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Republic of the Philippines  
**Supreme Court**  
Manila

*EN BANC*

**ALLAN MADRILEJOS, ALLAN  
HERNANDEZ, GLENDA GIL, and  
LISA GOKONGWEI-CHENG**

**G.R. No. 184389**

Present:

Petitioners,

**GESMUNDO, CJ,  
PERLAS-BERNABE,\*\*  
LEONEN,  
CAGUIOA,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,\*\*\*  
GAERLAN,  
ROSARIO,  
LOPEZ, J.,\* and  
DIMAAMPAO, JJ.**

- versus -

**LOURDES GATDULA, AGNES  
LOPEZ, HILARION BUBAN, and  
THE OFFICE OF THE CITY  
PROSECUTOR OF MANILA**

Respondents.

Promulgated:

November 16, 2021

X ----- X

**RESOLUTION**

**ZALAMEDA, J.:**

We resolve the Motion for Reconsideration (Motion)<sup>1</sup> of the 24

\*\* On Official Leave.

\*\*\* On Leave.

\* Took no part due to prior participation as City Prosecutor of Manila.

<sup>1</sup> Rollo, pp. 544-559.

September 2019 Decision rendered by the Court *En Banc* dismissing the Special Civil Action for Prohibition with Prayer for the Issuance of a Preliminary Injunction and/or Temporary Restraining Order (Petition).<sup>2</sup>

Petitioners - editors and publisher of *FHM Philippines* - sought to enjoin the conduct of preliminary investigation of a criminal complaint filed against them for **grave scandal under Article 200 of the Revised Penal Code (RPC) and violation of Manila City Ordinance No. 7780 which penalizes the printing, distribution, circulation and sale of scandalous, obscene and pornographic materials.**<sup>3</sup>

According to petitioners, the vague and expansive language of Ordinance No. 7780 is unconstitutional for being patently offensive to their rights to free speech and expression, due process, privacy and the principle of separation of church and state.<sup>4</sup>

On 11 November 2013, and while this case was still pending resolution, petitioners informed the Court that the Office of the City Prosecutor (OCP) of Manila had issued a Resolution dated 25 June 2013 dismissing the charges for violation of Article 200 of the RPC and Ordinance No. 7780. A criminal information for violation of Article 201(3) of the RPC<sup>5</sup> was ordered filed against petitioners instead. This case was docketed as Criminal Case No. 13-30084 and assigned to Branch 16 of the Regional Trial Court (RTC) of Manila, which was eventually dismissed.<sup>6</sup>

In dismissing the Petition, the Court, voting 9 to 4, held that: (1) the dismissal of the criminal charges against petitioners for violation of the provisions of Ordinance No. 7780 has rendered this case moot and academic; and (2) Ordinance No. 7780, being an anti-obscenity law, cannot be facially attacked on the ground of overbreadth as obscenity is unprotected speech.<sup>7</sup>

Petitioners, in their Motion for Reconsideration dated 06 February 2020, ask the Court to revisit its dismissal of the case on the ground of

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<sup>2</sup> *Id.* at 3-38.

<sup>3</sup> *Id.* at 457-461.

<sup>4</sup> *Id.* at 461.

<sup>5</sup> Art. 201. Immoral doctrines, obscene publications and exhibitions, and indecent shows. — The penalty of prison mayor or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon:

xxx

3. Those who shall sell, give away or exhibit films, prints, engravings, sculpture or literature which are offensive to morals. (As amended by PD Nos. 960 and 969).

<sup>6</sup> *Rollo*, pp. 462-463.

<sup>7</sup> *Id.* at 463-480.



mootness. They likewise reiterate their arguments for the declaration of Ordinance No. 7780's unconstitutionality.<sup>8</sup>

We DENY the Motion.

It is not disputed that the criminal charges against petitioners for violation of Ordinance No. 8870 have been dismissed.<sup>9</sup> This dismissal has clearly rendered the case for prohibition moot and academic.

Senior Associate Justice Estela Perlas-Bernabe and Associate Justices Marvic Leonen and Rosmari D. Carandang, however, are of the view that the case persists as the issue raised by petitioners against the constitutionality of Ordinance No. 7780 is separate and distinct from the matter of their criminal prosecution.<sup>10</sup> Senior Associate Justice Bernabe posits that a declaration on the matter of constitutionality would have practical legal value give its "expansive scope" and "subsistence in the legislative books of the City of Manila..."<sup>11</sup> Justice Leonen, on the other hand, sees the case as falling within the "capable of repetition, yet evading review" exception of the rule on mootness.<sup>12</sup>

*First.* Without doubt, any ruling from this Court with respect to the constitutionality of a subsisting law would have legal value, this Court being the "final arbiter of the Constitution."<sup>13</sup> As some commentators have put it, Supreme Court decisions "change the law and, thus, the country, by their very publication."<sup>14</sup> This, however, surely does not mean that the Court must settle *all* constitutional controversies presented before it *under all circumstances*; hence, the constitutional policy of avoidance.<sup>15</sup> To borrow from the words of Justice Kapunan, "[w]here a controversy can be settled on a platform other than the one involving constitutional adjudication," as in this case, "the court should exercise becoming modesty and avoid the constitutional question."<sup>16</sup>

*Second.* As explained in the Decision, the "capable of repetition, yet

<sup>8</sup> *Id.* at 544-556.

<sup>9</sup> *Id.* at 463-470.

<sup>10</sup> Senior Associate Justice Estela M. Perlas-Bernabe, Dissenting Opinion, p. 3; Associate Justice Marvic M. V. F. Leonen, Dissenting Opinion, p. 6.

<sup>11</sup> Senior Associate Justice Estela M. Perlas-Bernabe, Dissenting Opinion, p. 3.

<sup>12</sup> Associate Justice Marvic M. V. F. Leonen, Dissenting Opinion, p. 6.

<sup>13</sup> *Gios-Samar, Inc. v. Department of Transportation and Communications*, 896 Phil. 213, 257 (2019) [Per J. Jardeleza], citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per J. Laurel].

<sup>14</sup> Tribe, Laurence & Matz, Joshua. (2014). *Uncertain Justice: The Roberts Court and the Constitution*. New York: Picador, p. 318.

<sup>15</sup> See *Parcon-Song v. Parcon*, G.R. No. 199582, 07 July 2020 [Per J. Leonen].

<sup>16</sup> *Lim v. Pacquing*, 310 Phil. 722 (1995) [Per J. Padilla].

evading review” exception has been applied in limited cases, that is, in cases where the following requisites have been shown to concur: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again.<sup>17</sup> Both of these requirements are absent in this case.

Petitioners have not shown that criminal prosecution under the Ordinance would be of such short duration as to prevent this Court from ever being able to rule on the constitutionality of its provisions. Neither have they demonstrated any reasonable likelihood that they would be subjected to criminal prosecution under the same Ordinance again. In *Oclarino v. Navarro*,<sup>18</sup> we clarified that reasonable expectation is something more than mere speculation that the complaining party would be subjected to the same action. As noted in the Decision, the OCP of Manila did not even bother to challenge the dismissal of the case against petitioners. In fact, petitioners were hard-pressed to show any other prosecution, whether against them or others, under said Ordinance, much less on the level of occurrence they argue they would be prosecuted. This, to this Court’s mind, may also explain why, by petitioners’ own admission, “no other case has been filed to question [Ordinance No. 7780]’s constitutionality.”<sup>19</sup>

*Third.* Petitioners’ arguments are facial attacks against Ordinance No. 7780 on the ground of overbreadth. A litigant, however, cannot mount a facial challenge against a criminal statute on either vagueness or overbreadth grounds. The overbreadth doctrine finds special application in free speech cases; it is not used to test the validity of penal laws.<sup>20</sup>

*Fourth.* Ordinance No. 7780 is a law which criminalizes obscenity and pornography. These are unprotected speech which the State has the right and mandate, as *parens patriae*, to protect the public from.<sup>21</sup> Laws regulating such materials cannot be facially invalidated precisely because there is no “transcendent value to society” that would justify such attack.<sup>22</sup> This is all the more important especially when one considers that the Manila City Council, arguably an indispensable party considering that Ordinance No. 7780 was its enactment, was not made party to the proceedings and therefore

<sup>17</sup> *Pormento v. Estrada*, 643 Phil. 735 (2010) [Per J. Corona], citing *Lewis v. Continental Bank Corporation*, 494 U.S. 472 (1990).

<sup>18</sup> G.R. No. 220514, 25 September 2019 [Per J. Reyes, J. Jr.].

<sup>19</sup> *Rollo*, p. 545.

<sup>20</sup> See *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010) [Per J. Carpio-Morales]; See also Separate Opinion of Justice Vicente V. Mendoza.

<sup>21</sup> See *Fernando v. Court of Appeals*, 539 Phil. 407 (2006) [Per J. Quisumbing].

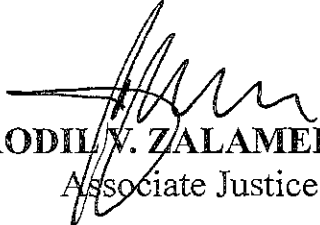
<sup>22</sup> See *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1105 (2017) [Per J. Perlas-Bernabe].

was not heard on this specific issue.<sup>23</sup>

We acknowledge that this Court has, in the past, seen fit to resolve questions even when subsequent events have rendered the resolution of said matter unnecessary at that time.<sup>24</sup> Further research would nevertheless also show an equally significant number of cases wherein this Court has seen fit to stay its hand and refrain from delving into the substantive aspects of a case where the case can be resolved on *other* grounds,<sup>25</sup> novelty or presence of constitutionality issues notwithstanding.

Finally, in dismissing this case, we do not mean to give short shrift to the constitutional freedoms sought to be protected by petitioners when they filed this case. However, it is one thing to strike down a legislative enactment (albeit in this case, a local ordinance) determined to be violative of fundamental rights in an actual case *after a full-blown hearing, where all pertinent issues are sufficiently and exhaustively briefed by all indispensable parties*, and quite another to cast aspersions on a law based on seemingly unfounded presumptions<sup>26</sup> and, on that basis, declare said law unconstitutional. We must be reminded of Justice Stone's admonition: "While unconstitutional exercise of power by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self-restraint."<sup>27</sup>

**WHEREFORE**, premises considered, petitioners' motion for reconsideration is **DENIED**.

  
**RODIL V. ZALAMEDA**  
Associate Justice

**WE CONCUR:**

<sup>23</sup> See *Moldex Realty, Inc. v. HLURB*, 552 Phil. 281 (2007) [Per J. Tinga].

<sup>24</sup> Associate Justice Marvic M. V. F. Leonen, Dissenting Opinion, p. 13.

<sup>25</sup> *Versoza v. People*, G.R. No. 184535, 03 September 2019 [Per Curiam]; *Real v. House of Representative*, G.R. No. 252187 (Notice), 30 June 2020; *Alliance of Non-Life Insurance Workers of the Philippines v. Mendoza*, G.R. No. 206159, 26 August 2020 [Per J. Leonen]; *ABS-CBN Corp. v. National Telecommunications Commission*, G.R. No. 252119, 25 August 2020 [Per J. Perlas-Bernabe]; *Islamic Da'wah Council of the Philippines, Inc. v. Office of the Executive Secretary of the Office of the President of the Philippines*, G.R. No. 216870 (Notice), 30 June 2020; *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, 791 Phil. 243 (2016) [Per J. Perlas-Bernabe]; *Oclarino v. Navarro*, *supra* at note 18; *Estrada v. Sandiganbayan (Fifth Division)*, 836 Phil. 281 (2018) [Per J. Perlas-Bernabe]; *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, G.R. No. 234448, 06 November 2018 [Per J. Tijam]; *Purisima v. Security Pacific Assurance Corp.*, G.R. No. 223318, 15 July 2019 [Per J. J. C. Reyes];

<sup>26</sup> Associate Justice Marvic M. V. F. Leonen, Dissenting Opinion, pp. 13-14.

<sup>27</sup> Dissenting Opinion of Justice Harlan F. Stone in *United States v. Butler*, 297 U.S. 1, 78-79 (1936).

*Alexander G. Gesmundo*  
**ALEXANDER G. GESMUNDO**  
Chief Justice

*Please see Dissenting Opinion*

*MSK*  
**ESTELA M. PERLAS-BERNABE**

Associate Justice

*See Dissent* (On Official Leave but left vote)

*I dissent. See separate opinion*

*MR*  
**MARVIC M.V.F. LEONEN**

Associate Justice

*Alfredo Benjamin S. Caguioa*  
**ALFREDO BENJAMIN S. CAGUIOA**

Associate Justice

*Ramon Paul L. Hernando*  
**RAMON PAUL L. HERNANDO**

Associate Justice

*I join the dissent of Justice Leonen*

*Rosmari D. Carandang*  
**ROSMARI D. CARANDANG**

Associate Justice

*See Dissenting Opinion*

*Amy C. Lazaro-Javier*  
**AMY C. LAZARO-JAVIER**

Associate Justice

*Henri Jean Paul B. Inting*  
**HENRI JEAN PAUL B. INTING**

Associate Justice

*Mario V. Lopez*  
**MARIO V. LOPEZ**

Associate Justice

(On Leave)

*Samuel H. Gaerlan*  
**SAMUEL H. GAERLAN**

Associate Justice

*Ricardo B. Rosario*  
**RICARDO B. ROSARIO**

Associate Justice

*No Part*  
**JHOSEP Y. LOPEZ**

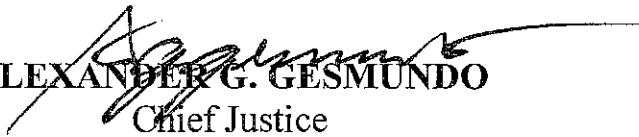
Associate Justice

*Japar B. Dimaampao*  
**JAPAR B. DIMAAMPAO**

Associate Justice

**CERTIFICATION**

Pursuant to the 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.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice