

## **THIRD DIVISION**

**[ G.R. No. 176394, October 21, 2015 ]**

**COL. ORLANDO E. DE LEON, PN (M), PETITIONER, VS. LT. GEN. HERMOGENES C. ESPERON, JR., (AFP), AND SPECIAL GENERAL COURT MARTIAL NO. 2, RESPONDENTS.**

**COL. ARMANDO V. BAÑEZ, PN (M), PETITIONER-INTERVENOR.**

**LTC ACHILLES S. SEGUMALIAN, PN (M), PETITIONER-INTERVENOR.**

**[G.R. No. 177033]**

**MAJOR LEOMAR JOSE M. DOCTOLERO O-10124 (INFANTRY) PHILIPPINE ARMY AND CAPTAIN WILLIAM VICTORINO F. UPANO O-11876 (INFANTRY) PHILIPPINE ARMY PETITIONERS, VS. LT. GEN. HERMOGENES C. ESPERON, JR., CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES AND THE SPECIAL GENERAL COURT MARTIAL NO. 2, RESPONDENTS.**

**[G.R. No. 177304]**

**MAJOR JASON L. AQUINO (INF) PA, PETITIONER, VS. GEN. HERMOGENES C. ESPERON, JR., AS CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES AND APPOINTING AND REVIEWING AUTHORITY OF THE SPECIAL GENERAL COURT MARTIAL NO. 2 (SIC), AND THE SPECIAL GENERAL COURT MARTIAL NO. 2, RESPONDENTS.**

**[G.R. No. 177470]**

**1<sup>ST</sup> LIEUTENANT ERVIN C. DIVINAGRACIA O-12742 (INF), PHILIPPINE ARMY, PETITIONER, VS. LT. GEN. HERMOGENES C. ESPERON, JR., CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES AND THE SPECIAL GENERAL COURT MARTIAL NO. 2, RESPONDENTS.**

**[G.R. No. 177471]**

**CAPTAIN JOEY T FONTIVEROS O-11713 (INFANTRY) PHILIPPINE ARMY, PETITIONER, VS. LT. GEN. HERMOGENES C. ESPERON, JR., CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES AND THE SPECIAL GENERAL COURT MARTIAL NO. 2, RESPONDENTS.**

**D E C I S I O N**

## JARDELEZA, J.:

These are consolidated petitions for *certiorari*, prohibition, *mandamus* and for the issuance of the writ of *habeas corpus* seeking:

1. To annul, reverse and set aside the Memorandum<sup>[1]</sup> dated November 17, 2006 of the Chief of Staff of the Armed Forces of the Philippines, Lt. Gen. Hermogenes Esperon, Jr. and Letter Order No. 758<sup>[2]</sup> dated November 24, 2006 signed by the Adjutant General of the AFP, Commodore Paterno Labiano;
2. To prohibit Lt. Gen. Esperon, Jr. and the Special General Court Martial No. 2 to desist from further proceeding with the court martial and from otherwise investigating or prosecuting the petitioners under the Articles of War (Commonwealth Act No. 408); and
3. To order Lt. Gen. Esperon, Jr. and/or Special General Court Martial No. 2 and/or all persons acting for and in behalf or under their authority to produce petitioners<sup>[3]</sup> Major Doctolero and Captain Upano, to release them from detention and to forthwith desist from restraining them in any manner of their liberty.

Petitioners also seek the issuance of a temporary restraining order and/or writ of preliminary injunction against the respondents and all persons acting for or under their authority to cease and desist from conducting court martial proceedings and to cease and desist from otherwise prosecuting, investigating or proceeding in any manner against the petitioners relative to their alleged violations of the Articles of War.

### **The Facts**

Prior to February 24, 2006, the military received reports that the units of the Philippine Marine Corps (PMC), First Scout Ranger Regiment and Philippine National Police Special Action Force (PNP SAF) planned to join the protest march of militant groups, the civil society, political opposition and religious sector on the commemoration of the EDSA Revolution to call for the resignation of former President Gloria Macapagal-Arroyo. The plan culminated in a stand-off on February 26, 2006 inside the PMC's headquarters in Fort Bonifacio.<sup>[4]</sup> Petitioners were among the thirty (30) military officers who joined the stand-off.<sup>[5]</sup>

As a result of the stand-off, an *Ad Hoc* Investigating Committee (AHIC) was created to conduct an inquiry on the facts and circumstances that led to the February 24-26, 2006 aborted plan. In an Investigation Report<sup>[6]</sup> dated July 7, 2006, the AHIC recommended that the petitioners, together with other officers and enlisted personnel, be charged before a General Court Martial for violations of the applicable Articles of War. Thus:

NAME	Articles of War
COL ORLANDO E DE LEON	67, 96 & 97
COL ARMANDO V BAÑEZ	68, 96 & 97
LTCOL ACHILLES S SEGUMALIAN	67, 96 & 97

MAJ JASON LAUREANO Y AQUINO	67, 96 & 97
MAJ JOSE LEOMAR M DOCTOLERO	68, 96 & 97
CPT JOEY T FONTIVEROS	68, 96 & 97
CPT WILLIAM UPANO	68, 96 & 97
1LT ERVIN C DIVINAGRACIA	68, 96 & 97 <sup>[7]</sup>

On July 20, 2006, Col. Nemesio I. Dabal, Judge Advocate General of the Judge Advocate General's Office (JAGO), AFP, issued Office Order No. 14-06<sup>[8]</sup> constituting a Pre-Trial Investigation Panel (Panel) which would conduct investigation on the cases of all the petitioners.

Thereafter, JAGO furnished the petitioners the charge sheets and amended charge sheets signed under oath by Captain Armando P. Paredes as the accuser and gave them time to submit their respective counter-affidavits.<sup>[9]</sup> They were also arrested and detained at Camp General Mateo Capinpin, Tanay Rizal. Petitioners were charged with violations of Articles 63,<sup>[10]</sup> 65,<sup>[11]</sup> 67,<sup>[12]</sup> 96<sup>[13]</sup> and 97<sup>[14]</sup> of the Articles of War, as follows:<sup>[15]</sup>

NAME	Articles of War
COL ORLANDO E DE LEON	67 & 96
COL ARMANDO V BAÑEZ	67 & 96
LTCOL ACHILLES S SEGUMALIAN	67, 96 & 97
MAJ JASON LAUREANO Y AQUINO	67 & 96
MAJ JOSE LEOMAR M DOCTOLERO	67 & 96
CPT JOEY T FONTIVEROS	67 & 96
CPT WILLIAM F UPANO	67 & 96
1LT ERVIN C DIVINAGRACIA	67 & 96

On October 25, 2006, the Panel submitted its Pre-Trial Investigation Report (PTI Report)<sup>[16]</sup> to Lt. Gen. Esperon, Jr. The Panel recommended that petitioners, except for Bañez, Segumalian and Divinagracia, be tried before the court-martial for violation of the applicable Articles of War:<sup>[17]</sup>

NAME	Articles of War
COL ORLANDO E DE LEON	96
ARMANDO V BAÑEZ	None
ACHILLES S SEGUMALIAN	96 & 97
MAJ JASON LAUREANO Y AQUINO	96
MAJ JOSE LEOMAR M DOCTOLERO	None
CPT JOEY T FONTIVEROS	96
CPT WILLIAM F UPANO	96
1LT ERVIN C DIVINAGRACIA	None

The PTI Report was referred to Col. Pedro G. Herrera-Davila, Staff Judge Advocate for the Chief of Staff of the Armed Forces of the Philippines (CSAFP). In his Pre-Trial Advice<sup>[18]</sup> dated November 7, 2006, Col. Davila disapproved the PTI Report and recommended the referral to trial by a General Court Martial of the 37 AFP Officers,

including the petitioners, for violations of Articles 96 (for all of the petitioners) and 97 (only for Segumalian). He also recommended that they be tried for violations of other offenses considering that the available evidence established a *prima facie* case against them. The offenses allegedly committed by the petitioners, as found by Col. Davila, are as follows:

NAME	Articles of War
COL ORLANDO E DE LEON	67 & 96
COL ARMANDO V BAÑEZ	67 & 96
LTC ACHILLES S SEGUMALIAN	67, 96 & 97
MAJ JASON LAUREANO Y AQUINO	67 & 96
MAJ JOSE LEOMAR M DOCTOLERO	67 & 96
CPT JOEY T FONTIVEROS	67 & 96
CPT WILLIAM F UPANO	67 & 96
1LT ERVIN C DIVINAGRACIA	67 & 96 <sup>[19]</sup>

Thereafter, in a Memorandum<sup>[20]</sup> dated November 17, 2006, Lt. Gen. Esperon, Jr. created and convened a Special General Court Martial to try petitioners' cases and other high-ranking military officers. In Letter Order No. 758<sup>[21]</sup> dated November 24, 2006, Commodore Paterno E. Labiano, the Adjutant General, designated the officers, to be detailed as the President and members of the Special General Court-Martial No. 2, who will try petitioners' cases.

Hence, these petitions.

In seeking to nullify the Memorandum dated November 17, 2006 and Letter Order No. 758, petitioners allege that the creation of Special General Court Martial No. 2 violates their right to due process under the Constitution and the Articles of War. For one, a Special General Court Martial is not among those allowed by the Articles of War to be created.<sup>[22]</sup> A special court martial is different from a general court martial. They have different powers and functions.<sup>[23]</sup> Further, citing Articles 8,<sup>[24]</sup> 9,<sup>[25]</sup> 45,<sup>[26]</sup> and 46<sup>[27]</sup> of the Articles of War, the petitioners pointed out that Lt. Gen. Esperon, Jr. cannot be the accuser, appointing authority, witness, prosecutor and reviewer of the findings of the Special General Court Martial No. 2 all at the same time.

They also claim that Lt. Gen. Esperon, Jr. already displayed manifest partiality when he openly declared even before the start of the pre-trial investigation that all the accused should be prosecuted before a court martial for their attempt to overthrow the government. He also executed an affidavit against some of the accused officers and expressed his willingness and determination to testify against them. Moreover, despite the PTI Report and the Pre-Trial Advice absolving the accused officers of the charge of attempted mutiny, Lt. Gen. Esperon, Jr. overruled the findings and proceeded to indict them for mutiny. He then immediately ordered the creation of the court martial without even stating the factual and legal bases of the charges. Petitioners argue that Lt. Gen. Esperon, Jr. should have afforded more weight to the PTI Report as the basis for issuing the said Memorandum, the Panel being considered as a trier of facts.<sup>[28]</sup>

In the PTI Report, the Panel already declared that petitioners cannot be prosecuted

for Attempting to Create or Begin a Mutiny under Article 67, but only for Conduct Unbecoming an Officer and Gentleman under Article 96 of the Articles of War, because of clear absence of overt acts which proximately tended to create an intended or actual collective insubordination.

Thus, petitioners argue that their continuing confinement in a maximum security detention facility at Camp General Mateo Capinpin, Tanay, Rizal violates Article 70<sup>[29]</sup> of the Articles of War because they were never charged with any crime or serious offense defined in the Articles of War when they were placed in confinement in July 2006. Further, they were not restricted to the barracks, quarters or tent as Article 70 mandates, but were placed in confinement in a maximum security detention facility.

Respondents counter, among other things, that Lt. Gen. Esperon, Jr. correctly referred petitioners' charges to Special General Court Martial No. 2 for trial. The ruling of the Panel which recommended the dismissal of the charge for violation of Article 67 of the Articles of War against petitioners was merely recommendatory and thus, not binding on Lt. Gen. Esperon, Jr. Notably, both the AHIC in its Investigation Report and the Staff Advocate General in his Pre-Trial Advice recommended the referral of the charges against petitioners to court martial. Thus, there was a *prima facie* case against petitioners.<sup>[30]</sup>

Respondents also maintain that Lt. Gen. Esperon, Jr.'s affidavit and alleged statements that petitioners should be tried before court martial does not make the Memorandum creating Special General Court Martial No. 2 illegal. Lt. Gen. Esperon, Jr. is expressly authorized to convene a court-martial to try the charges against all petitioners. He is not the judge of the charges against petitioners. Even if he approves the findings and sentence imposed by the court-martial, this is still subject to confirmation by the President in certain cases.<sup>[31]</sup> Lt. Gen. Esperon, Jr. is not the accuser, prosecutor and the judge of the charges against the petitioners. He did not swear to the charges against the petitioners and he was not among the designated prosecutors. There is even no impediment for Lt. Gen. Esperon, Jr. to act as an accuser or prosecutor on the basis of No. 5, paragraph 3, Chapter III, of Executive Order No. 178 (A Manual for Courts-Martial, Armed Forces of the Philippines), which provides in part that: (1) whether the commander who convened the court is the accuser or the prosecutor is mainly to be determined by his personal feeling or interest in the matter; and (2) an action by a commander which is merely official and in the strict line of his duty cannot be regarded as sufficient to disqualify him.

Respondents also argue that the remedies of writs of prohibition and *habeas corpus* are unavailing. Under Article 8 of the Articles of War and No. 5, paragraph 5, Chapter III, of Executive Order No. 178,<sup>[32]</sup> Lt. Gen. Esperon, Jr. is authorized to create or appoint a court-martial and to determine the cases to be referred to the court martial for trial. Thus, the Special General Court Martial No. 2 has jurisdiction over the cases filed against petitioners. Petitioners were likewise lawfully arrested and confined as a result of the charges against them for violations of the Articles of War pursuant to Article 70 thereof.<sup>[33]</sup>

### **The Court's Ruling**

**We dismiss the petitions on the ground of mootness.**