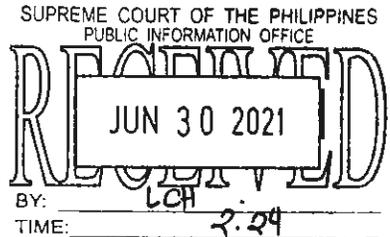




Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **FEBRUARY 2, 2021**, which reads as follows:

“G.R. No. 254516 (Louis “Barok” C. Biraogo vs. Hon. Ombudsman Samuel R. Martires)

X-----X

RESOLUTION

This is a petition for *certiorari*, prohibition and mandamus (Petition) under Rule 65 of the Rules of Court with a prayer for the issuance of a preliminary injunction and temporary restraining order filed on December 16, 2020 by petitioner Louis “Barok” C. Biraogo (petitioner) against respondent Ombudsman Samuel R. Martires (respondent). The Petition seeks to set aside and prohibit the implementation of Memorandum Circular No. 1, series of 2020¹ (Memorandum Circular No. 1) for being unconstitutional.

Petitioner alleges that he wrote to respondent on September 21, 2020, requesting for procedure to obtain a copy of the latest Statement of Assets Liabilities and Net Worth (SALN) of Vice President Maria Leonor “Leni” Robredo. Petitioner explains that he needed access to said SALN in connection with his own study on the Vice President’s alleged use of a mansion in Quezon City, which was purportedly being paid for with taxpayer’s money. Having received no written reply, petitioner claims he called up the office of respondent to inquire about the status of his request. Petitioner was allegedly told that his request could not be accommodated in view of Memorandum Circular No. 1.²

According to petitioner, under the said Memorandum Circular, access to a copy of a SALN on file with the Office of the Ombudsman may no

¹ AMENDED GUIDELINES ON PUBLIC ACCESS TO STATEMENTS OF ASSETS, LIABILITIES AND NET WORTH AND DISCLOSURE OF BUSINESS INTERESTS AND FINANCIAL CONNECTIONS FILED WITH THE OFFICE OF THE OMBUDSMAN; *rollo*, pp. 37-40.

² *Rollo*, pp. 11-13, 36.

longer be obtained without the prior written and duly notarized consent of the declarant.³ Petitioner asserts that this is a violation of the right to information enshrined in Section 7,⁴ Article III and Section 17,⁵ Article XI of the Constitution, and in Sections 5(e)⁶ and 8⁷ of Republic Act No. (RA) 6713.⁸

The Court resolves to dismiss the Petition.

In asking the Court to declare Memorandum Circular No. 1 as unconstitutional, petitioner invokes the exercise by this Court of its power of judicial review. This is the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution, with the end in view of enforcing and upholding the supremacy of the Constitution.⁹ The Court however, does not have unrestrained authority to

³ Id. at 17. Section 1 of Memorandum Circular No. 1, series of 2020 states:

SEC. 1. *Grounds to grant or deny request.* A copy of the SALN will be furnished to the requester if:

- a. he/she is the declarant or the duly authorized representative of the declarant;
- b. the request is upon lawful order of the court in relation to a pending case; and
- c. the request is made by this Office's Field Investigation Office/Bureau/Unit (FIO/FIB/FIU) for the purpose of conducting fact-finding investigation.

In all other instances, no SALN will be furnished to the requester unless he/she presents a notarized letter of authority from the declarant allowing the release of the requested SALN.

A. A request will be evaluated and submitted for the action of the Ombudsman provided that the following requirements concur:

- i. the Office is the official repository of the requested SALN;
- ii. the requested SALN is on file with or in actual possession by the Office; and
- iii. the requester completely fills-in the form, complies with the submission of the requirements and pays the fees, if applicable as herein provided.

B. All requests to inspect or to take picture of the SALN will be denied.

(Underscoring in the original)

⁴ SECTION 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

⁵ SECTION 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

⁶ SECTION 5. *Duties of Public Officials and Employees.* – In the performance of their duties, all public officials and employees are under obligation to:

x x x x

(e) *Make documents accessible to the public.* - All public documents must be made accessible to, and readily available for inspection by, the public within reasonable working hours.

⁷ SECTION 8. *Statements and Disclosure.* - Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

⁸ AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES, otherwise known as the "CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES."

⁹ See *Garcia v. Executive Secretary, et al.*, G.R. No. 157584, April 2, 2009, 583 SCRA 119, 128-129.

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rule on just any and every claim of constitutional violation.¹⁰ For the Court to exercise this power, certain exacting requirements must first be met, namely:

(1) an actual case or controversy calling for the exercise of judicial power;

(2) the person challenging the act must have “standing” to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

(3) the question of constitutionality must be raised at the earliest possible opportunity; and

(4) the issue of constitutionality must be the very *lis mota* of the case.¹¹

The Petition has failed to meet the first requirement as it does not present an actual case or controversy.

An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.¹² In order to be justiciable, the controversy must be definite and concrete, touching on the legal relations of parties having adverse legal interests.¹³ In *Information Technology Foundation of the Philippines v. COMELEC*,¹⁴ the Court elaborated that “the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely a theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.”¹⁵

Here, aside from the allegations that respondent has issued Memorandum Circular No. 1, which created a new manner of disclosure of the SALN that is allegedly repugnant to the Constitution and existing law, and that he was told over the phone that his request could not be accommodated in connection therewith, petitioner has miserably failed to demonstrate any actual act committed by respondent which resulted to a direct and concrete injury or adverse effect against him. It bears emphasis that the alleged verbal refusal of respondent to accommodate petitioner’s

¹⁰ *Ifurung v. Carpio-Morales*, G.R. No. 232131, April 24, 2018, 862 SCRA 684, 702.

¹¹ *Id.* at 702-703.

¹² *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, G.R. Nos. 178552, 178554, etc. October 5, 2010, 632 SCRA 146, 176.

¹³ *Id.* at 176, citing *Information Technology Foundation of the Philippines v. COMELEC*, G.R. No. 159139, June 15, 2005, 460 SCRA 291, 312.

¹⁴ 499 Phil. 281, 304-305 (2005).

¹⁵ *Id.* at 312-313. Underscoring supplied.

request is but a bare, self-serving, and unsubstantiated allegation. It also would not suffice for the Court to exercise judicial power by the mere existence or effectivity of Memorandum Circular No. 1, absent “acts or events where concrete rights or duties arise.”¹⁶ As aptly put by Associate Justice Marvic M.V.F. Leonen in his Dissenting Opinion in *Spouses Imbong v. Ochoa, Jr.*,¹⁷ the existence of rules does not substitute for real facts. Thus:

Without the existence and proper proof of actual facts, any review of the statute or its implementing rules will be theoretical and abstract. Courts are not structured to predict facts, acts or events that will still happen. Unlike the legislature, we do not determine policy. We read law only when we are convinced that there is enough proof of the real acts or events that raise conflicts of legal rights or duties. Unlike the executive, our participation comes in after the law has been implemented. Verily, we also do not determine how laws are to be implemented.¹⁸

Verily, the Court in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,¹⁹ noted several cases where claims resting on purely hypothetical or anticipatory grounds were denied, to wit:

Thus, a petition to declare unconstitutional a law converting the Municipality of Makati into a Highly Urbanized City was held to be premature as it was tacked on **uncertain, contingent events**. Similarly, **a petition that fails to allege that an application for a license to operate a radio or television station has been denied or granted by the authorities** does not present a justiciable controversy, and merely wheedles the Court to rule on a hypothetical problem.

The Court dismissed the petition in *Philippine Press Institute v. Commission on Elections* for **failure to cite any specific affirmative action of the Commission on Elections to implement the assailed resolution**. It refused, in *Abbas v. Commission on Elections*, to rule on the religious freedom claim of the therein petitioners **based merely on a perceived potential conflict between the provisions of the Muslim Code and those of the national law**, there being no actual controversy between real litigants.

The list of cases denying claims resting on purely hypothetical or anticipatory grounds goes on *ad infinitum*.

The Court is not unaware that a reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that

¹⁶ See J. Leonen, Dissenting Opinion in *Imbong v. Ochoa, Jr.*, G.R. Nos. 204819, 204934, etc., April 8, 2014, 721 SCRA 146, 739.

¹⁷ G.R. Nos. 204819, 204934, etc., April 8, 2014, 721 SCRA 146.

¹⁸ Id. at 739.

¹⁹ Supra note 12.

there must be sufficient facts to enable the Court to intelligently adjudicate the issues.²⁰ (Emphasis and underscoring supplied)

Furthermore, petitioner has failed to observe the doctrine of hierarchy of courts. His rather cursory invocation of transcendental importance cannot cure this defect, especially considering that the doctrine cannot and does not override the requirements of actual and justiciable controversy and ripeness for adjudication, which are conditions *sine qua non* for the exercise of judicial power.²¹ The rule is also now well-settled that litigants do not have unfettered discretion to invoke the Court's original jurisdiction in the issuance of extraordinary writs, which it concurrently shares with the Regional Trial Courts and the Court of Appeals.²² The doctrine of hierarchy of courts, being a constitutional imperative, dictates that direct recourse to this Court is allowed only to resolve questions of law, notwithstanding the invocation of paramount or transcendental importance of the action.²³ With the status of petitioner's request before the Office of the Ombudsman being an unsettled and debatable fact, the present Petition evidently does not involve *pure* questions of law.

Thus, while petitions for *certiorari* and prohibition filed before the Court "are the remedies by which the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government may be determined under the Constitution,"²⁴ this is, by no means, an indiscriminate license to disregard the requisites of the Court's judicial review and the doctrine of hierarchy of courts.

Finally, the Court holds that the remedy of mandamus does not lie in this case. The duty subject of mandamus must be ministerial rather than discretionary.²⁵ In *Roble Arrastre, Inc. v. Villaflor*,²⁶ the Court explained the difference between the exercise of ministerial and discretionary powers, to wit:

x x x A purely ministerial act or duty in contradiction to a discretionary act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when

²⁰ Id. at 176-177.

²¹ *De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas*, G.R. Nos. 185320 & 185348, April 19, 2017, 823 SCRA 550, 578.

²² See *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, 896 SCRA 213, 227.

²³ Id. at 227.

²⁴ *Araullo v. Aquino III*, G.R. Nos. 209287, 209135, etc., July 1, 2014, 728 SCRA 1, 71.

²⁵ *Lihaylihay v. The Treasurer of the Philippines*, G.R. No. 192223, July 23, 2018, p. 7.

²⁶ G.R. No. 128509, August 22, 2006, 499 SCRA 434.

the discharge of the same requires neither the exercise of official discretion or judgment. x x x²⁷

Here, while the right of access and information to a public official's SALN is provided under the Constitution and RA 6713, the same is not an absolute vested right. The Court has declared in the past that while no prohibition could stand against access to official records such as the SALN, the same is undoubtedly subject to regulation.²⁸ The power to regulate the access by the public to these documents stems from the inherent power of the custodian to control its very office to the end that damage to, or loss of, the records may be avoided; that undue interference with the duties of the custodian of the books and documents and other employees may be prevented; and that the right of other persons entitled to make inspection may be insured.²⁹

Thus, a custodian such as the Office of the Ombudsman is not bound under *every* circumstance to allow or to grant the request of disclosure of a public official's SALN to the public. A custodian is not prohibited by the Constitution to regulate such disclosure. Its duty therefore, under the Constitution and applicable laws, is far from being merely ministerial. The Court, in fact, as custodian of the SALNs of justices and judges, has itself laid down some guidelines to be observed for requests made to gain access to these SALNs.³⁰ It has likewise, on occasions, denied requests due to a "plainly discernible" improper motive³¹ or one that "smack[ed] of a fishing expedition."³²

²⁷ Id. at 451, as cited in *Laygo, et al. v. The Municipal Mayor of Solano, Nueva Vizcaya*, G.R. No. 188448, January 11, 2017, 814 SCRA 142, 155.

²⁸ *Re: Request for Copy of 2008 SALN and Personal Data Sheet or Curriculum Vitae of the Justices of the Supreme Court and Officers and Employees of the Judiciary*, A.M. Nos. 09-8-6-SC & 09-8-07-CA, June 13, 2012, 672 SCRA 27, 45.

²⁹ Id. at 48, citing *Subido v. Ozaeta*, 80 Phil. 383, 387 (1948).

³⁰ *Re: Request for Copy of 2008 SALN and Personal Data Sheet or Curriculum Vitae of the Justices of the Supreme Court and Officers and Employees of the Judiciary*, supra note 28, at 38.

1. All requests for copies of statements of assets and liabilities of any Justice or Judge shall be filed with the Clerk of Court of the Supreme Court or with the Court Administrator, as the case may be (Section 8 [A][2], R.A. 6713), and shall state the purpose of the request.
2. The independence of the Judiciary is constitutionally as important as the right to information which is subject to the limitations provided by law. **Under specific circumstances, the need for fair and just adjudication of litigations may require a court to be wary of deceptive requests for information which shall otherwise be freely available. Where the request is directly or indirectly traced to a litigant, lawyer, or interested party in a case pending before the court, or where the court is reasonably certain that a disputed matter will come before it under circumstances from which it may, also reasonably, be assumed that the request is not made in good faith and for a legitimate purpose, but to fish for information and, with the implicit threat of its disclosure, to influence a decision or to warn the court of the unpleasant consequences of an adverse judgment, the request may be denied.**
3. Where a decision has just been rendered by a court against the person making the request and the request for information appears to be a "fishing expedition" intended to harass or get back at the Judge, the request may be denied.
4. In the few areas where there is extortion by rebel elements or where the nature of their work exposes Judges to assaults against their personal safety, the request shall not only be denied but should be immediately reported to the military.
5. The reason for the denial shall be given in all cases. (Emphasis supplied)

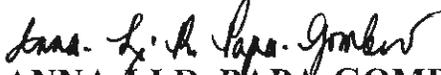
³¹ *Re: Request for Copies of the SALN and Personal Data Sheet or Curriculum Vitae of the Justices of the Supreme Court and Officers and Employees of the Judiciary*, A.M. Nos. 09-8-6-SC, 09-8-07-CA &

WHEREFORE, in view of the foregoing, the Petition is **DISMISSED.**" (53)

By authority of the Court:

EDGAR O. ARICHETA
Clerk of Court

By:


ANNA-LI R. PAPA-GOMBIO
Deputy Clerk of Court *En Banc*

14-4-01-CTA, August 26, 2014 (Unsigned Resolution), citing *Re: Request of Jose M. Alejandrino*, Resolution dated May 2, 1989.

³² Id.

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