

Truth Commission authors should go back to law school

Written by ANTONIO C. CAMPO
Saturday, 06 August 2011 11:50



THE lawyer or lawyers of President Benigno Aquino III who drafted the first executive order creating the Truth Commission to investigate anomalies of the administration of former President and current Pampanga Rep. Gloria Macapagal-Arroyo should go back to law school and specialize on constitutional law, especially on the meaning, application and history of the Equal Protection Clause.

A day after President Aquino's State of the Nation Address, the Supreme Court of the Philippines ruled with finality that Executive Order No. 1 was unconstitutional because it violated the Equal Protection Clause as embodied under Article III, Section 1 of the Bill of Rights of the Constitution of the Republic of the Philippines.

Article III, Section 1 of the Bill of Rights provides as follows:

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. (Underscoring mine.)

History of the Equal Protection Clause

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The Equal Protection Clause embodied under Section 1 of the Bill of Rights of the present Philippine Constitution was a carbon copy of the Equal Protection Clause which is part of the Fourteenth Amendment of the U.S. Constitution enacted in 1868 which provides as follows: “no state shall deny to any person within its jurisdiction the equal protection of the laws.”

The Equal Protection Clause can be seen as an attempt to secure the promise of the United States’ professed commitment to the proposition that “all men are created equal” by empowering the judiciary to enforce that principle against the states. (From Wikipedia.)

Originally, women in the United States were excluded under the Bill of Rights.

However, in 1971, the U.S. Supreme Court’s decision of Reed vs. Reed, the Equal Protection Clause of the Fourteenth Amendment was extended to women.

Most of the decisions decided by the U.S. Supreme Court involved discrimination against blacks.

Philippine jurisprudence on Equal Protection Clause

The Equal Protection Clause is designed to prevent any person or class from being singled out as a special subject or discriminating legislation.

It relates to individuals and its protective scope goes further, for it forbids the legislature to select any person, natural or artificial, and impose discrimination not cast upon others similarly situated.

Aliens are protected under the Equal Protection Clause though certain important areas of investment may be withheld from aliens in the national interest although it is a settled rule that

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arbitrarily forbidden by aliens to engage in ordinary kinds of business to earn their living are violative of the Equal Protection Clause. (Constitution of the Republic of the Philippines, Annotated by Jose N. Nolleto.)

The current Philippine Constitution contains provisions limited some industries to be enjoyed only by Filipino citizens excluding aliens as not violative of the Equal Protection Clause as follows:

1. The exploration, development and utilization of natural resources are reserved to Filipino citizens or corporations or associations at least sixty per centum of whose capital is owned by Filipino citizens.
2. No franchise, certificate or any other form of authorization for the operation of a public utility shall be granted only to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by Filipino citizens.
3. Educational institution, other than those established by religious groups and mission boards, shall be owned solely by Filipino citizens or corporations or associations at least sixty per centum of the capital of which is owned by Filipino citizens.
4. Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by Filipino citizens shall be allowed to engage in the advertising industry.

Author's comment

In their haste to hold the corrupt accountable, the lawyers of President Aquino who drafted Executive Order No. 1 creating the Truth Commission ignored the Supreme Court ruling in the case of Philippine Ports Authority vs. Commission on Audit, GR No. 160396, Sept. 6, 2005.

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In this case, the Supreme Court ruled that the principle of equal protection is not a barren concept that may be casually swept aside.

While it does not demand absolute equality, it requires that all persons similarly situated be treated alike, both as the privileges conferred and liabilities enforced.

Equal protection and security shall be accorded every person under identical or analogous circumstances. (SUMMA, Syllabi of the decisions and opinions of Chief Justice Artemio V. Panganiban.)

Executive Order No. 1 erroneously singled out the administration of President Arroyo without including past administrations, in violation of the Equal Protection Clause.

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