

EN BANC

[G. R. No. 156982, September 08, 2004]

**NATIONAL AMNESTY COMMISSION, PETITIONER, VS.
COMMISSION ON AUDIT, JUANITO G. ESPINO, DIRECTOR IV,
NCR, COMMISSION ON AUDIT, AND ERNESTO C. EULALIA,
RESIDENT AUDITOR, NATIONAL AMNESTY COMMISSION.
RESPONDENTS.**

D E C I S I O N

CORONA, J.:

This petition for review^[1] seeks to annul the two decisions of respondent Commission on Audit (COA)^[2] dated July 26, 2001^[3] and January 30, 2003,^[4] affirming the September 21, 1998 ruling^[5] of the National Government Audit Office (NGAO). The latter in turn upheld Auditor Ernesto C. Eulalia's order disallowing the payment of *honoraria* to the representatives of petitioner's *ex officio* members, per COA Memorandum No. 97-038.

Petitioner National Amnesty Commission (NAC) is a government agency created on March 25, 1994 by then President Fidel V. Ramos through Proclamation No. 347. The NAC is tasked to receive, process and review amnesty applications. It is composed of seven members: a Chairperson, three regular members appointed by the President, and the Secretaries of Justice, National Defense and Interior and Local Government as *ex officio* members.^[6]

It appears that after personally attending the initial NAC meetings, the three *ex officio* members turned over said responsibility to their representatives who were paid *honoraria* beginning December 12, 1994. However, on October 15, 1997, NAC resident auditor Eulalia disallowed on audit the payment of *honoraria* to these representatives amounting to P255,750 for the period December 12, 1994 to June 27, 1997, pursuant to COA Memorandum No. 97-038. On September 1, 1998, the NGAO upheld the auditor's order and notices of disallowance were subsequently issued to the following:^[7]

<u>REPRESENTATIVES</u>	<u>AMOUNT</u>
1. Cesar Averilla Department of National Defense	P 2,500.00
2. Ramon Martinez Department of National Defense	73,750.00
3. Cielito Mindaro, Department of Justice	18,750.00

4. Purita Deynata Department of Justice	62,000.00
5. Alberto Bernardo Department of the Interior And Local Government	71,250.00
6. Stephen Villaflor Department of the Interior and Local Government	26,250.00
7. Artemio Aspiras Department of Justice	<u>1,250.00</u>
P 255,750.00	

Meanwhile, on April 28, 1999, the NAC passed Administrative Order No. 2 (the new Implementing Rules and Regulations of Proclamation No. 347), which was approved by then President Joseph Estrada on October 19, 1999. Section 1, Rule II thereof provides:

Section 1, Composition – The NAC shall be composed of seven (7) members:

- a) A Chairperson who shall be **appointed** by the President;
- b) Three (3) Commissioners who shall be **appointed** by the President;
- c) Three (3) Ex-officio Members
 - 1. Secretary of Justice
 - 2. Secretary of National Defense
 - 3. Secretary of the Interior and Local Government

The **ex officio members may designate** their **representatives** to the Commission. Said Representatives shall be **entitled to per diems, allowances, bonuses and other benefits as may be authorized by law.** (Emphasis supplied)

Petitioner invoked Administrative Order No. 2 in assailing before the COA the rulings of the resident auditor and the NGAO disallowing payment of *honoraria* to the *ex officio* members' representatives, to no avail.

Hence, on March 14, 2003, the NAC filed the present petition, contending that the COA committed grave abuse of discretion in: (1) implementing COA Memorandum No. 97-038 without the required notice and publication under Article 2 of the Civil Code; (2) invoking paragraph 2, Section 7, Article IX-B of the 1987 Constitution to sustain the disallowance of *honoraria* under said Memorandum; (3) applying the Memorandum to the NAC *ex officio* members' representatives who were all appointive officials with ranks below that of an Assistant Secretary; (4) interpreting laws and rules outside of its mandate and declaring Section 1, Rule II of

Administrative Order No. 2 null and void, and (5) disallowing the payment of *honoraria* on the ground of lack of authority of representatives to attend the NAC meetings in behalf of the *ex officio* members.^[8]

We hold that the position of petitioner NAC is against the law and jurisprudence. The COA is correct that there is no legal basis to grant *per diem*, *honoraria* or any allowance whatsoever to the NAC *ex officio* members' official representatives.

The Constitution mandates the Commission on Audit to ensure that the funds and properties of the government are validly, efficiently and conscientiously used. Thus, Article IX-D of the Constitution ordains the COA to exercise exclusive and broad auditing powers over all government entities or trustees, without any exception:

Section 2. (1) The Commission on Audit shall have the power, authority and duty to **examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government**, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law of the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to **define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, inexpensive, extravagant, or unconscionable expenditures, or uses of government funds and properties.**

Section 3. **No law** shall be passed **exempting any entity** of the Government or its subsidiary in any guise whatever, or any investment of public funds, **from the jurisdiction of the Commission on Audit.** (Emphasis supplied).

It is in accordance with this constitutional mandate that the COA issued Memorandum No. 97-038 on September 19, 1997:

SUBJECT:Implementation of Senate Committee Report No. 509,
Committee on Accountability of Public Officers and
Investigations and Committee on Civil Service and
Government Reorganization.

The Commission received a copy of Senate Committee Report No. 509 urging the Commission on Audit **to immediately cause the disallowance of any payment of any form of additional compensation or remuneration to cabinet secretaries, their deputies and assistants, or their representatives, in violation of the rule on multiple positions, and to effect the refund of any and all such additional compensation given to and received by the officials concerned, or their representatives, from the time of the finality of the Supreme Court ruling in *Civil Liberties Union v. Executive Secretary* to the present.** In the Civil Liberties Union case, the Supreme Court ruled that **Cabinet Secretaries, their deputies and assistants may not hold any other office or employment. It declared Executive Order 284 unconstitutional insofar as it allows Cabinet members, their deputies and assistants to hold other offices in addition to their primary office and to receive compensation therefor.** The said decision **became final and executory on August 19, 1991.**

In view thereof, all unit heads/auditors/team leaders of the national government agencies and government owned or controlled corporations which have effected payment of subject allowances, are directed to implement the recommendation contained in the subject Senate Committee Report by undertaking the following audit action:

1. **On accounts that have not been audited and settled under certificate of settlements and balances on record from August 19, 1991 to present – to immediately issue the Notices of disallowance and corresponding certificate of settlements and balances.**
2. On accounts that have been audited and settled under certificate of settlements and balances on record – to review and re-open said accounts, issue the corresponding notices of disallowance, and certify a new balance thereon. **It is understood that the re-opening of accounts shall be limited to those that were settled within the prescriptive period of three (3) years prescribed in Section 52 of P.D. 1445.**
3. On disallowances previously made on these accounts – to submit a report on the status of the disallowances indicating whether those have been refunded/settled or have become final and executory and the latest action taken by the Auditor thereon.

All auditors concerned shall ensure that all documents evidencing the disallowed payments are kept intact on file in their respective offices.

Any problem/issue arising from the implementation of this Memorandum

shall be brought promptly to the attention of the Committee created under COA Officer Order No. 97-698 thru the Director concerned, for immediate resolution.

An initial report on the implementation of this Memorandum shall be submitted to the Directors concerned not later than October 31, 1997. Thereafter, a quarterly progress report on the status of disallowances made shall be submitted, until all the disallowances shall have been enforced.

The Committee created under COA Office Order No. 97-698, dated September 10, 1997, shall supervise the implementation of this Memorandum which shall take effect immediately and shall submit a consolidated report thereon in response to the recommendation of the Senate Committee on Accountability of Public Officers and Investigation and Committee on Civil Service and Government Reorganization.^[9] (Emphasis supplied)

Contrary to petitioner's claim, COA Memorandum No. 97-038 does not need, for validity and effectivity, the publication required by Article 2 of the Civil Code:

Art. 2. Laws shall take effect after fifteen days following the completion of their publication in the *Official Gazette*, unless it is otherwise provided. This Code shall take effect one year after such publication.

We clarified this publication requirement in *Tañada vs. Tuvera*:^[10]

[A]ll statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant to a valid delegation. Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties. (Emphasis supplied.)

COA Memorandum No. 97-038 is merely an internal and interpretative regulation or letter of instruction which does not need publication to be effective and valid. It is not an implementing rule or regulation of a statute but a directive issued by the COA to its auditors to enforce the self-executing prohibition imposed by Section 13, Article VII of the Constitution on the President and his official family, their deputies and assistants, or their representatives from holding multiple offices and receiving double compensation.