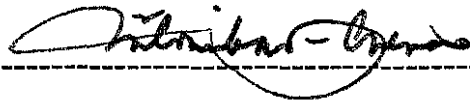


EN BANC

G.R. No. 203353 (*Universal Robina Corporation, petitioner vs. Department of Trade and Industry (DTI), The DTI Secretary, Zenaida C. Maglaya, in her capacity as DTI Undersecretary, and Victorio Mario A. Dimagiba, in his capacity as Director for DTI's Bureau of Trade Regulation and Consumer Protection, respondents*).

Promulgated: February 14, 2023



X-----X

CONCURRING OPINION

GESMUNDO, C.J.:

I fully concur with the *ponencia*. Nevertheless, I write to share my perspective on whether an action for declaratory relief, as a general rule, may be availed of before breach or violation of the assailed statute.

I respectfully answer in the affirmative.

Factual Background

The Director of the Bureau of Trade Regulation and Consumer Protection (*BTRCP*) sent a letter to Universal Robina Corporation (*URC*) seeking an explanation on its ex-mill flour prices and directing it to reduce such prices. *BTRCP* then filed a complaint against *URC* before the Department of Trade and Industry (*DTI*) for profiteering under the Price Act,¹ but the complaint was dismissed due to lack of certification against forum shopping. *DTI* later invited *URC* to meet regarding its prices. Thereafter, *URC* filed a petition for declaratory relief before the Regional Trial Court (*RTC*) praying that these issuances be declared invalid: (1) Section 5(2) of the Price Act which prohibits profiteering; (2) Executive Order No. 913 (*EO 913*) and Sec. 5, Rule IX of *DTI* Administrative Order No. 7 (*DTI AO 7*) for being an invalid exercise of quasi-legislative power and for violating due process; and (3) all issuances, acts, or proceedings based on these issuances.²

¹ Republic Act No. 7581, "An Act Providing Protection to Consumers by Stabilizing the Prices of Basic Necessities and Prime Commodities and by Prescribing Measures Against Undue Price Increases During Emergency Situations and Like Occasions."

² *Ponencia*, p. 4.



In its April 3, 2012 Decision, the RTC dismissed the petition for declaratory relief on the ground that it was prematurely filed because no justiciable controversy existed. URC moved for reconsideration but it was denied. Hence, URC filed the present petition for review on *certiorari* assailing the RTC's Decision.

URC argued that it had the right to challenge the constitutionality of Sec. 5(2) of the Price Act because DTI had initiated a complaint against it. It further argued that the provision may be facially challenged, considering that penal statutes may be nullified on a facial challenge based on vagueness.

The core issues are: (a) whether Sec. 5(2) of the Price Act, which penalizes profiteering, is void for vagueness; (b) whether EO 913 and Sec. 5, Rule IX of DTI AO 7 are invalid exercises of quasi-legislative power; and (c) whether the RTC properly dismissed the petition for declaratory relief for having no justiciable controversy. This opinion will focus on the third issue.

The *ponencia* held that the RTC erred in dismissing the petition for declaratory relief under Rule 63 of the Rules of Court (*Rule 63*) because there is an actual case or controversy. On the merits, it upholds the constitutionality of Sec. 5(2) of the Price Act.

It was discussed in the *ponencia* that an actual case or controversy exists when (1) there are actual facts to enable courts to intelligently adjudicate the issues;³ (2) or when there is a clear and convincing showing of a contrariety of rights.⁴ Discussing this concept of contrariety of rights, which does not require actual facts, the *ponencia* cited *Calleja v. Executive Secretary*⁵ (*Calleja*). It states that contrariety of legal rights is one that "can be interpreted and enforced on the basis of existing law and jurisprudence. Corollary thereto, the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. All these are in line with the well-settled rule that this Court does not issue advisory opinions, nor does it resolve mere academic questions, abstract quandaries, hypothetical or feigned problems, or mental exercises, no matter how challenging or interesting they may be. Instead, case law requires that there is ample showing of *prima facie* grave abuse of discretion in the assailed governmental act in the context of actual, not merely theoretical, facts."⁶

³ Id. at 10.

⁴ Id.

⁵ G.R. No. 252578, December 7, 2021.

⁶ Id.; see *ponencia*, p. 11

It was further held that there are other instances when actual facts need not be required before the review of the law is permissible: (a) in cases involving free expression and its cognates, where a facial challenge may be allowed; (b) when a violation of fundamental rights is so egregious or imminent; and (c) in cases involving constitutional provisions where emergency or urgent measures are invoked.⁷

Thus, declaratory relief as a remedy for constitutional challenge may succeed (1) when there is a clear and convincing contrariety of rights, or (2) in those instances when facial review is allowed. In this case, since there is a clear and convincing showing that a contrariety of rights exists between DTI and petitioner, then the action for declaratory relief is proper.

I agree with the *ponencia* that an action for declaratory relief under Rule 63 is the correct remedy. The RTC erred in dismissing the petition for declaratory relief. I likewise agree that Sec. 5(2) of the Price Act is constitutional.

The discussion below will center on the issue of whether the RTC properly dismissed the petition for declaratory relief for having no justiciable controversy.

At the outset, it bears recognizing that the introduction and evolution of the expanded judicial power in the constitutional framework has altered the plane of constitutional adjudication in Our jurisdiction. Before such innovation, an action for declaratory relief has long been available to assail the constitutionality of a statute even when no breach has been committed. When a breach does occur, a litigant may resort to the ordinary remedies under the law. Despite these changes, and regardless of the remedy invoked, courts can only entertain cases when there is a justiciable controversy, consistent with the role of the Judiciary in a tripartite allocation of power in government. Hence, a reexamination of what actual or justiciable controversy covers in our current constitutional regime seem essential. Notably, the understanding of justiciable controversy slightly varies when used in the traditional mode and expanded mode, especially when the constitutionality of a statute is assailed. Hence, the jurisprudential understanding of the actual or justiciable controversy element must, thus, be reviewed and harmonized.

⁷ *Ponencia*, pp. 12-13.

***Traditional and Expanded
Judicial Power under the
Constitution***

Sec. 1, Article VIII of the Constitution defines traditional judicial power as the duty of the courts of justice “to settle actual controversies involving rights which are legally demandable and enforceable.” On the other hand, expanded review power is the duty “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.” In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*,⁸ the Court emphasized that whether in the traditional or expanded mode, the exercise of judicial power requires the presence of an actual case or controversy.⁹

Courts may pass upon the constitutionality of statutes when the requisites of justiciability are present.¹⁰ Foremost of these requisites is *actual controversy*,¹¹ viz.:

As a rule, “the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned.” A controversy is said to be justiciable if: first, there is an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; third, the constitutionality must be raised at the earliest opportunity; and fourth, resolving the constitutionality must be essential to the disposition of the case.¹²

⁸ 802 Phil. 116 (2016).

⁹ The rationale for this requirement goes into the role of the Judiciary in the constitutional framework of government. (See Concurring and Dissenting Opinion of Associate Justice Arturo D. Brion in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, 589 Phil. 387, 679 [2008], which states that “[t]he limitation of the power of judicial review to actual cases and controversies defines the role assigned to the judiciary in a tripartite allocation of power, to assure that the courts will not intrude into areas committed to the other branches of government.”).

¹⁰ See *Lagman v. Ochoa*, G.R. No. 197422, November 3, 2020. “This justiciability requirement is ‘intertwined with the principle of separation of powers.’ It cautions the judiciary against unnecessary intrusion on matters committed to the other branches of the government.”

¹¹ Note: The phrase “actual controversy” will be used in this Opinion interchangeably with “*actual case or controversy*.” The terms “case” and “controversy” are used in the US Constitution in defining judicial power (See Article III, Section 2). In contrast, the Philippine Constitution uses only “controversies.” It is submitted that in the Philippine context, these two terms may be used interchangeably. In the US context, the US Supreme Court held in *Aetna Life Ins. Co. v. Haworth* (300 U.S. 227, 239 [1937]), that the “term ‘controversies,’ if distinguishable at all from ‘cases,’ is so in that it is less comprehensive than the latter, and includes only suits of a civil nature.”

¹² *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 244 (2018).

From the foregoing, it appears that actual controversy is a requirement of justiciable controversy separate from the requirement of standing, among others.

A. In Traditional Review

In its traditional sense, actual controversy is understood as one which involves “a **contrariety of legal rights**”¹³ (*i.e.*, “conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution”¹⁴). Separate but closely linked to the actual controversy requirement is the requirement of ripeness. “A justiciable controversy refers to an existing controversy that is appropriate or ripe for judicial determination.”¹⁵ A question is considered ripe for adjudication when the act being challenged has had a “direct adverse effect on the individual or entity challenging it.”¹⁶ It must be stressed that the conflict should be “ripe for judicial determination, not conjectural or anticipatory; otherwise, this Court’s decision will amount to an advisory opinion concerning legislative or executive action.”¹⁷

Another requisite for justiciability is the legal standing requirement. A person challenging an act must have standing, which means a “personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement.”¹⁸ Without such element, the issue presented would be purely hypothetical and academic.¹⁹

Jurisprudence explains that legal standing “sharpens the presentation of issues.” Thus, as a rule, a party will be allowed to raise a constitutional question only when “(1) he can show that he had personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.”²⁰

¹³ *Private Hospitals Association of the Philippines v. Medialdea*, 842 Phil. 747, 782 (2018).

¹⁴ *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, supra at 244.

¹⁵ *Velarde v. Social Justice Society*, 472 Phil. 285, 302 (2004).

¹⁶ *Philippine Constitution Association v. Philippine Government*, 801 Phil. 472, 486 (2016). The question of ripeness asks “whether a case involves contingent events that may not occur as anticipated and whether there is *actual injury* to the party” in the suit.

¹⁷ *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, supra at 245.

¹⁸ *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra at 151.

¹⁹ *Id.* at 151-152.

²⁰ *Tolentino v. Commission on Elections*, 465 Phil. 385, 402 (2004); *Private Hospitals Association of the Philippines v. Medialdea*, supra at 784.

In *Velarde v. Social Justice Society*,²¹ a petition for declaratory relief was filed before the RTC seeking a declaratory judgment on the constitutionality of acts of religious leaders endorsing a candidate for an elective office, or urging its members to vote for a specific candidate. When the case was elevated, the Court held that the petition failed to show a *justiciable controversy*, noting that there was no explicit allegation of any *legal right sought to be protected*. Moreover, there was no factual allegation that the rights of therein petitioners are “being subjected to any *threatened, imminent[,] and inevitable violation* that should be prevented by the declaratory relief.”²² It stressed that in a declaratory relief case, “a breach or violation should be *impending, imminent[,] or at least threatened*.”²³

Verily, it is worth stressing that in traditional judicial review, an actual injury need not be in existence for there to be a justiciable controversy. Its standing requirement is met when petitioner will sustain, or is threatened to sustain, the injury.

B. In Expanded Review

To reiterate, actual controversy remains to be a requisite in exercising the expanded power of review or the extraordinary jurisdiction of the courts, though it has been effectively simplified to mean “***prima facie showing of grave abuse of discretion in the exercise of a government act***.”²⁴ *Pangilinan v. Cayetano*²⁵ articulates this point:

In deciding matters involving grave abuse of discretion, courts cannot brush aside the requisite of an actual case or controversy. The clause articulating expanded *certiorari* jurisdiction requires a *prima facie* showing of grave abuse of discretion in the assailed governmental act which, in essence, is the actual case or controversy. Thus, “even now, under the regime of the textually broadened power of judicial review articulated in Article VIII, Sec. 1 of the 1987 Constitution, the requirement of an actual case or controversy is not dispensed with.”²⁶

Accordingly, as an exception, mere enactment of the assailed law and issuance of its implementing rules, or approval of the challenged action were, in some cases, considered sufficient for a case to be justiciable.

²¹ Supra.

²² Id. at 303.

²³ Id. at 305.

²⁴ *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra at 141.

²⁵ G.R. No. 238875, March 16, 2021.

²⁶ Id.

In *Imbong v. Ochoa*,²⁷ the Court held that an actual controversy existed and the case is ripe for adjudication because “the [Reproductive Health] Law and its implementing rules have already taken effect and that budgetary measures to carry out the law have already been passed.”²⁸ It also stressed the duty of the Judiciary to settle the dispute “when an action of the legislative branch is seriously alleged to have infringed the Constitution.”²⁹

In *Pimentel, Jr. v. Aguirre*,³⁰ the Court pronounced that “[b]y the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act.”³¹ Hence, the Court took cognizance of the petition assailing the constitutionality of the President’s administrative order, which reduced to 5% the amount of internal revenue allotment for the local government units. It stressed that “when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged to have infringed the Constitution and the laws, as in the present case, settling the dispute becomes the duty and the responsibility of the courts.”³²

In *Inmates of the New Bilibid Prison v. De Lima*,³³ the Court held that the mere issuance of the implementing rules has led to the ripening of a judicial controversy.³⁴ It explained that an actual controversy “may exist even in the absence of tangible instances when the assailed [implementing rules] has actually and adversely affected [therein] petitioners.”³⁵ Besides, *there is already a contrariety of legal rights* that can be interpreted and enforced based on existing law and jurisprudence. On the one hand, therein respondents stand for the prospective application of the good conduct time

²⁷ 732 Phil. 1 (2014).

²⁸ Id. at 124.

²⁹ Id.

³⁰ 391 Phil. 84 (2000).

³¹ Id. at 107. It held thus: “This is a rather novel theory — that people should await the implementing evil to befall on them before they can question acts that are illegal or unconstitutional. Be it remembered that the real issue here is whether the Constitution and the law are contravened by Section 4 of AO 372, not whether they are violated by the acts implementing it. In the unanimous *en banc* case *Tañada v. Angara*, this Court held that when an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy becomes the duty of this Court. By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty.” (Citation omitted)

³² Id. at 108.

³³ G.R. No. 212719, June 25, 2019, 905 SCRA 599, 620.

³⁴ As further support, see *Philippine Constitution Association v. Philippine Government* (supra note 16, at 491), where the Court dismissed the petitions questioning the constitutionality of the *un-enacted* Bangsamoro Basic Law for lack of actual controversy. It held that “[u]nless enacted into law, any proposed Bangsamoro Basic Law pending in Congress is not subject to judicial review.” The case also cited *Montesclaros v. COMELEC* (433 Phil. 620, 634 [2002]), where the Court held “that it has no power to declare a proposed bill constitutional or unconstitutional because that would be in the nature of rendering an advisory opinion on a proposed act of Congress. The power of judicial review cannot be exercised *in vacuo*.”

³⁵ Id.

allowance, while on the other hand, the petitioners therein argue that such provision violates the Constitution.

At this point, it bears underscoring that even in expanded review, courts are not allowed to issue advisory opinions. The expanded review will be exercised when there is a real conflict between the parties, which means that “there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text,”³⁶ to wit:

Even the expanded jurisdiction of this Court under Article VIII, Section 1 [of the Constitution] does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text.³⁷

To meet the ripeness requirement, “something [must have] been accomplished or performed by either branch [of government] before a court may come into the picture, and the petitioner must allege the existence of an **immediate or threatened injury** to himself [or herself] as a result of the challenged action.”³⁸

In *Calleja*, an actual controversy was found to exist because in challenging the Anti-Terrorism Act, the consolidated petitions “sufficiently raised concerns regarding the freedom of speech, expression, and its cognate rights.”³⁹ Further, they had “sufficiently shown that there is a **credible and imminent threat of injury**, as they may be subjected to the potential destructive consequences”⁴⁰ of the challenged law’s provisions.

³⁶ *Confederation for Unity, Recognition and Advancement of Government Employees v. Abad*, G.R. No. 200418, November 10, 2020.

³⁷ *Id.*

³⁸ *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1090 (2017); see also *Private Hospitals Association of the Philippines v. Medialdea* (supra note 13, at 783), where the Court held that consistent with the ripeness requirement, even when the challenged law and implementing rules have been issued, the petition must still allege that “an actual or direct injury as a result of a discretion gravely abused.” Absent such “actual and direct injury, any pronouncement by the Court would be purely advisory or sheer legal opinion, in view of the *mere hypothetical scenarios*” that would be presented in the petition. (Italics supplied)

³⁹ *Calleja v. Executive Secretary*, supra note 5.

⁴⁰ *Id.*

As seen from this discussion, actual controversy is required in both traditional and expanded judicial review, although its meaning differs depending on the applicable mode. Nevertheless, the other requisites of judicial review somehow have consistent meanings.

*The Ponencia's Proposed
Framework; Act No. 3736;
Rule 63*

The main contention in this case circles on the proposed framework of the *ponencia* regarding the appreciation of a petition for declaratory relief under Rule 63. This rule is based on Act No. 3736,⁴¹ quoted as follows:

ACT NO. 3736

AN ACT EMPOWERING THE COURTS TO MAKE
DECLARATORY JUDGMENTS, AND FOR OTHER PURPOSES

Section 1. *Construction.* — Any person interested under a deed, contract or other written instrument, or whose rights are affected by a statute, may bring an action in a Court of First Instance to determine any **question of construction or validity arising under the instrument or statute** and for a declaration of his rights or duties thereunder.


Section 2. *Before Breach.* — A contract may be construed before there has been a breach thereof.

Section 3. *Discretionary.* — The court may refuse to exercise the power to declare rights and to construe instruments in any case when a decision under it would not terminate the uncertainty or controversy which gave rise to the action, or in any case where the declaration or construction is not necessary and proper at the time under all the circumstances.

Section 4. *Parties.* — When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall, except as otherwise provided in these rules, prejudice the rights or persons not parties to the action.

Section 5. *Attorney-General.* — In any action which involves the validity of a statute the Attorney-General shall, before judgment is entered, be notified by the party attacking the statute, and shall be entitled to be heard upon such question.

⁴¹ Approved on November 22, 1930.



Section 6. *Municipal Ordinance*. — In any action which involves the validity of a municipal ordinance the provincial fiscal shall be similarly notified and entitled to be heard; and if the ordinance is alleged to be unconstitutional the Attorney-General shall also be notified and entitled to be heard.

Section 7. This Act shall take effect on its approval. (Emphasis supplied)

Evidently, even the legislative branch unqualifiedly recognizes that a petition for declaratory relief may be availed of to question the construction or validity of a statute it has enacted. Notably, the law does not unequivocally state that a petition for declaratory relief may, as general rule, only be availed of after breach of the said statute.

The purpose of declaratory relief is to “relieve litigants of the common law rule that no declaration of rights may be judicially adjudged unless a right has been violated.”⁴² Justice Moran elucidated on its nature, thus:

Actions for declaratory relief had its roots way back in the Middle Ages. It is permitted on the theory that courts should be allowed to act not only when harm is actually done and rights jeopardized by physical wrongs or physical attach upon existing legal relations, but also **when challenge, refusal, dispute, or denial thereof is made amounting to a live controversy**. The uncertainty and insecurity which may thereby be occasioned may hamper or disturb the freedom of parties to transact business or to make improvement on their property rights. A situation is thus created wherein a judicial declaration may serve to **prevent a dispute from ripening into violence or destruction**. Courts thus become an instrument of **both curative and preventive justice**.⁴³ (Emphases supplied)

In this jurisdiction, Rule 63 contains the procedure for an action of declaratory relief. Sec. 1 thereof provides:

Section 1. *Who may file petition*. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other

⁴² *Calleja v. Executive Secretary*, supra note 5. Based on *Velarde v. Social Justice Society* (supra note 15, at 305), a cause of action ordinarily involves a violation of a right constituting breach. This concept of a cause of action in ordinary civil actions does not strictly apply in the special civil action for declaratory relief. “The reason for this exception is that an action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of rights arising thereunder. Nevertheless, a breach or violation should be impending, imminent or at least threatened.”

⁴³ Moran, Comments on the Rules of Court (1957 ed.), pp. 141-142; for a deeper study of the evolution of declaratory relief in various jurisdictions, see Borchard (1918), *The Declaratory Judgment - A Needed Procedural Reform*, *Yale Law Journal*, Vol. 28(1), pp. 1-32.

governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of **construction or validity** arising, and for a declaration of his rights or duties, thereunder.⁴⁴ (Emphasis supplied)

The statutory anchor for this remedy is Act No. 3736⁴⁵ where persons whose rights are “affected by a statute” may file an action to question its validity and seek a declaration of their rights and duties.⁴⁶ In such actions, the statute entitles the Attorney General (now Solicitor General) to participate.⁴⁷

Justice Moran expounds that the meaning of the term “cause of action” in a proceeding for declaratory relief is broadened. It is not, as in ordinary civil actions, the wrong or delict by which the plaintiff’s rights are violated, but it is extended to a mere denial, refusal, or challenge raising at least an uncertainty or insecurity which is injurious to the plaintiff’s rights.⁴⁸ It is clarified that a complaint for declaratory relief should be filed before there has been a breach of contract or statute, the construction of which is sought. The law does not even require that there is an actual pending case.⁴⁹ When there is already a breach of the law, it will constitute as a bar to the complaint for declaratory judgment.⁵⁰

Justice Moran further explains that in an action for declaratory relief, the requisite of justiciability is satisfied by an actual controversy or the ripening seeds of one, which exists between parties all of whom are *sui juris* and before the court, and that the declaration sought will be a practical help

⁴⁴ Herrera, Remedial Law, Vol. III (1999 ed.), Special Civil Actions, Rules 57-71, p. 191.

⁴⁵ Notably, it appears that the requirement of “*before breach*” under Act No. 3736 refers only to the *construction* of “contracts,” and not the other instruments. The “*before breach*” requirement in the construction of statutes was added only in the 1940 Rules of Court. (Section 2 of Act No. 3736 states thus: “Section 2. *Before Breach*. — A contract may be construed before there has been a breach thereof. Section 2, Rule 66 of the 1940 Rules of Court states thus: “Section 2. *Before Breach*. — A contract or statute may be construed before there has been a breach thereof.”) It may be argued that this “before breach” requisite only applies when the case involves construction, not validity.

⁴⁶ Section 1. *Construction*. — Any person interested under a deed, contract or other written instrument, or whose rights are affected by a statute, may bring an action in a Court of First Instance to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder.

* Notably, it appears that the requirement of “*before breach*” under Act No. 3736 refers only to the *construction* of “contracts,” and not the other instruments. The “*before breach*” requirement in the construction of statutes was added only in the 1940 Rules of Court. (Section 2 of Act No. 3736 states thus: “Section 2. *Before Breach*. — A contract may be construed before there has been a breach thereof. Section 2, Rule 66 of the 1940 Rules of Court states thus: “Section 2. *Before Breach*. — A contract or statute may be construed before there has been a breach thereof.”) It may be argued that this “before breach” requisite only applies when the case involves construction, not validity.

⁴⁷ Act No. 3736, Sec. 5.

⁴⁸ Moran, Comments on the Rules of Court (1980 ed.), p. 152.

⁴⁹ Id. at 153.

⁵⁰ Id.

in ending the controversy. By “ripening seeds” the court means, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of the full-blown battle which looms ahead. It is described as a state of facts indicating “imminent and inevitable” litigation, provided that the issue is not settled and stabilized by a tranquilizing declaration.⁵¹

As stated previously, the philosophy behind actions for declaratory relief is that courts should be allowed to act not only when harm is actually done and rights jeopardized by physical wrongs or physical attack upon existing legal relations, but also when challenge, refusal, dispute, or denial thereof is made amounting to a live controversy. Relief is, thus, confined to a case of actual controversy within the court’s jurisdiction which may promulgate a declaratory judgment without need of injunction, execution, or other relief beyond the adjudication of the legal rights which are subject of the controversy between the parties. Basically, the question in each case would be whether the facts alleged, under all the circumstances, show that there is a substantial controversy between parties having adverse legal interest, of **sufficient immediacy and reality** to warrant the issuance of a declaratory relief.⁵²

Accordingly, Sec. 1, Rule 63 allows a petition for declaratory relief to question the construction or validity of a statute. It may be availed of before breach or violation thereof.

Nevertheless, to stress, even if there is no breach or violation of a statute yet, it does not necessarily mean that an action for declaratory relief has no actual case or controversy. It must be emphasized that the existence of an actual controversy does not necessarily mean that there must be an actual breach or violation of a statute.

To highlight, an actual controversy is constitutionally required before courts can exercise judicial power. Again, under an action for declaratory relief, actual controversy pertains to **the contrariety of legal rights**.⁵³ Ripeness covers not only actual injury but also “immediate or threatened injury” to the petitioner.⁵⁴ Standing is met not only when petitioner “has

⁵¹ Id. at 154.

⁵² Id. at 154-155.

⁵³ See *Inmates of the New Bilibid Prison v. De Lima*, supra note 33, at 619.

⁵⁴ *Samahan ng mga Progresibong Kabataan v. Quezon City*, supra note 38; see also *Private Hospitals Association of the Philippines v. Medialdea*, supra note 13.

sustained direct injury, but also when he “will sustain” or is about to sustain such injury should the challenged action be enforced.⁵⁵

Actual controversy is required even in actions for declaratory relief. It bears stressing that the introduction of declaratory relief as a judicial remedy has expanded the concept of justiciability (*e.g.*, actual controversy, ripeness, standing). Even when there is no breach yet, a case is already justiciable. Thus, courts can already resolve the action. For the case to be ripe for adjudication, however, the “breach or violation should be impending, imminent, or at least threatened.”⁵⁶

As expounded in the 1966 case of *Caltex (Philippines), Inc. v. Palomar*⁵⁷ (*Caltex*), the existence of justiciable controversy (*i.e.*, actual controversy between persons with adverse interests) in a declaratory relief case is not negated by the lack of breach. Such justiciable controversy already exists when the disagreement is no longer nebulous or contingent, and the issues are clearly defined, even if breach has not yet been committed, thus:

Of course, no breach of the Postal Law has as yet been committed. Yet, the disagreement over the construction thereof is no longer nebulous or contingent. It has taken a fixed and final shape, presenting clearly defined legal issues susceptible of immediate resolution. With the battle lines drawn, in a manner of speaking, the propriety — nay, the necessity — of setting the dispute at rest before it accumulates the asperity, distemper, animosity, passion and violence of a full-blown battle which looms ahead x x x, cannot but be conceded.⁵⁸ (Citations omitted)

The requisites for declaratory relief are: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination.⁵⁹ These requisites were later expanded based on the commentary of Justice Regalado,⁶⁰ thus:

⁵⁵ *Association of Medical Clinics for Overseas Workers Inc. v. GCC Approved Medical Centers Association, Inc.*, supra note 8, at 151.

⁵⁶ *Velarde v. Social Justice Society*, supra note 15.

⁵⁷ 124 Phil. 763 (1966).

⁵⁸ *Id.* at 773.

⁵⁹ *Id.* at 770, citing *Tolentino v. Board of Accountancy*, 90 Phil. 83, 88 (1951); *Delumen v. Republic*, 94 Phil. 287, 288 (1954); *Edades v. Edades*, 99 Phil. 675, 677-678 (1956). The Court held that based on then Rule 66 of the 1940 Rules of Court and Rule 64 of the subsequent rules: “In amplification, this Court, conformably to established jurisprudence on the matter, laid down certain conditions *sine qua non* therefor, to wit: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination.”

⁶⁰ Regalado (2005), Remedial Law Compendium, Vol. 1 (9th ed.), pp. 766-767.

- (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance;
- (2) the terms of said documents and the validity thereof are doubtful and require judicial construction;
- (3) there must have been no breach of the documents in question;
- (4) there must be an actual justiciable controversy or the “ripening seeds” of one between persons whose interests are adverse;
- (5) the issue must be ripe for judicial determination; [and]
- (6) adequate relief is not available through other means or other forms of action or proceeding.⁶¹

Relevant for discussion are the fourth and fifth requisites.

The fourth requisite, justiciable controversy, as defined, weaves together the concepts of actual controversy, ripeness, and standing as previously discussed under judicial review. The Court has long held that even in “cases of declaratory relief, there must be an actual and justiciable, not merely theoretical, controversy.”⁶² To underscore, an action for declaratory relief based on theoretical or hypothetical questions cannot be filed for our courts are not advisory courts.⁶³ Verily, declaratory judgments should not be confused with advisory opinions, which were differentiated by Commissioner Bernas, to wit:

What thus distinguishes a declaratory judgment from an advisory opinion is that the former involves real parties with real conflicting legal interests whereas an advisory opinion is a response to a legal issue posed in the abstract of any case in which it may be presented. As a consequence of this distinction, an advisory opinion binds no one whereas a declaratory

⁶¹ See the enumeration from Regalado (2005), Remedial Law Compendium, Vol. 1, id., as adopted in the Dissenting Opinion of Justice Leonen in *Department of Finance v. Dela Cruz, Jr.*, 767 Phil. 611, 665 (2015); *Republic v. Roque*, 718 Phil. 294, 304 (2013); *Ferrer, Jr. v. Roco, Jr.*, 637 Phil. 310, 317-318 (2010); *Almeda v. Bathala Marketing Industries, Inc.*, 566 Phil. 458, 467 (2008); *Jumamil v. Cafe*, 507 Phil. 455, 462 (2005).

⁶² *Jimenez v. Roa*, 148-A Phil. 286, 289 (1971). Back then, the requisites for justiciability of an action for declaratory relief were the following: “an actual controversy, or the ripening of one, exists between parties all of whom are *sui juris* and before the court, and that the declaration sought will be a practical, help in ending the controversy.”

⁶³ *City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 513 (2014). Accordingly, the statement in *Southern Hemisphere v. Anti-Terrorism Council* (646 Phil. 452, 482 [2010]), that “[w]ithout any justiciable controversy, the [petitions become] pleas for declaratory relief” is inaccurate.

judgment is a final one and is forever binding on the parties. The former is thus not a judicial act but the latter is.⁶⁴

Justice Moran confirms that an action for declaratory relief is a proceeding determinative of the rights of the parties to the case, and as such, exhibits characteristics quite distinct from those of an advisory opinion, rendered at the request of the executive or legislative department of the government to the handling down of which courts in this and jurisdictions have cast a definite aversion.⁶⁵

The fact that parties must have “**real conflicting legal interests**” emphasizes the need for legal standing for the controversy to be justiciable. In actions for declaratory relief, the legal interest “is to be found in the danger of loss or of uncertainty of [one’s] rights or other jural relations by a failure of the court to make the declaration.”⁶⁶ This does not mean, however, that there must have been breach or violation of rights. To reiterate, in the 1966 case of *Caltex*, the Court held that in a declaratory relief case, the existence of justiciable controversy is not negated by the lack of breach. Justiciable controversy already exists when the disagreement is no longer nebulous or contingent.⁶⁷ The reason of the parties in filing such action is to obtain a declaration that “will help in ending the controversy.”⁶⁸

In fine, a petition for declaratory relief under Rule 63 involves an actual case or controversy even though it is filed before a breach or violation of a statute is committed. Again, for the case to be ripe for adjudication, the “breach or violation should be **impending or imminent.**” Such justiciable controversy already exists when the disagreement is no longer nebulous or contingent, and the issues are clearly defined, even if the breach has not yet been committed.

Accordingly, the benchmark to determine whether an action for declaratory relief has an actual controversy before breach of the statute is when such breach or violation is impending or imminent. Otherwise, there will be no justiciable controversy. This is how an action for declaratory relief is distinguished from a mere advisory opinion. An action for declaratory relief involves real parties with real conflicting legal interests

⁶⁴ J. Bernas, *The 1987 Constitution of the Republic of the Philippines A Commentary* (2003 ed.), p. 924.

⁶⁵ Moran, *Comments on the Rules of Court* (1980 ed.), p. 148.

⁶⁶ Borchard (1918), *The Declaratory Judgment – A Needed Procedural Reform*, *Yale Law Journal*, Vol. 28(1), p. 18.

⁶⁷ *Caltex (Philippines), Inc. v. Palomar*, supra note 57, at 773.

⁶⁸ *International Hardwood and Veneer Co. of the Philippines v. University of the Philippines*, 277 Phil. 636, 652 (1991).

whereas an advisory opinion is a response to a legal issue posed in the abstract of any case in which it may be presented.⁶⁹

Again, an action for declaratory relief shall only be filed directly with the RTC; it cannot be filed immediately before this Court.

As applied, in this case, the petition filed before the RTC has an actual case or controversy even though there was no breach of the statute yet because of the impending or imminent violation by the parties of Sec. 5(2) of the Price Act.

Standards for delegation of legislative powers

Finally, on the merits, URC argues that the law forms an undue delegation of legislative power as the concept of “true worth” of a basic necessity and prime commodity, as with the “price grossly in excess” of that value, provide no standard for executive discretion.⁷⁰ It insists that the phrase “price grossly in excess” is vague because what is grossly excessive to one may be reasonable to another. It further questions whose standards should be used in determining whether a price is grossly excessive, and what an item’s true worth is.⁷¹

The *ponencia* finds URC’s arguments to be without merit and holds that the petitioner failed to establish the phrase “price grossly in excess” as void for being vague.

I agree.

In *Abakada Guro Party List v. Ermita*,⁷² it was explained that:

In every case of permissible delegation, there must be a showing that the delegation itself is valid. It is valid only if the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard — the limits of which are sufficiently determinate and determinable — to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected. Both

⁶⁹ J. Bernas, *The 1987 Constitution of the Republic of the Philippines A Commentary* (2003 ed.), p. 924.

⁷⁰ *Ponencia*, p. 14.

⁷¹ *Id.*

⁷² 506 Phil. 1 (2005).

tests are intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative.

Clearly, the legislature may delegate to executive officers or bodies the power to determine certain facts or conditions, or the happening of contingencies, on which the operation of a statute is, by its terms, made to depend, but the legislature must prescribe sufficient standards, policies or limitations on their authority. While certain powers, such as the power to tax, cannot be delegated to executive agencies, details as to the enforcement and administration of an exercise of such power may be left to them, including the power to determine the existence of facts on which its operation depends.

The rationale for this is that the preliminary ascertainment of facts as basis for the enactment of legislation is not of itself a legislative function, but is simply ancillary to legislation. Thus, the duty of correlating information and making recommendations is the kind of subsidiary activity which the legislature may perform through its members, or which it may delegate to others to perform. Intelligent legislation on the complicated problems of modern society is impossible in the absence of accurate information on the part of the legislators, and any reasonable method of securing such information is proper. The Constitution as a continuously operative charter of government does not require that Congress find for itself every fact upon which it desires to base legislative action or that it make for itself detailed determinations which it has declared to be prerequisite to application of legislative policy to particular facts and circumstances impossible for Congress itself properly to investigate.⁷³

In this case, the assailed provision states:

(2) Profiteering, which is the sale or offering for sale of any basic necessity or prime commodity at a **price grossly in excess of its true worth**. There shall be *prima facie* evidence of profiteering whenever a basic necessity or prime commodity being sold: (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he sells or offers for sale to the general public by more than ten percent (10%) of its price in the immediately preceding month: *Provided, That*, in the case of agricultural crops, fresh fish, fresh marine products, and other seasonal products covered by this Act and as determined by the implementing agency, the *prima facie* provisions shall not apply[.]⁷⁴ (Emphasis supplied)

I find that the challenged statute is clear and unambiguous. Where the law is clear and unambiguous, it must be taken to mean exactly what it says,

⁷³ Id. at 109, 111-112.

⁷⁴ Republic Act No. 7581, Sec. 5(2).

and courts have no choice but to see to it that the mandate is obeyed.⁷⁵ While the statute does not equivocally define “grossly in excess of its true worth,” the law itself provides standards to determine such as when the commodity (a) has no price tag; (b) is misrepresented as to its weight or measurement; (c) is adulterated or diluted; or (d) whenever a person raises the price of any basic necessity or prime commodity he/she sells or offers for sale to the general public by more than 10% of its price in the immediately preceding month. Thus, in implementing this law, the executive branch will not arbitrarily determine for itself the meaning of the phrase “grossly in excess of its true worth.”

Further, “true worth” is synonymous to the phrase “true value.” The true value of a product, which may include land, has been defined by the Court as early as 1910. In *Manila Railway Co. v. Fabie*,⁷⁶ it was held:

The value which ought to be shown is the market value of the land in that locality. **By market value we mean the price fixed by buyer and seller in the open market in the usual and ordinary course of legal trade and competition; the price and value of the article established or shown by sale, public or private, in the ordinary way of business; the fair value of the property as between one who desires to purchase and one who desires to sell; the current price; the general or ordinary price for which property may be bought and sold in that locality.** Undoubtedly, deeds conveying property in the same locality are of value in determining the market value of land in that vicinity, provided they are shown to have been made in the ordinary course of legal business and competition and that the prices stated therein were real and not affected by unusual conditions. Standing alone, however, they may be very misleading. One person may desire a piece of land in a given locality very much more than any other person. He may, for some special reason, desire it so much that he is willing to pay three or four times its value in order to secure it. A deed exhibiting such a value would be no criterion of the real value of property in that community.⁷⁷ (Emphasis supplied)

Evidently, true worth of a product, which is the same as its true value, is determinable due to its market value.

In my mind, the executive branch has a sufficient standard to determine the true worth of a product based on its market value, and whether profiteering is committed. Thus, I agree that the assailed provision is not unconstitutional.

⁷⁵ *Abakada Guro Party List v. Ermita*, supra at 113.

⁷⁶ 17 Phil. 206 (1910).


⁷⁷ *Id.* at 208.

It must be emphasized that every statute has in its favor the presumption of constitutionality. As the Court held in *Cawaling, Jr. v. Commission on Elections*:⁷⁸

Every statute has in its favor the presumption of constitutionality. This presumption is rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other's acts. The theory is that every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law. This Court, however, may declare a law, or portions thereof, unconstitutional, where a petitioner has shown a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one. In other words, the grounds for nullity must be beyond reasonable doubt, for to doubt is to sustain.⁷⁹

When a law is questioned before the Court, the presumption is in favor of its constitutionality. To warrant its nullification, there must be a clear and indubitable breach of the Constitution, not a doubtful and argumentative one. The burden of proving the invalidity of a law rests on those who challenge it.⁸⁰ As URC failed to establish that the provision is utterly vague and devoid of any hope of interpretation, then it is not unconstitutional.

All told, I join the *ponencia* in **DENYING** the petition.


ALEXANDER C. GESMUNDO
Chief Justice

⁷⁸ 420 Phil. 524 (2001).

⁷⁹ Id. at 530-531.

⁸⁰ *Spouses Lim v. People*, 438 Phil. 749, 755 (2002).