Republic of the Philippines
Supreme Court
Baguio City

EN BANC

CONGRESSMAN HERMILANDO I. MANDANAS; MAYOR EFREN B. DIONA; MAYOR ANTONINO AURELIO; KAGAWAD MARIO ILAGAN; BARANGAY CHAIR PERLITO MANALO; BARANGAY CHAIR MEDEL MEDRANO; BARANGAY KAGAWAD CRIS RAMOS; BARANGAY KAGAWAD ELISA D. BALBAGO, and ATTY. JOSE MALVAR VILLEGAS, Petitioners, - versus - **EXECUTIVE SECRETARY PAQUITO OCHOA; SECRETARY CESAR PURISIMA, Department of Finance; SECRETARY FLORENCIO H. ABAD, Department of Budget and Management; COMMISSIONER KIM JACINTO-HENARES, Bureau of Internal Revenue; and NATIONAL TREASURER ROBERTO TAN, Bureau of the Treasury,** Respondents.	**G.R. No. 199802**
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HONORABLE ENRIQUE T. GARCIA, JR., in his personal and official capacity as Representative of the 2nd District of the Province of Bataan, Petitioner,	**G.R. No. 208488** Present: BERSAMIN, *C.J.*, CARPIO,

- versus -

HONORABLE [PAQUITO] N. OCHOA, Executive Secretary; HONORABLE CESAR V. PURISIMA, Secretary, Department of Finance; HONORABLE FLORENCIO H. ABAD, Secretary, Department of Budget and Management; HONORABLE KIM JACINTO-HENARES, Commissioner, Bureau of Internal Revenue; and HONORABLE ROZZANO RUFINO B. BIAZON, Commissioner, Bureau of Customs,
Respondents.

PERALTA,
*DEL CASTILLO,
**PERLAS-BERNABE,
LEONEN,
***JARDELEZA,
CAGUIOA,
REYES, JR., A.,
GESMUNDO,
REYES, JR., J.,
HERNANDO,
CARANDANG, and
LAZARO-JAVIER, *JJ.*

Promulgated:

April 10, 2019

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RESOLUTION

BERSAMIN, *C.J.*:

On July 3, 2018, the Court promulgated its decision, disposing –

> **WHEREFORE**, the petitions in G.R. No. 199802 and G.R. No. 208488 are **PARTIALLY GRANTED**, and, **ACCORDINGLY**, the Court:
>
> **1. DECLARES** the phrase "internal revenue" appearing in Section 284 of Republic Act No. 7160 *(Local Government Code)* **UNCONSTITUTIONAL**, and **DELETES** the phrase from Section 284.
>
> Section 284, as hereby modified, shall henceforth read as follows:
>
> **Section 284**. *Allotment of Taxes.* — Local government units shall have a share in the national taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:
>
> (a) On the first year of the effectivity of this Code, thirty percent (30%);

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* On official leave.
** On leave.
*** On official leave and took no part.

(b) On the second year, thirty-five percent (35%); and

(c) On the third year and thereafter, forty percent (40%).

Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga," to make the necessary adjustments in the allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national taxes of the third fiscal year preceding the current fiscal year; Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

The phrase "internal revenue" is likewise hereby **DELETED** from the related sections of Republic Act No. 7160 *(Local Government Code)*, specifically Section 285, Section 287, and Section 290, which provisions shall henceforth read as follows:

Section 285. *Allocation to Local Government Units.* — The share of local government units in the allotment shall be collected in the following manner:

(a) Provinces — Twenty-three percent (23%);

(b) Cities — Twenty-three percent (23%);

(c) Municipalities — Thirty-four percent (34%); and

(d) Barangays — Twenty percent (20%)

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population — Fifty percent (50%);

(b) Land Area — Twenty-five percent (25%); and

(c) Equal sharing — Twenty-five percent (25%)

Provided, further, That the share of each barangay with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand (P80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the allotment, and the balance to be allocated on the basis of the following formula:

(a) On the first year of the effectivity of this Code:

(1) Population — Forty percent (40%); and

(2) Equal sharing — Sixty percent (60%)

(b) On the second year:

(1) Population — Fifty percent (50%); and

(2) Equal sharing — Fifty percent (50%)

(c) On the third year and thereafter:

(1) Population — Sixty percent (60%); and

(2) Equal sharing — Forty percent (40%).

Provided, finally, That the financial requirements of barangays created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned.

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Section 287. *Local Development Projects.* — Each local government unit shall appropriate in its annual budget no less than twenty percent (20%) of its annual allotment for development projects. Copies of the development plans of local government units shall be furnished the Department of the Interior and Local Government.

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Section 290. *Amount of Share of Local Government Units.* — Local government units shall, in addition to the allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

Article 378, Article 379, Article 380, Article 382, Article 409, Article 461, and related provisions of the Implementing Rules and Regulations of R.A. No. 7160 are hereby **MODIFIED** to reflect the deletion of the phrase "internal revenue" as directed herein.

Henceforth, any mention of "Internal Revenue Allotment" or "IRA" in Republic Act No. 7160 *(Local Government Code)* and its Implementing Rules and Regulations shall be understood as pertaining to the allotment of the Local Government Units derived from the national taxes;

2. **ORDERS the SECRETARY OF THE DEPARTMENT OF FINANCE; the SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; the COMMISSIONER OF INTERNAL REVENUE; the COMMISSIONER OF CUSTOMS**; and **the NATIONAL TREASURER** to include **ALL COLLECTIONS OF NATIONAL TAXES** in the computation of the base of the just share of the Local Government Units according to the ratio provided in the now-modified Section 284 of Republic Act No. 7160 *(Local Government Code)* except those accruing to special purpose funds and special allotments for the utilization and development of the national wealth.

For this purpose, the collections of national taxes for inclusion in the base of the just share the Local Government Units shall include, but shall not be limited to, the following:

(a) The national internal revenue taxes enumerated in Section 21 of the *National Internal Revenue Code*, as amended, collected by the Bureau of Internal Revenue and the Bureau of Customs;

(b) Tariff and customs duties collected by the Bureau of Customs;

(c) 50% of the value-added taxes collected in the Autonomous Region in Muslim Mindanao, and 30% of all other national tax collected in the Autonomous Region in Muslim Mindanao.

The remaining 50% of the collections of value-added taxes and 70% of the collections of the other national taxes in the Autonomous Region in Muslim Mindanao shall be the exclusive share of the Autonomous Region in Muslim Mindanao pursuant to Section 9 and Section 15 of Republic Act No. 9054.

(d) 60% of the national taxes collected from the exploitation and development of the national wealth.

The remaining 40% of the national taxes collected from the exploitation and development of the national wealth shall exclusively accrue to the host Local Government Units pursuant to Section 290 of Republic Act No. 7160 *(Local Government Code)*;

(e) 85% of the excise taxes collected from locally manufactured Virginia and other tobacco products.

The remaining 15% shall accrue to the special purpose funds created by Republic Act No. 7171 and Republic Act No. 7227;

(f) The entire 50% of the national taxes collected under Sections 106, 108 and 116 of the NIRC as provided under Section 283 of the NIRC; and

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(g) 5% of the 25% franchise taxes given to the National Government under Section 6 of Republic Act No. 6631 and Section 8 of Republic Act No. 6632.

3. **DECLARES** that:

(a) The apportionment of the 25% of the franchise taxes collected from the Manila Jockey Club and Philippine Racing Club, Inc. — that is, five percent (5%) to the National Government; five percent (5%) to the host municipality or city; seven percent (7%) to the Philippine Charity Sweepstakes Office; six percent (6%) to the Anti-Tuberculosis Society; and two percent (2%) to the White Cross pursuant to Section 6 of Republic Act No. 6631 and Section 8 of Republic Act No. 6632 — is **VALID**;

(b) Section 8 and Section 12 of Republic Act No. 7227 are **VALID**; and, **ACCORDINGLY**, the proceeds from the sale of the former military bases converted to alienable lands thereunder are **EXCLUDED** from the computation of the national tax allocations of the Local Government Units; and

(c) Section 24 (3) of Presidential Decree No. 1445, in relation to Section 284 of the National Internal Revenue Code, apportioning one-half of one percent (1/2 of 1%) of national tax collections as the auditing fee of the Commission on Audit is **VALID**;

4. **DIRECTS** the Bureau of Internal Revenue and the Bureau of Customs and their deputized collecting agents to certify all national tax collections, pursuant to Article 378 of the Implementing Rules and Regulations of R.A. No. 7160;

5. **DISMISSES** the claims of the Local Government Units for the settlement by the National Government of arrears in the just share on the ground that this decision shall have **PROSPECTIVE APPLICATION**; and

6. **COMMANDS** the **AUTOMATIC RELEASE WITHOUT NEED OF FURTHER ACTION** of the just shares of the Local Government Units in the national taxes, through their respective provincial, city, municipal, or barangay treasurers, as the case may be, on a quarterly basis but not beyond five (5) days from the end of each quarter, as directed in Section 6, Article X of the 1987 Constitution and Section 286 of Republic Act No. 7160 *(Local Government Code)*, and operationalized by Article 383 of the Implementing Rules and Regulations of RA 7160.

Let a copy of this decision be furnished to the President of the Republic of the Philippines, the President of the Senate, and the Speaker of the House of Representatives for their information and guidance.

SO ORDERED.

The Office of the Solicitor General (OSG), representing all the respondents, has filed a motion for reconsideration, specifying therein the following errors, to wit:

> **I.**
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> **THE HONORABLE COURT ERRED IN RULING THAT ARTICLE X, SECTION 6 OF THE CONSTITUTION REQUIRES THAT ALL NATIONAL TAXES SHALL BE THE BASE IN COMPUTING THE INTERNAL REVENUE ALLOTMENT (IRA) OF THE LOCAL GOVERNMENT UNITS (LGUs).**
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> **II.**
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> **THE HONORABLE COURT ERRED IN DELETING THE PHRASE "INTERNAL REVENUE" IN SECTIONS 284, 285, 287, AND 290 OF THE LOCAL GOVERNMENT CODE (LGC) AND IN ARTICLES 378, 379, 380, 382, 409, 461 AND RELATED PROVISIONS OF THE IMPLEMENTING RULES AND REGULATIONS OF THE LGC. THIS DELETION AMOUNTS TO AN ENCROACHMENT ON THE EXCLUSIVE POWER OF CONGRESS TO DETERMINE THE LGUs' JUST SHARE IN NATIONAL TAXES.**
>
> **III.**
>
> **THE HONORABLE COURT ERRED IN RULING THAT THE FOLLOWING TAXES SHOULD STILL BE INCLUDED IN THE BASE USED IN THE COMPUTATION OF THE IRA: (A) TARRIFF AND CUSTOMS DUTIES COLLECTED BY THE BUREAU OF CUSTOMS; (B) 50% OF VALUE-ADDED TAXES COLLECTED IN THE AUTONOMOUS REGION IN MUSLIM MINDANAO(ARMM); (C) 30% OF ALL OTHER NATIONAL TAXES COLLECTED IN THE ARMM; (D) 60% OF THE NATIONAL TAXES COLLECTED FROM THE EXPLOITATION AND DEVELOPMENT OF NATIONAL WEALTH; (E) FROM LOCALLY MANUFACTURED VIRGINIA AND OTHER TOBACCO PRODUCTS; (F) THE ENTIRE 50% OF THE NATIONAL TAXES UNDER SECTIONS 106, 108, AND 116 OF REPUBLIC ACT NO. 8424; AND (G) 5% OF THE 25% FRANCHISE TAXES GIVEN THE NATIONAL GOVERNMENT UNDER SECTION 6 OF R.A. NO. 0631 AND SECTION 8 OF R.A. NO. 6632.**
>
> **IV.**
>
> **IN THE EVENT THE HONORABLE COURT WILL MAINTAIN ITS DECISION, THE PROSPECTIVE APPLICATION OF THE DECISION SHOULD BE CLARIFIED TO MEAN THAT THE LGUs WILL BEGIN RECEIVING THE ADJUSTED IRA IN 2022.**[1]

In substantiation, the OSG contends that the affected provisions of the Local Government Code (LGC) are not contrary to Section 6, Article X of the Constitution, under which the plenary power of Congress extends not only to the determination of the *just share* of local government units (LGUs)

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[1] *Rollo*, G.R. No. 208488, Vol. II, pp. 566-567.

but also to the determination of which national taxes serve as base for the computation of such *just share*.

The OSG premises its contention on the fact that the article "*the*" immediately precedes the phrase "*national taxes*" in Section 6, thereby manifesting the intent to give Congress the discretion to determine which national taxes the *just share* will be based on considering that the qualifier "*the*" signals that the succeeding phrase "*national taxes*" is a specific class of taxes; that if it was the intention of the framers to include *all* national taxes, the Constitution should have so stated; that the phrase *internal revenue* should be restored in the affected provisions of the LGC considering that the deletion of the phrase constitutes an undue encroachment on the power of Congress to determine the LGUs' *just share*; that the effect of broadening the base for computing the *just share* is to modify Congress' internal revenue allocations (IRA) in favor of the LGUs, which the Court cannot do because imposing the new base was not intended by Congress; that it is more prudent for the Court to nullify Section 284 of the LGC in its entirety and to allow Congress to make the necessary adjustments; that, indeed, the Court, its awesome powers notwithstanding, cannot supplant Congress' discretion to determine the amount of the *just share* the LGUs are entitled to; that certain taxes (*i.e.*, those under Republic Act No. 9054, Republic Act No. 6631, and Republic Act No. 6632) that the Court has ordered to be included in the reckoning of the base amount of the fair share of the LGUs should be excluded because including them will result to double sharing on the part of host LGUs which are already given particular shares by virtue of the Court's directive to include in the base the national government share; that the double sharing is not intended by Congress; that the inclusion of the other taxes, particularly the taxes under Republic Act No. 7171 and Republic Act No. 8240, the national taxes on utilization and development of the national wealth under Section 289 of the LGC, the value added tax (VAT) collections under Section 106, Section 108 and Section 116 of the National Internal Revenue Code (NIRC) will deprive the National Government of much needed funds for essential services; and that the collections of the Bureau of Customs should be excluded from the base amount because of the nature of tariffs as being for the regulation of goods coming in and going out of the country instead of being just for income generation.

The OSG interposes that should the Court nonetheless affirm the decision of July 3, 2018, it should expressly declare the effects of the decision to be prospective following the operative fact doctrine, resulting in the base amount decreed herein to start only in Fiscal Year 2022.

On his part, petitioner Garcia seeks partial reconsideration to pray that all the arrears from 1992 resulting from the new computation of the base amount of the fair share be given to the LGUs.[2]

Ruling of the Court

The Court denies both motions for their lack of merit.

In the July 3, 2018 decision, the Court has held that the Constitution itself set *national taxes* as the base amount from which to reckon the *just share* of the LGUs, *viz.*:

> Section 6, Article X the 1987 Constitution textually commands the allocation to the LGUs of a *just share* in the national taxes, *viz.*:
>
> > Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.
>
> Section 6, when parsed, embodies three mandates, namely: (1) the LGUs shall have a *just share* in the *national taxes*; (2) the *just share* shall be *determined by law*; and (3) the *just share* shall be *automatically released* to the LGUs.
>
> Congress has sought to carry out the second mandate of Section 6 by enacting Section 284, Title III *(Shares of Local Government Units in the Proceeds of National Taxes)*, of the LGC, which is again quoted for ready reference:
>
> > Section 284. *Allotment of Internal Revenue Taxes.* — Local government units shall have a share in the **national internal revenue taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows:
> >
> > (a) On the first year of the effectivity of this Code, thirty percent (30%);
> >
> > (b) On the second year, thirty-five percent (35%); and
> >
> > (c) On the third year and thereafter, forty percent (40%).
> >
> > Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the

[2] Id. at 624-631.

> presiding officers of both Houses of Congress and the presidents of the "liga," to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

There is no issue as to what constitutes the LGUs' *just share* expressed in percentages of the national taxes (*i.e.*, 30%, 35% and 40% stipulated in subparagraphs (a), (b), and (c) of Section 284). Yet, Section 6, *supra*, mentions *national taxes* as the source of the *just share* of the LGUs while Section 284 ordains that the *share* of the LGUs be taken from *national internal revenue taxes* instead.

Has not Congress thereby infringed the constitutional provision?

Garcia contends that Congress has exceeded its constitutional boundary by limiting to the NIRTs the base from which to compute the *just share* of the LGUs.

We agree with Garcia's contention.

Although the power of Congress to make laws is plenary in nature, congressional lawmaking remains subject to the limitations stated in the 1987 Constitution. The phrase *national internal revenue taxes* engrafted in Section 284 is undoubtedly more restrictive than the term *national taxes* written in Section 6. As such, Congress has actually departed from the letter of the 1987 Constitution stating that *national taxes* should be the base from which the *just share* of the LGU comes. Such departure is impermissible. *Verba legis non est recedendum* (from the words of a statute there should be no departure). Equally impermissible is that Congress has also thereby curtailed the guarantee of fiscal autonomy in favor of the LGUs under the 1987 Constitution.

Taxes are the enforced proportional contributions exacted by the State from persons and properties pursuant to its sovereignty in order to support the Government and to defray all the public needs. Every tax has three elements, namely: (a) it is an enforced proportional contribution from persons and properties; (b) it is imposed by the State by virtue of its sovereignty; and (c) it is levied for the support of the Government. Taxes are classified into national and local. National taxes are those levied by the National Government, while local taxes are those levied by the LGUs.

What the phrase *national internal revenue taxes* as used in Section 284 included are all the taxes enumerated in Section 21 of the National Internal Revenue Code (NIRC), as amended by R.A. No. 8424, *viz.*:

> Section 21. *Sources of Revenue.* — The following taxes, fees and charges are deemed to be national internal revenue taxes:

(a) Income tax;

(b) Estate and donor's taxes;

(c) Value-added tax;

(d) Other percentage taxes;

(e) Excise taxes;

(f) Documentary stamp taxes; and

(g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue.

In view of the foregoing enumeration of what are the national internal revenue taxes, Section 284 has effectively deprived the LGUs from deriving their *just share* from *other* national taxes, like the customs duties.

Strictly speaking, customs duties are also taxes because they are exactions whose proceeds become public funds. According to *Garcia v. Executive Secretary*, *customs duties* is the nomenclature given to taxes imposed on the importation and exportation of commodities and merchandise to or from a foreign country. Although customs duties have either or both the generation of revenue and the regulation of economic or social activity as their moving purposes, it is often difficult to say which of the two is the principal objective in a particular instance, for, verily, customs duties, much like internal revenue taxes, are rarely designed to achieve only one policy objective. We further note that Section 102 (oo) of R.A. No. 10863 *(Customs Modernization and Tariff Act)* expressly includes all fees and charges imposed under the Act under the blanket term of *taxes*.

It is clear from the foregoing clarification that the exclusion of *other* national taxes like customs duties from the base for determining the *just share* of the LGUs contravened the express constitutional edict in Section 6, Article X the 1987 Constitution.

Still, the OSG posits that Congress can manipulate, by law, the base of the allocation of the just share in the national taxes of the LGUs.

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The position of the OSG cannot be sustained. Although it has the primary discretion to determine and fix the *just share* of the LGUs in the national taxes (*e.g.*, Section 284 of the LGC), Congress cannot disobey the express mandate of Section 6, Article X of the 1987 Constitution for the *just share* of the LGUs to be derived from the *national taxes*. The phrase *as determined by law* in Section 6 follows and qualifies the phrase *just share*, and cannot be construed as qualifying the succeeding phrase *in the national taxes*. The intent of the people in respect of Section 6 is really that the base for reckoning the just share of the LGUs should includes *all* national taxes. **To read Section 6 differently as requiring that *the just share of LGUs in the national taxes shall be determined by law* is tantamount to the unauthorized revision of the 1987**

> **Constitution.**[Bold emphasis supplied; italicized portions are part of the original text]

We reiterate that Congress, in limiting the base amount to *national internal revenue taxes*, gravely abused its discretion. What the Constitution extended to Congress was the power to determine, by law, the just share. The Constitution did not empower Congress to determine the just share and the base amount other than national taxes.

The respondents' construction of Section 6, Article X of the Constitution can lead to empowering Congress to change the base amount despite the Constitution having already pegged it to *national taxes*. We should remember that between two possible interpretations one of which will be free from constitutional infirmity and the other tainted by such grave defect, the former is to be preferred. A construction that will save rather than one that will affix the seal of doom certainly commends itself.[3] Moreover, it is a rule in statutory construction that every part of the law must be interpreted with reference to the context, *i.e.*, every part of the law must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. The law must not be read in truncated parts; its provisions must be read in relation to its entirety. The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.[4] Accordingly, between the Court's construction that is consistent with the constitutional policy on local autonomy and decentralization, on one hand, and the OSG's construction that seemingly rejects the constitutional policy, the former is to be desired.

Conformably with the foregoing, the Court sees no reason to exclude the national taxes mentioned in the July 3, 2018 decision. Indeed, Section 6, Article X of the Constitution expressly states that national taxes shall constitute the base amount from which the *just share* shall be computed. Without the Constitution itself excluding such national taxes from the computation of the base amount, the rule will be that such national taxes are to be included. This has been made clear in the decision, where the Court explains –

> Garcia submits that even assuming that the present version of Section 284 of the LGC is constitutionally valid, the implementation thereof has been erroneous because Section 284 does not authorize any exclusion or deduction from the collections of the NIRTs for purposes of the computation of the allocations to the LGUs. He further submits that the exclusion of certain NIRTs diminishes the fiscal autonomy granted to

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[3] *De la Cruz v. Paras*, G.R. Nos. L-42571-72, July 25, 1983, 123 SCRA 569, 580.

[4] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 192398, September 29, 2014, 736 SCRA 623, 637.

the LGUs. He claims that the following NIRTs have been illegally excluded from the base for determining the fair share of the LGUs in the IRA, to wit:

(1) NIRTs collected by the cities and provinces and divided exclusively among the LGUs of the Autonomous Region for Muslim Mindanao (ARMM), the regional government and the central government, pursuant to Section 15 in relation to Section 9, Article IX of R.A. No. 9054 *(An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, amending for the purpose Republic Act No. 6734, entitled An Act providing for an Organic Act for the Autonomous Region in Muslim Mindanao)*;

(2) The shares in the excise taxes on mineral products of the different LGUs, as provided in Section 287 of the NIRC in relation to Section 290 of the LGC;

(3) The shares of the relevant LGUs in the franchise taxes paid by Manila Jockey Club, Inc. and Philippine Racing Club, Inc.;

(4) The shares of various municipalities in VAT collections under R.A. No. 7643 *(An Act to Empower the Commissioner of Internal Revenue to Require the Payment of the Value Added Tax Every Month and to Allow Local Government Units to Share in VAT Revenue, Amending for this Purpose Certain Sections of the National Internal Revenue Code)* as embodied in Section 283 of the NIRC;

(5) The shares of relevant LGUs in the proceeds of the sale and conversion of former military bases in accordance with R.A. No. 7227 *(Bases Conversion and Development Act of 1992)*;

(6) The shares of different LGUs in the excise taxes imposed on locally manufactured Virginia tobacco products as provided in Section 3 of R.A. No. 7171 *(An Act to Promote the Development of the Farmers in the Virginia Tobacco Producing Provinces)*, and as now provided in Section 289 of the NIRC;

(7) The shares of different LGUs in the incremental revenues from Burley and native tobacco products under Section 8 of R.A. No. 8240 *(An Act Amending Sections 138, 140 and 142 of the National Internal Revenue Code as Amended and for Other Purposes)* and as now provided in Section 288 of the NIRC; and

(8) The share of the Commission on Audit (COA) in the NIRTs as provided in Section 24(3) of P.D. No. 1445 *(Government Auditing Code of the Philippines)* in relation to Section 284 of the NIRC.

Garcia insists that the foregoing taxes and revenues should have been included by Congress and, by extension, the BIR in the base for computing the IRA on the strength of the cited provisions; that the LGC did not authorize such exclusion; and that the continued exclusion has undermined the fiscal autonomy guaranteed by the 1987 Constitution.

The insistence of Garcia is valid to an extent.

An examination of the above-enumerated laws confirms that the following have been excluded from the base for reckoning the just share of the LGUs as required by Section 6, Article X of the 1987 Constitution, namely:

(a) The share of the affected LGUs in the proceeds of the sale and conversion of former military bases in accordance with R.A. No. 7227;

(b) The share of the different LGUs in the excise taxes imposed on locally manufactured Virginia tobacco products as provided for in Section 3, R.A. No. 7171, and as now provided in Section 289 of the NIRC;

(c) The share of the different LGUs in incremental revenues from Burley and native tobacco products under Section 8 of R.A. No. 8240, and as now provided for in Section 288 of the NIRC;

(d) The share of the COA in the NIRTs as provided in Section 24(3) of P.D. No. 1445 in relation to Section 284 of the NIRC;

(e) The shares of the different LGUs in the excise taxes on mineral products, as provided in Section 287 of the NIRC in relation to Section 290 of the LGC;

(f) The NIRTs collected by the cities and provinces and divided exclusively among the LGUs of the ARMM, the regional government and the central government, pursuant to Section 15 in relation to Section 9, Article IX of R.A. No. 9054; and

(g) The shares of the relevant LGUs in the franchise taxes paid by Manila Jockey Club, Inc., and the Philippine Racing Club, Inc.

Anent the share of the affected LGUs in the proceeds of the sale and conversion of the former military bases pursuant to R.A. No. 7227, the exclusion is warranted for the reason that such proceeds do not come from a tax, fee or exaction imposed on the sale and conversion.

As to the share of the affected LGUs in the excise taxes imposed on locally manufactured Virginia tobacco products under R.A. No. 7171 (now Section 289 of the NIRC); the share of the affected LGUs in incremental revenues from Burley and native tobacco products under Section 8, R.A. No. 8240 (now Section 288 of the NIRC); the share of the COA in the NIRTs pursuant to Section 24 (3) of P.D. No. 1445 in relation

to Section 284 of the NIRC; and the share of the host LGUs in the franchise taxes paid by the Manila Jockey Club, Inc., and Philippine Racing Club, Inc., under Section 6 of R.A. No. 6631 and Section 8 of R.A. No. 6632, respectively, the exclusion is also justified. Although such shares involved national taxes as defined under the NIRC, Congress had the authority to exclude them by virtue of their being taxes imposed for special purposes. A reading of Section 288 and Section 289 of the NIRC and Section 24 (3) of P.D. No. 1445 in relation to Section 284 of the NIRC reveals that all such taxes are levied and collected for a special purpose. The same is true for the franchise taxes paid under Section 6 of R.A. No. 6631 and Section 8 of R.A. No. 6632, inasmuch as certain percentages of the franchise taxes go to different beneficiaries. The exclusion conforms to Section 29 (3), Article VI of the 1987 Constitution, which states:

> Section 29. x x x
>
> x x x x
>
> (3) **All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only**. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government. [Bold emphasis supplied]

The exclusion of the share of the different LGUs in the excise taxes imposed on mineral products pursuant to Section 287 of the NIRC in relation to Section 290 of the LGC is premised on a different constitutional provision. Section 7, Article X of the 1987 Constitution allows affected LGUs to have an equitable share in the proceeds of the utilization of the nation's national wealth "within their respective areas," to wit:

> Section 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

This constitutional provision is implemented by Section 287 of the NIRC and Section 290 of the LGC thusly:

> SEC. 287. *Shares of Local Government Units in the Proceeds from the Development and Utilization of the National Wealth.* — Local Government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth, within their respective areas, including sharing the same with the inhabitants by way of direct benefits.
>
> (A) Amount of Share a Local Government Units. — **Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from excise taxes on mineral**

> **products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.**
>
> (B) Share of the Local Governments from Any Government Agency or Government-owned or -Controlled Corporation. — Local Government Units shall have a share, based on the preceding fiscal year, from the proceeds derived by any government agency or government-owned or controlled corporation engaged in the utilization and development of the national wealth based on the following formula, whichever will produce a higher share for the local government unit:
>
> (1) One percent (1%) of the gross sales or receipts of the preceding calendar year, or
>
> (2) Forty percent (40%) of the excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines the government agency or government-owned or -controlled corporations would have paid if it were not otherwise exempt. [Bold emphasis supplied]
>
> **SEC. 290.** *Amount of Share of Local Government Units.* — **Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges,** including related surcharges, interests, or fines, and from its share in any co-production. joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction. [Bold emphasis supplied]

Lastly, the NIRTs collected by the provinces and cities within the ARMM whose portions are distributed to the ARMM's provincial, city and regional governments are also properly excluded for such taxes are intended to truly enable a sustainable and feasible autonomous region as guaranteed by the 1987 Constitution. The mandate under Section 15 to Section 21, Article X of the 1987 Constitution is to allow the separate development of peoples with distinctive cultures and traditions in the autonomous areas. The grant of autonomy to the autonomous regions includes the right of self-determination — which in turn ensures the right of the peoples residing therein to the necessary level of autonomy that will guarantee the support of their own cultural identities, the establishment of priorities by their respective communities' internal decision-making processes and the management of collective matters by themselves. As such, the NIRTs collected by the provinces and cities within the ARMM will ensure local autonomy and their very existence with a continuous supply of funding sourced from their very own areas. The ARMM will become self-reliant and dynamic consistent with the dictates of the 1987 Constitution.

The shares of the municipalities in the VATs collected pursuant to R.A. No. 7643 should be included in determining the base for computing the *just share* because such VATs are national taxes, and nothing can validly justify their exclusion.

In recapitulation, the national taxes to be included in the base for computing the just share the LGUs shall henceforth be, but shall not be limited to, the following:

1. The NIRTs enumerated in Section 21 of the NIRC, as amended, to be inclusive of the VATs, excise taxes, and DSTs collected by the BIR and the BOC, and their deputized agents;

2. Tariff and customs duties collected by the BOC;

3. 50% of the VATs collected in the ARMM, and 30% of all other national taxes collected in the ARMM; the remaining 50% of the VATs and 70% of the collections of the other national taxes in the ARMM shall be the exclusive share of the ARMM pursuant to Section 9 and Section 15 of R.A. No. 9054;

4. 60% of the national taxes collected from the exploitation and development of the national wealth; the remaining 40% will exclusively accrue to the host LGUs pursuant to Section 290 of the LGC;

5. 85% of the excise taxes collected from locally manufactured Virginia and other tobacco products; the remaining 15% shall accrue to the special purpose funds pursuant created in R.A. No. 7171 and R.A. No. 7227;

6. The entire 50% of the national taxes collected under Section 106, Section 108 and Section 116 of the NIRC in excess of the increase in collections for the immediately preceding year; and

7. 5% of the franchise taxes in favor of the national government paid by franchise holders in accordance with Section 6 of R.A. No. 6631 and Section 8 of R.A. No. 6632.

While the Court understands the financial implications that may result from the July 3, 2018 decision, it is not within the power of the Court to adjust the purportedly exorbitant rate of the fair share of the LGUs. In striking down the affected provisions of the LGC, the Court is only exercising and discharging its constitutional duty of judicial review. The duty does not allow the Court to mark time and await the rectification to be made by Congress of the unconstitutional situation, as the OSG seems to suggest, considering that the Court has to intervene and act once its power of judicial review has been properly and duly invoked.

Lastly, petitioner Garcia argues that because portions of Section 284 of the LGC are found and declared to be unconstitutional, the LGUs are entitled to recover the arrears in their *just share*. In contrast, the OSG wants the ruling to have a prospective application.

Both positions have been fully considered and settled by the decision of July 3, 2018, as borne out by the following excerpts of the relevant portions of the decision, *viz.*:

> The petitioners' prayer for the payment of the arrears of the LGUs' *just share* on the theory that the computation of the base amount had been unconstitutional all along cannot be granted.
>
> It is true that with our declaration today that the IRA is not in accordance with the constitutional determination of the just share of the LGUs in the national taxes, logic demands that the LGUs should receive the difference between the *just share* they should have received had the LGC properly reckoned such just share from all national taxes, on the one hand, and the share — represented by the IRA — the LGUs have actually received since the effectivity of the IRA under the LGC, on the other. This puts the National Government in arrears as to the *just share* of the LGUs. A legislative or executive act declared void for being unconstitutional cannot give rise to any right or obligation.
>
> Yet, the Court has conceded in *Araullo v. Aquino III* that:
>
> x x x **the generality of the rule makes us ponder whether rigidly applying the rule may at times be impracticable or wasteful. Should we not recognize the need to except from the rigid application of the rule the instances in which the void law or executive act produced an almost irreversible result?**
>
> **The need is answered by the doctrine of operative fact.** The doctrine, definitely not a novel one, has been exhaustively explained in *De Agbayani v. Philippine National Bank*:
>
> > The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: 'When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.' Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution. It is understandable why it should be so, the

> Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.
>
> **Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.**
>
> In the language of an American Supreme Court decision: 'The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official.'

The doctrine of operative fact recognizes the existence of the law or executive act prior to the determination of its unconstitutionality as an operative fact that produced consequences that cannot always be erased, ignored or disregarded. In short, it nullifies the void law or executive act but sustains its effects. It provides an exception to the general rule that a void or unconstitutional law produces no effect. But its use must be subjected to great scrutiny and circumspection, and it cannot be invoked to validate an unconstitutional law or executive act, but is resorted to only as a matter of equity and fair play. It applies only to cases where extraordinary circumstances exist, and only when

> the extraordinary circumstances have met the stringent conditions that will permit its application.
>
> Conformably with the foregoing pronouncements in *Araullo v. Aquino III*, the effect of our declaration through this decision of the unconstitutionality of Section 284 of the LGC and its related laws as far as they limited the source of the just share of the LGUs to the NIRTs is prospective. It cannot be otherwise. (Bold underscoring is part of the original)

As the foregoing excerpts indicate, the Court has expressly mandated the prospective application of its ruling.

It becomes unavoidable to ask when the adjusted amounts will be granted in favor of LGUs. The OSG suggests that the adjusted amounts be given to the LGUs starting with the 2022 budget cycle.

The suggestion of the OSG is well taken.

The adjusted amounts can be deemed effective only after this ruling has lapsed into finality, which is procedurally to be reckoned only from the denial of the OSG's motion for reconsideration through this resolution. From then onwards, and as ruled herein, the just share should be based on all national taxes collected on "the third fiscal year preceding." In the absence of any amendment by Congress, the rates fixed in Section 284 of the LGC, as herein modified, shall control.

WHEREFORE, the Court **DENIES** the motion for reconsideration of the respondents, and the motion for partial reconsideration of the petitioner in G.R. No. 208488.

SO ORDERED.

LUCAS P. BERSAMIN
Chief Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

(On Official Leave)
MARIANO C. DEL CASTILLO
Associate Justice

(On Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

I maintain my dissent.

(On Official Leave) (No Part)
FRANCIS H. JARDELEZA
Associate Justice

I join the dissent of J. Leonen

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court