RECENT JURISPRUDENCE ON POLITICAL LAW*

INTRODUCTION

This article provides an overview of select Supreme Court decisions on political law promulgated last 2021. They tackle various concepts under political law, namely the Bill of Rights, social justice, and presidential powers and privileges. Part I discusses how the Supreme Court fixed the bounds of constitutionally guaranteed freedoms, most notably on free speech and expression. Part II focuses on the State's policy of promoting equal rights and opportunities to all Filipinos, such as those pertaining to academic freedom and cultural heritage and ancestral domains. Part III illustrates the broad applicability of presidential immunity and the scope of the president's powers as the chief architect of the country's foreign policy.

I. BILL OF RIGHTS

A. *Calleja v. Executive Secretary*[1]

The President signed into law Republic Act No. 11479, otherwise known as the Anti-Terrorism Act (ATA).[2] Pursuant to the State policy to protect life, liberty, and property, its passage was geared toward addressing terrorism, it being inimical to the national security and welfare of the Filipino people.[3]

Shortly after the enactment of ATA, members of the Philippine Congress, registered voters, indigenous peoples (IP), students, members of the academe, representatives from sociocivic and nongovernmental organizations, and members of the Bar assailed various sections of the Act, most notably Section 4 on the definition of terrorism, Section 10 on membership in a terrorist organization, and Section 25 on the modes of

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* *Cite as Recent Jurisprudence on Political Law*, 95 PHIL. L.J. 239, [page cited] (2022). This was prepared by Editorial Assistants Frances Dianne S. Bael, Kimberly Belle Diet, Audrey Louise J. Kho, and Juan Carlos C. Novero, and reviewed by Atty. Lee Edson P. Yarcia, M.D., Senior Lecturer at the University of the Philippines College of Law and National Programme Officer of the United Nations Joint Programme for the Protection and Promotion of Human Rights in the Philippines.

This article is part of a series published by the JOURNAL, providing updates in jurisprudence across the eight identified fields of the law. The other articles focus on labor law, taxation law, civil law, mercantile law, criminal law, remedial law, and judicial ethics.

[1] G.R. No. 252578, Dec. 7, 2021.

[2] Rep. Act. No. 11479 (2020), The Anti-Terrorism Act of 2020.

[3] § 1.

designation. They brought a facial challenge to question the constitutionality of almost all key provisions of the law. The Court gave due course to this consolidated petition only in relation to the provisions of the ATA that involved and raised chilling effects on freedom of expression and its cognate rights in the context of actual and not mere hypothetical facts. Thus, the Supreme Court affirmed that, in this jurisdiction, facial challenges are permissible only when the case involves an alleged violation of the rights to freedoms of speech and expression and their other cognate rights.

One of the few provisions declared partly unconstitutional by the Supreme Court was a portion of Section 4 that defined terrorism. It was declared void in part for vagueness and overbreadth for invading the area of protected freedoms. The provision is reproduced below:

> SEC. 4. *Terrorism.* – Subject to Section 49 of this Act, terrorism is committed by any person who, within or outside the Philippines, regardless of the stage of execution:
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> (a) Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life;
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> (b) Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private property;
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> (c) Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure;
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> (d) Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and
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> (e) Release of dangerous substances, or causing fire, floods or explosions
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> when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety, shall be guilty of committing terrorism and shall suffer the penalty of life imprisonment without

> the benefit of parole and the benefits of Republic Act No. 10592, otherwise known as "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code"; *Provided*, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, *which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.*[4]

Speaking through Associate Justice Rosmari Carandang, the Court held that the italicized portion of the provision (dubbed the "Not Intended Clause") was void for vagueness as the proviso's scope of application is very large and contemplated all forms of expression. The Supreme Court held that the Not Intended Clause raised serious ambiguity for want of sufficient parameters that rendered it incapable of judicial construction. This provision was found to produce a chilling effect, which would operate to confuse the people on whether their action, while a valid exercise of their constitutional right, might be interpreted to be an act of terrorism. "Such liberties are abridged if the [speakers] – before [they] can even speak – must ready [themselves] with evidence that [they have] no terroristic intent." Additionally, the postindictment effect of this provision was to shift the burden upon the accused to prove that their actions constitute an exercise of civil and political rights, contrary to the principle that it is the State that has the burden to prove the illegality of a speech.

The Not Intended Clause was also found to be overbroad for abridging free expression. Employing the *Brandenburg* standard,[5] the Supreme Court held that the Not Intended Clause discounted the imminence element as a factor. As a result, the expression and its mere intent, without the likelihood of causing imminent lawless action, would be enough to arrest or detain someone for terrorism. In this respect, the Court found that it would produce a chilling effect, and thus was overbroad for overstepping into the realm of constitutionally-protected speech.

The Supreme Court also found that the Not Intended Clause failed the Strict Scrutiny test. Under the Strict Scrutiny test, the government has the

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[4] (Emphasis added.)

[5] The Brandenburg standard was articulated in the American case of *Brandenburg v. Ohio*, 395 U.S. 444 (1969), in which the United States Supreme Court explained that "constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." The Court said this is the proper standard to delimit the prohibited speech provisions, such as inciting to terrorism, proposal, and threat.

burden of proving that the regulation (1) is necessary to achieve a compelling state interest and (2) is the least restrictive means to protect such interest. With regard to the ATA, its passage indeed does have a compelling state interest, i.e., to curtail terrorism. However, punishing speech intended "to cause death or serious physical harm to a person, to endanger a person's life, or to create a public risk to public safety" is not the least restrictive means to achieve the interest. The Court found that the Not Intended Clause blurs the line between terroristic conduct and speech, and so was not narrowly tailored to serve the interest of the State.

In conclusion, the Not Intended Clause curtailed not only certain kinds of protected speech, but the very freedom to speak itself. Nonetheless, only the proviso was struck down; the rest of the provision was retained, for it was deemed to accurately reflect the legislative intent behind the ATA.

The Supreme Court also passed upon the constitutionality of Section 10 of the ATA on membership. According to the provision, one shall be punished for voluntarily and knowingly joining an organization, association, or group of persons if it is (1) proscribed under Section 26 of the ATA; (2) designated by the UN Security Council (UNSC) as a terrorist organization; or (3) organized for the purpose of engaging in terrorism. The Court held that the first two instances are permissible restrictions on the freedom of association, as these are necessary means to achieve a compelling state interest: the State's inherent right of self-preservation. However, the third instance was struck down for vagueness, overbreadth, and failure to satisfy the strict scrutiny test. It is vague because the law does not provide guidelines to determine and verify whether the organization is one "organized for the purpose of engaging in terrorism." The proviso also suffers from overbreadth, as it would unnecessarily overreach into innocent and protected membership. Lastly, the proviso is not narrowly tailored, and fails to employ the least restrictive means to prevent membership in terrorist organizations. It would be very easy to fabricate charges under this instance. Thus, the phrase "organized for the purpose of engaging in terrorism" in Section 10 was struck down for violating freedom of association.

Lastly, the Court addressed the constitutionality of Section 25 on the modes of designation of individuals or groups as terrorists. Out of the three, only the second mode of designation was struck down as unconstitutional. This mode allowed the ATC to adopt requests for designations by other jurisdictions or supranational jurisdictions, after determination that the proposed designee meets the criteria for designation under UNSC Resolution

(UNSCR) No. 1373.[6] The Court held that this mode did not satisfy the strict scrutiny test. While this second mode of designation has the same underlying compelling State interests as the first mode of designation,[7] the means employed were not the least restrictive means to achieve such interests. By giving the ATC the power to grant requests for designation based on its own determination, without sufficient standards in granting or denying such requests, the ATC was given unbridled discretion to do so based "loosely" on UNSCR No. 1373 criteria. There were also no procedural safeguards and remedies in case of erroneous designation, unlike the mode of delisting under the first mode, or the automatic review provision in Section 26 on proscription.

B. *Philippine Daily Inquirer v. Enrile*[8]

The Philippine Daily Inquirer published on its front page a news article with the heading, "PCGG: no to coconut levy agreement." The said report allegedly contained defamatory statements against then Senator Juan Ponce Enrile by imputing to him the following acts: (1) having benefited from the coco levy funds; (2) accumulating ill-gotten wealth; and (3) committing the crime of plunder. In its defense, the news outfit claimed that the mention of Enrile's name was merely incidental to the Presidential Commission on Good Government's (PCGG) explanation of its position in the compromise agreement. Further, the reporter testified during trial that the press statement was simply handed to her by one of the commissioners. Arguing that the issue being a matter of public interest, she said that she had the responsibility to write about it.

The Court resolved the matter by examining the elements of libel vis-a-vis the constitutional guarantee of press freedom. Their analysis focused on (1) the imputation of a discreditable act or condition and (2) the existence of malice.

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[6] S.C. Res. No. 1373 (Sept. 28, 2001). UNSCR No. 1373 was issued in response to "threats to international peace and security caused by terrorist acts." Essentially, the Resolution obliges member States to refrain from "organizing, instigating, assisting, or participating in terrorist acts in another state, or acquiescing in organized activities within its territory directed towards the commission of such acts."

[7] The first mode of designation allows for the automatic adoption of the UNSC Consolidated List of designated persons, organizations, etc. This was held as a legitimate exercise of police power, as it serves a compelling state interest. This mode of designation is intended to (1) forestall possible terrorist activities of foreigners within the Philippine jurisdiction or against Philippine nationals abroad; (2) cooperate with global efforts against terrorist groups who are known to operate across territorial borders; and (3) comply with our international obligations under UNSCR No. 1373.

[8] G.R. No. 229440, July 14, 2021.

The factual circumstances reveal that the subject article was a mere replication of a supposed statement from the PCGG. In determining whether the article was libelous, the court construed the statements in their entirety and adopted their plain, natural and ordinary meaning as they would naturally be understood by the audience reading them, unless it appeared that they were used and understood in another sense. The Court added that The Inquirer's failure to verify if the statements were indeed made by the commissioner did not make the imputations in the article as its own. The perspective of the reader remains the judicial guidepost in determining whether an utterance is libelous; and here it was not.

The Court held that the subject of the article is undoubtedly a matter in which the public has the right to be informed, taking into account the public character of the funds involved. Under Article 354 of the Revised Penal Code, the general rule is that every defamatory imputation is presumed to be malicious. The exceptions are privileged communications, which may be either absolutely privileged or qualifiedly privileged. Fair reports on matters of public interest are under the protective mantle of privileged communications. The Court ruled that the article was not published with reckless disregard since The Inquirer did not know whether the statement contained falsities when the same was given by the PCGG commissioner. Likewise, there was no proof that the news article was made to harass, vex, or humiliate Enrile.

The Court emphasized striking a balance between freedom of the press and the limits thereof in relation to libel. Reiterating the Court's pronouncements in *Borjal v. Court of Appeals*, the Court explained that media practitioners must be reminded of their adherence to the ethical standards.[9] The "unbridled irrational exercise of the right of free speech and press" would lead to the "eventual self-destruction of the right and the regression of human society."[10] This should not be construed as diminishing or constricting the space in which expression freely flourishes and operates.[11] Freedom of expression is a person's birthright, and it is the role of the press to act as its "*defensor fidei*" in a democratic society.[12]

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[9] Borjal v. Court of Appeals, G.R. No. 126466, 301 SCRA 1, Jan. 14, 1999.
[10] *Id* at 31.
[11] *Id.* at 32.
[12] *Id.*

II. SOCIAL JUSTICE

A. *Saint Louis University v. Olairez*[13]

The respondents were graduating students from the College of Medicine of Saint Louis University. In the middle of the school year, the newly appointed dean of the College amended the requirements for graduation. Initially, graduating students were required to pass a comprehensive written examination ("COWE"), consisting of multiple tests across 12 subject areas. Failure to do so would result in additional remedial examinations limited only to the subjects the students failed. Under the revised COWE, however, a written examination precedes mandatory oral examinations. Students who do not pass the oral examinations are required to render at least two months of extended clerkship.

Respondents failed the written examination and the first oral examination. Consequently, they were required to render extended clerkships. They eventually filed a petition, assailing the retroactive imposition of the revised COWE and the arbitrary nature of the oral examinations. The Regional Trial Court (RTC) acknowledged that the students "have the right to expect that the requisites for graduation contained in their Student Handbook at the time they enrolled and started the school year should be maintained as that is a contract between those who enrolled and the school." Subsequently, the CA affirmed *in toto* the ruling of the RTC. The CA recognized that graduation requirements cannot be arbitrarily changed, because the relationship between the school and its students is contractual in nature. Nonetheless, the appellate court pronounced that the matter had become moot and academic, considering the certifications on the qualifications of the students received from the Commission on Higher Education and Association of Philippine Medical Colleges Foundation. Further, the students had completed their post-graduate medical internships.

In affirming the ruling of the CA, the Court reiterated that academic freedom is both a right and an obligation.[14] Academic freedom "thrives not only on the independent and uninhibited exchange of ideas among teachers and students, but also on autonomous decision-making by the academy itself."[15]

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[13] G.R. No. 197126, Jan. 19, 2021.

[14] Judith Butler, *Academic Freedom and the Critical Task of the University*, 14 GLOBALIZATIONS 857, 857 (2017).

[15] Regents of the University of Michigan v. Ewing, 474 U.S. 214, 226 n.12 (1985).

Article XIV, Section 5 (2) of the 1987 Constitution provides that "[a]cademic freedom shall be enjoyed in all institutions of higher learning." In line with this, an educational institution of higher learning inherently has the right to establish academic policies to achieve its objectives.[16] The Court recognized that "[t]he academic institutions are competent to determine whatever parameters, examinations, minimum average grade, or failing limit [they] will impose on [their] students and courts will not step in and review decisions [that] are done in exercise of academic freedom unless there was grave abuse of discretion."

Still, the Court held that the exercise of academic freedom is not absolute, such that it must be balanced with competing interests.[17] Furthermore, it ruled that it will not hesitate to strike down institutional acts constituting grave abuse of discretion or patent arbitrariness.

In the present case, the Court ruled that Saint Louis University acted with grave abuse of discretion in its "sudden imposition of harsher and more punitive requirements to its graduating students in the middle of what was supposed to be their final school year[.]" It stressed that there is an established contract between an academic institution and its students.[18] Apparently, the records clearly showed the graduation requirements encapsulated in the student handbook of the university.

While the Court affirmed its unequivocal commitment to safeguarding academic freedom, it explained that it cannot condone the wanton abuse of this right. The ruling rested on the premise that courts may interfere and prevent arbitrary acts when the exercise of a right is unjust.

B. *Sama y Hinupas v. People*[19]

While the case at bar is criminal in nature, it also centers on the rights of indigenous peoples (IP) to cultural heritage and ancestral domains vis-à-vis the State's police power and the regalian doctrine. These rights find their basis in several sections of the 1987 Constitution and the Indigenous Peoples Rights Act of 1997 (IPRA).[20]

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[16] Ateneo de Manila University v. Judge Capulong, 294 Phil. 654, 673 (1993); Morales v. Board of Regents, 487 Phil. 449, 474 (2004).

[17] Dow Chemical Co. v. Allen, 672 F.2d 1262, 1275 (17th Cir. 1982).

[18] Phil. School of Business Administration v. Ct. of Appeals, 282 Phil. 759, 764 (1992).

[19] G.R. No. 224469, Jan. 5, 2021.

[20] Rep. Act No. 8371 (1997).

An Information was filed against the petitioners, who were members of the Iraya-Mangyan IP, for allegedly violating Section 77 of Presidential Decree No. 705, or the Revised Forestry Code of the Philippines, as amended, when they cut down a *dita* tree supposedly absent proper authority. During the patrol of a team of police officers and representatives from the Department of Environment and Natural Resources (DENR), petitioners Diosdado Sama and Bandy Masanglay, and their coaccused Demetrio Masanglay, were caught in the act of cutting a *dita* tree. When the team asked if the accused had a license to cut down the tree, the latter replied in the negative. In their defense, petitioners expressed that they cut the *dita* tree for the construction of the Iraya-Mangyan IPs' community toilet, and that the tree was located within their ancestral domain and lands. Despite such defense, the lower court ruled in favor of the prosecution, and the petitioners were convicted and sentenced accordingly. The decision was affirmed by the CA. Sama and Masanglay filed a Petition for Review on certiorari assailing the decision of the Court of Appeals.

The Supreme Court ruled in favor of the petitioners. It found reasonable doubt as to the absence of proper authority to log the *dita* trees within their claimed ancestral domain and that their practice of cutting the tree was indicative of their right to preserve the cultural integrity and claim title to ancestral domain. As possessors of a certificate of ancestral domain claim, the Iraya-Mangyan IPs, including the petitioners, were found to "have been confirmed to have the right to the exclusive communal use and occupation of the ancestral domain covering a designated territory within [their municipality] for a variety of purposes, including limited non-traditional purposes and the right to enjoy its economic fruits."

The Court went on the highlight "the ever growing respect, recognition, protection, and preservation accorded by the State to the IPs." It explained that this protection extends to their rights to cultural heritage and ancestral domains and lands, which were not previously contemplated in earlier laws, such as the Revised Forestry Code. Speaking through Justice Amy Lazaro-Javier, the Court held that the spectrum of IP rights finds its cornerstone in "their degree of connection to the land. Land is the central element of their existence."[21] Notably, this spectrum of IP rights encompasses:

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[21] John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997); Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 275 (1982).

1. On one end: constitutionally protected activities distinctive to IP culture, but which do not "support a claim of title to the land" being occupied or used for such activities;[22]

2. In the middle: activities intimately related to a particular land with site-specific rights to engage in such, though they may have no title to the land;[23] and

3. On the other end: site-specific activities covered by an IP title, which confers both the right to engage in such activities, and more importantly, the right to the land itself.[24]

An IP title, which is *sui generis*, is an intergenerational, communal, and collective title that can only be alienated and encumbered by the State, subject to certain conditions. The regalian doctrine provides for the State's ownership of lands of public domain and patrimony of the nation, conferring upon the State the title to all lands in the country. Evidently, it is in conflict with pre-existing IP rights, with IPs having occupied and used their land prior to the birth of the State. The State's ownership of lands should consequently exclude those under the IP title. However, the Court remarked that IP rights are within the purview of police power. As this inherent power of the State was exercised in the application of Section 77 of PD 705, said decree continues to be operative, even as the objects being regulated are owned by the accused. "Police power trumps objections on the basis of ownership."

Despite the foregoing, the Court held that the *sui generis* ownership of the IP title is identical to the purpose of Section 77 as a police power measure. The proper authority thus required to cut down a *dita* tree was in fact satisfied by the *sui generis* ownership of the IPs, and no license was needed to be secured by the petitioners.

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[22] Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Sea (1565-1898)*, 63 Phil. L. J. 82, 107-108 (1988).

[23] Balisnomo, *supra* note 25, at 174; Lynch, *supra* note 25, at 275.

[24] Balisnomo, *supra* note 25, at 174; Lynch, *supra* note 26, at 109.

III. PRESIDENTIAL POWERS AND PRIVILEGES

A. *Pangilinan v. Cayetano*[25]

In 2019, the country officially withdrew from the International Criminal Court (ICC) through the President's unilateral move to that effect. Three consolidated petitions were subsequently filed, challenging this withdrawal – first, a petition from six senators, asserting their standing as such for a perceived infringement on the Senate's prerogative to concur in an international treaty; second, a petition instituted by concerned citizens, claiming a violation of their rights to life and personal security by this withdrawal; and third, a petition from the Integrated Bar of the Philippines, on the ground that it has standing to question the propriety of the withdrawal as the body that aims to uphold the rule of law. The majority took the time to explain many principles, such as the Youngstown Framework[26] and the mirror principle,[27] to justify the President's act; however, in the end, the petition was declared moot as the President had already withdrawn from the treaty, and the ICC had already accepted the same. All in all, the petitions were mainly dismissed on procedural grounds.

The first petition was filed by petitioners-senators who were part of the incumbent minority. Invoking their standing as legislators, they claimed that the Senate's constitutional prerogative to concur in the government's decision to withdraw from the Rome Statute has been impaired. They likewise sued as citizens, claiming the case involved a public right that demands the enforcement of a public duty. The Court said, had the upper house passed Senate Resolution No. 289 or the "Resolution Expressing the Sense of the Senate that Termination of, or Withdrawal from, Treaties and International Agreements Concurred in by the Senate shall be Valid and Effective Only Upon Concurrence by the Senate," the minority senators can claim a right.

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[25] G.R. No. 238875, Mar. 16, 2021.

[26] The Youngstown framework originates from the case of *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), which laid down three categories of executive action as regards the necessity of concomitant legislative action. The first category contemplates the situation wherein the President acts pursuant to an express or implied authorization from Congress; thus, their authority is strongest here. The second category deals with situations when the President acts without congressional grant or denial of authority, where they rely on their independent powers; though there is a zone of twilight where the President and Congress may have concurrent authority, or in which its distribution is uncertain. Lastly, the third category describes situations wherein the President's acts are incompatible with the express or implied will of Congress; thus, their power here is at its lowest.

[27] The mirror principle dictates that the degree of legislative approval needed to exit an international agreement must parallel the degree of legislative approval originally required to enter it.

However, the legislators refrained from passing this resolution indicating their inhibition from the President's act.

Meanwhile, petitioner Philippine Coalition for the International Criminal Court and its individual members asserted that the withdrawal from the Rome Statute violated their fundamental rights to life and personal security. They also claimed that their petition was a taxpayers' suit as the executive department spent public funds in the negotiations drafting of the Rome Statute. In rejecting this petition, the Court ruled that the petitioners failed to show the actual or imminent injury that they sustained from the President's withdrawal. Additionally, petitioners were found to have no standing as taxpayers because they failed to show any illegal expenditure of public funds.

Lastly, the Integrated Bar of the Philippines (IBP) invoked legal standing as a body aimed to uphold the rule of law. It added that its members' right to life and due process may be affected by the withdrawal. The Court held that while it recognizes third party standing of associations filing petitions on behalf of its members, IBP and the Philippine Coalition for the International Criminal Court failed to convince the Court why they must be heard as associations. It found that the being institutions that advocate for human rights is insufficient to vest them with standing.

All petitioners also invoked transcendental importance, which the Court brushed aside. It found that none of the exceptional conditions to relax the requisite standing were present. There were no funds or assets involved. Neither was there any express disregard of a constitutional or statutory prohibition. The petitioners failed to invoke any source of right to these petitions. In the end, the case was dismissed for being moot.

The Supreme Court did not consider that this case may fall under any of the well-settled exceptions to the rule that the Supreme Court should refrain from taking cognizance of moot and academic cases. These exceptions are as follows: (1) there is a grave violation of the Constitution; (2) the situation is of an exceptional character and paramount public interest is involved; (3) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review.[28]

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[28] David v. Macapagal-Arroyo [hereinafter *David*], G.R. No. 171396, 489 SCRA 160, 214-15, 12, May 3, 2006. It may be argued that the case may fall under the fourth exception to mootness, i.e. that the issue is capable of repetition yet evading review. First, the Philippines

For application in future cases of similar subject matter, the Court acknowledged that the presidents are the primary architects of foreign policy, such that they "[enjoy] a degree of leeway to withdraw from treaties [that] are bona fide deemed contrary to the Constitution or our laws, and to withdraw in keeping with the national policy adopted pursuant to the Constitution and our laws."

This discretion, however, is qualified by the extent of the involvement of the legislature in having a treaty enter into our jurisdiction. In accordance with legislative intent, the president cannot unilaterally withdraw from treaties. This is premised on the Senate concurrence for accession. As such, the same concurrence for withdrawal is necessary. The Court provides that the "[t]he imposition of Senate concurrence as a condition may be made piecemeal, through individual Senate resolutions pertaining to specific treaties, or through encompassing legislative action, such as a law, a joint resolution by Congress, or a comprehensive Senate resolution."

Finally, the Court reiterated that the exercise of discretion to withdraw from international agreements, attended by grave abuse, is subject to judicial review. In particular, judicial review is pertinent "when there is no clear, definite, or reliable showing of repugnance to the Constitution or our statutes, or in cases of inordinate unilateral withdrawal violating requisite legislative involvement." However, invoking judicial review must subscribe to the basic requisites of justiciability, such that a properly justiciable controversy is demonstrated.

B. *Esmero v. Duterte*[29]

Petitioner Atty. Romeo M. Esmero filed a writ of mandamus to compel respondent President Rodrigo Duterte to comply with his constitutional duty to defend the national territory, including the West Philippine Sea, against Chinese incursions. The petition emphasized such ministerial duty of the President with regard to the country's national territory,

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is party to many international treaties and agreements, such as the International Covenant on Civil and Political Rights. Second, there are treaties pending concurrence by the Senate as of writing, specifically the Regional Comprehensive Economic Partnership Agreement and the Treaty between the Government of the Republic of the Philippines and the Government of Canada on the Transfer of Sentenced Persons and on Cooperation in the Enforcement of Penal Sentences. From the foregoing, it may be concluded that the issue as regards the proper procedure for withdrawal from an international treaty may be brought to the Supreme Court once more.

[29] G.R. No. 256288, July 29, 2021.

and that such inaction was to the detriment of the livelihood of marginalized Filipino fisherfolk located along the coastal islands facing the West Philippine Sea. Likewise, petitioner urged that the President should seek damages and payment from China before the International Court of Justice (ICJ), or seek recourse with the United Nations Security Council (UNSC). As regards the general rule on the presidential immunity from suit, Esmero contended that the subject petition is an exception to such immunity. However, the Court ruled in the contrary, dismissing the petition for lack of merit.

The Decision, penned by Justice Rodil Zalameda, is a categorical reaffirmation of the Court's ruling in *De Lima v. Duterte*, which held that "[presidents are] immune from suit during [their] incumbency, regardless of the nature of the suit filed against [them]. Petitioner named President Duterte as the sole respondent in this case. For this reason, this suit should be dismissed outright."[30]

Assuming, *arguendo*, that the petition would not be dismissed on such ground, the Court found that a writ of mandamus would still not lie in Esmero's favor. It averred that the foregoing duties of the President as characterized by the petitioner are not ministerial, but discretionary. The petitioner failed to cite any laws specifically requiring the President to go to the ICJ or the UN to sue China for incursions into the country's exclusive economic zone. Moreover, Esmero did not identify any constitutional or statutory provision that prescribes how the President should address actual or imminent threats "from another State to our sovereignty or exercise of our sovereign rights." Ultimately, it held that presidents, as chief architects of the country's foreign policy, are given the utmost discretion, "accountable only to [their] country in [their] political character and to [their] conscience," on how to manage the Philippines' territorial disputes with China.

C. *Nepomuceno v. Duterte*[31]

Pedrito Nepomuceno filed a case against President Rodrigo Duterte, Health Secretary Francisco Duque, and Retired General Carlito Galvez Jr. to compel said public officials to observe the Food and Drug Administration (FDA) rules on the acquisition, procurement, and use of COVID-19 vaccines. At the core of the petition was the concern over the distribution of Sinovac

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[30] De Lima v. Duterte [hereinafter *"De Lima"*], G.R. No. 227635, Oct. 15, 2019, at 15. This pinpoint citation refers to the copy of this resolution uploaded to the Supreme Court Website.

[31] G.R. No. 256207, June 15, 2021.

vaccines to the public despite the absence of a concrete study and reports raising doubts on their efficacy.

First, the Court held that Duterte as the incumbent president of the Republic of the Philippines must be dropped as a respondent. It held that chief executives possess immunity from suit regardless of the nature of the suit filed against them since our governmental system does not distinguish between their personal or official acts. The concept of presidential immunity cannot be found in the text of the 1987 Constitution. According to Fr. Joaquin Bernas, the omission was based on jurisprudence that during their tenure, presidents are immune from suit.[32] The rationale for the grant of the privilege is to free the exercise of presidential duties and functions from any hindrance or distraction. Moreover, it degrades the dignity of the Office of the President, if one can be dragged into court litigation.[33] Likewise, presidential immunity may be invoked only by the holder of the office, and not by any other person on the president's behalf.[34] The only proceeding for which the presidents may be involved in litigation during their term of office is an impeachment case.

The petition for a writ of mandamus was outrightly dismissed for Nepomuceno's failure to raise the specific law that enjoins the respondents to perform a duty from their office, and which they neglected to do. There was no ministerial duty that compelled the public officials to conduct the trial and procurement of COVID-19 vaccines. In fact, the Universal Healthcare (UHC) Law, which required the completion of clinical trials before the usage of vaccines, was suspended for three months. Government officials were given the discretion to decide and adopt the measures practiced by the World Health Organization and the United States Centers for Disease Control and Prevention. The Congress devolved its power in favor of the President by passing the Republic Act 11494, which granted President Duterte the authority to exercise discretion in handling the procurement of the COVID-19 vaccines, even those that did not undergo Phase IV trials as required by the UHC.

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[32] *De Lima*, at 18.

[33] *Id.* at 4, *citing David*, 489 SCRA 160, 224.

[34] *Id.* at 399.