

EN BANC

G.R. No. 257608 – THE SENATE OF THE PHILIPPINES, represented by SENATE PRESIDENT VICENTE C. SOTTO III, SENATE PRESIDENT PRO TEMPORE RALPH G. RECTO, SENATE MAJORITY FLOOR LEADER JUAN MIGUEL F. ZUBIRI, SENATE MINORITY FLOOR LEADER FRANKLIN M. DRILON, and SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS CHAIRPERSON RICHARD J. GORDON, and in their official and individual capacities as members of the Senate of the Philippines, Petitioners, v. THE EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA and SECRETARY OF HEALTH FRANCISCO T. DUQUE III, Respondents.

X-----X

Promulgated: July 5, 2022

CONCURRING AND DISSENTING OPINION

LEONEN, J:

I concur in the *ponencia* written by Justice Amy Lazaro-Javier. The Petition was filed prematurely because the jurisdictional challenge posed by the October 4, 2021 Memorandum was not resolved by the Blue Ribbon Committee. Therefore, there is no actual case or controversy for this Court to resolve.

Still, I dissent as to the actions of then President Rodrigo Duterte (President Duterte). The grant of emergency powers, coupled with the Commission on Audit Report stating that there were anomalies in the disbursement of public funds to address the COVID-19 national emergency, is a legitimate subject of Senate inquiry. Prohibiting all officials and employees of the Executive from appearing and attending the Blue Ribbon Committee hearings deprived the Senate of its right to information for purposes of legislation. Ultimately, the people were deprived of access to information on a matter of public concern.

I

This Court exercises its power of judicial review¹ only when there is an actual case or controversy, or one where the assertion of opposite legal

¹ CONST., art. VIII, sec. 1 provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

claims is susceptible of judicial resolution.² A conflict is said to be ripe for adjudication when the challenged act is a “completed action”³ that has a “direct, concrete, and adverse effect”⁴ on the petitioner. This is to prevent this Court from wasting time over “conjectural or anticipatory”⁵ disputes that may not even come to reality.

Here, the dispute is still anticipatory because the Senate Blue Ribbon Committee has yet to rule on the jurisdictional challenge posed by the October 4, 2021 Memorandum. To recall, the President claimed that the conduct of the Senate Blue Ribbon Committee hearings were no longer in aid of legislation but to “identify persons to hold accountable for alleged irregularities already punishable under existing laws.”⁶ As such, according to the President, “the Senate Blue Ribbon Committee has stepped into the mandates of other branches of government and has deprived itself of the only basis to compel attendance to its hearings.”⁷ Under Section 3 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation, the Blue Ribbon Committee should rule on the jurisdictional challenge before proceeding with the inquiry:

Section 3. *Jurisdictional Challenge.* If the jurisdiction of the Committee is challenged on any ground, the said issue must first be resolved by the Committee before proceeding with the inquiry.

If the Committee, by a majority vote of its members present being a quorum, decides that its inquiry is pertinent or relevant to the implementation or re-examination of any law or appropriation or in connection with any pending or proposed legislation or will aid in the review or formulation of a new legislative policy or enactment, or extends to any and all matters vested by the Constitution in Congress and/or in the Senate alone, it shall overrule such objection and proceed with the investigation.

Only one challenge on the same ground shall be permitted.

The filing or pendency or any prosecution of criminal or administrative action shall not stop or abate any inquiry to carry out a legislative purpose.

I would have taken a contrary view had some members of the Blue Ribbon Committee joined then Senate President Vicente Sotto III, Senate

² See *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 244 (2018) [Per J. Leonen, *En Banc*], citing *Information Technology Foundation of the Philippines v. Commission on Elections*, 499 Phil. 281, 304 (2005) [Per C.J. Panganiban, *En Banc*].

³ *Kilusang Mayo Uno, et al. v. Aquino, et al.*, 850 Phil. 1168, 1191 (2019) [Per J. Leonen, *En Banc*], citing *Abakada Guro Party List v. Purisima*, 584 Phil. 246 (2008) [Per J. Corona, *En Banc*].

⁴ *Id.*

⁵ *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 245 (2018) [Per J. Leonen, *En Banc*], citing *Southern Hemisphere Engagement Network v. Anti-Terrorism Council*, 646 Phil. 452, 479 (2010) [Per J. Carpio-Morales, *En Banc*].

⁶ *Ponencia*, p. 4.

⁷ *Id.*

President Pro Tempore Ralph G. Recto, Senate Majority Floor Leader Juan Miguel F. Zubiri, Senate Minority Floor Leader Franklin M. Drilon, and Senate Blue Ribbon Committee Chairperson Richard J. Gordon in filing the Petition. Directly filing the Petition before this Court would have overruled the jurisdictional challenge, but only if the Petition was filed by at least six members of the Blue Ribbon Committee.

The Blue Ribbon Committee, formally called the Committee on Accountability of Public Officers and Investigations, is empowered to make inquiries in aid of legislation on all matters relating to malfeasance, misfeasance, and nonfeasance in office by officers and employees of the government, its branches, agencies, subdivisions, and instrumentalities. It also has the power to investigate any matter of public interest on its own initiative or brought to its attention by any member of the Senate.⁸

Under the 2020 Rules of the Senate that was in effect when the challenged inquiries were conducted, the Blue Ribbon Committee has 17 regular members⁹ and three *ex officio* members: the senate president *pro tempore*, and the majority and minority leaders.¹⁰ And as provided in Section 3 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation, a majority vote of the members present, there being a quorum, is required to determine whether an inquiry is in aid of legislation. In turn, under Section 4 of the same Rules, there is a quorum when one-third of all the regular members of the committee are present. For purposes of determining the existence of a quorum, the presence of *ex officio* members may be considered.¹¹

Based on the foregoing, there is a quorum in the Blue Ribbon Committee when at least six members – one-third of the 17 regular members – are present. Thus, the majority required to overrule a challenge to the jurisdiction of the Blue Ribbon Committee only needs four votes when there are at least six members present.

The Petition could have overruled the jurisdictional challenge had at least two more members of the Blue Ribbon Committee joined in the filing of the Petition. In *Senate v. Ermita*,¹² this Court took cognizance of the Petition filed by the Senate Committee of the Whole, despite a lack of resolution on the jurisdictional challenge posed by Executive Order No. 464 because, according to this Court:

⁸ 2022 Rules of the Senate, rule X, sec. 13(2).

⁹ 2020 Rules of the Senate, rule X, sec. 13(2).

¹⁰ 2020 Rules of the Senate, rule X, sec. 20.

¹¹ Section 4. *Quorum*. — One third of all the regular members of the Committee shall constitute a quorum but in no case shall it be less than two. The presence of *ex officio* members may be considered in determining the existence of a quorum.

¹² 522 Phil. 1 (2006) [Per J. Carpio Morales, *En Banc*].

As the implementation of the challenged order has already resulted in the absence of officials invited to the hearings of petitioner Senate of the Philippines, it would make no sense to wait for any further event before considering the present case ripe for adjudication. Indeed, it would be sheer abandoning of duty if this Court would not refrain from passing on the constitutionality of E.O. 464.¹³

In *Ermita*, it was the Senate Committee of the Whole conducting the inquiries when Executive Order No. 464 was issued by then President Gloria Macapagal Arroyo. Out of the Senate's 24 members, 16 joined in the filing of the Petition before this Court.¹⁴ The 1995 Senate Rules of Procedure Governing Inquiries in Aid of Legislation then in effect had the same quorum and voting requirements¹⁵ for overruling a jurisdictional challenge as that in the 2020 Rules. Thus, in *Ermita*, a majority of the members had resolved to overrule the jurisdictional challenge posed by the issuance of Executive Order No. 464, and that there was a quorum because more than one-third of the 24 Senators joined the filing of the petition.

Unlike in *Ermita*, only the chairperson of the Blue Ribbon Committee, Senator Richard J. Gordon, joined in filing the Petition. While a total of four members of the Blue Ribbon Committee filed the present Petition, which can be considered a majority vote had there been a quorum, there is no certainty as to whether there was a quorum when these four members decided to file the Petition in the first place. Consequently, the filing of the Petition cannot be considered a resolution overruling the jurisdictional challenge posed by the October 4, 2021 Memorandum issued by President Duterte.

In sum, the Blue Ribbon Committee has yet to decide the jurisdictional challenge posed by the October 4, 2021 Memorandum. As

¹³ *Id.* at 33.

¹⁴ *Id.* at 1. Senators Franklin M. Drilon, Juan M. Flavies, Francis N. Pangilinan, Aquilino Q. Pimentel, Jr., Rodolfo G. Biazon, Pia S. Cayetano, Jinggoy Ejercito Estrada, Luisa Ejercito Estrada, Juan Ponce Enrile, Richard J. Gordon, Panfilo M. Lacson, Alfredo S. Lim, M.A. Madrigal, Sergio Osmeña III, Ralph G. Recto, and Mar Roxas joined in the filing of the Petition.

¹⁵ 1995 Senate Rules of Procedure Governing Inquiries in Aid of Legislation provides:

SECTION 3. *Jurisdictional Challenge.* —

If the jurisdiction of the Committee is challenged on any ground, the said issue must first be resolved by the Committee before proceeding with the inquiry.

If the Committee, by a majority vote of its members present there being a quorum, decides that its inquiry is pertinent or relevant to the implementation or re-examination of any law or appropriation or in connection with any pending or proposed legislation or will aid in the review or formulation of a new legislative policy or enactment, or extends to any and all matters vested by the Constitution in Congress and/or in the Senate alone, it shall overrule such objection and proceed with the investigation.

Only one challenge on the same ground shall be permitted.

The filing or pendency or any prosecution of criminal or administrative action shall not stop or abate any inquiry to carry out a legislative purpose.

SECTION 4. *Quorum.* —

One third of all the regular members of the Committee shall constitute a quorum but in no case shall it be less than two. The presence of ex officio members may be considered in determining the existence of a quorum.

such, the Petition was filed prematurely and there was no actual case or controversy for this Court to resolve.

II

The prematurity of the filing of the present Petition notwithstanding, I express my dissent as to the President's issuance of the October 4, 2021 Memorandum.

In the 1950 case of *Arnault v. Nazareno*,¹⁶ this Court recognized that the Legislative's power of inquiry is "an essential and appropriate auxiliary to the legislative function":¹⁷

Our form of government being patterned after the American system—the framers of our Constitution having been drawn largely from American institution and practices—we can, in this case[,] properly draw also from American precedents in interpreting analogous provisions of our Constitution, as we have done in other cases in the past.

Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which is not infrequently true—recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. . . . The fact that the Constitution expressly gives to Congress the power to punish its Members for disorderly behaviour, does not by necessary implication exclude the power to punish for contempt any other person[.]¹⁸ (Citations omitted)

As an express constitutional grant, the power of inquiry first appeared in Article VIII, Section 12(2) of the 1973 Constitution and was granted to the unicameral Batasang Pambansa and its committees. The provision was retained in the present Constitution, albeit now granted to the two chambers of Congress and their respective committees. Article VI, Section 21 of the Constitution states:

¹⁶ 87 Phil. 29 (1950) [Per J. Ozaeta, *En Banc*].

¹⁷ *Id.* at 45.

¹⁸ *Id.*

SECTION 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

Section 21 provides the limits to the exercise of the Legislative's power of inquiry, the first of which is that it must be conducted "in aid of legislation." Furthermore, the inquiry must be conducted in accordance with the published rules of the chamber or committee conducting the inquiry.¹⁹ Lastly, the rights of the persons appearing in or affected by the inquiry shall be respected. In as much as the power of inquiry is implied in the power of legislation, the limits were nevertheless provided in the Constitution to prevent similar abuses in the past such as intimidating witnesses, grandstanding, or gathering information on purely private matters.²⁰

What is considered an "inquiry in aid of legislation" depends on the Senate rules in effect at the time of the controversy.²¹ When the inquiries on the alleged anomalies in the disbursement of COVID-19 funds were being conducted, the 2010 Senate Rules of Procedure Governing Inquiries in Aid of Legislation was in effect. Section 1 of the Rules defines an inquiry in aid of legislation as one "[referring] to the implementation or re-examination of any law or appropriation, or in connection with any proposed legislation or the formulation of, or in connection with future legislation, or will aid in the review or formulation of a new legislative policy or enactment." The inquiry may even "extend to any and all matters vested by the Constitution in Congress and/or in the Senate alone."

As can be gleaned from Section 1, the definition is broad, reflecting the wide latitude Congress has in conducting inquiries in aid of legislation.²² The inquiry need not even result in the enactment of a statute. So long as the inquiry can be related to a matter vested by the Constitution in Congress or any of its chambers, the inquiry is deemed to be in aid of legislation.²³

Taking these into consideration, the inquiries conducted by the Senate were in aid of legislation. Consequently, the issuance of the October 4, 2021 Memorandum impeded the investigative powers of the Blue Ribbon Committee.

It is undisputed that the following matters were taken up during the committee hearings: (1) the Department of Health's underutilization of its 2020 budget; (2) the procurement of COVID-19 vaccines by local government units; (3) unspent funds, misstatements, irregularities, and

¹⁹ *Garcillano v. House of Representatives*, 595 Phil. 775, 797 (2008) [Per J. Nachura, *En Banc*].

²⁰ *Bengzon, Jr. v. Senate Blue Ribbon Committee*, 280 Phil. 829, 840 (1991) [Per J. Padilla, *En Banc*].

²¹ *Id.* at 842.

²² *See Arnault v. Nazareno*, 87 Phil. 29, 46 (1950) [Per J. Ozaeta, *En Banc*].

²³ *Id.* at 48.

deficiencies of the Department of Health, as found by the Commission on Audit; and, (4) payment claims issues between the Philippine Health Insurance Corporation and private hospitals.²⁴ These matters are obviously related to the implementation of laws, specifically, Republic Act No. 11469 or the Bayanihan to Heal as One Act, and Republic Act No. 11494, or the Bayanihan to Recover as One Act.

Moreover, Republic Act No. 11469 and Republic Act No. 11494 both delegated emergency powers to the President.²⁵ The grant of emergency powers being legislative in nature,²⁶ the Senate has even greater reason to investigate how the Executive exercised the delegated powers, especially considering the Commission on Audit Report on the alleged misuse of public funds of which Congress is the constitutional guardian.²⁷

That an oversight committee was created under Republic Act Nos. 11469 and 11494 cannot prevent the Senate from conducting inquiries in aid of legislation. Nothing in Republic Act Nos. 11469 and 11494 provides that the oversight committee shall have exclusive jurisdiction to investigate the allegedly anomalous implementation of these statutes. Besides, statutes cannot supersede constitutional rights, with the Constitution being superior to all statutes.

It is true that the President has “executive privilege” or “the power of Government to withhold information from the public, the courts, and the Congress.”²⁸ There are three kinds of executive privilege, the first being “state secrets privilege” that prevents the disclosure of crucial military or diplomatic objectives.²⁹ There is also “informer’s privilege” or “the privilege of the Government not to disclose the identity of persons who furnish information of violations of law to officers charged with the enforcement of that law.”³⁰ Lastly, there is the “generic privilege” accorded to internal deliberations and which “attach to intragovernmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.”³¹ All of these exempt the Executive from disclosing information as these are considered sensitive, hence, “necessary to the discharge of highly important executive responsibilities involved in maintaining governmental operations.”³²

²⁴ *Ponencia*, p. 3.

²⁵ Republic Act No. 11469 (2020), sec. 4 and Republic Act No. 11494 (2020), sec. 4.

²⁶ CONST., art. VI, sec. 23(2) provides:

(2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

²⁷ *Arnault v. Nazareno*, 87 Phil. 29, 46 (1950) [Per J. Ozaeta, *En Banc*].

²⁸ *Senate v. Ermita*, 522 Phil. 1, 37 (2006) [Per J. Carpio Morales, *En Banc*].

²⁹ *Id.* at 38, citing 1 L. TRIBE, AMERICAN CONSTITUTIONAL LAW 770-1 (3rd ed., 2000).

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 38–39, citing BLACK’S LAW DICTIONARY 569-570 (6th ed., 1991).

Still, executive privilege, “being a claim of exemption from an obligation to disclose information[,] must. . . be clearly asserted.”³³ An implied claim of privilege “renders an assessment of the potential harm resulting from disclosure impossible, thereby preventing the Court from balancing such harm against plaintiffs’ needs to determine whether to override any claims of privilege.”³⁴ Without an express claim of privilege, this Court is bound to “presume that the action of the legislative body was with a legitimate object if it was capable of being so construed,”³⁵ and the Court has “no right to assume that the contrary was intended.”³⁶ In *Ermita*, this Court voided provisions of Executive Order No. 464 issued by President Arroyo for being implied claims of executive privilege, thus:

Congress undoubtedly has a right to information from the executive branch whenever it is sought in aid of legislation. If the executive branch withholds such information on the ground that it is privileged, it must so assert it and state the reason therefor and why it must be respected.

The infirm provisions of [Executive Order 464], however, allow the executive branch to evade congressional requests for information without need of clearly asserting a right to do so and/or proffering its reasons therefor. By the mere expedient of invoking said provisions, the power of Congress to conduct inquiries in aid of legislation is frustrated. That is impermissible. For

[w]hat republican theory did accomplish . . . was to reverse the old presumption in favor of secrecy, based on the divine right of kings and nobles, and replace it with a *presumption in favor of publicity*, based on the doctrine of popular sovereignty.³⁷ (Emphasis in the original)

The President’s October 4, 2021 Memorandum reads, in part:

The Senate Blue Ribbon Committee hearings on the 2020 Audit Report of the Commission on Audit have been going on for nearly two months now. The Executive has been showing due respect to such Committee, through the faithful attendance and participation of its officials and employees in the aforesaid hearings. However, the point has been reached where the participation of the Executive is already greatly affecting its ability to fulfill its core mandates in the Constitution and laws, most of all[,] the protection of our people’s right to health in this time of pandemic.

³³ *Id.* at 54.

³⁴ *Id.* at 54–55, citing *A.O. Smith v. Federal Trade Commission*, 403 F.Supp. 1000, 20 Fed.R.Serv.2d 1382 (1975).

³⁵ *Arnault v. Nazareno*, 87 Phil. 29, 49 (1950) [Per J. Ozaeta, *En Banc*] citing *People ex rel Mc. Donald vs. Keeier* 99 N. Y., 463; 52 Am. Rep., 49; 2 N. E., 615.

³⁶ *Id.*

³⁷ 522 Phil. 1, 62 (2006) [Per J. Carpio Morales, *En Banc*].

Moreover, given the manner that the inquiry has been conducted, and clear indications that the hearings are meant to go on indefinitely, *it has become evident that the said hearings are conducted not in aid of legislation, but to identify persons to hold accountable for alleged irregularities already punishable under existing laws.* In so doing, the Senate Blue Ribbon Committee has stepped into the mandates of other branches of government and has deprived itself of the only basis to compel attendance to its hearings.

Thus, on the premise that the principle of separation of powers requires mutual respect among the different branches of government, and in view of Article II, Section 15 of the 1987 Constitution on the protection and promotion by the State of the right to health of the people, the President has DIRECTED all officials and employees of the Executive Department to no longer appear before or attend the abovementioned Senate Blue Ribbon Committee hearings, effective immediately. Instead, they shall focus all their time and effort on the implementation of measures to address the current State of Calamity on account of COVID-19, and in carrying out their other functions.

All officials and employees of the Executive Department are reminded to perform their functions in accordance with the Constitution and laws, and observe utmost responsibility, integrity[,] and efficiency. This Administration shall continue and shall not hesitate to investigate and file charges against corrupt officials and employees in the proper forum.

For strict compliance.

By order of the President:

SALVADOR C MEDIALDEA³⁸
(Emphasis supplied)

Reading the Memorandum, it does not appear that there was an express claim of executive privilege. Instead, the President determined for himself that the hearings were no longer conducted in aid of legislation but done to “identify persons to hold accountable for alleged irregularities already punishable under existing laws.”³⁹ This is not a valid claim of privilege as it was made not to protect crucial military or diplomatic objectives. Neither is it an informer’s privilege invoked to protect the identity of those who inform the government of violations of laws. There is also no claim of generic privilege to protect internal deliberations in the Executive.

For these reasons, it must be assumed that the inquiries were conducted in aid of legislation. It is not for this Court to assume the contrary.

³⁸ *Ponencia*, pp. 4–5.

³⁹ *Id.* at 4.

III


The more important reason why I dissent as to the actions of President Duterte is because they ultimately deprive the people of vital information as to the government's response to the pandemic. Again, in *Ermita*:

To the extent that investigations in aid of legislation are generally conducted in public, however, any executive issuance tending to unduly limit disclosures of information in such investigations necessarily deprives the people of information which, being presumed to be in aid of legislation, is presumed to be a matter of public concern. The citizens are thereby denied access to information which they can use in formulating their own opinions on the matter before Congress — opinions which they can then communicate to their representatives and other government officials through the various legal means allowed by their freedom of expression. Thus holds *Valmonte v. Belmonte*:

It is in the interest of the State that the channels for free political discussion be maintained to the end that the government may perceive and be responsive to the people's will. Yet, this open dialogue can be effective only to the extent that the citizenry is informed and thus able to formulate its will intelligently. Only when the participants in the discussion are aware of the issues and have access to information relating thereto can such bear fruit.⁴⁰

Given that emergency powers were granted to the President under Republic Act Nos. 11469 and 11494, all the more should the people be informed of how the Executive utilized these delegated powers. It is during times when the President gains more power, even if temporary, that the people should be more vigilant and actively take part in checking the actions of government.

ACCORDINGLY, I vote to **DISMISS** the Petition and **DENY** the application for preliminary injunction.



MARVIC M.V.F. LEONEN
Senior Associate Justice

⁴⁰ 522 Phil. 1, 60 (2006) [Per J. Carpio Morales, *En Banc*].