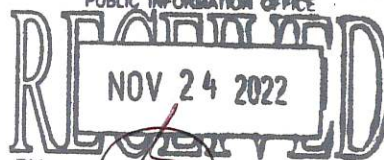




SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Republic of the Philippines
Supreme Court
Manila

EN BANC

ADVISORY
(Revised as of November 23, 2022)

G.R. No. 261892 (KILUSAN SA PAGBABAGO NG INDUSTRIYA NG TRANSPORTASYON, INC., [KAPIT], PANGKALAHATANG SANGGUNIAN MANILA & SUBURBS DRIVERS ASSOCIATION NATIONWIDE, INC. [PASANG MASDA], ALLIANCE OF TRANSPORT OPERATORS AND DRIVERS ASSOCIATION OF THE PHILIPPINES [ALTODAP], AND ALLIANCE OF CONCERNED TRANSPORT ORGANIZATION [ACTO] vs. CITY OF MANILA, QUEZON CITY, VALENZUELA CITY, PARAÑAQUE CITY, MUNTINLUPA CITY, AND LAND TRANSPORTATION OFFICE); and G.R. No. 262192 (ATTY. JUMAN B. PAA vs. SANGGUNIAN PANLUNGSOD NG MANILA AND HON. DR. MARIA SHEILAH LACUNA-PANGAN)

For the orderly proceeding of the **Oral Arguments** on the above-captioned consolidated cases scheduled on **December 6, 2022, two o'clock in the afternoon (2:00 p.m.)** at the *En Banc* Session Hall, Second Floor, Supreme Court Main Building, the parties are required to observe the following:

I. Petitioners and respondents shall limit their discussion to the following essential issues:¹

A. *Procedural Issues*

1. Whether the issues raised in the Petitions involve an actual and justiciable controversy.
2. Whether petitioners Kilusan sa Pagbabago ng Industriya ng Transportasyon, Inc. (KAPIT), Pangkalahatang Sanggunian Manila & Suburbs Drivers Association Nationwide, Inc.

¹ As modified by the agreement of the parties during the Preliminary Conference held last November 8, 2022.

(PASANG MASDA), Alliance of Transport Operators and Drivers Association of the Philippines (ALTODAP) have legal capacity to sue.

3. Whether petitioners KAPIT, PASANG MASDA, ALTODAP, Alliance of Concerned Transport Organization (ACTO), and Atty. Juman B. Paa each have *locus standi*:
 - a. Whether petitioners each suffered direct injury; and
 - b. Whether the doctrine of third party standing is applicable.
4. Whether petitioners' direct resort to the Supreme Court is proper, thus:
 - a. Whether the doctrine of hierarchy of courts is violated;
 - b. Whether the instant case presents issues of transcendental importance to warrant a relaxation of procedural rules;
 - c. Whether the doctrine of exhaustion of administrative remedies is violated; and
 - d. Whether the instant controversy involves questions of fact.
5. Whether petitioner KAPIT committed forum shopping in violation of Section 5, Rule 7 of the 2019 Amendments to the 1997 Rules of Civil Procedure.

B. Substantive Issues

Issues relating to the Bill of Rights

1. Whether the implementation of the No Physical Contact Apprehension Policy (NCAP) is a valid exercise of police power:
 - a. Whether the assailed Ordinances meet the requisites for the validity of ordinances as established by jurisprudence;
 - b. Whether the right to procedural and substantive due process is violated; and

- c. Whether the NCAP can validly apply the registered-owner rule.
2. Whether the NCAP Ordinances violate the constitutional right to privacy.
3. Whether the NCAP Ordinances violate the constitutional right against excessive fines and penalties.

Issues relating to the authority of Local Government Units (LGUs)

4. Whether the implementation of the NCAP Ordinances is a valid exercise of local autonomy:
 - a. Whether the LGUs can establish their respective schedules of fines and penalties;
 - b. Whether the implementation of the NCAP can be done through Joint Venture Agreements (JVAs) or service agreements between LGUs and private entities;
 - c. Whether the fees paid by motorists to the LGUs can be transferred to private contractors; and
 - d. Whether the NCAP Ordinances may validly grant honoraria to the members of the committees created for the purpose of enforcing the NCAP.

Issues relating to the violation of other statutes

(i) Land Transportation and Traffic Code

5. Whether the NCAP Ordinances violate the provisions of Republic Act (RA) No. 4136, otherwise known as the Land Transportation and Traffic Code:
 - a. Whether Section 29 of RA No. 4136 is sufficient basis for no physical contact apprehension for violation of traffic rules;
 - b. Whether Section 29 of RA No. 4136, as presently worded, allows other modes of apprehension other than face-to-face; and

- c. Whether the enactment of a law is required to allow for a no physical contact apprehension for violation of traffic rules.
6. Whether the payment of penalties for violations of the NCAP Ordinances can be made a condition for the renewal of motor vehicle registration under RA No. 4136.

(ii) Data Privacy Act of 2012

7. Whether the NCAP Ordinances violate RA No. 10173, also known as the Data Privacy Act of 2012:
 - a. Whether the consent of motorists, as data subjects, must be secured prior to the processing of their personal information or sensitive personal information in the implementation of the NCAP;
 - b. Whether the exception under Section 4 of RA No. 10173 applies;
 - c. Whether the Land Transportation Office (LTO) validly entered into data sharing agreements with LGUs and their private contractors; and
 - d. Whether the existing JVAs or service agreements between respondent LGUs and private entities pursuant to their respective NCAP Ordinances violate the Data Privacy Act of 2012.
8. Whether the NCAP Ordinances can be declared unconstitutional if the Court finds that their implementation violated specific provisions of the Data Privacy Act of 2012.

(iii) Act No. 3326

9. Whether the condition that penalties arising from infractions of the NCAP Ordinances must be paid first before motor vehicle registrations may be renewed violates the two-month prescriptive period for the violation of municipal ordinances under Act No. 3326, otherwise known as "An Act to Establish Periods of Prescription for Violations Penalized by Special

Order

Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run.”

Issues relating to declaration of unconstitutionality of NCAP

10. Whether the operative fact doctrine shall apply if the NCAP is declared unconstitutional:

a. Whether the notices of violations issued by the LGUs prior to the issuance of the TRO can still be enforced.

11. Whether the assailed Ordinances constitute a usurpation of legislative authority for expanding the coverage of traffic regulations under RA No. 4136.

II. Each side, through their respective counsels, shall have a total of **twenty (20) minutes** to present their arguments on the foregoing issues. However, they are enjoined to focus their discussion on the *substantive* issues listed under **Item I(B)** of this Advisory.

III. Counsels for each side are directed to coordinate with each other and, thereafter, submit to the Court a manifestation stating: (a) the name/s of the lawyer/s that will be attending in person for each side, **which number shall not exceed five (5)** in observance of the Court’s health and safety protocols; (b) the name/s of the presenting lawyer/s on each issue or group of issues; and (c) the time allotted for each presenting lawyer, the total of which should not, however, exceed the time limit as stated in **Item II** above. Each side is required to submit the manifestation by **November 29, 2022**.

IV. As agreed during the Preliminary Conference conducted last November 8, 2022, the Solicitor General is given **ten (10) to fifteen (15) minutes** on top of the period allotted to respondents under **Item II** above to present their audio-visual materials. Other counsels who intend to present audio-visual materials must submit a manifestation to this effect by **November 29, 2022**.

V. The Solicitor General is directed to bring with him during the Oral Arguments the heads of the LTO and the Metropolitan Manila Development Authority (MMDA), or their duly authorized representatives.

VI. The interpellations by the Members of the Court shall immediately follow after the presentation of each side. The time allotted for counsels shall be exclusive of the time devoted to the interpellations by the Members of the Court.

VII. All manifestations to be submitted to the Court pursuant to **Items III and IV** above may be filed before the Court personally or *via* electronic mail at efile_jro.sc@judiciary.gov.ph on or before the deadline set herein.

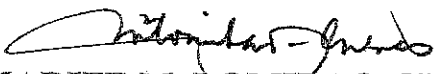
VIII. All other matters not covered by the Oral Arguments shall not, however, be considered as eliminated issues but shall be discussed and argued in the written memoranda to be required of the concerned parties. The Members of the Court further maintain their right to ask any questions on any relevant matter, including those related to the *procedural* issues outlined in **Item I(A)** of this Advisory, necessary for the resolution of these consolidated cases.

IX. The Oral Arguments on December 6, 2022 shall end at **5:30 p.m.** When necessary, the interpellations by the Members of the Court shall continue on **January 24, 2023, two o'clock in the afternoon (2:00 p.m.)** at the *En Banc* Session Hall, Second Floor, Supreme Court Main Building.

X. All attendees shall be required to present **negative antigen test results taken within twenty-four (24) hours** prior to the Oral Arguments. In this regard, antigen testing shall be available at the Supreme Court Centennial Building, subject to payment of the required fees.

Finally, as discussed during the Preliminary Conference, all parties and their counsels are **strictly prohibited** from publicly commenting on these consolidated cases or discussing the merits of their respective arguments until after the resolution of these consolidated cases. Likewise, they shall **not be allowed to introduce any change in the circumstances** without timely and proper notice to the Court as well as the other parties concerned.

By authority of the Court:


MARIFE M. LOMIBAO-CUEVAS
Clerk of Court

HON. ALEXANDER G. GESMUNDO (x)
Chief Justice
HON. MARVIC MARIO VICTOR F. LEONEN (x)
Senior Associate Justice
HON. ALFREDO BENJAMIN S. CAGUIOA (x)
HON. RAMON PAUL L. HERNANDO (x)
HON. AMY C. LAZARO-JAVIER (x)
HON. HENRI JEAN PAUL B. INTING (x)
HON. RODIL V. ZALAMEDA (x)
HON. MARIO V. LOPEZ (x)
HON. SAMUEL H. GAERLAN (x)
HON. RICARDO R. ROSARIO (x)
HON. JHOSEP Y. LOPEZ (x)
HON. JAPAR B. DIMAAMPAO (x)
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