

**DATU FIRDAUSI I.Y. ABBAS, DATU BLO UMPAR ADIONG, DATU
MACALIMPOWAC DELANGALEN, CELSO PALMA, ALI MONTAHA
BABAO, JULMUNIRJANNARAL, RASHID SABER, AND DATU JAMAL
ASHLEY ABBAS, REPRE...**

G.R. No. 89651. November 10, 1989

Ponente: CORTES, J.

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CORTES, J.:

The present controversy relates to the plebiscite in thirteen (13) provinces and nine (9) cities in Mindanao and Palawan,[*] scheduled for November 19, 1989, in implementation of Republic Act No. 6734, entitled "An Act Providing for an Organic Act for the Autonomous Region of Muslim Mindanao."

These consolidated petitions pray that the Court: (1) enjoin the Commission on Elections (COMELEC) from conducting the plebiscite and the Secretary of Budget and Management from releasing funds to the COMELEC for the purpose; and (2) declare R.A. No. 6734, or parts thereof, unconstitutional.

After a consolidated comment was filed by the Solicitor General for the respondents, which the Court considered as the answer, the case was deemed submitted for decision, the issues having been joined. Subsequently, petitioner Mama-o filed a "Manifestation with Motion for Leave to File Reply on Respondents' Comment and to Open Oral Arguments," which the Court noted.

The arguments against R.A. No. 6734 raised by petitioners may generally be categorized into either of the following:

- (a) that R.A. 6734, or parts thereof, violates the Commission, and
- (b) that certain provisions of R.A. No. 6734 conflict with the Tripoli Agreement.

The Tripoli Agreement, more specifically, the "Agreement Between the Government of the Republic of the Philippines and Moro National Liberation Front with the Participation of the Quadripartite Ministerial Commission Members of the Islamic Conference and the Secretary General of the Organization of Islamic Conference" took effect on December 23, 1976. It provided for "[t]he establishment of Autonomous in the Southern Philippines within the realm of the sovereignty and territorial integrity of the Republic of the Philippines" and enumerated the thirteen (13) provinces comprising the "areas of autonomy."]**]

In 1987, a new Constitution was ratified, which for the first time provided for regional autonomy. Article X, Section 15 of the charter provides that "[t]here shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting or 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."

The effectuate this mandate, the Constitution further provides:

Sec. 16. The President shall exercise general supervision over autonomous regions to ensure that the laws to the autonomous regions shall be vested in the National Government.

Sec. 17. All powers, functions, and responsibilities not granted by this Commission 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 or 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 on the autonomous region.

Sec. 19. The first Congress elected under this Constitution shall, within months from the time of organization of both Houses, pass the organic acts for 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 claims;
- (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 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.

Pursuant to the constitutional mandate, R.A. No. 6734 was enacted and signed into law on August 1, 1989.

- The Court shall dispose first of the second category of arguments raised by petitioners, i.e., that certain provision of R.A. No. 6734 conflict with the provisions of the Tripoli Agreement.

Petitioners premise their arguments on the assumption that the Tripoli Agreement is part of the law of the land, being a bidding international agreement. The Solicitor General asserts that the Tripoli Agreement is neither a bidding treaty, not having been entered into by Republic of the Philippines with a sovereign state and ratified

according to the provisions of the 1973 or 1987 Constitutions, nor a bidding international agreement.

We find it neither necessary nor determinative of cause to rule on the nature of the Tripoli Agreement and its bidding effect on the Philippine Government whether under public international or internal Philippine law. In the first place, it is now the Constitution itself that provides for the creation of an autonomous region in Muslim Mindanao. The standard for any inquiry into the validity of R.A. No. 6734 would therefore be what is so provided in the Constitution. Thus, any conflict between provisions of R.A. No. 6734 and the provisions of the Tripoli Agreement will not have the effect of enjoining the implementation of the Organic Act. Assuming for the sake of argument that the Tripoli Agreement is a bidding treaty or international agreement, it would then constitute part of the law of the land. But as internal law it would not be superior to R.A. No. 6734, an enactment of the Congress of the Philippines, rather it would be in the same class as the latter [SALONGA, PUBLIC INTERNATIONAL LAW 320 (4th ed., 1974), citing *Head Money Cases*, 112 U.S. 580 (1884) and *Foster v. Nelson*, 2 Pet. 253 (1829)]. Thus, if at all, R.A. No. 6734 would be amendatory of the Tripoli Agreement, being a subsequent law. Only a determination by this Court that R.A. No. 6734 contravenes the Constitution would result in the granting of the reliefs sought.[***]

- The Court shall therefore only pass upon the constitutional questions which have been raised by petitioners.

Petitioner Abbas argues that R.A. No. 6434 unconditionally creates an autonomous region in Mindanao, contrary to the aforequoted provisions of the Constitution on the autonomous region which make the creation of such region dependent upon the outcome of the plebiscite.

In support of his agreement, petitioner cites Article II, Section I(1) of R.A. No. 6734 which declares that "[t]here is hereby created the Autonomous Region in Muslim Mindanao, to be composed of provinces and cities voting favorably in the plebiscite called for the purpose, in accordance with Section 18, Article X of the Constitution." Petitioner contends that the tenor of the above provision makes the creation of an autonomous region absolute, such that even if only two provinces vote in favor of autonomy, an autonomous region would still be created composed of the two provinces where the favorable votes were obtained.

The matter of the creation of the autonomous region and its composition needs to be clarified.

First, the questioned provision itself in R.A. No. 6734 refers to Section 18, Article X of the Constitution which sets forth the conditions necessary for the creation of the autonomous region. The reference to the constitutional provision cannot be glossed over for it clearly indicates that the creation of the autonomous region shall take place only in accord with the constitutional requirements. Second, there is a specific provision in the Transitory Provisions (Article XIX) of the Organizational Act, which incorporates substantially the same requirements embodied in the Constitution and fills in the detail, thus:

SEC. 13. The creation of the Autonomous Region in Muslim Mindanao shall take effect when approved by a majority of the votes cast by the constituent units provided in paragraph (2) Sec. 1 of Article II of this Act in a plebiscite which shall be held not earlier than ninety (90) days or later than one hundred twenty (120) days after the approval of this Act: Provided, That only the provinces and cities voting favorably in such plebiscite shall be included in the Autonomous Region of Muslim Mindanao. The provinces and cities which in the plebiscite do not vote for inclusion in the Autonomous Region shall remain in the existing administrative regions: Provided, however, That the President may, by administrative determination, merge the existing regions.

Thus under the Constitution and R.A. No. 6734, the creation of the autonomous region shall take effect only when approved by a majority of the votes cast the constituent units in a plebiscite, and only those provinces and cities where a majority vote in favor of the Organic Act shall be included in the autonomous region. It may be that even

if autonomous region is created, not all of the thirteen (13) provinces and nine (9) cities mentioned in Article II, Section 1(2) of R.A. No. 6734 shall be included therein. The single plebiscite contemplated by the Constitution and R.A. No. 6734 will therefore be determinative of (1) whether there shall be an autonomous region in Muslim Mindanao and (2) which provinces and cities, among those enumerated in R.A. No. 6734 shall comprise it [See III RECORD OF THE CONSTITUTIONAL COMMISSION, 487-492 (1986)].

As provided in the Constitution, the creation of the autonomous region in Muslim Mindanao is made effective upon the approval "by majority of the votes cast by the constituent units in a plebiscite called for the purpose" [Art X, Sec. 18]. The question has been raised as to what this majority means. Does it refer to a majority of the total votes cast in the plebiscite in all the constituent units, or a majority in each of the constituent units, or both?

We need not go beyond the Constitution to resolve this question.

If the framers of the Constitution intended to require approval by a majority of all the votes cast in the plebiscite they would have so indicated. Thus, in Article XVIII, Section 27, it is provided that "[t]his Constitution shall take effect immediately upon its ratification by a majority of votes cast in a plebiscite held for the purpose x x x." Comparing this with the provision on the creation of the autonomous region, which reads:

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. [Art. X, Sec. 18, par. 2].

it will readily be seen that the creation of the autonomous region is made to depend, not on the total majority vote in the plebiscite, but on the will of the majority in each of the constituent units and the proviso underscores this. For if the intention of the framers of the Constitution was to get the majority of the totality of the votes cast, they could have simply adopted the same phraseology as that used for the ratification of the Constitution, i.e., "the creation of the autonomous region shall be effective when approved by a majority of the votes cast in a plebiscite called for the purpose."

It is thus clear that what is required by the Constitution is a simple majority of votes approving the Organic Act in individual constituent units and not a double majority of the votes in all constituent units put together, as well as in the individual constituent units.

More importantly, because of its categorical language, this is also the sense in which the vote requirement in the plebiscite provided under Article X, Section 18 must have been understood by the people when they ratified the Constitution.

Invoking the earlier cited constitutional provisions, petitioner Mama-O, on the other hand, maintains that only those areas which, to his view, share common and distinctively historical and natural heritage, economic and social structures, and other relevant characteristics should be properly included within the coverage of the autonomous region. He insists that R.A. No. 6734 is unconstitutional because only the provinces of Basilan, Sulu, Tawi-Tawi, Lanao del Sur, Lanao del Norte and Maguindanao and the cities of Marawi and Cotabato, and not of the thirteen (13) provinces and nine (9) cities included in Organic Act, possess such concurrence in historical and cultural heritage and other relevant characteristics. By including areas which do not strictly share the same characteristics as the others, petitioner claims that Congress has expanded the scope of the autonomous region which the Constitution itself has prescribed to be limited.

Petitioner's argument is not tenable. The Constitution lays down the standards by which Congress shall determine which areas should constitute by autonomous region. Guided by these constitutional criteria, the ascertainment by Congress of the areas that share common attributes is within the exclusive realm of the legislature's discretion.

Any review of the ascertainment would have to go into the wisdom of the law. This the Court cannot do without doing violence to the separation of governmental powers [Angara v. Electoral Commission, 63 Phil. 139 (1936); Morfe v. Mutuc, G.R. No. L-20387, January 31, 1968, 22 SCRA 424].

After assailing the inclusion of non-Muslim areas in the Organic Act for lack of basis, petitioner Mama-o would then adopt the extreme view the other non-Muslim areas in Mindanao should likewise be covered. He argues that since the Organic Act covers non-Muslims area, its scope should be further broadened to include the rest of the non-Muslims areas in Mindanao in order for the others to similarly enjoy the benefits of autonomy. Petitioner maintains that the failure of R.A. No. 6734 to include the other non-Muslim areas denies said areas equal protection of the law, and therefore is violative of the Constitution.

Petitioner's contention runs counter to the very time constitutional provision he had earlier invoked. Any determination by Congress of what areas in Mindanao should comprise the autonomous region, taking into account shared historical and cultural heritage, economic and social structures, and other relevant characteristics, would necessarily carry with it the exclusion of other areas. As earlier stated, such determination by Congress of which areas should be covered by organic act for the autonomous region constitutes a recognized legislative prerogative, whose wisdom may not be inquired into by this Court.

Moreover, equal protection permits of reasonable classification [People v. Vera, 65 Phil. 56 (1936); Laurel v. Misa, 76 Phil. 372 (1946); J.M. Tuason and Co. v. Land Tenure Administration, G.R. No. L-21064, February 18, 1970, 31 SCRA 413]. In Dumlaog v. Commission on Elections [G.R. No. 52245, January 22, 1980, 95 SCRA 392], the Court ruled that one class may be treated differently from another where the groupings are based on reasonable and real distinctions. The guarantee of equal protection is thus not infringed in this case, the classification having been made by Congress on the basis of substantial distinction as set for the by the Constitutional itself.

Both parties also question the validity of R.A. No. 6734 on the ground that it violates the constitutional guarantee on free exercise of religion [Art. III, Sec. 5]. The objection centers on a provision in the Organic Act which mandates that should there be any conflict between the Muslim Code [P.D. No. 1083] and the Tribal Code (still to be enacted) on the one hand, and the national law on the other hand, the Shari'ah courts created under the same Act should apply national law. Petitioners maintain that the Islamic Law (Shari'ah) is derived from the Koran, which makes it part of divine law. Thus it may not be subjected to any "man-made" national law. Petitioner Abbas supports this objection by enumeration possible instances of conflict between provisions of the Muslim Code and national law, wherein an application of national law might be offensive to a Muslim's religious convictions.

An enshrined in the Constitution, judicial power includes the duty to settle actual controversies involving rights which are legally demandable and enforceable [Art. VIII, Sec. 1]. As a condition precedent for the power to be exercised, an actual controversy between litigants must first exist [Angara v. Electoral Commission, supra; Tan v. Macapagal, G.R. No. L-34161, February 29, 1972, 43 SCRA 677]. In the present case, no conflicting claims involving the application of national law resulting in an alleged of national law resulting in an alleged violation of religious freedom. This being so, then Court in this case may not be called upon to resolve what is merely a perceived potential conflict between the provisions of the Muslim Code and national law.

Petitioners also impugn the constitutionality of Article XIX, Section 13 of R.A. No. 6734 which, among others, states:

. . . Provided, That only the provinces and cities voting favorably in such plebiscite shall be included in the Autonomous Region in Muslim Mindanao. The provinces and cities which in the plebiscite do not vote for inclusion in the Autonomous Region shall remain in the existing administrative regions: Provided, however,

that the President may, by administrative determination, merge the existing regions.

According to petitioners, said provision grants the President the power to merge regions, a power which is not conferred by the Constitution upon the President. That the President may choose to merge existing regions pursuant to the Original Act is challenged as being in conflict with Article X, Section 10 of the Constitution which provides:

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.

It must be pointed out what is referred to in R.A. No. 6734 is the merger of administrative regions, i.e., Regions I to XII and the National Capital Region, which are mere groupings of contiguous provinces for administrative purpose [Integrated Reorganization Plan 91972), which made as part of the law of the land by Pres. Dec. No. 1; Pres. Dec. No. 742]. Administrative regions are not territorial and political subdivisions like provinces, cities, municipalities and barangay [see Art. X, Sec. 1 of the Constitution]. While the power to merge administrative regions is not expressly provided for in the Constitution, it is a power which has traditionally been lodged with the President to facilitate the exercise of the power of the President to facilitate the exercise of the power of general supervision over local government [see Art. X, Sec. 4 of the Constitution]. There is no conflict between the power of the President to merge administrative regions with the constitutional provision requiring a plebiscite in the merger of local government units because the requirement of a plebiscite in a merger expressly applies only to the provinces, cities, municipalities or barangays, not to administrative regions.

Petitioners likewise question the validity of provisions in the Organic Act which create an Oversight Committee to supervise the transfer to the autonomous region of the powers, appropriations, and properties vested upon the regional government by the Organic Act [Art. XIX, Secs. 3 and 4]. Said provisions mandate that the transfer of certain national government offices mandate that the transfer of certain national government offices and their properties to the regional government shall be made pursuant to a schedule prescribed by the Oversight Committee, and that such transfer should be accomplished within six (6) years from the organization of the regional government.

It is asserted by petitioners that such provisions are unconstitutional because while the Constitution states that the creation of the autonomous region shall take effect upon approval in a plebiscite, the requirement of organizing an Oversight Committee tasked with supervising the transfer of powers and properties to the regional government would in effect delay the creating of the autonomous region.

Under the Constitution, the creation of the autonomous region hinges only on the result of the plebiscite. If the Organic Act is approved by majority of the votes cast by constituent units in the scheduled plebiscite, the creation of the autonomous region immediately takes effect. The questioned provisions in R.A. No. 6734 requiring an Oversight Committee to supervise the transfer do not provide for a different date of effectivity. Much less would the organization of the Oversight Committee cause an impediment to the operation of the Organic Act, for such is evidently aimed at effecting a smooth transition period for the regional government. The constitutional objection on this point thus cannot be sustained as there is no basis therefor.

Every law has in its favor the presumption of constitutionality [Yu Cong Eng v. Trinidad, 47 Phil. 387 (1925); Salas v. Jarencio, G.R. No. L-29788, August 30, 1979, 46 SCRA 734; Morfe v. Mutuc, supra; Peralta v. COMELEC, G.R. No. L-47771, March 11, 1978, 82 SCRA 30]. Those who petition this Court to declare a law, or parts thereof, unconstitutional must clearly establish the basis for such a declaration. Otherwise, their petition must fail. Based on the grounds raised by petitioners to challenge the constitutionality of R.A. No. 6734, the Court

finds that petitioners have failed to overcome the presumption. The dismissal of these two petitions is, therefore, inevitable.

WHEREFORE, the petitions are DISMISSED for lack of merit.

SO ORDERED.

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

Melencio-Herrera, J., on leave.

[*]Art. II, Sec 1(2) of R.A. No. 6734 provides that "[t]he plebiscite shall be conducted in the provinces of Basilan, Cotabato, Davao del Sur, Lanao del Norte, Lanao del Sur, Maguindanao, Palawan, South Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte and Zamboanga del Sur, and the cities of Cotabato, Dapitan, Dipolog, General Santos, Iligan, Mawawi, Pagadian, Puerto Princesa, and Zamboanga."

[**] The provinces enumerated in the Tripoli Agreement are the same ones mentioned in R.A. No. 6734.

[***]With regard to the controversy regarding the alleged inconsistencies between R.A. No. 6734 and the Tripoli Agreement, it may be enlightening to quote from the statement of Senator Aquilino Pimentel, Jr., the principal sponsor of R.A. No. 6734:

x x x

x x x

x x x

The assertion that the Organic Act is a "betrayal" of the Tripoli Agreement is actually misplaced, to say the least. Misplaced because it overlooks the fact that the Organic Act incorporates, at least, 99 percent of the provisions of the Tripoli Agreement. Misplaced, again, because it gratuitously assumes that the Tripoli Agreement can bring more benefits to the people of Muslim Mindanao than the Organic Act.

The truth of the matter is that the Organic Act address the basic demands of the Muslim, tribal and Christian populations of the proposed area of autonomy in a far more reasonable, realistic and immediate manner than the Tripoli Agreement ever sought to do.

The Organic Act is, therefore, a boon to, not a betrayal, of the interests of the people of Muslim Mindanao.

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x x x

[Consolidated Comment, p. 26].

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