

## FIRST DIVISION

[ G. R. NO. 138965, June 30, 2006 ]

**PUBLIC INTEREST CENTER INC., LAUREANO T. ANGELES, AND  
JOCELYN P. CELESTINO, PETITIONERS, VS. MAGDANGAL B.  
ELMA, AS CHIEF PRESIDENTIAL LEGAL COUNSEL AND AS  
CHAIRMAN OF THE PRESIDENTIAL COMMISSION ON GOOD  
GOVERNMENT, AND RONALDO ZAMORA, AS EXECUTIVE  
SECRETARY, RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

This is an original action for *Certiorari*, Prohibition, and *Mandamus*, with a Prayer for Temporary Restraining Order/Writ of Preliminary Injunction filed on 30 June 1999.

[1] This action seeks to declare as null and void the concurrent appointments of respondent Magdangal B. Elma as Chairman of the Presidential Commission on Good Government (PCGG) and as Chief Presidential Legal Counsel (CPLC) for being contrary to Section 13, [2] Article VII and Section 7, par. 2, [3] Article IX-B of the 1987 Constitution. In addition, the petitioners further seek the issuance of the extraordinary writs of prohibition and *mandamus*, as well as a temporary restraining order to enjoin respondent Elma from holding and discharging the duties of both positions and from receiving any salaries, compensation or benefits from such positions during the pendency of this petition. [4] Respondent Ronaldo Zamora was sued in his official capacity as Executive Secretary.

On 30 October 1998, respondent Elma was appointed and took his oath of office as Chairman of the PCGG. Thereafter, on 11 January 1999, during his tenure as PCGG Chairman, respondent Elma was appointed CPLC. He took his oath of office as CPLC the following day, but he waived any remuneration that he may receive as CPLC. [5]

Petitioners cited the case of *Civil Liberties Union v. Executive Secretary* [6] to support their position that respondent Elma's concurrent appointments as PCGG Chairman and CPLC contravenes Section 13, Article VII and Section 7, par. 2, Article IX-B of the 1987 Constitution. Petitioners also maintained that respondent Elma was holding incompatible offices.

Citing the Resolution [7] in *Civil Liberties Union v. Executive Secretary*, respondents allege that the strict prohibition against holding multiple positions provided under Section 13, Article VII of the 1987 Constitution applies only to heads of executive departments, their undersecretaries and assistant secretaries; it does not cover other public officials given the rank of Secretary, Undersecretary, or Assistant Secretary.

Respondents claim that it is Section 7, par. 2, Article IX-B of the 1987 Constitution

that should be applied in their case. This provision, according to the respondents, would allow a public officer to hold multiple positions if (1) the law allows the concurrent appointment of the said official; and (2) the primary functions of either position allows such concurrent appointment. Respondents also alleged that since there exists a close relation between the two positions and there is no incompatibility between them, the primary functions of either position would allow respondent Elma's concurrent appointments to both positions. Respondents further add that the appointment of the CPLC among incumbent public officials is an accepted practice.

The resolution of this case had already been overtaken by supervening events. In 2001, the appointees of former President Joseph Estrada were replaced by the appointees of the incumbent president, Gloria Macapagal Arroyo. The present PCGG Chairman is Camilo Sabio, while the position vacated by the last CPLC, now Solicitor General Antonio Nachura, has not yet been filled. There no longer exists an actual controversy that needs to be resolved. However, this case raises a significant legal question as yet unresolved - whether the PCGG Chairman can concurrently hold the position of CPLC. The resolution of this question requires the exercise of the Court's judicial power, more specifically its exclusive and final authority to interpret laws. Moreover, the likelihood that the same substantive issue raised in this case will be raised again compels this Court to resolve it.<sup>[8]</sup> The rule is that courts will decide a question otherwise moot and academic if it is "capable of repetition, yet evading review."<sup>[9]</sup>

Supervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution. Even in cases where supervening events had made the cases moot, this Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, bar, and public.<sup>[10]</sup>

The merits of this case may now be discussed.

The issue in this case is whether the position of the PCGG Chairman or that of the CPLC falls under the prohibition against multiple offices imposed by Section 13, Article VII and Section 7, par. 2, Article IX-B of the 1987 Constitution, which provide that:

Art. VII .

x x x x

Section 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. x x x

Art. IX-B.

x x x x

Section 7. No elective official shall be eligible for appointment or

designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

To harmonize these two provisions, this Court, in the case of *Civil Liberties Union v. Executive Secretary*,<sup>[11]</sup> construed the prohibition against multiple offices contained in Section 7, Article IX-B and Section 13, Article VII in this manner:

[T]hus, while all other appointive officials in the civil service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, members of the Cabinet, their deputies and assistants may do so only when expressly authorized by the Constitution itself. In other words, Section 7, Article IX-B is meant to lay down the general rule applicable to all elective and appointive public officials and employees, while Section 13, Article VII is meant to be the exception applicable only to the President, the Vice- President, Members of the Cabinet, their deputies and assistants.

The general rule contained in Article IX-B of the 1987 Constitution permits an appointive official to hold more than one office only if "allowed by law or by the primary functions of his position." In the case of *Quimson v. Ozaeta*,<sup>[12]</sup> this Court ruled that, "[t] here is no legal objection to a government official occupying two government offices and performing the functions of both **as long as there is no incompatibility**." The crucial test in determining whether incompatibility exists between two offices was laid out in *People v. Green*<sup>[13]</sup> - whether one office is subordinate to the other, in the sense that one office has the right to interfere with the other.

[I]ncompatibility between two offices, is an inconsistency in the functions of the two; x x x Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that incompatibility from which the law declares that the acceptance of the one is the vacation of the other. The force of the word, in its application to this matter is, that from the nature and relations to each other, of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other. x x x The offices must subordinate, one [over] the other, and they must, *per se*, have the right to interfere, one with the other, before they are incompatible at common law. x x x

In this case, an incompatibility exists between the positions of the PCGG Chairman and the CPLC. The duties of the CPLC include giving independent and impartial legal advice on the actions of the heads of various executive departments and agencies and to review investigations involving heads of executive departments and agencies, as well as other Presidential appointees. The PCGG is, without question, an agency