

**B/GEN. (RET.) FRANCISCO V. GUDANI, et al. v.  
LT./GEN. GENEROSO S. SENGA, et al.\*  
G.R. No. 170165, 15 August 2006, Tinga, J. (En Banc)**

*A most dangerous general proposition is foisted on the Court – that soldiers who defy orders of their superior officers are exempt from the strictures of military law and discipline if such defiance is predicated on an act otherwise valid under civilian law. Obedience and deference to the military chain of command and the President as commander-in-chief are the cornerstones of a professional military in the firm cusp of civilian control. These values of obedience and deference expected of military officers are content-neutral, beyond the sway of the officer's own sense of what is prudent and ash, or more elementally, of right or wrong. A self-righteous military invites itself as the scoundrel's activist solution to the "ills" of participatory democracy.*

On September 22, 2005, Senator Rodolfo Biazon invited several senior officers of the AFP to appear at a public hearing before the Senate Committee on National Defense and Security scheduled on September 28, 2005. The hearing was scheduled after topics concerning the conduct of the 2004 elections emerged in the public eye, particularly allegations of massive cheating and the surfacing of copies of an audio excerpt purportedly of a phone conversation between President Arroyo and an official of the Commission on Elections (COMELEC), Commissioner Virgilio Garcillano. Gen. Francisco Gudani and Col. Alexander Balutan, who were designated as commander and member, respectively, of the "Joint Task Force Lanao" by the AFP Southern Command in the provinces of Lanao del Norte and Lanao del Sur, tasked with the maintenance of peace and order during the 2004 elections, received invitations to attend the said Senate hearing.

In the evening of September 27, a message was transmitted from the office of AFP Chief of Staff Gen. Generoso Senga, stating that: "per instruction of her excellency PGMA, no AFP personnel shall appear before any congressional or Senate hearing without her approval. Inform BGen Francisco F Gudani AFP and LTC Alexander Balutan PA (GSC) accordingly." On the day of the hearing, President Arroyo issued Executive Order 464 (E.O. 464) which enjoined officials of the executive department including the military establishment from appearing in any legislative inquiry without her approval. Despite E.O. 464 and despite the order from Gen. Senga, Gen. Gudani and Col. Balutan appeared and testified during the Senate hearing.

The Office of the Provost Marshall General (OPMG) recommended that Gen. Gudani and Col. Balutan be charged with violation of Article of War 65, for willfully disobeying a superior officer, in relation to Article of War 97, for conduct prejudicial to the good order and military discipline. The day after Gen Gudani and Col. Balutan were required to appear before the OPMG, Gen. Gudani was compulsorily retired from service. Thereafter, Gen. Gudani and Col. Balutan filed a petition for *certiorari* and injunction, claiming that E.O. 464 is unconstitutional and seeking that the charges against them be quashed. Furthermore, it is stressed that Gen. Gudani was no longer subject to military jurisdiction on account of his compulsory retirement.

**ISSUES:**

- 1.) Whether or not the violation of directive of the President could lead to any investigation for court-martial of Gen. Gudani and Col. Balutan; and
- 2.) Whether or not the court martial has jurisdiction over Gen. Gudani in view of his compulsory retirement

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\* See also *Lt. (SG) Eugene Gonzales, et al. v. Gen. Nariso Abaya*, G.R. No. 164007, 10 August 2006, which involves the Oakwood Mutiny on July 27, 2003.

**HELD:**

The petition is DISMISSED.

***AFP personnel of whatever rank are liable under military law for violating a direct order of an officer superior in rank.***

A most dangerous general proposition is foisted on the Court – that soldiers who defy orders of their superior officers are exempt from the strictures of military law and discipline if such defiance is predicated on an act otherwise valid under civilian law. Obedience and deference to the military chain of command and the President as commander-in-chief are the cornerstones of a professional military in the firm cusp of civilian control. These values of obedience and deference expected of military officers are content-neutral, beyond the sway of the officer's own sense of what is prudent and ash, or more elementally, of right or wrong. A self-righteous military invites itself as the scoundrel's activist solution to the "ills" of participatory democracy.

The ability of the President to require a military official to secure prior consent before appearing before Congress pertains to the commander-in-chief powers of the President. The Constitution reposes final authority, control and supervision of the AFP to the President, a civilian who is not a member of the armed forces, and whose duties as commander-in-chief represent only a part of the organic duties imposed upon the office, the other functions being clearly civil in nature. The commander-in-chief clause vests on the President, as commander-in-chief, absolute authority over the persons and actions of the members of the armed forces. Such authority includes the ability of the President to restrict the travel, movement and speech of military officers, activities which may otherwise be sanctioned under civilian law. By tradition and jurisprudence, the commander-in-chief powers of the President are not encumbered by the same degree of restriction as that which may attach to executive privilege or executive control.

Any chamber of Congress which seeks the appearance before it of a military officer against the consent of the President has adequate remedies under the law to compel such attendance. Any military officer whom Congress summons to testify before it may be compelled to do so by the President. If the President is not so inclined, the President may be commanded by judicial order to compel the attendance of the military officer. It is only the courts that can compel, with conclusiveness, the attendance or non-attendance in legislative inquiries.

***The court martial has jurisdiction over Gen. Gudani since proceedings were initiated against him before his compulsory retirement.***

The Court has already declared that an officer whose name was dropped from the roll of officers cannot be considered to be outside the jurisdiction of military authorities when military justice proceedings were initiated against him before the termination of his service. Once jurisdiction has been acquired over the officer, it continues until his case is terminated. Thus, military jurisdiction has fully attached to Gen. Gudani inasmuch as both the acts complained of and the initiation of the proceedings against him occurred before he compulsorily retired.