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SENATE
P. S. Resolution No. **281**

Introduced by Senator M.A. Madrigal

RESOLUTION

DIRECTING THE COMMITTEES ON CONSTITUTIONAL AMENDMENTS, REVISION OF CODES AND LAWS AND ON NATIONAL DEFENSE AND SECURITY TO INVESTIGATE THE RECENT EXTENSION OF THE TERM OF AFP CHIEF OF STAFF HERMOGENES ESPERON, JR. GIVEN BY PRES. GLORIA MACAPAGAL-ARROYO WHICH MAY BE IN VIOLATION OF THE CONSTITUTION, WITH THE END VIEW OF ENACTING REMEDIAL LEGISLATION

WHEREAS during her term, President Gloria Macapagal-Arroyo has appointed eight AFP Chiefs of Staff, the terms of three of whom were extended for unclear if not questionable considerations;

WHEREAS President Macapagal-Arroyo recently announced in Davos, Switzerland the extension of the term of incumbent AFP Chief of Staff Hermogenes Esperon, Jr. for another three months supposedly to "sustain the government's ongoing campaign to finally end rebel insurgency in the country";

WHEREAS Gen. Esperon, the longest serving Chief of Staff under the Arroyo administration, is set to retire on 9 February 2008 upon reaching the compulsory retirement age of 56 years old;

WHEREAS Section 5, Article 16 of the Constitution expressly provides that:

"(5) Laws on retirement of military officers shall not allow extension of their service.

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(7) The tour of duty of the Chief of Staff of the armed forces shall not exceed three years. However, in times of war or other national emergency declared by the Congress, the President may extend such tour of duty."

WHEREAS Presidential Decree 1638, as amended by Presidential Decree 1650, regarding the compulsory retirement age for military personnel, provides that:

"Sec. 5(a). Upon attaining fifty-six (56) years of age or upon accumulation of thirty (30) years of satisfactory active service, whichever is later, an officer or enlisted man shall be compulsorily retired: provided, that such officer or enlisted man who shall have attained fifty-six (56) years of age with at least twenty (20) years of active service shall be allowed to complete thirty (30) years of service but not beyond his sixtieth (60) birthday; Provided, however, That such military personnel compulsorily retiring by age shall have at least twenty (20) years of active service; Provided, further, That a statutory position shall be deferred until completion of the tour of duty prescribed by law; and, Provided, finally, That the active service of military personnel may be extended by the President, if in his opinion, such continued military service is for the good of the service."

WHEREAS the aforementioned Marcos decrees, while still law, are limited by the provisions of Republic Act 8186 which provides that:

"Sec. 3. Maximum Tenure in Grade. The maximum tenure of officers in the grades of Colonel/Captain (PN) and General/Flag Officer in the AFP are hereby prescribed as follows:

GRADE	MAXIMUM TENURE IN GRADE
General/Admiral (0-10)	three (3) years
Lieutenant General/Vice Admiral (0-9)	three (3) years
Major General/Rear Admiral (0-8)	three (3) years
Brigadier General/Commodore (0-7)	five (5) years
Colonel/Captain (PN) (0-6)	ten (10) years

Unless earlier separated, retired or promoted to the next higher grade or occupying a position calling for the ranks of higher grade in the AFP Table of Organizations, Colonels/Captain (PN) and Generals/Flag Officers shall be compulsorily retired upon the attainment of the maximum tenure in grade herein prescribed, or upon reaching the age of compulsory retirement whichever is earlier, except for the Chief of Staff, AFP, who may be allowed by the President of the Philippines to finish tenure in position as provided for in the Constitution: Provided, That officers already holding these ranks upon the approval of this Act may be allowed one (1) year more of tenure in grade before the maximum tenure provided in this section shall be applied to them, unless they shall have already reached the compulsory retirement age under existing laws, in which case the compulsory retirement age shall prevail.

Sec. 4. Maximum Tenure in Position. □ Officers holding the following key positions are hereby limited to a maximum tenure in position of three (3) years unless otherwise earlier relieved by competent authority or compulsorily retired under existing laws:

Chief of Staff, AFP xxx;"

WHEREAS it is clear from the Constitution that the term of service of all military personnel, Chief of Staff or otherwise, may not be extended even by law - a prohibition which the framers of the Constitution clearly intended to stymie any repeat of President Ferdinand Marcos' practice of extending the term of his loyal AFP Chiefs of Staff, as in the case of Gen. Fabian Ver during the twilight of the martial law regime;

WHEREAS the only exception provided in the Constitution - when there is a war or other national emergency declared by Congress - does not exist at present and the extension of Gen. Esperon's term would in fact exacerbate the very conditions that have fomented demoralization in military ranks and undermined efforts to professionalize the military;

WHEREAS the act of Gloria Macapagal-Arroyo in extending the tour of duty of the incumbent AFP Chief of Staff may be unconstitutional despite the provision of laws allowing such;

WHEREAS there is a need to review these existing laws to determine their compliance with the prohibition in the Constitution against the extension of service of AFP officers and personnel;

WHEREAS the determination of unconstitutionality of these laws or any of their provisions would certainly require amendments to these laws;

WHEREAS the amendments, if any, would be timely especially in view of allegations that the extension of Gen. Esperon is more of a political reward for his blind loyalty and not due to the exigencies of the counter-insurgency drive which military intelligence documents in fact have revealed may only be curbed by 2018;

WHEREAS the track record of Gen. Esperon, who was directly implicated in the "Hello Garci" scandal involving cheating in the 2004 elections that secured a dubious mandate for Mrs. Arroyo and in equally serious charges involving the extrajudicial killings and enforced disappearances of over 800 activists, raises critical issues about his qualification and eligibility for any official position;

WHEREAS it is likewise as important to inquire if the extension of Gen. Esperon's term does indeed serve the "national interest" or is it another example of how political patronage and the abuse of the presidential prerogative are allowed to prevail over the standards of merit and professionalism in appointments to government positions;

WHEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED, to direct the Committees on Constitutional Amendments, Revision of Codes and Laws and on National Defense and Security to investigate the recent extension of the term of AFP Chief of Staff Hermogenes Esperon, Jr. given by Pres. Gloria Macapagal-Arroyo which

may be in violation of the Constitution, with the end view of enacting remedial legislation.

Adopted,


M. A. MADRIGAL