

CORDILLERA BROAD COALITION, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 79956. January 29, 1990

Ponente: CORTES, J.

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CORTES, J.:

In these consolidated petitions, the constitutionality of Executive Order No. 220, dated July 15, 1987, which created the Cordillera Administrative Region, is assailed on the primary ground that it pre-empts the enactment of an organic act by the Congress and the creation of the autonomous region in the Cordilleras conditional on the approval of the act through a plebiscite.

Relative to the creation of autonomous regions, the Constitution, in Article X, provides:

AUTONOMOUS REGIONS

Sec. 15. There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.

Sec. 16. The President shall exercise general supervision over autonomous regions to ensure that laws are faithfully executed.

Sec. 17. All powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions shall be vested in the National Government.

Sec. 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family and property law jurisdiction consistent with the provisions of this Constitution and national laws.

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

Sec. 19. The first Congress elected under this Constitution shall, within eighteen months from the time of organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras.

Sec. 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

- (1) Administrative organization;
- (2) Creation of sources of revenues;
- (3) Ancestral domain and natural resources;
- (4) Personal, family and property relations;
- (5) Regional urban and rural planning development;
- (6) Economic, social and tourism development;
- (7) Educational policies;
- (8) Preservation and development of the cultural heritage; and
- (9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

Sec. 21. The preservation of peace and order within the regions shall be the responsibility of the local police agencies which shall be organized, maintained, supervised, and utilized in accordance with applicable laws. The defense and security of the regions shall be the responsibility of the National Government.

A study of E.O. No. 220 would be incomplete without reference to its historical background.

In April 1986, just after the EDSA Revolution, Fr. Conrado M. Balweg, S.V.D., broke off on ideological grounds from the Communist Party of the Philippines (CPP) and its military arm — the New People's Army (NPA).

After President Aquino was installed into office by People Power, she advocated a policy of national reconciliation. She called on all revolutionary forces to a peace dialogue. The CPLA heeded this call of the President. After preliminary negotiations, President Aquino and some members of her, Cabinet flew to Mt. Data in the Mountain Province on September 13, 1986 and signed with Fr. Conrado M. Balweg (as Commander of the CPLA) and Ama Mario Yag-ao (as President of Cordillera Bodong Administration, the civil government of the CPLA) a ceasefire agreement that signified the cessation of hostilities (WHEREAS No. 7, E.O. 220).

The parties arrived at an agreement in principle: the Cordillera people shall not undertake their demands through armed and violent struggle but by peaceful means, such as political negotiations. The negotiations shall be a continuing process until the demands of the Cordillera people shall have been substantially granted.

On March 27, 1987, Ambassador Pelaez [Acting as Chief Negotiator of the government], in pursuance of the September 13, 1986 agreement, flew to the Mansion House, Baguio City, and signed with Fr. Balweg (as Chairman of the Cordillera panel) a joint agreement, paragraphs 2 and 3 of which state:

Par. 2 - Work together in drafting an Executive Order to create a preparatory body that could perform policy-making and administrative functions and undertake consultations and studies leading to a draft organic act for the Cordilleras.

Par. 3 - Have representatives from the Cordillera panel join the study group of the R.P. Panel in drafting the Executive Order.

Pursuant to the above joint agreement, E.O. 220 was drafted by a panel of the Philippine government and of the representatives of the Cordillera people.

On July 15, 1987, President Corazon C. Aquino signed the joint draft into law, known now as E.O. 220. [Rejoinder, G.R. No. 82217, pp. 2-3.]

Executive Order No. 220, issued by the President in the exercise of her legislative powers under Art. XVIII, sec. 6 of the 1987 Constitution, created the Cordillera Administrative Region (CAR), which covers the provinces of Abra, Benguet, Ifugao, Kalinga-Apayao and Mountain Province and the City of Baguio [secs. 1 and 2.] It was created to accelerate economic and social growth in the region and to prepare for the establishment of the

autonomous region in the Cordilleras [sec. 3.] Its main function is to coordinate the planning and implementation of programs and services in the region, particularly, to coordinate with the local government units as well as with the executive departments of the National Government in the supervision of field offices and in identifying, planning, monitoring, and accepting projects and activities in the region [sec. 5.] It shall also monitor the implementation of all ongoing national and local government projects in the region [sec. 20.]. The CAR shall have a Cordillera Regional Assembly as a policy-formulating body and a Cordillera Executive Board as an implementing arm [secs. 7, 8 and 10.] The CAR and the Assembly and Executive Board shall exist until such time as the autonomous regional government is established and organized [sec. 17.]

Explaining the rationale for the issuance of E.O. No. 220, its last "Whereas" clause provides:

WHEREAS, pending the convening of the first Congress and the enactment of the organic act for a Cordillera autonomous region, there is an urgent need, in the interest of national security and public order, for the President to reorganize immediately the existing administrative structure in the Cordilleras to suit it to the existing political realities therein and the Government's legitimate concerns in the areas, without attempting to pre-empt the constitutional duty of the first Congress to undertake the creation of an autonomous region on a permanent basis.

During the pendency of this case, Republic Act No. 6766 entitled "An Act Providing for an Organic Act for the Cordillera Autonomous Region," was enacted and signed into law. The Act recognizes the CAR and the offices and agencies created under E.O. No. 220 and its transitory nature is reinforced in Art. XXI of R.A. No. 6766, to wit:

SEC. 3. The Cordillera Executive Board, the Cordillera Regional Assembly, as well as all offices and agencies created under Executive Order No. 220 shall cease to exist immediately upon the ratification of this Organic Act.

All funds, properties and assets of the Cordillera Executive Board and the Cordillera Regional Assembly shall automatically be transferred to the Cordillera Autonomous Government.

I

It is well-settled in our jurisprudence that respect for the inherent and stated powers and prerogatives of the law-making body, as well as faithful adherence to the principle of separation of powers, require that its enactment be accorded the presumption of constitutionality. Thus, in any challenge to the constitutionality of a statute, the burden of clearly and unequivocally proving its unconstitutionality always rests upon the challenger. Conversely, failure to so prove will necessarily defeat the challenge.

We shall be guided by these principles in considering these consolidated petitions.

In these cases, petitioners principally argue that by issuing E.O. No. 220 the President, in the exercise of her legislative powers prior to the convening of the first Congress under the 1987 Constitution, has virtually pre-empted Congress from its mandated task of enacting an organic act and created an autonomous region in the Cordilleras. We have carefully studied the Constitution and E.O. No. 220 and we have come to the conclusion that petitioners' assertions are unfounded. Events subsequent to the issuance of E.O. No. 220 also bear out this conclusion.

1. A reading of E.O. No. 220 will easily reveal that what it actually envisions is the consolidation and coordination of the delivery of services of line departments and agencies of the National Government in the areas covered by the administrative region as a step preparatory to the grant of autonomy to the Cordilleras. It does not create the autonomous region contemplated in the Constitution. It merely provides for transitory measures in

anticipation of the enactment of an organic act and the creation of an autonomous region. In short, it prepares the ground for autonomy. This does not necessarily conflict with the provisions of the Constitution on autonomous regions, as we shall show later.

The Constitution outlines a complex procedure for the creation of an autonomous region in the Cordilleras. A regional consultative commission shall first be created. The President shall then appoint the members of a regional consultative commission from a list of nominees from multisectoral bodies. The commission shall assist the Congress in preparing organic act for the autonomous region. The organic act shall be passed by the first Congress under the 1987 Constitution within eighteen months from the time of its organization and enacted into law. Thereafter there shall be held a plebiscite for the approval of the organic act [Art. X, sec. 18.] Only then, after its approval in the plebiscite, shall the autonomous region be created.

Undoubtedly, all of these will take time. The President, in 1987 still exercising legislative powers as the first Congress had not yet convened, saw it fit to provide for some measures to address the urgent needs of the Cordilleras in the meantime that the organic act had not yet been passed and the autonomous region created. These measures we find in E.O. No. 220. The steps taken by the President are obviously perceived by petitioners, particularly petitioner Yaranon who views E.O. No. 220 as capitulation to the Cordillera People's Liberation Army (CPLA) of Balweg, as unsound, but the Court cannot inquire into the wisdom of the measures taken by the President. We can only inquire into whether or not the measures violate the Constitution. But as we have seen earlier, they do not.

2. Moreover, the transitory nature of the CAR does not necessarily mean that it is, as petitioner Cordillera Broad Coalition asserts, "the interim autonomous region in the Cordilleras" [Petition, G.R. No. 79956, p. 25.]

The Constitution provides for a basic structure of government in the autonomous region composed of an elective executive and legislature and special courts with personal, family and property law jurisdiction [Art. X, sec. 18.] Using this as a guide, we find that E.O. No. 220 did not establish an autonomous regional government. It created a region, covering a specified area, for administrative purposes with the main objective of coordinating the planning and implementation of programs and services [secs. 2 and 5.] To determine policy, it created a representative assembly, to convene yearly only for a five-day regular session, tasked with, among others, identifying priority projects and development programs [sec. 9.] To serve as an implementing body, it created the Cordillera Executive Board composed of the Mayor of Baguio City, Provincial governors and representatives of the Cordillera Bodong Administration, ethno-linguistic groups and non-governmental organizations as regular members and all regional directors of the line departments of the National Government as ex-officio members and headed by an Executive Director [secs. 10 and 11.] The bodies created by E.O. No. 220 do not supplant the existing local governmental structure, nor are they autonomous government agencies. They merely constitute the mechanism for an "umbrella" that brings together the existing local governments, the agencies of the National Government, the ethno-linguistic groups or tribes, and non-governmental organizations in a concerted effort to spur development in the Cordilleras.

The creation of the CAR for purposes of administrative coordination is underscored by the mandate of E.O. No. 220 for the President and appropriate national departments and agencies to make available sources of funds for priority development programs and projects recommended by the CAR [sec. 21] and the power given to the President to call upon the appropriate executive departments and agencies of the National Government to assist the CAR [sec. 24.]

3. Subsequent to the issuance of E.O. No. 220, the Congress, after it was convened, enacted Republic Act No. 6658 which created the Cordillera Regional Consultative Commission. The President then appointed its members.

The commission prepared a draft organic act which became the basis for the deliberations of the Senate and the House of Representatives. The result was Republic Act No. 6766, the organic act for the Cordillera autonomous region, which was signed into law on October 23, 1989. A plebiscite for the approval of the organic act, to be conducted shortly, shall complete the process outlined in the Constitution.

In the meantime, E.O. No. 220 had been in force and effect for more than two years and we find that, despite E.O. No. 220, the autonomous region in the Cordilleras is still to be created, showing the lack of basis of petitioners' assertion. Events have shown that petitioners' fear that E.O. No. 220 was a "shortcut" for the creation of the autonomous region in the Cordilleras was totally unfounded.

Clearly, petitioners' principal challenge has failed.

II

A collateral issue raised by petitioners is the nature of the CAR: whether or not it is a territorial and political subdivision.

The Constitution provides in Article X:

Section 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.

x x x

Sec. 10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

We have seen earlier that the CAR is not the autonomous region in the Cordilleras contemplated by the Constitution. Thus, we now address petitioners' assertion that E.O. No. 220 contravenes the Constitution by creating a new territorial and political subdivision.

After carefully considering the provisions of E.O. No. 220, we find that it did not create a new territorial and political subdivision or merge existing ones into a larger subdivision.

1. Firstly, the CAR is not a public corporation or a territorial and political subdivision. It does not have a separate juridical personality, unlike provinces, cities and municipalities. Neither is it vested with the powers that are normally granted to public corporations, e.g. the power to sue and be sued, the power to own and dispose of property, the power to create its own sources of revenue, etc. As stated earlier, the CAR was created primarily to coordinate the planning and implementation of programs and services in the covered areas.

The creation of administrative regions for the purpose of expediting the delivery of services is nothing new. The Integrated Reorganization Plan of 1972, which was made as part of the law of the land by virtue of Presidential Decree No. 1, established eleven (11) regions, later increased to twelve (12), with definite regional centers and required departments and agencies of the Executive Branch of the National Government to set up field offices therein. The functions of the regional offices to be established pursuant to the Reorganization Plan are: (1) to implement laws, policies, plans, programs, rules and regulations of the department or agency in the regional areas; (2) to provide economical, efficient and effective service to the people in the area; (3) to coordinate with regional offices of other departments, bureaus and agencies in the area; (4) to coordinate with local government units in the area; and (5) to perform such other functions as may be provided by law. [See Part II, chap. III, art. I, of the Reorganization Plan.]

We can readily see that the CAR is in the same genre as the administrative regions created under the Reorganization Plan, albeit under E.O. No. 220 the operation of the CAR requires the participation not only of the line departments and agencies of the National Government but also the local governments, ethno-linguistic groups and non-governmental organizations in bringing about the desired objectives and the appropriation of funds solely for that purpose.

2. Then, considering the control and supervision exercised by the President over the CAR and the offices created under E.O. No. 220, and considering further the indispensable participation of the line departments of the National Government, the CAR may be considered more than anything else as a regional coordinating agency of the National Government, similar to the regional development councils which the President may create under the Constitution [Art. X, sec. 14.] These councils are "composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the region for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region" [Ibid.] In this wise, the CAR may be considered as a more sophisticated version of the regional development council.

III

Finally, petitioners incidentally argue that the creation of the CAR contravened the constitutional guarantee of local autonomy for the provinces (Abra, Benguet, Ifugao, Kalinga-Apayao and Mountain Province) and city (Baguio City) which compose the CAR.

We find first a need to clear up petitioners' apparent misconception of the concept of local autonomy.

It must be clarified that the constitutional guarantee of local autonomy in the Constitution [Art. X, sec. 2] refers to the administrative autonomy of local government units or, cast in more technical language, the decentralization of government authority [Villegas v. Subido, G.R. No. L-31004, January 8, 1971, 37 SCRA 1.] Local autonomy is not unique to the 1987 Constitution, it being guaranteed also under the 1973 Constitution [Art. II, Sec. 10.] And while there was no express guarantee under the 1935 Constitution, the Congress enacted the Local Autonomy Act (R.A. No. 2264) and the Decentralization Act (R.A. No. 5185), which ushered the irreversible march towards further enlargement of local autonomy in the country [Villegas v. Subido, supra.]

On the other hand, the creation of autonomous regions in Muslim Mindanao and the Cordilleras, which is peculiar to the 1987 Constitution, contemplates the grant of political autonomy and not just administrative autonomy to these regions. Thus, the provision in the Constitution for an autonomous regional government with a basic structure consisting of an executive department and a legislative assembly and special courts with personal, family and property law jurisdiction in each of the autonomous regions [Art. X, sec. 18.]

As we have said earlier, the CAR is a mere transitory coordinating agency that would prepare the stage for political autonomy for the Cordilleras. It fills in the resulting gap in the process of transforming a group of adjacent territorial and political subdivisions already enjoying local or administrative autonomy into an autonomous region vested with political autonomy.

Anent petitioners' objection, we note the obvious failure to show how the creation of the CAR has actually diminished the local autonomy of the covered provinces and city. It cannot be over-emphasized that pure speculation and a resort to probabilities are insufficient to cause the invalidation of E.O. No. 220.

WHEREFORE, the petitions are DISMISSED for lack of merit.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Gutierrez, Jr., J., see concurrence in the result.

CONCURRING OPINION**GUTIERREZ, JR., J.:**

I concur in the result because with the enactments of Republic Acts No. 6658 and No. 6766, the questioned Executive Order No. 220 has been superseded. The basic issues have become moot and academic. The Cordillera Regional Consultative Commission and the Cordillera Autonomous Region have taken over the functions of the Cordillera Administrative Region. The latter office has become *functus officio*. Moreover, there can be no question about the validity of its acts because if it is not *de jure*, at the very least it is a *de facto* office.

I make these observations because I have grave doubts about the authority of the President to create such an office as the Cordillera Administrative Region (CAR) by mere executive fiat. The office has to be created by statute. To me, the functions of CAR go beyond ordinary planning and preparation for the real office. In fact, Congress had to pass Republic Act 6658 for this purpose. CAR was an agency which accelerated economic and social growth in the Cordilleras, coordinated the implementation of programs, accepted projects and activities in the Cordilleras, and discharged basic administrative functions. It was a *de facto* agency whose acts are valid but not a *de jure* or fully valid creation.

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