Human Rights in Recent Supreme Court Rulings

Street parliament: **Akbayan partylist representative Etta Rosales.**
Photos by AKBAYAN

■ By **CARLOS P. MEDINA, JR.**

IN APRIL and May 2006, the Supreme Court decided on a number of cases eagerly awaited by the public because they affect fundamental rights of citizens and relate to very urgent matters of national interest. These decisions concern the following: (a) Executive Order No. 420, on the Unified ID System, decided on April 19, 2006; (b) Executive Order No. 464, on Legislative Investigations, decided on April 20, 2006; (c) the Calibrated Preemptive Response (CPR) Policy, decided on April 25, 2006; and (d) Proclamation 1017, on the Declaration of a State of National Emergency, decided on May 3, 2006. This article discusses what the Supreme Court said about human rights in these recent decisions. As taken up in the decisions, these rights, in particular, are the following: privacy, information, freedom of expression, free speech, free press, and the rights to peacefully assemble and petition the government for redress of grievances, and to due process.

The Right to Privacy: Unified ID System (EO 420)

This case focuses on the right to privacy. On April 13, 2005, President Arroyo issued EO 420 directing all government agencies, including government-owned and controlled corporations, to adopt a unified multi-purpose ID system. The EO covered all agencies which issued cards to their members or constituents, like GSIS, SSS, Philhealth, LTO, and PRC. Its purpose was to make existing ID card systems of government agencies less costly, more efficient, reliable and user-friendly.

Bearing in mind a 1998 decision of the Supreme Court which rejected a national ID system proposed by the Ramos government, many groups (including KMU, Bayan Muna, and church organizations) and concerned individuals questioned the constitutionality of EO 420 before the Supreme Court. They maintained, among others, that the EO violates the people's right to privacy because it allows access to personal confidential data without the owner's consent.

The Supreme Court, however, disagreed with them. It ruled that the unified multi-

purpose ID system does not violate the people's right to privacy. The Court said that the right to privacy does not prohibit government agencies from adopting reasonable ID systems, like the proposed unified ID system under EO 420. The Court noted that all these

years, many government agencies have been issuing ID cards and there have been no complaints from citizens that these ID cards violate their right to privacy.

The Court explained that some of these government agencies collect and show more data than what EO 420 requires. Under EO 420, the unified ID system requires the agencies to collect and record only the following 14 personal data: name, home address, sex, picture, signature, date of birth, place of birth, marital status, names of parents, height, weight, the prints of two index fingers and two thumbmarks, any prominent distinguishing features like moles and others, and tax identification number (TIN). But in the ID card itself, only the following information will be shown: name, home address, sex, picture, signature, fingerprint, agency number and common reference number. Therefore, compared to existing ID systems of government agencies, the unified ID system limits the data that can be collected, recorded and shown.

In addition, the Supreme Court said that unlike in existing government ID systems, EO 420 provides for safeguards to protect the personal confidential data of citizens. These safeguards include the following:

a. the data shall be used only to establish the identity of a person and shall be limited to the 14 personal data listed earlier;
b. the right to privacy shall be respected;
c. access to the personal data shall be strictly controlled;
d. the owner must agree personally or in writing for anyone to have access to the data;
e. the ID card shall have advanced security features; and
f. any change in the data must be based on the written request of the owner or under conditions prescribed by the agency issuing the ID card.

The Court also said that EO 420 applies only to government agencies that already issue ID systems under existing laws. It does not apply to other departments of government and to independent constitutional commissions, like the courts, Congress, and the COMELEC. Hence, it is not a national ID system, which will require the passage of a new law. The 1998 decision of the Supreme Court is, therefore, not applicable because the presidential issuance in that case, which provided for a national ID system without safeguards, was struck down by the Court for not being based on any law.

The Right to Information: Legislative Investigations (EO 464)

This case relates to the

right of the people to information on matters of public concern in connection with the power of Congress to investigate anomalies in government. In the exercise of its power to make laws, the Senate, through its various committees, conducts these investigations in aid of legislation which require the attendance of government officials and employees as resource persons.

On September 21-23, 2005 different Senate committees invited various government officials, including AFP officers, to testify in separate public hearings on the North Rail Project (with a Chinese corporation) and on the role of the military in the "Gloriagate Scandal" (alleged cheating in the 2004 presidential elections) and in the wire-tapping of the President (the "Hello Garci" case). The invited officials requested for postponement of the hearings, but the Senate refused. So on September 28, 2005, President Arroyo issued EO 464 which required senior public officials and senior officers of the PNP and AFP to first get the consent of the President before appearing in any congressional hearing.

Because of EO 464, many invited officials refused to appear in any of the Senate investigations for lack of presidential consent. In response, senators and various groups, like Bayan Muna, PDP-LABAN, IBP and the Alternative Law Groups (ALG), questioned the constitutional validity of EO 420 before the Supreme Court. They argued, among others, that EO 420 violates the right of the people to information on matters of public concern since it prevents the people from getting information about the alleged anomalies under investigation.

The Supreme Court agreed with them. According to the Court, EO 420 violated not only the power of Congress to conduct investigations in aid of legislation, but also the right of the people to information. Since the investigations are done in public, any presidential directive which limits disclosures of information in such hearings in effect deprives the people of information which are of public concern. Citizens are, as a result, denied access to information which they can use in making their own opinions on the subjects of the investigations. The Court said that it is in the interest of the state to have free political discussions so that the government may know and be able to respond to the people's will. But this is possible only if the people are properly informed on matters of public concern.

Rallyists led by Akbayan's Risa Hontiveros-Baraquel confront an anti-riot squad. Photos by AKBAYAN

The Right to Freedom of Expression, Assembly and Petition: CPR Policy

This case is about the right to freedom of expression and the right to peacefully assemble and to petition the government for redress of grievances. Between September 26 to October 6, 2005, several anti-government rallies in Metro Manila were violently dispersed by the police, resulting in injuries and the arrest of many rallyists. They were dispersed because they had no permits, which were required under BP 880, The Public Assembly Act of 1985. The police based their actions on the government policy of "no permit, no rally" and the rule of "calibrated preemptive response" (CPR) which were applied to implement BP 880. The leaders and organizers of the rallies went to the Supreme Court to question the constitutionality of BP 880 and asked the Court to stop the violent dispersals. They claimed that their right to freedom of expression and right to peacefully assemble and petition the government for redress of grievances were violated by the police actions.

The Supreme Court said that the right to peacefully assembly and petition the government for redress of grievances is, together with freedom of speech, of expression, and of the press, a right which is given primary importance and protection by the Constitution. It is because these are the rights which make democracy work, without which all other rights would be meaningless and unprotected. The Court, however, said that these rights are not absolute. They may be regulated, and BP 880 simply regulates when and where public assemblies may be held, and how they may be conducted. It is not an absolute ban on public assemblies.

Furthermore, the Court said that although BP 880 requires a mayor's permit to hold a rally, the permit can only be denied if the holding of the rally will result in a clear and present danger to public order, public safety, public convenience, public morals or public health. And if the rallyists cannot wait for a permit, under the law, they can hold the rally without any permit required in a freedom park which every city and municipality in the country must create within six months from the time BP 880 took effect in 1985. The Supreme Court, however, found out that only

Cebu City has declared a freedom park in compliance with BP 880. The Court, therefore, ruled that cities and municipalities which have not yet created any freedom park may not require permits for rallies in any public park or plaza in the city or municipality until a freedom park is declared.

Specifically on the CPR policy, the High Court said that CPR does not serve any valid purpose if it means the same thing as the maximum tolerance policy set forth in BP 880 (i.e., the highest degree of restraint that the police and the military shall observe during rallies or in the dispersal of rallies). But if CPR means something else, then it is illegal, since the law itself already mandates maximum tolerance as the policy to be followed by the authorities in handling rallies.

The Court also looked into the situation where, because mayors refuse to act on applications for a permit, rallyists are not able to produce permits when asked by police, as a result of which they are immediately dispersed. To address this situation, the Court said that as part of maximum tolerance, rallyists who can show the police that they have filed an application on a given date can, after two days from such date, hold a rally without having to show a permit, since the grant of the permit will be presumed under the law, and it will be for the police to show that the application has been denied before it may peacefully disperse the rally.

The Rights to Due Process, Peaceful Assembly, Free Speech and Press: Declaration of a State of National Emergency (PP 1017)

This case concerns the rights to due process, peaceful assembly, free speech and free press. On February 24, 2006, as the nation celebrated the 20th anniversary of the Edsa People Power I, President Arroyo issued Presidential Proclamation No. 1017 (PP 1017) declaring a state of national emergency. She said there was a conspiracy between communists and rightist forces to bring down her government with the help of some media people. On the same day, she also issued General Order No. 5 (GO No. 5) directing the PNP and the AFP "to immediately carry out the necessary and appropriate actions and measures to suppress and prevent acts of terrorism and lawless violence."

Urban poor women challenge president Arroyo's calibrated preemptive response policy.

Immediately after the issuance of PP 1017 and GO No. 5, the government cancelled all anniversary celebration activities and revoked all permits to hold rallies given by local governments. Rallies without permits were violently dispersed by the police and some rallyists were arrested. The offices of the pro-opposition *Daily Tribune* were raided. The PNP warned it would take over any media organization that would not follow "standards set by the government during the state of national emergency." The police also arrested without warrants certain anti-government personalities.

A week after the declaration, the President lifted PP 1017 saying that the emergency has ended. By that time, however, many oppositionists, concerned citizens, and groups (e.g., KMU, IBP, and ALGs) had already filed petitions with the Supreme Court challenging the constitutionality of PP 1017 and GO No. 5. They claimed, among others, that PP 1017 and GO No. 5 violate the freedom of the press, of speech and of assembly.

The Supreme Court declared that PP 1017 did not give the police the power to conduct illegal searches or illegal arrests, or to violate the rights of citizens, and that the police committed illegal acts in the implementation of PP 1017.

The Court examined GO No. 5's directive for the PNP and the AFP "to immediately carry out the necessary and appropriate actions and measures to suppress and prevent acts of terrorism and lawless violence." The Court said that GO No. 5 is vague since there is no law defining "acts of terrorism". The absence of a definition may result in abuse and oppression on the part of the police and the military. Without such a definition, under GO No. 5, it is the President alone who decides what are acts of terrorism. This can lead to indiscriminate arrests without warrants, breaking into offices and residences, taking over media groups, and the prohibition and dispersal of anti-government rallies, all in the name of GO No. 5. These acts violate the right to due process under the Constitution. Hence, the Court declared that the "acts of terrorism" part of GO No. 5 is unconstitutional.

The Court also said that the dispersal of rallies and arrest of rallyists were illegal since they were just exercising the right to peaceful assembly. The wholesale cancellation of rally permits, without any showing by the government of a clear and present danger to the state, was a violation of the right to peaceful assembly. The raid on the *Daily Tribune* offices was plain censorship and violated freedom of the press. The Court emphasized that freedom to comment on public affairs is essential to the vitality of a representative democracy.

Conclusion

The Supreme Court has clearly taken a stand in favor of upholding the fundamental rights of citizens in these decisions, while also upholding governmental acts which it has determined to be reasonable. These rulings by the Court are now considered part of the law of the land. By coming up with these decisions, the Court has certainly strengthened the promotion and protection of human rights in the country. At the same time, the Court has also given notice to those in power that it will not allow the government to act in ways which violate rights guaranteed by the Constitution and by international human rights instruments. This reassuring position of the Supreme Court on the side of human rights is especially significant since grave political and economic problems and national emergencies continue to affect the country. For it is in difficult and trying times like these that fundamental human rights are most endangered and need the most protection, especially from the acts of those in power.

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