

SENATOR AQUILINO PIMENTEL, JR., REP. ETTA ROSALES, PHILIPPINE COALITION FOR THE ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL COURT, TASK FORCE DETAINEES OF THE PHILIPPINES, FAMIL...

G.R. No. 158088. July 06, 2005

Ponente: PUNO J.

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PUNO J.:

This is a petition for mandamus filed by petitioners to compel the Office of the Executive Secretary and the Department of Foreign Affairs to transmit the signed copy of the Rome Statute of the International Criminal Court to the Senate of the Philippines for its concurrence in accordance with Section 21, Article VII of the 1987 Constitution.

The Rome Statute established the International Criminal Court which "shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern xxx and shall be complementary to the national criminal jurisdictions." [1] Its jurisdiction covers the crime of genocide, crimes against humanity, war crimes and the crime of aggression as defined in the Statute. [2] The Statute was opened for signature by all states in Rome on July 17, 1998 and had remained open for signature until December 31, 2000 at the United Nations Headquarters in New York. The Philippines signed the Statute on December 28, 2000 through Charge d' Affairs Enrique A. Manalo of the Philippine Mission to the United Nations. [3] Its provisions, however, require that it be subject to ratification, acceptance or approval of the signatory states. [4]

Petitioners filed the instant petition to compel the respondents — the Office of the Executive Secretary and the Department of Foreign Affairs — to transmit the signed text of the treaty to the Senate of the Philippines for ratification.

It is the theory of the petitioners that ratification of a treaty, under both domestic law and international law, is a function of the Senate. Hence, it is the duty of the executive department to transmit the signed copy of the Rome Statute to the Senate to allow it to exercise its discretion with respect to ratification of treaties. Moreover, petitioners submit that the Philippines has a ministerial duty to ratify the Rome Statute under treaty law and customary international law. Petitioners invoke the Vienna Convention on the Law of Treaties enjoining the states to refrain from acts which would defeat the object and purpose of a treaty when they have signed the treaty prior to ratification unless they have made their intention clear not to become parties to the treaty. [5]

The Office of the Solicitor General, commenting for the respondents, questioned the standing of the petitioners to file the instant suit. It also contended that the petition at bar violates the rule on hierarchy of courts. On the substantive issue raised by petitioners, respondents argue that the executive department has no duty to transmit the Rome Statute to the Senate for concurrence.

A petition for mandamus may be filed when any tribunal, corporation, board, officer or person unlawfully

neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station.[6] We have held that to be given due course, a petition for mandamus must have been instituted by a party aggrieved by the alleged inaction of any tribunal, corporation, board or person which unlawfully excludes said party from the enjoyment of a legal right. The petitioner in every case must therefore be an aggrieved party in the sense that he possesses a clear legal right to be enforced and a direct interest in the duty or act to be performed.[7] The Court will exercise its power of judicial review only if the case is brought before it by a party who has the legal standing to raise the constitutional or legal question. "Legal standing" means a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the government act that is being challenged. The term "interest" is material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.[8]

The petition at bar was filed by Senator Aquilino Pimentel, Jr. who asserts his legal standing to file the suit as member of the Senate; Congresswoman Loretta Ann Rosales, a member of the House of Representatives and Chairperson of its Committee on Human Rights; the Philippine Coalition for the Establishment of the International Criminal Court which is composed of individuals and corporate entities dedicated to the Philippine ratification of the Rome Statute; the Task Force Detainees of the Philippines, a juridical entity with the avowed purpose of promoting the cause of human rights and human rights victims in the country; the Families of Victims of Involuntary Disappearances, a juridical entity duly organized and existing pursuant to Philippine Laws with the avowed purpose of promoting the cause of families and victims of human rights violations in the country; Bianca Hacintha Roque and Harrison Jacob Roque, aged two (2) and one (1), respectively, at the time of filing of the instant petition, and suing under the doctrine of inter-generational rights enunciated in the case of *Oposa vs. Factoran, Jr.*;^[9] and a group of fifth year working law students from the University of the Philippines College of Law who are suing as taxpayers.

The question in standing is whether a party has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.^[10]

We find that among the petitioners, only Senator Pimentel has the legal standing to file the instant suit. The other petitioners maintain their standing as advocates and defenders of human rights, and as citizens of the country. They have not shown, however, that they have sustained or will sustain a direct injury from the non-transmittal of the signed text of the Rome Statute to the Senate. Their contention that they will be deprived of their remedies for the protection and enforcement of their rights does not persuade. The Rome Statute is intended to complement national criminal laws and courts. Sufficient remedies are available under our national laws to protect our citizens against human rights violations and petitioners can always seek redress for any abuse in our domestic courts.

As regards Senator Pimentel, it has been held that "to the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution."^[11] Thus, legislators have the standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in their office and are allowed to sue to question the validity of any official action which they claim infringes their prerogatives as legislators. The petition at bar invokes the power of the Senate to grant or withhold its concurrence to a treaty entered into by the executive branch, in this case, the Rome Statute. The petition seeks to order the executive branch to transmit the copy of the treaty to the Senate to allow it to exercise such authority. Senator Pimentel, as member of the institution, certainly has the legal standing to assert such authority of the Senate.

We now go to the substantive issue.

The core issue in this petition for mandamus is whether the Executive Secretary and the Department of Foreign Affairs have a ministerial duty to transmit to the Senate the copy of the Rome Statute signed by a member of the Philippine Mission to the United Nations even without the signature of the President.

We rule in the negative.

In our system of government, the President, being the head of state, is regarded as the sole organ and authority in external relations and is the country's sole representative with foreign nations.[12] As the chief architect of foreign policy, the President acts as the country's mouthpiece with respect to international affairs. Hence, the President is vested with the authority to deal with foreign states and governments, extend or withhold recognition, maintain diplomatic relations, enter into treaties, and otherwise transact the business of foreign relations.[13] In the realm of treaty-making, the President has the sole authority to negotiate with other states.

Nonetheless, while the President has the sole authority to negotiate and enter into treaties, the Constitution provides a limitation to his power by requiring the concurrence of 2/3 of all the members of the Senate for the validity of the treaty entered into by him. Section 21, Article VII of the 1987 Constitution provides that "no treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate." The 1935 and the 1973 Constitution also required the concurrence by the legislature to the treaties entered into by the executive. Section 10 (7), Article VII of the 1935 Constitution provided:

Sec. 10. (7) The President shall have the power, with the concurrence of two-thirds of all the Members of the Senate, to make treaties xxx.

Section 14 (1) Article VIII of the 1973 Constitution stated:

Sec. 14. (1) Except as otherwise provided in this Constitution, no treaty shall be valid and effective unless concurred in by a majority of all the Members of the Batasang Pambansa.

The participation of the legislative branch in the treaty-making process was deemed essential to provide a check on the executive in the field of foreign relations.[14] By requiring the concurrence of the legislature in the treaties entered into by the President, the Constitution ensures a healthy system of checks and balance necessary in the nation's pursuit of political maturity and growth.[15]

In filing this petition, the petitioners interpret Section 21, Article VII of the 1987 Constitution to mean that the power to ratify treaties belongs to the Senate.

We disagree.

Justice Isagani Cruz, in his book on International Law, describes the treaty-making process in this wise:

The usual steps in the treaty-making process are: negotiation, signature, ratification, and exchange of the instruments of ratification. The treaty may then be submitted for registration and publication under the U.N. Charter, although this step is not essential to the validity of the agreement as between the parties.

Negotiation may be undertaken directly by the head of state but he now usually assigns this task to his authorized representatives. These representatives are provided with credentials known as full powers, which they exhibit to the other negotiators at the start of the formal discussions. It is standard practice for one of the parties to submit a draft of the proposed treaty which, together with the counter-proposals, becomes the basis of the subsequent negotiations. The negotiations may be brief or protracted, depending on the issues involved, and may even "collapse" in case the parties are unable to come to an agreement on the points under consideration.

If and when the negotiators finally decide on the terms of the treaty, the same is opened for signature. This step

is primarily intended as a means of authenticating the instrument and for the purpose of symbolizing the good faith of the parties; but, significantly, it does not indicate the final consent of the state in cases where ratification of the treaty is required. The document is ordinarily signed in accordance with the alternat, that is, each of the several negotiators is allowed to sign first on the copy which he will bring home to his own state.

Ratification, which is the next step, is the formal act by which a state confirms and accepts the provisions of a treaty concluded by its representatives. The purpose of ratification is to enable the contracting states to examine the treaty more closely and to give them an opportunity to refuse to be bound by it should they find it inimical to their interests. It is for this reason that most treaties are made subject to the scrutiny and consent of a department of the government other than that which negotiated them.

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The last step in the treaty-making process is the exchange of the instruments of ratification, which usually also signifies the effectivity of the treaty unless a different date has been agreed upon by the parties. Where ratification is dispensed with and no effectivity clause is embodied in the treaty, the instrument is deemed effective upon its signature.[16] [emphasis supplied]

Petitioners' arguments equate the signing of the treaty by the Philippine representative with ratification. It should be underscored that the signing of the treaty and the ratification are two separate and distinct steps in the treaty-making process. As earlier discussed, the signature is primarily intended as a means of authenticating the instrument and as a symbol of the good faith of the parties. It is usually performed by the state's authorized representative in the diplomatic mission. Ratification, on the other hand, is the formal act by which a state confirms and accepts the provisions of a treaty concluded by its representative. It is generally held to be an executive act, undertaken by the head of the state or of the government.[17] Thus, Executive Order No. 459 issued by President Fidel V. Ramos on November 25, 1997 provides the guidelines in the negotiation of international agreements and its ratification. It mandates that after the treaty has been signed by the Philippine representative, the same shall be transmitted to the Department of Foreign Affairs. The Department of Foreign Affairs shall then prepare the ratification papers and forward the signed copy of the treaty to the President for ratification. After the President has ratified the treaty, the Department of Foreign Affairs shall submit the same to the Senate for concurrence. Upon receipt of the concurrence of the Senate, the Department of Foreign Affairs shall comply with the provisions of the treaty to render it effective. Section 7 of Executive Order No. 459 reads:

Sec. 7. Domestic Requirements for the Entry into Force of a Treaty or an Executive Agreement. — The domestic requirements for the entry into force of a treaty or an executive agreement, or any amendment thereto, shall be as follows:

A. Executive Agreements.

- All executive agreements shall be transmitted to the Department of Foreign Affairs after their signing for the preparation of the ratification papers. The transmittal shall include the highlights of the agreements and the benefits which will accrue to the Philippines arising from them.
- The Department of Foreign Affairs, pursuant to the endorsement by the concerned agency, shall transmit the agreements to the President of the Philippines for his ratification. The original signed instrument of ratification shall then be returned to the Department of Foreign Affairs for appropriate action.

B. Treaties.

- All treaties, regardless of their designation, shall comply with the requirements provided in sub-paragraph[s] 1 and 2, item A (Executive Agreements) of this Section. In addition, the Department of Foreign Affairs shall submit the treaties to the Senate of the Philippines for concurrence in the ratification by the President. A certified true copy of the treaties, in such numbers as may be required by the Senate, together with a certified

true copy of the ratification instrument, shall accompany the submission of the treaties to the Senate.

- Upon receipt of the concurrence by the Senate, the Department of Foreign Affairs shall comply with the provision of the treaties in effecting their entry into force.

Petitioners' submission that the Philippines is bound under treaty law and international law to ratify the treaty which it has signed is without basis. The signature does not signify the final consent of the state to the treaty. It is the ratification that binds the state to the provisions thereof. In fact, the Rome Statute itself requires that the signature of the representatives of the states be subject to ratification, acceptance or approval of the signatory states. Ratification is the act by which the provisions of a treaty are formally confirmed and approved by a State. By ratifying a treaty signed in its behalf, a state expresses its willingness to be bound by the provisions of such treaty. After the treaty is signed by the state's representative, the President, being accountable to the people, is burdened with the responsibility and the duty to carefully study the contents of the treaty and ensure that they are not inimical to the interest of the state and its people. Thus, the President has the discretion even after the signing of the treaty by the Philippine representative whether or not to ratify the same. The Vienna Convention on the Law of Treaties does not contemplate to defeat or even restrain this power of the head of states. If that were so, the requirement of ratification of treaties would be pointless and futile. It has been held that a state has no legal or even moral duty to ratify a treaty which has been signed by its plenipotentiaries.[18] There is no legal obligation to ratify a treaty, but it goes without saying that the refusal must be based on substantial grounds and not on superficial or whimsical reasons. Otherwise, the other state would be justified in taking offense.[19]

It should be emphasized that under our Constitution, the power to ratify is vested in the President, subject to the concurrence of the Senate. The role of the Senate, however, is limited only to giving or withholding its consent, or concurrence, to the ratification.[20] Hence, it is within the authority of the President to refuse to submit a treaty to the Senate or, having secured its consent for its ratification, refuse to ratify it.[21] Although the refusal of a state to ratify a treaty which has been signed in its behalf is a serious step that should not be taken lightly,[22] such decision is within the competence of the President alone, which cannot be encroached by this Court via a writ of mandamus. This Court has no jurisdiction over actions seeking to enjoin the President in the performance of his official duties.[23] The Court, therefore, cannot issue the writ of mandamus prayed for by the petitioners as it is beyond its jurisdiction to compel the executive branch of the government to transmit the signed text of Rome Statute to the Senate.

IN VIEW WHEREOF, the petition is DISMISSED.
SO ORDERED.

Davide, Jr., C.J., Panganiban, Quisumbing, Ynares-Santiago, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Sandoval-Gutierrez, Carpio, and Corona, JJ., on official leave.

[1] Article 1, Rome Statute.

[2] Article 5, Rome Statute.

[3] Annex "B" of Petition, Rollo, p. 101.

[4] Article 25, Rome Statute.

[5] Article 18, Vienna Convention on the Law of Treaties reads:

Article 18 Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

[6] Section 3, Rule 65, 1997 Rules of Civil Procedure.

[7] *Legaspi vs. Civil Service Commission*, 150 SCRA 530 (1987).

[8] *Joya vs. Presidential Commission on Good Government*, 225 SCRA 568 (1993).

[9] 224 SCRA 792 (1993).

[10] *Gonzales vs. Narvasa*, 337 SCRA 733 (2000).

[11] *Del Mar vs. Philippine Amusement and Gaming Corporation*, 346 SCRA 485 (2000).

[12] Cortes, *The Philippine Presidency: A Study of Executive Power* (1966), p. 187.

[13] Cruz, *Philippine Political Law* (1996 Ed.), p. 223.

[14] Cortes, *supra* note 12, p. 189.

[15] *Bayan vs. Zamora*, 342 SCRA 449 (2000).

[16] Cruz, *International Law* (1998 Ed.), pp. 172-174.

[17] *Bayan vs. Zamora*, *supra* note 15.

[18] Salonga and Yap, *Public International Law* (5th Edition), p. 138.

[19] Cruz, *International Law*, *supra* note 16, p.174.

[20] *Bayan vs. Zamora*, *supra* note 15.

[21] Cruz, *International Law*, *supra* note 16, p.174.

[22] Salonga and Yap, *supra* note 18.

[23] See *Severino vs. Governor-General*, 16 Phil. 366 (1910).

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