



Republic of the Philippines  
 Supreme Court  
 Manila

EN BANC

**PHILIPPINE ASSOCIATION OF  
 DETECTIVE AND  
 PROTECTIVE AGENCY  
 OPERATORS (PADPAO),  
 REGION 7 CHAPTER, INC.,**  
 Petitioner,

**G.R. No. 223505**

Present:

SERENO, *C.J.*,  
 CARPIO,  
 VELASCO, JR.,  
 LEONARDO-DE CASTRO,  
 PERALTA,  
 BERSAMIN,  
 DEL CASTILLO,  
 PERLAS-BERNABE,  
 LEONEN,  
 JARDELEZA,  
 CAGUIOA,  
 MARTIRES,  
 TIJAM,  
 REYES, JR., and  
 GESMUNDO, *JJ.*

- versus -

**COMMISSION ON ELECTIONS  
 (COMELEC) AND/OR ITS  
 COMMITTEE ON THE BAN ON  
 FIREARMS AND SECURITY  
 PERSONNEL (CBFSP),**

Promulgated:

Respondents.

October 3, 2017

X-----*Prologon-Pane*-----X

**DECISION**

**CAGUIOA, J.:**

Before the Court is a petition for *certiorari*<sup>1</sup> under Rule 65 of the Rules of Court assailing the validity of Section 2(e), Rule III of Commission on Elections (COMELEC) Resolution No. 10015<sup>2</sup> (Resolution No. 10015) filed by petitioner Philippine Association of Detective and Protective Agency Operators (PADPAO), Region 7 Chapter, Inc., which is an association of licensed security agencies and company security forces in

<sup>1</sup> *Rollo*, pp. 3-39.

<sup>2</sup> RULES AND REGULATIONS ON: (1) THE BAN ON THE BEARING, CARRYING OR TRANSPORTING OF FIREARMS AND OTHER DEADLY WEAPONS; AND (2) THE EMPLOYMENT, AVAILMENT OR ENGAGEMENT OF THE SERVICES OF SECURITY PERSONNEL OR BODYGUARDS DURING THE ELECTION PERIOD OF THE MAY 9, 2016 SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS, promulgated on November 13, 2015.

Region 7 under Republic Act No. 5487<sup>3</sup> (RA 5487) or the Private Security Agency Law.

### **The Assailed COMELEC Resolution**

Under Resolution No. 9981,<sup>4</sup> the COMELEC set the election period for the May 2016 National and Local Elections beginning on January 10, 2016 up to June 8, 2016 (120 days before and 30 days after the election day).<sup>5</sup>

On November 13, 2015, the COMELEC promulgated Resolution No. 10015 which provided for the rules and regulations on the ban on bearing, carrying or transporting of firearms and other deadly weapons and the employment, availment or engagement of the services of security personnel or bodyguards during the election period, more commonly referred to as the “Gun Ban.” Despite the nomenclature used, it must be noted that the regulation covers not only the subject of firearms, but also the engagement of security services.

Section 1, Rule II of Resolution No. 10015 provides for the prohibited acts during election period:

#### **RULE II**

#### **GENERAL PROVISIONS**

##### **SECTION 1. *Prohibited Acts.* - During the Election Period:**

- a. No person shall bear, carry or transport Firearms or Deadly Weapons outside his residence or place of business, and in all public places, including any building, street, park, and in private vehicles or public conveyances, even if he is licensed or authorized to possess or to carry the same, unless authorized by the Commission, through the CBFSP,<sup>6</sup> in accordance with the provisions of this Resolution;
- b. No person shall employ, avail himself or engage the services of security personnel or bodyguards, whether or not such security personnel or bodyguards are regular members or officers of the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), other law enforcement agency of the government or from a private security service provider, unless authorized by the Commission, through the CBFSP, in accordance with the provisions of this Resolution;

<sup>3</sup> AN ACT TO REGULATE THE ORGANIZATION AND OPERATION OF PRIVATE DETECTIVE, WATCHMEN OR SECURITY GUARD AGENCIES, as amended by Presidential Decree Nos. 11, 100, and 1919.

<sup>4</sup> IN THE MATTER OF PRESCRIBING THE CALENDAR OF ACTIVITIES AND PERIODS OF CERTAIN PROHIBITED ACTS IN CONNECTION WITH THE MAY 09, 2016 NATIONAL AND LOCAL ELECTIONS, promulgated on August 18, 2015.

<sup>5</sup> 1987 CONSTITUTION, Art. IX-C, Sec. 9 which provides:

Sec. 9. Unless otherwise fixed by the Commission in special cases, the election period shall commence ninety days before the day of election and shall end thirty days thereafter.

<sup>6</sup> Committee on the Ban on Firearms and Security Personnel (Section 1[e], Rule I, Resolution No. 10015).



- c. No person or entity shall transport and deliver Firearms and/or its parts, Ammunition and/or its components, and Explosives and/or its components, unless authorized by the Commission, through the CBFSP, in accordance with the provisions of this Resolution.

In turn, Section 1, Rule III of Resolution No. 10015 lists those who may apply for authority to bear, carry, or transport firearms or deadly weapons. Private security services providers (PSSPs),<sup>7</sup> which include private security agencies (PSAs), are specifically included. The provision states:

### RULE III

#### AUTHORITY TO BEAR, CARRY OR TRANSPORT FIREARMS OR OTHER DEADLY WEAPONS

**SECTION 1. Who may bear, carry or transport firearms or deadly weapons.** - Only the following persons may be authorized to bear, carry or transport Firearms or other Deadly Weapons during the Election Period:

x x x x

L. **Members of Private Security Service Providers (PSSPs); *Provided, That, when in the possession of Firearms, they are:***

- i. *in the agency-prescribed uniform with the agency-issued identification card prominently displayed and visible at all times, showing clearly the name and position;*
- ii. *in possession of a valid License to Exercise Security Profession (LESP) with Duty Detail Order (DDO), and valid firearms license of the agency/company where they are employed.*
- iii. *deployed by PSA/PDS/CGF duly licensed by the PNP;*
- iv. *in the actual performance of official duty at his specified place or area of duty; and*
- v. *carrying one (1) small firearm, unless specifically allowed otherwise under existing laws, rules and regulations;*  
(Emphasis supplied)

Section 2(e), Rule III of Resolution No. 10015 provides for the documentary requirements for the application:

**SECTION 2. Application for authority to bear, carry or transport Firearms or Deadly Weapons** – All applications shall include:

x x x x

- (e) For Private Security Services Providers (Agencies) mentioned in Section 1, paragraph L of Rule III:

<sup>7</sup> Private Security Service Provider (PSSP) refers to a Private Security Agency (PSA), Private Detective Agency (PDA) or Company Guard Force (CGF); COMELEC Resolution No. 10015, Rule I, Section 1(p).

1. Duly accomplished **CBFSP Form No. 2016-02** (downloadable at [www.comelec.gov.ph](http://www.comelec.gov.ph)) in three (3) copies with CD;
2. **Form 16A-02** indicating therein:
  - i. the full names of the security personnel with their corresponding rank/position;
  - ii. firearms description and registration data;
  - iii. the security personnel's respective LESP and DDOs;
3. **Form 16B** with the colored 4" x 5" picture and description of the authorized uniform of the Agency;
4. Copy of the Agency's License to Operate (LTO);
5. A certified true copy of the agency's updated and valid Monthly Disposition Report (MDR);
6. Certification under oath that x x x the firearms described are duly registered firearms and the persons named therein are:
  - i. regular employees of the Agency;
  - ii. performing actual security functions;
  - iii. receiving regular compensation for the services rendered in the said agency;
  - iv. duly authorized and sanctioned by their agency to bear, carry and transport firearms in the exercise of their security functions and duties;
  - v. covered by duly issued and valid LESP and DDOs;
7. Copy of Official Receipt to prove payment of the filing fee in the amount of Fifty Pesos (PhP50.00) for each security personnel included in the list.

Thus, under the said provisions, PSAs may obtain authority to bear, carry, and transport firearms outside their place of work or business and in public places during the election period after compliance with the foregoing documentary requirements and under the conditions set forth therein.

### **The Petition**

Petitioner assails the validity of Section 2(e), Rule III of Resolution No. 10015 insofar as its application to PSAs is concerned. Petitioner asserts that the COMELEC does not have any authority to promulgate rules regarding the bearing, carrying, or transporting of firearms by PSAs. Petitioner alleges that PSAs should not be required to secure authority from the COMELEC as RA 5487 already grants to PSAs and their security



guards, watchmen, detectives, and security personnel the authority to possess, bear, carry, and transport firearms, being necessary equipment for the conduct of its business and practice of its personnel's profession. Section 13 of RA 5487 states:

SEC. 13. *Issuance of Firearms.* – A watchman or security agency shall be entitled to possess firearms after having satisfactorily passed the requirements prescribed by the Chief, Philippine Constabulary pertinent to the possession of firearm of any caliber not higher than 45 caliber in a number not exceeding one firearm for every two watchmen or security guards in its employ: *Provided, however,* That a watchman or security agent shall be entitled to possess not more than one riot gun or shotgun in order to provide adequate security when circumstances so demand: *Provided, further,* That all the firearms mentioned herein shall be carried by the watchman or security guard only during his tour of duty in proper uniform within the compound of the establishment except when he escorts big amounts of cash or valuables in and out of said compound.

Petitioner maintains that the power to promulgate rules and regulations with regard to said law is granted to the Philippine National Police (PNP), in consultation with the PADPAO, under Section 17 of the said law:

SEC. 17. *Rules and Regulations by Chief, Philippine Constabulary.* – The Chief of the Philippine Constabulary, in consultation with the Philippine Association of Detective and Protective Agency Operators, Incorporated and subject to the provisions of existing laws, is hereby authorized to issue the rules and regulations necessary to carry out the purpose of this Act.

Petitioner also asserts that the COMELEC's powers are defined and limited to election related matters under the 1987 Philippine Constitution. According to petitioner, nothing in the Constitution gives to the COMELEC, even during election period, the power and authority to promulgate rules and regulations relating to the bearing, carrying, and transporting of firearms by PSAs. According to petitioner, in issuing Resolution No. 10015, the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner further avers that Resolution No. 10015 violates the constitutional tenets of equal protection of laws and non-impairment of obligations of contracts as it impairs the contracts of its member PSAs with their respective clients. As well, petitioner asserts that the COMELEC contradicts itself. While Section 1, Rule III of Resolution No. 10015 provides that PSSPs or PSAs may bear, carry or transport firearms or deadly weapons, immediately thereafter, Section 2 mandates that they must apply for said authority. Petitioner also claims that the filing fee of ₱50.00 for each security personnel requesting for authority is exorbitant.



Lastly, petitioner cites *Rimando v. COMELEC*,<sup>8</sup> (*Rimando*) as supposedly strengthening its position that respondent COMELEC acted without or in excess of jurisdiction or with abuse of jurisdiction when it approved and implemented Resolution No. 10015.

The petition includes a prayer for a writ of preliminary injunction and/or temporary restraining order which was noted by the Court.

### **The OSG Comment**

The COMELEC, through the Office of the Solicitor General (OSG), filed its Comment<sup>9</sup> on June 27, 2016.

On the procedural issue, the OSG contends that the petition is moot and academic as Resolution No. 10015 is no longer in effect, since the election period already expired on June 8, 2016. Also, a petition for *certiorari* under Rule 65 is the wrong remedy because Resolution No. 10015 was issued in the exercise of COMELEC's administrative function and not its quasi-judicial power. The petition is actually one for declaratory relief over which the Court has no original jurisdiction. Assuming *arguendo* that the petition for *certiorari* is proper, it was filed out of time. Under Section 3, Rule 64 of the Rules of Court, a *certiorari* petition must be filed within 30 days from notice of a resolution. Resolution No. 10015 was promulgated on November 13, 2015 and was published on COMELEC's website<sup>10</sup> on November 14, 2015. However, the petition was filed only on April 8, 2016. Even assuming that the petition may be filed under Rule 65 under the Court's extraordinary jurisdiction, the petition is still filed beyond the 60-day period under the said Rule.

With regard to the substantive aspect, the OSG argues that the COMELEC's powers are not limited to those enumerated in the 1987 Constitution. Both Batas Pambansa Blg. 881<sup>11</sup> (BP 881) and RA 7166<sup>12</sup>

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<sup>8</sup> 616 Phil. 562 (2009).

<sup>9</sup> *Rollo*, pp. 141-179.

<sup>10</sup> [www.comelec.gov.ph](http://www.comelec.gov.ph).

<sup>11</sup> OMNIBUS ELECTION CODE OF THE PHILIPPINES. Section 52 of BP 881 provides:

SEC. 52. *Powers and functions of the Commission on Elections.* – In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall:

x x x x

(c) Promulgate rules and regulations implementing the provisions of this Code or other laws which the Commission is required to enforce and administer, and require the payment of legal fees and collect the same in payment of any business done in the Commission, at rates that it may provide and fix in its rules and regulations.

<sup>12</sup> AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES. Section 35 of RA 7166 provides:

SEC. 35. *Rules and Regulations.* - The Commission shall issue rules and regulations to implement this Act. Said rules shall be published in at least two (2) national newspapers of general circulation.

confer upon the COMELEC the power to promulgate rules and regulations to implement the provisions of said laws.

The OSG points out that the prohibition on carrying of firearms during the election period and the requirement of written authority from the COMELEC are found in both laws.<sup>13</sup> Thus, when the COMELEC issued Resolution No. 10015, it was merely implementing the mandates of BP 881 and RA 7166.

The OSG further argues that neither does Resolution No. 10015 violate the equal protection clause as PSAs are not singled out in the imposition of the requirement. The requirement of written authority to carry, possess, and transport firearms applies even to public officials, members of the PNP and AFP, security personnel of foreign diplomatic corps, cashiers, disbursing officers, or persons who habitually carry large sums of money, among others. The non-impairment of contracts clause is not violated as well. Resolution No. 10015 does not prevent PSAs from performing their contractual obligations. It merely requires written authority to bear, carry, and transport firearms during the election period.

Lastly, the OSG refutes the applicability of *Rimando* in this case. In said case, *Rimando* was the president of a security agency. It was alleged that he permitted his security guards to carry firearms outside their place of business without written authority from the COMELEC. The issue therein was *Rimando's* liability for failing to obtain a permit from the COMELEC. The Court, interpreting Section 261(s) of BP 881, absolved *Rimando* of the election offense as it was held that "bearing of arms by such person within the immediate vicinity of his place of work is not prohibited and does not

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<sup>13</sup> B.P. 881, Section 261 provides:

SEC. 261. *Prohibited Acts.* – The following shall be guilty of an election offense:

x x x x

(q) *Carrying firearms outside residence or place of business.* – Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: *Provided*, That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

R.A. 7166, Section 32 provides:

SEC. 32. *Who May Bear Firearms.* – During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearm licenses shall be suspended during the election period.

Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other law enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the election period: *Provided*, That, when in the possession of firearms, the deputized law enforcement officer must be: (a) in full uniform showing clearly and legibly his name, rank and serial number which shall remain visible at all times; and (b) in the actual performance of his election duty in the specific area designated by the Commission.

require prior written approval from the Commission.”<sup>14</sup> The guards of Rimando were guarding a private residential subdivision, which was considered their place of work, although they had a separate main office. Thus, the guards were actually within their place of work and there was no need to secure written authority from the COMELEC.

Petitioner filed a Reply<sup>15</sup> on November 15, 2016 reiterating the arguments in the petition.

### Issues

1. Whether the petition is moot;
2. Whether the remedy is proper and timely filed; and
3. Whether Section 2(e), Rule III of Resolution No. 10015 is valid.

### The Court's Ruling

The petition has no merit.

#### *Procedural aspects*

At the outset, although the subject of the petition is a Resolution of the COMELEC promulgated relative to the May 2016 National and Local Elections, the issue raised herein has not been rendered moot and academic by the conclusion of the 2016 elections.

As a rule, the Court may only adjudicate actual, ongoing controversies. In *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*,<sup>16</sup> the Court held:

An action is considered “moot” when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. There is nothing for the court to resolve as the determination thereof has been overtaken by subsequent events.<sup>17</sup>

There are recognized exceptions to the rule; thus, the Court has seen fit to decide cases, otherwise moot, if: *first*, there is a grave violation of the

<sup>14</sup> *Rimando v. COMELEC*, supra note 8, at 577.

<sup>15</sup> *Rollo*, pp. 189-203.

<sup>16</sup> G.R. Nos. 209271, 209276, 209301 & 209430, July 26, 2016, 798 SCRA 250.

<sup>17</sup> *Id.* at 270.



Constitution; *second*, the exceptional character of the situation and the paramount public interest are involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.<sup>18</sup>

The present case falls within the fourth exception. For this exception to apply, the following factors must be present: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration; and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action.<sup>19</sup>

The election period in 2016 was from January 10 until June 8, 2016, or a total of only 150 days. The petition was filed only on April 8, 2016. There was thus not enough time for the resolution of the controversy. Moreover, the COMELEC has consistently issued rules and regulations on the Gun Ban for previous elections in accordance with RA 7166: Resolution No. 8714<sup>20</sup> for the 2010 elections, Resolution No. 9561-A<sup>21</sup> for the 2013 elections, and the assailed Resolution No. 10015 for the 2016 elections. Thus, the COMELEC is expected to promulgate similar rules in the next elections. Prudence accordingly dictates that the Court exercise its power of judicial review to finally settle this controversy.

On the timeliness of the filing of the petition, the Court holds that the 30-day reglementary period under Rule 64<sup>22</sup> in relation to Rule 65 does not apply. The Court's power to review decisions of the COMELEC stems from the Constitution itself. Section 7, Article IX-A thereof prescribes:

Section 7. Each commission shall decide by a majority vote of all its members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the commission or by the commission itself. Unless otherwise provided by

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<sup>18</sup> Id. at 270-271.

<sup>19</sup> Id. at 287.

<sup>20</sup> RULES AND REGULATIONS ON THE: (1) BEARING, CARRYING OR TRANSPORTING OF FIREARMS OR OTHER DEADLY WEAPONS; AND (2) EMPLOYMENT, AVAILMENT OR ENGAGEMENT OF THE SERVICES OF SECURITY PERSONNEL OR BODYGUARDS, DURING THE ELECTION PERIOD FOR THE MAY 10, 2010 NATIONAL AND LOCAL ELECTIONS.

<sup>21</sup> RULES AND REGULATIONS ON: (1) THE BAN ON THE BEARING, CARRYING OR TRANSPORTING OF FIREARMS AND OTHER DEADLY WEAPONS; AND (2) THE EMPLOYMENT, AVAILMENT OR ENGAGEMENT OF THE SERVICES OF SECURITY PERSONNEL OR BODYGUARDS DURING THE ELECTION PERIOD OF THE MAY 13, 2013 AUTOMATED SYNCHRONIZED NATIONAL, LOCAL ELECTIONS AND ARMM REGIONAL ELECTIONS, AS AMENDED.

<sup>22</sup> SEC. 3. *Time to file petition.* – The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

this constitution or by law, any decision, order, or ruling of each commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

The Court has interpreted this constitutional provision to mean final orders, rulings and decisions of the COMELEC *en banc* rendered in the exercise of its adjudicatory or quasi-judicial powers.<sup>23</sup> The petition herein assails the validity of a COMELEC Resolution which was issued under its rule-making power, to implement the provisions of BP 881 and RA 7166. Thus, the period under Rule 64 does not apply.

On the propriety of the remedy, the OSG argues that the appropriate case should have been a petition for declaratory relief before the Regional Trial Court under Rule 63 of the Rules of Court. On this procedural issue, respondent's position has merit. However, considering the very important and substantive issues raised that, as explained, are expected to recur, the Court resolves to set aside this technicality and rule on the substantive issue to put an end to this controversy.

### *Substantive Aspects*

#### ***The COMELEC did not exceed its rule-making authority in issuing the assailed provision of Resolution No. 10015.***

Petitioner contends that the COMELEC does not have the authority, during an election period, to impose upon PSAs the requirement of written authority from the COMELEC to bear, carry, and transport firearms and other deadly weapons, as the power to do so belongs exclusively to the PNP under RA 5487. Petitioner is mistaken.

The power of the COMELEC to promulgate rules and regulations to enforce and implement elections laws is enshrined in the Constitution, which provides:

#### **Section 6, Article IX-A:**

Section 6. Each Commission *en banc* may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules, however, shall not diminish, increase, or modify substantive rights.

#### **Section 2, Article IX-C:**

Section 2. The Commission on Elections shall exercise the following powers and functions:

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<sup>23</sup> *Cayetano v. Commission on Elections*, 663 Phil. 694, 701 (2011).

- (1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

The COMELEC's power to issue rules and regulations was reiterated in BP 881:

Article VII. THE COMMISSION ON ELECTIONS

SEC. 52. *Powers and functions of the Commission on Elections.* – In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall:

x x x x

(c) **Promulgate rules and regulations implementing the provisions of this Code or other laws which the Commission is required to enforce and administer** x x x. (Emphasis supplied)

In *Aquino v. COMELEC*,<sup>24</sup> the Court recognized the wide latitude given to the COMELEC by the Constitution and by law to enforce and implement election laws to fulfil its mandate of ensuring free, orderly, peaceful, and honest elections. The Court held:

A common and clear conclusion that we can gather from these provisions is the obvious and unequivocal intent of the framers of the Constitution and of the law to grant the COMELEC with powers, necessary and incidental to achieve the objective of ensuring *free, orderly, honest, peaceful and credible elections*.

Thus, expressly, the Constitution and the laws grant the COMELEC with the power, first and foremost, to “[e]nforce and administer all laws and regulations relative to the conduct of an election,” and second, to “promulgate rules and regulations.” Together, these powers ensure that the COMELEC is well armed to properly enforce and implement the election laws and enable it to fill in the situational gaps which the law does not provide for or which the legislature had not foreseen.<sup>25</sup>

In *Lokin, Jr. v. COMELEC*,<sup>26</sup> the Court also ruled:

The COMELEC is constitutionally mandated to enforce and administer all laws and regulations relative to the conduct of an election, a plebiscite, an initiative, a referendum, and a recall. In addition to the powers and functions conferred upon it by the Constitution, the COMELEC is also charged to promulgate IRRs implementing the

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<sup>24</sup> 756 Phil. 80 (2015).

<sup>25</sup> Id. at 102.

<sup>26</sup> 635 Phil. 372 (2010).

provisions of the *Omnibus Election Code* or other laws that the COMELEC enforces and administers.<sup>27</sup>

COMELEC's Resolution No. 10015 finds statutory basis in BP 881 and RA 7166:

**B.P. 881**

SEC. 261. *Prohibited Acts.* – The following shall be guilty of an election offense:

x x x x

(q) *Carrying firearms outside residence or place of business.* – **Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: *Provided*, That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.**

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables. (Emphasis supplied)

**R.A. 7166**

SEC. 32. *Who May Bear Firearms.* – During the election period, **no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission.** The issuance of firearm licenses shall be suspended during the election period.

Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other law enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the election period: *Provided*, That, when in the possession of firearms, the deputized law enforcement officer must be: (a) in full uniform showing clearly and legibly his name, rank and serial number which shall remain visible at all times; and (b) in the actual performance of his election duty in the specific area designated by the Commission.

x x x x

SEC. 35. *Rules and Regulations.* – **The Commission shall issue rules and regulations to implement this Act.** Said rules shall be published in at least two (2) national newspapers of general circulation. (Emphasis supplied)

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<sup>27</sup> Id. at 393.

Contrary to PADPAO's position, the Constitution and the cited laws specifically empower the COMELEC to issue rules and regulations implementing the so-called Gun Ban during election period.

Under BP 881 and RA 7166, it is unlawful for any person to bear, carry, or transport firearms or other deadly weapons in public places during the election period, even if otherwise licensed to do so, unless authorized in writing by the COMELEC. Section 35 of RA 7166 also uses the mandatory word "shall" to impose upon the COMELEC its duty to issue rules and regulations to implement the law.

To be sure, the COMELEC's authority to promulgate rules and regulations to implement Section 32 of RA 7166 has jurisprudential imprimatur. In *Orceo v. COMELEC*,<sup>28</sup> the Court upheld the inclusion of airguns and airsoft guns in the definition of firearm under COMELEC Resolution 8714, viz.:

Evidently, the COMELEC had the authority to promulgate Resolution No. 8714 pursuant to Section 35 of R.A. No. 7166. It was granted the power to issue the implementing rules and regulations of Sections 32 and 33 of R.A. No. 7166. **Under this broad power, the COMELEC was mandated to provide the details of who may bear, carry or transport firearms or other deadly weapons, as well as the definition of "firearms," among others. These details are left to the discretion of the COMELEC, which is a constitutional body that possesses special knowledge and expertise on election matters, with the objective of ensuring the holding of free, orderly, honest, peaceful and credible elections.**

x x x x

A license to possess an airsoft gun, just like ordinary licenses in other regulated fields, does not confer an absolute right, but only a personal privilege to be exercised under existing restrictions, and such as may thereafter be reasonably imposed.

x x x x

The Court holds that the COMELEC did not gravely abuse its discretion in including airsoft guns and airguns in the term firearm in Resolution No. 8714 for purposes of the gun ban during the election period, with the apparent objective of ensuring free, honest, peaceful and credible elections this year. x x x<sup>29</sup> (Emphasis supplied)

PADPAO's insistence that the power to issue rules and regulations in relation to the operation of PSAs belongs exclusively to the PNP is specious. In RA 5487, it is the PNP that exercises general supervision over the operation of all private detective and watchman security guard agencies. It

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<sup>28</sup> 630 Phil. 670 (2010).

<sup>29</sup> Id. at 682-685.



has the exclusive authority to regulate and to issue the required licenses to operate security and protective agencies.<sup>30</sup> The COMELEC does not encroach upon this authority of the PNP to regulate PSAs — as it merely regulates the bearing, carrying, and transporting of firearms and other deadly weapons by PSAs and all other persons, **during election period**.

Notably, the language of RA 5487 and its implementing rules is not so restrictive as to prohibit other government agencies from imposing additional restrictions relating to the conduct of business by PSAs and PSSPs under special circumstances. In this case, the special circumstance is the election period. The Court takes judicial notice of the fact that historically, Philippine elections have been marred by violence and unnecessary bloodshed and additional guidelines must be put in place to eliminate, or at least, lessen the threat. Whether or not the Gun Ban has been an effective deterrent is a different matter, which is beyond the Court's domain.

The wording of Section 261 of BP 881 and Section 32 of RA 7166 also provides that the said provisions apply to any and all persons. Thus, PADPAO cannot claim any exception as a PSA under the cloak of RA 5487.

Moreover, the license to operate as a PSA and the right to possess and carry firearms do not confer an absolute right on the private licensee, as this is still subject to regulation. In *Chavez v. Romulo*,<sup>31</sup> the Court upheld the validity of the Guidelines in the Implementation of the Ban on the Carrying of Firearms Outside of Residence<sup>32</sup> issued by the PNP, which revoked all permits to carry firearms outside of residence and imposed additional requirements and restrictions thereto.

As to the nature of the right to bear arms, the Court ruled:

The right of individuals to bear arms is not absolute, but is subject to regulation. The maintenance of peace and order and the protection of the people against violence are constitutional duties of the State, and the right to bear arms is to be construed in connection and in harmony with these constitutional duties.<sup>32a</sup>

Lastly, RA 5487 is not a blanket authority on PSAs to carry firearms. Even if they are licensed as a security agency, they must still apply for license to own and possess a firearm as required under RA 10591<sup>33</sup> or the Comprehensive Firearms and Ammunition Regulation Act.

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<sup>30</sup> *Ferrer v. Office of the Ombudsman*, 583 Phil. 50, 62 (2008).

<sup>31</sup> 475 Phil. 486 (2004).

<sup>32</sup> Issued on January 31, 2003.

<sup>32a</sup> *Chavez v. Romulo*, supra note 31, at 491.

<sup>33</sup> AN ACT PROVIDING FOR A COMPREHENSIVE LAW ON FIREARMS AND AMMUNITION AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF. Section 5 provides:

***Resolution No. 10015 does not violate the equal protection clause and the non-impairment of contracts clause.***

Petitioner's argument that the application of Resolution No. 10015 to PSAs violates the constitutional tenets of equal protection and non-impairment of contracts deserves scant consideration.

Under the Bill of Rights in Article III of the 1987 Constitution, these are protected rights:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

x x x x

Section 10. No law impairing the obligation of contracts shall be passed.

The equal protection clause means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances."<sup>34</sup> The guaranty of the equal protection of the laws is not violated by a legislation based on a reasonable classification. The equal protection clause, therefore, does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is reasonable and not arbitrary.<sup>35</sup>

Classification, to be reasonable, must (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to

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SEC. 5. *Ownership of Firearms and Ammunition by a Juridical Entity.* – A juridical person maintaining its own security force may be issued a regular license to own and possess firearms and ammunition under the following conditions:

- (a) It must be Filipino-owned and duly registered with the Securities and Exchange Commission (SEC);
- (b) It is current, operational and a continuing concern;
- (c) It has completed and submitted all its reportorial requirements to the SEC; and
- (d) It has paid all its income taxes for the year, as duly certified by the Bureau of Internal Revenue.

The application shall be made in the name of the juridical person represented by its President or any of its officers mentioned below as duly authorized in a board resolution to that effect: *Provided*, That the officer applying for the juridical entity, shall possess all the qualifications required of a citizen applying for a license to possess firearms.

Other corporate officers eligible to represent the juridical person are: the vice president, treasurer, and board secretary.

Security agencies and LGUs shall be included in this category of licensed holders but shall be subject to additional requirements as may be required by the Chief of the PNP.

<sup>34</sup> *National Power Corporation v. Pinatubo Commercial*, 630 Phil. 599, 609 (2010).

<sup>35</sup> *Id.*

existing conditions only; and (4) apply equally to all members of the same class.<sup>36</sup>

Resolution No. 10015 applies to any and all persons, whether private individuals or public officers. Rule III thereof contains a comprehensive list of persons required to obtain written authority from the COMELEC to bear, carry, and transport firearms outside his place or residence or business. Aside from PSAs and PSSPs, the regulation applies even to the President of the Republic of the Philippines, Vice President, Senators, Members of the House of Representatives, the Chief Justice of the Supreme Court and Associate Justices of the Supreme Court, Court of Appeals, Sandiganbayan, and Court of Tax Appeals and Judges of lower courts, members of the Philippine National Police, Armed Forces of the Philippines, and to cashiers and disbursing officers or persons who by the nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables, among others.<sup>37</sup>

<sup>36</sup> *Commissioner of Customs v. Hypermix Feeds Corporation*, 680 Phil. 681, 693 (2012).

<sup>37</sup> **SECTION 1. *Who may bear, carry or transport firearms or deadly weapons.*** – Only the following persons may be authorized to bear, carry or transport Firearms or other Deadly Weapons during the Election Period:

- A. The President of the Republic of the Philippines;
- B. The Vice-President of the Republic of the Philippines;
- C. Senators and Members of the House of Representatives (who are not candidates);
- D. Cabinet Secretaries;
- E. The Chief Justice and Justices of the Supreme Court, Justices of the Court of Appeals, Sandiganbayan, and Court of Tax Appeals; and Judges of the Regional Trial courts and Municipal/Metropolitan/Circuit Trial Courts;
- F. The Ombudsman and Deputy Ombudsmen;
- G. The Chairmen and Commissioners of the Civil Service Commission (CSC) and the Commission on Audit (COA);
- H. The Chairperson and Commissioners of the Commission on Human Rights;
- I. Security Personnel of Foreign Diplomatic Corps, Missions and Establishments under international law, including Foreign Military Personnel in the Philippines covered by existing treaties and international agreements endorsed by the Secretary of the Department of Foreign Affairs and the Heads of Missions of foreign countries in the Philippines.
- J. Regular **officers, members, and agents** of the following agencies of the government **who are actually performing law enforcement and/or security functions.** x x x:
  - x x x x
  1. Officers and Members of the Philippine National Police (PNP);
  2. Commissioned Officers (COs), Non-Commissioned Officers (NCOs) and Enlisted Personnel (EP) of the Armed Forces of the Philippines (AFP);
  3. National Bureau of Investigation (NBI);
  4. Provincial and City Jails, Bureau of Corrections (BuCor), Department of Justice;
  5. Bureau of Jail Management and Penology (BJMP);
  6. (a) Intelligence Division and (b) Investigation Division of the Intelligence and Investigation Service; and the (c) Customs Police Division of the Enforcement and Security Service of the Bureau of Customs (BoC);
  7. Port Police Department, Philippine Ports Authority (PPA);
  8. Philippine Economic Zone Authority (PEZA) police forces;
  9. Government Guard Units (GGUs) regulated by the PNP under RA No. 5487;
  10. (a) The Commissioner and Deputy Commissioners, (b) members of the Law and Investigation Division and (c) members of the Intelligence Division, Bureau of Immigration (BI);
  11. Manila International Airport (MIA) Authority Police Force;
  12. Mactan-Cebu International Airport Authority Police Force;

Under Section 2 of Rule III, PSAs/PSSPs and cashiers and disbursing officers or persons who by the nature of their official duties, profession, business, or occupation habitually carry large sums of money or valuables are required to pay a filing fee. The former are required to pay ₱50.00 for each security personnel while the latter are required to pay ₱5,000.00. No filing fee is imposed on the government officials and employees.

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13. Law Enforcement Service of the Land Transportation Office (LTO);
  14. Philippine Coast Guard (PCG);
  15. Cebu Port Authority Police Force;
  16. Internal Security Operations Group (ISOG) of the Witness Protection, Security and Benefits Program of the Department of Justice;
  17. Enforcement and Investigation Division, Optical Media Board (OMB);
  18. (a) The Security Investigation and Transport Department (SITD), (b) Cash Department and (c) the Office of Special Investigation (OSI), Branch Operations of the Bangko Sentral ng Pilipinas (BSP);
  19. Offices of the Sergeant-At-Arms (OSAA) of (a) the Senate and (b) the House of Representatives, including the OSAA designated regular security escorts of Senators and Congressmen;
  20. Inspection Service of the Philippine Postal Corporation (PhilPost);
  21. Inspection, Monitoring and Investigation Service of the National Police Commission (NAPOLCOM);
  22. Forest Officers defined under PD No. 705, Forest/Park Rangers, Wildlife Officers, and Forest Protection and Law Enforcement Officers of the Department of Environment and Natural Resources (DENR) under DAO No. 1997-32;
  23. Intelligence and Security Unit, Office of the Secretary, Department of Foreign Affairs (DFA);
  24. Philippine Drug Enforcement Agency (PDEA);
  25. Philippine Center for Transnational Crime (PCTC);
  26. National Intelligence Coordinating Agency (NICA);
  27. Civilian Armed Forces Geographical Units (CAFGU) Active Auxiliaries and Special Civilian Armed Forces Geographical Units Active Auxiliaries already constituted upon the effectivity of this Resolution while within the barracks;
  28. Presidential Security Group (PSG);
  29. Internal Security Division of the Bureau of the Treasury (BoT), the Treasurer and Deputy Treasurers of the Philippines;
  30. Internal Security of the Office of the Vice-President;
  31. The Secretary, Undersecretaries, Assistant Secretaries of the Department of the Interior and Local Government and the Internal Security of the Office of the Secretary of the Interior and Local Government;
  32. Internal Security of the Office of the Secretary of National Defense;
  33. The Secretary, Undersecretaries, Assistant Secretaries, The Prosecutor General, Chief State Prosecutor, and the State, Regional, Provincial and City Prosecutors, Department of Justice;
  34. The Solicitor-General;
  35. Investigators and Prosecutors of the Office of the Ombudsman;
  36. The Chief Public Attorney; and
  37. The officers and members of departments/divisions/offices/units/detachments performing law enforcement and/or security functions;
- K. Cashiers and disbursing officers or persons who by the nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables; x x x:  
x x x x
- L. Members of Private Security Service Providers (PSSPs); x x x:  
x x x x
- M. The Chairman and the Commissioners of the Commission on Elections, the Executive Director, Deputy Executive Directors, Directors and Lawyers employed by and holding office in the Main Office of the Commission, Regional Election Directors, Assistant Regional Election Directors, Chiefs-of-Staff of the Offices of the Chairman and Commissioners, Provincial Election Supervisors, Regional Attorneys and Election Officers, and Organic Security Officers of the Commission on Elections.

As correctly put by the COMELEC, through the OSG, there is substantial distinction between and among the persons listed therein.

Majority of the persons listed are public officers who include high-ranking officials, law enforcement officers, members of the armed forces, and other government officials providing security services to officials of the Philippine government or foreign diplomatic corps.

Cashiers, disbursement officers, similar persons with the same nature of work, and PSAs do not fall under the same category. They are not public officers, law enforcement officers, and neither are they providing security services in relation to public office. The inclusion of cashiers and disbursement officers is due to the necessity for them to safeguard the significant sums of money or valuables in their possession. PSSPs/PSAs are included due to the nature of their private business, which is to provide security services to their clients.

On this imposition on private individuals, the Court ruled in the old case of *Government of the Philippine Islands v. Amechazurra*<sup>38</sup>:

[N]o private person is bound to keep arms. Whether he does or not is entirely optional with himself, but if, for his own convenience or pleasure, he desires to possess arms, he must do so upon such terms as the Government sees fit to impose, for the right to keep and bear arms is not secured to him by law. The Government can impose upon him such terms as it pleases. If he is not satisfied with the terms imposed, he should decline to accept them, but, if for the purpose of securing possession of the arms he does agree to such conditions, he must fulfill them. x x x<sup>39</sup>

Furthermore, the imposition of the license fee is germane to the purpose of the law, which is to regulate the bearing, carrying, and transporting of firearms during the election period. It is not limited to existing conditions only as it applies similarly to cashiers, disbursing officers, PSSPs, and PSAs during election period.

As to the violation of the non-impairment clause, petitioner's claim cannot be countenanced. The non-impairment clause under Section 10, Article III of the Constitution is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. There is impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.<sup>40</sup>

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<sup>38</sup> 10 Phil. 637 (1908).

<sup>39</sup> Id. at 639.

<sup>40</sup> *Philippine Amusement and Gaming Corp. v. Bureau of Internal Revenue*, 660 Phil. 636, 655-656 (2011).

In this case, PSAs' contracts with their clients are not affected in any manner by the requirement of having to obtain from the COMELEC written authority to bear, carry, and transport firearms outside of their residence or place of work and in public places, during election period. All that PSAs must do is to secure such authority.

Lastly, the filing fee of fifty pesos (₱50.00) per security guard can hardly be said to be exorbitant. It is a reasonable charge for the issuance of the permit to private individuals. Besides, petitioner did not present any evidence to prove its allegation that the amounts collected are exorbitant or unreasonable.

***Rimando v. COMELEC is not applicable in this case.***

Petitioner's reliance on *Rimando* is hollow, if not totally pointless.

In said case, Rimando was the president and general manager of a security agency. The COMELEC had issued a resolution recommending the filing of an Information against Rimando for violation of Section 261(s) of BP 881. It was alleged that Rimando was guilty of an election offense as he unlawfully allowed his security guards to guard private residences in Santa Rosa Homes Subdivision in Laguna, using firearms, knowing fully well that they had no prior written authority from the COMELEC as required under then COMELEC Resolution No. 3328, in relation to the Gun Ban during election period from January 2, 2001 until June 13, 2001.

The Court ruled in favor of Rimando stating that under Section 261(s) of BP 881, the punishable act is the bearing of arms outside the immediate vicinity of one's place of work during the election period and not the failure of the head or responsible officer of the security agency to obtain prior written COMELEC approval. There is likewise nothing in RA 7166 that expressly penalizes the mere failure to secure written authority from the COMELEC as required in Section 32 thereof. Such failure to secure an authorization must still be accompanied by other operative acts, such as the bearing, carrying or transporting of firearms in public places during the election period.

The Court also clarified the correct interpretation of Section 261(s)<sup>41</sup>:

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<sup>41</sup> SEC. 261. *Prohibited Acts.* – The following shall be guilty of an election offense:

x x x x

(s) *Wearing of uniforms and bearing arms.* – During the campaign period, on the day before and on election day, any member of security or police organization of government agencies, commissions, councils, bureaus, offices, or government-owned or controlled corporations, or privately-owned or operated security, investigative, protective or intelligence agencies, who wears his uniform or uses his insignia, decorations or regalia, or bears arms outside the immediate vicinity of his place of work: *Provided*, That this prohibition shall not apply when said member is in pursuit of a person who has committed or is committing a crime in

A perusal of Section 261 (s) in its entirety would show that, as a rule, the bearing of arms by a member of security or police organization of a government office or of a privately owned security agency outside the immediate vicinity of one's place of work is prohibited. Implicitly, the bearing of arms by such person within the immediate vicinity of his place of work is not prohibited and does not require prior written approval from the Commission. However, Section 261 (s) also lays down exceptions to this rule and states that the general prohibition shall not apply in three instances: (a) when any of the persons enumerated therein is in pursuit of another person who has committed or is committing a crime in the premises the former is guarding; (b) when such person is escorting or providing security for the transport of payrolls, deposits, or other valuables; and (c) when he is guarding private residences, buildings or offices. It is only in the case of the third exception that it is provided that prior written approval from the COMELEC shall be obtained.<sup>42</sup>

Thus, there is nothing in *Rimando* that would support petitioner's tenuous contentions. Precisely, Resolution No. 10015 provides for the requirements to obtain written authority from the COMELEC to bear, carry, and transport firearms or dangerous weapons outside one's residence or place of work, or in any public place only during the election period.

All told, the Court holds that the COMELEC did not gravely abuse its discretion or exceed its jurisdiction in including PSSPs and PSAs within the ambit of those persons required to secure written authority from the COMELEC to bear, carry, and transport firearms and other dangerous weapons outside their place of residence, work, or within public places during the election period.

**WHEREFORE**, the petition for *certiorari* with prohibition with prayer for the issuance of a writ of preliminary injunction/temporary restraining order are **DENIED** for lack of merit. The Court upholds Section 2(e), Rule III of COMELEC Resolution No. 10015 as valid and constitutional.

**SO ORDERED.**

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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the premises he is guarding; or when escorting or providing security for the transport of payrolls, deposits, or other valuables; or when guarding the residence of private persons or when guarding private residences, buildings or offices: *Provided, further*, That in the last case prior written approval of the Commission shall be obtained. The Commission shall decide all applications for authority under this paragraph within fifteen days from the date of the filing of such application.

<sup>42</sup> *Rimando v. COMELEC*, supra note 8, at 577-578.

WE CONCUR:

*Maria Lourdes P. A. Sereno*

**MARIA LOURDES P. A. SERENO**  
Chief Justice

*Antonio T. Carpio*

**ANTONIO T. CARPIO**  
Associate Justice

*Presbitero J. Velasco, Jr.*

**PRESBITERO J. VELASCO, JR.**  
Associate Justice

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
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**DIOSDADO M. PERALTA**  
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**LUCAS P. BERSAMIN**  
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*Mariano C. del Castillo*

**MARIANO C. DEL CASTILLO**  
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*Marvic M.V.F. Leonen*

**MARVIC M.V.F. LEONEN**  
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*Francis H. Jardeleza*

**FRANCIS H. JARDELEZA**  
Associate Justice

*Samuel R. Martires*

**SAMUEL R. MARTIRES**  
Associate Justice

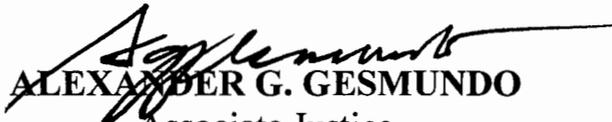
*Noel Gimenez Tijam*

**NOEL GIMENEZ TIJAM**  
Associate Justice

*Andres B. Reyes, Jr.*

**ANDRES B. REYES, JR.**  
Associate Justice

*[Handwritten signature]*

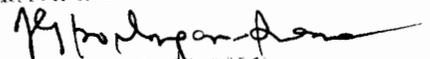
  
**ALEXANDER G. GESMUNDO**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

CERTIFIED XEROX COPY:

  
FELIPA B. ANAMA  
CLERK OF COURT, EN BANC  
SUPREME COURT

