

G.R. No. 211567 (*PROGUN [Peaceful Responsible Owners of Gun], Inc. v. Philippine National Police*)

G.R. No. 215634 (*PROGUN [Peaceful Responsible Owners of Gun], Inc. v. Philippine National Police*)

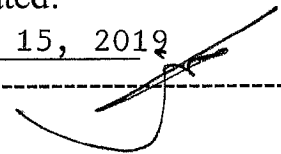
G.R. No. 211559 (*Eric F. Acosta and Nathaniel G. Dela Paz v. Hon. Paquito N. Ochoa, in his capacity as Executive Secretary, et al.*)

G.R. No. 212570 (*Guns and Ammo Dealers Association of the Philippines, Inc. v. The Philippine National Police PNP Firearms and Explosives Office and PNP Civil Security*)

Promulgated:

October 15, 2019

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SEPARATE CONCURRING AND DISSENTING OPINION

REYES JR., J.:

The preservation of peace and order is a forefront duty of the State, however, no matter how noble the ends sought to be achieved may be, the State may not unnecessarily intrude upon the constitutional rights of its people.

As a brief background, the petitioners assail the constitutionality of some provisions of Republic Act (R.A.) No. 10591 otherwise known as, “An Act Providing for a Comprehensive Law on Firearms and Ammunition and Providing Penalties for Violations thereof” and its Implementing Rules and Regulations (IRR) for allegedly infringing upon their right to bear arms, right to property and right to privacy.

Precedence of National Interest over Rule on Technicalities

At the outset, the *ponencia* notes the absence of the requisites for a valid exercise of the Court’s power of judicial review, particularly:

First, there is no actual case or controversy that is ripe for the Court’s resolution. The petitioners in G.R. No. 211559 do not allege facts that will confirm the existence of an actual case or controversy to warrant the Court’s exercise of its judicial power. As discussed in the *ponencia*, an actual case or



controversy is necessary for the Court to avoid using its time and limited resources in resolving mere hypothetical cases or conjectural issues.

Next, the petitioners do not have legal standing to file the present suit. Petitioners Eric F. Acosta and Nathaniel G. Dela Paz did not allege that they are engineers, but they raise as issue the omission of engineers in Section 7.3¹ of the IRR of R.A. No. 10591 as professionals who are not required to submit threat assessment certificates in applying for a Permit to Carry Firearms Outside of Residence (PTCFOR). There is also no showing that the petitioners PROGUN and Guns and Ammo Dealers Association of the Philippines were authorized by their members to sue on their behalf. Thus, the absence of legal standing on the part of the petitioners to file the present suit.

Lastly, the *ponencia* observes that the petitioners violated the doctrine of hierarchy of courts when they directly sought recourse from the Court.

In spite of the foregoing lapses, I find it striking that the Petitions were not outrightly denied on these procedural grounds; in fact, the *ponencia* extensively discussed the issues raised by the petitioners. I wish to emphasize that since constitutional rights are involved, technicalities should not impede the resolution of the present consolidated petitions. Indeed, the petitioners' violations are mere procedural technicalities which the Court may set aside in its discretion in the interest of substantial justice. In *Chavez v. Hon. Romulo*,² the Court was confronted with a petition that also sought to enjoin the implementation of guidelines regarding the carrying of firearms outside residence. Despite procedural barriers, the Court treated the matter as one of national interest and of serious implication,³ and as such, entertained the petition despite the attendant procedural infirmities. There is no reason why the present case should be dealt with differently.

Now, with respect to the substantive issues.

¹ 7.3 For purposes of this Act, the following professionals are considered to be in imminent danger due to the nature of their profession, occupation or business and hence are not required to submit threat assessment certificates:

- a) Members of the Philippine Bar;
- b) Certified Public Accountants;
- c) Accredited media practitioners from recognized media institutions; Cashiers and bank tellers;
- d) Priests, Ministers, Rabbi, Imams;
- e) Physicians and Nurses; and
- f) Businessmen, who by the nature of their business or undertaking duly recognized or regulated by law, are exposed to high risk of being targets of criminal elements.

² 475 Phil. 486 (2004).

³ Id. at 499.

Meyer

***Invalidity of the Inspection
Requirement***

There is no fundamental right to bear arms in the Philippines, thus, the State may regulate gun ownership through the exercise of its police power. In line with this, I stand with the *ponencia* in declaring Section 9.6⁴ of the IRR of R.A. No. 10591 which was promulgated in 2013 unconstitutional, albeit for a different reason.

I agree that requiring Types 3 to 5 license applicants to sign the *pro forma* "Consent of Voluntary Presentation for Inspection" violates Article III, Section 2 of the 1987 Constitution,⁵ but, primarily because there are no sufficient safeguards to carry out the inspection. In *Ople v. Torres*,⁶ the Court held that "the right to privacy does not bar all incursions into individual privacy."⁷ However, "intrusions into the right must be accompanied by proper safeguards and well-defined standards to prevent unconstitutional invasions. We reiterate that any law or order that invades individual privacy will be subjected by this Court to strict scrutiny."⁸

The *ponencia* rules that even though Section 9.3⁹ of the 2018 Revised IRR of R.A. No. 10591 now provides for the scope and extent of the inspection, a search warrant must be first obtained considering that there is no compelling urgency to immediately conduct the inspection.

Based on Section 9¹⁰ of R.A. No. 10591, Types 3 to 5 licenses allow a citizen to own and possess at least six registered firearms. In view of the

⁴ 9.6 For Types 3 to 5 licenses, the licensed citizen must comply with the inspection requirements of the PNP. Failure on their part to comply with any of the requirements herein mentioned is a ground for the cancellation of license and/or registration.

⁵ Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

⁶ 354 Phil. 948 (1998).

⁷ Id. at 985.

⁸ Id.

⁹ 9.3. For Types 3 to 5 licenses, licensed citizens must comply with the inspection requirements of the PNP before the issuance of license. Failure on their part to comply with any of the requirements herein mentioned is a ground for the denial of license. The inspection shall be limited to visual, announced seven days prior, and conducted during office hours (8:00AM to 5:00PM) in the presence of the licensed citizen or his authorized representative and must be limited to the compliance on vault requirement. The Inspection Team shall be covered with a Letter Order issued by the Director, CSG.

¹⁰ Section 9. *Licenses Issued to Individuals*. – Subject to the requirements set forth in this Act and payment of required fees to be determined by the Chief of the PNP, a qualified individual may be issued the appropriate license under the following categories;

Type 1 license – allows a citizen to own and possess a maximum of two (2) registered firearms;

Type 2 license – allows a citizen to own and possess a maximum of five (5) registered firearms;

Type 3 license – allows a citizen to own and possess a maximum of ten (10) registered firearms;

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gravity, responsibility, and possible repercussions of owning and possessing at least six firearms in one's residence, I am of the opinion that the State must still be given an opportunity to ensure compliance with the vault and safety requirements under R.A. No. 10951, and the only way to confirm compliance is through the conduct of an initial, one-time inspection, complemented by a subsequent inspection in case of compelling urgency, as the *ponencia* suggests.

In *People of the Philippines v. O'Coirlain*,¹¹ the Court noted that administrative searches are allowed in certain situations where special needs arise and securing a prior search warrant is rendered impracticable, *viz.*:

US courts have permitted exceptions to the Fourth Amendment when "special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable" such as work-related searches of government employees' desks and offices, warrantless searches conducted by school officials of a student's property, government investigators conducting searches pursuant to a regulatory scheme when the searches meet "reasonable legislative or administrative standards," and a State's operation of a probation system. The Fourth Amendment permits the warrantless search of "closely regulated" businesses; "special needs" cases such as schools, employment, and probation; and "checkpoint" searches such as airport screenings under the administrative search doctrine.¹² (Citation omitted)

From this vantage ground, an inspection prior to the issuance of Types 3 to 5 licenses must be allowed as an adjunct of administrative search, owing to the weight of responsibility involved in gun ownership, which from its nature, necessitates a stricter regulatory scheme.

Nevertheless, inspection under R.A. No. 10591 and its IRR must be struck down for failure to limit the frequency of inspection. While Section 9.3 of the 2018 Revised IRR provides for more guidelines, my view is that the inspection must be subjected to further and more stringent standards, such as limiting the inspection only to one instance— prior to the issuance of the license. This is to ensure that the applicant has complied with the safety measures and vault requirements under the law.

Type 4 license – allows a citizen to own and possess a maximum of fifteen (15) registered firearms; and

Type 5 license – allows a citizen, who is a certified gun collector, to own and possess more than fifteen (15) registered firearms.

For Types 1 to 5 licenses, a vault or a container secured by lock and key or other security measures for the safekeeping of firearms shall be required.

For Types 3 to 5 licenses, the citizen must comply with the inspection and bond requirements.

¹¹ G.R. No. 229071, December 10, 2018.

¹² *Id.*

Reyes

***Exception to Prohibition on
Bringing Firearms inside
Commercial Establishments***

For the purpose of maintaining public peace and order, Section 7.11.2(b)¹³ of the IRR of R.A. No. 10591 commands that firearms be secured inside a vehicle or motorcycle compartment, and Section 7.12(b)¹⁴ of the IRR of R.A. No. 10591 prohibits the bringing of firearms inside places of worship, public drinking, amusement places, and all other commercial or public establishments.

The *ponencia* holds the view that keeping a firearm secured in a motor vehicle compartment or motorcycle prevents the firearm owner from impulsively using the firearm in case of altercation. Meanwhile, the restriction on bringing a firearm to commercial or public places is a reasonable measure to prevent mass shootings.

I agree.

However, it is my opinion that an exemption must be made for commercial establishment owners who own licensed firearms. The blanket prohibition on carrying firearms inside all commercial or public establishments poses an issue insofar as it renders nugatory the PTCFOR secured by the owners of these commercial establishments.

While I agree that maintaining public peace and order is important, enjoining even the commercial establishment owners themselves from bringing their firearms inside their place of business serves no viable purpose. Some commercial establishment owners such as small-scale business owners or sole proprietors cannot afford to engage the services of private security. With the prohibition, they are left with little to no means of protecting themselves or their clients against unlawful elements who may enter their establishments and commit violence. Verily, it is a declared State policy under Section 2 of R.A. No. 10951 that “the State recognizes the right of its qualified citizens to self-defense through, when it is the reasonable means to

¹³ 7.11 The following guidelines regarding the manner of carrying firearms shall be observed:

x x x x

7.11.2 For All Other Persons: (including members of the PNP, AFP and other LEAs in civilian attire)

x x x x

b) The firearm must be secured inside a vehicle or a motor cycle compartment.

¹⁴ 7.12 The following other restriction shall likewise be observed:

x x x x

b) The firearm shall not be brought inside places of worship, public drinking and amusement places and all other commercial or public establishment.

Meyer

repel the unlawful aggression under the circumstances, the use of firearms.” Prohibiting even these owners from bringing their firearm to their place of business does not support this declared State policy and contradicts the purpose for which establishment owners’ PTCFOR was secured.

This prohibition also runs counter to Section 7¹⁵ of R.A. No. 10591, which recognizes businessmen, who by the nature of their business or undertaking, are exposed to high risk of being target of criminal elements. Thus, in my view, this all-out prohibition in Section 7.12(b) of the IRR is unduly restrictive on their part.

Certification as Implicit Compulsion to Join Gun Clubs

Anent the requirement for sports shooters to get a certification from the president of a recognized gun club under Section 4.10¹⁶ of the IRR, the *ponencia* espouses that there is nothing in Section 4.10 that compels a sports shooter applicant to join a gun club or shooting association.

According to the *ponencia*, all that Section 4.10 provides is that a person intending to apply as a sports shooter must submit a certification from the President of a recognized gun club or sports shooting association that he or she is joining the competition.

Again, I depart from the *ponencia*’s ruling in this regard.

To my mind, the requirement of a submitting a certification from the President of a recognized gun club tacitly compels a sports shooter applicant to join the gun club to which such President belongs, for it is reasonable to believe that no President of a gun club would issue a certification to non-

¹⁵ Section 7. *Carrying of Firearms Outside of Residence or Place of Business.* – A permit to carry firearms outside of residence shall be issued by the Chief of the PNP or his/her duly authorized representative to any qualified person whose life is under actual threat or his/her life is in imminent danger due to the nature of his/her profession, occupation or business.

It shall be the burden of the applicant to prove that his/her life is under actual threat by submitting a threat assessment certificate from the PNP.

For purposes of this Act, the following professionals are considered to be in imminent danger due to the nature of their profession, occupation or business:

x x x x

(h) Businessmen, who by the nature of their business or undertaking, are exposed to high risk of being targets of criminal elements.

¹⁶ 4.10 A qualified applicant shall submit the following requirements to apply as a sports shooter:

- a) A copy of the License to Own and Possess Firearms;
- b) Certification from the President of a recognized Gun Club or Sports Shooting Association; and
- c) Written Authority or Consent from Parents/Guardian (for minors).

Meyer

members. Thus, this requirement under Section 4.10(b) is violative of the sports shooters' right to freedom of association.

Section 8, Article III of the 1987 Constitution guarantees the right of people to join or form associations:

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

However, "[t]he constitutionally guaranteed freedom of association includes the freedom *not* to associate."¹⁷ "It should be noted that the provision guarantees the right to form an association. It does not include the right to compel others to form or join one."¹⁸

In view of the foregoing, I vote to **DECLARE** Section 4.10(b) of the Implementing Rules and Regulations **UNCONSTITUTIONAL** for violating Section 8, Article III of the 1987 Constitution.

Nonetheless, I **CONCUR** with the majority in its other dispositions.

Reyes
ANDRES B. REYES, JR.
Associate Justice

¹⁷ *Sta. Clara Homeowners' Association v. Sps. Gaston*, 425 Phil. 221, 235 (2002).

¹⁸ *Id.*