

EN BANC

G.R. No. 225973 – SATURNINO C. OCAMPO, et al., *Petitioners v. REAR ADMIRAL ERNESTO C. ENRIQUEZ, (in his capacity as the Deputy Chief of Staff for Reservist and Retiree Affairs, Armed Forces of the Philippines), et al., Respondents.*

G.R. No. 225984 – REP. EDCEL LAGMAN (in his personal and official capacities and as Honorary Chairperson of the Families of Victims of Involuntary Disappearance [FIND]), et al., *Petitioners v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, et al., Respondents.*

G.R. No. 226097 – LORETTA ANN PARGAS-ROSALES, et al., *Petitioners v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, et al., Respondents.*

G.R. No. 226116 – HEHERSON T. ALVAREZ, et al., *Petitioners v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, et al., Respondents.*

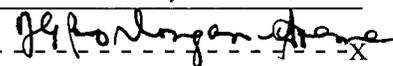
G.R. No. 226117 – ZAIRA PATRICIA B. BANIAGA, et al., *Petitioners v. SECRETARY OF NATIONAL DEFENSE DELFIN N. LORENZANA, et al., Respondents.*

G.R. No. 226120 – ALGAMAR A. LATIPH, et al., *Petitioners v. SECRETARY DELFIN N. LORENZANA, sued in his capacity as Secretary of National Defense, et al., Respondents.*

G.R. No. 226294 – LEILA M. DE LIMA, in her capacity as Senator of the Republic and as Taxpayer, *Petitioner v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, et al., Respondents.*

Promulgated:

November 8, 2016



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DISSENTING OPINION

CARPIO, J.:

The petitions seek to prevent the interment of the remains of the late President Ferdinand E. Marcos (Marcos) at the Libingan ng mga Bayani (LNMB).



The LNMB was formerly known as the Republic Memorial Cemetery. On 27 October 1954, then President Ramon Magsaysay issued Proclamation No. 86, "changing the Republic Memorial Cemetery at Fort WM McKinley, Rizal Province, to Libingan ng mga Bayani." More than a decade later, then President Marcos issued Proclamation No. 208 on 28 May 1967, excluding approximately 1,428,800 square meters from the Fort Bonifacio Military Reservation for the site of the LNMB, and reserving the same for national shrine purposes under the administration of the National Shrines Commission. The National Shrines Commission was subsequently abolished and its functions transferred to the Military Shrines Service of the Philippine Veterans Affairs Office of the Department of National Defense under Presidential Decree No. 1076, issued by then President Marcos on 26 January 1977.

On 11 September 2000, Acting Armed Forces of the Philippines (AFP) Chief of Staff Jose M. Calimlim, by order of the Secretary of National Defense, issued AFP Regulation 161-375 (AFPR G 161-375),¹ on the allocation of cemetery plots at the LNMB.

Under AFPR G 161-375, the deceased persons who are qualified to be interred at the LNMB are:

- a. Medal of Valor Awardees;
- b. Presidents or Commander-in-Chief, AFP;
- c. Secretaries of National Defense;
- d. Chiefs of Staff, AFP;
- e. Generals/Flag Officers of the AFP;
- f. Active and retired military personnel of the AFP to include active draftees and trainees who died in line of duty, active reservists and CAFGU Active Auxiliary (CAA) who died in combat operations or combat related activities;
- g. Former members of the AFP who laterally entered or joined the Philippine Coast Guard (PCG) and the Philippine National Police (PNP);
- h. Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerillas;
- i. Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress or the Secretary of National Defense; and
- j. Former Presidents, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of Former Presidents, Secretaries of National Defense and Chief[s] of Staff.

AFPR G 161-375 also enumerates **those not qualified to be interred at the LNMB**, namely:

¹ AFPR G 161-375 superseded AFPR G 161-374 dated 27 March 1998, which in turn superseded AFPR G 161-373 issued on 9 April 1986.

- a. **Personnel who were dishonorably separated/reverted/ discharged from the service;** and
- b. Authorized personnel who were convicted by final judgment of an offense involving moral turpitude. (Emphasis supplied)

In a Memorandum dated 7 August 2016, the Department of National Defense (DND) Secretary Delfin Lorenzana ordered the AFP Chief of Staff Ricardo Visaya to undertake the necessary preparations to facilitate the interment of Marcos at the LNMB, in compliance with the verbal order of President Rodrigo Duterte on 11 July 2016.

The DND Memorandum resulted in the filing of these petitions, which oppose the implementation of the DND Memorandum for the interment of Marcos at the LNMB.

I vote to grant the petitions on the ground that Marcos is not qualified to be interred at the LNMB, and thus the Memorandum dated 7 August 2016 of DND Secretary Lorenzana was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Marcos is disqualified from being interred at the LNMB

Assuming that Marcos was qualified to be interred at the LNMB as a Medal of Valor Awardee, and as a former President of the Philippines and Commander-in-Chief, he ceased to be qualified when he was ousted from the Presidency by the non-violent People Power Revolution on 25 February 1986.

AFPR G 161-375, which respondents rely on to justify the interment of Marcos at the LNMB, specifically provides that “**personnel who were dishonorably separated/reverted/discharged from the service**” are not qualified to be interred at the LNMB. Marcos, who was forcibly ousted from the Presidency by the sovereign act of the Filipino people, falls under this disqualification.

Dishonorable discharge from office

In *Marcos v. Manglapus*,² the Court described Marcos as “a dictator **forced out of office and into exile** after causing twenty years of political, economic and social havoc in the country.”³ In short, he was ousted by the Filipino people. Marcos was forcibly removed from the Presidency by what

² 258 Phil. 479 (1989).

³ Id. at 492.

is now referred to as the People Power Revolution. This is the **strongest form of dishonorable discharge** from office since it is meted out by the direct act of the sovereign people.

The fact of Marcos' ouster is beyond judicial review. This Court has no power to review the legitimacy of the People Power Revolution as it was successfully carried out by the sovereign people who installed the revolutionary government of Corazon C. Aquino. The people have spoken by ratifying the 1987 Constitution, which was drafted under the Aquino government installed by the People Power Revolution. The Court has been steadfast in dismissing challenges to the legitimacy of the Aquino government, and has declared that its legitimacy is not a justiciable matter that can be acted upon by the Court.⁴

As the removal of Marcos from the Presidency is no longer within the purview of judicial review, we must accept this as an incontrovertible fact which has become part of the history of the Philippines. This ouster, which was directly carried out by the sovereign act of the Filipino people, constitutes dishonorable removal from service. Marcos was forcibly removed from the position as President and Commander-in-Chief by the Filipino people. In *Estrada v. Desierto*,⁵ the Court reiterated the legitimacy of the removal of Marcos and the establishment of the Aquino government:

No less than the Freedom Constitution declared that **the Aquino government was installed through a direct exercise of the power of the Filipino people** in defiance of the provisions of the 1973 Constitution, as amended. It is familiar learning that the legitimacy of a government sired by **a successful revolution by people power is beyond judicial scrutiny** for that government automatically orbits out of the constitutional loop.⁶
(Emphasis supplied)

The removal of Marcos from the Presidency, therefore, was a direct exercise of the sovereign act of the Filipino people that is "**beyond judicial scrutiny.**" It cannot be said that this removal was an "honorable" one. Truly, there is nothing more dishonorable for a President than being forcibly removed from office by the direct sovereign act of the people.

Respondents argue that because Marcos was not dishonorably discharged in accordance with the procedures and guidelines prescribed in Administrative Discharge Prior to Expiration of Term of Enlistment (Circular 17, dated 2 October 1987, Series of 1987, of the Armed Forces of the Philippines), Marcos was honorably separated from service.

⁴ *Joint Resolution, Lawyers' League for a Better Philippines v. President Aquino*, G.R. No. 73748; *People's Crusade for the Supremacy of the Constitution v. Aquino*, G.R. No. 73972; *Ganay v. Aquino*, G.R. No. 73990, 22 May 1986 (unsigned Resolution).

⁵ 406 Phil. 1 (2001).

⁶ *Id.* at 43-44.



I disagree.

First, Marcos was separated from service with finality, having been forcibly ousted by the Filipino people on 25 February 1986. Circular 17, issued **more than one year after** such separation from office, cannot be made to apply retroactively to Marcos. When Circular 17 was issued, Marcos had already been finally discharged, terminated, and ousted – as President and Commander-in-Chief – by the Filipino people. Circular 17 requires certain administrative procedures and guidelines in the discharge of **incumbent or serving** military personnel. There is a physical and legal impossibility to apply to Marcos Circular 17 since it was issued long after Marcos had been separated from office.

Second, even assuming that Circular 17 can be given retroactive effect, Marcos was still dishonorably discharged from service since Circular 17 cannot prevail over the sovereign act of the Filipino people. Marcos was ousted by the direct act of the Filipino people. The sovereign people is the ultimate source of all government powers.⁷ The Constitution specifically declares that “sovereignty resides in the people and all government authority emanates from them.”⁸ Thus, the act of the sovereign people in removing Marcos from the Presidency, which is now beyond judicial review, and thus necessarily beyond administrative review, cannot be overturned by a mere administrative circular issued by a department secretary. The reality is, more than one year before Circular 17 was issued, Marcos had already been removed with finality from office by the sovereign people for reasons that are far from honorable.

Circular 17, a mere administrative issuance of a department secretary, cannot be applied retroactively to undo a final act by the sovereign people. The power of all government officials, this Court included, emanates from the people. Thus, any act that runs afoul with the direct exercise of sovereignty by the people, such as the removable of a dictator, plunderer and human rights violator, cannot be countenanced. The sovereign act of the Filipino people obviously prevails over a mere administrative circular issued by a department secretary.

Equal Protection Clause

The respondents assert that the disqualifications under AFPR G 161-375 are inapplicable to former presidents as the disqualifications under AFPR G 161-375 apply only to military personnel and not to non-military personnel.

⁷ See *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panlungsod of Dumaguete*, 239 Phil. 403 (1987).

⁸ Article II, Section 1, 1987 Philippine Constitution.

I disagree.

The disqualifications prescribed under AFPR G 161-375 are reasonable *per se* considering that the LNMB is a national shrine.⁹ Proclamation No. 86 renamed the Republic Memorial Cemetery to LNMB to make it more “symbolic of the cause for which Filipino soldiers have died” and “to truly express the nation’s esteem and reverence for her war dead.” The disqualifications are safeguards to ensure that those interred at the LNMB indeed deserve such honor and reverence.

However, to submit to respondents’ view that the disqualifications under AFPR G 161-375 apply only to military personnel, and that the President, even as Commander-in-Chief, is not a military personnel subject to such disqualifications,¹⁰ negates the purpose for which the LNMB was originally established, which is to honor Filipino soldiers who fought for freedom and democracy for our country. Indeed, Marcos is the very anti-thesis of freedom and democracy because he was a dictator as declared by this Court.

Respondents’ view will discriminate against military personnel who are subject to the disqualifications. Applying only to military personnel the disqualifications will unduly favor non-military personnel who will always be eligible, regardless of crimes committed against the State or humanity, to be interred at the LNMB as long as they are included in the list of those qualified. This will lead to the absurd situation where a military officer who was dishonorably discharged would be disqualified, while a deposed President who was dishonorably discharged through an act of the sovereign people for committing plunder, human rights violations, and other atrocious acts would still be qualified to be interred at the LNMB.

The term “personnel” is not defined anywhere in Circular 17 and thus, we must refer to its common usage. Personnel is defined as “the people who work for a particular company or organization.”¹¹ The enumeration of the people qualified to be interred at the LNMB includes both military (such as the Generals, Flag Officers and Active and Retired Military personnel of the AFP) and civilian (such as Presidents, Secretaries of National Defense, Government Dignitaries, Statesmen, National Artists and widows of former Presidents) personnel. Thus, the term “personnel” as used in the provision for disqualifications should refer to both military and civilian personnel. Significantly, paragraph 4 of AFPR G 161-375, the provision which enumerates those not qualified to be interred at the LNMB, does not use the

⁹ Proclamation No. 208, issued on 28 May 1967.

¹⁰ Consolidated Comment (of public respondents) in G.R. No. 225973, G.R. No. 225984, and G.R. No. 226097, pp. 54-55.

¹¹ [http://www.merriam-webster.com/dictionary/personnel?](http://www.merriam-webster.com/dictionary/personnel?utm_campaign=sd&utm_medium=serp&utm_source=jsonld)
[utm_campaign=sd&utm_medium=serp&utm_source=jsonld](http://www.merriam-webster.com/dictionary/personnel?utm_campaign=sd&utm_medium=serp&utm_source=jsonld) (last accessed 14 September 2016).



word “military” to define personnel, while for other provisions in the regulation, the term “military” is specifically used to classify “personnel.”

If as respondents argue, the disqualifications should apply only to military personnel, then AFPR G 161-375 would be a patent violation of the Equal Protection Clause as it would indiscriminately create unreasonable classifications between civilian and military personnel for purposes of interment at the LNMB. Such classification serves no purpose and is not germane to the purpose of interment at the LNMB. The Equal Protection Clause enshrined in Section 1, Article III of the 1987 Constitution states that: “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.” The Equal Protection Clause applies not only to statutes or legislative acts but to all official state actions.¹² As explained in *Bureau of Customs Employees Associations (BOCEA) v. Hon. Teves*:¹³

Equal protection simply provides that all persons or things similarly situated should be treated in a similar manner, both as to rights conferred and responsibilities imposed. The purpose of the equal protection clause is to secure every person within a state’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state’s duly constituted authorities. In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.¹⁴

To be valid, a classification must be reasonable and based on real and substantial distinctions. The Court, in the landmark case of *Victoriano v. Elizalde Rope Workers’ Union*,¹⁵ held:

All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.¹⁶

Thus, for a classification to be valid and compliant with the Equal Protection Clause, it must (1) be based on substantial distinctions, (2) be germane to the

¹² *1-United Transport Koalisyon (1-UTAK) v. Commission on Elections*, G.R. No. 206020, 14 April 2015, 755 SCRA 441; *Biraogo v. The Phil. Truth Commission of 2010*, 651 Phil. 374 (2010).

¹³ 677 Phil. 636 (2011).

¹⁴ Id. at 660.

¹⁵ 158 Phil. 60 (1974).

¹⁶ Id. at 87.

purpose of the law, (3) not be limited to existing conditions only, and (4) apply equally to all members of the same class.¹⁷

In this case, however, there is no substantial distinction between the military and civilian personnel, for purposes of interment at the LNMB, that would warrant applying the disqualifications to military personnel and not to civilian personnel.

In *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,¹⁸ the Court found that the rank-and-file employees of the Bangko Sentral ng Pilipinas (BSP) were unduly discriminated against when all the rank-and-file employees of other Government Financial Institutions (GFIs) were exempted from the Salary Standardization Law (SSL) while the SSL continued to be applied to the rank-and-file employees of the BSP. The Court held that while the exemption from the applicability of the SSL is a privilege that is within the prerogative of the legislature to grant, the validity or legality of the exercise is still subject to judicial review, such that if it is exercised capriciously and arbitrarily, the Court is duty bound to correct it. The Court held:

It bears stressing that the exemption from the SSL is a “*privilege*” fully within the legislative prerogative to give or deny. However, its subsequent grant to the rank-and-file of the seven other GFIs and continued denial to the BSP rank-and-file employees breached the latter’s right to equal protection. In other words, while the granting of a privilege *per se* is a matter of policy exclusively within the domain and prerogative of Congress, *the validity or legality of the exercise* of this prerogative is subject to judicial review. So when the distinction made is superficial, and not based on substantial distinctions that make real differences between those included and excluded, it becomes a matter of arbitrariness that this Court has the duty and the power to correct. As held in the United Kingdom case of *Hooper v. Secretary of State for Work and Pensions*, once the State has chosen to confer benefits, “discrimination” contrary to law may occur where favorable treatment already afforded to one group is refused to another, even though the State is under no obligation to provide that favorable treatment.

The disparity of treatment between BSP rank-and-file and the rank-and-file of the other seven GFIs definitely bears the unmistakable badge of invidious discrimination - no one can, with candor and fairness, deny the discriminatory character of the subsequent blanket and total exemption of the seven other GFIs from the SSL when such was withheld from the BSP. *Alikes are being treated as unalikes without any rational basis.*

Again, it must be emphasized that the equal protection clause does not demand absolute equality *but it requires that all persons shall be treated alike, under like circumstances and conditions both as to*

¹⁷ *Tiu v. CA*, 361 Phil. 229 (1999).

¹⁸ 487 Phil. 531 (2004).

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privileges conferred and liabilities enforced. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances which, if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion; whatever restrictions cast on some in the group is equally binding on the rest.¹⁹ (Italicization in the original)

Therefore, under the Equal Protection Clause, persons who are in like circumstances and conditions must be treated alike both as to the privileges conferred and liabilities imposed. In this case, as those enumerated in the AFPR G 161-375 are all granted the privilege of being interred at the LNMB, consequently, the disqualifications must also be made applicable to all of them. There is no substantial or reasonable basis for the disqualifications to be made applicable to military personnel only when civilians alike may be dishonorably dismissed from service for the same offenses.

To sustain respondents' view would give rise to an absurd situation where civilians, eligible to be interred at the LNMB would have the absolute and irrevocable right to be interred there, notwithstanding that military personnel, likewise eligible to be interred at the LNMB, may be disqualified. There is no real or substantial basis for this distinction. The conditions for disqualification should likewise be applied to civilian personnel as the privileges conferred on them – interment at the LNMB – is the same privilege conferred on military personnel.

Marcos' interment at the LNMB is contrary to public policy

Jurisprudence defines public policy as “that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good.”²⁰

The Constitution grants the Legislative branch the power to enact laws and establish the public policy behind the law. The public policy is prescribed by the Legislature and is implemented by the Executive. The Executive must implement the law by observing the highest standards of promoting the public policy. These standards are embedded in the Constitution, international law and municipal statutes. By these standards, the DND Memorandum ordering the interment of Marcos at the LNMB is contrary to public policy.

¹⁹ Id. at 582-583. Citations omitted.

²⁰ *Gonzalo v. Tarnate, Jr.*, 724 Phil. 198, 207 (2014), citing *Avon Cosmetics, Inc. v. Luna*, 540 Phil. 389, 404 (2006).

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Section 11, Article II of the 1987 Constitution provides that the State values the dignity of every human person and guarantees full respect for human rights. This public policy is further established in Section 12 of Article III which prohibits the use of torture, force, violence, threat, intimidation, or any other means which vitiate free will and mandates the rehabilitation of victims of torture or similar practices. Also, following the doctrine of incorporation,²¹ the Philippines adheres to the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and the Convention Against Torture. Through the provisions of the Constitution and international law, the State binds itself to enact legislation recognizing and upholding the rights of human rights victims.

Congress, by enacting Republic Act No. 10368 or “The Human Rights Victims Reparation and Recognition Act of 2013,” established as a “**policy of the State**” to recognize the heroism and sacrifices of victims of (a) summary execution; (b) torture; (c) enforced or involuntary disappearance; and (d) other gross human rights violations during the Marcos regime. Section 2 of R.A. No. 10368 states:

Consistent with the foregoing, it is hereby declared the **policy of the State** to recognize the heroism and sacrifices of all Filipinos who were **victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos** covering the period from September 21, 1972 to February 25, 1986 and restore the victims’ honor and dignity. The State hereby acknowledges its **moral and legal obligation to recognize and/or provide reparation to said victims and/or their families** for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime. (Emphasis supplied)

R.A. No. 10368 mandates that it is the “moral and legal obligation” of the State to recognize the sufferings and deprivations of the human rights victims of Marcos’ martial law regime. Interring Marcos on the hallowed grounds of the LNMB, which was established to show “the nation’s esteem and reverence” for those who fought for freedom and democracy for our country, extols Marcos and exculpates him from human rights violations. This starkly negates the “moral and legal obligation” of the State to recognize the sufferings and deprivations of the human rights victims under the dictatorship of Marcos.

The legislative declarations must be implemented by the Executive who is sworn under the Constitution to “faithfully execute the law.” The Executive, in implementing the law, must observe the standard of recognizing the rights of human rights victims. Marcos’ interment at the LNMB will cause undue injury particularly to human rights victims of the

²¹ Article II, Section 2 states: “The Philippines x x x adopts the generally accepted principles of international law as part of the law of the land x x x.”

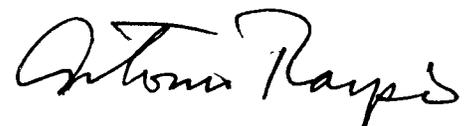


Marcos regime, as well as the sovereign people who ousted Marcos during the People Power Revolution. Marcos' interment at the LNMB is thus contrary to public policy.

The sufferings and deprivations of the human rights victims during the martial law era are well documented. The United States District Court of Hawaii in *In Re Estate of Marcos*²² held Marcos guilty of widespread human rights violations and awarded one billion two hundred million U.S. Dollars (\$1,200,000,000) in exemplary damages and seven hundred sixty-six million U.S. Dollars (\$766,000,000) in compensatory damages to human rights victims. The judgment of the district court was affirmed by the Ninth Circuit Court of Appeals in *Hilao v. Estate of Marcos*.²³

Finally, government funds or property shall be spent or used **solely** for public purposes.²⁴ Since Marcos was ousted by the sovereign act of the Filipino people, he was dishonorably discharged from office. Consequently, Marcos' dishonorable discharge serves to convert his burial into a private affair of the Marcos family. Hence, no public purpose is served by interring his remains at the LNMB.

ACCORDINGLY, I vote to **GRANT** the petitions in G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120, and 226294 and to **DECLARE** the DND Memorandum dated 7 August 2016 **VOID** for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.



ANTONIO T. CARPIO
Associate Justice

²² 910 F. Supp. 1460 (D. Haw. 1995).

²³ 103 F.3d 767 (9th Cir. 1996).

²⁴ *Fort Bonifacio Dev't. Corp. v. Commissioner of Internal Revenue*, 694 Phil. 7 (2012).