

## EN BANC

[ G.R. No. 162230, August 12, 2014 ]

**ISABELITA C. VINUYA, VICTORIA C. DELA PEÑA, HERMINIHILDA MANIMBO, LEONOR H. SUMAWANG, CANDELARIA L. SOLIMAN, MARIA L. QUILANTANG, MARIA L. MAGISA, NATALIA M. ALONZO, LOURDES M. NAVARO, FRANCISCA M. ATENCIO, ERLINDA MANALASTAS, TARCILA M. SAMPANG, ESTER M. PALACIO, MAXIMA R. DELA CRUZ, BELEN A. SAGUM, FELICIDAD TURLA, FLORENCIA M. DELA PEÑA, EUGENIA M. LALU, JULIANA G. MAGAT, CECILIA SANGUYO, ANA ALONZO, RUFINA P. MALLARI, ROSARIO M. ALARCON, RUFINA C. GULAPA, ZOILA B. MANALUS, CORAZON C. CALMA, MARTA A. GULAPA, TEODORA M. HERNANDEZ, FERMIN B. DELA PEÑA, MARIA DELA PAZ B. CULALA, ESPERANZA MANAPOL, JUANITA M. BRIONES, VERGINIA M. GUEVARRA, MAXIMA ANGULO, EMILIA SANGIL, TEOFILA R. PUNZALAN, JANUARIA G. GARCIA, PERLA B. BALINGIT, BELEN A. CULALA, PILAR Q. GALANG, ROSARIO C. BUCO, GAUDENCIA C. DELA PEÑA, RUFINA Q. CATA CUTAN, FRANCIA A. BUCO, PASTORA C. GUEVARRA, VICTORIA M. DELA CRUZ, PETRONILA O. DELA CRUZ, ZENAIDA P. DELA CRUZ, CORAZON M. SUBA, EMERINCIANA A. VINUYA, LYDIA A. SANCHEZ, ROSALINA M. BUCO, PATRICIA A. BERNARDO, LUCILA H. PAYAWAL, MAGDALENA LIWAG, ESTER C. BALINGIT, JOVITA A. DAVID, EMILIA C. MANGILIT, VERGINIA M. BANGIT, GUILERMA S. BALINGIT, TERCITA PANGILINAN, MAMERTA C. PUNO, CRISENCIANA C. GULAPA, SEFERINA S. TURLA, MAXIMA B. TURLA, LEONICIA G. GUEVARRA, ROSALINA M. CULALA, CATALINA Y. MANIO, MAMERTA T. SAGUM, CARIDAD L. TURLA, et al. in their capacity and as members of the "Malaya Lolas Organizations," PETITIONERS, VS. THE HONORABLE EXECUTIVE SECRETARY ALBERTO G. ROMULO, THE HONORABLE SECRETARY OF FOREIGN AFFAIRS DELIA DOMINGO-ALBERT, THE HONORABLE SECRETARY OF JUSTICE MERCEDITAS N. GUTIERREZ, AND THE HONORABLE SOLICITOR GENERAL ALFREDO L. BENIPAYO, RESPONDENTS.**

## RESOLUTION

**BERSAMIN, J.:**

Petitioners filed a *Motion for Reconsideration*<sup>[1]</sup> and a *Supplemental Motion for Reconsideration*,<sup>[2]</sup> praying that the Court reverse its decision of April 28, 2010, and grant their petition for *certiorari*.

In their *Motion for Reconsideration*, petitioners argue that our constitutional and jurisprudential histories have rejected the Court's ruling that the foreign policy

prerogatives of the Executive Branch are unlimited; that under the relevant jurisprudence and constitutional provisions, such prerogatives are proscribed by international human rights and international conventions of which the Philippines is a party; that the Court, in holding that the Chief Executive has the prerogative whether to bring petitioners' claims against Japan, has read the foreign policy powers of the Office of the President in isolation from the rest of the constitutional protections that expressly textualize international human rights; that the foreign policy prerogatives are subject to obligations to promote international humanitarian law as incorporated into the laws of the land through the Incorporation Clause; that the Court must re-visit its decisions in *Yamashita v. Styer*<sup>[3]</sup> and *Kuroda v. Jalandoni*<sup>[4]</sup> which have been noted for their prescient articulation of the import of laws of humanity; that in said decision, the Court ruled that the State was bound to observe the laws of war and humanity; that in *Yamashita*, the Court expressly recognized rape as an international crime under international humanitarian law, and in *Jalandoni*, the Court declared that even if the Philippines had not acceded or signed the Hague Convention on Rules and Regulations covering Land Warfare, the Rules and Regulations formed part of the law of the nation by virtue of the Incorporation Clause; that such commitment to the laws of war and humanity has been enshrined in Section 2, Article II of the 1987 Constitution, which provides "that the Philippines...adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

The petitioners added that the status and applicability of the generally accepted principles of international law within the Philippine jurisdiction would be uncertain without the Incorporation Clause, and that the clause implied that the general international law forms part of Philippine law only insofar as they are expressly adopted; that in its rulings in *The Holy See, v. Rosario, Jr.*<sup>[5]</sup> and *U.S. v. Guinto*<sup>[6]</sup> the Court has said that international law is deemed part of the Philippine law as a consequence of Statehood; that in *Agustin v. Edu*,<sup>[7]</sup> the Court has declared that a treaty, though not yet ratified by the Philippines, was part of the law of the land through the Incorporation Clause; that by virtue of the Incorporation Clause, the Philippines is bound to abide by the *erga omnes* obligations arising from the *jus cogens* norms embodied in the laws of war and humanity that include the principle of the imprescriptibility of war crimes; that the crimes committed against petitioners are proscribed under international human rights law as there were undeniable violations of *jus cogens* norms; that the need to punish crimes against the laws of humanity has long become *jus cogens* norms, and that international legal obligations prevail over national legal norms; that the Court's invocation of the political doctrine in the instant case is misplaced; and that the Chief Executive has the constitutional duty to afford redress and to give justice to the victims of the comfort women system in the Philippines.<sup>[8]</sup>

Petitioners further argue that the Court has confused diplomatic protection with the broader responsibility of states to protect the human rights of their citizens, especially where the rights asserted are subject of *erga omnes* obligations and pertain to *jus cogens* norms; that the claims raised by petitioners are not simple private claims that are the usual subject of diplomatic protection; that the crimes committed against petitioners are shocking to the conscience of humanity; and that the atrocities committed by the Japanese soldiers against petitioners are not subject to the statute of limitations under international law.<sup>[9]</sup>

Petitioners pray that the Court reconsider its April 28, 2010 decision, and declare: (1) that the rapes, sexual slavery, torture and other forms of sexual violence committed against the Filipina comfort women are crimes against humanity and war crimes under customary international law; (2) that the Philippines is not bound by the Treaty of Peace with Japan, insofar as the waiver of the claims of the Filipina comfort women against Japan is concerned; (3) that the Secretary of Foreign Affairs and the Executive Secretary committed grave abuse of discretion in refusing to espouse the claims of Filipina comfort women; and (4) that petitioners are entitled to the issuance of a writ of preliminary injunction against the respondents.

Petitioners also pray that the Court order the Secretary of Foreign Affairs and the Executive Secretary to espouse the claims of Filipina comfort women for an official apology, legal compensation and other forms of reparation from Japan.<sup>[10]</sup>

In their *Supplemental Motion for Reconsideration*, petitioners stress that it was highly improper for the April 28, 2010 decision to lift commentaries from at least three sources without proper attribution – an article published in 2009 in the Yale Law Journal of International Law; a book published by the Cambridge University Press in 2005; and an article published in 2006 in the Western Reserve Journal of International Law – and make it appear that such commentaries supported its arguments for dismissing the petition, when in truth the plagiarized sources even made a strong case in favour of petitioners' claims.<sup>[11]</sup>

In their *Comment*,<sup>[12]</sup> respondents disagree with petitioners, maintaining that aside from the statements on plagiarism, the arguments raised by petitioners merely rehashed those made in their June 7, 2005 *Memorandum*; that they already refuted such arguments in their *Memorandum* of June 6, 2005 that the Court resolved through its April 28, 2010 decision, specifically as follows:

1. The contentions pertaining to the alleged plagiarism were then already lodged with the Committee on Ethics and Ethical Standards of the Court; hence, the matter of alleged plagiarism should not be discussed or resolved herein.<sup>[13]</sup>

2. A writ of *certiorari* did not lie in the absence of grave abuse of discretion amounting to lack or excess of jurisdiction. Hence, in view of the failure of petitioners to show any arbitrary or despotic act on the part of respondents, the relief of the writ of *certiorari* was not warranted.<sup>[14]</sup>

3. Respondents hold that the Waiver Clause in the Treaty of Peace with Japan, being valid, bound the Republic of the Philippines pursuant to the international law principle of *pacta sunt servanda*. The validity of the Treaty of Peace was the result of the ratification by two mutually consenting parties. Consequently, the obligations embodied in the Treaty of Peace must be carried out in accordance with the common and real intention of the parties at the time the treaty was concluded.<sup>[15]</sup>

4. Respondents assert that individuals did not have direct international remedies against any State that violated their human rights except where

such remedies are provided by an international agreement. Herein, neither of the Treaty of Peace and the Reparations Agreement, the relevant agreements affecting herein petitioners, provided for the reparation of petitioners' claims. Respondents aver that the formal apology by the Government of Japan and the reparation the Government of Japan has provided through the Asian Women's Fund (AWF) are sufficient to recompense petitioners on their claims, specifically:

- a. About 700 million yen would be paid from the national treasury over the next 10 years as welfare and medical services;
- b. Instead of paying the money directly to the former comfort women, the services would be provided through organizations delegated by governmental bodies in the recipient countries (i.e., the Philippines, the Republic of Korea, and Taiwan); and
- c. Compensation would consist of assistance for nursing services (like home helpers), housing, environmental development, medical expenses, and medical goods.<sup>[16]</sup>

### **Ruling**

The Court **DENIES** the *Motion for Reconsideration and Supplemental Motion for Reconsideration* for being devoid of merit.

#### **1.**

#### **Petitioners did not show that their resort was timely under the Rules of Court.**

Petitioners did not show that their bringing of the special civil action for *certiorari* was timely, *i.e.*, within the 60-day period provided in Section 4, Rule 65 of the *Rules of Court*, to wit:

Section 4. *When and where position filed.* – The petition shall be filed not later than sixty (60) days from notice of judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

As the rule indicates, the 60-day period starts to run from the date petitioner receives the assailed judgment, final order or resolution, or the denial of the motion for reconsideration or new trial timely filed, whether such motion is required or not. To establish the timeliness of the petition for *certiorari*, the date of receipt of the assailed judgment, final order or resolution or the denial of the motion for reconsideration or new trial must be stated in the petition; otherwise, the petition for *certiorari* must be dismissed. The importance of the dates cannot be understated, for such dates determine the timeliness of the filing of the petition for *certiorari*. As the Court has emphasized in *Tambong v. R. Jorge Development*

Corporation:[17]

There are three essential dates that must be stated in a petition for certiorari brought under Rule 65. *First*, the date when notice of the judgment or final order or resolution was received; *second*, when a motion for new trial or reconsideration was filed; and *third*, when notice of the denial thereof was received. **Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal of the petition. Substantial compliance will not suffice in a matter involving strict observance with the Rules.** (Emphasis supplied)

The Court has further said in *Santos v. Court of Appeals*:[18]

The requirement of setting forth the three (3) dates in a petition for *certiorari* under Rule 65 is for the purpose of determining its timeliness. Such a petition is required to be filed not later than sixty (60) days from notice of the judgment, order or *Resolution* sought to be assailed. Therefore, that the petition for *certiorari* was filed forty-one (41) days from receipt of the denial of the motion for reconsideration is hardly relevant. The Court of Appeals was not in any position to determine when this period commenced to run and whether the motion for reconsideration itself was filed on time since the material dates were not stated. It should not be assumed that in no event would the motion be filed later than fifteen (15) days. Technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. Utter disregard of the Rules cannot justly be rationalized by harking on the policy of liberal construction.[19]

The petition for *certiorari* contains the following averments, *viz*:

82. Since 1998, petitioners and other victims of the "comfort women system," approached the Executive Department through the Department of Justice in order to request for assistance to file a claim against the Japanese officials and military officers who ordered the establishment of the "comfort women" stations in the Philippines;

83. Officials of the Executive Department ignored their request and refused to file a claim against the said Japanese officials and military officers;

84. Undaunted, the Petitioners in turn approached the Department of Foreign Affairs, Department of Justice and Office of the of the Solicitor General to file their claim against the responsible Japanese officials and military officers, but their efforts were similarly and carelessly disregarded;[20]