



Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division  
JAN 11 2017

THIRD DIVISION

ALBERT WILSON,  
Petitioner,

G.R. No. 189220

-versus-

THE HONORABLE EXECUTIVE  
SECRETARY EDUARDO ERMITA,  
SECRETARY OF FOREIGN  
AFFAIRS ALBERTO ROMULO,  
SECRETARY OF JUSTICE RAUL  
GONZALES, BUREAU OF JAIL  
MANAGEMENT AND PENOLOGY,  
BOARD OF CLAIMS,  
DEPARTMENT OF JUSTICE,  
SOLICITOR GENERAL AGNES  
DEVANADERA, and BUREAU OF  
IMMIGRATION,

Respondents.

x-----/

January 9, 2017

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on December 7, 2016 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on January 9, 2017 at 9:15 a.m.

Very truly yours,

*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court

*ALW 1-9-17*

- over -

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The Hon. Secretary  
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The Hon. Commissioner  
BUREAU OF IMMIGRATION  
Bureau of Immigration Bldg.  
Magallanes Drive, Intramuros  
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The Hon. Executive Secretary  
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Sec. Jesus R.S. Domingo  
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Republic of the Philippines  
**Supreme Court**  
 Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Ligtan*  
 WILFREDO V. LIGHTAN  
 Division Clerk of Court  
 Third Division  
 JAN 11 2017

**THIRD DIVISION**

**ALBERT WILSON,**  
 Petitioner,

**G.R. No. 189220**

Present:

- versus -

VELASCO, JR., J.,  
*Chairperson,*  
 PERALTA,  
 PEREZ,  
 REYES, and  
 JARDELEZA, JJ.

**THE HONORABLE EXECUTIVE  
 SECRETARY EDUARDO  
 ERMITA, SECRETARY OF  
 FOREIGN AFFAIRS ALBERTO  
 ROMULO, SECRETARY OF  
 JUSTICE RAUL GONZALES,  
 BUREAU OF JAIL  
 MANAGEMENT AND  
 PENOLOGY, BOARD OF  
 CLAIMS, DEPARTMENT OF  
 JUSTICE, SOLICITOR GENERAL  
 AGNES DEVANADERA, and  
 BUREAU OF IMMIGRATION,**  
 Respondents.

Promulgated:

December 7, 2016

X-----*Wilfredo V. Ligtan*-----X

**DECISION**

**REYES, J.:**

Before the Court is a Petition for *Mandamus*<sup>1</sup> filed by Albert Wilson (Wilson) to enforce the United Nations Human Rights Committee (the Committee) Communication No. 868/1999<sup>2</sup> (View) against the Republic of

<sup>1</sup> *Rollo*, pp. 4-42.

<sup>2</sup> United Nations Human Rights, Office of the High Commissioner; CCPR/C/79/D/868/1999; <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f79%2fD%2f868%2f1999&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f79%2fD%2f868%2f1999&Lang=en)> (visited June 9, 2016).

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the Philippines (RP).

### Antecedent Facts

The present case has its roots in the incarceration and subsequent acquittal of Wilson for the crime of rape which was the subject of the Court's ruling in G.R. No. 135915 entitled *People of the Philippines v. Wilson*.<sup>3</sup>

### Proceedings in G.R. No. 135915

On September 16, 1996, Wilson, a British national, was accused and charged with the crime of consummated rape<sup>4</sup> by a 12-year-old girl, the daughter of his Filipina live-in partner. The girl was assisted by her biological father in filing the criminal complaint. Immediately thereafter, Wilson was taken into custody.

After trial, Wilson was found guilty beyond reasonable doubt of the crime of Rape by the Regional Trial Court (RTC) of Valenzuela, Metro Manila, Branch 171, in its Decision dated September 30, 1998 and was imposed the death penalty pursuant to Section 11 of Republic Act (R.A.) No. 7659<sup>5</sup> and ordered to indemnify the victim the amount of ₱50,000.00.<sup>6</sup> The case was elevated to the Supreme Court for automatic review.

Pending appeal, or on June 15, 1999, Wilson filed with the Committee, pursuant to Article 5, paragraph 4 of the Optional Protocol, a case<sup>7</sup> against the RP for violations of the International Covenant on Civil and Political Rights (ICCPR) specifically: Article 2, paragraphs 2 and 3,<sup>8</sup>

<sup>3</sup> 378 Phil. 1023 (1999).

<sup>4</sup> Defined under Section 11 of Republic Act No. 7659.

<sup>5</sup> AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES. Approved on December 13, 1993.

<sup>6</sup> *People v. Wilson*, supra note 3, at 1029.

<sup>7</sup> CCPR/C/79/D/868/1999, supra, p. 3.

<sup>8</sup> Article 2

x x x x

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Articles 6;<sup>9</sup> 7;<sup>10</sup> 9;<sup>11</sup> 10, paragraphs 1 and 2;<sup>12</sup> and Article 14, paragraphs 1, 2, and 3 and 6.<sup>13</sup>

United Nations Human Rights, Office of the High Commissioner, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (visited June 9, 2016).

<sup>9</sup> Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant. Id.

<sup>10</sup> Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. Id.

<sup>11</sup> Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. Id.

<sup>12</sup> Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

x x x Id.

<sup>13</sup> Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature

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In the Decision<sup>14</sup> dated December 21, 1999, the Court reversed the ruling of the RTC. It found that there were serious discrepancies and inconsistent statements particularly in the testimony given by the victim. It concluded that there was not enough evidence to support the finding of guilt beyond reasonable doubt for the crime of rape by Wilson. The Court, thus, acquitted Wilson stating:

**WHEREFORE**, the decision of the trial court is reversed and set aside. The accused is hereby acquitted of the charge of consummated rape. The Director of the Bureau of Corrections is ordered to effect his immediate release from custody unless he is being held in custody for some other legal cause.

**SO ORDERED.**<sup>15</sup>

### The Present Case

Wilson was released from detention the day after the acquittal. He immediately left the Philippines for the United Kingdom (UK). Upon his return in the UK, Wilson sought compensation from the Board of Claims (BOC) of the Department of Justice (DOJ) pursuant to R.A. No. 7309<sup>16</sup> through counsel as one who was unjustly accused, convicted and imprisoned but released by virtue of an acquittal.

On January 1, 2001, the BoC-DOJ awarded to Wilson ₱14,000.00 as compensation. On February 21, 2001, Wilson was informed of the BoC-DOJ award and that he had to claim the compensation in person

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and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

x x x x

6. When a person has by a final decision been convicted of a criminal offense and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributed to them. *Id.*

<sup>14</sup> *People v. Wilson*, supra note 3.

<sup>15</sup> *Id.* at 1040.

<sup>16</sup> AN ACT CREATING A BOARD OF CLAIMS UNDER THE DEPARTMENT OF JUSTICE FOR VICTIMS OF UNJUST IMPRISONMENT OR DETENTION AND VICTIMS OF VIOLENT CRIMES AND FOR OTHER PURPOSES. Approved on March 30, 1992.

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in the Philippines. Wilson moved for reconsideration arguing that under R.A. No. 7309, he was entitled to ₱40,000.00.<sup>17</sup>

On April 23, 2001, the BoC-DOJ informed Wilson that a memorandum was issued directing the BOC to raise the award to the maximum amount that may be paid to those unjustly imprisoned or detained subject to the availability of funds.<sup>18</sup>

Wilson applied for and was denied a tourist visa to travel to the Philippines due to his presence in the Bureau of Immigration (BI) watch list.<sup>19</sup> According to the BI, Wilson's presence in the watch list could be attributed to his overstaying and his previous conviction of a crime involving moral turpitude.<sup>20</sup>

The BoC-DOJ, thereafter, issued Resolution No. 2001-25 dated August 24, 2001 granting Wilson an additional award of ₱26,000.00 in addition to the initial amount of ₱14,000.00 bringing the total award to ₱40,000.00.<sup>21</sup>

In September 2001, the DOJ issued a check amounting to ₱26,000.00 representing the additional award. The check was made out to Wilson, care of the Ambassador of UK at the request of the former.<sup>22</sup>

On November 11, 2003, the Committee issued the View. It found that the allegations falling under Article 14, paragraphs 1, 2, 3 and 6 of the ICCPR were inadmissible.<sup>23</sup> The Committee stated:

9. In accordance with article 2, paragraph 3 (a), of the [ICCPR], the State party is under an obligation to provide the author with an effective remedy. In respect of the **violations of article 9** the **State party should compensate** the author. As to the **violations of articles 7 and 10** suffered while in detention, including subsequent to sentence of death, the **Committee observes that the compensation provided by the State party under its domestic law was not directed at these violations, and that compensation due to the author should take due account both of the seriousness of the violations and the damage to the author caused.** In this context, the Committee recalls the **duty upon the State party to undertake a comprehensive and impartial investigation of the issues raised in the course of the author's detention, and to draw the appropriate penal and disciplinary consequences for the individuals**

<sup>17</sup> *Rollo*, p. 57.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 58.

<sup>20</sup> *Id.*

<sup>21</sup> See letter dated January 14, 2008 of the Department of Foreign Affairs addressed to the Supreme Court.

<sup>22</sup> *Id.*

<sup>23</sup> CCPR/C/79/D/868/1999, *supra* note 2, at 11-12.

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**found responsible.** As to the imposition of immigration fees and visa exclusion, the Committee takes the view that in order to remedy the violations of the Covenant the State party should refund to the author the moneys claimed from him. All monetary compensation thus due to the author by the State party should be made available for payment to the author at the venue of his choice, be it within the State party's territory or abroad. The State party is also under an obligation to avoid similar violations in the future.<sup>24</sup>

In a letter<sup>25</sup> dated June 19, 2008, Wilson, through his counsel, asked the Executive Secretary [ES]:

As with internationally wrongful acts, a breach of a State obligation gives rise first to a duty of reparation. The Committee found that the breach of Covenant obligations required that the Philippines provide compensation or redress. In accordance with the decision of the Committee, we thus pray that this Honorable Office:

1. take steps to effect payment of compensation to Mr. Wilson, taking into consideration the seriousness of the breach of his human rights;
2. direct the [BOC] to release the sums awarded to Mr. Wilson to his authorized representatives, the undersigned counsel Roque and Butuyan Law Office.
3. direct the [BI] to refund the amount unjustly imposed upon Mr. Wilson for overstaying his tourist visa, such being directly attributable to the wrongful decision of the trial court.<sup>26</sup>

In his letter<sup>27</sup> dated October 20, 2008, Wilson reiterated his June 19, 2008 letter and asked that the payment of compensation be effected, a comprehensive and impartial investigation be conducted, and the monies paid by Wilson with respect to immigration fees and visa exclusion be refunded.<sup>28</sup>

On October 29, 2008, the letter was referred by the ES to the DOJ Secretary for appropriate action.<sup>29</sup>

On September 9, 2009, Wilson filed the present petition for *mandamus*.<sup>30</sup> He insists his entitlement to the writ of *mandamus* owing to the ICCPR and the Optional Protocol. He argues that by virtue of the doctrine of transformation, the RP is in breach of an international obligation since any View issued by the Committee constitutes part of international law

<sup>24</sup> CCPR/C/79/D/868/1999, id. at 13.

<sup>25</sup> *Rollo*, pp. 66-67.

<sup>26</sup> Id. at 67.

<sup>27</sup> Id. at 82-84.

<sup>28</sup> Id. at 84.

<sup>29</sup> Id. at 85.

<sup>30</sup> Id. at 4-42.

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and that the RP is obligated to enforce the same. He prays that:

1. Respondents take steps to ensure that Albert Wilson is paid and given reparation in the amount sufficient to compensate him for the torture and abuse he suffered under the penal system of the Philippines, in compliance with Philippine treaty obligations in the ICCPR as embodied in the Communication of the Human Rights Committee in Case no. 868/1999 in keeping with international law on reparations.
2. Respondents undertake continual efforts and steps to ensure that no torture and inhuman and degrading treatment are suffered by prisoners in the National Penitentiary and other places of detention and imprisonment in the Philippines, in the manner laid down in the *Manila Bay case*.<sup>31</sup>

The RP, through the Office of the Solicitor General (OSG), opines that the petition is without merit. It argues that Wilson was not able to prove that there is any national law giving life to the ICCPR and Optional Protocol in order for it to have force and effect in our jurisdiction as required under Article 2(2) of the ICCPR.<sup>32</sup> It further avers that the findings of the Committee are merely recommendatory and does not give rise to an obligation to enforce and implement the View. Thus, being recommendatory, the View cannot be used to compel the Philippine Government to compensate Wilson.<sup>33</sup> In any event, Wilson's documents show that BoC-DOJ had already awarded in his favor ₱40,000.00 pursuant to R.A. No. 7309 and it was of Wilson's own volition that the amount remains unclaimed.<sup>34</sup> It disagrees that the case of *Metropolitan Manila Development Authority, et al. v. Concerned Residents of Manila Bay, et al.*<sup>35</sup> is applicable because unlike the *Manila Bay case*, the petitioner, in this case, seeks to enforce international law and not domestic law.<sup>36</sup>

### Issue

Simply, the issue before this Court is whether *mandamus* lies to compel the enforcement of the View.

### Ruling of the Court

The petition is without merit.

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<sup>31</sup> Id. at 39.  
<sup>32</sup> Id. at 189-194.  
<sup>33</sup> Id. at 194-197.  
<sup>34</sup> Id. at 198.  
<sup>35</sup> 595 Phil. 305 (2008).  
<sup>36</sup> *Rollo*, pp. 199-202.

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Under Section 3, Rule 65 of the Rules of Court, *mandamus* is a writ issued to compel a tribunal to perform an act which the law enjoins as a duty resulting from an office, trust or station, to wit:

Section 3. *Petition for mandamus.* — **When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station,** or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, **and there is no other plain, speedy and adequate remedy in the ordinary course of law,** the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (Emphasis ours)

In *Yuvienco v. Hon. Canonoy, etc., et al.*,<sup>37</sup> and several times reiterated thereafter, the Court held that a purely ministerial duty must exist and a clear legal right must be established by the petitioner for *mandamus* to lie, to wit:

Two pertinent principles are well settled in this jurisdiction: (a) one is that mandamus would lie only to compel a tribunal, board or officer to comply with a purely ministerial duty, or to allow a party to exercise a right or to occupy and enjoy the privileges of an office to which he is lawfully entitled; (b) the others is that for the writ of mandamus to issue, petitioner must establish a clear legal right to the relief sought, and a mandatory duty on the part of the respondent in relation thereto.<sup>38</sup>

It behooves the Court to examine whether the View dated November 11, 2003 relied upon by Wilson confers upon him any legal right which the respondents are ministerially required to perform but have unlawfully neglected.

### **No Ministerial Duty**

It is well-settled that a ministerial duty must be clear and specific as to leave no room for the exercise of discretion in its performance.<sup>39</sup> As stated in *Lord Allan Jay Q. Velasco v. Hon. Speaker Feliciano R. Belmonte, Jr.*,

<sup>37</sup> 148-A Phil. 532 (1971).

<sup>38</sup> Id. at 537.

<sup>39</sup> *Lord Allan Jay Q. Velasco v. Hon. Speaker Feliciano R. Belmonte, Jr., Secretary General Marilyn B. Barua-Yap and Regina Ongsiako Reyes*, G.R. No. 211140, January 12, 2016.

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*Secretary General Marilyn B. Barua-Yap and Regina Ongsiako Reyes:*<sup>40</sup>

A purely ministerial act or duty 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 the discharge of the same requires neither the exercise of official discretion or judgment.<sup>41</sup>

R.A. No. 7309 was passed on March 30, 1992 creating a BoC-DOJ to evaluate and investigate claims for compensation for persons who were: (1) unjustly accused, convicted and imprisoned but released by virtue of an acquittal; (2) unjustly detained and released without being charged; (3) a victim of arbitrary or illegal detention and released without being charged; and (4) victim of a violent crime.<sup>42</sup> Under R.A. No. 7309, compensation for victims of unjust imprisonment or detention will be based on the number of months of imprisonment. Compensation for each month of imprisonment shall not exceed ₱1,000.00.<sup>43</sup>

It is clear, however, that Wilson has been granted compensation under R.A. No. 7309. In fact, the BoC-DOJ granted to Wilson the maximum allowed compensation under that law. It was Wilson's decision not to collect the money granted to him.

Other than the R.A. No. 7309, under which Wilson had already been granted compensation, there is no other law or regulation that forms the basis of such ministerial right that the government is impelled to grant. Wilson does not present any law by which his ministerial right arises from

<sup>40</sup> G.R. No. 211140, January 12, 2016.

<sup>41</sup> Id.

<sup>42</sup> Section 3. *Who may File Claims.* – The following may file claims for compensation before the Board:

(a) any person who was unjustly accused, convicted and imprisoned but subsequently released by virtue of a judgment of acquittal;

(b) any person who was unjustly detained and released without being charged;

(c) any victim of arbitrary or illegal detention by the authorities as defined in the Revised Penal Code under a final judgment of the court; and

(d) any person who is a victim of violent crimes. For purposes of this Act, violent crimes shall include rape and shall likewise refer to offenses committed with malice which resulted in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or committed with torture, cruelty or barbarity.

<sup>43</sup> Section 4. *Award Ceiling.* – For victims of unjust imprisonment or detention, the compensation shall be based on the number of months of imprisonment or detention and every fraction thereof shall be considered one month; Provided, however, That in no case shall such compensation exceed One Thousand pesos (P1,000.00) per month.

In all other cases, the maximum amount for which the Board may approve a claim shall not exceed Ten thousand pesos (P10,000.00) or the amount necessary to reimburse the claimant the expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to injury, whichever is lower. This is without prejudice to the right of the claimant to seek other remedies under existing laws.

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with respect to additional compensation. It is not within this Court's discretion to adjust any monetary grant arbitrarily.

### **There is No Clear and Complete Legal Right**

On December 19, 1966, the RP became party to the ICCPR and the Optional Protocol.<sup>44</sup> The ICCPR recognized the "inherent dignity of the human person" and its concomitant rights. At the same time, the Philippines made a declaration that:

The Philippine Government, in accordance with article 41 of the said Covenant, recognizes the competence of the Human Rights Committee set up in the aforesaid Covenant, to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.<sup>45</sup>

Pursuant to Article 41 of the ICCPR, the Committee was organized. Signatories recognized the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the ICCPR.<sup>46</sup> In addition, under Article 1 of the Optional Protocol, the State parties agreed to recognize the competence of the Committee to receive and consider communications from individuals who claim to be victims of a violation by that State Party of any rights set forth in the ICCPR. The Philippine Congress ratified the ICCPR on October 23, 1986 and the Optional Protocol on August 22, 1989.

As the OSG points out, the Court in the case of *Pharmaceutical and Health Care Association of the Philippines v. Health Sec. Duque III*<sup>47</sup> stated that a treaty is transformed into domestic law through a constitutional mechanism. The Court explained:

Under the 1987 Constitution, international law can become part of the sphere of domestic law either by transformation or incorporation. The **transformation method** requires that **an international law be transformed into a domestic law through a constitutional mechanism such as local legislation**. The **incorporation method** applies when, by **mere constitutional declaration, international law is deemed to have the force of domestic law**.

<sup>44</sup> Pursuant to Article 49 of the ICCPR, the same went into force on March 23, 1976.

<sup>45</sup> <[https://umich.edu/~psci160/PSI160/Readings/HumanRights/iv\\_4.html](https://umich.edu/~psci160/PSI160/Readings/HumanRights/iv_4.html)> (visited June 9, 2016).

<sup>46</sup> ICCPR, Article 41(1).

<sup>47</sup> 561 Phil. 386 (2007).

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Treaties become part of the law of the land through transformation pursuant to Article VII, Section 21 of the Constitution which provides that “[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate.” Thus, treaties or conventional international law must go through a process prescribed by the Constitution for it to be transformed into municipal law that can be applied to domestic conflicts.<sup>48</sup> (Citations omitted and emphasis ours)

In sum, there must be an act more than ratification to make a treaty applicable in our jurisdiction. To be sure, what was ratified were the ICCPR and the Optional Protocol, nowhere in the instrument does it say that the View of the Committee forms part of the treaty. Even the Committee in its General Comment No. 33 stated that:

11. While the function of the Human Rights Committee in considering individual communications is not, as such, that of a judicial body, the views issued by the Committee under the Optional Protocol exhibit some important characteristics of a judicial decision. x x x.<sup>49</sup>

Any View issued by the Committee only displays “important characteristics of a judicial decision” and are not *per se* decisions which may be enforced outright. These Views, therefore, are mere recommendations to guide the State it is issued against.

Once again, the Court would like to stress that it is beyond its purview to act on such recommendations as these are matters which are best taken up by the Legislative and the Executive branches of government as can be seen by the formation of the Presidential Human Rights Committee.<sup>50</sup> To recall, the Court derives its powers under its basic mandate under Section 1, Article VIII of the 1987 Constitution:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The Court finds that there is no ministerial duty and clear legal right which would justify the issuance of a writ of mandamus.

<sup>48</sup> Id. at 397-398.

<sup>49</sup> <<http://ohchr.org/english/bodies/hrc/docs/CCPR.C.GC.33.pdf>> (visited June 9, 2016).

<sup>50</sup> The RP formed a Human Rights Committee under Administration Order No. 101 on December 13, 1988. On January 27, 2002, under A.O. No. 29, the Committee was renamed the Presidential Human Rights Committee.


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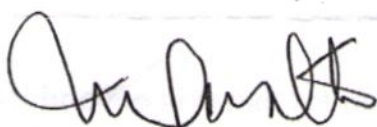
**WHEREFORE**, the petition is denied for lack of merit.

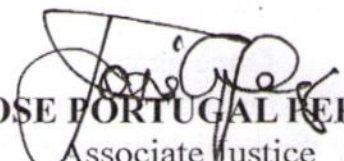
**SO ORDERED.**

  
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

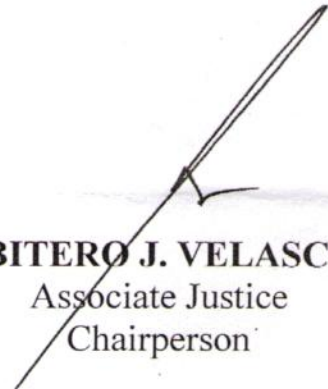
  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**FRANCIS H. JARDELEZA**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.




**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LICITAN**  
Division Clerk of Court  
Third Division

**JAN 11 2017**

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