

EN BANC

[G.R. No. 157036, June 09, 2004]

FRANCISCO I. CHAVEZ, PETITIONER, VS. HON. ALBERTO G. ROMULO, IN HIS CAPACITY AS EXECUTIVE SECRETARY; DIRECTOR GENERAL HERMOGENES E. EBDANE, JR., IN HIS CAPACITY AS THE CHIEF OF THE PNP, ET AL., RESPONDENTS.

DECISION

SANDOVAL-GUTIERREZ, J.:

The right of individuals to bear arms is not absolute, but is subject to regulation. The maintenance of peace and order^[1] and the protection of the people against violence are constitutional duties of the State, and the right to bear arms is to be construed in connection and in harmony with these constitutional duties.

Before us is a petition for prohibition and injunction seeking to enjoin the implementation of the "*Guidelines in the Implementation of the Ban on the Carrying of Firearms Outside of Residence*"^[2] (Guidelines) issued on January 31, 2003, by respondent Hermogenes E. Ebdane, Jr., Chief of the Philippine National Police (PNP).

The facts are undisputed:

In January 2003, President Gloria Macapagal-Arroyo delivered a speech before the members of the PNP stressing the need for a nationwide gun ban in all public places to avert the rising crime incidents. She directed the then PNP Chief, respondent Ebdane, to suspend the issuance of Permits to Carry Firearms Outside of Residence (PTCFOR), thus:

"THERE IS ALSO NEED TO FOCUS ON THE HIGH PROFILE CRIMES THAT TEND TO DISTURB THE PSYCHOLOGICAL PERIMETERS OF THE COMMUNITY – THE LATEST BEING THE KILLING OF FORMER NPA LEADER ROLLY KINTANAR. I UNDERSTAND WE ALREADY HAVE THE IDENTITY OF THE CULPRIT. LET US BRING THEM TO THE BAR OF JUSTICE.

THE NPA WILL FIND IT MORE DIFFICULT TO CARRY OUT THEIR PLOTS IF OUR LAW ENFORCEMENT AGENCIES CAN RID THEMSELVES OF RASCALS IN UNIFORM, AND ALSO IF WE ENFORCE A GUN BAN IN PUBLIC PLACES.

THUS, I AM DIRECTING THE PNP CHIEF TO SUSPEND INDEFINITELY THE ISSUANCE OF PERMIT TO CARRY FIREARMS IN PUBLIC PLACES. THE ISSUANCE OF PERMITS WILL NOW BE LIMITED ONLY TO OWNERSHIP AND POSSESSION OF GUNS AND NOT TO CARRYING THEM IN PUBLIC PLACES. FROM NOW ON, ONLY THE UNIFORMED MEN IN THE MILITARY AND AUTHORIZED LAW ENFORCEMENT OFFICERS CAN CARRY FIREARMS IN PUBLIC

PLACES, AND ONLY PURSUANT TO EXISTING LAW. CIVILIAN OWNERS MAY NO LONGER BRING THEIR FIREARMS OUTSIDE THEIR RESIDENCES. THOSE WHO WANT TO USE THEIR GUNS FOR TARGET PRACTICE WILL BE GIVEN SPECIAL AND TEMPORARY PERMITS FROM TIME TO TIME ONLY FOR THAT PURPOSE. AND THEY MAY NOT LOAD THEIR GUNS WITH BULLETS UNTIL THEY ARE IN THE PREMISES OF THE FIRING RANGE.

WE CANNOT DISREGARD THE PARAMOUNT NEED FOR LAW AND ORDER. JUST AS WE CANNOT BE HEEDLESS OF OUR PEOPLE'S ASPIRATIONS FOR PEACE."

Acting on President Arroyo's directive, respondent Ebdane issued the assailed Guidelines quoted as follows:

"TO : All Concerned

FROM : Chief, PNP

SUBJECT : **Guidelines in the Implementation of the Ban on the Carrying of Firearms Outside of Residence.**

DATE : January 31, 2003

1. Reference: PD 1866 dated June 29, 1983 and its Implementing Rules and Regulations.

2. General:

The possession and carrying of firearms outside of residence is a privilege granted by the State to its citizens for their individual protection against all threats of lawlessness and security.

As a rule, persons who are lawful holders of firearms (regular license, special permit, certificate of registration or MR) are prohibited from carrying their firearms outside of residence. However, the Chief, Philippine National Police may, in meritorious cases as determined by him and under conditions as he may impose, authorize such person or persons to carry firearms outside of residence.

3. Purposes:

This Memorandum prescribes the guidelines in the implementation of the ban on the carrying of firearms outside of residence as provided for in the **Implementing Rules and Regulations, Presidential Decree No. 1866, dated June 29,**

1983 and as directed by PGMA. It also prescribes the conditions, requirements and procedures under which exemption from the ban may be granted.

4. Specific Instructions on the Ban on the Carrying of Firearms:

- a. All PTCFOR are hereby revoked. Authorized holders of licensed firearms covered with valid PTCFOR may re-apply for a new PTCFOR in accordance with the conditions hereinafter prescribed.**
- b. All holders of licensed or government firearms are hereby prohibited from carrying their firearms outside their residence except those covered with mission/letter orders and duty detail orders issued by competent authority pursuant to Section 5, IRR, PD 1866, provided, that the said exception shall pertain only to organic and regular employees.**

5. The following persons may be authorized to carry firearms outside of residence.

- a.** All persons whose application for a new PTCFOR has been approved, provided, that the persons and security of those so authorized are under actual threat, or by the nature of their position, occupation and profession are under imminent danger.
- b.** All organic and regular employees with Mission/Letter Orders granted by their respective agencies so authorized pursuant to Section 5, IRR, PD 1866, provided, that such Mission/Letter Orders is valid only for the duration of the official mission which in no case shall be more than ten (10) days.
- c.** All guards covered with Duty Detail Orders granted by their respective security agencies so authorized pursuant to Section 4, IRR, PD 1866, provided, that such DDO shall in no case exceed 24-hour duration.
- d.** Members of duly recognized Gun Clubs issued Permit to Transport (PTT) by the PNP for purposes of practice and competition, provided, that such firearms while in transit must not be loaded with ammunition and secured in an appropriate box or case detached from the person.

- e. Authorized members of the Diplomatic Corps.

6. Requirements for issuance of new PTCFOR:

- a. Written request by the applicant addressed to Chief, PNP stating his qualification to possess firearm and the reasons why he needs to carry firearm outside of residence.
- b. Xerox copy of current firearm license duly authenticated by Records Branch, FED;
- c. Proof of actual threat, the details of which should be issued by the Chief of Police/Provincial or City Directors and duly validated by C, RIID;
- d. Copy of Drug Test Clearance, duly authenticated by the Drug Testing Center, if photocopied;
- e. Copy of DI/ RIID clearance, duly authenticated by ODI/RIID, if photocopied;
- f. Copy of Neuro-Psychiatric Clearance duly authenticated by NP Testing Center, if photocopied;
- g. Copy of Certificate of Attendance to a Gun Safety Seminar, duly validated by Chief, Operations Branch, FED;
- h. NBI Clearance;
- i. Two (2) ID pictures (2" x 2") taken not earlier than one (1) year from date of filing of application; and
- j. Proof of Payment

7. Procedures:

- a. Applications may be filed directly to the Office of the PTCFOR Secretariat in Camp Crame. In the provinces, the applications may also be submitted to the Police Regional Offices (PROs) and Provincial/City Police Offices (P/CPOs) for initial processing before they are forwarded to the office of the PTCFOR Secretariat. The processors, after ascertaining that the documentary requirements are in order, shall issue the Order of Payment (OP) indicating the amount of fees payable by the

applicant, who in turn shall pay the fees to the Land Bank.

- b.** Applications, which are duly processed and prepared in accordance with existing rules and regulations, shall be forwarded to the OCPNP for approval.
- c.** Upon approval of the application, OCPNP will issue PTCFOR valid for one (1) year from date of issue.
- d.** Applications for renewal of PTCFOR shall be processed in accordance with the provisions of par. 6 above.
- e.** Application for possession and carrying of firearms by diplomats in the Philippines shall be processed in accordance with NHQ PNP Memo dated September 25, 2000, with Subj: Possession and Carrying of Firearms by Diplomats in the Philippines.

8. Restrictions in the Carrying of Firearms:

- a.** The firearm must not be displayed or exposed to public view, except those authorized in uniform and in the performance of their official duties.
- b.** The firearm shall not be brought inside public drinking and amusement places, and all other commercial or public establishments.”

Petitioner Francisco I. Chavez, a licensed gun owner to whom a PTCFOR has been issued, requested the Department of Interior and Local Government (DILG) to reconsider the implementation of the assailed Guidelines. However, his request was denied. Thus, he filed the present petition impleading public respondents Ebdane, as Chief of PNP; Alberto G. Romulo, as Executive Secretary; and Gerry L. Barias, as Chief of the PNP-Firearms and Explosives Division. He anchored his petition on the following grounds:

“I

THE PRESIDENT HAS NO POWER OR AUTHORITY – MUCH LESS BY A MERE SPEECH – TO ALTER, MODIFY OR AMEND THE LAW ON FIREARMS BY IMPOSING A GUN BAN AND CANCELING EXISTING PERMITS FOR GUNS TO BE CARRIED OUTSIDE RESIDENCES.

II

OFFICIALLY, THERE IS NO PRESIDENTIAL ISSUANCE ON THE GUN BAN; THE PRESIDENTIAL SPEECH NEVER INVOKED POLICE POWER TO JUSTIFY THE GUN BAN; THE PRESIDENT’S VERBAL DECLARATION ON GUN BAN