnel or bodyguards are regular members or officers of the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), other law enforcement agency of the government or from a private security service provider, unless authorized by the Commission, through the CBFSP, in accordance with the provisions of this Resolution;
- c. No person or entity shall transport and deliver Firearms and/or its parts, Ammunition and/or its components, and Explosives and/or its components, unless authorized by the Commission, through the CBFSP, in accordance with the provisions of this Resolution.

In turn, Section 1, Rule III of Resolution No. 10015 lists those who may apply for authority to bear, carry, or transport firearms or deadly weapons. Private security services providers (PSSPs),<sup>[7]</sup> which include private security agencies (PSAs), are specifically included. The provision states:

### **RULE III**

#### **AUTHORITY TO BEAR, CARRY OR TRANSPORT FIREARMS OR OTHER DEADLY WEAPONS**

**SECTION 1. *Who may bear, carry or transport firearms or deadly weapons.*** - Only the following persons may be authorized to bear, carry or transport Firearms or other Deadly Weapons during the Election Period:

x x x x

**L. *Members of Private Security Service Providers*** (PSSPs); *Provided, That, when in the possession of (Firearms, they are:*

- i. in the agency-prescribed uniform with the agency-issued identification card prominently displayed and visible at all times, showing clearly the name and position;*
- ii. in possession of a valid License to Exercise Security Profession (LESP) with Duty Detail Order (DDO), and valid firearms license of the agency/company where they are employed*
- iii. deployed by PSA/PDS/CGF duly licensed by the PNP;*
- iv. in the actual performance of official duty at his specified place or area of duty; and*

v. carrying one (1) small firearm, unless specifically allowed otherwise under existing laws, rules and regulations; (Emphasis supplied)

Section 2(e), Rule III of Resolution No. 10015 provides for the documentary requirements for the application:

**SECTION 2. Application for authority to bear, carry or transport Firearms or Deadly Weapons** - All applications shall include:

x x x x

(e) For Private Security Services Providers (Agencies) mentioned in Section 1, paragraph L of Rule III:

1. Duly accomplished **CBFSP Form No. 2016-02** (downloadable at [www.comelec.gov.ph](http://www.comelec.gov.ph)) in three (3) copies with CD;
2. **Form 16A-02** indicating therein:
  - i. the full names of the security personnel with their corresponding rank/position;
  - ii. firearms description and registration data;
  - iii. the security personnel's respective LESP's and DDO's;
3. **Form 16B** with the colored 4" x 5" picture and description of the authorized uniform of the Agency;
4. Copy of the Agency's License to Operate (LTO);
5. A certified true copy of the agency's updated and valid Monthly Disposition Report (MDR);
6. Certification under oath that x x x the firearms described are duly registered firearms and the persons named therein are:
  - i. regular employees of the Agency;
  - ii. performing actual security functions;
  - iii. receiving regular compensation for the services rendered in the said agency;
  - iv. duly authorized and sanctioned by their agency to bear, carry and transport firearms in the exercise of their security functions and duties;
  - v. covered by duly issued and valid LESP's and DDO's;
7. Copy of Official Receipt to prove payment of the filing fee in the amount of Fifty Pesos (PhP50.00) for each security personnel included in the list.

Thus, under the said provisions, PSAs may obtain authority to bear, carry, and transport firearms outside their place of work or business and in public places during the election period after compliance with the foregoing documentary requirements and under the conditions set forth therein.

## **The Petition**

Petitioner assails the validity of Section 2(e), Rule III of Resolution No. 10015 insofar as its application to PSAs is concerned. Petitioner asserts that the COMELEC does not have any authority to promulgate rules regarding the bearing, carrying, or transporting of firearms by PSAs. Petitioner alleges that PSAs should not be required to secure authority from the COMELEC as RA 5487 already grants to PSAs and their security guards, watchmen, detectives, and security personnel the authority to possess, bear, carry, and transport firearms, being necessary equipment for the conduct of its business and practice of its personnel's profession. Section 13 of RA 5487 states:

*SEC. 13. Issuance of Firearms.* - A watchman or security agency shall be entitled to possess firearms after having satisfactorily passed the requirements prescribed by the Chief, Philippine Constabulary pertinent to the possession of firearm of any caliber not higher than 45 caliber in a number not exceeding one firearm for every two watchmen or security guards in its employ: *Provided, however,* That a watchman or security agent shall be entitled to possess not more than one riot gun or shotgun in order to provide adequate security when circumstances so demand: *Provided, further,* That all the firearms mentioned herein shall be carried by the watchman or security guard only during his tour of duty in proper uniform within the compound of the establishment except when he escorts big amounts of cash or valuables in and out of said compound.

Petitioner maintains that the power to promulgate rules and regulations with regard to said law is granted to the Philippine National Police (PNP), in consultation with the PADPAO, under Section 17 of the said law:

*SEC. 17. Rules and Regulations by Chief, Philippine Constabulary.* - The Chief of the Philippine Constabulary, in consultation with the Philippine Association of Detective and Protective Agency Operators, Incorporated and subject to the provisions of existing laws, is hereby authorized to issue the rules and regulations necessary to carry out the purpose of this Act.

Petitioner also asserts that the COMELEC's powers are defined and limited to election related matters under the 1987 Philippine Constitution. According to petitioner, nothing in the Constitution gives to the COMELEC, even during election period, the power and authority to promulgate rules and regulations relating to the bearing, carrying, and transporting of firearms by PSAs. According to petitioner, in issuing Resolution No. 10015, the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner further avers that Resolution No. 10015 violates the constitutional tenets of equal protection of laws and non-impairment of obligations of contracts as it impairs the contracts of its member PSAs with their respective clients. As well, petitioner asserts that the COMELEC contradicts itself. While Section 1, Rule III of

Resolution No. 10015 provides that PSSPs or PSAs may bear, carry or transport firearms or deadly weapons, immediately thereafter, Section 2 mandates that they must apply for said authority. Petitioner also claims that the filing fee of 50.00 for each security personnel requesting for authority is exorbitant.

Lastly, petitioner cites *Rimando v. COMELEC*,<sup>[8]</sup> (*Rimando*) as supposedly strengthening its position that respondent COMELEC acted without or in excess of jurisdiction or with abuse of jurisdiction when it approved and implemented Resolution No. 10015.

The petition includes a prayer for a writ of preliminary injunction and/or temporary restraining order which was noted by the Court.

### **The OSG Comment**

The COMELEC, through the Office of the Solicitor General (OSG), filed its Comment<sup>[9]</sup> on June 27, 2016.

On the procedural issue, the OSG contends that the petition is moot and academic as Resolution No. 10015 is no longer in effect, since the election period already expired on June 8, 2016. Also, a petition for *certiorari* under Rule 65 is the wrong remedy because Resolution No. 10015 was issued in the exercise of COMELEC's administrative function and not its quasi-judicial power. The petition is actually one for declaratory relief over which the Court has no original jurisdiction. Assuming *arguendo* that the petition for *certiorari* is proper, it was filed out of time. Under Section 3, Rule 64 of the Rules of Court, a *certiorari* petition must be filed within 30 days from notice of a resolution. Resolution No. 10015 was promulgated on November 13, 2015 and was published on COMELEC's website<sup>[10]</sup> on November 14, 2015. However, the petition was filed only on April 8, 2016. Even assuming that the petition may be filed under Rule 65 under the Court's extraordinary jurisdiction, the petition is still filed beyond the 60-day period under the said Rule.

With regard to the substantive aspect, the OSG argues that the COMELEC's powers are not limited to those enumerated in the 1987 Constitution. Both Batas Pambansa Blg. 881<sup>[11]</sup> (BP 881) and RA 7166<sup>[12]</sup> confer upon the COMELEC the power to promulgate rules and regulations to implement the provisions of said laws.

The OSG points out that the prohibition on carrying of firearms during the election period and the requirement of written authority from the COMELEC are found in both laws.<sup>[13]</sup> Thus, when the COMELEC issued Resolution No. 10015, it was merely implementing the mandates of BP 881 and RA 7166.

The OSG further argues that neither does Resolution No. 10015 violate the equal protection clause as PSAs are not singled out in the imposition of the requirement. The requirement of written authority to carry, possess, and transport firearms applies even to public officials, members of the PNP and AFP, security personnel of foreign diplomatic corps, cashiers, disbursing officers, or persons who habitually carry large sums of money, among others. The non-impairment of contracts clause is not violated as well. Resolution No. 10015 does not prevent PSAs from performing their contractual obligations. It merely requires written authority to bear, carry, and transport firearms during the election period.