

Republic of the Philippines  
**SUPREME COURT**  
Manila

EN BANC

**G.R. No. 88211 October 27, 1989**

**FERDINAND E. MARCOS, IMELDA R. MARCOS, FERDINAND R. MARCOS. JR., IRENE M. ARANETA, IMEE M. MANOTOC, TOMAS MANOTOC, GREGORIO ARANETA, PACIFICO E. MARCOS, NICANOR YÑIGUEZ and PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), represented by its President, CONRADO F. ESTRELLA, petitioners,**

vs.

**HONORABLE RAUL MANGLAPUS, CATALINO MACARAIG, SEDFREY ORDOÑEZ, MIRIAM DEFENSOR SANTIAGO, FIDEL RAMOS, RENATO DE VILLA, in their capacity as Secretary of Foreign Affairs, Executive Secretary, Secretary of Justice, Immigration Commissioner, Secretary of National Defense and Chief of Staff, respectively, respondents.**

R E S O L U T I O N

**EN BANC:**

In its decision dated September 15, 1989, the Court, by a vote of eight (8) to seven (7), dismissed the petition, after finding that the President did not act arbitrarily or with grave abuse of discretion in determining that the return of former President Marcos and his family at the present time and under present circumstances pose a threat to national interest and welfare and in prohibiting their return to the Philippines. On September 28, 1989, former President Marcos died in Honolulu, Hawaii. In a statement, President Aquino said:

In the interest of the safety of those who will take the death of Mr. Marcos in widely and passionately conflicting ways, and for the tranquility of the state and order of society, the remains of Ferdinand E. Marcos will not be allowed to be brought to our country until such time as the government, be it under this administration or the succeeding one, shall otherwise decide. [Motion for Reconsideration, p. 1; Rollo, p. 443.]

On October 2, 1989, a Motion for Reconsideration was filed by petitioners, raising the following major arguments:

1. to bar former President Marcos and his family from returning to the Philippines is to deny them not only the inherent right of citizens to return to their country of birth but

also the protection of the Constitution and all of the rights guaranteed to Filipinos under the Constitution;

2. the President has no power to bar a Filipino from his own country; if she has, she had exercised it arbitrarily; and

3. there is no basis for barring the return of the family of former President Marcos. Thus, petitioners prayed that the Court reconsider its decision, order respondents to issue the necessary travel documents to enable Mrs. Imelda R. Marcos, Ferdinand R. Marcos, Jr., Irene M. Araneta, Imee M. Manotoc, Tommy Manotoc and Gregorio Araneta to return to the Philippines, and enjoin respondents from implementing President Aquino's decision to bar the return of the remains of Mr. Marcos, and the other petitioners, to the Philippines.

Commenting on the motion for reconsideration, the Solicitor General argued that the motion for reconsideration is moot and academic as to the deceased Mr. Marcos. Moreover, he asserts that "the 'formal' rights being invoked by the Marcoses under the label 'right to return', including the label 'return of Marcos' remains, is in reality or substance a 'right' to destabilize the country, a 'right' to hide the Marcoses' incessant shadowy orchestrated efforts at destabilization." [Comment, p. 29.] Thus, he prays that the Motion for Reconsideration be denied for lack of merit.

We deny the motion for reconsideration.

1. It must be emphasized that as in all motions for reconsideration, the burden is upon the movants, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court.

2. After a thorough consideration of the matters raised in the motion for reconsideration, the Court is of the view that no compelling reasons have been established by petitioners to warrant a reconsideration of the Court's decision.

The death of Mr. Marcos, although it may be viewed as a supervening event, has not changed the factual scenario under which the Court's decision was rendered. The threats to the government, to which the return of the Marcoses has been viewed to provide a catalytic effect, have not been shown to have ceased. On the contrary, instead of erasing fears as to the destabilization that will be caused by the return of the Marcoses, Mrs. Marcos reinforced the basis for the decision to bar their return when she called President Aquino "illegal," claiming that it is Mr. Marcos, not Mrs. Aquino, who is the "legal" President of the Philippines, and declared that the matter "should be brought to all the courts of the world." [Comment, p. 1; *Philippine Star*, October 4, 1989.]

3. Contrary to petitioners' view, it cannot be denied that the President, upon whom executive power is vested, has unstated residual powers which are implied from the grant of executive power and which are necessary for her to comply with her duties under the Constitution. The powers of the President are not limited to what are expressly enumerated in the article on the Executive Department and in scattered

provisions of the Constitution. This is so, notwithstanding the avowed intent of the members of the Constitutional Commission of 1986 to limit the powers of the President as a reaction to the abuses under the regime of Mr. Marcos, for the result was a limitation of specific power of the President, particularly those relating to the commander-in-chief clause, but *not a diminution of the general grant of executive power*.

That the President has powers other than those expressly stated in the Constitution is nothing new. This is recognized under the U.S. Constitution from which we have patterned the distribution of governmental powers among three (3) separate branches.

Article II, [section] 1, provides that "The Executive Power shall be vested in a President of the United States of America." In Alexander Hamilton's widely accepted view, this statement cannot be read as mere shorthand for the specific executive authorizations that follow it in [sections] 2 and 3. Hamilton stressed the difference between the sweeping language of article II, section 1, and the conditional language of article I, [section] 1: "All legislative Powers *herein granted* shall be vested in a Congress of the United States . . ." Hamilton submitted that "[t]he [article III enumeration [in sections 2 and 3] ought therefore to be considered, as intended merely to specify the principal articles implied in the definition of execution power; leaving the rest to flow from the general grant of that power, interpreted in conformity with other parts of the Constitution...

In *Myers v. United States*, the Supreme Court — accepted Hamilton's proposition, concluding that the federal executive, unlike the Congress, could exercise power from sources not enumerated, so long as not forbidden by the constitutional text: the executive power was given in general terms, strengthened by specific terms where emphasis was regarded as appropriate, and was limited by direct expressions where limitation was needed. . ." The language of Chief Justice Taft in *Myers* makes clear that the constitutional concept of inherent power is not a synonym for power without limit; rather, the concept suggests only that not all powers granted in the Constitution are themselves exhausted by internal enumeration, so that, within a sphere properly regarded as one of "executive" power, authority is implied unless there or elsewhere expressly limited. [TRIBE, AMERICAN CONSTITUTIONAL LAW 158-159 (1978).]

And neither can we subscribe to the view that a recognition of the President's implied or residual powers is tantamount to setting the stage for another dictatorship. Despite petitioners' strained analogy, the residual powers of the President under the Constitution should not be confused with the power of the President under the 1973 Constitution to legislate pursuant to Amendment No. 6 which provides:

Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the *interim* Batasang Pambansa or the regular National Assembly fails or is

unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or letters of instruction, which shall form part of the law of the land,

There is no similarity between the residual powers of the President under the 1987 Constitution and the power of the President under the 1973 Constitution pursuant to Amendment No. 6. First of all, Amendment No. 6 refers to an express grant of power. It is not implied. Then, Amendment No. 6 refers to a grant to the President of the *specific power of legislation*.

4. Among the duties of the President under the Constitution, in compliance with his (or her) oath of office, is to protect and promote the interest and welfare of the people. Her decision to bar the return of the Marcoses and subsequently, the remains of Mr. Marcos at the present time and under present circumstances is in compliance with this bounden duty. In the absence of a clear showing that she had acted with arbitrariness or with grave abuse of discretion in arriving at this decision, the Court will not enjoin the implementation of this decision.

ACCORDINGLY, the Court resolved to DENY the Motion for Reconsideration for lack of merit."

### **Separate Opinions**

**CRUZ, J.**, dissenting:

Nothing important has happened to change my vote for granting the petition. The death of Marcos has not plunged the nation into paroxysms of grief as the so-called "loyalists" had hoped. By and large, it has been met with only passing interest if not outright indifference from the people. Clearly, the discredited dictator is in death no El Cid. Marcos dead is only an unpleasant memory, not a bolt of lightning to whip the blood.

This only shows that if he was at all a threat to the national security when he was already moribund that feeble threat has died with him. As the government stresses, he has been reduced to a non-person (which makes me wonder why it is still afraid of him). His cadaver is not even regarded as a symbol of this or that or whatever except by his fanatical followers. It is only a dead body waiting to be interred in this country.

This is a tempest in a teapot. We have more important things to do than debating over a corpse that deserves no kinder fate than dissolution and oblivion. I say let it be brought home and buried deep and let us be done with it forever.

**PARAS, J.**, dissenting on the Motion for Reconsideration:

I find no reason to deviate from the dissenting opinion I have already expressed.

Firstly, the former President, although already dead, is still entitled to certain rights. It is not correct to say that a dead man, since he is no longer a human being, has ceased to have rights. For instance, our Revised Penal Code prohibits the commission of libel against a deceased individual. And even if we were to assume the non-existence anymore of his human rights what about the human rights of his widow and the other members of his family?

Secondly, up to now, the alleged threats to national security have remained unproved and consequently, unpersuasive. Our Armed Forces can easily control any possible uprising or political and military destabilization. In fact, the converse appears to be nearer the truth, that is, if we do not allow the remains to come, more trouble may be expected.

Thirdly, reconciliation can proceed at a much faster pace if the petition for the return is granted. To refuse the request can mean a hardening of resistance against the well-intentioned aim of the administration. Upon the other hand, to grant the petition may well soften the hearts of the oppositionists; paving the way for a united citizenry.

Finally, the entire world will surely applaud our government's act of mercy. As Shakespeare once wrote "the quality of mercy is not strained." Surely, compassion is the better part of government. Remove mercy, and you remove the best reason against civil strife, which if not abated can turn our country into a mainstream of fiery dissent and in the end, as one great man has put it, the question will no longer be what is right, but what is left.

**PADILLA, J.**, dissenting:

The death of former President Ferdinand E. Marcos, which supervened after decision in this case had been rendered, was pre-empted and foreseen in my original dissenting opinion. There I said that the first cogent and decisive proposition in this case is that "Mr. Marcos is a *Filipino* and, as such, entitled to return to, die and *be buried* in this country." I have only to add a few statements to that dissenting opinion.

Respondents have succeeded in denying Mr. Marcos the first two (2) rights, i.e. to return to and die in this country, The remaining right of this Filipino that cries out for vindication at this late hour is the right to be buried in this country. Will the respondents be allowed to complete the circle of denying the constitutional and human right of Mr. Marcos to travel which, as stated in my dissenting opinion, includes the right to return to, die and be buried in this country? The answer should be in the negative if the Constitution is to still prevail; the answer should be in the negative if we are to avoid the completely indefensible act of denying a Filipino the last right to blend his mortal remains with a few square feet of earth in the treasured land of his birth.

Those who would deny this Filipino the only constitutional and human right that can be accorded him now say that the constitutional and human right to be buried in this

country would apply to any Filipino, except Mr. Marcos, because he was a dictator and he plundered the country. This is the most irrelevant argument that can be raised at this time. For, our democracy is built on the fundamental assumption (so we believe) that the Constitution and all its guarantees apply to *all* Filipinos, whether dictator or pauper, learned or ignorant, religious or agnostic as long as he is a Filipino.

It is said that to accord this Filipino the right to be buried in this country would pose a serious threat to national security and public safety. What threat? As pointed out in my dissenting opinion, the second cogent and decisive proposition in this case is that respondents have not presented any "hard evidence" (factual bases) or convincing proof of such threat. "All we have are general conclusions of national security and public safety' in avoidance of a specific, demandable and enforceable constitutional and basic human right to return." Recent events have, to my mind, served to confirm the validity of such dissenting statement.

If a live Marcos returning to this country did not pose a serious threat to national security, the situation cannot be any worse with a dead Marcos returning. For, a dead Marcos will return to be buried into mother earth, where there are no protests, "demos", or even dissents, where the rule that reigns, in the language of Mr. Justice Jackson in *Barnette* is the "unanimity of the graveyard."

It is said that, while a dead Marcos has been rendered impotent to threaten national security, his supporters would pose that threat to national security. This argument is untenable as it is without merit. As I see it, Marcos' supporters pose a *greater threat* to peace and order, with Marcos deprived of his right to burial in this country. On the other hand, if the remains of Mr. Marcos are brought to the country and allowed the burial to which he is constitutionally and humanly entitled, Marcos' supporters would be deprived of an otherwise potent argument—so conducive to mass protests and even violence—that their Idol has been cruelly denied the right to be buried in his homeland.

It is also said that Mr. Marcos, in cadaver form, has no constitutional or human rights, to speak of. This contention entirely begs the issue. In the first place, one cannot overlook that the right of Mr. Marcos, as a Filipino, to be buried in this country, is asserted not for the first time after his death. It was vigorously asserted long before his death. But, more importantly, the right of *every Filipino* to be buried in his country, is part of a *continuing right* that starts from birth and ends only on the day he is finally laid to rest in his country.

This dissenting opinion does not pretend to deny the Philippine government the right to lay down conditions for the burial of Mr. Marcos in this country, but I submit that these conditions must, as a fundamental postulate, recognize the right of the man, *as a Filipino*, to be buried in this country NOW.

The majority resolution, in effect, bans Mr. Marcos' burial in this country now. Without in any way affecting my respect and regard for my brethren and sisters in the majority, I am deeply concerned and greatly disturbed that, with their decision banning a dead Marcos from burial in this country, they have passed an opportunity to defuse a

constitutional crisis that, in my humble assessment, threatens to ignite an already divided nation, Regrettably, they have ignored the constitutional dimension of the problem rooted in the ageless and finest tradition of our people for respect and deference to the dead. What predictably follows will be a continuing strife, among our people, of unending hatred, recriminations and retaliations. God save this country!

My vote is for this Court to ORDER the respondents to allow the immediate return and burial in the Republic of the Philippines of former President Ferdinand E. Marcos, subject to such conditions as the Philippine government may impose in the interest of peace and order.

**SARMIENTO, J.,** Dissenting:

The case has curious trappings of a *deja vu*, the shoe being on the other foot, yet, as I stated before, I can not allow personal emotions to soften my "hardened impartiality" and deny, as a consequence, the rights of the ex-President's bereaved to bury his remains in his homeland, and for them to return from exile. As I had, then, voted to grant the petition, so do I vote to grant reconsideration.

I have gone to lengths to locate in the four comers of the Constitution, by direct grant or by implication, the President's supposed "residual" power to forbid citizens from entering the motherland reiterated in the resolution of the majority. I have found none. I am not agreed, that:

3. Contrary to petitioners view, it cannot be denied that the President, upon whom executive power is vested, has unstated residual powers which are implied from the grant of executive power and which are necessary for her to comply with her duties under the Constitution. The powers of the President are not limited to what are expressly enumerated in the article on the Executive Department and in scattered provisions of the Constitution. This, notwithstanding the avowed intent of the members of the Constitutional Commission of 1986 to limit the powers of the President as a reaction to the abuses under the regime of Mr. Marcos, for the result was a limitation of specific powers of the President, particularly those relating to the commander-in-chief clause, but not a diminution of the general grant of executive power.

It is a nice word game, but it is nothing else. For, if the Constitution has imposed limitations on specific powers of the President, it has, *a fortiori*, prescribed a diminution of executive power. The Charter says that the right may only be restricted by: (1) a court order; or (2) by fiat of law. Had the fundamental law intended a presidential imprimatur, it would have said so. It would have also completed the symmetry: judicial, congressional, and executive restraints on the right. No amount of presumed residual executive power can amend the Charter.

It is well to note that the Bill of Rights stands primarily, a limitation not only against legislative encroachments on individual liberties, but more so, against presidential

intrusions. And especially so, because the President is the caretaker of the military establishment that has, several times over, been unkind to part of the population it has also sworn to protect.

That "[t]he threats to the government, to which the return of the Marcoses has been viewed to provide a catalytic effect, have not been shown to have ceased" (Res., 3) is the realm of conjecture, speculation, and imagination. The military has shown no hard evidence that "the return of the Marcoses" would indeed interpose a threat to national security. And apparently, the majority itself is not convinced ("has been viewed...").

That Mrs. Marcos has referred to President Corazon Aquino as an illegitimate President, does not, so I submit, reinforce alleged fears of a massive destabilization awaiting the nation. The military has said over and over that Marcos followers are not capable of successful destabilization effort. And only this morning (October 27, 1989), media reported the assurances given to foreign investors by no less than the President, of the political and economic stability of the nation, as well as the Government's capability to quell forces that menace the gains of EDSA.

I have no eulogies to say on the passing of Mr. Marcos. My personal impressions, however, are beside the point. I reiterate that the President has no power to deny requests of Marcos relatives to bury Marcos in his homeland. As for the former, let them get their just deserts here too. And let the matter rest.

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