

EN BANC

G.R. No. 212719 – INMATES OF THE NEW BILIBID PRISON, MUNTINLUPA CITY, NAMELY: VENANCIO A. ROXAS, SATURNINO V. PARAS, EDGARDO G. MANUEL, HERMINILDO V. CRUZ, ALLAN F. TEJADA, ROBERTO C. MARQUEZ, JULITO P. MONDEJAR, ARMANDO M. CABUANG, JONATHAN O. CRISANTO, EDGAR ECHENIQUE, JANMARK SARACHO, JOSENEL ALVARAN, and CRISENCIO NERI, JR., *Petitioners*; ATTY. RENE A.V. SAGUISAG, SR., *Petitioner-Intervenor*; WILLIAM M. MONTINOLA, FORTUNATO P. VISTO, and ARESENIO C. CABANILLA, *Petitioners-Intervenors* v. SECRETARY LEILA M. DE LIMA, Department of Justice; and SECRETARY MANUEL A. ROXAS II, Department of the Interior and Local Government, *Respondents*;

G.R. No. 214637 – REYNALDO D. EDAGO, PETER R. TORIDA, JIMMY E. ACLAO, WILFREDO V. OMERES, PASCUA B. GALLADAN, VICTOR M. MACOY, JR., EDWIN C. TRABUNCON, WILFREDO A. PATERNO, FEDERICO ELLIOT, and ROMEO R. MACOLBAS, *Petitioners* v. SECRETARY LEILA M. DE LIMA, Department of Justice; SECRETARY MANUEL A. ROXAS II, Department of the Interior and Local Government; ACTING DIRECTOR FRANKLIN JESUS B. BUCAYU, Bureau of Corrections; and JAIL CHIEF SUPERINTENDENT DIONY DACANAY MAMARIL, Bureau of Jail Management and Penology, *Respondents*.

Promulgated:
June 25, 2019

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CONCURRING OPINION

LEONEN, J.:

I concur with the finding that Rule I, Section 4 of the Implementing Rules and Regulations of Republic Act No. 10592 is invalid. I add that it is, as separately raised in the Petitions, void *ab initio* as it violates the due process and equal protection clauses of the Constitution. As such, applying the prospectivity rule amounts to a cruel and unusual punishment for those currently serving their penalties before the law took effect insofar as they are treated differently from others.

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Indeed, Section 4 is not only invalid based on Article 22¹ of the Revised Penal Code alone, but the Constitution itself. In my view, Article 22 finds its anchor on Article III, Section 1² and Article II, Section 11³ of the Constitution.

I

Respondents allege that this case is not justiciable and that this Court does not have jurisdiction over the remedies that petitioners availed of.

They are mistaken.

To recapitulate, the courts' authority to "settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights"⁴ is an aspect of judicial power that is anchored on Article VIII, Section 1 of the 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.

Judicial review, as an aspect of judicial power, is the competence to: (1) settle actual controversies and enforce rights conferred by law; and (2) determine grave abuse of discretion by any government instrumentality. Jurisprudence refers to these two (2) judicial powers as the courts' traditional and expanded powers of judicial review, respectively.⁵

¹ REV. PEN. CODE, art. 22 provides:

ARTICLE 22. Retroactive Effect of Penal Laws. — Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in rule 5 of article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

² CONST., art. III, sec. 1 provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

³ CONST., art. II, sec. 11 provides:

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

⁴ *Lopez v. Roxas*, 124 Phil. 168, 173 (1966) [Per C.J. Concepcion, En Banc].

⁵ *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 137–139 (2016) [Per J. Brion, En Banc] and *Araullo v. Aquino III*, 737 Phil. 457, 525–527 (2014) [Per J. Bersamin, En Banc].

The courts' traditional power of judicial review applies whether the offense alleged violates a statute or the Constitution, or both. Clearly, the source of rights that are legally demandable and enforceable may be a constitutional provision, a statute, or an administrative issuance. The traditional power of judicial review may not involve a constitutional question.

Thus, a trial court may simply determine the facts based on the evidence presented, and interpret and apply the relevant law invoked. Similarly, the Supreme Court's original jurisdiction for mandamus may entail a reading of the relevant law and its application to a given set of facts. In such cases, when there is concurrent jurisdiction and when only a statute is involved, this Court will seriously inquire as to whether the judicial principle of respect for the hierarchy of courts should be applied.

If only Article 22 of the Revised Penal Code is involved here, as the majority seems to have ruled in the *ponencia* of my esteemed colleague, Associate Justice Diosdado M. Peralta, then the consolidated Petitions could have been considered as petitions for mandamus. Thus, the issue would simply have been whether respondents had a legal duty to implement the rule on retroactivity under Article 22 of the Revised Penal Code.

In such case, reference to *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*,⁶ *Pimentel, Jr. v. Aguirre*,⁷ and *Araullo v. Aquino III*⁸ would not have been necessary.

However, in my reading of the pleadings, the constitutionality of the questioned provision implementing Republic Act No. 10592 was raised. Specifically, petitioners claim that the provision and its non-implementation to those serving their sentence or preventively detained before the law took effect violate the due process and equal protection clauses. In my view, we should also rule on these issues. After all, Article 22 of the Revised Penal Code is founded on the concepts of fairness enshrined in the due process clause and non-discrimination expressed in the equal protection clause.

In the exercise of our traditional power of judicial review for constitutional adjudication, this Court only passes upon the constitutionality of a statute if "it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned."⁹ A controversy is deemed justiciable if the following are

⁶ 589 Phil. 387 (2008) [Per J. Carpio Morales, En Banc].

⁷ 391 Phil. 84 (2000) [Per J. Panganiban, En Banc].

⁸ 737 Phil. 457 (2014) [Per J. Bersamin, En Banc].

⁹ *Philippine Association of Colleges and Universities v. Secretary of Education*, 97 Phil. 806, 809 (1955) [Per J. Bengzon, En Banc].

present: (1) an actual case or controversy over legal rights, which require the exercise of judicial power; (2) standing or *locus standi* to bring up the constitutional issue; (3) the constitutionality issue was raised at the earliest opportunity; and (4) resolving the constitutionality issue is essential to the disposition of the case or its *lis mota*.¹⁰

Additionally, an actual case or controversy is present when the issues raised are ripe for adjudication or the challenged statute has a direct, adverse effect on the party that raised its constitutionality. Absent an actual case or controversy, this Court's decision would be a mere advisory opinion that "is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law."¹¹ *Angara v. Electoral Commission*¹² explained the reason behind the requirement of justiciability of a constitutional issue:

Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.¹³

On the other hand, this Court's expanded power of judicial review requires a *prima facie* showing of grave abuse of discretion by any government branch or instrumentality. This expanded power is often mistaken for the remedy of certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure. But the expanded power is decidedly more expansive than a Rule 65 petition, which is limited to the review of judicial and quasi-judicial acts.¹⁴

Nonetheless, despite this Court's broad power under its expanded power of judicial review, an actual case or controversy, or "a legally demandable and enforceable right[,] must exist as basis, and must be shown to have been violated"¹⁵ for the case to be justiciable.

¹⁰ *Macasiano v. National Housing Authority*, 296 Phil. 56, 63–64 (1993) [Per C.J. Davide, Jr., En Banc].

¹¹ J. Leonen, Concurring Opinion in *Belgica v. Ochoa*, 721 Phil. 416, 661 (2013) [Per J. Perlas-Bernabe, En Banc].

¹² 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

¹³ *Id.* at 158–159.

¹⁴ *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.*, 802 Phil. 116, 142 (2016) [Per J. Brion, En Banc].

¹⁵ *Id.* at 140.

Here, petitioners want to strike down Rule I, Section 4 of the Implementing Rules and Regulations of Republic Act No. 10592, which states:

SECTION 4. *Prospective Application.* — Considering that these Rules provide for new procedures and standards of behavior for the grant of good conduct time allowance as provided in Section 4 of Rule V hereof and require the creation of a Management, Screening and Evaluation Committee (MSEC) as provided in Section 3 of the same Rule, the grant of good conduct time allowance under Republic Act No. 10592 shall be prospective in application.


The grant of time allowance of study, teaching and mentoring and of special time allowance for loyalty shall also be prospective in application as these privileges are likewise subject to the management, screening and evaluation of the MSEC.

Rule V, Section 3 of the Implementing Rules and Regulations directs the Director of the Bureau of Corrections, the Chief of the Bureau of Jail Management and Penology, and wardens of local government units to create a committee that will manage, screen, and evaluate the entitlement of inmates to good conduct time allowance:

SECTION 3. Management, Screening and Evaluation Committee (MSEC). —

- a. The Director of the BUCOR, Chief of the BJMP and Wardens of various provinces, cities, districts and municipalities are mandated to assess, evaluate and grant time deduction to a deserving prisoner, whether detained or convicted by final judgment, in the form of [good conduct time allowance], [special time allowance for loyalty] and [time allowance for study, teaching and mentoring] as prescribed by these Rules through the creation of the MSEC.
- b. The composition of the MSEC shall be determined by the Director of the BUCOR, Chief of the BJMP or Wardens of Provincial and Sub-Provincial, District, City and Municipal Jails, respectively. Membership shall not be less than five (5) and shall include a Probation and Parole Officer, and if available, a psychologist and a social worker.
- c. The MSEC shall prepare minutes of every meeting to record each proceeding.

After considering the inmates' conduct and behavior, the Management, Screening and Evaluation Committee recommends the appropriate good conduct time allowance to which a detained or convicted



prisoner is entitled.¹⁶ The authorized official¹⁷ then acts on this recommendation. Once granted, the time allowances shall be irrevocable.¹⁸

Petitioners are correct that the prospective application of Republic Act No. 10592 robs them of the opportunity to avail of the good conduct time allowance and substantially decrease their time behind bars.

In ruling that an actual case or controversy existed in this case, this Court cited *Pimentel, Jr. v. Aguirre*¹⁹ and reasoned that there was no need to “wait for the implementing evil to befall”²⁰ before people could question an illegal or unconstitutional act, because “[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.”²¹

We should read *Pimentel, Jr.* more carefully.

Pimentel, Jr. involved the propriety of Sections 1 and 4 of Administrative Order No. 372. Section 1 required government agencies,

¹⁶ Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule V, sec. 4 provides:
SECTION 4. Procedures for the Grant of Good Conduct Time Allowance. — The following procedures shall be followed in the grant of GCTA:

- a. The BUCOR, BJMP and Provincial Jails shall give special considerations to satisfactory behavior of a detention or convicted prisoner consisting of active involvement in rehabilitation programs, productive participation in authorized work activities or accomplishment of exemplary deeds. It is understood that in all instances, the detained or convicted prisoner must faithfully obey all prison/jail rules and regulations;
- b. The BUCOR, BJMP and Provincial Jails shall each create the MSEC or such appropriate number of MSECs tasked to manage, screen and evaluate the behavior or conduct of a detention or convicted prisoner;
- c. After due consideration of the behavior or conduct shown by a detained or convicted prisoner, the MSEC shall then recommend to the appropriate official the appropriate GCTA that may be credited in favor of said prisoner ranging from the minimum of the allowable credit to the maximum credit thereof;
- d. Acting on the recommendation of the MSEC, the appropriate official named in Section 1 of Rule VIII hereof shall either:
 1. Approve the recommendation and issue a certification granting GCTA to the prisoner for the particular period;
 2. Disapprove the recommendation if the prisoner recommended is not qualified to be granted the benefit or that errors or irregularities attended the evaluation of the prisoner; or
 3. Return the recommendation, without action, for corrections as regards the name, prison number or other clerical or inadvertent errors, or for the further evaluation of the conduct or behavior of the prisoner concerned.
- e. The appropriate official concerned shall ensure that GCTAs are processed each month and that there is proper recording of a prisoner’s good behavior in the jail or prison records.

¹⁷ Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule VIII, sec. 1 provides:
SECTION 1. Who Grants Time Allowances. — Whenever lawfully justified, the following officials shall grant allowances for good conduct:

- a) Director of the Bureau of Corrections;
- b) Chief of the Bureau of Jail Management and Penology; and/or
- c) Warden of a Provincial, District, City or Municipal Jail.

¹⁸ Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule VIII, sec. 2.

¹⁹ 391 Phil. 84 (2000) [Per J. Panganiban, En Banc].

²⁰ Ponencia, p. 10.

²¹ Id. citing *Pimentel, Jr. v. Aguirre*, 391 Phil. 84 (2000) [Per J. Panganiban, En Banc].

state universities and colleges, government-owned and controlled corporations, and local government units to implement measures that would reduce their annual expenditure for non-personal services by at least 25%. On the other hand, Section 4 ordered that 10% of the internal revenue allotment released to local government units be withheld.²²

Pimentel, Jr. upheld the validity of Section 1 as a legitimate exercise of the executive branch's supervisory power insofar as it directs government instrumentalities and local government units to undertake cost reduction measures in response to the economic difficulties facing the nation. *Pimentel, Jr.* clarified that despite its tone, Section 1 was merely advisory, and was not mandatory. Thus, no legal sanction would be meted on a government instrumentality or local government unit that failed to submit its own planned cost reduction measures.²³

However, *Pimentel, Jr.* struck down Section 4 for directly contravening the constitutional mandates that the internal revenue allotment: (1) should be released directly to the concerned local government unit every quarter; and (2) cannot be the subject of any lien or holdback by the national government.²⁴

In arguing for the ripeness of the Petition in *Pimentel, Jr.*, this Court declared that the mere violation of the Constitution or any statute "is enough to awaken judicial duty."²⁵ Nonetheless, it admitted that the issue of prematurity was not raised by any of the parties.²⁶ Furthermore, an actual case or controversy existed in *Pimentel, Jr.* because the directive to withhold 10% of the internal revenue allotment was immediately executory and would cause a direct and adverse effect on the local government units, as represented by petitioners-intervenors League of Provinces of the Philippines and League of Leagues of Local Governments.²⁷ Hence, it was not the mere passage of Administrative Order No. 372 that was objected to in *Pimentel, Jr.*, but its direct detrimental effect on local government units and their fiscal autonomy.

As with *Pimentel, Jr.*, there is a similar immediate danger here. Petitioners will suffer a direct injury under Republic Act No. 10592's Implementing Rules and Regulations. While the entitlement to time credits is not automatic and is contingent upon the Management, Screening and Evaluation Committee's positive assessment of an inmate's application for time credits, the law's prospective application means that an inmate's

²² Id. at 97.

²³ Id. at 104–105.

²⁴ Id. at 105–106.

²⁵ Id. at 107.

²⁶ Id. at 108.

²⁷ Id. at 94.

application for time credits will be dismissed outright and will not even be considered by the recommending authority.

II

I also concur with the *ponencia*²⁸ that Rule I, Section 4 of the Implementing Rules and Regulations of Republic Act No. 10592 violates the well-entrenched principle that laws are applied prospectively. Nonetheless, penal laws that are favorable to the accused are given retroactive effect, as contained in Article 22²⁹ of the Revised Penal Code.

Moreover, Article 22 of the Revised Penal Code is not the sole basis for the invalidity of Republic Act No. 10592's prospective application. It also violates the inmates' constitutional rights to equal protection of the laws³⁰ and against "cruel, degrading[,] or inhuman punishment."³¹

Equal protection is covered under the mantle of due process, as unfair discrimination goes against the very nature of justice and fair play. Equal protection demands that similar subjects be treated similarly; to do otherwise would be to confer an unwarranted favor to some at the expense of others who are similarly situated.³²

The equal protection clause ensures equality, not identity of rights. Hence, it is not required for a statute to affect every single person the same way.³³ Since a classification is a tacit recognition of an existing inequality or difference, its validity shall be upheld if it is based on a reasonable or rational basis:

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that

²⁸ Ponencia, pp. 17–20.

²⁹ REV. PEN. CODE, art. 22 provides:

ARTICLE 22. Retroactive Effect of Penal Laws. — Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

³⁰ CONST., art. III, sec. 1 provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

³¹ CONST., art. III, sec. 19(1) provides:

SECTION 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*.

³² *The Philippine Judges Association v. Prado*, 298 Phil. 502, 512–513 (1993) [Per J. Cruz, En Banc].

³³ *See Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60 (1974) [Per J. Zaldivar, En Banc].

of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.³⁴

Thus, a valid classification must contain the following requisites to hurdle the test of reasonableness: (1) it is based on substantial differences; (2) it is relevant to the purpose of the law; (3) it is not limited to existing conditions; and (4) it equally applies to all members of the same class.

Here, the Implementing Rules and Regulations of Republic Act No. 10592 states that the award of time credits to detained or convicted prisoners was meant to:

- a) redeem and uplift valuable human material towards economic and social usefulness;
- b) level the field of opportunity by giving an increased time allowance to motivate prisoners to pursue a productive and law-abiding life; and
- c) implement the state policy of restorative and compassionate justice by promoting the reformation and rehabilitation of prisoners, strengthening their moral fiber and facilitating their successful reintegration into the mainstream of society.³⁵

Yet, by directing a prospective application of the statute, the Implementing Rules and Regulations distinguishes prisoners who were detained or convicted before Republic Act No. 10592 took effect from those who were detained or convicted after its effectivity.

Respondents explain that a prospective application was necessary in light of the “new procedures and standards of behavior for the grant of good conduct time allowance”³⁶ and the “creation of a Management, Screening and Evaluation Committee[.]”³⁷ But the supposed innovations and new procedures are mere modifications or reiterations of practices already in place even before the effectivity of Republic Act No. 10592, as the *ponencia*³⁸ has exhaustively discussed. Even the creation of the Management, Screening and Evaluation Committee as a recommendatory body was not a new innovation, as a Classification Board was already

³⁴ Id. at 87.

³⁵ Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule II, sec. 1.

³⁶ Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule I, sec. 4.

³⁷ Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule I, sec. 4.

³⁸ Ponencia, pp. 20–23.

recommending time allowances and implementing its approved recommendations.³⁹

Thus, if the statute's intention was to "redeem and uplift valuable human material towards economic and social usefulness[,]""⁴⁰ there was no reasonable basis to distinguish between the detained or convicted prisoners before and after Republic Act No. 10592 took effect. Not only was the distinction irrelevant to the statute's purpose, it also unjustly treats similarly situated prisoners under different standards, all because it used the arbitrary metric of when they were detained or convicted.

Likewise, the unreasonable discrimination created by the law's Implementing Rules and Regulations violates petitioners' right against "cruel, degrading[,] or inhuman punishment."⁴¹

Republic Act No. 10592 aims to uphold the State policy of restorative and compassionate justice by promoting prisoner rehabilitation and successful reintegration into mainstream society. But despite its avowed purpose, it capriciously denies the same opportunity of rehabilitation and reintegration to a big segment of the inmate population.

This blatant discrimination amounts to a cruel and unusual punishment, creating a disproportionate impact⁴² on inmates who were detained or incarcerated prior to Republic Act No. 10592's enactment. They end up serving sentences lengthier than inmates who were convicted after Republic Act No. 10592 took effect, despite committing similar crimes.

Although not a penalty, the prospective application of Republic Act No. 10592 penalizes inmates by withholding from them the benefits of the good conduct time credits without any justifiable reason, squarely placing it under the constitutional ban for being "flagrantly and plainly oppressive[.]""⁴³

Finally, the prospective application of Republic Act No. 10592 does not advance its guiding policy of restorative and compassionate justice. This is because it implies that all inmates detained or convicted prior to its effectivity can no longer be rehabilitated for a successful reintegration into society, effectively trampling upon their dignity as human beings.

³⁹ Id. at 24.

⁴⁰ Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule II, sec. 1.

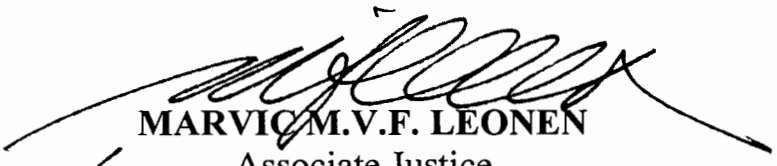
⁴¹ CONST., art. III, sec. 19.

⁴² J. Leonen, Concurring Opinion in *Estipona, Jr. v. Lobrigo*, G.R. No. 226679, August 15, 2017, 837 SCRA 160, 196 [Per J. Peralta, En Banc].

⁴³ *People v. Estoista*, 93 Phil. 647, 655 (1953) [Per J. Tuason, En Banc].


As such, Section 4 of the Implementing Rules and Regulations of Republic Act No. 10592 must be struck down, and its retroactive application be allowed to benefit prisoners who are not habitual criminals.

ACCORDINGLY, I vote to **GRANT** the Petitions and Petitions-in-Intervention.



MARVIC M.V.F. LEONEN
Associate Justice

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EDILBERTO O. ARCHISTA
Secretary of the Court
Supreme Court