

EN BANC

[G.R. No. 148560, November 19, 2001]

**JOSEPH EJERCITO ESTRADA, PETITIONER, VS. SANDIGANBAYAN
(THIRD DIVISION) AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

JOHN STUART MILL, in his essay *On Liberty*, unleashes the full fury of his pen in defense of the rights of the individual from the vast powers of the State and the inroads of societal pressure. But even as he draws a sacrosanct line demarcating the limits on individuality beyond which the State cannot tread - asserting that "individual spontaneity" must be allowed to flourish with very little regard to social interference - he veritably acknowledges that the exercise of rights and liberties is imbued with a civic obligation, which society is justified in enforcing at all cost, against those who would endeavor to withhold fulfillment. Thus he says -

The sole end for which mankind is warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.

Parallel to individual liberty is the natural and illimitable right of the State to self-preservation. With the end of maintaining the integrity and cohesiveness of the body politic, it behooves the State to formulate a system of laws that would compel obeisance to its collective wisdom and inflict punishment for non-observance.

The movement from Mill's individual liberalism to unsystematic collectivism wrought changes in the social order, carrying with it a new formulation of fundamental rights and duties more attuned to the imperatives of contemporary socio-political ideologies. In the process, the web of rights and State impositions became tangled and obscured, enmeshed in threads of multiple shades and colors, the skein irregular and broken. Antagonism, often outright collision, between the law as the expression of the will of the State, and the zealous attempts by its members to preserve their individuality and dignity, inevitably followed. It is when individual rights are pitted against State authority that judicial conscience is put to its severest test.

Petitioner Joseph Ejercito Estrada, the highest-ranking official to be prosecuted under RA 7080 (*An Act Defining and Penalizing the Crime of Plunder*),^[1] as amended by RA 7659,^[2] wishes to impress upon us that the assailed law is so defectively fashioned that it crosses that thin but distinct line which divides the valid from the constitutionally infirm. He therefore makes a stringent call for this Court to

subject the Plunder Law to the crucible of constitutionality mainly because, according to him, (a) it suffers from the vice of vagueness; (b) it dispenses with the "reasonable doubt" standard in criminal prosecutions; and, (c) it abolishes the element of *mens rea* in crimes already punishable under *The Revised Penal Code*, all of which are purportedly clear violations of the fundamental rights of the accused to due process and to be informed of the nature and cause of the accusation against him.

Specifically, the provisions of the Plunder Law claimed by petitioner to have transgressed constitutional boundaries are Secs. 1, par. (d), 2 and 4 which are reproduced hereunder:

Section 1. x x x x (d) "Ill-gotten wealth" means any asset, property, business, enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

(1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

(2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public office concerned;

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities, or government owned or controlled corporations and their subsidiaries;

(4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

(5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

(6) By taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

Section 2. Definition of the Crime of Plunder, Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth

through a **combination or series of overt or criminal acts** as described in Section 1 (d) hereof, in the aggregate amount or total value of at least fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances as provided by the Revised Penal Code shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State (underscoring supplied).

Section 4. Rule of Evidence. - For purposes of establishing the crime of plunder, it shall not be necessary to prove **each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy** (underscoring supplied).

On 4 April 2001 the Office of the Ombudsman filed before the Sandiganbayan eight (8) separate Informations, docketed as: (a) Crim. Case No. 26558, for violation of RA 7080, as amended by RA 7659; (b) Crim. Cases Nos. 26559 to 26562, inclusive, for violation of Secs. 3, par. (a), 3, par. (a), 3, par. (e) and 3, par. (e), of RA 3019 (*Anti-Graft and Corrupt Practices Act*), respectively; (c) Crim. Case No. 26563, for violation of Sec. 7, par. (d), of RA 6713 (*The Code of Conduct and Ethical Standards for Public Officials and Employees*); (d) Crim. Case No. 26564, for Perjury (Art. 183 of *The Revised Penal Code*); and, (e) Crim. Case No. 26565, for Illegal Use Of An Alias (CA No. 142, as amended by RA 6085).

On 11 April 2001 petitioner filed an *Omnibus Motion* for the remand of the case to the Ombudsman for preliminary investigation with respect to specification "d" of the charges in the Information in Crim. Case No. 26558; and, for reconsideration/reinvestigation of the offenses under specifications "a," "b," and "c" to give the accused an opportunity to file counter-affidavits and other documents necessary to prove lack of probable cause. Noticeably, the grounds raised were only lack of preliminary investigation, reconsideration/reinvestigation of offenses, and opportunity to prove lack of probable cause. The purported ambiguity of the charges and the vagueness of the law under which they are charged were never raised in that *Omnibus Motion* thus indicating the explicitness and comprehensibility of the Plunder Law.

On 25 April 2001 the Sandiganbayan, Third Division, issued a Resolution in Crim. Case No. 26558 finding that "a probable cause for the offense of PLUNDER exists to justify the issuance of warrants for the arrest of the accused." On 25 June 2001 petitioner's motion for reconsideration was denied by the Sandiganbayan.

On 14 June 2001 petitioner moved to quash the Information in Crim. Case No. 26558 on the ground that the facts alleged therein did not constitute an indictable offense since the law on which it was based was unconstitutional for vagueness, and

that the Amended Information for Plunder charged more than one (1) offense. On 21 June 2001 the Government filed its *Opposition to the Motion to Quash*, and five (5) days later or on 26 June 2001 petitioner submitted his *Reply to the Opposition*. On 9 July 2001 the Sandiganbayan denied petitioner's *Motion to Quash*.

As concisely delineated by this Court during the oral arguments on 18 September 2001, the issues for resolution in the instant petition for certiorari are: (a) The Plunder Law is unconstitutional for being vague; (b) The Plunder Law requires less evidence for proving the predicate crimes of plunder and therefore violates the rights of the accused to due process; and, (c) Whether Plunder as defined in RA 7080 is a *malum prohibitum*, and if so, whether it is within the power of Congress to so classify it.

Preliminarily, the whole gamut of legal concepts pertaining to the validity of legislation is predicated on the basic principle that a legislative measure is presumed to be in harmony with the Constitution.^[3] Courts invariably train their sights on this fundamental rule whenever a legislative act is under a constitutional attack, for it is the postulate of constitutional adjudication. This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. Thus it has been said that the presumption is based on the deference the judicial branch accords to its coordinate branch - the legislature.

If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence in determining whether the acts of the legislature are in tune with the fundamental law, courts should proceed with judicial restraint and act with caution and forbearance. Every intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort. In construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality.

In *La Union Credit Cooperative, Inc. v. Yaranon*^[4] we held that as long as there is some basis for the decision of the court, the constitutionality of the challenged law will not be touched and the case will be decided on other available grounds. Yet the force of the presumption is not sufficient to catapult a fundamentally deficient law into the safe environs of constitutionality. Of course, where the law clearly and palpably transgresses the hallowed domain of the organic law, it must be struck down on sight lest the positive commands of the fundamental law be unduly eroded.

Verily, the onerous task of rebutting the presumption weighs heavily on the party challenging the validity of the statute. He must demonstrate beyond any tinge of doubt that there is indeed an infringement of the constitution, for absent such a showing, there can be no finding of unconstitutionality. A doubt, even if well-founded, will hardly suffice. As tersely put by Justice Malcolm, "**To doubt is to sustain.**"^[5] And petitioner has miserably failed in the instant case to discharge his burden and overcome the presumption of constitutionality of the Plunder Law.

As it is written, the Plunder Law contains ascertainable standards and well-defined

parameters which would enable the accused to determine the nature of his violation. Section 2 is sufficiently explicit in its description of the acts, conduct and conditions required or forbidden, and prescribes the elements of the crime with reasonable certainty and particularity. Thus -

1. *That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;*
2. *That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts: (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer; (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries; (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or (f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,*
3. *That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least P50,000,000.00.*

As long as the law affords some comprehensible guide or rule that would inform those who are subject to it what conduct would render them liable to its penalties, its validity will be sustained. It must sufficiently guide the judge in its application; the counsel, in defending one charged with its violation; and more importantly, the accused, in identifying the realm of the proscribed conduct. Indeed, it can be understood with little difficulty that what the assailed statute punishes is the act of a public officer in amassing or accumulating ill-gotten wealth of at least P50,000,000.00 through a series or combination of acts enumerated in Sec. 1, par. (d), of the Plunder Law.

In fact, the amended Information itself closely tracks the language of the law, indicating with reasonable certainty the various elements of the offense which petitioner is alleged to have committed:

"The undersigned Ombudsman, Prosecutor and OIC-Director, EPIB, Office of the Ombudsman, hereby accuses former **PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES**, Joseph Ejercito Estrada, a.k.a.