

EN BANC

[A.M. NO. 02-2-10-SC, December 14, 2005]

RE: REQUEST OF MUSLIM EMPLOYEES IN THE DIFFERENT COURTS IN ILIGAN CITY (RE: OFFICE HOURS)

R E S O L U T I O N

CALLEJO, SR., J.:

In their Letter dated November 19, 2001 addressed to Executive Judge Valerio M. Salazar, Regional Trial Court of Iligan City, several Muslim employees in the different courts in the said city request that they be allowed to enjoy the following privileges:

1. to hold office hours from 7:30 a.m. to 3:30 p.m. without lunch break or coffee breaks during the month of Ramadan;
2. to be excused from work from 10:00 a.m. to 2:00 p.m. every Friday (Muslim Prayer Day) during the entire calendar year.

Judge Salazar forwarded the said letter-request to the Office of the Court Administrator (OCA). Judge Salazar expressed his conformity with the first request, *i.e.*, allowing them to hold office from 7:30 a.m. to 3:30 p.m. without any break during the month of *Ramadan*. However, he expressed some misgivings about the second request, *i.e.*, excusing them from work from 10:00 a.m. to 2:00 p.m. every Friday during the entire calendar year.

In support of their requests, the Muslim employees invoke Presidential Decree (P.D.) No. 291^[1] as amended by P.D. No. 322^[2] enacted by then President Ferdinand E. Marcos. The avowed purpose of P.D. No. 291 was to reinforce national unity by recognizing Muslim holidays and making them part of our national holidays. Section 2 thereof, as amended by P.D. No. 322, provides that the following are recognized Muslim holidays:

- a. Eid-ul-Fitr (Hariraya Puasa) - which falls on the 1st day of the lunar month of Shawwal commemorating the end of the fasting season;
- b. Eid-ul-Adha (Hariraya Hajj) - which falls on the 10th day of the 12th Lunar month of Zul Hajj;
- c. Mauledan Nabi - Birthday of Prophet Mohammad (P.B.U.H), which falls on the 12th day of the 3rd Lunar month of Rabbiol-Awwal;
- d. Lailatul Isra Wal Miraj - (Ascension) which falls on the 27th day of the 8th Lunar month of Rajjab;
- e. Muharram (Ashura) - which falls on the 10th Lunar month of Muharram; and
- f. Amon Jaded (New Year) - which falls on the 1st day of the 1st Lunar month of Muharram.

Muslims employees in the government are excused from reporting to office during these holidays in order that they may be able to properly observe them.

Section 3 of the same law, as amended by P.D. No. 322, further provides that:

Sec. 3. (a) During the fasting season on the month of Ramadan, all Muslim employees in the national government, government-owned or controlled corporations, provinces, cities, municipalities and other instrumentalities shall observe office hours from seven-thirty in the morning (7:30 a.m.) to three-thirty in the afternoon (3:30 p.m.) without lunch break or coffee breaks, and that there shall be no diminution of salary or wages, provided, that the employee who is not fasting is not entitled to the benefit of this provision.

(b) Regulations for the implementation of this section shall be issued together with the implementing directives on Muslim holidays.

Pursuant thereto, the Civil Service Commission (CSC) promulgated Resolution No. 81-1277 dated November 13, 1981 which states in part:

2. During "Ramadan" the Fasting month (30 days) of the Muslims, the Civil Service official time of 8 o'clock to 12 o'clock and 1 o'clock to 5 o'clock is hereby modified to 7:30 A.M. to 3:30 P.M. without noon break and the difference of 2 hours is not counted as undertime;

3. During Friday, the Muslim pray day, Muslims are excused from work from 10 o'clock in the morning to 2 o'clock in the afternoon.

Moreover, in its Resolution No. 00-0227 dated January 26, 2000, the CSC clarified that the term "Friday" in the above resolution is not limited to the Fridays during the month of *Ramadan*, but refers to "all Fridays of the calendar year." However, in order not to run afoul of Section 5,^[3] Rule XVII of the Omnibus Rules Implementing Book V of Executive Order (E.O.) No. 292^[4] which enjoins civil servants to render public service not less than eight hours a day or forty (40) hours a week, the CSC prescribes the adoption of a flexible working schedule to accommodate the Muslims' Friday Prayer Day subject to certain conditions, e.g., the flexible working hours shall not start earlier than 7:00 a.m. and end not later than 7:00 p.m.^[5]

In the Resolution dated October 1, 2002, the Court required the Court Administrator to study the matter. In compliance therewith, Court Administrator Presbitero J. Velasco, Jr. recommends that the Muslim employees in the Judiciary be allowed to hold flexible office hours from 7:30 a.m. to 3:30 p.m. without break during the month of *Ramadan*. Further, that they be excused from work from 10:00 a.m. to 2:00 p.m. every Friday to allow them to attend the Muslim Prayer Day. However, to compensate for the lost hours, they should be required to observe flexible working schedule which should start from 7:00 a.m. to 10:00 a.m. and from 2:00 p.m. to 7:00 p.m. every Friday. In that way, the working hours mandated by the civil service rules is complied with.

The recommendation of the Court Administrator with respect to the matter of allowing the Muslim employees in the Judiciary to hold flexible office hours from 7:30 a.m. to 3:30 p.m. without break during the month of *Ramadan* is well taken.

The same has statutory basis in Section 3 (a) of P.D. No. 291, as amended by P.D. No. 322, which categorically states that "[d]uring the fasting season in the month of *Ramadan*, all Muslim employees in the national government, government-owned or controlled corporations, provinces, cities, municipalities and other instrumentalities shall observe office hours from seven-thirty in the morning (7:30 a.m.) to three-thirty in the afternoon (3:30 p.m.) without lunch break or coffee breaks, and that there shall be no diminution of salary or wages ..."

The Court, however, is constrained to deny for lack of statutory basis the request of the Muslim employees to be excused from work from 10:00 a.m. to 2:00 p.m. every Friday to allow them to attend the Muslim Prayer Day. As correctly observed by Atty. Edna Diño, Chief, Office of the Court Attorney, in her Report dated May 13, 2005, the CSC exceeded its authority insofar as it declared in Resolution No. 81-1277 and Resolution No. 00-0227 that Muslim employees are excused from work from 10:00 a.m. to 2:00 p.m. every Friday subject to certain conditions. CSC Resolution No. 81-1277 was purportedly issued pursuant to Sections 2 and 5 of P.D. No. 291, as amended by P.D. No. 322, but neither of the two decrees mention "Friday, the Muslim Prayer Day" as one of the recognized holidays.

The Court is not unmindful that the subject requests are grounded on Section 5, Article III of the Constitution:

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil and political rights.

This provision contains two aspects: (1) the non-establishment clause; and (2) the free exercise clause. The subject requests are based on the latter and in interpreting this clause (the free exercise clause) embodied in the Constitution, the Court has consistently adhered to the doctrine that:

The right to religious profession and worship has a two-fold aspect, *viz.*, freedom to believe and freedom to act on one's beliefs. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare.^[6]

Justice Isagani A. Cruz explained these two concepts in this wise:

(1) Freedom to Believe

The individual is free to believe (or disbelieve) as he pleases concerning the hereafter. He may indulge his own theories about life and death; worship any god he chooses, or none at all; embrace or reject any religion; acknowledge the divinity of God or of any being that appeals to his reverence; recognize or deny the immortality of his soul – in fact, cherish any religious conviction as he and he alone sees fit. However absurd his beliefs may be to others, even if they be hostile and heretical to the majority, he has full freedom to believe as he pleases. He may not be required to prove his beliefs. He may not be punished for his inability to do so. Religion, after all, is a matter of faith. "Men may believe what