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[G.R. No. 212426, July 26, 2016]

RENE A.V. SAGUISAG, WIGBERTO E. TAÑADA, FRANCISCO "DODONG" NEMENZO, JR., SR. MARY JOHN MANANZAN, PACIFICO A. AGABIN, ESTEBAN "STEVE" SALONGA, H. HARRY L. ROQUE, JR., EVALYN G. URSUA, EDRE U. OLALIA, DR. CAROL PAGADUAN-ARAULLO, DR. ROLAND SIMBULAN, AND TEDDY CASIÑO, PETITIONERS, VS. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., DEPARTMENT OF NATIONAL DEFENSE SECRETARY VOLTAIRE GAZMIN, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY ALBERT DEL ROSARIO, JR., DEPARTMENT OF BUDGET AND MANAGEMENT SECRETARY FLORENCIO ABAD, AND ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL EMMANUEL T. BAUTISTA, RESPONDENTS.

[G.R. No. 212444]

BAGONG ALYANSANG MAKABAYAN (BAYAN), REPRESENTED BY ITS SECRETARY GENERAL RENATO M. REYES, JR., BAYAN MUNA PARTY-LIST REPRESENTATIVES NERI J. COLMENARES, AND CARLOS ZARATE, GABRIELA WOMEN'S PARTY-LIST REPRESENTATIVES LUZ ILAGAN AND EMERENCIANA DE JESUS, ACT TEACHERS PARTY-LIST REPRESENTATIVE ANTONIO L. TINIO, ANAKPAWIS PARTY-LIST REPRESENTATIVE FERNANDO HICAP, KABATAAN PARTY-LIST REPRESENTATIVE TERRY RIDON, MAKABAYANG KOALISYON NG MAMAMAYAN (MAKABAYAN), REPRESENTED BY SATURNINO OCAMPO, AND LIZA MAZA, BIENVENIDO LUMBERA, JOEL C. LAMANGAN, RAFAEL MARIANO, SALVADOR FRANCE, ROGELIO M. SOLUTA, AND CLEMENTE G. BAUTISTA, PETITIONERS, VS. DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY VOLTAIRE GAZMIN, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY ALBERT DEL ROSARIO, EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL EMMANUEL T. BAUTISTA, DEFENSE UNDERSECRETARY PIO LORENZO BATINO, AMBASSADOR LOURDES YPARRAGUIRRE, AMBASSADOR J. EDUARDO MALAYA, DEPARTMENT OF JUSTICE UNDERSECRETARY FRANCISCO BARAAN III, AND DND ASSISTANT SECRETARY FOR STRATEGIC ASSESSMENTS RAYMUND JOSE QUILOP AS CHAIRPERSON AND MEMBERS, RESPECTIVELY, OF THE NEGOTIATING PANEL FOR THE PHILIPPINES ON EDCA, RESPONDENTS.

KILUSANG MAYO UNO, REPRESENTED BY ITS CHAIRPERSON, ELMER LABOG, CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), REPRESENTED BY ITS NATIONAL PRESIDENT FERDINAND GAITE, NATIONAL FEDERATION OF LABOR UNIONS-KILUSANG MAYO UNO, REPRESENTED BY ITS NATIONAL PRESIDENT JOSELITO USTAREZ,

NENITA GONZAGA, VIOLETA ESPIRITU, VIRGINIA FLORES, AND ARMANDO TEODORO, JR., PETITIONERS-IN-INTERVENTION,

RENE A.Q. SAGUISAG, JR., PETITIONER-IN-INTERVENTION.

R E S O L U T I O N

SERENO, C.J.:

The Motion for Reconsideration before us seeks to reverse the Decision of this Court in *Saguisag et. al., v. Executive Secretary* dated 12 January 2016.[1] The petitions in *Sasguisag, et. al.*[2] had questioned the constitutionality of the Enhanced Defense Cooperation Agreement (EDCA) between the Republic of the Philippines and the United States of America (U.S.). There, this Court ruled that the petitions be dismissed.[3]

On 3 February 2016, petitioners in the Decision filed the instant Motion, asking for a reconsideration of the Decision in *Saguisag, et. al*., questioning the ruling of the Court on both procedural and substantive grounds, *viz*:

> WHEREFORE, premises considered, petitioners respectfully pray that the Honorable Court RECONSIDER, REVERSE, AND SET - ASIDE its Decision dated January 12, 2016, and issue a new Decision GRANTING the instant consolidated petitions by declaring the Enhanced Defense Cooperation Agreement (EDCA) entered into by the respondents for the Philippine government, with the United States of America, UNCONSTITUTIONAL AND INVALID and to permanently enjoin its implementation.
>
> Other forms of relief just and equitable under the premises are likewise prayed for.

At the outset, petitioners questioned the procedural findings of the Court despite acknowledging the fact that the Court had given them standing to sue.[4] Therefore this issue is now irrelevant and academic, and deserves no reconsideration.

As for the substantive grounds, petitioners claim this Court erred when it ruled that EDCA was not a treaty.[5] In connection to this, petitioners move that EDCA must be in the form of a treaty in order to comply with the constitutional restriction under Section 25, Article XVIII of the 1987 Constitution on foreign military bases, troops, and facilities.[6] Additionally, they reiterate their arguments on the issues of telecommunications, taxation, and nuclear weapons.[7]

We deny the Motion for Reconsideration.

Petitioners do not present new arguments to buttress their claims of error on the part of this Court. They have rehashed their prior arguments and made them responsive to the structure of the Decision in *Saguisag*, yet the points being made are the same.

However, certain claims made by petitioners must be addressed.

On verba legis interpretation

Petitioners assert that this Court contradicted itself when it interpreted the word "allowed in" to refer to the initial entry of foreign bases, troops, and facilities, based on the fact that the plain meaning of the provision in question referred to prohibiting the return of

foreign bases, troops, and facilities except under a treaty concurred in by the Senate.[8]

This argument fails to consider the function and application of the *verba legis* rule.

Firstly, *verba legis* is a mode of construing the provisions of law as they stand.[9] This takes into account the language of the law, which is in English, and therefore includes reference to the meaning of the words based on the actual use of the word in the language.

Secondly, by interpreting "allowed in" as referring to an initial entry, the Court has simply applied the plain meaning of the words in the particular provision.[10] Necessarily, once entry has been established by a subsisting treaty, latter instances of entry need not be embodied by a separate treaty. After all, the Constitution did not state that foreign military bases, troops, and facilities shall not subsist or exist in the Philippines.

Petitioners' own interpretation and application of the *verba legis* rule will in fact result in an absurdity, which legal construction strictly abhors.[11] If this Court accept the essence of their argument that every instance of entry by foreign bases, troops, and facilities must be set out in detail in a new treaty, then the resulting bureaucratic impossibility of negotiating a treaty for the entry of a head of State's or military officer's security detail, meetings of foreign military officials in the country, and indeed military exercises such as *Balikatan* will occupy much of, if not all of the official working time by various government agencies. This is precisely the reason why any valid mode of interpretation must take into account how the law is exercised and its goals effected.[12] *Ut res magis valeat quam pereat*.

The Constitution cannot be viewed solely as a list of prohibitions and limitations on governmental power, but rather as an instrument providing the process of structuring government in order that it may effectively serve the people.[13] It is not simply a set of rules, but an entire legal framework for Philippine society.

In this particular case, we find that EDCA did not go beyond the framework. The entry of US troops has long been authorized under a valid and subsisting treaty, which is the Visiting Forces Agreement (VFA).[14] Reading the VFA along with the longstanding Mutual Defense Treaty (MDT)[15] led this Court to the conclusion that an executive agreement such as the EDCA was well within the bounds of the obligations imposed by both treaties.

On strict construction of an exception

This Court agrees with petitioners' cited jurisprudence that exceptions are strictly construed.[16] However, their patent misunderstanding of the Decision and the confusion this creates behooves this Court to address this argument.

To be clear, the Court did not add an exception to Section 25 Article XVIII. The general rule is that foreign bases, troops, and facilities are not allowed in the Philippines.[17] The exception to this is authority granted to the foreign state in the form of a treaty duly concurred in by the Philippine Senate.[18]

It is in the operation of this exception that the Court exercised its power of review. The lengthy legal analysis resulted in a proper categorization of EDCA: an executive agreement authorized by treaty. This Court undeniably considered the arguments

asserting that EDCA was, in fact, a treaty and not an executive agreement, but these arguments fell flat before the stronger legal position that EDCA merely implemented the VFA and MDT. As we stated in the Decision:

> xxx [I]t must already be clarified that the terms and details used by an implementing agreement need not be found in the mother treaty. They must be sourced from the authority derived from the treaty, but are not necessarily expressed word-for-word in the mother treaty.[19]

Hence, the argument that the Court added an exception to the law is erroneous and potentially misleading. The parties, both petitioners and respondents must therefore read the Decision carefully in order to fully comply with its disposition.

On EDCA as a treaty

The principal reason for the Motion for Reconsideration is evidently petitioners' disagreement with the Decision that EDCA implements the VFA and MDT. They reiterate their arguments that EDCA's provisions fall outside the allegedly limited scope of the VFA and MDT because it provides a wider arrangement than the VFA for military bases, troops, and facilities, and it allows the establishment of U.S. military bases.[20]

Specifically, petitioners cite the terms of the VFA referring to "joint exercises,"[21] such that arrangements involving the individual States-parties such as exclusive use of prepositioned materiel are not covered by the VFA. More emphatically, they state that prepositioning itself as an activity is not allowed under the VFA.[22]

Evidently, petitioners left out of their quote the portion of the Decision which cited the Senate report on the VFA. The full quote reads as follows:

> Siazon clarified that it is not the VFA by itself that determines what activities will be conducted between the armed forces of the U.S. and the Philippines. The VFA regulates and provides the legal framework for the presence, conduct and legal status of U.S. personnel while they are in the country for **visits, joint exercises and other related activities**.[23]

Quite clearly, the VFA contemplated activities beyond joint exercises, which this Court had already recognized and alluded to in *Lim v. Executive Secretary*,[24] even though the Court in that case was faced with a challenge to the Terms of Reference of a specific type of joint exercise, the *Balikatan Exercise*.

One source petitioners used to make claims on the limitation of the VFA to joint exercises is the alleged Department of Foreign Affairs (DFA) Primer on the VFA, which they claim states that:

> Furthermore, the VFA does not involve access arrangements for United States armed forces or the pre-positioning in the country of U.S. armaments and war materials. The agreement is about personnel and not equipment or supplies. [25]

Unfortunately, the uniform resource locator link cited by petitioners is inaccessible. However, even if we grant its veracity, the text of the VFA itself belies such a claim. Article I of the VFA states that "[a]s used in this Agreement, "United States personnel" means United States military and civilian personnel temporarily in the Philippines in connection with activities approved by the Philippine Government."[26] These "activities"

were, as stated in *Lim*, left to further implementing agreements. It is true that Article VII on Importation did not indicate pre-positioned materiel, since it referred to "United States Government equipment, materials, supplies, and other property imported into or acquired in the Philippines by or on behalf of the United States armed forces in connection with activities to which this agreement applies[.]"[27]

Nonetheless, neither did the text of the VFA indicate "joint exercises" as the only activity, or even as one of those activities authorized by the treaty. In fact, the Court had previously noted that

> [n]ot much help can be had therefrom [VFA], unfortunately, since the terminology employed is itself the source of the problem. The VFA permits United States personnel to engage, on an impermanent basis, in "activities," the exact meaning of which was left undefined. The expression is ambiguous, permitting a wide scope of undertakings subject only to the approval of the Philippine government. The sole encumbrance placed on its definition is couched in the negative, in that United States personnel must "abstain from any activity inconsistent with the spirit of this agreement, and in particular, from any political activity." All other activities, in other words, are fair game. [28]

Moreover, even if the DFA Primer was accurate, properly cited, and offered as evidence, it is quite clear that the DFA's opinion on the VFA is not legally binding nor conclusive. [29] It is the exclusive duty of the Court to interpret with finality what the VFA can or cannot allow according to its provisions.[30]

In addition to this, petitioners detail their objections to EDCA in a similar way to their original petition, claiming that the VFA and MDT did not allow EDCA to contain the following provisions:

1. Agreed Locations

2. Rotational presence of personnel

3. U.S. contractors

4. Activities of U.S. contractors[31]

We ruled in *Saguisag, et. al.* that the EDCA is not a treaty despite the presence of these provisions. The very nature of EDCA, its provisions and subject matter, indubitably categorize it as an executive agreement - a class of agreement that is not covered by the Article XVIII Section 25 restriction - in painstaking detail.[32] To partially quote the Decision:

> Executive agreements may dispense with the requirement of Senate concurrence because of the legal mandate with which they are concluded. As culled from the afore-quoted deliberations of the Constitutional Commission, past Supreme Court Decisions, and works of noted scholars, executive agreements merely involve arrangements on the implementation of *existing* policies, rules, laws, or agreements. They are concluded (1) to adjust the details of a treaty; (2) pursuant to or upon confirmation by an act of the Legislature; or (3) in the exercise of the President's independent powers under the Constitution. The *raison d'etre* of executive agreements hinges on *prior* constitutional or legislative authorizations.