

## EN BANC

[ G.R. No. 180564, June 22, 2010 ]

**JESUS P. DISINI, PETITIONER, VS. THE HONORABLE  
SANDIGANBAYAN, THE REPUBLIC OF THE PHILIPPINES, AS  
REPRESENTED BY THE PRESIDENTIAL COMMISSION ON GOOD  
GOVERNMENT (PCGG), RESPONDENTS.**

### D E C I S I O N

**ABAD, J.:**

This case is about the elementary rule of fair play and the dire effect on the Republic's credibility when it reneges on its undertaking to protect witnesses to whom it had given immunity from prosecution.

#### **The Facts and the Case**

In 1989 respondent Republic of the Philippines, represented in this case by the Presidential Commission on Good Government (PCGG), wanted petitioner Jesus P. Disini to testify for his government in its case against Westinghouse Electric Corporation<sup>[1]</sup> (Westinghouse) before the United States District Court of New Jersey and in the arbitration case that Westinghouse International Projects Company and others filed against the Republic<sup>[2]</sup> before the International Chamber of Commerce Court of Arbitration. Disini worked for his second cousin, Herminio T. Disini (Herminio), as an executive in the latter's companies from 1971 to 1984. The Republic believed that the Westinghouse contract for the construction of the Bataan Nuclear Power Plant, brokered by one of Herminio's companies, had been attended by anomalies.

On February 16, 1989 respondent Republic and petitioner Disini entered into an Immunity Agreement under which Disini undertook to testify for his government and provide its lawyers with the information, affidavits, and documents they needed for prosecuting the two cases.<sup>[3]</sup> Acknowledging Disini's concern that the Republic could become a party to yet other proceedings relating to the matters subject of his testimony, the Republic guaranteed that, apart from the two cases, it shall not compel Disini to testify in any other domestic or foreign proceeding brought by the Republic against Herminio.<sup>[4]</sup>

The pertinent terms of the immunity read:

**1. Jesus P. Disini agrees to appear and to testify truthfully in the civil matter captioned Republic of the Philippines, et al. v. Westinghouse Electric Corporation, et al., (now pending as No. 88-5150 in the United States District Court for the District of New Jersey (or any jurisdiction to which it may be transferred) and in**

the arbitration proceedings captioned Westinghouse International Projects Company, Westinghouse Electric S.A. Westinghouse Electric Corporation v. National Power Corporation, Republic of the Philippines and Burns & Roe Enterprises v. National Power Corporation, Republic of the Philippines (now pending as Nos. 6401/BGD and 6423/BGD, respectively in the International Chamber of Commerce Court of Arbitration); to provide to the attorneys for the Republic of the Philippines all documents in his possession or under his control related to the subject matter of said action; to submit to interviews by those attorneys upon reasonable notice; to provide affidavits regarding his knowledge of the subject matter of said actions; and to cooperate truthfully with the Republic of the Philippines and its attorneys in the prosecution of this action, subject to the provision set forth in this paragraph and at paragraph 3, below. The parties acknowledge that the Republic of the Philippines is or may become a party to other proceedings relating to circumstances as to which Jesus P. Disini may have knowledge. The Republic of the Philippines by this instrument agrees that it shall not compel the testimony of Jesus P. Disini in any proceeding, domestic or foreign, other than this civil matter and these arbitration proceedings and, in the event this civil matter or any portion thereof is referred for arbitration, then and in that event, in said arbitration proceedings resulting from said reference.

2. The Republic of the Philippines agrees that it shall not institute, prosecute or maintain any criminal, civil or administrative proceeding, audit or investigation against Jesus P. Disini, for or in connection with (a) any conduct directly or indirectly relating to or arising out of the construction of the Philippine Nuclear Power Plant in Bataan, Philippines or Jesus P. Disini's former employment by Herminio T. Disini or any company in which Herminio T. Disini owned any interest prior to July 1, 1984; or (b) any claim or matter, civil, criminal or administrative, known or unknown, arising under the Internal Revenue Code of the Philippines, which exists as of the date of this agreement; and it further agrees that it shall not use, directly or indirectly, against Jesus P. Disini, any information, lead or document obtained from him pursuant to this agreement.

3. Should the Republic of the Philippines name Herminio T. Disini a defendant in any of the above-referenced matters, or in any resulting arbitration proceeding, or any other proceeding ancillary to said matters, the Republic of the Philippines shall not call Jesus P. Disini to testify as a witness in said matters on any claim brought by the Republic of the Philippines against Herminio T. Disini. Nothing herein shall affect Jesus P. Disini's obligation to provide truthful information or testimony. (Underscoring supplied.)

2007, upon application of respondent Republic, respondent Sandiganbayan issued a subpoena *duces tecum* and *ad testificandum* against Disini, commanding him to testify and produce documents before that court on March 6 and 30, 2007 in an action that the Republic filed against Herminio.<sup>[5]</sup> Disini filed a motion to quash the subpoena, invoking his immunity agreement with the Republic, but respondent Sandiganbayan ignored the motion and issued a new subpoena, directing him to testify before it on May 6 and 23, 2007.

On July 19, 2007 the PCGG issued Resolution 2007-031,<sup>[6]</sup> revoking and nullifying the Immunity Agreement between petitioner Disini and respondent Republic insofar as it prohibited the latter from requiring Disini to testify against Herminio. On August 16, 2007 respondent Sandiganbayan denied Disini's motion to quash subpoena,<sup>[7]</sup> prompting the latter to take recourse to this Court.

### **The Issues**

Two issues are presented:

1. Whether or not the PCGG acted within its authority when it revoked and nullified the Immunity Agreement between respondent Republic and petitioner Disini; and
2. Whether or not respondent Sandiganbayan gravely abused its discretion when it denied petitioner Disini's motion to quash the subpoena addressed to him.

### **Discussion**

**One.** Respondent Republic contends that the power to grant immunity given the PCGG covers only immunity from civil or criminal prosecution. It does not cover immunity from providing evidence in court. The Republic even believes that immunity from the need to testify in other ill-gotten wealth cases would defeat the very purpose of Executive Order 1 which charged the PCGG with the task of recovering all ill-gotten wealth of former President Marcos, his family, relatives, subordinates, and close associates.

Section 5 of Executive Order (E.O.) 14, which vests on the PCGG the power to grant immunity to witnesses provides:

**Sec. 5. The Presidential Commission on Good Government is authorized to grant immunity from criminal prosecution to any person who provides information or testifies in any investigation conducted by such Commission to establish the unlawful manner in which any respondent, defendant or accused has acquired or accumulated the property or properties in question in any case where such information or testimony is necessary to ascertain or prove the latter's guilt or his civil liability. The immunity thereby granted shall be continued to protect the witness who repeats such testimony before the Sandiganbayan when required to do so by the latter or by the Commission.**

Construing the above, the Court has ruled in a previous case that the scope of

immunity offered by the PCGG may vary.<sup>[8]</sup> It has discretion to grant appropriate levels of criminal immunity depending on the situation of the witness and his relative importance to the prosecution of ill-gotten wealth cases. It can even agree, as in this case, to conditions expressed by the witness as sufficient to induce cooperation.

The language of Section 5, E.O. 14, said the Court, affords latitude to the PCGG in determining the extent of that criminal immunity.<sup>[9]</sup> In petitioner Disini's case, respondent Republic, acting through the PCGG, offered him not only criminal and civil immunity<sup>[10]</sup> but also immunity against being compelled to testify in any domestic or foreign proceeding, other than the civil and arbitration cases identified in the Immunity Agreement, just so he would agree to testify. Trusting in the Government's honesty and fidelity, Disini agreed and fulfilled his part of the bargain. Surely, the principle of fair play, which is the essence of due process, should hold the Republic on to its promise.

The Republic of course points out that the immunity from criminal or civil prosecution that Section 5 of E.O. 14 authorizes does not cover immunity from giving evidence in a case before a court of law.

But in reality the guarantee given to petitioner Disini against being compelled to testify in other cases against Herminio constitutes a grant of immunity from civil or criminal prosecution. If Disini refuses to testify in those other cases he would face indirect contempt, which is essentially a prosecution for willful disobedience of a valid court order, a subpoena.<sup>[11]</sup> His refusal to testify will warrant the imposition against him of the penalty of fine not exceeding P30,000.00 or imprisonment not exceeding 6 months or both fine and imprisonment.<sup>[12]</sup>

Here, petitioner Disini's refusal to testify as ordered by the Sandiganbayan is certain to result in prosecution for criminal contempt. It constitutes criminal contempt since guilt would draw a penalty of fine or imprisonment or both. Said the Court in *Montenegro v. Montenegro*:<sup>[13]</sup>

**Contempt, whether direct or indirect, may be civil or criminal depending on the nature and effect of the contemptuous act. Criminal contempt is "conduct directed against the authority and dignity of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. On the other hand, civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein and is therefore an offense against the party in whose behalf the violated order was made. If the purpose is to punish, then it is criminal in nature, but if to compensate, then it is civil."**<sup>[14]</sup>

In criminal contempt, the proceedings are regarded as criminal and the rules of criminal procedure apply. What is more, it is generally held that the State or respondent Republic is the real prosecutor in such a case.<sup>[15]</sup> The grant, therefore, of immunity to petitioner Disini against being compelled to testify is ultimately a

grant of immunity from being criminally prosecuted by the State for refusal to testify, something that falls within the express coverage of the immunity given him.

Respondent Republic claims that the grant of immunity to petitioner Disini against being compelled to testify against Herminio contravenes the state's public policy respecting the recovery of illegally acquired wealth under the regime of former President Marcos.

But the same authority that adopted such policy, former President Corazon C. Aquino, is the same authority that gave the PCGG the power to grant immunity to witnesses whom it might use to recover illegally acquired wealth during that regime. In the case of *Tanchanco v. Sandiganbayan*,<sup>[16]</sup> the Court regarded as valid and binding on the government the immunity it gave former National Food Authority Administrator, Jesus Tanchanco for all "culpable acts of his during his service in the Marcos government," which would include possible prosecution for any illegal wealth that he may himself have acquired during that service. The Court did not regard such immunity in contravention of the state policy on recovery of ill-gotten wealth under the auspices of the Marcos regime.

True, respondent Republic may have other cases in which it also needed petitioner Disini's testimony. But such circumstance does not necessarily invalidate the concession it gave him--the freedom from being compelled to give evidence in specific cases. It may be assumed that the Republic regarded Disini's testimony in the two cases covered by the agreement more important and critical than those other cases. It is well known that the cases with Westinghouse before the New Jersey District Court and the International Arbitration Tribunal concerning the construction of the Bataan Nuclear Power Plant had so huge a financial impact on the Republic that it was willing to waive its power and right to compel petitioner Disini's testimony in other cases.

**Two.** Petitioner Disini argues that respondent Republic, through the PCGG, should not be allowed to revoke the guarantee it gave him against being compelled to testify in other cases, the Republic being in estoppel for making him believe that it had the authority to provide such guarantee. The Republic rejects this argument, however, invoking Section 15, Article XI of the 1987 Constitution which provides: "The right of the State to recover properties unlawfully acquired by public officials or employees from them or from their nominees, or transferees, shall not be barred by prescription, laches or estoppel."

But, first, the estoppel that petitioner Disini invokes does not have the effect, if recognized, of denying the state its right to recover whatever ill-gotten wealth Herminio may have acquired under the Marcos regime. The action against Herminio can continue, hampered only by the exclusion of Disini's testimony. And there are other ways of proving the existence of ill-gotten wealth. Second, although the government cannot be barred by estoppel based on unauthorized acts of public officers,<sup>[17]</sup> such principle cannot apply to this case since, as already pointed out, respondent PCGG acted within its authority when it provided Disini with a guarantee against having to testify in other cases.

A contract is the law between the parties. It cannot be withdrawn except by their mutual consent.<sup>[18]</sup> This applies with more reason in this case where petitioner