Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-63915 April 24, 1985

LORENZO M. TAÑADA, ABRAHAM F. SARMIENTO, and MOVEMENT OF ATTORNEYS FOR BROTHERHOOD, INTEGRITY AND NATIONALISM, INC. [MABINI], petitioners,
vs.
HON. JUAN C. TUVERA, in his capacity as Executive Assistant to the President, HON. JOAQUIN VENUS, in his capacity as Deputy Executive Assistant to the President , MELQUIADES P. DE LA CRUZ, in his capacity as Director, Malacañang Records Office, and FLORENDO S. PABLO, in his capacity as Director, Bureau of Printing, respondents.

ESCOLIN, *J.*:

Invoking the people's right to be informed on matters of public concern, a right recognized in Section 6, Article IV of the 1973 Philippine Constitution, [1] as well as the principle that laws to be valid and enforceable must be published in the Official Gazette or otherwise effectively promulgated, petitioners seek a writ of mandamus to compel respondent public officials to publish, and/or cause the publication in the Official Gazette of various presidential decrees, letters of instructions, general orders, proclamations, executive orders, letter of implementation and administrative orders.

Specifically, the publication of the following presidential issuances is sought:

> a] Presidential Decrees Nos. 12, 22, 37, 38, 59, 64, 103, 171, 179, 184, 197, 200, 234, 265, 286, 298, 303, 312, 324, 325, 326, 337, 355, 358, 359, 360, 361, 368, 404, 406, 415, 427, 429, 445, 447, 473, 486, 491, 503, 504, 521, 528, 551, 566, 573, 574, 594, 599, 644, 658, 661, 718, 731, 733, 793, 800, 802, 835, 836, 923, 935, 961, 1017-1030, 1050, 1060-1061, 1085, 1143, 1165, 1166, 1242, 1246, 1250, 1278, 1279, 1300, 1644, 1772, 1808, 1810, 1813-1817, 1819-1826, 1829-1840, 1842-1847.
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> b] Letter of Instructions Nos.: 10, 39, 49, 72, 107, 108, 116, 130, 136, 141, 150, 153, 155, 161, 173, 180, 187, 188, 192, 193, 199, 202, 204, 205, 209, 211-213, 215-224, 226-228, 231-239, 241-245, 248, 251, 253-261, 263-269, 271-273, 275-283, 285-289, 291, 293, 297-299, 301-303, 309, 312-315, 325, 327, 343, 346, 349, 357, 358, 362, 367, 370, 382, 385, 386, 396-397,

405, 438-440, 444- 445, 473, 486, 488, 498, 501, 399, 527, 561, 576, 587, 594, 599, 600, 602, 609, 610, 611, 612, 615, 641, 642, 665, 702, 712-713, 726, 837-839, 878-879, 881, 882, 939-940, 964,997,1149-1178,1180-1278.

c] General Orders Nos.: 14, 52, 58, 59, 60, 62, 63, 64 & 65.

d] Proclamation Nos.: 1126, 1144, 1147, 1151, 1196, 1270, 1281, 1319-1526, 1529, 1532, 1535, 1538, 1540-1547, 1550-1558, 1561-1588, 1590-1595, 1594-1600, 1606-1609, 1612-1628, 1630-1649, 1694-1695, 1697-1701, 1705-1723, 1731-1734, 1737-1742, 1744, 1746-1751, 1752, 1754, 1762, 1764-1787, 1789-1795, 1797, 1800, 1802-1804, 1806-1807, 1812-1814, 1816, 1825-1826, 1829, 1831-1832, 1835-1836, 1839-1840, 1843-1844, 1846-1847, 1849, 1853-1858, 1860, 1866, 1868, 1870, 1876-1889, 1892, 1900, 1918, 1923, 1933, 1952, 1963, 1965-1966, 1968-1984, 1986-2028, 2030-2044, 2046-2145, 2147-2161, 2163-2244.

e] Executive Orders Nos.: 411, 413, 414, 427, 429-454, 457- 471, 474-492, 494-507, 509-510, 522, 524-528, 531-532, 536, 538, 543-544, 549, 551-553, 560, 563, 567-568, 570, 574, 593, 594, 598-604, 609, 611- 647, 649-677, 679-703, 705-707, 712-786, 788-852, 854-857.

f] Letters of Implementation Nos.: 7, 8, 9, 10, 11-22, 25-27, 39, 50, 51, 59, 76, 80-81, 92, 94, 95, 107, 120, 122, 123.

g] Administrative Orders Nos.: 347, 348, 352-354, 360- 378, 380-433, 436-439.

The respondents, through the Solicitor General, would have this case dismissed outright on the ground that petitioners have no legal personality or standing to bring the instant petition. The view is submitted that in the absence of any showing that petitioners are personally and directly affected or prejudiced by the alleged non-publication of the presidential issuances in question [2] said petitioners are without the requisite legal personality to institute this mandamus proceeding, they are not being "aggrieved parties" within the meaning of Section 3, Rule 65 of the Rules of Court, which we quote:

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

Upon the other hand, petitioners maintain that since the subject of the petition concerns a public right and its object is to compel the performance of a public duty, they need not show any specific interest for their petition to be given due course.

The issue posed is not one of first impression. As early as the 1910 case of *Severino vs. Governor General*, [3] this Court held that while the general rule is that "a writ of mandamus would be granted to a private individual only in those cases where he has some private or particular interest to be subserved, or some particular right to be protected, independent of that which he holds with the public at large," and "it is for the public officers exclusively to apply for the writ when public rights are to be subserved [Mithchell vs. Boardmen, 79 M.e., 469]," nevertheless, "when the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the people are regarded as the real party in interest and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of the laws [High, Extraordinary Legal Remedies, 3rd ed., sec. 431].

Thus, in said case, this Court recognized the relator Lope Severino, a private individual, as a proper party to the mandamus proceedings brought to compel the Governor General to call a special election for the position of municipal president in the town of Silay, Negros Occidental. Speaking for this Court, Mr. Justice Grant T. Trent said:

> We are therefore of the opinion that the weight of authority supports the proposition that the relator is a proper party to proceedings of this character when a public right is sought to be enforced. If the general rule in America were otherwise, we think that it would not be applicable to the case at bar for the reason 'that it is always dangerous to apply a general rule to a particular case without keeping in mind the reason for the rule, because, if under the particular circumstances the reason for the rule does not exist, the rule itself is not applicable and reliance upon the rule may well lead to error'
>
> No reason exists in the case at bar for applying the general rule insisted upon by counsel for the respondent. The circumstances which surround this case are different from those in the United States, inasmuch as if the relator is not a proper party to these proceedings no other person could be, as we have seen that it is not the duty of the law officer of the Government to appear and represent the people in cases of this character.

The reasons given by the Court in recognizing a private citizen's legal personality in the aforementioned case apply squarely to the present petition. Clearly, the right sought to be enforced by petitioners herein is a public right recognized by no less than the fundamental law of the land. If petitioners were not allowed to institute this proceeding, it would indeed be difficult to conceive of any other person to initiate the same, considering that the Solicitor General, the government officer generally empowered to represent the people, has entered his appearance for respondents in this case.

Respondents further contend that publication in the Official Gazette is not a sine qua non requirement for the effectivity of laws where the laws themselves provide for their own effectivity dates. It is thus submitted that since the presidential issuances in question contain special provisions as to the date they are to take effect, publication in the Official Gazette is not indispensable for their effectivity. The point stressed is anchored on Article 2 of the Civil Code:

> Art. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided, ...

The interpretation given by respondent is in accord with this Court's construction of said article. In a long line of decisions, [4] this Court has ruled that publication in the Official Gazette is necessary in those cases where the legislation itself does not provide for its effectivity date-for then the date of publication is material for determining its date of effectivity, which is the fifteenth day following its publication-but not when the law itself provides for the date when it goes into effect.

Respondents' argument, however, is logically correct only insofar as it equates the effectivity of laws with the fact of publication. Considered in the light of other statutes applicable to the issue at hand, the conclusion is easily reached that said Article 2 does not preclude the requirement of publication in the Official Gazette, even if the law itself provides for the date of its effectivity. Thus, Section 1 of Commonwealth Act 638 provides as follows:

> Section 1. There shall be published in the Official Gazette [1] all important legisiative acts and resolutions of a public nature of the, Congress of the Philippines; [2] all executive and administrative orders and proclamations, except such as have no general applicability; [3] decisions or abstracts of decisions of the Supreme Court and the Court of Appeals as may be deemed by said courts of sufficient importance to be so published; [4] such documents or classes of documents as may be required so to be published by law; and [5] such documents or classes of documents as the President of the Philippines shall determine from time to time to have general applicability and legal effect, or which he may authorize so to be published. ...

The clear object of the above-quoted provision is to give the general public adequate notice of the various laws which are to regulate their actions and conduct as citizens. Without such notice and publication, there would be no basis for the application of the maxim "ignorantia legis non excusat." It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a constructive one.

Perhaps at no time since the establishment of the Philippine Republic has the publication of laws taken so vital significance that at this time when the people have bestowed upon the President a power heretofore enjoyed solely by the legislature. While the people are kept abreast by the mass media of the debates and deliberations in the

Batasan Pambansa—and for the diligent ones, ready access to the legislative records—no such publicity accompanies the law-making process of the President. Thus, without publication, the people have no means of knowing what presidential decrees have actually been promulgated, much less a definite way of informing themselves of the specific contents and texts of such decrees. As the Supreme Court of Spain ruled: "Bajo la denominacion generica de leyes, se comprenden tambien los reglamentos, Reales decretos, Instrucciones, Circulares y Reales ordines dictadas de conformidad con las mismas por el Gobierno en uso de su potestad. [5]

The very first clause of Section I of Commonwealth Act 638 reads: "There shall be published in the Official Gazette ... ." The word "shall" used therein imposes upon respondent officials an imperative duty. That duty must be enforced if the Constitutional right of the people to be informed on matters of public concern is to be given substance and reality. The law itself makes a list of what should be published in the Official Gazette. Such listing, to our mind, leaves respondents with no discretion whatsoever as to what must be included or excluded from such publication.

The publication of all presidential issuances "of a public nature" or "of general applicability" is mandated by law. Obviously, presidential decrees that provide for fines, forfeitures or penalties for their violation or otherwise impose a burden or. the people, such as tax and revenue measures, fall within this category. Other presidential issuances which apply only to particular persons or class of persons such as administrative and executive orders need not be published on the assumption that they have been circularized to all concerned. [6]

It is needless to add that the publication of presidential issuances "of a public nature" or "of general applicability" is a requirement of due process. It is a rule of law that before a person may be bound by law, he must first be officially and specifically informed of its contents. As Justice Claudio Teehankee said in *Peralta vs. COMELEC* [7]:

> In a time of proliferating decrees, orders and letters of instructions which all form part of the law of the land, the requirement of due process and the Rule of Law demand that the Official Gazette as the official government repository promulgate and publish the texts of all such decrees, orders and instructions so that the people may know where to obtain their official and specific contents.

The Court therefore declares that presidential issuances of general application, which have not been published, shall have no force and effect. Some members of the Court, quite apprehensive about the possible unsettling effect this decision might have on acts done in reliance of the validity of those presidential decrees which were published only during the pendency of this petition, have put the question as to whether the Court's declaration of invalidity apply to P.D.s which had been enforced or implemented prior to their publication. The answer is all too familiar. In similar situations in the past this Court had taken the pragmatic and realistic course set forth in *Chicot County Drainage District vs. Baxter Bank* [8] to wit:

> The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. Norton v. Shelby County, 118 U.S. 425, 442; Chicago, 1. & L. Ry. Co. v. Hackett, 228 U.S. 559, 566. It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects-with respect to particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

Consistently with the above principle, this Court in *Rutter vs. Esteban* [9] sustained the right of a party under the Moratorium Law, albeit said right had accrued in his favor before said law was declared unconstitutional by this Court.

Similarly, the implementation/enforcement of presidential decrees prior to their publication in the Official Gazette is "an operative fact which may have consequences which cannot be justly ignored. The past cannot always be erased by a new judicial declaration ... that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified."

From the report submitted to the Court by the Clerk of Court, it appears that of the presidential decrees sought by petitioners to be published in the Official Gazette, only Presidential Decrees Nos. 1019 to 1030, inclusive, 1278, and 1937 to 1939, inclusive, have not been so published. [10] Neither the subject matters nor the texts of these PDs can be ascertained since no copies thereof are available. But whatever their subject matter may be, it is undisputed that none of these unpublished PDs has ever been implemented or enforced by the government. In *Pesigan vs. Angeles*, [11] the Court, through Justice Ramon Aquino, ruled that "publication is necessary to apprise the public of the contents of [penal] regulations and make the said penalties binding on the persons affected thereby. " The cogency of this holding is apparently recognized by respondent officials considering the manifestation in their comment that "the government, as a matter of policy, refrains from prosecuting violations of criminal laws until the same shall have been published in the Official Gazette or in some other publication, even though some criminal laws provide that they shall take effect immediately.

WHEREFORE, the Court hereby orders respondents to publish in the Official Gazette all unpublished presidential issuances which are of general application, and unless so published, they shall have no binding force and effect.

SO ORDERED.

Relova, J., concurs.

Aquino, J., took no part.

Concepcion, Jr., J., is on leave.

Separate Opinions

FERNANDO, *C.J.*, concurring (with qualification):

There is on the whole acceptance on my part of the views expressed in the ably written opinion of Justice Escolin. I am unable, however, to concur insofar as it would unqualifiedly impose the requirement of publication in the Official Gazette for unpublished "presidential issuances" to have binding force and effect.

I shall explain why.

1. It is of course true that without the requisite publication, a due process question would arise if made to apply adversely to a party who is not even aware of the existence of any legislative or executive act having the force and effect of law. My point is that such publication required need not be confined to the Official Gazette. From the pragmatic standpoint, there is an advantage to be gained. It conduces to certainty. That is too be admitted. It does not follow, however, that failure to do so would in all cases and under all circumstances result in a statute, presidential decree or any other executive act of the same category being bereft of any binding force and effect. To so hold would, for me, raise a constitutional question. Such a pronouncement would lend itself to the interpretation that such a legislative or presidential act is bereft of the attribute of effectivity unless published in the Official Gazette. There is no such requirement in the Constitution as Justice Plana so aptly pointed out. It is true that what is decided now applies only to past "presidential issuances". Nonetheless, this clarification is, to my mind, needed to avoid any possible misconception as to what is required for any statute or presidential act to be impressed with binding force or effectivity.

2. It is quite understandable then why I concur in the separate opinion of Justice Plana. Its first paragraph sets forth what to me is the constitutional doctrine applicable to this

case. Thus: "The Philippine Constitution does not require the publication of laws as a prerequisite for their effectivity, unlike some Constitutions elsewhere. It may be said though that the guarantee of due process requires notice of laws to affected Parties before they can be bound thereby; but such notice is not necessarily by publication in the Official Gazette. The due process clause is not that precise. [1] I am likewise in agreement with its closing paragraph: "In fine, I concur in the majority decision to the extent that it requires notice before laws become effective, for no person should be bound by a law without notice. This is elementary fairness. However, I beg to disagree insofar as it holds that such notice shall be by publication in the Official Gazette. [2]

3. It suffices, as was stated by Judge Learned Hand, that law as the command of the government "must be ascertainable in some form if it is to be enforced at all. [3] It would indeed be to reduce it to the level of mere futility, as pointed out by Justice Cardozo, "if it is unknown and unknowable. [4] Publication, to repeat, is thus essential. What I am not prepared to subscribe to is the doctrine that it must be in the Official Gazette. To be sure once published therein there is the ascertainable mode of determining the exact date of its effectivity. Still for me that does not dispose of the question of what is the jural effect of past presidential decrees or executive acts not so published. For prior thereto, it could be that parties aware of their existence could have conducted themselves in accordance with their provisions. If no legal consequences could attach due to lack of publication in the Official Gazette, then serious problems could arise. Previous transactions based on such "Presidential Issuances" could be open to question. Matters deemed settled could still be inquired into. I am not prepared to hold that such an effect is contemplated by our decision. Where such presidential decree or executive act is made the basis of a criminal prosecution, then, of course, its ex post facto character becomes evident. [5] In civil cases though, retroactivity as such is not conclusive on the due process aspect. There must still be a showing of arbitrariness. Moreover, where the challenged presidential decree or executive act was issued under the police power, the non-impairment clause of the Constitution may not always be successfully invoked. There must still be that process of balancing to determine whether or not it could in such a case be tainted by infirmity. [6] In traditional terminology, there could arise then a question of unconstitutional application. That is as far as it goes.

4. Let me make therefore that my qualified concurrence goes no further than to affirm that publication is essential to the effectivity of a legislative or executive act of a general application. I am not in agreement with the view that such publication must be in the Official Gazette. The Civil Code itself in its Article 2 expressly recognizes that the rule as to laws taking effect after fifteen days following the completion of their publication in the Official Gazette is subject to this exception, "unless it is otherwise provided." Moreover, the Civil Code is itself only a legislative enactment, Republic Act No. 386. It does not and cannot have the juridical force of a constitutional command. A later legislative or executive act which has the force and effect of law can legally provide for a different rule.

5. Nor can I agree with the rather sweeping conclusion in the opinion of Justice Escolin that presidential decrees and executive acts not thus previously published in the Official Gazette would be devoid of any legal character. That would be, in my opinion, to go too

far. It may be fraught, as earlier noted, with undesirable consequences. I find myself therefore unable to yield assent to such a pronouncement.

I am authorized to state that Justices Makasiar, Abad Santos, Cuevas, and Alampay concur in this separate opinion.

Makasiar, Abad Santos, Cuevas and Alampay, JJ., concur.

TEEHANKEE, *J.,* concurring:

I concur with the main opinion of Mr. Justice Escolin and the concurring opinion of Mme. Justice Herrera. The Rule of Law connotes a body of norms and laws published and ascertainable and of equal application to all similarly circumstances and not subject to arbitrary change but only under certain set procedures. The Court has consistently stressed that "it is an elementary rule of fair play and justice that a reasonable opportunity to be informed must be afforded to the people who are commanded to obey before they can be punished for its violation, [1] citing the settled principle based on due process enunciated in earlier cases that "before the public is bound by its contents, especially its penal provisions, a law, regulation or circular must first be published and the people officially and specially informed of said contents and its penalties.

Without official publication in the Official Gazette as required by Article 2 of the Civil Code and the Revised Administrative Code, there would be no basis nor justification for the corollary rule of Article 3 of the Civil Code (based on constructive notice that the provisions of the law are ascertainable from the public and official repository where they are duly published) that "Ignorance of the law excuses no one from compliance therewith.

Respondents' contention based on a misreading of Article 2 of the Civil Code that "only laws which are silent as to their effectivity [date] need be published in the Official Gazette for their effectivity" is manifestly untenable. The plain text and meaning of the Civil Code is that "laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, *unless it is otherwise provided, " i.e.* a different effectivity date is provided by the law itself. This proviso perforce refers to a law that has been duly published pursuant to the basic constitutional requirements of due process. The best example of this is the Civil Code itself: the same Article 2 provides otherwise that it "shall take effect [only] one year [not 15 days] after such publication. [2] To sustain respondents' misreading that "most laws or decrees specify the date of their effectivity and for this reason, publication in the Official Gazette is not necessary for their effectivity [3] would be to nullify and render nugatory the Civil Code's indispensable and essential requirement of prior publication in the Official Gazette by the simple expedient of providing for immediate effectivity or an earlier effectivity date in the law itself *before* the completion of 15 days following its publication which is the period generally fixed by the Civil Code for its proper dissemination.

MELENCIO-HERRERA, *J.,* concurring:

I agree. There cannot be any question but that even if a decree provides for a date of effectivity, it has to be published. What I would like to state in connection with that proposition is that when a date of effectivity is mentioned in the decree but the decree becomes effective only fifteen (15) days after its publication in the Official Gazette, it will not mean that the decree can have retroactive effect to the date of effectivity mentioned in the decree itself. There should be no retroactivity if the retroactivity will run counter to constitutional rights or shall destroy vested rights.

PLANA, *J.,* concurring (with qualification):

The Philippine Constitution does not require the publication of laws as a prerequisite for their effectivity, unlike some Constitutions elsewhere. * It may be said though that the guarantee of due process requires notice of laws to affected parties before they can be bound thereby; but such notice is not necessarily by publication in the Official Gazette. The due process clause is not that precise. Neither is the publication of laws in the *Official Gazette* required by any statute as *a prerequisite for their effectivity, if* said laws already provide for their effectivity date.

Article 2 of the Civil Code provides that "laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, *unless it is otherwise provided* " Two things may be said of this provision: Firstly, it obviously does not apply to a law with a built-in provision as to when it will take effect. Secondly, it clearly recognizes that each law may provide not only a different period for reckoning its effectivity date but also a different mode of notice. Thus, a law may prescribe that it shall be published elsewhere than in the Official Gazette.

Commonwealth Act No. 638, in my opinion, does not support the proposition that *for their effectivity,* laws must be published in the Official Gazette. The said law is simply "An Act to Provide for the Uniform Publication and Distribution of the Official Gazette." Conformably therewith, it authorizes the publication of the Official Gazette, determines its frequency, provides for its sale and distribution, and defines the authority of the Director of Printing in relation thereto. It also enumerates what shall be published in the Official Gazette, among them, "important legislative acts and resolutions of a public nature of the Congress of the Philippines" and "all executive and administrative orders and proclamations, except such as have no general applicability." It is noteworthy that not all legislative acts are required to be published in the Official Gazette but only "important" ones "of a public nature." Moreover, the said law does not provide that publication in the Official Gazette is essential for the effectivity of laws. This is as it should be, for all statutes are equal and stand on the same footing. A law, especially an earlier one of general application such as Commonwealth Act No. 638, cannot nullify or restrict the operation of a subsequent statute that has a provision of its own as to when

and how it will take effect. Only a higher law, which is the Constitution, can assume that role.

In fine, I concur in the majority decision to the extent that it requires notice before laws become effective, for no person should be bound by a law without notice. This is elementary fairness. However, I beg to disagree insofar as it holds that such notice shall be by publication in the Official Gazette.

Cuevas and Alampay, JJ., concur.

GUTIERREZ, Jr., *J.,* concurring:

I concur insofar as publication is necessary but reserve my vote as to the necessity of such publication being in the Official Gazette.

DE LA FUENTE, *J.,* concurring:

I concur insofar as the opinion declares the unpublished decrees and issuances of a public nature or general applicability ineffective, until due publication thereof.

Separate Opinions

FERNANDO, *C.J.,* concurring (with qualification):

There is on the whole acceptance on my part of the views expressed in the ably written opinion of Justice Escolin. I am unable, however, to concur insofar as it would unqualifiedly impose the requirement of publication in the Official Gazette for unpublished "presidential issuances" to have binding force and effect.

I shall explain why.

1. It is of course true that without the requisite publication, a due process question would arise if made to apply adversely to a party who is not even aware of the existence of any legislative or executive act having the force and effect of law. My point is that such publication required need not be confined to the Official Gazette. From the pragmatic standpoint, there is an advantage to be gained. It conduces to certainty. That is too be admitted. It does not follow, however, that failure to do so would in all cases and under

all circumstances result in a statute, presidential decree or any other executive act of the same category being bereft of any binding force and effect. To so hold would, for me, raise a constitutional question. Such a pronouncement would lend itself to the interpretation that such a legislative or presidential act is bereft of the attribute of effectivity unless published in the Official Gazette. There is no such requirement in the Constitution as Justice Plana so aptly pointed out. It is true that what is decided now applies only to past "presidential issuances". Nonetheless, this clarification is, to my mind, needed to avoid any possible misconception as to what is required for any statute or presidential act to be impressed with binding force or effectivity.

2. It is quite understandable then why I concur in the separate opinion of Justice Plana. Its first paragraph sets forth what to me is the constitutional doctrine applicable to this case. Thus: "The Philippine Constitution does not require the publication of laws as a prerequisite for their effectivity, unlike some Constitutions elsewhere. It may be said though that the guarantee of due process requires notice of laws to affected Parties before they can be bound thereby; but such notice is not necessarily by publication in the Official Gazette. The due process clause is not that precise. [1] I am likewise in agreement with its closing paragraph: "In fine, I concur in the majority decision to the extent that it requires notice before laws become effective, for no person should be bound by a law without notice. This is elementary fairness. However, I beg to disagree insofar as it holds that such notice shall be by publication in the Official Gazette. [2]

3. It suffices, as was stated by Judge Learned Hand, that law as the command of the government "must be ascertainable in some form if it is to be enforced at all. [3] It would indeed be to reduce it to the level of mere futility, as pointed out by Justice Cardozo, "if it is unknown and unknowable. [4] Publication, to repeat, is thus essential. What I am not prepared to subscribe to is the doctrine that it must be in the Official Gazette. To be sure once published therein there is the ascertainable mode of determining the exact date of its effectivity. Still for me that does not dispose of the question of what is the jural effect of past presidential decrees or executive acts not so published. For prior thereto, it could be that parties aware of their existence could have conducted themselves in accordance with their provisions. If no legal consequences could attach due to lack of publication in the Official Gazette, then serious problems could arise. Previous transactions based on such "Presidential Issuances" could be open to question. Matters deemed settled could still be inquired into. I am not prepared to hold that such an effect is contemplated by our decision. Where such presidential decree or executive act is made the basis of a criminal prosecution, then, of course, its ex post facto character becomes evident. [5] In civil cases though, retroactivity as such is not conclusive on the due process aspect. There must still be a showing of arbitrariness. Moreover, where the challenged presidential decree or executive act was issued under the police power, the non-impairment clause of the Constitution may not always be successfully invoked. There must still be that process of balancing to determine whether or not it could in such a case be tainted by infirmity. [6] In traditional terminology, there could arise then a question of unconstitutional application. That is as far as it goes.

4. Let me make therefore that my qualified concurrence goes no further than to affirm that publication is essential to the effectivity of a legislative or executive act of a general

application. I am not in agreement with the view that such publication must be in the Official Gazette. The Civil Code itself in its Article 2 expressly recognizes that the rule as to laws taking effect after fifteen days following the completion of their publication in the Official Gazette is subject to this exception, "unless it is otherwise provided." Moreover, the Civil Code is itself only a legislative enactment, Republic Act No. 386. It does not and cannot have the juridical force of a constitutional command. A later legislative or executive act which has the force and effect of law can legally provide for a different rule.

5. Nor can I agree with the rather sweeping conclusion in the opinion of Justice Escolin that presidential decrees and executive acts not thus previously published in the Official Gazette would be devoid of any legal character. That would be, in my opinion, to go too far. It may be fraught, as earlier noted, with undesirable consequences. I find myself therefore unable to yield assent to such a pronouncement.

I am authorized to state that Justices Makasiar, Abad Santos, Cuevas, and Alampay concur in this separate opinion.

Makasiar, Abad Santos, Cuevas and Alampay, JJ., concur.

TEEHANKEE, *J.,* concurring:

I concur with the main opinion of Mr. Justice Escolin and the concurring opinion of Mme. Justice Herrera. The Rule of Law connotes a body of norms and laws published and ascertainable and of equal application to all similarly circumstances and not subject to arbitrary change but only under certain set procedures. The Court has consistently stressed that "it is an elementary rule of fair play and justice that a reasonable opportunity to be informed must be afforded to the people who are commanded to obey before they can be punished for its violation, [1] citing the settled principle based on due process enunciated in earlier cases that "before the public is bound by its contents, especially its penal provisions, a law, regulation or circular must first be published and the people officially and specially informed of said contents and its penalties.

Without official publication in the Official Gazette as required by Article 2 of the Civil Code and the Revised Administrative Code, there would be no basis nor justification for the corollary rule of Article 3 of the Civil Code (based on constructive notice that the provisions of the law are ascertainable from the public and official repository where they are duly published) that "Ignorance of the law excuses no one from compliance therewith.

Respondents' contention based on a misreading of Article 2 of the Civil Code that "only laws which are silent as to their effectivity [date] need be published in the Official Gazette for their effectivity" is manifestly untenable. The plain text and meaning of the Civil Code is that "laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, *unless it is otherwise provided, " i.e.* a different

effectivity date is provided by the law itself. This proviso perforce refers to a law that has been duly published pursuant to the basic constitutional requirements of due process. The best example of this is the Civil Code itself: the same Article 2 provides otherwise that it "shall take effect [only] one year [not 15 days] after such publication. [2] To sustain respondents' misreading that "most laws or decrees specify the date of their effectivity and for this reason, publication in the Official Gazette is not necessary for their effectivity [3] would be to nullify and render nugatory the Civil Code's indispensable and essential requirement of prior publication in the Official Gazette by the simple expedient of providing for immediate effectivity or an earlier effectivity date in the law itself *before* the completion of 15 days following its publication which is the period generally fixed by the Civil Code for its proper dissemination.

MELENCIO-HERRERA, *J.,* concurring:

I agree. There cannot be any question but that even if a decree provides for a date of effectivity, it has to be published. What I would like to state in connection with that proposition is that when a date of effectivity is mentioned in the decree but the decree becomes effective only fifteen (15) days after its publication in the Official Gazette, it will not mean that the decree can have retroactive effect to the date of effectivity mentioned in the decree itself. There should be no retroactivity if the retroactivity will run counter to constitutional rights or shall destroy vested rights.

PLANA, *J.,* concurring (with qualification):

The Philippine Constitution does not require the publication of laws as a prerequisite for their effectivity, unlike some Constitutions elsewhere. * It may be said though that the guarantee of due process requires notice of laws to affected parties before they can be bound thereby; but such notice is not necessarily by publication in the Official Gazette. The due process clause is not that precise. Neither is the publication of laws in the *Official Gazette* required by any statute as *a prerequisite for their effectivity, if* said laws already provide for their effectivity date.

Article 2 of the Civil Code provides that "laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, *unless it is otherwise provided* " Two things may be said of this provision: Firstly, it obviously does not apply to a law with a built-in provision as to when it will take effect. Secondly, it clearly recognizes that each law may provide not only a different period for reckoning its effectivity date but also a different mode of notice. Thus, a law may prescribe that it shall be published elsewhere than in the Official Gazette.

Commonwealth Act No. 638, in my opinion, does not support the proposition that *for their effectivity,* laws must be published in the Official Gazette. The said law is simply "An Act to Provide for the Uniform Publication and Distribution of the Official Gazette."

Conformably therewith, it authorizes the publication of the Official Gazette, determines its frequency, provides for its sale and distribution, and defines the authority of the Director of Printing in relation thereto. It also enumerates what shall be published in the Official Gazette, among them, "important legislative acts and resolutions of a public nature of the Congress of the Philippines" and "all executive and administrative orders and proclamations, except such as have no general applicability." It is noteworthy that not all legislative acts are required to be published in the Official Gazette but only "important" ones "of a public nature." Moreover, the said law does not provide that publication in the Official Gazette is essential for the effectivity of laws. This is as it should be, for all statutes are equal and stand on the same footing. A law, especially an earlier one of general application such as Commonwealth Act No. 638, cannot nullify or restrict the operation of a subsequent statute that has a provision of its own as to when and how it will take effect. Only a higher law, which is the Constitution, can assume that role.

In fine, I concur in the majority decision to the extent that it requires notice before laws become effective, for no person should be bound by a law without notice. This is elementary fairness. However, I beg to disagree insofar as it holds that such notice shall be by publication in the Official Gazette.

Cuevas and Alampay, JJ., concur.

GUTIERREZ, Jr., *J.*, concurring:

I concur insofar as publication is necessary but reserve my vote as to the necessity of such publication being in the Official Gazette.

DE LA FUENTE, *J.*, concurring:

I concur insofar as the opinion declares the unpublished decrees and issuances of a public nature or general applicability ineffective, until due publication thereof.