

FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)

OFFICE OF THE SECRETARY

8 NOV 13 12:07

SENATE

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COMMITTEE REPORT NO. 229

Submitted by the Committee on Foreign Relations on NOV 13 2008

Re: The Reported Undeclared Cash Carried by Retired PNP Police Director Eliseo De La Paz, Which Was Beyond Russia's Custom's Limit for Departing Passengers.

Recommending the Adoption of the Recommendations and their Immediate Implementation.

Sponsor: Senator Miriam Defensor Santiago.

MR. PRESIDENT:

The Committee on Foreign Relations which conducted a hearing on:

“The Reported Undeclared Cash Carried by Retired PNP Police Director Eliseo De La Paz, Which Was Beyond Russia's Custom's Limit for Departing Passengers”

has the honor to submit the report of its investigation, in aid of legislation, to the Senate recommending the adoption of its recommendations and their immediate implementation.

A. FINDINGS

1. Jurisdiction Upheld, Reportedly Appealed to the Supreme Court

Before the start of the hearing on Thursday, 23 October 2008, the Committee Chair received a “Challenge to Jurisdiction with Motion to Quash

Subpoenae” from retired PNP Director Eliseo dela Paz and spouse Maria Fe dela Paz, thru counsel. The Committee, which at the start of the inquiry, consisted of Sen. Miriam Defensor Santiago, chair; Sen. Mar Roxas, vice-chair; and Sen. Miguel Zubiri, member; unanimously decided to overrule the objection and to deny the motion, under the Rules of Procedure Governing Inquiries In Aid of Legislation, Section 3. They were later joined by Sen. Aquilino Pimentel and Sen. Francis Pangilinan.

At the start of the hearing, all witnesses testifying as to the facts were placed under oath. The Chair found it unnecessary to place under oath the resource persons testifying as to the law.

It appears that none of the wives who attended the Interpol conference and who claimed they did so on their own personal funds, appeared at the hearing. However, the Chair declined to cite them for contempt, on humane considerations, considering that holding them in detention might affect their families, particularly the children.

It was established that the Office of the Sergeant-at-Arms duly served the subpoena on the couple. Hence, the Committee found Dela Paz in contempt. The Committee ordered the Sergeant-at-Arms to arrest and detain Dela Paz in the Senate premises or any other suitable place, until he agrees to produce the required documents or to be sworn, or testify, or otherwise purges himself of this contempt.

However, although the Chair signed the arrest warrant, the Senate OIC, Sen. Pia Cayetano, preferred to wait for the Senate President’s arrival from

abroad. Parenthetically, the Rules of Procedure, Section 18, provides: “The Committee, by a vote of a majority of all its members, may punish for contempt any witness before it who disobeys any order of the Committee or refuses to be sworn or to testify, or to answer the proper question of the Committee”

Reportedly, the Senate Secretariat interpreted this section to mean a majority of all the committee members. This is wrong and violates the rule of statutory construction that the law should be interpreted so as to accomplish its purpose. Under this interpretation, if a witness who has been served with a subpoena refuses to appear, that witness cannot be punished for contempt unless a majority of all the committee members so vote.

This means that, since under present practice, the majority of committee members do not even bother to attend the committee hearings, the committee is impotent to punish a witness who has been cited for contempt. That would be absurd, which is prohibited by the rules of statutory construction.

Accordingly, the undersigned Committee Chair shall, when session opens, file a motion to amend the Rules of Procedure so as to clarify that the committee may punish for contempt by a vote of a majority of all its members who are present.

2. The Whole Philippine Delegation Violated the Travel Ban

Administrative Order No. 103 issued in 2004 by President Arroyo states in effect: “All national government agencies . . . under the executive department. . . are hereby ordered to adopt the following austerity measures: (a)

Suspension of the following: (1) All foreign travels, except for (1) ministerial meetings, and (2) scholarship/training that are grant funded or undertaken at no cost to the government.”

Subsequently, Executive Order No. 459 issued in 2005 concerning authority to travel abroad, states: “Section 3. Administrative Order No. 103, dated August 31, 2004 directing the continued adoption of austerity measures in the government shall remain in full force and effect.”

Further, PNP Circular No. 2002-017 on the subject of foreign travel, issued in 2002, provides in V. General Guidelines (g): “All travels abroad . . . shall not involve any government or PNP funds, whatsoever.”

3. The Claim by PNP Comptroller Dela Paz that He was Carrying Contingency Funds Has no Basis in Law.

Under Executive Order No. 298 issued 2004, travel expenses are defined in Section 1 as “the amount authorized to cover hotel/lodging rate, meals and incidental expenses.” *Black’s Law Dictionary* defines “incidental” as “subordinate to something of greater importance; having a minor role.”

While the authorized travel expenses amounted to some ₱2.3 million, the alleged “contingency fund” amounted to some ₱6.9 million. Thus, the contingency fund carried by Dela Paz could not possibly be placed in the category of “incidental expenses.”

At the hearing, both the COA Chair Reynaldo A. Villar and DBM Secretary Rolando G. Andaya testified that the budget does not provide for any so-called “contingency fund” for travel.

4. PNP Delegation Violated the Law on Allowable Travel Expenses

Executive Order No. 298 provides: “Allowable travel expenses. Government personnel who travel abroad shall be entitled to the Daily Subsistence Allowance (DSA) as provided under the United Nations Development Programme (UNDP) Index, which can be secured from the Department of Foreign Affairs.” The UNDP Index provides for DFA (also known as per diem) for St. Petersburg is \$229, equivalent to some ₱11,450.

By comparison, the per diem of the PNP delegation amounted to some ₱21,418 – or almost double the amount allowed by law.

Further, there appears to have been a violation of the following COA circulars: No. 90-345 issued in 1990 on official travel abroad of government personnel under the category of conference; No. 96-004 issued in 1996 on the new rates of allowance for foreign travels of government personnel; No. 96-257 issued in 1996, on selective preaudit on government transactions, more specifically on the grant and liquidation of cash advances; and No. 90-331 issued in 1990, on the granting, utilization, and liquidation of cash advances.

5. The Dela Paz Claim of a “Contingency Fund” Contradicts the Law

Executive Order No. 298 provides: “Subject to the approval of the President, claims for reimbursement of actual travel expenses in excess of the DSA authorized herein may be allowed upon certification by the head of agency as absolutely necessary in the performance of assignment and presentation of bills and receipts.”

The law in effect, provides that the Philippine delegate abroad should first spend his own money in case of a contingency, and then present a claim for reimbursement that should be approved by the President.

The claim of a so-called “contingency fund” is contrary to the reimbursement system provided by law.

6. The PNP Violated the Law by Sending Delegates who are About to Retire

Republic Act No. 9498, aka General Appropriations Act, provides certain restrictions on the use of government funds. In the General Provisions, under Expenditures, the following is a restriction: “Provided, that no personnel or employee, including uniformed personnel of the DILG and DND, will be sent to . . . conference . . . when they are due to retire within one year after the said foreign travel.”

At the hearing, all the PNP officials, except one, said that they are more or less 55 years old. Since retirement age is 56 years old, many of them are due to retire within one year.

Further, Napolcom Memorandum Circular No. 95-025 concerning official foreign travel provides under Procedural Guidelines: “4(b) Priority shall be given to all those who are 45 years old and below.” Further, it also provides in 4(c): “Qualified candidates who do not have previous training shall be given priority.”

7. Dela Paz Being Absent, He Was Unable to Explain What Was His Travel Itinerary Which According to Media, Included a Trip From Moscow to Warsaw, Poland

PNP Circular No. 2002-017 also provides in V. General Guidelines (i):

“A prepared itinerary of travel must be included in the application for travel authority together with all the requirements submitted for the purpose of securing a Foreign Travel Authority.”

8. Dela Paz Violated Banko Sentral Regulations

BSP Circular No. 308 issued 2001; MB Resolution No. 1779 issued 2001, as amended by BSP Circular No. 57 issued 2006; and MB Resolution No. 1588 issued 2005, all require “a person who is bringing into or out of the Philippines foreign currency in excess of ₱10,000 or its equivalent,” to furnish the Monetary Board with a statement in writing disclosing the source and purpose for carrying the subject amount of money.

R.A. No. 7653, aka the New Central Bank Act, Section 36, imposes a penalty of: “A fine of not less than ₱50,000 nor more than ₱200,000, or by imprisonment of not less than two (2) years or more than ten (10) years, or both, at the discretion of the Court.”

According to media reports, Customs Deputy Collector Tess Roque assigned to NAIA said no such declaration was filed at the airport customs office.

B. RECOMMENDATIONS

1. Criminal Prosecution

Copies of this Report should be given to the Ombudsman and to the Secretary of Justice, for preliminary investigation of the persons with apparent criminal liability, as indicated in the findings, on the basis of the official list of members of the Philippine Interpol delegation, attached to this report as Annex "A".

It appears that some or all of them might be criminally liable under the following laws: Penal Code, for malversation under Article 217; technical malversation of public funds under Article 220; R.A. No. 3019, aka Anti-Graft and Corrupt Practices Act, Section 3 para. (c); R.A. No. 9160, as amended, aka Anti-Money Laundering Act of 2001; and the New Central Bank Act, Section 36.

2. Such Preliminary Investigation Should Include the DILG Secretary

Executive Order No. 459 provides that "all other government officials and employees seeking authority to travel abroad from their respective heads of agencies For the purpose of this paragraph heads of agencies refer to the Department Secretaries, or their equivalents."

Under the doctrine in administrative law that liability follows duty, the DILG Secretary should be held liable for violating the travel ban under Administrative Order No. 103 issued 2004.

3. The Preliminary Investigation Should also Include Police Director General Jesus Verzosa


Under Executive Order No. 298, Section 3: "Travels of officials and employees of National Government Agencies for less than thirty (30) days, and payment of travel expenses therefor shall be approved by the head of office ..."

At the hearing, the PNP chief admitted that he was informed of a so-called contingency fund in the amount of some ₱7 million, but all he did was to order an investigation, after the event.

4. Pending Supreme Court Appeal, Dela Paz Should Remain in Senate Custody

On the day of the hearing, counsel for Dela Paz said that as advised by this Committee Chair, he would appeal the Committee ruling citing his client for contempt, before the Supreme Court. Even so, unless the Supreme Court orders otherwise, Dela Paz should remain in detention under Senate custody, until he purges himself of the contempt.


MIRIAM DEFENSOR SANTIAGO
Chair


MARA A. ROXAS
Vice-Chair

Members:

Concur on Recommendation # 1 only

Edg. I. Angara
EDGARDA I. ANGARA

Concur on Recommendation 1 only

Ramon B. Revilla Jr.
RAMON "BONG" B. REVILLA JR.

JOKER P. ARROYO

Juan Miguel F. Zubiri
JUAN MIGUEL F. ZUBIRI *I concur except for Recommendation # 2+3.*

JUAN PONCE ENRILE

Rodolfo G. Blazon
RODOLFO G. BLAZON

Richard J. Gordon
RICHARD J. GORDON *concur on recommendation only*

LOREN B. LEGARDA

GREGORIO "GRINGO" B. HONASAN II

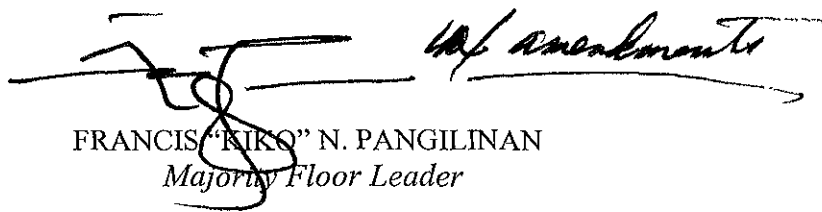
M.A. MADRIGAL

Manuel "Lito" M. Lapid
MANUEL "LITO" M. LAPID

ANTONIO "SONNY" F. TRILLANES III

Ex-Officio Members:

JINGGOY EJERCITO ESTRADA
President Pro-Tempore



FRANCIS "KIKO" N. PANGILINAN
Majority Floor Leader



AQUILINO O. PIMENTEL JR.
Minority Floor Leader

HON. MANNY VILLAR
President, Senate of the Philippines



22 September 2008

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I have the honor to inform you that the following officials will participate to the 77th INTERPOL General Assembly Session to be held on 07 – 10 October 2008 in Saint Petersburg, Russia will be composed of the following officials:

USEC ROLANDO C. GARCIA Executive Director, Philippine Center on Transnational Crime Head, INTERPOL National Central Bureau Manila Secretariat	-	Head of delegation
HON. MARCELINO C. LIBANAN Commissioner Bureau of Immigration	-	Member
HON. NESTOR M. MANTARING Director National Bureau of Investigation	-	Member
POLICE DEPUTY DIRECTOR GENERAL EMMANUEL R. CARTA Deputy Chief for Operations Philippine National Police	-	Member
POLICE DEPUTY DIRECTOR GENERAL ISMAEL R. RAFANAN Chief Directorial Staff Philippine National Police	-	Member
POLICE DIRECTOR ROMEO T. RICARDO Director for Plans Philippine National Police	-	Member
POLICE DIRECTOR SILVERIO D. ALARCIO, JR. Director for Operations Philippine National Police	-	Member
POLICE DIRECTOR SILVERIO B. DORIA Director for Human Resources and Doctrine Development Philippine National Police	-	Member
POLICE DIRECTOR ELISEIO D. DELA PAZ Director for Comptrollership Philippine National Police	-	Member

MR. RONALD K. NOBLE
Secretary General
International Criminal Police Organization
Lyon, France

POLICE CHIEF SUPERINTENDENT JAIME S. CARINGAL Regional Director Police Regional Office 9	-	Member
ATTY. REYNALDO ESMERALDA Deputy Director National Bureau of Investigation	-	Member
ATTY. CLARO C. DE CASTRO Chief, INTERPOL National Bureau of Investigation	-	Member
MR. ARHEL DALUMPINES Head Agent Chief, Special Task Force National Bureau of Investigation	-	Member
ATTY. JOSYLI A TABAJONDA Prosecutor Department of Justice	-	Member
ATTY. NORMAN G. TANSINCO Chief of Staff Office of the Commissioner Bureau of Immigration	-	Member
ATTY. FLORO C. BALATO, JR. Deputy Chief of Staff Office of the Commissioner Bureau of Immigration	-	Member
MR. NIXON DIZON Consultant Philippine Center on Transnational Crime	-	Member
POLICE SUPERINTENDENT ELMER R. PELOBELLO Aldo-de-Camp/Secretariat Philippine National Police	-	Member
MRS. CYNTHIA VERSOZA Office of the Deputy Chief for Administration Philippine National Police	-	Member
MR. ROMEO EVANGELISTA National Bureau of Investigation	-	Member


 FRANKLIN M. EBDALIN
 Acting Secretary of Foreign Affairs