

ROSENDO DE BORJA, PETITIONER, VS. PINALAKAS NA UGNAYAN NG MALILIIT NA MANGINGISDA NG LUZON, MINDANAO AT VISAYAS (“PUMALU-MV”), PAMBANSANG KATIPUNAN NG MGA SAMAHAN SA KANAYUNAN (...)

G.R. NO. 185320. April 19, 2017

Ponente: JARDELEZA, J.

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JARDELEZA, J.:

Petitioners call upon us to disregard procedural rules on account of the alleged novelty and transcendental importance of the issue involved here. However, the transcendental importance doctrine cannot remedy the procedural defects that plague this petition. In the words of former Supreme Court Chief Justice Reynato Puno, "no amount of exigency can make this Court exercise a power where it is not proper."^[1] A petition for declaratory relief, like any other court action, cannot prosper absent an actual controversy that is ripe for judicial determination.

In these consolidated petitions,^[2] petitioners Rosendo De Borja (De Borja) and Tambuyog Development Center, Inc. (TDCI) seek to nullify the February 21, 2008 Decision^[3] and November 3, 2008 Resolution^[4] of the Court of Appeals (CA) in CA-G.R. CV No. 87391. The CA reversed the March 31, 2006 Decision^[5] of the Regional Trial Court (RTC) of Malabon City-Branch 74 and dismissed, on the ground of prematurity, the petition for declaratory relief filed by De Borja and the petition-in-intervention filed by respondents Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas (PUMALU-MV), Pambansang Katipunan ng mga Samahan sa Kanayunan (PKSK), and TDCI.^[6]

On February 16, 2004, De Borja, a commercial fishing operator, filed a Petition for Declaratory Relief^[7] (De Borja's petition) with the RTC of Malabon City. He asked the court to construe and declare his rights under Section 4(58) of Republic Act No. 8550 or The Philippine Fisheries Code of 1998 (1998 Fisheries Code). De Borja asked the court to determine the reckoning point of the 15-kilometer range of municipal waters, as provided under Section 4(58) of the 1998 Fisheries Code, in relation with Rule 4.1 (a) of its Implementing Rules and Regulations (IRR).^[8] Section 4(58) of the 1998 Fisheries Code and Rule 4.1 (a) of the IRR respectively read:

Sec. 4(58). Municipal waters – include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline. Where two (2) municipalities are so situated on opposite shores that there is less than thirty (30) kilometers of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities. (Emphasis and underscoring supplied.)

Rule 4.1 (a) Coastline – refers to the outline of the mainland shore touching the sea at mean lower low tide.

De Borja pleaded that the construction of the reckoning point of the 15-kilometer range affects his rights because he is now exposed to apprehensions and possible harassments that may be brought by conflicting interpretations of the 1998 Fisheries Code.[9] He further claimed that varying constructions of the law would spark conflict between fishermen and law enforcers, and would ultimately affect food security and defeat the purpose of the 1998 Fisheries Code.[10]

De Borja, however, did not implead any party as respondent in his petition. The RTC, in an Order[11] dated March 9, 2004, directed the Office of the Solicitor General (OSG) to file a comment.

Meanwhile, the National Mapping and Resource Information Authority (NAMRIA), through Engr. Enrique A. Macaspac, Chief of Geodesy and Geophysics Division, filed a letter-request to intervene and comment on the petition.[12] In its Comment,[13] NAMRIA stated that Rule 4.1 (a) used the term "coastline," while Section 4(58) specified "general coastline." It thus concluded that the definition of "coastline" in Rule 4.1 (a) is valid only for municipalities without any island. NAMRIA explained that by definition, the "general coastline" of a municipality without any island is simply the coastline of the mainland (or mainland shore) of that municipality. On the other hand, a municipality with island/s has the coastline/s of its island/s; hence, its general coastline consists of not only the coastline of its mainland (or mainland shore) but also the coastline/s of its island/s.[14] Thus, where the municipality is archipelagic, the archipelagic principle shall apply in delineating municipal waters, i.e., the 15-kilometer range of the municipal waters of an archipelagic municipality shall be reckoned not only from the coastline of the mainland but also from the coastline/s of the island/s of that municipality, such coastline/s of the island/s being part and parcel of the general coastline of that municipality.[15]

NAMRIA also gave their opinion as to whether the phrase "including offshore islands" in the phrase "a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline" refer to the "third line" (meaning, the third line includes or encloses the islands) or to the "general coastline" (meaning, the general coastline includes the coastline/s of the island/s). NAMRIA noted that "general coastline" precedes the word "including;" thus, "including offshore islands" must be referring to the "general coastline." NAMRIA also noted that the "third line" is qualified by two conditions: the third line is (1) parallel with the general coastline including offshore islands and (2) 15 kilometers from such coastline. NAMRIA concluded that to satisfy both conditions, the phrase "including offshore islands" must refer to the "general coastline," or in other words, must use the archipelagic principle.[16] NAMRIA stated that "including offshore islands" appeared only in the 1998 Fisheries Code. Earlier laws, which defined municipal waters, did not have it. NAMRIA then theorized that its presence in Section 4(58) of the 1998 Fisheries Code does not rule out the applicability of the archipelagic principle in delineating municipal waters. This interpretation is technically correct and consistent with the procedure in delimiting maritime boundaries under the United Nations Convention on the Law of the Sea.[17]

In its Comment,[18] the OSG narrated the events that led De Borja to file the petition. The OSG averred that the root cause of the petition was the adoption of the archipelagic principle in delineating and delimiting municipal waters of municipalities with offshore islands under Department of Environment and Natural Resources (DENR) Administrative Order No. 2001-17[19] (DAO 17).[20] Specifically, Section 5(B)(l)(c) of DAO 17 provides:

- Sec. 5. Systems and Procedures, x x x
- B. Procedure for Delineation and Delimitation of Municipal Waters
- 1. Delineation of Municipal Waters
- x x x
- c) Use of Municipal archipelagic baselines
- i.

Where the territory of a municipality includes several islands, the outermost points of such islands shall be used as basepoints and connected by municipal archipelagic baselines, provided that the length of such baselines shall not exceed thirty (30) kilometers.

ii.

The municipal archipelagic baselines shall determine the general coastline of the municipality for purposes of delineation and delimitation.

iii.

Islands, isles, or islets located more than thirty (30) kilometers from the mainland of the municipality shall have their own separate coastlines.

iv.

Rocks, reefs, cays, shoals, sandbars, and other features which are submerged during high tide shall not be used as basepoints for municipal archipelagic baselines. Neither shall they have their own coastlines.

v.

The outer limits of the municipal waters of the municipality shall be enclosed by a line parallel to the municipal archipelagic baselines and fifteen (15) kilometers therefrom. (Emphasis supplied.)

The OSG detailed that on September 21, 2001, the Committee on Appropriations of the House of Representatives adopted Committee Resolution No. 2001-01 (House Committee Resolution) which recommended the revocation of DAO 17 for being tainted with legal infirmities.[21] The House Committee Resolution stated that the DENR has no jurisdiction to issue DAO 17 because Section 123[22] of the 1998 Fisheries Code clearly referred to the Department of Agriculture (DA) as the department which shall determine the outer limits of municipal waters.[23] More importantly, the House Committee Resolution claimed that DAO 17 directly contravened the 1998 Fisheries Code and the Local Government Code (LGC). The House Committee Resolution explained that the phrase "including offshore islands" in Section 4(58) of the 1998 Fisheries Code means that offshore islands are deemed to be within 15 kilometers from the shorelines; therefore, negating the applicability of the archipelagic principle.[24] DAO 17, however, authorized otherwise. The implementation of DAO 17, therefore, would vastly reduce the fishing grounds already defined under the 1998 Fisheries Code and result in adverse effects to the fishing industry and the nation's food security.[25]

The House Committee Resolution was also sent to the DENR for appropriate action. The DENR, however, did not act on it. Thus, upon request of the House Committee on Appropriations, the Legal Affairs Bureau (LAB) of the House of Representatives issued a legal opinion on the validity of DAO 17. The LAB echoed the legal arguments contained in the House Committee Resolution. It asserted that the employment of the phrase "including offshore islands" was intentional to remove any doubt as to where the 15 kilometers should be reckoned from—that is, from the general coastline of the actual mainland and not from the archipelagic baseline.[26]

The matter was also referred to the Department of Justice (DOJ) for opinion. On November 27, 2002, the DOJ issued Opinion No. 100, which stated that the DA, not the DENR, has jurisdiction to authorize the delineation of municipal waters.[27] The DOJ then dispensed with the determination of whether DAO 17, which adopted the archipelagic principle in the delineation of municipal waters, was consistent with the provisions of the 1998 Fisheries Code.[28] As a result of the DOJ Opinion, the DENR Secretary revoked DAO 17 through DENR Administrative Order No. 2003-07.[29]

The OSG stressed that the DA was in the process of formulating guidelines for the delineation and delimitation of

municipal waters. In fact, the DA conducted a Fisheries Summit on November 12 to 13, 2003 to consult small fisherfolk and the commercial fishing sector on the definition of municipal waters. However, these negotiations reached an impasse, which then triggered De Borja's filing of the petition before the RTC.[30]

The OSG explained the two conflicting views on the delineation of municipal waters, namely: (1) the archipelagic principle espoused by the Municipalities of the Philippines and small fisher folk; and (2) the mainland principle favored by the commercial fishing sector.[31] Under the mainland principle, the 15-kilometer range shall be reckoned from the municipality's coastline including offshore islands. The archipelagic principle, on the other hand, reckons the 15-kilometer range of municipal waters from the outermost offshore islands, and not the mainland. The outer limits of the municipal waters of the municipality shall be enclosed by a line parallel to the municipal archipelagic baseline and 15 kilometers therefrom.[32]

The OSG argued that the mainland principle should be adopted. It stated that the adoption of the archipelagic principle found in Article I of the 1987 Constitution, which is utilized in defining the Philippine territory vis-a-vis other states, is relevant only when the issue of intrusion into Philippine territorial water arises—that is, when foreign fishing vessels enter Philippine territorial waters.[33]

The OSG further explained that:

The phrase "including offshore islands" used to modify general coastline in Section 4(58) of R.A. No. 8550 shows the legislative intent that the mainland shall be the reckoning point of the fifteen kilometer range of municipal waters, and not the archipelagic municipal baseline. To adopt the archipelagic municipal baseline as the reckoning point would be to render the phrase "including offshore islands" redundant because offshore islands would be deemed already included in drawing the archipelagic baseline.

A correct grammatical construction of the questioned provision would indicate that the word "such" in the phrase "including offshore islands and fifteen kilometers from such coastline" refers to the general coastline, and not to an archipelagic municipal baseline. Coastline as defined under Rule 4.1 (a) of the Implementing Rules and Regulations of R.A. No. 8550 "refers to the outline of the mainland shore touching the sea at mean lower tide." x x x[34]

The OSG also cited the House of Representatives Committee Deliberations on the 1998 Fisheries Code to show that the intent of the lawmakers is to reckon the 15-kilometer range of the municipal waters from the "shoreline." [35]

On August 16, 2004, PUMALU-MV, PKSK and TDCI (collectively, the intervenors) filed a Motion for Leave to File Intervention,[36] which the RTC granted. In their Petition-in-Intervention,[37] the intervenors claimed that, as small fisherfolk engaged in community-based coastal resource management, they have substantial rights over the issue of delineation of municipal waters.[38] They maintained that Section 4(58) of the 1998 Fisheries Code should be construed in a manner that would give effect to the intent of delineating and delimiting municipal waters of a municipality with or without offshore islands. They posited that to apply the mainland principle to municipalities with offshore islands would result in the latter's dismemberment of their own islands or islets.[39] The intervenors also contended that the application of the mainland principle to municipalities with offshore islands would deny the local government units of their water and territorial jurisdiction, which would not be in keeping with the principle of autonomy under the LGC.[40]

As to municipalities with offshore islands, the intervenors averred that the archipelagic principle should be applied for consistency and congruence of the legal framework, considering that Article I of the 1987 Constitution adopts the archipelagic principle.[41] They argued that the application of the archipelagic principle in delimiting municipal waters is evident in the previous administrative issuances of the DA through the Bureau of Fisheries

and Aquatic Resources (BFAR), namely: Fisheries Administrative Order No. (FAO) 164,[42] and FAO 156.[43] The intervenors noted that in defining the municipal waters under the regime of Presidential Decree No. 704,[44] FAO 164 and FAO 156 reckoned municipal waters of municipalities with islands and islets from the outer shorelines of such group of islands or islets.[45]

Finally, the intervenors revealed that after the revocation of DAO 17, the DA issued Department Order No. 01-04[46] (DAO 1) providing the guidelines for delineating municipal waters for municipalities and cities without offshore islands.[47] DAO 1, in effect, recognizes the need to distinguish between municipalities with and without offshore islands.

In its Decision dated March 31, 2006, the RTC agreed with the position of the OSG. It noted that the issuance of DAO 1 cited by the intervenors does not tacitly indicate that the archipelagic principle must be adopted as a means of delimitation or delineation of municipal waters in municipalities or cities with offshore islands. The RTC found an existing controversy regarding the definition of municipal waters for municipalities and cities with offshore islands, which the DA has yet to settle through an administrative directive. The RTC observed that the DA, through the OSG, opted to leave the matter of interpretation to the court.[48] Thus, the RTC disposed of the case in this wise:

WHEREFORE, judgment is hereby rendered declaring that in interpreting the phrase "and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline,["] the "mainland principle] and not the "archipelagic principle" should be applied.[49]

The intervenors appealed to the CA.

In its Decision dated February 21, 2008, the CA reversed and set aside the Decision of the RTC. According to the CA, De Borja's petition for declaratory relief and the request for intervention should have been dismissed due to prematurity.[50]

The CA ruled that De Borja's petition did not meet the two requisites of a petition for declaratory relief, namely: justiciable controversy and ripeness for judicial determination. It noted that there is no actual case or controversy regarding the definition of municipal waters for municipalities with offshore islands because the DA has yet to issue guidelines with respect to these.[51]

De Borja filed a Motion for Reconsideration with Motion for Clarification.[52] He argued that Section 1, Rule 63 of the Rules of Court allows any interested person to bring an action for declaratory relief for the construction of a statute, such as the 1998 Fisheries Code. Hence, it may be the subject of a petition for declaratory relief independent and regardless of the issuance of implementing guidelines, since implementing rules only flow from the statute.[53]

De Borja further asserted that the controversy is ripe for judicial determination considering the diverse interpretations of the parties on the scope of the phrase "and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline." [54] He also claimed that the construction of the reckoning point of the 15-kilometer range of municipal waters under the law is, in any case, of national importance with transcendental implications because it affects the entire local fishing industry. He thus prayed for the CA to relax procedural rules and take cognizance of the petition.[55]

TDCI also filed its Motion for Reconsideration[56] of the CA Decision. It argued that the petition should have been given due course because the issues in the case are not only novel, but are of transcendental importance. They involve the protection of small and marginal fisherfolk, and the delimitation of municipal waters throughout the country for fisheries or coastal resource management and law enforcement. TDCI prayed for the CA to declare

the archipelagic doctrine as adopted in interpreting Section 4(58) of the 1998 Fisheries Code, with respect to municipalities with offshore islands.[57]

PKSK, on the other hand, filed its Comment[58] to De Borja's Motion for Reconsideration with Motion for Clarification, praying that it be dismissed for lack of merit. PKSK insisted that there is no actual case or controversy between the parties as to the provisions of the 1998 Fisheries Code, and that De Borja simply wants an interpretation by the court.[59] PKSK, however, argued that the dismissal of the petition meant that the archipelagic doctrine is the prevailing interpretation.[60]

In its Resolution[61] dated November 3, 2008, the CA denied De Borja's and TDCI's motions. The CA held:

x x x At present, the DA has yet to issue guidelines for delineating/delimiting municipal waters for municipalities and cities with offshore islands. Since the DA still has to issue such guidelines to carry into effect the requirement imposed by Rule 123.2 of the IRR of RA No. 8550, whatever ramifications petitioner-appellee [De Borja] and intervenors-appellants fear may result from the enforcement of the questioned provision of RA No. 8550 remain to be merely hypothetical.

While this Court acknowledges the importance of the issue raised by petitioner-appellee and intervenors-appellants in SP Civil Action No. 04-007-MN as well as in the present case it must be emphasized that this Court may not act upon a hypothetical issue that has not yet ripened into a justiciable controversy.[62] (Citations omitted.)

Thus, De Borja and TDCI filed their own petitions for review before us, which we consolidated in our Resolution[63] dated January 14, 2009. De Borja and TDCI both insist that the CA erred in dismissing the petition for declaratory relief on the ground of prematurity. They assert that only a judicial declaration will finally settle the different interpretations of Section 4(58) of the 1998 Fisheries Code. According to De Borja, a petition for declaratory relief is the proper remedy for the construction of the provision regardless of the issuance of implementing guidelines. As for TDCI, it maintains that all the requisites for a valid petition for declaratory relief are present.

De Borja and TDCI also both reiterate the issues' national significance and transcendental implications to the entire local fishing industry. They, however, differ in the principle they want the court to uphold in interpreting Section 4(58) of the 1998 Fisheries Code, respecting municipalities of cities with offshore islands. De Borja opines that the provision unqualifiedly adopts only the mainland principle in defining municipal waters.[64] TDCI, on the other hand, maintains that using the mainland principle in interpreting the provision would violate the constitutional rights of simple fisherfolk to subsistence fishing, and of municipalities and cities with offshore islands to meaningful autonomy in managing their resources.[65]

In its Comment[66] dated June 10, 2009, the OSG concurs with the CA that De Borja's petition before the RTC failed to allege a justiciable controversy. The OSG avers that the petition must fail because it was based on mere speculations, contingent events, and hypothetical issues that have not yet ripened into an actual controversy.[67] Notwithstanding this position, the OSG still submits that the mainland principle, and not the archipelagic principle, should be adopted in defining municipal waters under the 1998 Fisheries Code.[68]

The sole issue presented is whether De Borja's petition for declaratory relief should prosper.

We deny the petition.

For a petition for declaratory relief[69] to prosper, it must be shown that (a) there is a justiciable controversy, (b) the controversy is between persons whose interests are adverse, (c) the party seeking the relief has a legal interest in the controversy, and (d) the issue invoked is ripe for judicial determination.[70] We agree with the CA when it

dismissed De Borja's petition for being premature as it lacks the first and fourth requisites. We hasten to add that the petition, in fact, lacks all four requisites.

First, we find that De Borja's petition does not present a justiciable controversy or the "ripening seeds" of one as to warrant a court's intervention. A justiciable controversy is a definite and concrete dispute touching on the legal relations of parties having adverse legal interests, which may be resolved by a court of law through the application of a law.[71] It must be appropriate or ripe for judicial determination, admitting of specific relief through a decree that is conclusive in character. It must not be conjectural or merely anticipatory, which only seeks for an opinion that advises what the law would be on a hypothetical state of facts.[72]

In his five-page petition for declaratory relief, De Borja failed to provide factual allegations showing that his legal rights were the subject of an imminent or threatened violation that should be prevented by the declaratory relief sought. He simply went on to conclude that the construction or interpretation of the reckoning point of the 15-kilometer range of municipal waters under the 1998 Fisheries Code would affect his rights as he is "now exposed to apprehensions and possible harassments that may be brought about by conflicting interpretations of the said statute x x x." [73] As to how these apprehensions and harassments shall come about, De Borja did not elaborate. Clearly, therefore, there is no actual or imminent threat to his rights which is ripe for judicial review. As we have explained in *Republic v. Roque*: [74]

A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372. Not far removed from the factual milieu in the *Southern Hemisphere* cases, private respondents only assert general interests as citizens, and taxpayers and infractions which the government could prospectively commit if the enforcement of the said law would remain untrammelled. As their petition would disclose, private respondents' fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. They, however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of RA 9372 against them. In other words, there was no particular, real or imminent threat to any of them. As held in *Southern Hemisphere*:

Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.

The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused. Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable.[75] (Emphasis supplied; citations omitted.)

De Borja neither established his legal interest in the controversy nor demonstrated the adverse interests between him and others. He did not even implead any respondent and merely stated that he was engaged in fishing operations in various fishing grounds within the internal waters of the Philippines. He simply made a general statement that there are varying interpretations of the reckoning point of the 15-kilometer range of municipal waters under the 1998 Fisheries Code, without elaborating as to what these conflicting interpretations of the law were.

In the early case of *Delumen v. Republic*, [76] we concurred with the Solicitor General's contention that a justiciable controversy is one involving an active antagonistic assertion of a legal right on one side and a denial

thereof on the other concerning a real and not a merely theoretical question or issue.[77] We held that the petitioners in *Delumen* were not entitled to a declaratory relief because their petition did not mention any specific person having or claiming adverse interest in the matter. As such, they were invoking an action for declaratory judgment solely to determine a hypothetical, abstract, theoretical, or uncertain claim, which we cannot allow.[78]

We stress that neither the OSG's filing of its Comment nor the petition-in-intervention of PUMALU-MV, PKSK, and TDCI endowed De Borja's petition with an actual case or controversy. The Comment, for one, did not contest the allegations in De Borja's petition. Its main role was to supply De Borja's petition with the factual antecedents detailing how the alleged controversy reached the court. It also enlightened the RTC as to the two views, the mainland principle versus the archipelagic principle, on the definition of municipal waters. Even if the Comment did oppose the petition, there would still be no justiciable controversy for lack of allegation that any person has ever contested or threatened to contest De Borja's claim of fishing rights.[79]

The petition-in-intervention, on the other hand, also did not dispute or oppose any of the allegations in De Borja's petition. While it did espouse the application of the archipelagic principle in contrast to the mainland principle advocated by the OSG, it must be recalled that De Borja did not advocate for any of these principles at that time. He only adopted the OSG's position in his Memorandum before the RTC. Thus, the petition-in-intervention did not create an actual controversy in this case as the cause of action for declaratory relief must be made out by the allegations of the petition without the aid of on any other pleading.[80]

Simply put, De Borja's petition does not contain ultimate facts to support his cause of action. De Borja merely wants the court to give him an opinion on the proper interpretation of the definition of municipal waters. This is a prayer which we cannot grant. Our constitutional mandate to settle only actual controversies involving rights that are legally demandable and enforceable[81] proscribes us from giving an advisory opinion.

Second, closely associated with the requirement of actual or justiciable controversy is the requirement of ripeness for adjudication. In this regard, we cite our ruling in *Lozano v. Nograles*,[82] viz.:

An aspect of the "case-or-controversy" requirement' is the requisite of "ripeness." x x x In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. An alternative road to review similarly taken would be to determine whether an action has already been accomplished or performed by a branch of government before the courts may step in.[83] (Emphasis and citations omitted.)

The requisite of ripeness has a two-fold aspect: fitness of the issues for judicial decision and the hardship to the parties entailed by withholding court consideration.[84] The first aspect requires that the issue tendered is a purely legal one and that the regulation subject of the case is a "final agency action." The second aspect mandates that the effects of the regulation are felt in a concrete way by the challenging parties.[85] Applying these tests, we find that De Borja's petition is not ripe for adjudication.

The question calling for the interpretation of the definition of municipal waters for municipalities with offshore islands is not a purely legal question because the given set of facts from which our interpretation will be based are not yet complete. In other words, the question demands an agency action from the DA. An agency action is defined in Book VII, Chapter I, Section 2(15) of the Administrative Code of 1987[86] as referring to the whole or part of every agency rule, order, license, sanction, relief or its equivalent or denial thereof. As applied here, the action required from the DA involves further factual determination of a kind that necessitates the application of the Department's expertise and authority, both of which we do not have.

Under Section 123 of the 1998 Fisheries Code (now Section 157 of the 1998 Fisheries Code as amended by

Republic Act No. 10654[87] [hereinafter, the Amended Fisheries Code]), the DA has the mandate to authorize the NAMRIA to designate and chart navigational lanes in fisheries areas and to delineate municipal waters. In the legitimate exercise of its power of subordinate legislation, the DA issued the IRR of the Amended Fisheries Code.[88] The IRR of the Amended Fisheries Code, particularly Sections 157.1 to 157.4, echoes the mandate of the DA and NAMRIA under Section 157 of the law. It provides the details and the process of delineation of municipal waters, to wit:

Sec. 157. Charting of Navigational Lanes and Delineation of Municipal Waters. – The Department shall authorize the National Mapping and Resource Information Authority (NAMRIA) for the designation and charting of navigational lanes in fishery areas and delineation of municipal waters. The Philippine Coast Guard shall exercise control and supervision over such designated navigational lanes.

Rule 157.1. Delineation of Municipal Waters. - Recognizing that all municipal waters have not yet been delineated, the DA-BFAR shall issue guidelines for the delineation of all municipal waters in the Philippines following the process stated in Rule 65.2.

Rule 157.2. Navigational Lanes. - The DA-BFAR, shall facilitate the designation and charting of navigational lanes in fishery areas, by convening an Inter-Agency committee composed of NAMRIA, PN, PCG, MARINA, other concerned agencies and the NFARMC.

Rule 157.3. Mapping. – The DA-BFAR, in coordination with the NAMRIA and with the participation of local government units concerned shall determine the outer limits of the municipal waters. Overlapping boundaries in municipal waters shall be governed by the Rules embodied in this law and the Local Government Code of 1991.

Rule 157.4. Navigational Charts. – Charts of navigational lane and outer limits of municipal waters shall be produced, published and regularly updated by NAMRIA.

Rule 157.5. Funding. – The Department, through DBM, shall allocate sufficient funds for these purposes. (Emphasis supplied.)

Pertinently, Rule 65.2 provides:

Rule 65.2. Formulation of Rules and Regulations. - In formulating rules and regulations, the DA-BFAR shall observe these principles:

- The regulation shall be based on scientific studies. In the conduct of scientific studies, stakeholders in the affected region shall be informed of the conduct of the study, its duration and the expert/s who will conduct the same. The stakeholders may nominate their own scientist/s to participate in the study or will be given the chance to provide comments on the scientist who will conduct the study;
- The consultation shall be conducted in all affected regions as may be practicable, taking into consideration the safety and accessibility of the venue to the stakeholders;
- Stakeholders shall be given at least fifteen (15) days prior notice of the date and venue of the consultation including the subject matter of the proposed regulation. The notice shall be published in a newspaper of general circulation in the region, where feasible; and,
- The proposed regulation shall be made publicly available at the BFAR website and BFAR Regional Offices at least seven (7) days prior to the consultation. (Emphasis supplied.)

The DA, however, has not yet performed any of the above acts. The record shows that no rule, regulation, or guidelines have been issued by the DA to date, in coordination with BFAR, as regards municipalities with offshore islands. There are serious gaps in the implementation of the law which the DA and the concerned

agencies would still need to fill in. As it stands, therefore, there is no agency action to speak of, much less a "final agency action" required under the ripeness doctrine.

Equally significant, we find that if we were to grant the petition for declaratory relief, it would mean an intrusion into the domain of the executive, preempting the actions of the DA and other concerned government agencies and stakeholders. As clearly set out in the provisions of the IRR, the primary duty of determining the reckoning point of the 15-kilometer range of municipal waters of municipalities with offshore islands falls with the DA, NAMRIA, and the BFAR. They shall do so through public consultation or with the participation of stakeholders, such as the concerned municipalities, fishing operators, and fisherfolk.

Nonetheless, De Borja insists that a statute may be the subject of a petition for declaratory relief regardless of the issuance of an implementing guideline. He pleads that the "persisting and actual confusion brought about by the different interpretations of the interested groups in the local fishing industry is ripe for judicial action." [89] We disagree. In *Garcia v. Executive Secretary*, [90] we ruled that a petition assailing the constitutionality of Republic Act No. 7042 or the Foreign Investments Act of 1991 is not ripe for adjudication, there being "no actual case or controversy, particularly because of the absence of the implementing rules that are supposed to carry the Act into effect." [91]

In *Bayan Telecommunications, Inc. v. Republic*, [92] we affirmed the ruling of the CA in dismissing a petition for declaratory relief after we found that Bayantel's fear of sanction under Section 21 of Republic Act No. 7925 [93] was merely hypothetical, as there are yet no implementing rules or guidelines to carry into effect the requirement imposed by the said provision. [94]

Likewise, in *Lozano*, [95] we noted that judicial intervention [96] was premature because the House of Representatives has yet to adopt rules of procedure in relation to Resolution No. 1109. [97]

Corollarily, since no implementing rule or agency action is involved in this case, no real hardship may be felt by De Borja if we were to withhold judicial consideration. As earlier discussed, the petition did not state any specific right to which De Borja was entitled, and which was threatened to be violated, prejudiced or denied by the DA. We emphasize that court action is discretionary in petitions for declaratory relief. [98] We may refuse to construe the instrument, or in this case, the statute involved, if the construction is not necessary and proper under the circumstances and/or if the construction would not terminate the controversy. [99] Here, the lack of a purely legal question, the absence of agency action, and the nonexistence of a threatened direct injury, make the construction of Section 4(58) of the 1998 Fisheries Code inappropriate and unripe for judicial resolution at this time. We cannot give relief merely because De Borja has a "real problem" and "a genuine need for legal advice." [100] As aptly put in *Abbott Laboratories v. Gardner*: [101]

x x x Without undertaking to survey the intricacies of the ripeness doctrine, it is fair to say that its basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties. (Citation omitted.)

Considering the foregoing, the DA's decision, through the OSG, to submit the interpretation of municipal waters to the court's wisdom and discretion was improper. The executive cannot simply pass the buck to the judiciary. As we have explained in *Tan v. Macapagal*: [102]

x x x The doctrine of separation of powers calls for the other departments being left alone to discharge their duties as they see fit. The judiciary as Justice Laurel emphatically asserted "will neither direct nor restrain executive [or legislative] action x x x." The legislative and executive branches are not bound to seek its advice

as to what to do or not to do. Judicial inquiry has to be postponed in the meanwhile. It is a prerequisite that something had by then been accomplished or performed by either branch before a court may come into the picture. At such a time, it may pass on the validity of what was done but only "when xxx properly challenged in an appropriate legal proceeding." [103] (Emphasis supplied; citations omitted.)

Finally, in their attempt to salvage the case, both De Borja and intervenor TDCI invoked transcendental importance. However, their contention is misplaced. The transcendental importance doctrine dispenses only with the requirement of locus standi. [104] It cannot and does not override the requirements of actual and justiciable controversy and ripeness for adjudication, which are conditions sine qua non for the exercise of judicial power.

WHEREFORE, the consolidated petitions are DENIED. The February 21, 2008 Decision and November 3, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 87391 are hereby AFFIRMED.

SO ORDERED.

Velasco, Jr., (Chairperson), Bersamin, Reyes, and Tijam, JJ., concur.

NOTICE OF JUDGMENT

Sirs /Mesdames:

Please take notice that on April 19, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on April 26, 2017 at 9:00 a.m.

Very truly yours,

WILFREDO V. LAPITAN
Clerk of Court

By:

(SGD.) MISAEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court

[1] Lozano v. Nograles, G.R. No. 187883, June 16, 2009, 589 SCRA 356, 357.

[2] De Borja's Petition, rollo (G.R. No. 185320), pp. 3-27; TDCI's Petition, rollo, (G.R. No. 185348), pp. 7-32.

[3] Rollo (G.R. No. 185320), pp. 30-42; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag.

[4] Id. at 44-49.

[5] Id. at 172-184.

[6] Id. at 41.

[7] Id. at 84-89.

[8] DA Administrative Order No. 3 (1998).

[9] Rollo (G.R. No. 185320), pp. 86-87.

[10] Id.

[11] Records, p. 81.

[12] Id. at 82.

[13] Id. at 88-105.

[14] Id. at 91.

[15] Id. at 94-95.

[16] Id. at 91-92; 100.

[17] Id. at 93-94.

[18] Id. at 111-150.

[19] Guidelines for Delineating/Delimiting Municipal Waters.

[20] Rollo (G.R. No. 185320), p. 94.

[21] Id. at 94-95.

[22] Sec. 123. Charting of Navigational Lanes and Delineation of Municipal Waters. – The Department shall authorize the National Mapping and Resource Information Authority (NAMRIA) for the designation and charting of navigational lanes in fishery areas and delineation of municipal waters. The Philippine Coast Guard shall exercise control and supervision over such designated navigational lanes.

[23] Rollo (G.R. No. 185320), p. 96.

[24] Id. at 96-98.

[25] Id. at 97.

[26] Id. at 101-102.

[27] Id. at 105-106.

[28] Id. at 106.

[29] Revocation of Administrative Order 17, Series of 2001.

[30] Rollo (G.R. No. 185320), pp. 108-110.

[31] Id. at 108-109.

[32] Id. at 111-112.

[33] Id. at 116-117.

[34] Id. at 120.

[35] Id. at 120-127.

[36] Records, pp. 186-190.

[37] Rollo (G.R. No. 185320), pp. 130-149.

[38] Id. at 131.

[39] Id. at 134-135.

[40] Id. at 137.

[41] Id. at 136-138.

[42] Rules and Regulations Governing the Operation of "Hulbot-Hulbot" in the Philippine Waters (1987).

[43] Guidelines and Procedure in the Effective Implementation of LOI No. 1328 (1986).

[44] Fisheries Decree of 1975.

[45] Rollo (G.R. No. 185320), pp. 138-139.

[46] Guidelines for Delineating/Delimiting Municipal Waters for Municipalities and Cities Without Offshore Islands. Dated January 14, 2004, published on January 24, 2004 and took effect 15 days thereafter.

[47] Rollo (G.R. No. 185320), p. 131.

[48] Id. at 180-184.

[49] Id. at 184.

[50] Id. at 41.

[51] Id. at 40.

[52] Id. at 295-309.

[53] Id. at 299.

[54] Id. at 302.

[55] Id. at 303.

[56] Id. at 310-316.

[57] Id. at 312.

[58] CA rollo, pp. 292-299.

[59] Id. at 294.

[60] Id. at 295-296.

[61] Rollo (G.R. No. 185320), pp. 44-49.

[62] Id. at 48.

[63] Id. at 317-318.

[64] Id. at 18-20.

[65] Rollo (G.R. No. 185348), pp. 21-27.

[66] Rollo (G.R. No. 185320), pp. 357-404.

[67] Id. at 381-383.

[68] Id. at 383.

[69] RULES OF COURT, Rule 63, Sec. 1. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

[70] *Bayan Telecommunications, Inc. v. Republic*, G.R. No. 161140, January 31, 2007, 513 SCRA 562, 568, citing *Office of the Ombudsman v. Ibay*, G.R. No. 137538, September 3, 2001, 364 SCRA 281, 286.

[71] *Bayan Telecommunications, Inc. v. Republic*, supra at 568, citing *Cularan v. Department of Environment and Natural Resources*, G.R. No. 134958, January 31, 2001, 350 SCRA 697, 704-705.

[72] See *Republic of the Philippines v. Roque*, G.R. No. 204603, September 24, 2013, 706 SCRA 273, 284, citing *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, 428 SCRA 283, 291; and *Guingona, Jr. v. Court of Appeals*, G.R. No. 125532, July 10, 1998, 292 SCRA 402, 413-414.

[73] *Rollo* (G.R. No. 185320), pp. 86-87; emphasis ours.

[74] G.R. No. 204603, September 24, 2013, 706 SCRA 273.

[75] *Id.* at 284-285.

[76] 94 Phil. 287 (1954).

[77] *Id.* at 288-289.

[78] *Id.* at 289.

[79] See *Obiles v. Republic*, 92 Phil. 864 (1953)

[80] See *Delumen v. Republic*, supra at 289.

[81] CONSTITUTION, Art. VIII, Sec. 1.

[82] G.R. No. 187883, June 16, 2009, 589 SCRA 356.

[83] *Id.* at 358-359.

[84] *Id.* at 359, citing *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967).

[85] *National Automatic Laundry and Cleaning Council v. Shultz*, 443 F.2d 689 (1971), citing *Abbott Laboratories v. Gardner*, supra.

[86] Executive Order No. 292.

[87] An Act to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Amending Republic Act No. 8550, Otherwise Known as "The Philippine Fisheries Code of 1998" (2015).

[88] DA Administrative Order No. 10 (2015).

[89] *Rollo* (G.R. No. 185320), p. 13.

[90] G.R. No. 100883, December 2, 1991, 204 SCRA 516.

[91] *Id.* at 522.

[92] G.R. No. 161140, January 31, 2007, 513 SCRA 562.

[93] Public Telecommunications Policy Act of the Philippines (1995).

[94] Bayan Telecommunications, Inc. v. Republic, *supra* at 568.

[95] *Supra* note 82.

[96] Petitioners, in Lozano, called for the nullification of House Resolution No. 1109.

[97] A Resolution Calling Upon the Members of Congress to Convene for the Purpose of Considering Proposals to Amend or Revise the Constitution, Upon a Three-fourths Vote of All the Members of Congress, Fourteenth Congress.

[98] *Chan v. Galang*, G.R No. L-21732, October 17, 1966, 18 SCRA 345, 351.

[99] See RULES OF COURT, Rule 63, Sec. 5.

[100] *National Automatic Laundry and Cleaning Council v. Shultz*, 443 F.2d 689 (1971), citing *F. W. Maurer & Sons Co. v. Andrews*, 30 F. Supp. 637, 638 (E.D. Pa. 1939).

[101] 387 U.S. 136 (1967).

[102] G.R. No. L-34161, February 29, 1972, 43 SCRA 677.

[103] *Id.* at 681.

[104] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. No. 178552, October 5, 2010, 632 SCRA 146, 168, citing *Chavez v. Presidential Commission on Good Government*, G.R. No. 130716. December 9, 1998, 299 SCRA 744.

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