Republic of the Philippines
Supreme Court
Manila

EN BANC

ARVIN R. BALAG, Petitioner, - versus - **SENATE OF THE PHILIPPINES, SENATE COMMITTEE ON PUBLIC ORDER AND DANGEROUS DRUGS, SENATE COMMITTEE ON JUSTICE AND HUMAN RIGHTS, SENATE COMMITTEE ON CONSTITUTIONAL AMENDMENTS AND REVISION OF CODES AND MGEN. JOSE V. BALAJADIA, JR. (RET.) IN HIS CAPACITY AS SENATE SERGEANT-AT-ARMS,** Respondents.	**G.R. No. 234608** Present: CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, PERALTA, BERSAMIN, DEL CASTILLO, PERLAS-BERNABE, LEONEN, JARDELEZA, CAGUIOA, MARTIRES,* TIJAM, REYES, JR. and GESMUNDO, *JJ.* Promulgated: July 3, 2018

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DECISION

GESMUNDO, *J.*:

This is a petition for *certiorari* and prohibition with prayer for issuance of a temporary restraining order *(TRO)* and/or writ of preliminary injunction seeking to annul, set aside and enjoin the implementation of Senate P.S. Resolution *(SR)* No. 504[1] and the October 18, 2017 Order[2] *(Contempt Order)*

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* No part.

[1] *Rollo*, pp. 53-54; Entitled Condemning in the Strongest Sense the Death of Freshman Law Student Horacio Tomas Castillo III and Directing the Appropriate Senate Committees to Conduct an Investigation, in Aid of Legislation, to Hold Accountable Those Responsible for this Senseless Act.

[2] Id. at 55.

of the Senate Committee on Public Order and Dangerous Drugs citing Arvin Balag *(petitioner)* in contempt.

The Antecedents

On September 17, 2017, Horacio Tomas T. Castillo III *(Horacio III),*[3] a first year law student of the University of Sto. Tomas *(UST),* died allegedly due to hazing conducted by the Aegis Juris Fraternity *(AJ Fraternity)* of the same university.

On September 19, 2017, SR No. 504,[4] was filed by Senator Juan Miguel Zubiri *(Senator Zubiri)*[5] condemning the death of Horacio III and directing the appropriate Senate Committee to conduct an investigation, in aid of legislation, to hold those responsible accountable.

On September 20, 2017, SR No. 510, entitled: "A Resolution Directing the Appropriate Senate Committees to Conduct An Inquiry, In Aid of Legislation, into the Recent Death of Horacio Tomas Castillo III Allegedly Due to Hazing-Related Activities" was filed by Senator Paolo Benigno Aquino IV.[6]

On the same day, the Senate Committee on Public Order and Dangerous Drugs chaired by Senator Panfilo Lacson *(Senator Lacson)* together with the Committees on Justice and Human Rights and Constitutional Amendment and Revision of Codes, invited petitioner and several other persons to the Joint Public Hearing on September 25, 2017 to discuss and deliberate the following: Senate Bill Nos. 27,[7] 199,[8] 223,[9] 1161,[10] 1591,[11] and SR No. 504.

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[3] Id.; referred to as Horatio "ATIO" Castillo III in the Order.
[4] Id. at 53; supra note 1.
[5] Id. at 774.
[6] Id.
[7] **Senate Bill No. 27.** An Act Amending Republic Act No. 8049 entitled An Act Regulating Hazing and Other Forms of Initiation Rites in Fraternities, Sororities and other Organizations and Providing Penalties Therefor, and for other Purposes.
[8] **Senate Bill No. 199.** An Act Prohibiting Hazing and Regulating other Forms of Initiation Rites of Fraternities, Sororities, and other Organizations and Providing Penalties for Violation thereof, Repealing for the Purpose Republic Act No. 8049.
[9] **Senate Bill No. 223.** An Act Amending Section 4 of Republic Act No. 8049, otherwise Known as An Act Regulating Hazing and other Forms of Initiation Rites in Fraternities, Sororities and other Organizations and Providing Penalties Therefor.
[10] **Senate Bill No. 1161.** An Act Prohibiting Hazing and Regulating other Forms of Initiation Rites of Fraternities, Sororities, and other Organizations, and Providing Penalties for Violation thereof, Repealing for the Purpose Republic Act No. 8049.
[11] **Senate Bill No. 1591.** An Act Prohibiting Hazing and Regulating other Forms of Initiation Rites of Fraternities, Sororities, and other Organizations, and Providing Penalties for Violation thereof, Repealing for the Purpose Republic Act No. 8049.

Petitioner, however, did not attend the hearing scheduled on September 25, 2017. Nevertheless, John Paul Solano, a member of AJ Fraternity, Atty. Nilo T. Divina, Dean of UST Institute of Civil Law and Arthur Capili, UST Faculty Secretary, attended the hearing and were questioned by the senate committee members.

On the same date, Spouses Carmina T. Castillo and Horacio M. Castillo, Jr. *(Spouses Castillo),* parents of Horacio III, filed a Criminal Complaint[12] for Murder and violation of Section 4 of Republic Act *(R.A.)* No. 8049,[13] before the Department of Justice *(DOJ)* against several members of the AJ Fraternity, including petitioner. On October 9, 2017, Spouses Castillo filed a Supplemental Complaint-Affidavit[14] before the DOJ citing the relevant transcripts of stenographic notes during the September 25, 2017 Senate Hearing.

On October 11, 2017, Senator Lacson as Chairman of Senate Committee on Public Order and Dangerous Drugs, and as approved by Senate President Aquilino Pimentel III, issued a Subpoena *Ad Testificandum*[15] addressed to petitioner directing him to appear before the committee and to testify as to the subject matter under inquiry.[16] Another Subpoena *Ad Testificandum*[17] was issued on October 17, 2017, which was received by petitioner on the same day, requiring him to attend the legislative hearing on October 18, 2017.

On said date, petitioner attended the senate hearing. In the course of the proceedings, at around 11:29 in the morning, Senator Grace Poe *(Senator Poe)* asked petitioner if he was the president of AJ Fraternity but he refused to answer the question and invoked his right against self-incrimination. Senator Poe repeated the question but he still refused to answer. Senator Lacson then reminded him to answer the question because it was a very simple question, otherwise, he could be cited in contempt. Senator Poe retorted that petitioner might still be clinging to the supposed "Code of Silence" in his alleged text messages to his fraternity. She manifested that petitioner's signature appeared on the application for recognition of the AJ Fraternity and on the organizational sheet, indicating that he was the president. Petitioner, again, invoked his right against self-incrimination. Senator Poe then moved to cite him in contempt, which was seconded by Senators Joel Villanueva *(Senator Villanueva)* and Zubiri. Senator Lacson ruled that the motion was properly seconded, hence, the Senate Sergeant-at-arms was ordered to place petitioner

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[12] *Rollo*, pp. 56-71.
[13] Otherwise Known as An Act Regulating Hazing and Other Forms of Initiation Rites in Fraternities, Sororities, and other Organizations and Providing Penalties Therefor.
[14] Id. at 90-105.
[15] Id. at 1091-1092.
[16] Id.
[17] Id. at 532-533.

in detention after the committee hearing. Allegedly, Senator Lacson threatened to order the detention of petitioner in Pasay City Jail under the custody of the Senate Sergeant-at-arms and told him not to be evasive because he would be merely affirming school records.

A few minutes later, at around 12:09 in the afternoon, Senators Lacson and Poe gave petitioner another chance to purge himself of the contempt charge. Again, he was asked the same question twice and each time he refused to answer.[18]

Thereafter, around 1:19 in the afternoon, Senator Villanueva inquired from petitioner whether he knew whose decision it was to bring Horacio III to the Chinese General Hospital instead of the UST Hospital. Petitioner apologized for his earlier statement and moved for the lifting of his contempt. He admitted that he was a member of the AJ Fraternity but he was not aware as to who its president was because, at that time, he was enrolled in another school.

Senator Villanueva repeated his question to petitioner but the latter, again, invoked his right against self-incrimination. Petitioner reiterated his plea that the contempt order be lifted because he had already answered the question regarding his membership in the AJ Fraternity. Senator Villanueva replied that petitioner's contempt would remain. Senator Lacson added that he had numerous opportunities to answer the questions of the committee but he refused to do so. Thus, petitioner was placed under the custody of the Senate Sergeant-at-arms. The Contempt Order reads:

> RE: PRIVILEGE SPEECH OF SEN. JUAN MIGUEL ZUBIRI ON THE DEATH OF HORATIO "ATIO" CASTILLO III DUE TO HAZING DELIVERED ON 20 SEPTEMBER 2017;
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> PS RES. NO. 504: RESOLUTION CONDEMNING IN THE STRONGEST SENSE THE DEATH OF FRESHMAN LAW STUDENT HORATIO TOMAS CASTILLO III AND DIRECTING THE APPROPRIATE SENATE COMMITTEES TO CONDUCT AN INVESTIGATION, IN AID OF LEGISLATION, TO HOLD ACCOUNTABLE THOSE RESPONSIBLE FOR THIS SENSELESS ACT (SEN. ZUBIRI); AND
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> SENATE BILLS NOS. 27, 199, 223, 1161, AND 1591.
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> For testifying falsely and evasively before the Committee on [October 18, 2017] and thereby delaying, impeding and obstructing the inquiry into the death of Horacio "Atio" Castillo III. Thereupon the motion

[18] Id. at 775.

of Senator Grace Poe and seconded by Senator Joel Villanueva and Senator Juan Miguel Zubiri, the Committee hereby cites MR. ARVIN BALAG in contempt and ordered arrested and detained at the Office of the Sergeant-at-Arms until such time that he gives his true testimony, or otherwise purges himself of that contempt.

The Sergeant-at-Arms is hereby directed to carry out and implement this Order and make a return hereof within twenty-four (24) hours from its enforcement.

SO ORDERED.[19]

Hence, this petition.

ISSUE

WHETHER RESPONDENT SENATE COMMITTEES ACTED WITH GRAVE ABUSE OF DISCRETION IN CONDUCTING THE LEGISLATIVE INQUIRY AND CITING PETITIONER IN CONTEMPT.

Petitioner chiefly argues that the legislative inquiry conducted by respondent committees was not in aid of legislation; rather, it was in aid of prosecution. He posits that the purpose of SR No. 504 was to hold accountable those responsible for the senseless act of killing Horacio III, and not to aid legislation. Petitioner underscores that the transcripts during the September 25, 2017 committee hearing were used in the criminal complaint filed against him, which bolsters that the said hearings were in aid of prosecution. He insists that the senate hearings would violate his right to due process and would pre-empt the findings of the DOJ with respect to the criminal complaint filed against him.

Petitioner also asserts that he properly invoked his right against self-incrimination as the questions propounded by Senator Poe regarding the officers, particularly the presidency of the AJ Fraternity, were incriminating because the answer thereto involves an element of the crime of hazing. Despite the questions being incriminating, he, nonetheless, answered them by admitting that he was a member of the AJ Fraternity but he did not know of its current president because he transferred to another school. He adds that his right to equal protection of laws was violated because the other resource persons who refused to answer the questions of the Senate committees were not cited in contempt.

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[19] Supra note 2.

Finally, petitioner prays for the issuance of TRO and/or writ of preliminary injunction because the Senate illegally enforced and executed SR No. 504 and the Contempt Order, which caused him grave and irreparable injury as he was deprived of his liberty without due process of law. He contends that respondents did not exercise their power of contempt judiciously and with restraint.

In their Comment,[20] respondents, through the Office of the Senate Legal Counsel, countered that the purpose of the hearing was to re-examine R.A. No. 8049; that several documents showed that the legislative hearing referred to Senate Bill Nos. 27, 199, 223, 1161, and 1591; that the statement of the senators during the hearing demonstrated that the legislative inquiry was conducted in aid of legislation; and that the Senate Rules of Procedure Governing Inquiries in Aid of Legislation *(Senate Rules)* were duly published.

Respondents emphasized that petitioner was first asked on October 18, 2017, around 11:29 in the morning, whether he was the president of the AJ Fraternity, based on school records, and he denied it; he was asked again at 12:09 in the afternoon whether he was the president of the AJ Fraternity but he still refused to answer the question; at 1:19 in the afternoon, he admitted that he was a member of the fraternity but still he refused to say whether or not he was the president, only saying that he is already studying in another school. On November 6, 2017, at the resumption of the hearing, petitioner was still unresponsive. According to respondents, these acts were contemptuous and were valid reasons to cite petitioner in contempt.

Respondents highlighted that there were numerous documents showing that petitioner was the president of the AJ Fraternity but he continually refused to answer. They added that petitioner cannot purge himself of contempt by continually lying.

Further, respondents underscored that the question propounded to petitioner was not incriminating because an admission that he was an officer of the AJ Fraternity would not automatically make him liable under R.A. No. 8049. They emphasized that the Senate respected petitioner's right to due process because the hearing was conducted in aid of legislation; that the senators explained why he would be cited in contempt; that he was given several chances to properly purge himself from contempt; and that no incriminating question was asked. Respondents concluded that there was no violation of petitioner's right to equal protection of laws because the other

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[20] Id. at 772.

resource persons did not invoke their right against self-incrimination when asked if they were the officers of the AJ Fraternity.

Respondents likewise explained that the legislative inquiry in aid of legislation may still continue in spite of any pending criminal or administrative cases or investigation. They countered that the actions for *certiorari* and prohibition were not proper because there were existing remedies that petitioner could have availed of, particularly: a motion to reverse the contempt charge filed within 7 days under Section 18 of the Senate Rules; and a petition for *habeas corpus* as petitioner ultimately would seek for his release from detention.

Finally, respondents asserted that the recourse for the issuance of TRO and/or writ of preliminary injunction was not proper because petitioner was actually asking to be freed from detention, and this was contemplated under a *status quo ante order*. For invoking the wrong remedy, respondents concluded that a TRO and/or writ of preliminary injunction should not be issued.

In its Resolution[21] dated December 12, 2017, the Court ordered in the interim the immediate release of petitioner pending resolution of the instant petition.

In its Manifestation[22] dated February 20, 2018, respondents stated that on January 23, 2018, the Committees on Public Order and Dangerous Drugs and Justice and Human Rights jointly submitted Committee Report Nos. 232 and 233 recommending that Senate Bill No. 1662 be approved in substitution of Senate Bill Nos. 27, 199, 223, 1161, 1591, and 1609. The said committee reports were approved by the majority of their members.[23] On February 12, 2018, the Senate passed on 3rd reading Senate Bill No. 1662, entitled: An Act Amending Republic Act No. 8049 to Strengthen the Law on Hazing and Regulate Other Forms of Initiation Rites of Fraternities, Sororities, and Other Organizations, Providing Penalties Therefor, and for Other Purposes, with its short title as "Anti-Hazing Act of 2018."

The Court's Ruling

The petition is moot and academic.

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[21] *Rollo*, p. 1625.
[22] Id. at 1640.
[23] Id. at 1642.

The existence of an actual case or controversy is a necessary condition precedent to the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In the negative, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts.[24]

In this case, the Court finds that there is no more justiciable controversy. Petitioner essentially alleges that respondents unlawfully exercised their power of contempt and that his detention was invalid. As discussed earlier, in its resolution dated December 12, 2017, the Court ordered in the interim the immediate release of petitioner pending resolution of the instant petition. Thus, petitioner was no longer detained under the Senate's authority.

Then, on January 23, 2018, the Committees on Public Order and Dangerous Drugs and Justice and Human Rights jointly adopted Committee Report Nos. 232 and 233 and submitted the same to the Senate. Committee Report No. 232 referred to the findings of respondent committees in the inquiry conducted in aid of legislation; while Committee Report No. 233 referred to the recommendation that Senate Bill No. 1662 be approved in substitution of Senate Bill Nos. 27, 199, 223, 1161, 1591, and 1609. On February 12, 2018, the Senate passed on 3rd reading Senate Bill No. 1662.

Evidently, respondent committees have terminated their legislative inquiry upon the approval of Committee Report Nos. 232 and 233 by the majority of its members. The Senate even went further by approving on its 3rd reading the proposed bill, Senate Bill No. 1662, the result of the inquiry in aid of legislation. As the legislative inquiry ends, the basis for the detention of petitioner likewise ends.

Accordingly, there is no more justiciable controversy regarding respondents' exercise of their constitutional power to conduct inquiries in aid of legislation, their power of contempt, and the validity of petitioner's detention. Indeed, the petition has become moot and academic.

Nevertheless, there were occasions in the past when the Court passed upon issues although supervening events had rendered those petitions moot

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[24] *Lim Bio Hian v. Lim Eng Tian,* G.R. Nos. 195472 & 195568, January 8, 2018.

and academic. After all, the moot and academic principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will decide cases, otherwise moot and academic.[25] This Court may assume jurisdiction over a case that has been rendered moot and academic by supervening events when any of the following instances are present:

(1) Grave constitutional violations;
(2) Exceptional character of the case;
(3) Paramount public interest;
(4) The case presents an opportunity to guide the bench, the bar, and the public; or
(5) The case is capable of repetition yet evading review.[26]

In *David v. Arroyo*,[27] several petitions assailed the constitutionality of the declaration of a state of national emergency by then President Gloria Macapagal-Arroyo. During the pendency of the suits, the said declaration was lifted. However, the Court still decided the cases on the merits because the issues involved a grave violation of the Constitution and it affected public interest.

Similarly, in *Republic v. Principalia Management and Personnel Consultants, Inc.*,[28] the controversy therein was whether the Regional Trial Court *(RTC)* had jurisdiction over an injunction complaint filed against the Philippine Overseas Employment Administration *(POEA)* regarding the cancellation of the respondent's license. The respondent then argued that the case was already moot and academic because it had continuously renewed its license with the POEA. The Court ruled that although the case was moot and academic, it could still pass upon the main issue for the guidance of both bar and bench, and because the said issue was capable of repetition.

Recently, in *Regulus Development, Inc. v. Dela Cruz*,[29] the issue therein was moot and academic due to the redemption of the subject property by the respondent. However, the Court ruled that it may still entertain the jurisdictional issue of whether the RTC had equity jurisdiction in ordering the levy of the respondent's property since it posed a situation capable of repetition yet evading judicial review.

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[25] *Mattel, Inc. v. Francisco, et al.*, 582 Phil. 492, 501 (2008).
[26] Supra note 24.
[27] 522 Phil. 705 (2006).
[28] 768 Phil. 334 (2015).
[29] 779 Phil. 75 (2016).

In this case, the petition presents a critical and decisive issue that must be addressed by Court: what is the duration of the detention for a contempt ordered by the Senate?

This issue must be threshed out as the Senate's exercise of its power of contempt without a definite period is capable of repetition. Moreover, the indefinite detention of persons cited in contempt impairs their constitutional right to liberty. Thus, paramount public interest requires the Court to determine such issue to ensure that the constitutional rights of the persons appearing before a legislative inquiry of the Senate are protected.

The contempt order issued against petitioner simply stated that he would be arrested and detained until such time that he gives his true testimony, or otherwise purges himself of the contempt. It does not provide any definite and concrete period of detention. Neither does the Senate Rules specify a precise period of detention when a person is cited in contempt.

Thus, a review of the Constitution and relevant laws and jurisprudence must be conducted to determine whether there is a limitation to the period of detention when the Senate exercises its power of contempt during inquiries in aid of legislation.

Period of imprisonment for contempt during inquiries in aid of legislation

The contempt power of the legislature under our Constitution is sourced from the American system.[30] A study of foreign jurisprudence reveals that the Congress' inherent power of contempt must have a limitation. In the 1821 landmark case of *Anderson v. Dunn,*[31] the Supreme Court of the United States *(SCOTUS)* held that although the offense committed under the inherent power of contempt by Congress may be undefinable, it is justly contended that the punishment need not be indefinite. It held that as the legislative body ceases to exist from the moment of its adjournment or periodical dissolution, then it follows that imprisonment under the contempt power of Congress must terminate with adjournment.

As the US Congress was restricted of incarcerating an erring witnesses beyond their adjournment under its inherent power of contempt, it enacted a statutory law that would fix the period of imprisonment under legislative

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[30] See *Arnault v. Nazareno,* 87 Phil. 29 (1950).
[31] 19 U.S. 204 (1821).

contempt. Section 102 of the Revised Statutes, enacted on January 24, 1857, provided that the penalty of imprisonment for legislative contempt was a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisonment in a common jail for not less than one (1) month nor more than twelve (12) months.[32] The legislative contempt under the statutes must be initiated for criminal prosecution and it must heard before the courts in order to convict the contumacious witness.[33]

The case of *In re Chapman*[34] involved the constitutionality of the statutory power of contempt of the US Congress. There, the SCOTUS ruled that the said statute was valid because Congress, by enacting this law, simply sought to aid each of the Houses in the discharge of its constitutional functions.

Subsequently, in *Jurney v. MacCracken,*[35] the SCOTUS clarified that the power of either Houses of Congress to punish for contempt was not impaired by the enactment of the 1857 statute. The said law was enacted, not because the power of both Houses to punish for a past contempt was doubted, but because imprisonment limited to the duration of the session was not considered sufficiently drastic as a punishment for contumacious witnesses. The purpose of the statutory contempt was merely to supplement the inherent power of contempt by providing for additional punishment. On June 22, 1938, Section 102 of the Revised Statutes was codified in Section 192, Title II of the U.S. Code.[36]

In our jurisdiction, the period of the imprisonment for contempt by Congress was first discussed in *Lopez v. De Los Reyes*[37] *(Lopez).* In that case, on September 16, 1930, the petitioner therein was cited in contempt by the House of Representatives for physically attacking their member. However, the assault occurred during the Second Congress, which adjourned on November 8, 1929. The Court ruled therein that there was no valid exercise of the inherent power of contempt because the House of Representatives already adjourned when it declared the petitioner in contempt.

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[32] *In re Chapman*, 166 U.S. 661 (1897).
[33] *Watkins v. United States,* 354 U.S. 178 (1957).
[34] Supra note 32.
[35] 294 U.S. 125 (1935).
[36] 2 U.S. Code § 192 - Refusal of witness to testify or produce papers

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

[37] 55 Phil. 170 (1930).

It was held therein that imprisonment for a term not exceeding the session of the deliberative body in which the contempt occurred was the limit of the authority to deal directly by way of contempt, without criminal prosecution. Citing foreign jurisprudence, it was thoroughly discussed therein that the power of contempt was limited to imprisonment during the session of the legislative body affected by the contempt. The Court also discussed the nature of Congress' inherent power of contempt as follows:

> xxx **We have said that the power to find in contempt rests fundamentally on the power of self-preservation.** That is true even of contempt of court where the power to punish is exercised on the preservative and not on the vindictive principle. **Where more is desired, where punishment as such is to be imposed, a criminal prosecution must be brought, and in all fairness to the culprit, he must have thrown around him all the protections afforded by the Bill of Rights.** Proceeding a step further, it is evident that, while the legislative power is perpetual, and while one of the bodies composing the legislative power disappears only every three years, yet the sessions of that body mark new beginnings and abrupt endings, which must be respected.[38] (emphases supplied)

The Court ruled therein that if the House of Representatives desires to punish the person cited in contempt beyond its adjournment, then criminal prosecution must be brought. In that instance, the said person shall be given an opportunity to defend himself before the courts.

Then came *Arnault v. Nazareno*[39] *(Arnault),* where the Senate's power of contempt was discussed. In that case, the Court held that the Senate "is a continuing body and which does not cease to exist upon the periodical dissolution of Congress or of the House of Representatives. There is no limit as to time [with] the Senate's power to punish for contempt in cases where that power may constitutionally be exerted xxx"[40] It was ruled therein that had contempt been exercised by the House of Representatives, the contempt could be enforced until the final adjournment of the last session of the said Congress.[41]

Notably, *Arnault* gave a distinction between the Senate and the House of Representatives' power of contempt. In the former, since it is a continuing body, there is no time limit in the exercise of its power to punish for contempt; on the other hand, the House of Representatives, as it is not a continuing body, has a limit in the exercise of its power to punish for contempt, which is on the

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[38] Id. at 184.
[39] Supra note 30.
[40] Id. at 62.
[41] Id.

final adjournment of its last session. In the same case, the Court addressed the possibility that the Senate might detain a witness for life, to wit:

> As against the foregoing conclusion it is argued for the petitioner that the power may be abusively and oppressively exerted by the Senate which might keep the witness in prison for life. But we must assume that the Senate will not be disposed to exert the power beyond its proper bounds. And if, contrary to this assumption, proper limitations are disregarded, the portals of this Court are always open to those whose rights might thus be transgressed.[42]

Further, the Court refused to limit the period of imprisonment under the power of contempt of the Senate because "[l]egislative functions may be performed during recess by duly constituted committees charged with the duty of performing investigations or conducting hearings relative to any proposed legislation. To deny to such committees the power of *inquiry* with process to enforce it would be to defeat the very purpose for which that power is recognized in the legislative body as an essential and appropriate auxiliary to its legislative function. xxx."[43]

Later, in *Neri v. Senate*[44] *(Neri),* the Court clarified the nature of the Senate as continuing body:

> On the nature of the Senate as a "continuing body", this Court sees fit to issue a clarification. Certainly, there is no debate that the Senate as an institution is "continuing", as it is not dissolved as an entity with each national election or change in the composition of its members. However, in the conduct of its day-to-day business the Senate of each Congress acts separately and independently of the Senate of the Congress before it. The Rules of the Senate itself confirms this when it states:
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> RULE XLIV
> UNFINISHED BUSINESS
>
> SEC. 123. Unfinished business at the end of the session shall be taken up at the next session in the same status.
>
> All pending matters and proceedings shall terminate upon the expiration of one (1) Congress, but may be taken by the succeeding Congress as if present for the first time.
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> Undeniably from the foregoing, all pending matters and proceedings, i.e., unpassed bills and even legislative investigations, of the Senate of a particular Congress are considered terminated upon the expiration of that

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[42] Id. at 63.
[43] Supra note 30.
[44] 586 Phil. 135 (2008).

> Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, not in the same status, but as if presented for the first time. The logic and practicality of such a rule is readily apparent considering that the Senate of the succeeding Congress (which will typically have a different composition as that of the previous Congress) should not be bound by the acts and deliberations of the Senate of which they had no part. If the Senate is a continuing body even with respect to the conduct of its business, then pending matters will not be deemed terminated with the expiration of one Congress but will, as a matter of course, continue into the next Congress with the same status.[45]

Based on the above-pronouncement, the Senate is a continuing institution. However, in the conduct of its day-to-day business, the Senate of each Congress acts separately and independently of the Senate of the Congress before it. Due to the termination of the business of the Senate during the expiration of one (1) Congress, **all pending matters and proceedings, such as unpassed bills and even legislative investigations, of the Senate are considered terminated upon the expiration of that Congress** and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, not in the same status, but as if presented for the first time.

The termination of the Senate's business and proceedings after the expiration of Congress was utilized by the Court in ruling that the Senate needs to publish its rules for its legislative inquiries in each Congress. The pronouncement in *Neri* was reiterated in *Garcillano v. House of Representatives*[46] and *Romero II v. Estrada.*[47]

The period of detention under the Senate's inherent power of contempt is not indefinite.

The Court finds that there is a genuine necessity to place a limitation on the period of imprisonment that may be imposed by the Senate pursuant to its inherent power of contempt during inquiries in aid of legislation. **Section 21, Article VI of the Constitution states that Congress, in conducting inquiries in aid of legislation, must respect the rights of persons appearing in or affected therein.** Under *Arnault,* however, a witness or resource speaker cited in contempt by the Senate may be detained indefinitely due to its characteristic as a continuing body. The said witness may be detained for a day, a month, a year, or even for a lifetime depending on the desire of the perpetual Senate. Certainly, in that case, the rights of persons appearing before or affected by the legislative inquiry are in jeopardy. The

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[45] Id. at 196-197.
[46] 595 Phil. 775 (2008).
[47] 602 Phil. 312 (2009).

constitutional right to liberty that every citizen enjoys certainly cannot be respected when they are detained for an indefinite period of time without due process of law.

As discussed in *Lopez,* Congress' power of contempt rests solely upon the right of self-preservation and does not extend to the infliction of punishment as such. It is a means to an end and not the end itself.[48] Even *arguendo* that detention under the legislative's inherent power of contempt is not entirely punitive in character because it may be used by Congress only to secure information from a recalcitrant witness or to remove an obstruction, it is still a restriction to the liberty of the said witness. It is when the restrictions during detention are arbitrary and purposeless that courts will infer intent to punish. Courts will also infer intent to punish even if the restriction seems to be related rationally to the alternative purpose if the restriction appears excessive in relation to that purpose.[49] An indefinite and unspecified period of detention will amount to excessive restriction and will certainly violate any person's right to liberty.

Nevertheless, it is recognized that the Senate's inherent power of contempt is of utmost importance. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislations are intended to affect or change. Mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed through the power of contempt during legislative inquiry.[50] While there is a presumption of regularity that the Senate will not gravely abuse its power of contempt, there is still a lingering and unavoidable possibility of indefinite imprisonment of witnesses as long as there is no specific period of detention, which is certainly not contemplated and envisioned by the Constitution.

Thus, the Court must strike a balance between the interest of the Senate and the rights of persons cited in contempt during legislative inquiries. The balancing of interest requires that the Court take a conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation. These interests usually consist in the exercise by an individual of his basic freedoms on the one hand, and the government's promotion of fundamental public interest or policy objectives on the other.[51]

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[48] Supra note 37 at 184.
[49] *Alejano v. Cabuay,* 505 Phil. 298, 314 (2005).
[50] See *Arnault v. Nazareno,* supra note 30 at 45.
[51] *Secretary of Justice v. Hon. Lantion, et al.,* 397 Phil. 423, 437 (2000).

The Court finds that the period of imprisonment under the inherent power of contempt by the Senate during inquiries in aid of legislation should only last until the termination of the legislative inquiry under which the said power is invoked. In *Arnault,* it was stated that obedience to its process may be enforced by the Senate Committee if the subject of investigation before it was within the range of legitimate legislative inquiry and the proposed testimony called relates to that subject. [52] Accordingly, as long as there is a legitimate legislative inquiry, then the inherent power of contempt by the Senate may be properly exercised. Conversely, once the said legislative inquiry concludes, the exercise of the inherent power of contempt ceases and there is no more genuine necessity to penalize the detained witness.

Further, the Court rules that the legislative inquiry of the Senate terminates on two instances:

First, upon the approval or disapproval of the Committee Report. Sections 22 and 23 of Senate Rules state:

> Sec. 22. Report of Committee. **Within fifteen (15) days after the conclusion of the inquiry, the Committee shall meet to begin the consideration of its Report.**
>
> The Report shall be approved by a majority vote of all its members. Concurring and dissenting reports may likewise be made by the members who do not sign the majority report within seventy-two (72) hours from the approval of the report. The number of members who sign reports concurring in the conclusions of the Committee Report shall be taken into account in determining whether the Report has been approved by a majority of the members: Provided, That the vote of a member who submits both a concurring and dissenting opinion shall not be considered as part of the majority unless he expressly indicates his vote for the majority position.
>
> **The Report, together with any concurring and/or dissenting opinions, shall be filed with the Secretary of the Senate, who shall include the same in the next Order of Business.**
>
> Sec. 23. Action on Report. The Report, upon inclusion in the Order of Business, shall be referred to the Committee on Rules for assignment in the Calendar. (emphases supplied)

As gleaned above, the Senate Committee is required to issue a Committee Report after the conduct of the legislative inquiry. The importance of the Committee Report is highlighted in the Senate Rules because it mandates that the committee begin the consideration of its Report within

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[52] Supra note 30 at 45 & 48.

fifteen (15) days from the conclusion of the inquiry. The said Committee Report shall then be approved by a majority vote of all its members; otherwise, it is disapproved. The said Report shall be the subject matter of the next order of business, and it shall be acted upon by the Senate. Evidently, the Committee Report is the culmination of the legislative inquiry. Its approval or disapproval signifies the end of such legislative inquiry and it is now up to the Senate whether or not to act upon the said Committee Report in the succeeding order of business. At that point, the power of contempt simultaneously ceases and the detained witness should be released. As the legislative inquiry ends, the basis for the detention of the recalcitrant witness likewise ends.

Second, the legislative inquiry of the Senate also terminates upon the expiration of one (1) Congress. As stated in *Neri,* all pending matters and proceedings, such as unpassed bills and even legislative investigations, of the Senate are considered terminated upon the expiration of that Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, not in the same status, but as if presented for the first time. Again, while the Senate is a continuing institution, its proceedings are terminated upon the expiration of that Congress at the final adjournment of its last session. Hence, as the legislative inquiry ends upon that expiration, the imprisonment of the detained witnesses likewise ends.

In *Arnault,* there have been fears that placing a limitation on the period of imprisonment pursuant to the Senate's power of contempt would "deny to it an essential and appropriate means for its performance."[53] Also, in view of the limited period of imprisonment, "the Senate would have to resume the investigation at the next and succeeding sessions and repeat the contempt proceedings against the witness until the investigation is completed xxx."[54]

The Court is of the view that these fears are insufficient to permit an indefinite or an unspecified period of imprisonment under the Senate's inherent power of contempt. If Congress believes that there is a necessity to supplement its power of contempt by extending the period of imprisonment beyond the conduct of its legislative inquiry or beyond its final adjournment of the last session, then it can enact a law or amend the existing law that penalizes the refusal of a witness to testify or produce papers during inquiries in aid of legislation. The charge of contempt by Congress shall be tried before the courts, where the contumacious witness will be heard. More importantly, it shall indicate the exact penalty of the offense, which may include a fine and/or imprisonment, and the period of imprisonment shall be specified

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[53] Id. at 62.
[54] Id. at 63.

therein. This constitutes as the statutory power of contempt, which is different from the inherent power of contempt.

Congress' statutory power of contempt has been recognized in foreign jurisdictions as reflected in the cases of *In re Chapman* and *Jurney v. MacCracken.* Similarly, in this jurisdiction, the statutory power of contempt of Congress was also acknowledged in *Lopez.* It was stated therein that in cases that if Congress seeks to penalize a person cited in contempt beyond its adjournment, it must institute a criminal proceeding against him. When his case is before the courts, the culprit shall be afforded all the rights of the accused under the Constitution. He shall have an opportunity to defend himself before he can be convicted and penalized by the State.

Notably, there is an existing statutory provision under Article 150 of the Revised Penal Code, which penalizes the refusal of a witness to answer any legal inquiry before Congress, to wit:

> Art. 150. Disobedience to summons issued by the National Assembly, its committees or subcommittees, by the Constitutional Commissions, its committees, subcommittees or divisions. — The penalty of arresto mayor or a fine ranging from two hundred to one thousand pesos, or both such fine and imprisonment shall be imposed upon any person who, having been duly summoned to attend as a witness before the National Assembly, (Congress), its special or standing committees and subcommittees, the Constitutional Commissions and its committees, subcommittees, or divisions, or before any commission or committee chairman or member authorized to summon witnesses, **refuses, without legal excuse, to obey such summons, or being present before any such legislative or constitutional body or official, refuses to be sworn or placed under affirmation or to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions**. The same penalty shall be imposed upon any person who shall restrain another from attending as a witness, or who shall induce disobedience to a summon or refusal to be sworn by any such body or official. (emphasis and underscoring supplied)

Verily, the said law may be another recourse for the Senate to exercise its statutory power of contempt. The period of detention provided therein is definite and is not limited by the period of the legislative inquiry. Of course, the enactment of a new law or the amendment of the existing law to augment its power of contempt and to extend the period of imprisonment shall be in the sole discretion of Congress.

Moreover, the apprehension in *Arnault* – that the Senate will be prevented from effectively conducting legislative hearings during recess –

shall be duly addressed because it is expressly provided herein that the Senate may still exercise its power of contempt during legislative hearings while on recess provided that the period of imprisonment shall only last until the termination of the legislative inquiry, specifically, upon the approval or disapproval of the Committee Report. Thus, the Senate's inherent power of contempt is still potent and compelling even during its recess. At the same time, the rights of the persons appearing are respected because their detention shall not be indefinite.

In fine, the interests of the Senate and the witnesses appearing in its legislative inquiry are balanced. The Senate can continuously and effectively exercise its power of contempt during the legislative inquiry against recalcitrant witnesses, even during recess. Such power can be exercised by the Senate immediately when the witness performs a contemptuous act, subject to its own rules and the constitutional rights of the said witness.

In addition, if the Congress decides to extend the period of imprisonment for the contempt committed by a witness beyond the duration of the legislative inquiry, then it may file a criminal case under the existing statute or enact a new law to increase the definite period of imprisonment.

WHEREFORE, the petition is **DENIED** for being moot and academic. However, the period of imprisonment under the inherent power of contempt of the Senate during inquiries in aid of legislation should only last until the termination of the legislative inquiry.

The December 12, 2017 Resolution of the Court ordering the temporary release of Arvin R. Balag from detention is hereby declared **FINAL**.

SO ORDERED.

ALEXANDER G. GESMUNDO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

no part, related to one of the parties.

SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court