Chapter 22

KMU v. The Director General (NEDA):*
Validity of the Executive ID System

The Facts

President Gloria Macapagal-Arroyo issued Executive Order (EO) No. 420 on April 13, 2005, directing all government agencies and government-owned and -controlled corporations to adopt uniform data collection and format for their existing identification (ID) systems.

The Issues

The issues were as follows:

1. Whether EO 420 was a usurpation of legislative power by the President

2. Whether EO 420 infringed on the citizen's right to privacy

The Court's Ruling

First Issue:
Alleged Usurpation of Legislative Power

Prior to the issuance of EO 420, various government entities -- like the GSIS, SSS, Philhealth, Mayor's Office, LTO and PRC -- had already been recording data and issuing ID cards as part of their functions. The data they collected and recorded were, however, disparate; and the IDs they issued, dissimilar.

EO 420 directed all government entities "issuing ID cards to their members or constituents" to "adopt a unified multi-purpose ID system." It enumerated the purposes of the uniform data collection and format; namely, to reduce costs, achieve efficiency and reliability, ensure compatibility, and provide convenience to the people served by these entities.

Under the uniform ID system, the data to be collected and recorded would be limited to only 14 specific items: (1) name, (2) home address, (3) sex, (4) picture, (5) signature, (6) date of birth, (7) place of birth, (8) marital status, (9) names of parents, (10) height, (11) weight, (12) two index fingers and two thumbmarks, (13) any prominent distinguishing features like moles or others, and (14) Tax Identification Number.

Unifying the data collection and recording, as well as standardizing the ID formats, would admittedly achieve substantial benefits; specifically, savings in terms of procurement of equipment and supplies, compatibility in systems as to hardware and software, ease of verification and thus increased reliability of data, and user-friendliness of a single ID format for all government entities.

The Supreme Court found that the achievement of a unified ID system for all the entities concerned was purely an administrative matter that would not involve the exercise of legislative power. It pointed to Section 17 of Article VII of the 1987 Constitution, according to which the "President shall have control of all executive departments, bureaus and offices." The same section also mandated the Chief Executive to "ensure that the laws be faithfully executed." Certainly, under that constitutional power of control, the President could direct all government entities, in the exercise of their functions under existing laws, to adopt a uniform ID data collection and format to achieve savings, efficiency, reliability, compatibility, and

convenience to the public.

Of course, the President's power of control is limited to the executive branch of government and does not extend to the judiciary or to the independent constitutional commissions. Thus, EO 420 does not apply to the judiciary; or to the Comelec which, under existing laws, is also authorized to issue voter's ID cards. This fact only shows that EO 420 does not establish a national ID system, because legislation is needed to establish a single ID system that will be compulsory for all branches of government.

What will require legislation are three aspects of a government-maintained ID card system: *first*, when the implementation of that system requires a special appropriation, because there is none existing for the purpose; *second*, when the system is compulsory for all branches of government, including the independent constitutional commissions, as well as for all citizens whether or not they have any use for the ID card; *third*, when the system requires the collection and recording of personal data beyond those routinely or usually required for the purpose, such that the citizen's right to privacy would be infringed.

Second Issue:

The Right to Privacy

All these years, the GSIS, SSS, LTO, Philhealth and other government entities have been issuing ID cards in the performance of their governmental functions. There have been no complaints from citizens that these ID cards violate their right to privacy. Neither have there been complaints of abuse by government entities in the collection and recording of personal identification data.

In fact, petitioners in the present cases did not claim that the ID systems of

government entities prior to EO 420 violated their right to privacy. Thus, they had even less basis for complaining against a unified ID system under the executive order in question. The data collected and stored under EO 420 were to be limited to only 14 specific data, and the ID card itself would show only 8 of these.

The right to privacy does not bar the adoption of reasonable ID systems by government entities. With the exception of the eight specific data to be shown on an ID card, the personal data to be collected and recorded under EO 420 shall be treated as "strictly confidential" under Section 6(d) of the executive order. These data are to be considered not only strictly confidential, but also personal matters. As such, they shall be exempt or outside the coverage of the people's right to information, under Section 7 of Article III of the Constitution on matters of public concern. Being matters that are private and not of public concern, the data treated as "strictly confidential" under EO 420 cannot be released to the public or the press.

Compared with the personal medical data required for disclosure to the New York State in *Whalen* (cited in the Dissent), the 14 specific data required for disclosure to the Philippine government under EO 420 are far less sensitive and far less personal. They are, in fact, routine for ID systems, unlike the sensitive and potentially embarrassing medical records of patients taking prescription drugs. *Whalen*, therefore, carries persuasive force for upholding the constitutionality of EO 420 as non-violative of the right to privacy.

Indeed, compared with the disclosures of personal data that the U.S. Supreme Court upheld in *Whalen*, those required under EO 420 are far more benign. Hence, they cannot constitute any violation of the right to privacy or be used to embarrass or humiliate anyone.

Ople v. Torres was not the proper authority on which to base the argument that

EO 420 would violate the right to privacy. In that case the assailed executive issuance, broadly drawn and devoid of safeguards, was annulled solely on the ground that the subject matter required legislation.

EO 420 applies only to government entities that, pursuant to their regular functions under existing laws, already maintain ID systems and issue ID cards. It does not grant these entities any power that they do not already possess under existing laws.

Dissenting Opinion

In her Dissent, Justice Consuelo Ynares-Santiago, joined by Justice Adolfo S. Azcuna, said that EO 420 constituted a usurpation of legislative functions by the executive branch of government; infringed on the citizenry's right to privacy; and completely disregarded and violated the Decision of this Court in *Ople v. Torres*.

She said that Section 1 of Article VII of the Constitution, which respondents used as basis for the issuance of EO 420, merely declared that "the executive power shall be vested in the President of the Philippines." The provision did not in any way permit a delegation of legislative power.

Notwithstanding respondents' avowal that EO 420 was merely an internal regulation to promote efficiency in government operations and greater convenience for those transacting business with the government, the unrestricted and unrestrained impact of a unified multipurpose ID system divested itself of the pretensions of being an internal management issuance. As the term denoted, the multipurpose ID card system could be utilized in any and all conceivable situations involving governmental or even private transactions, as stated by the "Whereas" clause. The

scope of its usage was staggering and all-encompassing. With its ubiquitous application, its legal and practical repercussions would not be confined solely to the corridors of the executive departments, but would overflow even beyond.

EO 420 vis-à-vis AO 308

In *Ople v. Torres*, the Court struck down Administrative Order (AO) 308 for being unconstitutional. It rejected the argument that the Administrative Code of 1987 was merely being implemented by AO 308, which had established for the first time a National Computerized Identification Reference System. This system required a delicate adjustment of various contending state policies: the primacy of national security, the extent of privacy interest against dossier-gathering by the government, and the choice of policies, among others.

Justice Santiago, pointed out that, although AO 308 and EO 420 were couched differently, they were similar in their effects and intent. As all government instrumentalities were required to adopt the proposed ID system, its reach and extent became practically inescapable. In the words of *Ople v. Torres*, "no citizen will refuse to get this identification card for no one can avoid dealing with government. It is thus clear as daylight that without the ID, a citizen will have difficulty exercising his rights and enjoying his privileges."

Right to Privacy

The right to privacy is the inalienable right of an individual to be let alone. As a legal precept, it takes its bearing from common law, which recognizes a man's house as his castle -- impregnable, often even to its own officers engaged in the execution of its commands.

In *Griswold v. Connecticut*,[1] the U. S. Supreme Court laid down the constitutional foundations of the right to privacy. Recognizing the need to protect basic constitutional rights, the U.S. Court applied them against the states under the "Due Process" clause. It mandated a stricter scrutiny of laws interfering with "fundamental personal rights" than for those regulating economic relations.

In *Whalen v. Roe*,[2] the US Supreme Court upheld the constitutionality of a law requiring physicians to identify patients obtaining prescription drugs enumerated in the Controlled Substance Act of 1972 -- those with medical application, but with potential for abuse. The names and addresses of the patients were required to be recorded in a centralized computer file of New York State's Department of Health.

The law was found to have complied with certain safeguards to the right to privacy, as follows: (1) while a person's interest in avoiding disclosure of personal matters was an aspect of the right to privacy, the law did not pose any grievous threat of becoming violative of the Constitution; (2) the statute was necessary to assist in the enforcement of a law designed to minimize the misuse of dangerous drugs; (3) the patient-identification requirement was the product of an orderly and rational legislative decision made upon recommendation by a commission, which had conducted hearings on the matter; (4) the law had been narrowly drawn and contained several safeguards against indiscriminate disclosure; (5) it laid down the procedure for the gathering, storage, and retrieval of the information to be collected; (6) it enumerated who were authorized to access the data; and (7) it prohibited public disclosure of the data by imposing penalties for its violation.

Philippine jurisprudence on the right to privacy is at its infancy. With the exception of *Ople v. Torres*, the more notable case is *Morfe v. Mutuc* in which the Court first recognized the constitutional right to privacy as laid down in *Griswold v. Connecticut*.

Justice Santiago noted that, as computer technology and advanced information systems accelerated the erosion of personal privacy, the individual's ability to control the use of the information thus collected diminished. Aside from the chilling prospect that one's profile was being formed from the data gathered from various sources, there was also the unsettling thought that those data might be inaccurate or outdated or, worse, misused. There was therefore a pressing need to define the parameters for the use of electronic files or information, to be properly initiated by a legislative act and not formulated in a mere executive order as in the case of EO 420.

Even granting that EO 420 constituted a valid exercise of executive power, Justice Santiago opined that it must still be struck down. It had no specific and foolproof provision against the invasion of the right to privacy, particularly that which dealt with indiscriminate disclosure. Neither did the executive order contain any procedure for the gathering, storage, and retrieval of information; enumeration of the persons who would be authorized to access the data; or sanctions to be imposed against unauthorized use and disclosure. It failed to provide guidelines for handling subsequent and additional data that would be accumulated when the ID was used for future governmental and private transactions.

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[*] *Kilusang Mayo Uno v. The Director General* (NEDA); GR No. 167798; and *Bayan Muna v. Eduardo Ermita*, GR No. 167930, April 19, 2006, per Carpio, *J.* Concurred in by Chief Justice Panganiban; and Justices Quisumbing, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Callejo, Tinga, Chico-Nazario and Garcia. Justice Ynares-Santiago dissented and was joined by Justice Azcuna. Justice Puno was on leave.

[1] 381 U.S. 479, 14 L Ed. 2D 510 (1965).

[2] 429 U.S. 589, 51 L Ed. 2D 64 (1977).