

## EN BANC

[ G.R. NO. 164007, August 10, 2006 ]

**LT. (SG) EUGENE GONZALES, LT. (SG) ANDY TORRATO, LT. (SG) ANTONIO TRILLANES IV, CPT. GARY ALEJANO, LT. (SG) JAMES LAYUG, CPT. GERARDO GAMBALA, CPT. NICANOR FAELDON, LT. (SG) MANUEL CABOCHAN, ENS. ARMAND PONTEJOS, LT. (JG) ARTURO PASCUA, AND 1LT. JONNEL SANGGALANG, PETITIONERS, VS. GEN. NARCISO ABAYA, IN HIS CAPACITY AS CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES, AND B. GEN. MARIANO M. SARMIENTO, JR., IN HIS CAPACITY AS THE JUDGE ADVOCATE GENERAL OF THE JUDGE ADVOCATE GENERAL'S OFFICE (JAGO), RESPONDENTS.**

### DECISION

#### **SANDOVAL-GUTIERREZ, J.:**

For our resolution is the Petition for Prohibition (with prayer for a temporary restraining order) filed by the above-named members of the Armed Forces of the Philippines (AFP), herein petitioners, against the AFP Chief of Staff and the Judge Advocate General, respondents.

The facts are:

On July 26, 2003, President Gloria Macapagal Arroyo received intelligence reports that some members of the AFP, with high-powered weapons, had abandoned their designated places of assignment. Their aim was to destabilize the government. The President then directed the AFP and the Philippine National Police (PNP) to track and arrest them.

On July 27, 2003 at around 1:00 a.m., more than 300 heavily armed junior officers and enlisted men of the AFP – mostly from the elite units of the Army's Scout Rangers and the Navy's Special Warfare Group – entered the premises of the Oakwood Premier Luxury Apartments on Ayala Avenue, Makati City. They disarmed the security guards and planted explosive devices around the building.

Led by Navy Lt. (SG) Antonio Trillanes IV, the troops sported red armbands emblazoned with the emblem of the "*Magdalo*" faction of the *Katipunan*.<sup>[1]</sup> The troops then, through broadcast media, announced their grievances against the administration of President Gloria Macapagal Arroyo, such as the graft and corruption in the military, the illegal sale of arms and ammunition to the "enemies" of the State, and the bombings in Davao City intended to acquire more military assistance from the US government. They declared their withdrawal of support from their Commander-in-Chief and demanded that she resign as President of the Republic. They also called for the resignation of her cabinet members and the top brass of the AFP and PNP.

About noontime of the same day, President Arroyo issued Proclamation No. 427 declaring a state of rebellion, followed by General Order No. 4 directing the AFP and PNP to take all necessary measures to suppress the rebellion then taking place in Makati City. She then called the soldiers to surrender their weapons at five o'clock in the afternoon of that same day.

In order to avoid a bloody confrontation, the government sent negotiators to dialogue with the soldiers. The aim was to persuade them to peacefully return to the fold of the law. After several hours of negotiation, the government panel succeeded in convincing them to lay down their arms and defuse the explosives placed around the premises of the Oakwood Apartments. Eventually, they returned to their barracks.

A total of 321 soldiers, including petitioners herein, surrendered to the authorities.

The National Bureau of Investigation (NBI) investigated the incident and recommended that the military personnel involved be charged with *coup d'etat* defined and penalized under Article 134-A of the Revised Penal Code, as amended. On July 31, 2003, the Chief State Prosecutor of the Department of Justice (DOJ) recommended the filing of the corresponding Information against them.

Meanwhile, on August 2, 2003, pursuant to Article 70 of the Articles of War, respondent General Narciso Abaya, then AFP Chief of Staff, ordered the arrest and detention of the soldiers involved in the Oakwood incident and directed the AFP to conduct its own separate investigation.

On August 5, 2003, the DOJ filed with the Regional Trial Court (RTC), Makati City an Information for *coup d'etat*<sup>[2]</sup> against those soldiers, docketed as Criminal Case No. 03-2784 and eventually raffled off to Branch 61, presided by Judge Romeo F. Barza.<sup>[3]</sup> Subsequently, this case was consolidated with Criminal Case No. 03-2678, involving the other accused, pending before Branch 148 of the RTC, Makati City, presided by Judge Oscar B. Pimentel.

On August 13, 2003, the RTC directed the DOJ to conduct a reinvestigation of Criminal Case No. 03-2784.

On the same date, respondent Chief of Staff issued Letter Order No. 625 creating a Pre-Trial Investigation Panel tasked to determine the propriety of filing with the military tribunal charges for violations of the Articles of War under Commonwealth Act No. 408,<sup>[4]</sup> as amended, against the same military personnel. Specifically, the charges are: (a) violation of Article 63 for disrespect toward the President, the Secretary of National Defense, etc., (b) violation of Article 64 for disrespect toward a superior officer, (c) violation of Article 67 for mutiny or sedition, (d) violation of Article 96 for conduct unbecoming an officer and a gentleman, and (e) violation of Article 97 for conduct prejudicial to good order and military discipline.

Of the original 321 accused in Criminal Case No. 03-2784, only 243 (including petitioners herein) filed with the RTC, Branch 148 an Omnibus Motion praying that the said trial court assume jurisdiction over all the charges filed with the military tribunal. They invoked Republic Act (R.A.) No. 7055.<sup>[5]</sup>

On September 15, 2003, petitioners filed with the Judge Advocate General's Office (JAGO) a motion praying for the suspension of its proceedings until after the RTC shall have resolved their motion to assume jurisdiction.

On October 29, 2003, the Pre-Trial Investigation Panel submitted its Initial Report to the AFP Chief of Staff recommending that the military personnel involved in the Oakwood incident be charged before a general court martial with violations of Articles 63, 64, 67, 96, and 97 of the Articles of War.

Meanwhile, on November 11, 2003, the DOJ, after conducting a reinvestigation, found probable cause against only 31 (petitioners included) of the 321 accused in Criminal Case No. 03-2784. Accordingly, the prosecution filed with the RTC an Amended Information.<sup>[6]</sup>

In an Order dated November 14, 2003, the RTC admitted the Amended Information and dropped the charge of *coup d'etat* against the 290 accused.

Subsequently, or on December 12, 2003, the Pre-Trial Investigation Panel submitted its Final Pre-Trial Investigation Report<sup>[7]</sup> to the JAGO, recommending that, following the "doctrine of absorption," those charged with *coup d'etat* before the RTC should not be charged before the military tribunal for violation of the Articles of War.

For its part, the RTC, on February 11, 2004, issued an Order<sup>[8]</sup> stating that "all charges before the court martial against the accused" are hereby declared **not service-connected**, but rather absorbed and in furtherance of the alleged crime of *coup d'etat*." The trial court then proceeded to hear petitioners' applications for bail.

In the meantime, Colonel Julius A. Magno, in his capacity as officer-in-charge of the JAGO, reviewed the findings of the Pre-Trial Investigation Panel. He recommended that 29 of the officers involved in the Oakwood incident, including petitioners, be prosecuted before a general court martial for violation of Article 96 (conduct unbecoming an officer and a gentleman) of the Articles of War.

On June 17, 2004, Colonel Magno's recommendation was approved by the AFP top brass. The AFP Judge Advocate General then directed petitioners to submit their answer to the charge. Instead of complying, they filed with this Court the instant Petition for Prohibition praying that respondents be ordered to desist from charging them with violation of Article 96 of the Articles of War in relation to the Oakwood incident.<sup>[9]</sup>

Petitioners maintain that since the RTC has made a determination in its Order of February 11, 2004 that the offense for violation of Article 96 (conduct unbecoming an officer and a gentleman) of the Articles of War is not service-connected, but is absorbed in the crime of *coup d'etat*, the military tribunal cannot compel them to submit to its jurisdiction.

The Solicitor General, representing the respondents, counters that R.A. No. 7055 specifies which offenses covered by the Articles of War are service-connected. These are violations of Articles 54 to 70, 72 to 92, and 95 to 97. The law provides that violations of these Articles are properly cognizable by the court martial. As the

charge against petitioners is violation of Article 96 which, under R.A. No. 7055 is a service-connected offense, then it falls under the jurisdiction of the court martial.

Subsequently, petitioners filed with this Court a Supplemental Petition raising the additional issue that the offense charged before the General Court Martial has prescribed. Petitioners alleged therein that during the pendency of their original petition, respondents proceeded with the Pre-Trial Investigation for purposes of charging them with violation of Article 96 (conduct unbecoming an officer and a gentleman) of the Articles of War; that the Pre-Trial Investigation Panel then referred the case to the General Court Martial; that "almost two years since the Oakwood incident on July 27, 2003, only petitioner Lt. (SG) Antonio Trillanes was arraigned, and this was done under questionable circumstances;"<sup>[10]</sup> that in the hearing of July 26, 2005, herein petitioners moved for the dismissal of the case on the ground that they were not arraigned within the prescribed period of two (2) years from the date of the commission of the alleged offense, in violation of Article 38 of the Articles of War;<sup>[11]</sup> that "the offense charged **prescribed on July 25, 2005;**"<sup>[12]</sup> that the General Court Martial ruled, however, that "the prescriptive period shall end only at 12:00 midnight of July 26, 2005;"<sup>[13]</sup> that "(a)s midnight of July 26, 2005 was approaching and it was becoming apparent that the accused could not be arraigned, the prosecution suddenly changed its position and asserted that 23 of the accused have already been arraigned;"<sup>[14]</sup> and that petitioners moved for a reconsideration but it was denied by the general court martial in its Order dated September 14, 2005.<sup>[15]</sup>

In his Comment, the Solicitor General prays that the Supplemental Petition be denied for lack of merit. He alleges that **"contrary to petitioners' pretensions, all the accused were duly arraigned on July 13 and 18, 2005."**<sup>[16]</sup> The "(r)ecords show that in the hearing on July 13, 2005, all the 29 accused were present" and, "(o)n that day, Military Prosecutor Captain Karen Ong Jags read the Charges and Specifications from the Charge Sheet in open court (pp. 64, TSN, July 13, 2005)."<sup>[17]</sup>

The sole question for our resolution is whether the petitioners are entitled to the writ of prohibition.

There is no dispute that petitioners, being officers of the AFP, are subject to military law. Pursuant to Article 1 (a) of Commonwealth Act No. 408, as amended, otherwise known as the Articles of War, the term "officer" is "construed to refer to a commissioned officer." Article 2 provides:

Art. 2. *Persons Subject to Military Law.* – The following persons are subject to these articles and shall be understood as included in the term "any person subject to military law" or "persons subject to military law," whenever used in these articles:

(a) **All officers and soldiers in the active service of the Armed Forces of the Philippines** or of the Philippine Constabulary, all members of the reserve force, from the dates of their call to active duty and while on such active duty; all trainees undergoing military instructions; and all other persons lawfully called, drafted, or ordered into, or to

duty or for training in the said service, from the dates they are required by the terms of the call, draft, or order to obey the same.

Upon the other hand, Section 1 of R.A. No. 7055 reads:

SEC. 1. Members of the Armed Forces of the Philippines and other persons subject to military law, including members of the Citizens Armed Forces Geographical Units, who commit crimes or offenses penalized under the Revised Penal Code, other special penal laws, or local government ordinances, regardless of whether or not civilians are co-accused, victims, or offended parties, which may be natural or juridical persons, **shall be tried by the proper civil court, except when the offense, as determined before arraignment by the civil court, is service-connected, in which case, the offense shall be tried by court-martial**, *Provided*, That the President of the Philippines may, in the interest of justice, order or direct at any time before arraignment that any such crimes or offenses be tried by the proper civil courts.

**As used in this Section, service-connected crimes or offenses shall be limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended.**

In imposing the penalty for such crimes or offenses, the court-martial may take into consideration the penalty prescribed therefor in the Revised Penal Code, other special laws, or local government ordinances.

Section 1 of R.A. No. 7055, quoted above, is clear and unambiguous. First, it lays down the **general rule** that members of the AFP and other persons subject to military law, including members of the Citizens Armed Forces Geographical Units, who commit crimes or offenses penalized under the Revised Penal Code (like *coup d'etat*), other special penal laws, or local ordinances **shall be tried by the proper civil court**. Next, it provides the **exception** to the general rule, i.e., where the civil court, before arraignment, has determined the offense to be **service-connected, then the offending soldier shall be tried by a court martial**. Lastly, the law states an exception to the exception, i.e., where the President of the Philippines, in the interest of justice, directs before arraignment that **any such crimes or offenses be tried by the proper civil court**.

The second paragraph of the same provision further **identifies the "service-connected crimes or offenses" as "limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97"** of the Articles of War. Violations of these specified Articles are **triable by court martial**. This delineates the jurisdiction between the civil courts and the court martial over crimes or offenses committed by military personnel.

Such delineation of jurisdiction by R.A. No. 7055 is necessary to preserve the peculiar nature of military justice system over military personnel charged with service-connected offenses. The military justice system is disciplinary in nature, aimed at achieving the highest form of discipline in order to ensure the highest degree of military efficiency.<sup>[18]</sup> Military law is established not merely to enforce