

## SECOND DIVISION

[G.R. No. 131719. May 25, 2004]

**THE EXECUTIVE SECRETARY, THE SECRETARY OF JUSTICE, THE SECRETARY OF LABOR AND EMPLOYMENT, AND THE SECRETARY OF FOREIGN AFFAIRS, OWWA ADMINISTRATOR, and POEA ADMINISTRATOR, *petitioners*, vs. THE HON. COURT OF APPEALS and ASIAN RECRUITMENT COUNCIL PHILIPPINE CHAPTER (ARCO-PHIL.), INC., representing its members: Worldcare Services Internationale, Inc., Steadfast International Recruitment Corporation, Dragon International Manpower Services Corporation, Verdant Manpower Mobilization Corporation, Brent Overseas Personnel, Inc., ARL Manpower Services, Inc., Dahzhen International Services, Inc., Interworld Placement Center, Inc., Lakas Tao Contract Services, Ltd. Co., and SSC Multiservices, *respondents*.**

### DECISION

**CALLEJO, SR., J.:**

In this petition for review on *certiorari*, the Executive Secretary of the President of the Philippines, the Secretary of Justice, the Secretary of Foreign Affairs, the Secretary of Labor and Employment, the POEA Administrator and the OWWA Administrator, through the Office of the Solicitor General, assail the Decision<sup>11</sup> of the Court of Appeals in CA-G.R. SP No. 38815 affirming the Order<sup>12</sup> of the Regional Trial Court of Quezon City dated August 21, 1995 in Civil Case No. Q-95-24401, granting the plea of the petitioners therein for a writ of preliminary injunction and of the writ of preliminary injunction issued by the trial court on August 24, 1995.

#### The Antecedents

Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, took effect on July 15, 1995. The Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipino Act of 1995 was, thereafter, published in the April 7, 1996 issue of the Manila Bulletin. However, even before the law took effect, the Asian Recruitment Council Philippine Chapter, Inc. (ARCO-Phil.) filed, on July 17, 1995, a petition for declaratory relief under Rule 63 of the Rules of

Court with the Regional Trial Court of Quezon City to declare as unconstitutional Section 2, paragraph (g), Section 6, paragraphs (a) to (j), (l) and (m), Section 7, paragraphs (a) and (b), and Sections 9 and 10 of the law, with a plea for the issuance of a temporary restraining order and/or writ of preliminary injunction enjoining the respondents therein from enforcing the assailed provisions of the law.

In a supplement to its petition, the ARCO-Phil. alleged that Rep. Act No. 8042 was self-executory and that no implementing rules were needed. It prayed that the court issue a temporary restraining order to enjoin the enforcement of Section 6, paragraphs (a) to (m) on illegal recruitment, Section 7 on penalties for illegal recruitment, and Section 9 on venue of criminal actions for illegal recruitments, *viz*:

Viewed in the light of the foregoing discussions, there appears to be urgent an imperative need for this Honorable Court to maintain the status quo by enjoining the implementation or effectivity of the questioned provisions of RA 8042, by way of a restraining order otherwise, the member recruitment agencies of the petitioner will suffer grave or irreparable damage or injury. With the effectivity of RA 8042, a great majority of the duly licensed recruitment agencies have stopped or suspended their operations for fear of being prosecuted under the provisions of a law that are unjust and unconstitutional. This Honorable Court may take judicial notice of the fact that processing of deployment papers of overseas workers for the past weeks have come to a standstill at the POEA and this has affected thousands of workers everyday just because of the enactment of RA 8042. Indeed, this has far reaching effects not only to survival of the overseas manpower supply industry and the active participating recruitment agencies, the country's economy which has survived mainly due to the dollar remittances of the overseas workers but more importantly, to the poor and the needy who are in dire need of income-generating jobs which can only be obtained from abroad. The loss or injury that the recruitment agencies will suffer will then be immeasurable and irreparable. As of now, even foreign employers have already reduced their manpower requirements from the Philippines due to their knowledge that RA 8042 prejudiced and adversely affected the local recruitment agencies. <sup>13</sup>

On August 1, 1995, the trial court issued a temporary restraining order effective for a period of only twenty (20) days therefrom.

After the petitioners filed their comment on the petition, the ARCO-Phil. filed an amended petition, the amendments consisting in the inclusion in the caption thereof eleven (11) other corporations which it alleged were its members and which it represented in the suit, and a plea for a temporary restraining order enjoining the respondents from enforcing Section 6 subsection (i), Section 6 subsection (k) and paragraphs 15 and 16 thereof, Section 8, Section 10, paragraphs 1 and 2, and Sections 11 and 40 of Rep. Act No. 8042.

The respondent ARCO-Phil. assailed Section 2(g) and (i), Section 6 subsection (a) to (m), Section 7(a) to (b), and Section 10 paragraphs (1) and (2), quoted as follows:

(g) THE STATE RECOGNIZES THAT THE ULTIMATE PROTECTION TO ALL MIGRANT WORKERS IS THE POSSESSION OF SKILLS. PURSUANT TO THIS AND AS SOON AS PRACTICABLE, THE GOVERNMENT SHALL DEPLOY AND/OR ALLOW THE DEPLOYMENT ONLY OF SKILLED FILIPINO WORKERS.<sup>141</sup>

Sec. 2 subsection (i, 2nd par.)

Nonetheless, the deployment of Filipino overseas workers, whether land-based or sea-based, by local service contractors and manning agents employing them shall be encourages (*sic*). Appropriate incentives may be extended to them.

...

## II. ILLEGAL RECRUITMENT

SEC. 6. Definition. – For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall, likewise, include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

- (a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;
- (b) To furnish or publish any false notice or information or document in relation to recruitment or employment;
- (c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;
- (d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

- (e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;
- (f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;
- (g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;
- (h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;
- (i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;
- (j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;
- (k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;
- (l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and
- (m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

...

SEC. 7. Penalties. –

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than two hundred thousand pesos (₱200,000.00) nor more than five hundred thousand pesos (₱500,000.00).

(b) The penalty of life imprisonment and a fine of not less than five hundred thousand pesos (₱500,000.00) nor more than one million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

Sec. 8.

*Prohibition on Officials and Employees.* – It shall be unlawful for any official or employee of the Department of Labor and Employment, the Philippine Overseas Employment Administration (POEA), or the Overseas Workers Welfare Administration (OWWA), or the Department of Foreign Affairs, or other government agencies involved in the implementation of this Act, or their relatives within the fourth civil degree of consanguinity or affinity, to engage, directly or indirectly, in the business of recruiting migrant workers as defined in this Act. The penalties provided in the immediate preceding paragraph shall be imposed upon them. (underscoring supplied)

...

Sec. 10, pars. 1 & 2.

*Money Claims.* – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for

overseas deployment including claims for actual, moral, exemplary and other forms of damages.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

...

SEC. 11. Mandatory Periods for Resolution of Illegal Recruitment Cases. – The preliminary investigations of cases under this Act shall be terminated within a period of thirty (30) calendar days from the date of their filing. Where the preliminary investigation is conducted by a prosecution officer and a *prima facie* case is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a *prima facie* case is found to exist, the corresponding information shall be filed by the proper prosecution officer within forty-eight (48) hours from the date of receipt of the records of the case.

The respondent averred that the aforequoted provisions of Rep. Act No. 8042 violate Section 1, Article III of the Constitution.<sup>[5]</sup> According to the respondent, Section 6(g) and (i) discriminated against unskilled workers and their families and, as such, violated the equal protection clause, as well as Article II, Section 12<sup>[6]</sup> and Article XV, Sections 1<sup>[7]</sup> and 3(3) of the Constitution.<sup>[8]</sup> As the law encouraged the deployment of skilled Filipino workers, only overseas skilled workers are granted rights. The respondent stressed that unskilled workers also have the right to seek employment abroad. According to the respondent, the right of unskilled workers to due process is violated because they are prevented from finding employment and earning a living abroad. It cannot be argued that skilled workers are immune from abuses by employers, while unskilled workers are merely prone to such abuses. It was pointed out that both skilled and unskilled workers are subjected to abuses by foreign employers. Furthermore, the prohibition of the deployment of unskilled workers abroad would only encourage fly-by-night illegal recruiters.

According to the respondent, the grant of incentives to service contractors and manning agencies to the exclusion of all other licensed and authorized recruiters is an invalid classification. Licensed and authorized recruiters are thus deprived of their right to property and due process and to the “equality of the person.” It is understandable for

the law to prohibit illegal recruiters, but to discriminate against licensed and registered recruiters is unconstitutional.

The respondent, likewise, alleged that Section 6, subsections (a) to (m) is unconstitutional because licensed and authorized recruitment agencies are placed on equal footing with illegal recruiters. It contended that while the Labor Code distinguished between recruiters who are holders of licenses and non-holders thereof in the imposition of penalties, Rep. Act No. 8042 does not make any distinction. The penalties in Section 7(a) and (b) being based on an invalid classification are, therefore, repugnant to the equal protection clause, besides being excessive; hence, such penalties are violative of Section 19(1), Article III of the Constitution.<sup>[9]</sup> It was also pointed out that the penalty for officers/officials/employees of recruitment agencies who are found guilty of economic sabotage or large-scale illegal recruitment under Rep. Act No. 8042 is life imprisonment. Since recruitment agencies usually operate with a manpower of more than three persons, such agencies are forced to shut down, lest their officers and/or employees be charged with large scale illegal recruitment or economic sabotage and sentenced to life imprisonment. Thus, the penalty imposed by law, being disproportionate to the prohibited acts, discourages the business of licensed and registered recruitment agencies.

The respondent also posited that Section 6(m) and paragraphs (15) and (16), Sections 8, 9 and 10, paragraph 2 of the law violate Section 22, Article III of the Constitution<sup>[10]</sup> prohibiting *ex-post facto* laws and bills of attainder. This is because the provisions presume that a licensed and registered recruitment agency is guilty of illegal recruitment involving economic sabotage, upon a finding that it committed any of the prohibited acts under the law. Furthermore, officials, employees and their relatives are presumed guilty of illegal recruitment involving economic sabotage upon such finding that they committed any of the said prohibited acts.

The respondent further argued that the 90-day period in Section 10, paragraph (1) within which a labor arbiter should decide a money claim is relatively short, and could deprive licensed and registered recruiters of their right to due process. The period within which the summons and the complaint would be served on foreign employees and, thereafter, the filing of the answer to the complaint would take more than 90 days. This would thereby shift on local licensed and authorized recruiters the burden of proving the defense of foreign employers. Furthermore, the respondent asserted, Section 10, paragraph 2 of the law, which provides for the joint and several liability of the officers and employees, is a bill of attainder and a violation of the right of the said corporate officers and employees to due process. Considering that such corporate officers and employees act with prior approval of the board of directors of such corporation, they should not be liable, jointly and severally, for such corporate acts.

The respondent asserted that the following provisions of the law are unconstitutional:

SEC. 9. Venue. – A criminal action arising from illegal recruitment as defined herein shall be filed with the Regional Trial Court of the province or city where the offense was committed or where the offended party actually resides at the time of the

commission of the offense: *Provided*, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts: *Provided, however*, That the aforestated provisions shall also apply to those criminal actions that have already been filed in court at the time of the effectivity of this Act.

...

SEC. 10. Money Claims. – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

Sec. 40.

The departments and agencies charged with carrying out the provisions of this Act shall, within ninety (90) days after the effectivity of this Act, formulate the necessary rules and regulations for its effective implementation.

According to the respondent, the said provisions violate Section 5(5), Article VIII of the Constitution<sup>111</sup> because they impair the power of the Supreme Court to promulgate rules of procedure.

In their answer to the petition, the petitioners alleged, *inter alia*, that (a) the respondent has no cause of action for a declaratory relief; (b) the petition was premature as the rules implementing Rep. Act No. 8042 not having been released as yet; (c) the assailed provisions do not violate any provisions of the Constitution; and, (d) the law was approved by Congress in the exercise of the police power of the State. In opposition to the respondent's plea for injunctive relief, the petitioners averred that:

As earlier shown, the amended petition for declaratory relief is devoid of merit for failure of petitioner to demonstrate convincingly that the assailed law is unconstitutional, apart from the defect and impropriety of the petition. One who attacks a statute, alleging unconstitutionality must prove its invalidity beyond reasonable doubt (*Caleon v. Agus Development Corporation*, 207 SCRA 748). All reasonable doubts should be resolved in favor of the constitutionality of a statute (*People v. Vera*, 65 Phil. 56). This presumption of constitutionality is based on the doctrine of separation of powers which enjoin upon each department a becoming respect for the acts of the other departments (*Garcia vs. Executive Secretary*, 204 SCRA 516 [1991]). Necessarily, the ancillary remedy of a temporary restraining order and/or a writ of preliminary injunction prayed for must fall. Besides, an act of

legislature approved by the executive is presumed to be within constitutional bounds (National Press Club v. Commission on Elections, 207 SCRA 1).<sup>121</sup>

After the respective counsels of the parties were heard on oral arguments, the trial court issued on August 21, 1995, an order granting the petitioner's plea for a writ of preliminary injunction upon a bond of ₱50,000. The petitioner posted the requisite bond and on August 24, 1995, the trial court issued a writ of preliminary injunction enjoining the enforcement of the following provisions of Rep. Act No. 8042 pending the termination of the proceedings:

... Section 2, subsections (g) and (i, 2nd par.); Section 6, subsections (a) to (m), and pars. 15 & 16; Section 7, subsections (a) & (b); Section 8; Section 9; Section 10; pars. 1 & 2; Section 11; and Section 40 of Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995. ...<sup>123</sup>

The petitioners filed a petition for *certiorari* with the Court of Appeals assailing the order and the writ of preliminary injunction issued by the trial court on the following grounds:

1. Respondent ARCO-PHIL. had utterly failed to show its clear right/s or that of its member-agencies to be protected by the injunctive relief and/or violation of said rights by the enforcement of the assailed sections of R.A. 8042;
2. Respondent Judge fixed a ₱50,000 injunction bond which is grossly inadequate to answer for the damage which petitioner-officials may sustain, should respondent ARCO-PHIL. be finally adjudged as not being entitled thereto.<sup>124</sup>

The petitioners asserted that the respondent is not the real party-in-interest as petitioner in the trial court. It is inconceivable how the respondent, a non-stock and non-profit corporation, could sustain direct injury as a result of the enforcement of the law. They argued that if, at all, any damage would result in the implementation of the law, it is the licensed and registered recruitment agencies and/or the unskilled Filipino migrant workers discriminated against who would sustain the said injury or damage, not the respondent. The respondent, as petitioner in the trial court, was burdened to adduce preponderant evidence of such irreparable injury, but failed to do so. The petitioners further insisted that the petition *a quo* was premature since the rules and regulations implementing the law had yet to be promulgated when such petition was filed. Finally, the petitioners averred that the respondent failed to establish the requisites for the issuance of a writ of preliminary injunction against the enforcement of the law and the rules and regulations issued implementing the same.

On December 5, 1997, the appellate court came out with a four-page decision dismissing the petition and affirming the assailed order and writ of preliminary injunction issued by the trial court. The appellate court, likewise, denied the petitioners' motion for reconsideration of the said decision.

The petitioners now come to this Court in a petition for review on *certiorari* on the following grounds:

1. Private respondent ARCO-PHIL. had utterly failed to show its clear right/s or that of its member-agencies to be protected by the injunctive relief and/or violation of said rights by the enforcement of the assailed sections of R.A. 8042;
2. The ₱50,000 injunction bond fixed by the court *a quo* and sustained by the Court of Appeals is grossly inadequate to answer for the damage which petitioners-officials may sustain, should private respondent ARCO-PHIL. be finally adjudged as not being entitled thereto.<sup>151</sup>

On February 16, 1998, this Court issued a temporary restraining order enjoining the respondents from enforcing the assailed order and writ of preliminary injunction.

### The Issues

The core issue in this case is whether or not the trial court committed grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the assailed order and the writ of preliminary injunction on a bond of only ₱50,000 and whether or not the appellate court erred in affirming the trial court's order and the writ of preliminary injunction issued by it.

The petitioners contend that the respondent has no *locus standi*. It is a non-stock, non-profit organization; hence, not the real party-in-interest as petitioner in the action. Although the respondent filed the petition in the Regional Trial Court in behalf of licensed and registered recruitment agencies, it failed to adduce in evidence a certified copy of its Articles of Incorporation and the resolutions of the said members authorizing it to represent the said agencies in the proceedings. Neither is the suit of the respondent a class suit so as to vest in it a personality to assail Rep. Act No. 8042; the respondent is service-oriented while the recruitment agencies it purports to represent are profit-oriented. The petitioners assert that the law is presumed constitutional and, as such, the respondent was burdened to make a case strong enough to overcome such presumption and establish a clear right to injunctive relief.

The petitioners bewail the ₱50,000 bond fixed by the trial court for the issuance of a writ of preliminary injunction and affirmed by the appellate court. They assert that the amount is grossly inadequate to answer for any damages that the general public may suffer by reason of the non-enforcement of the assailed provisions of the law. The trial court committed a grave abuse of its discretion in granting the respondent's plea for injunctive relief, and the appellate court erred in affirming the order and the writ of preliminary injunction issued by the trial court.

The respondent, for its part, asserts that it has duly established its *locus standi* and its right to injunctive relief as gleaned from its pleadings and the appendages

thereto. Under Section 5, Rule 58 of the Rules of Court, it was incumbent on the petitioners, as respondents in the RTC, to show cause why no injunction should issue. It avers that the injunction bond posted by the respondent was more than adequate to answer for any injury or damage the petitioners may suffer, if any, by reason of the writ of preliminary injunction issued by the RTC. In any event, the assailed provisions of Rep. Act No. 8042 exposed its members to the immediate and irreparable damage of being deprived of their right to a livelihood without due process, a property right protected under the Constitution.

The respondent contends that the commendable purpose of the law to eradicate illegal recruiters should not be done at the expense and to the prejudice of licensed and authorized recruitment agencies. The writ of preliminary injunction was necessitated by the great number of duly licensed recruitment agencies that had stopped or suspended their business operations for fear that their officers and employees would be indicted and prosecuted under the assailed oppressive penal provisions of the law, and meted excessive penalties. The respondent, likewise, urges that the Court should take judicial notice that the processing of deployment papers of overseas workers have come to a virtual standstill at the POEA.

### The Court's Ruling

The petition is meritorious.

*The Respondent Has Locus Standi  
To File the Petition in the RTC in  
Representation of the Eleven  
Licensed and Registered  
Recruitment Agencies Impleaded  
in the Amended Petition*

The modern view is that an association has standing to complain of injuries to its members. This view fuses the legal identity of an association with that of its members.<sup>[16]</sup> An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organization has standing to assert the concerns of its constituents.<sup>[17]</sup>

In *Telecommunications and Broadcast Attorneys of the Philippines v. Commission on Elections*,<sup>[18]</sup> we held that standing *jus tertii* would be recognized only if it can be shown that the party suing has some substantial relation to the third party, or that the right of the third party would be diluted unless the party in court is allowed to espouse the third party's constitutional claims.

In this case, the respondent filed the petition for declaratory relief under Rule 64 of the Rules of Court for and in behalf of its eleven (11) licensed and registered recruitment agencies which are its members, and which approved separate resolutions

expressly authorizing the respondent to file the said suit for and in their behalf. We note that, under its Articles of Incorporation, the respondent was organized for the purposes *inter alia* of promoting and supporting the growth and development of the manpower recruitment industry, both in the local and international levels; providing, creating and exploring employment opportunities for the exclusive benefit of its general membership; enhancing and promoting the general welfare and protection of Filipino workers; and, *to act as the representative of any individual, company, entity or association on matters related to the manpower recruitment industry, and to perform other acts and activities necessary to accomplish the purposes embodied therein.* The respondent is, thus, the appropriate party to assert the rights of its members, because it and its members are in every practical sense identical. The respondent asserts that the assailed provisions violate the constitutional rights of its members and the officers and employees thereof. The respondent is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances.<sup>[19]</sup>

However, the respondent has no *locus standi* to file the petition for and in behalf of unskilled workers. We note that it even failed to implead any unskilled workers in its petition. Furthermore, in failing to implead, as parties-petitioners, the eleven licensed and registered recruitment agencies it claimed to represent, the respondent failed to comply with Section 2 of Rule 63<sup>[20]</sup> of the Rules of Court. Nevertheless, since the eleven licensed and registered recruitment agencies for which the respondent filed the suit are specifically named in the petition, the amended petition is deemed amended to avoid multiplicity of suits.<sup>[21]</sup>

*The Assailed Order and Writ of  
Preliminary Injunction Is Mooted  
By Case Law*

The respondent justified its plea for injunctive relief on the allegation in its amended petition that its members are exposed to the immediate and irreparable danger of being deprived of their right to a livelihood and other constitutional rights without due process, on its claim that a great number of duly licensed recruitment agencies have stopped or suspended their operations for fear that (a) their officers and employees would be prosecuted under the unjust and unconstitutional penal provisions of Rep. Act No. 8042 and meted equally unjust and excessive penalties, including life imprisonment, for illegal recruitment and large scale illegal recruitment without regard to whether the recruitment agencies involved are licensed and/or authorized; and, (b) if the members of the respondent, which are licensed and authorized, decide to continue with their businesses, they face the stigma and the curse of being labeled “illegal recruiters.” In granting the respondent’s plea for a writ of preliminary injunction, the trial court held, without stating the factual and legal basis therefor, that the enforcement of Rep. Act No. 8042, *pendente lite*, would cause grave and irreparable injury to the respondent until the case is decided on its merits.

We note, however, that since Rep. Act No. 8042 took effect on July 15, 1995, the Court had, in a catena of cases, applied the penal provisions in Section 6, including paragraph (m) thereof, and the last two paragraphs therein defining large scale illegal recruitment committed by officers and/or employees of recruitment agencies by themselves and in connivance with private individuals, and imposed the penalties provided in Section 7 thereof, including the penalty of life imprisonment.<sup>[22]</sup> The Informations therein were filed after preliminary investigations as provided for in Section 11 of Rep. Act No. 8042 and in venues as provided for in Section 9 of the said act. In *People v. Chowdury*,<sup>[23]</sup> we held that illegal recruitment is a crime of economic sabotage and must be enforced.

In *People v. Diaz*,<sup>[24]</sup> we held that Rep. Act No. 8042 is but an amendment of the Labor Code of the Philippines and is not an *ex-post facto* law because it is not applied retroactively. In *JMM Promotion and Management, Inc. v. Court of Appeals*,<sup>[25]</sup> the issue of the extent of the police power of the State to regulate a business, profession or calling *vis-à-vis* the equal protection clause and the non-impairment clause of the Constitution were raised and we held, thus:

A profession, trade or calling is a property right within the meaning of our constitutional guarantees. One cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong.

Nevertheless, no right is absolute, and the proper regulation of a profession, calling, business or trade has always been upheld as a legitimate subject of a valid exercise of the police power by the state particularly when their conduct affects either the execution of legitimate governmental functions, the preservation of the State, the public health and welfare and public morals. According to the maxim, *sic utere tuo ut alienum non laedas*, it must of course be within the legitimate range of legislative action to define the mode and manner in which every one may so use his own property so as not to pose injury to himself or others.

In any case, where the liberty curtailed affects at most the rights of property, the permissible scope of regulatory measures is certainly much wider. To pretend that licensing or accreditation requirements violates the due process clause is to ignore the settled practice, under the mantle of the police power, of regulating entry to the practice of various trades or professions. Professionals leaving for abroad are required to pass rigid written and practical exams before they are deemed fit to practice their trade. Seamen are required to take tests determining their seamanship. Locally, the Professional Regulation Commission has begun to require previously licensed doctors and other professionals to furnish documentary proof that they had either re-trained or had undertaken continuing education courses as a requirement for renewal of their licenses. It is not claimed that these requirements pose an unwarranted deprivation of

a property right under the due process clause. So long as professionals and other workers meet reasonable regulatory standards no such deprivation exists.

Finally, it is a futile gesture on the part of petitioners to invoke the non-impairment clause of the Constitution to support their argument that the government cannot enact the assailed regulatory measures because they abridge the freedom to contract. In *Philippine Association of Service Exporters, Inc. vs. Drilon*, we held that “[t]he non-impairment clause of the Constitution ... must yield to the loftier purposes targeted by the government.” Equally important, into every contract is read provisions of existing law, and always, a reservation of the police power for so long as the agreement deals with a subject impressed with the public welfare.

A last point. Petitioners suggest that the singling out of entertainers and performing artists under the assailed department orders constitutes class legislation which violates the equal protection clause of the Constitution. We do not agree.

The equal protection clause is directed principally against undue favor and individual or class privilege. It is not intended to prohibit legislation which is limited to the object to which it is directed or by the territory in which it is to operate. It does not require absolute equality, but merely that all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed. We have held, time and again, that the equal protection clause of the Constitution does not forbid classification for so long as such classification is based on real and substantial differences having a reasonable relation to the subject of the particular legislation. If classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and future conditions, the classification does not violate the equal protection guarantee.<sup>[26]</sup>

The validity of Section 6 of R.A. No. 8042 which provides that employees of recruitment agencies may be criminally liable for illegal recruitment has been upheld in *People v. Chowdury*:<sup>[27]</sup>

As stated in the first sentence of Section 6 of RA 8042, the persons who may be held liable for illegal recruitment are the principals, accomplices and accessories. An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that he *actively and consciously participated* in illegal recruitment. It has been held that the existence of the corporate entity does not shield from prosecution the corporate agent who knowingly and intentionally causes the corporation to commit a crime. The corporation obviously acts, and can act, only by and through its human agents, and it is their conduct which the law must deter. The employee or agent of a corporation engaged in unlawful business naturally aids and abets in the carrying on of such

business and will be prosecuted as principal if, with knowledge of the business, its purpose and effect, he consciously contributes his efforts to its conduct and promotion, however slight his contribution may be. ...<sup>[28]</sup>

By its rulings, the Court thereby affirmed the validity of the assailed penal and procedural provisions of Rep. Act No. 8042, including the imposable penalties therefor. Until the Court, by final judgment, declares that the said provisions are unconstitutional, the enforcement of the said provisions cannot be enjoined.

*The RTC Committed Grave Abuse of Its Discretion Amounting to Excess or Lack of Jurisdiction in Issuing the Assailed Order and the Writ of Preliminary Injunction*

The matter of whether to issue a writ of preliminary injunction or not is addressed to the sound discretion of the trial court. However, if the court commits grave abuse of its discretion in issuing the said writ amounting to excess or lack of jurisdiction, the same may be nullified via a writ of certiorari and prohibition.

In *Social Security Commission v. Judge Bayona*,<sup>[29]</sup> we ruled that a law is presumed constitutional until otherwise declared by judicial interpretation. The suspension of the operation of the law is a matter of extreme delicacy because it is an interference with the official acts not only of the duly elected representatives of the people but also of the highest magistrate of the land.

In *Younger v. Harris, Jr.*,<sup>[30]</sup> the Supreme Court of the United States emphasized, thus:

Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional. No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and, hence, unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. 752 Beal v. Missouri Pacific Railroad Corp., 312 U.S. 45, 49, 61 S.Ct. 418, 420, 85 L.Ed. 577.

And similarly, in Douglas, supra, we made clear, after reaffirming this rule, that:

“It does not appear from the record that petitioners have been threatened with any injury other than that incidental to every criminal proceeding brought lawfully and in good faith ...” 319 U.S., at 164, 63 S.Ct., at 881.<sup>[31]</sup>

The possible unconstitutionality of a statute, on its face, does not of itself justify an injunction against good faith attempts to enforce it, unless there is a showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief.<sup>[32]</sup> The “on its face” invalidation of statutes has been described as “manifestly strong medicine,” to be employed “sparingly and only as a last resort,” and is generally disfavored.<sup>[33]</sup>

To be entitled to a preliminary injunction to enjoin the enforcement of a law assailed to be unconstitutional, the party must establish that it will suffer irreparable harm in the absence of injunctive relief and must demonstrate that *it is likely to succeed on the merits, or that there are sufficiently serious questions going to the merits and the balance of hardships tips decidedly in its favor.*<sup>[34]</sup> The higher standard reflects judicial deference toward “legislation or regulations developed through presumptively reasoned democratic processes.” Moreover, an injunction will alter, rather than maintain, the *status quo*, or will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits.<sup>[35]</sup> Considering that injunction is an exercise of equitable relief and authority, in assessing whether to issue a preliminary injunction, *the courts must sensitively assess all the equities of the situation, including the public interest.*<sup>[36]</sup> In litigations between governmental and private parties, courts go much further both to give and withhold relief in furtherance of public interest than they are accustomed to go when only private interests are involved.<sup>[37]</sup> Before the plaintiff may be entitled to injunction against future enforcement, he is burdened to show some substantial hardship.<sup>[38]</sup>

The fear or chilling effect of the assailed penal provisions of the law on the members of the respondent does not by itself justify prohibiting the State from enforcing them against those whom the State believes in good faith to be punishable under the laws:

... Just as the incidental “chilling effect” of such statutes does not automatically render them unconstitutional, so the chilling effect that admittedly can result from the very existence of certain laws on the statute books does not in itself justify prohibiting the State from carrying out the important and necessary task of enforcing these laws against socially harmful conduct that the State believes in good faith to be punishable under its laws and the Constitution.<sup>[39]</sup>

It must be borne in mind that subject to constitutional limitations, Congress is empowered to define what acts or omissions shall constitute a crime and to prescribe punishments therefor.<sup>[40]</sup> The power is inherent in Congress and is part of the sovereign power of the State to maintain peace and order. Whatever views may be entertained regarding the severity of punishment, whether one believes in its efficiency or its futility, these are peculiarly questions of legislative policy.<sup>[41]</sup> The comparative gravity of crimes and whether their consequences are more or less injurious are matters for the State and Congress itself to determine.<sup>[42]</sup> Specification of penalties involves questions of legislative policy.<sup>[43]</sup>

Due process prohibits criminal liability from shifting the burden of proof to the accused, punishing wholly passive conduct, defining crimes in vague or overbroad language and failing to grant fair warning of illegal conduct.<sup>[44]</sup> Class legislation is such legislation which denies rights to one which are accorded to others, or inflicts upon one individual a more severe penalty than is imposed upon another in like case offending.<sup>[45]</sup> Bills of attainder are legislative acts which inflict punishment on individuals or members of a particular group without a judicial trial. Essential to a bill of attainder are a specification of certain individuals or a group of individuals, the imposition of a punishment, penal or otherwise, and the lack of judicial trial.<sup>[46]</sup>

Penalizing unlicensed and licensed recruitment agencies and their officers and employees and their relatives employed in government agencies charged with the enforcement of the law for illegal recruitment and imposing life imprisonment for those who commit large scale illegal recruitment is not offensive to the Constitution. The accused may be convicted of illegal recruitment and large scale illegal recruitment only if, after trial, the prosecution is able to prove all the elements of the crime charged.<sup>[47]</sup>

The possibility that the officers and employees of the recruitment agencies, which are members of the respondent, and their relatives who are employed in the government agencies charged in the enforcement of the law, would be indicted for illegal recruitment and, if convicted sentenced to life imprisonment for large scale illegal recruitment, absent proof of irreparable injury, is not sufficient on which to base the issuance of a writ of preliminary injunction to suspend the enforcement of the penal provisions of Rep. Act No. 8042 and avert any indictments under the law.<sup>[48]</sup> The normal course of criminal prosecutions cannot be blocked on the basis of allegations which amount to speculations about the future.<sup>[49]</sup>

There is no allegation in the amended petition or evidence adduced by the respondent that the officers and/or employees of its members had been threatened with any indictments for violations of the penal provisions of Rep. Act No. 8042. Neither is there any allegation therein that any of its members and/or their officers and employees committed any of the acts enumerated in Section 6(a) to (m) of the law for which they could be indicted. Neither did the respondent adduce any evidence in the RTC that any or all of its members or a great number of other duly licensed and registered recruitment agencies had to stop their business operations because of fear of indictments under Sections 6 and 7 of Rep. Act No. 8042. The respondent merely speculated and surmised that licensed and registered recruitment agencies would close shop and stop business operations because of the assailed penal provisions of the law. A writ of preliminary injunction to enjoin the enforcement of penal laws cannot be based on such conjectures or speculations. The Court cannot take judicial notice that the processing of deployment papers of overseas workers have come to a virtual standstill at the POEA because of the assailed provisions of Rep. Act No. 8042. The respondent must adduce evidence to prove its allegation, and the petitioners accorded a chance to adduce controverting evidence.

The respondent even failed to adduce any evidence to prove irreparable injury because of the enforcement of Section 10(1)(2) of Rep. Act No. 8042. Its fear or apprehension that, because of time constraints, its members would have to defend

foreign employees in cases before the Labor Arbiter is based on speculations. Even if true, such inconvenience or difficulty is hardly irreparable injury.

The trial court even ignored the public interest involved in suspending the enforcement of Rep. Act No. 8042 *vis-à-vis* the eleven licensed and registered recruitment agencies represented by the respondent. In *People v. Gamboa*,<sup>[50]</sup> we emphasized the primary aim of Rep. Act No. 8042:

Preliminarily, the proliferation of illegal job recruiters and syndicates preying on innocent people anxious to obtain employment abroad is one of the primary considerations that led to the enactment of *The Migrant Workers and Overseas Filipinos Act of 1995*. Aimed at affording greater protection to overseas Filipino workers, it is a significant improvement on existing laws in the recruitment and placement of workers for overseas employment. Otherwise known as the Magna Carta of OFWs, it broadened the concept of illegal recruitment under the Labor Code and provided stiffer penalties thereto, especially those that constitute economic sabotage, *i.e.*, *Illegal Recruitment in Large Scale* and *Illegal Recruitment Committed by a Syndicate*.<sup>[51]</sup>

By issuing the writ of preliminary injunction against the petitioners *sans* any evidence, the trial court frustrated, albeit temporarily, the prosecution of illegal recruiters and allowed them to continue victimizing hapless and innocent people desiring to obtain employment abroad as overseas workers, and blocked the attainment of the salutary policies<sup>[52]</sup> embedded in Rep. Act No. 8042. It bears stressing that overseas workers, land-based and sea-based, had been remitting to the Philippines billions of dollars which over the years had propped the economy.

In issuing the writ of preliminary injunction, the trial court considered paramount the interests of the eleven licensed and registered recruitment agencies represented by the respondent, and capriciously overturned the presumption of the constitutionality of the assailed provisions on the barefaced claim of the respondent that the assailed provisions of Rep. Act No. 8042 are unconstitutional. The trial court committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the assailed order and writ of preliminary injunction. It is for this reason that the Court issued a temporary restraining order enjoining the enforcement of the writ of preliminary injunction issued by the trial court.

**IN LIGHT OF ALL THE FOREGOING**, the petition is GRANTED. The assailed decision of the appellate court is REVERSED AND SET ASIDE. The Order of the Regional Trial Court dated August 21, 1995 in Civil Case No. Q-95-24401 and the Writ of Preliminary Injunction issued by it in the said case on August 24, 1995 are NULLIFIED. No costs.

**SO ORDERED.**

*Quisumbing, (Acting Chairman), Austria-Martinez, and Tinga, JJ., concur.*  
*Puno, (Chairman), J., on official leave.*

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<sup>[1]</sup> Penned by Associate Justice Jesus M. Elbinias with Associate Justices Hector L. Hofileña and Omar U. Amin concurring.

<sup>[2]</sup> Penned by Judge Teodoro P. Regino, who was later promoted Associate Justice of the Court of Appeals.

<sup>[3]</sup> Records, Vol. I, pp. 86-87.

<sup>[4]</sup> Section 2, paragraph (g).

<sup>[5]</sup> Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

<sup>[6]</sup> Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception.

The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

<sup>[7]</sup> Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

<sup>[8]</sup> Sec. 3. The State shall defend the following:

...

(3) The right of the family to a family living wage and income.

<sup>[9]</sup> Sec. 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*. (Section 19, Article III of the Constitution.)

<sup>[10]</sup> Sec. 22. No *ex-post facto* law or bill of attainder shall be enacted.

<sup>[11]</sup> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

<sup>[12]</sup> Records, Vol. I, p. 223.

<sup>[13]</sup> *Id.* at 235.

<sup>[14]</sup> *CA Rollo*, p. 10.

<sup>[15]</sup> *Rollo*, p. 19.

<sup>[16]</sup> *W.C.M. Winston Co., Inc. v. Bernardi*, 730 F2d 486 (1984), citing *NACCP v. Alabama*, 2 L.ed.2d 1488 (1958).

<sup>[17]</sup> *Maite v. Chicago Board of Education*, 415 NE2d 1034 (1980), cited in *DeWitt County Taxpayers Association v. The County Board of Deliot County*, 445 NE2d 509 (1983).

<sup>[18]</sup> 289 SCRA 337 (1998).

- <sup>[19]</sup> *National Associates for the Advancement of Colored People v. State of Alabama*, 2 L.Ed.2d 1488 (1958).
- <sup>[20]</sup> SEC. 2. *Parties*. – All persons who have or claim any interest which would be affected by the declaration shall be made parties; and no declaration shall, except as otherwise provided in these Rules, prejudice the rights of persons not parties to the action.
- <sup>[21]</sup> SEC. 11. *Misjoinder and non-joinder of parties*. – Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.
- <sup>[22]</sup> *People v. Navarra*, 352 SCRA 84 (2001); *People v. Fajardo*, 345 SCRA 395 (2000); *People v. Saulo*, 344 SCRA 605 (2000); *People v. Gamboa*, 341 SCRA 451 (2000); *People v. Banzales*, 336 SCRA 64 (2000); *People v. Ordoño*, 335 SCRA 331 (2000); *People v. Mercado de Arabia*, 332 SCRA 49 (2000); *People v. Moreno*, 314 SCRA 556 (1999); *People v. Castillon*, 306 SCRA 271 (1999); *People v. Mercado*, 304 SCRA 504 (1999); *People v. Peralta*, 283 SCRA 81 (1997); *People v. Ortiz-Miyake*, 279 SCRA 180 (1997); *People v. Villas*, 277 SCRA 391 (1997); *People v. Santos*, 276 SCRA 329 (1997); *People v. Tan Tiong Meng*, 271 SCRA 125 (1997); *People v. Mañozca*, 269 SCRA 513 (1997); *People v. Señoron*, 267 SCRA 278 (1997); *People v. De Leon*, 267 SCRA 644 (1997); *People v. Benemerito*, 264 SCRA 677 (1996); *People v. Pabalan*, 262 SCRA 574 (1996); *People v. Calonzo*, 262 SCRA 534 (1996).
- <sup>[23]</sup> 325 SCRA 572 (2000).
- <sup>[24]</sup> 259 SCRA 441 (1996).
- <sup>[25]</sup> 260 SCRA 319 (1996).
- <sup>[26]</sup> *Id.* at 330-332.
- <sup>[27]</sup> *Supra* at note 23.
- <sup>[28]</sup> *Supra*.
- <sup>[29]</sup> 5 SCRA 126 (1962).
- <sup>[30]</sup> 27 L.Ed.2d 669 (1971).
- <sup>[31]</sup> *Ibid.*
- <sup>[32]</sup> *Id.*; *Fieger v. Thomas*, 74 F.3d 740 (1996).
- <sup>[33]</sup> *Broaderick v. Oklahoma*, 37 L.Ed.2d 841.
- <sup>[34]</sup> *Latino Officers Association v. Safir*, 170 F.3d 167 (1999).
- <sup>[35]</sup> *Forest City Daly Housing, Inc. v. Town of North Hempstead*, 175 F.3d 144 (1999).
- <sup>[36]</sup> *Beal v. Stern*, 184 F.3d 117 (1999).
- <sup>[37]</sup> *Maryland Commission on Human Relations v. Downey Communications, Inc.*, 110 Md.App. 493, 678 A.2d 55 (1996).
- <sup>[38]</sup> *Croselto v. State Bar of Wisconsin*, 12 F.3d 396 (1993).
- <sup>[39]</sup> *Younger v. Harris, Jr.*, *supra*.
- <sup>[40]</sup> *U.S. v. Schnell*, 982 F.2d 216 (1992); *United States v. Bogle*, 689 F.Supp. 1121 (1988).
- <sup>[41]</sup> *United States v. Bogle*, *supra*.
- <sup>[42]</sup> *Collins v. Joluston*, 59 L.Ed. 1071 (1915).
- <sup>[43]</sup> *Gore v. United States*, 62 L.Ed.2d 1405 (1958).

<sup>[44]</sup> *U.S. v. Schnell, supra.*

<sup>[45]</sup> *State v. Murray*, 175 NE 666 (1919).

<sup>[46]</sup> *Misolas v. Panga*, 181 SCRA 648 (1990).

<sup>[47]</sup> The essential elements for illegal recruitment are:

- (1) the offender undertakes either any activity within the meaning of “recruitment and placement” defined under Art. 13(b), or any of the prohibited practices enumerated under Article 34 of the Labor Code; and
- (2) he has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers. [*People v. Pascua*, 366 SCRA 505 (2001)].

The essential elements for large scale illegal recruitment are:

- (1) the accused engages in the recruitment and placement of workers, as defined under Article 13(b) or in any prohibited activities under Article 34 of the Labor Code;
- (2) accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the securing of a license or an authority to recruit and deploy workers, whether locally or overseas; and
- (3) accused commits the same against three (3) or more persons, individually or as a group. [*People v. Saulo*, 344 SCRA 605 (2000)].

<sup>[48]</sup> See *Beal v. Pacific Railroad Corporation*, 85 L.Ed. 577, cited in *Younger v. Harris, Jr., supra.*

<sup>[49]</sup> *Boyle v. Landry*, 27 L.Ed.2d 696 (1971).

<sup>[50]</sup> 341 SCRA 451 (2000).

<sup>[51]</sup> *Id.* at 456-458.

- <sup>[52]</sup> (a) In the pursuit of an independent foreign policy and while considering national sovereignty, territorial integrity, national interest and the right to self-determination paramount in its relations with other states, the State shall, at all times, uphold the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers, in particular.
- (b) The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.
- (c) While recognizing the significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizen shall not, at any time, be compromised or violated. The State, therefore, shall continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development.
- (d) The State affirms the fundamental equality before the law of women and men and the significant role of women in nation-building. Recognizing the contribution of overseas migrant women workers and their particular vulnerabilities, the State shall apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers.
- (e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in

general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded.

- (f) The right of Filipino migrant workers and all overseas Filipinos to participate in the democratic decision-making processes of the State and to be represented in institutions relevant to overseas employment is recognized and guaranteed.
- (g) The State recognizes that the ultimate protection to all migrant workers is the possession of skills. Pursuant to this and as soon as practicable, the government shall deploy and/or allow the deployment only of skilled Filipino workers.
- (h) Non-governmental organizations, duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in a spirit of trust and mutual respect.
- (i) Government fees and other administrative costs of recruitment, introduction, placement and assistance to migrant workers shall be rendered free without prejudice to the provision of Section 36 hereof.

Nonetheless, the deployment of Filipino overseas workers, whether land-based or sea-based, by local service contractors and manning agencies employing them shall be encouraged. Appropriate incentives may be extended to them. (Records, Vol. I, p. 35.)