

EN BANC

G.R. No. 203754 – FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, Petitioner, v. REGIONAL TRIAL COURT-CEBU CITY, BRANCH 5, COLON HERITAGE REALTY CORP., operator of ORIENTE GROUP THEATERS, rep. by ISIDRO A. CANIZARES, Respondents.

G.R. No. 204418 – FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, Petitioner, v. CITY OF CEBU, Respondent.

Promulgated:

June 16, 2015

X-----
J. Leonen - Chairman

CONCURRING OPINION

LEONEN, J.:

I concur with the majority that Sections 13 and 14 of Republic Act No. 9167¹ are unconstitutional because these infringe on the principle of local autonomy enshrined in the 1987 Constitution.²

I write this separate opinion to express the view that our decision in this case should not be read as a prohibition against other forms of grants, subsidies, and incentives to the arts.

The development and promotion of culture and the arts are recognized as a vital aspect of nation building. During the period of the Freedom Constitution, then President Corazon C. Aquino recognized the importance of promoting culture and the arts in the development of our national identity.³ Thus, President Aquino issued Executive Order No. 118⁴ which created the Presidential Commission on Culture and Arts.⁵

¹ An Act Creating the Film Development Council of the Philippines, Defining its Powers and Functions, Appropriating Funds Therefor, and for Other Purposes (2002).

² CONST., art. X, sec. 2: "The territorial and political subdivisions shall enjoy local autonomy."

³ Portions of the preambular clauses of Executive Order No. 118 state:

AFFIRMING the government is committed to fulfill its constitutional mandate of preserving and developing Philippine culture for national identity and of placing arts and letters under the patronage of the state;

MINDFUL of the fact that there is a need for a national body to articulate a national policy on culture, to conserve and promote national heritage, and to guarantee a climate of freedom, support and dissemination for all forms of artistic and cultural expression[.]

⁴ Creating the Presidential Commission on Culture and Arts (1987).

⁵ National Commission for Culture and the Arts, <http://www.ncca.gov.ph/about-ncca/about-ncca/about-ncca-history-mandate.php> (visited June 8, 2015).

l

The 1987 Constitution includes provisions on the promotion of culture and arts. Article II, Section 17 provides:

Article II. Declaration of Principles and State Policies

....

Section 17. The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.

Other provisions regarding culture and the arts are found in Article XIV, specifically:

Article XIV. Education, Science and Technology, Arts, Culture, and Sports

....

Section 14. The State shall foster the preservation, enrichment, and dynamic evolution of a Filipino national culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression.

Section 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations.

Section 16. All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State which may regulate its disposition.

....

Section 18. (1) The State shall ensure equal access to cultural opportunities through the educational system, public or private cultural entities, scholarships, grants and other incentives, and community cultural centers, and other public venues

(2) The State shall encourage and support researches and studies on arts and culture.

In 1992, Congress enacted Republic Act No. 7356,⁶ which established the National Commission for Culture and the Arts and replaced⁷ the

⁶ Law Creating the National Commission for Culture and the Arts (1992).

⁷ Section 23 of Rep. Act No. 7356 states:

Section 23. Transitory provisions. – (a) All the personnel, properties, assets and liabilities of the Presidential Commission on Culture and Arts (PCCA) created by Executive Order No. 118, are hereby transferred to the Commission as its successor-in-interest.

....

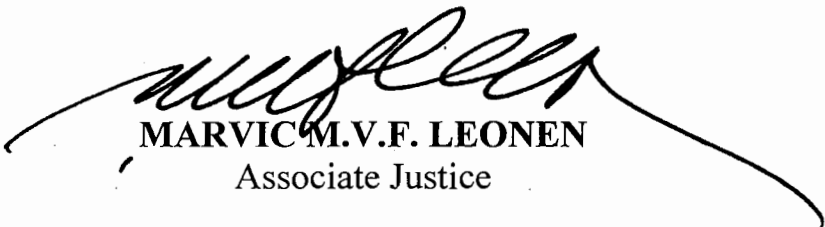
Presidential Commission on Culture and Arts. One of the mandates of the National Commission for Culture and the Arts is to “extend financial and economic assistance such as subsidies, artist funds and social security to promote cultural development and protect artists and cultural workers.”⁸

The enrichment and dynamic evolution of national culture through the arts are now a positive constitutional duty on the part of the state. Quality artistic expression is not simply private property but also partakes of the nature of “cultural treasure of the nation”⁹ which enjoys state protection. The Constitution acknowledges the concept of “equal access to cultural opportunities”¹⁰ and allows the use of “grants and other incentives”¹¹ to achieve this ideal.

We are witnesses to the local cultural hegemony created by producers of foreign commercial films, including media formats accessible through cyberspace. Republic Act No. 9167 was adopted precisely to give the best among our local artists a chance to enhance their participation in the cultural spaces now dominated by non-locals.

I am of the opinion that the traditional doctrines enunciated with respect to public money and the private sphere need to be nuanced when it comes to support for artistic expression. Necessarily, the affirmative means that are made constitutionally available to artistic expression will have to be made to private individuals and entities in a manner consistent with the provisions of Article X¹² and XIV¹³ of the Constitution.

ACCORDINGLY, the Petitions are partially **GRANTED**.



MARVIC M.V.F. LEONEN
Associate Justice

⁸ Rep. Act No. 7356 (1992), sec. 12.

⁹ CONST., art. XIV, sec. 16.

¹⁰ CONST., art. XIV, sec. 18(1).

¹¹ CONST., art. XIV, sec. 18(1).

¹² CONST., art. X, Local Government.

¹³ CONST., art. IX, Education, Science, and Technology, Arts, Culture, and Sports.