

**Jesus P. Disini vs. The Honorable Sandiganbayan, The Republic of the Philippines, as represented by the Presidential Commission on Good Government (PCGG)
G.R. No. 180564; 22 June 2010**

Facts: On 16 February 1989, the Republic of the Philippines (Republic) and Jesus P. Disini (Disini) entered into an Immunity Agreement (the Immunity Agreement) under which Disini undertook to testify for the Republic and provide its lawyers with the information, affidavits, and documents they needed in its case against Westinghouse Electric Corporation before the United States District Court of New Jersey and in the arbitration case that Westinghouse International Projects Company and others filed against the Republic before the International Chamber of Commerce Court of Arbitration. Disini worked for his second cousin, Herminio T. Disini (Herminio), as an executive in the latter's companies from 1971 to 1984. The Republic believed that the Westinghouse contract for the construction of the Bataan Nuclear Power Plant, brokered by one of Herminio's companies, had been attended by anomalies.

In the Immunity Agreement, the Republic guaranteed that, apart from the two Westinghouse cases, it would not compel Disini to testify in any other domestic or foreign proceeding brought by the Republic against Herminio.

Disini complied with his undertaking but 18 years later, upon the Republic's application, the Sandiganbayan issued a subpoena against Disini, commanding him to testify and produce documents before that court in an action that the Republic filed against Herminio. Disini moved to quash the subpoena, invoking the Immunity Agreement. The Sandiganbayan ignored the motion and issued a new subpoena directing him to testify before it.

Subsequently, the PCGG revoked and nullified the Immunity Agreement insofar as it prohibited the Republic from requiring Disini to testify against Herminio. Later on, the Sandiganbayan denied Disini's motion to quash the subpoena. Disini, thus, brought the matter to the Supreme Court.

The Republic maintained that the PCGG's power to grant immunity under Section 5 of Executive Order 14 covered only immunity from civil or criminal prosecution and did not cover immunity from providing evidence in court. The Republic argued that Disini's immunity from testifying against Herminio contravened the state's policy to recover ill-gotten wealth acquired under the regime of former President Marcos.

The Republic further argued that under the last sentence of paragraph 3 of the Immunity Agreement which reads: **"Nothing herein shall affect Jesus P. Disini's obligation to provide truthful information or testimony,"** Disini, despite the immunity given him against being compelled to testify in other cases, was to "provide truthful information or testimony" in such other cases.

For his part, Disini argued that the Republic, through the PCGG, was estopped from revoking the questioned immunity as it had made him believe that it had the authority to provide such guarantee. The Republic countered by invoking Section 15, Article XI of the 1987 Constitution which provides that "(t)he right of the State to recover properties unlawfully acquired by public officials or employees from them or from their nominees, or transferees, shall not be barred by prescription, laches or estoppel."

Issues (as defined by the Supreme Court): (1) Whether or not the PCGG acted within its authority when it revoked and nullified the Immunity Agreement; and (2) Whether or not the Sandiganbayan gravely abused its discretion when it denied Disini's motion to quash the subpoena.

Held: The language of Section 5, Executive Order 14 affords latitude to the PCGG in determining the extent of the criminal immunity it may grant. It has discretion to grant appropriate levels of criminal immunity depending on the situation of the witness and his relative importance to the prosecution of ill-gotten wealth cases. It can even agree, as in this case, to conditions expressed by the witness as sufficient to induce cooperation. Trusting in

the Government's honesty and fidelity, Disini agreed and fulfilled his part of the bargain. Surely, the principle of fair play, which is the essence of due process, should hold the Republic on to its promise.

If Disini refuses to testify in those other cases as ordered by Sandiganbayan, it was certain to result in prosecution for criminal contempt (a conduct directed against the authority and dignity of the court or a judge acting judicially; an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect), punishable by a fine or imprisonment or both. In criminal contempt, the proceedings are regarded as criminal and the rules of criminal procedure apply. The grant, therefore, of immunity to Disini against being compelled to testify was ultimately a grant of immunity from criminal prosecution, something that fell within the express coverage of the immunity given him.

The questioned immunity did not contravene the state's public policy respecting the recovery of illegally acquired wealth under the regime of former President Marcos. The authority that adopted such policy, former President Corazon C. Aquino, was the same authority that gave the PCGG the power to grant immunity to witnesses whom it might use to recover illegally acquired wealth during that regime. In the case of *Tanchanco vs. Sandiganbayan* (_____), the Court regarded as valid and binding on the government the immunity it gave former National Food Authority Administrator, Jesus Tanchanco, for all "culpable acts of his during his service in the Marcos government," which would include possible prosecution for any illegal wealth that he might himself have acquired during that service. The Court did not regard such immunity in contravention of the state policy on recovery of ill-gotten wealth under the auspices of the Marcos regime.

The last sentence in paragraph 3 of the Immunity Agreement that enjoined Disini to "provide truthful information or testimony," despite the guarantee not to be compelled to testify against Herminio, merely emphasized the fact that such concessions did not affect his obligation to "provide truthful information or testimony" in the two Westinghouse cases. The grant of immunity to Disini against being compelled to testify in "other cases" against Herminio was quite clear and did not need any interpretation.

The estoppel Disini invoked did not have the effect, if recognized, of denying the state its right to recover whatever ill-gotten wealth Herminio may have acquired under the Marcos regime. The action against Herminio could continue, hampered only by the exclusion of Disini's testimony. And there are other ways of proving the existence of ill-gotten wealth.

Although the government cannot be barred by estoppel based on unauthorized acts of public officers, such principle cannot apply to this case since PCGG acted within its authority when it provided Disini with a guarantee against having to testify in other cases.

A contract is the law between the parties; it cannot be withdrawn except by their mutual consent. This applies with more reason in this case where Disini already complied with the terms of the Immunity Agreement. To allow the Republic to revoke the Immunity Agreement at this late stage would run afoul of the rule that a party to a compromise cannot ask for a rescission after it had enjoyed its benefits.

The Court should not allow the Republic, to put it bluntly, to double cross Disini. The Immunity Agreement was the result of a long drawn out process of negotiations with each party trying to get the best concessions out of it. The Republic did not have to enter into that agreement; it was free not to. But when it did, it needed to fulfill its obligations honorably as Disini did. More than any one, the government should be fair.

PCGG's revocation of the questioned immunity and Sandiganbayan's denial of Disini's motion to quash the subpoena were both annulled.

Ponente: J. Roberto A. Abad