

EN BANC

[G.R. No. 139465, January 18, 2000]

SECRETARY OF JUSTICE, PETITIONER, VS. HON. RALPH C. LANTION, PRESIDING JUDGE, REGIONAL TRIAL COURT OF MANILA, BRANCH 25, AND MARK B. JIMENEZ, RESPONDENTS.

DECISION

MELO, J.:

The individual citizen is but a speck of particle or molecule vis-à-vis the vast and overwhelming powers of government. His only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need. The Court is now called to decide whether to uphold a citizen's basic due process rights, or the government's ironclad duties under a treaty. The bugle sounds and this Court must once again act as the faithful guardian of the fundamental writ.

The petition at our doorstep is cast against the following factual backdrop:

On January 13, 1977, then President Ferdinand E. Marcos issued Presidential Decree No. 1069 "Prescribing the Procedure for the Extradition of Persons Who Have Committed Crimes in a Foreign Country". The Decree is founded on: the doctrine of incorporation under the Constitution; the mutual concern for the suppression of crime both in the state where it was committed and the state where the criminal may have escaped; the extradition treaty with the Republic of Indonesia and the intention of the Philippines to enter into similar treaties with other interested countries; and the need for rules to guide the executive department and the courts in the proper implementation of said treaties.

On November 13, 1994, then Secretary of Justice Franklin M. Drilon, representing the Government of the Republic of the Philippines, signed in Manila the "Extradition Treaty Between the Government of the Republic of the Philippines and the Government of the United States of America" (hereinafter referred to as the RP-US Extradition Treaty). The Senate, by way of Resolution No. 11, expressed its concurrence in the ratification of said treaty. It also expressed its concurrence in the Diplomatic Notes correcting Paragraph (5)(a), Article 7 thereof (on the admissibility of the documents accompanying an extradition request upon certification by the principal diplomatic or consular officer of the requested state resident in the Requesting State).

On June 18, 1999, the Department of Justice received from the Department of Foreign Affairs U. S. Note Verbale No. 0522 containing a request for the extradition of private respondent Mark Jimenez to the United States. Attached to the Note Verbale were the Grand Jury Indictment, the warrant of arrest issued by the U.S. District Court, Southern District of Florida, and other supporting documents for said

extradition. Based on the papers submitted, private respondent appears to be charged in the United States with violation of the following provisions of the United States Code (USC):

- A) 18 USC 371 (*Conspiracy to commit offense or to defraud the United States*; two [2] counts; Maximum Penalty – 5 years on each count);
 - B) 26 USC 7201 (*Attempt to evade or defeat tax*; four [4] counts; Maximum Penalty – 5 years on each count);
 - C) 18 USC 1343 (*Fraud by wire, radio, or television*; two [2] counts; Maximum Penalty – 5 years on each count);
 - D) 18 USC 1001 (*False statement or entries*; six [6] counts; Maximum Penalty – 5 years on each count);
 - E) 2 USC 441f (*Election contributions in name of another*; thirty-three [33] counts; Maximum Penalty – less than one year).
- (p. 14, Rollo.)

On the same day, petitioner issued Department Order No. 249 designating and authorizing a panel of attorneys to take charge of and to handle the case pursuant to Section 5(1) of Presidential Decree No. 1069. Accordingly, the panel began with the "technical evaluation and assessment" of the extradition request and the documents in support thereof. The panel found that the "official English translation of some documents in Spanish were not attached to the request and that there are some other matters that needed to be addressed" (p. 15, Rollo).

Pending evaluation of the aforestated extradition documents, private respondent, through counsel, wrote a letter dated July 1, 1999 addressed to petitioner requesting copies of the official extradition request from the U. S. Government, as well as all documents and papers submitted therewith; and that he be given ample time to comment on the request after he shall have received copies of the requested papers. Private respondent also requested that the proceedings on the matter be held in abeyance in the meantime.

Later, private respondent requested that preliminarily, he be given at least a copy of, or access to, the request of the United States Government, and after receiving a copy of the Diplomatic Note, a period of time to amplify on his request.

In response to private respondent's July 1, 1999 letter, petitioner, in a reply-letter dated July 13, 1999 (but received by private respondent only on August 4, 1999), denied the foregoing requests for the following reasons:

1. We find it premature to furnish you with copies of the extradition request and supporting documents from the United States Government, pending evaluation by this Department of the sufficiency of the extradition documents submitted in accordance with the provisions of the extradition treaty and our extradition law. Article 7 of the Extradition Treaty between the Philippines and the United States enumerates the documentary requirements and establishes the procedures under which the documents submitted shall be received and admitted as evidence. Evidentiary requirements under our domestic law are also set forth in Section 4 of P.D. No. 1069.

Evaluation by this Department of the aforementioned documents is not a preliminary investigation nor akin to preliminary investigation of criminal cases. We merely determine whether the procedures and requirements under the relevant law and treaty have been complied with by the Requesting Government. The constitutionally guaranteed rights of the accused in all criminal prosecutions are therefore not available.

It is only after the filing of the petition for extradition when the person sought to be extradited will be furnished by the court with copies of the petition, request and extradition documents and this Department will not pose any objection to a request for ample time to evaluate said documents.

2. The formal request for extradition of the United States contains grand jury information and documents obtained through grand jury process covered by strict secrecy rules under United States law. The United States had to secure orders from the concerned District Courts authorizing the United States to disclose certain grand jury information to Philippine government and law enforcement personnel for the purpose of extradition of Mr. Jimenez. Any further disclosure of the said information is not authorized by the United States District Courts. In this particular extradition request the United States Government requested the Philippine Government to prevent unauthorized disclosure of the subject information. This Department's denial of your request is consistent with Article 7 of the RP-US Extradition Treaty which provides that the Philippine Government must represent the interests of the United States in any proceedings arising out of a request for extradition. The Department of Justice under P.D. No. 1069 is the counsel of the foreign governments in all extradition requests.
3. This Department is not in a position to hold in abeyance proceedings in connection with an extradition request. Article 26 of the Vienna Convention on the Law of Treaties, to which we are a party provides that "[E]very treaty in force is binding upon the parties to it and must be performed by them in good faith". Extradition is a tool of criminal law enforcement and to be effective, requests for extradition or surrender of accused or convicted persons must be processed expeditiously.

(pp. 77-78, Rollo.)

Such was the state of affairs when, on August 6, 1999, private respondent filed with the Regional Trial Court of the National Capital Judicial Region a petition against the Secretary of Justice, the Secretary of Foreign Affairs, and the Director of the National Bureau of Investigation, for mandamus (to compel herein petitioner to furnish private respondent the extradition documents, to give him access thereto, and to afford him an opportunity to comment on, or oppose, the extradition request, and thereafter to evaluate the request impartially, fairly and objectively); certiorari (to set aside herein petitioner's letter dated July 13, 1999); and prohibition (to restrain petitioner from considering the extradition request and from filing an

extradition petition in court; and to enjoin the Secretary of Foreign Affairs and the Director of the NBI from performing any act directed to the extradition of private respondent to the United States), with an application for the issuance of a temporary restraining order and a writ of preliminary injunction (pp. 104-105, Rollo).

The aforementioned petition was docketed as Civil Case No. 99-94684 and thereafter raffled to Branch 25 of said regional trial court stationed in Manila which is presided over by the Honorable Ralph C. Lantion.

After due notice to the parties, the case was heard on August 9, 1999. Petitioner, who appeared in his own behalf, moved that he be given ample time to file a memorandum, but the same was denied.

On August 10, 1999, respondent judge issued an order dated the previous day, disposing:

WHEREFORE, this Court hereby Orders the respondents, namely: the Secretary of Justice, the Secretary of Foreign Affairs and the Director of the National Bureau of Investigation, their agents and/or representatives to maintain the status quo by refraining from committing the acts complained of; from conducting further proceedings in connection with the request of the United States Government for the extradition of the petitioner; from filing the corresponding Petition with a Regional Trial court; and from performing any act directed to the extradition of the petitioner to the United States, for a period of twenty (20) days from service on respondents of this Order, pursuant to Section 5, Rule 58 of the 1997 Rules of Court.

The hearing as to whether or not this Court shall issue the preliminary injunction, as agreed upon by the counsels for the parties herein, is set on August 17, 1999 at 9:00 o'clock in the morning. The respondents are, likewise, ordered to file their written comment and/or opposition to the issuance of a Preliminary Injunction on or before said date.

SO ORDERED.

(pp. 110-111, Rollo.)

Forthwith, petitioner initiated the instant proceedings, arguing that:

PUBLIC RESPONDENT ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE TEMPORARY RESTRAINING ORDER BECAUSE:

I.

BY ORDERING HEREIN PETITIONER TO REFRAIN FROM COMMITTING THE ACTS COMPLAINED OF, *I. E.*, TO DESIST FROM REFUSING PRIVATE RESPONDENT ACCESS TO THE OFFICIAL EXTRADITION REQUEST AND DOCUMENTS AND FROM DENYING PRIVATE RESPONDENT AN OPPORTUNITY TO FILE A COMMENT ON, OR OPPOSITION TO, THE REQUEST, THE MAIN PRAYER FOR A WRIT OF MANDAMUS IN THE

PETITION FOR MANDAMUS, CERTIORARI AND PROHIBITION WAS, IN EFFECT, GRANTED SO AS TO CONSTITUTE AN ADJUDICATION ON THE MERITS OF THE MANDAMUS ISSUES;

II.

PETITIONER WAS UNQUALIFIEDLY PREVENTED FROM PERFORMING LEGAL DUTIES UNDER THE EXTRADITION TREATY AND THE PHILIPPINE EXTRADITION LAW;

III.

THE PETITION FOR (MANDAMUS), CERTIORARI AND PROHIBITION IS, ON ITS FACE, FORMALLY AND SUBSTANTIALLY DEFICIENT; AND

IV.

PRIVATE RESPONDENT HAS NO RIGHT *IN ESSE* THAT NEEDS PROTECTION AND ENFORCEMENT, AND WILL NOT SUFFER ANY IRREPARABLE INJURY.

(pp. 19-20, Rollo.)

On August 17, 1999, the Court required private respondent to file his comment. Also issued, as prayed for, was a temporary restraining order (TRO) providing:

NOW, THEREFORE, effective immediately and continuing until further orders from this Court, You, Respondent Judge Ralph C. Lantion, your agents, representatives or any person or persons acting in your place or stead are hereby ORDERED to CEASE and DESIST from enforcing the assailed order dated August 9, 1999 issued by public respondent in Civil Case No. 99-94684.

GIVEN by the Honorable HILARIO G. DAVIDE, JR., Chief Justice, Supreme Court of the Philippines, this 17th day of August 1999.

(pp. 120-121, Rollo.)

The case was heard on oral argument on August 31, 1999, after which the parties, as directed, filed their respective memoranda.

From the pleadings of the opposing parties, both procedural and substantive issues are patent. However, a review of these issues as well as the extensive arguments of both parties, compel us to delineate the focal point raised by the pleadings: During the evaluation stage of the extradition proceedings, is private respondent entitled to the two basic due process rights of notice and hearing? An affirmative answer would necessarily render the proceedings at the trial court, moot and academic (the issues of which are substantially the same as those before us now), while a negative resolution would call for the immediate lifting of the TRO issued by this Court dated August 24, 1999, thus allowing petitioner to fast-track the process leading to the filing of the extradition petition with the proper regional trial court. Corollarily, in the event that private respondent is adjudged entitled to basic due process rights at the evaluation stage of the extradition proceedings, would this entitlement constitute a breach of the legal commitments and obligations of the Philippine Government under the RP-US Extradition Treaty? And assuming that the result would indeed be a