

EN BANC

[G.R. No. 139465, October 17, 2000]

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

RESOLUTION

PUNO, J.:

On January 18, 2000, by a vote of 9-6, we dismissed the petition at bar and ordered the petitioner to furnish private respondent copies of the extradition request and its supporting papers and to grant him a reasonable period within which to file his comment with supporting evidence.^[1]

On February 3, 2000, the petitioner timely filed an Urgent Motion for Reconsideration. He assails the decision on the following grounds:

"The majority decision failed to appreciate the following facts and points of substance and of value which, if considered, would alter the result of the case, thus:

- I. There is a substantial difference between an evaluation process antecedent to the filing of an extradition petition in court and a preliminary investigation.
- II. Absence of notice and hearing during the evaluation process will not result in a denial of fundamental fairness.
- III. In the evaluation process, instituting a notice and hearing requirement satisfies no higher objective.
- IV. The deliberate omission of the notice and hearing requirement in the Philippine Extradition Law is intended to prevent flight.
- V. There is a need to balance the interest between the discretionary powers of government and the rights of an individual.
- VI. The instances cited in the assailed majority decision when the twin rights of notice and hearing may be dispensed with in this case results in a *non sequitur* conclusion.
- VII. Jimenez is not placed in imminent danger of arrest by the Executive Branch necessitating notice and hearing.
- VIII. By instituting a 'proceeding' not contemplated by PD No. 1069, the Supreme Court has encroached upon the constitutional boundaries

separating it from the other two co-equal branches of government.

IX. Bail is not a matter of right in proceedings leading to extradition or in extradition proceedings."^[2]

On March 28, 2000, a 58-page Comment was filed by the private respondent Mark B. Jimenez, opposing petitioner's Urgent Motion for Reconsideration.

On April 5, 2000, petitioner filed an Urgent Motion to Allow Continuation and Maintenance of Action and Filing of Reply. Thereafter, petitioner filed on June 7, 2000 a Manifestation with the attached Note 327/00 from the Embassy of Canada and Note No. 34 from the Security Bureau of the Hongkong SAR Government Secretariat. On August 15, 2000, private respondent filed a Manifestation and Motion for Leave to File Rejoinder in the event that petitioner's April 5, 2000 Motion would be granted. Private respondent also filed on August 18, 2000, a Motion to Expunge from the records petitioner's June 7, 2000 Manifestation with its attached note verbales. Except for the Motion to Allow Continuation and Maintenance of Action, the Court denies these pending motions and hereby resolves petitioner's Urgent Motion for Reconsideration.

The jugular **issue** is whether or not the private respondent is entitled to the due process right to notice and hearing during the evaluation stage of the extradition process.

We **now hold** that private respondent is bereft of the right to notice and hearing during the **evaluation stage** of the extradition process.

First. P.D. No. 1069^[3] which implements the RP-US Extradition Treaty **provides the time** when an extraditee shall be furnished a copy of the petition for extradition as well as its supporting papers, *i.e.*, after the filing of the petition for extradition in the extradition court, *viz*:

"Sec. 6. Issuance of Summons; Temporary Arrest; Hearing; Service of Notices. - (1) Immediately upon receipt of the petition, the presiding judge of the court shall, as soon as practicable, summon the accused to appear and to answer the petition on the day and hour fixed in the order . . . Upon receipt of the answer, or should the accused after having received the summons fail to answer within the time fixed, the presiding judge shall hear the case or set another date for the hearing thereof.

(2) The order and notice as well as a copy of the warrant of arrest, if issued, shall be promptly served each upon the accused and the attorney having charge of the case."

It is of judicial notice that the summons includes the petition for extradition which will be answered by the extraditee.

There is **no provision** in the RP-US Extradition Treaty and in P.D. No. 1069 which gives an extraditee the right to demand from the petitioner Secretary of Justice copies of the extradition request from the US government and its supporting documents and to comment thereon **while the request is still undergoing evaluation**. We cannot write a provision in the treaty giving private respondent that

right where there is none. It is well-settled that a "court cannot alter, amend, or add to a treaty by the insertion of any clause, small or great, or dispense with any of its conditions and requirements or take away any qualification, or integral part of any stipulation, upon any motion of equity, or general convenience, or substantial justice."^[4]

Second. All treaties, including the RP-US Extradition Treaty, **should be interpreted in light of their intent.** Nothing less than the Vienna Convention on the Law of Treaties to which the Philippines is a signatory provides that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context **and in light of its object and purpose.**"^[5] (emphasis supplied) The preambular paragraphs of P.D. No. 1069 define its intent, viz:

"WHEREAS, under the Constitution[,] the Philippines adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations;

WHEREAS, the **suppression of crime** is the concern not only of the state where it is committed but also of any other state to which the criminal may have escaped, because it saps the foundation of social life and is an outrage upon humanity at large, and it is in the interest of civilized communities that crimes should not go unpunished;

WHEREAS, in recognition of this principle the Philippines recently concluded an extradition treaty with the Republic of Indonesia, and intends to conclude similar treaties with other interested countries;

x x x." (emphasis supplied)

It cannot be gainsaid that today, countries like the Philippines forge extradition treaties to arrest the dramatic rise of international and transnational crimes like terrorism and drug trafficking. Extradition treaties provide the assurance that the punishment of these crimes will not be frustrated by the frontiers of territorial sovereignty. Implicit in the treaties should be the unbending commitment that the perpetrators of these crimes will not be coddled by any signatory state.

It ought to follow that the RP-US Extradition Treaty calls for an interpretation that will minimize if not prevent the escape of extraditees from the long arm of the law and expedite their trial. The submission of the private respondent, that as a probable extraditee under the RP-US Extradition Treaty he should be furnished a copy of the US government request for his extradition and its supporting documents even while they are still under evaluation by petitioner Secretary of Justice, does not meet this desideratum. The fear of the petitioner Secretary of Justice that the demanded notice is equivalent to a notice to flee must be deeply rooted on the experience of the executive branch of our government. As it comes from the branch of our government in charge of the faithful execution of our laws, it deserves the careful consideration of this Court. In addition, it cannot be gainsaid that private respondent's demand for **advance notice** can delay the summary process of executive evaluation of the extradition request and its accompanying papers. The

foresight of Justice Oliver Wendell Holmes did not miss this danger. In 1911, he held:

"It is common in extradition cases to attempt to bring to bear all the factitious niceties of a criminal trial at common law. **But it is a waste of time** . . . if there is presented, even in somewhat untechnical form according to our ideas, such reasonable ground to suppose him guilty as to make it proper that he should be tried, **good faith to the demanding government requires his surrender.**"^[6] (emphasis supplied)

We erode no right of an extraditee when we do not allow time to stand still on his prosecution. Justice is best served when done without delay.

Third. An equally compelling factor to consider is the **understanding of the parties** themselves to the RP-US Extradition Treaty as well as the **general interpretation of the issue in question by other countries with similar treaties with the Philippines**. The rule is recognized that while courts have the power to interpret treaties, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is accorded great weight.^[7] The reason for the rule is laid down in ***Santos III v. Northwest Orient Airlines, et al.***,^[8] where we stressed that a treaty is a joint executive-legislative act which enjoys the presumption that "it was first carefully studied and determined to be constitutional before it was adopted and given the force of law in the country."

Our executive department of government, thru the Department of Foreign Affairs (DFA) and the Department of Justice (DOJ), has steadfastly maintained that the RP-US Extradition Treaty and P.D. No. 1069 do not grant the private respondent a right to notice and hearing during the evaluation stage of an extradition process.^[9] **This understanding of the treaty is shared by the US government, the other party to the treaty.**^[10] This interpretation by the two governments cannot be given scant significance. It will be presumptuous for the Court to assume that both governments did not understand the terms of the treaty they concluded.

Yet, this is not all. **Other countries with similar extradition treaties with the Philippines have expressed the same interpretation adopted by the Philippine and US governments.** Canadian^[11] and Hongkong^[12] authorities, thru appropriate note verbales communicated to our Department of Foreign Affairs, stated in unequivocal language that it is not an international practice to afford a potential extraditee with a copy of the extradition papers during the evaluation stage of the extradition process. We cannot disregard such a convergence of views unless it is manifestly erroneous.

Fourth. Private respondent, however, peddles the postulate that he must be afforded the right to notice and hearing as required by our Constitution. He buttresses his position by likening an extradition proceeding to a criminal proceeding and the evaluation stage to a preliminary investigation.

We are not persuaded. An extradition proceeding is *sui generis*. It is **not a criminal proceeding** which will call into operation **all** the rights of an accused as guaranteed by the Bill of Rights. To begin with, **the process of extradition does**

not involve the determination of the guilt or innocence of an accused.^[13]

His guilt or innocence will be adjudged in the court of the state where he will be extradited. Hence, as a rule, constitutional rights that are only relevant to determine the guilt or innocence of an accused cannot be invoked by an extraditee especially by one whose extradition papers are still undergoing evaluation.^[14] As held by the US Supreme Court in ***United States v. Galanis***:

"An extradition proceeding is not a criminal prosecution, and the constitutional safeguards that accompany a criminal trial in this country do not shield an accused from extradition pursuant to a valid treaty."^[15]

There are **other differences** between an extradition proceeding and a criminal proceeding. An extradition proceeding is summary in nature while criminal proceedings involve a full-blown trial.^[16] In contradistinction to a criminal proceeding, the rules of evidence in an extradition proceeding allow admission of evidence under less stringent standards.^[17] In terms of the quantum of evidence to be satisfied, a criminal case requires proof beyond reasonable doubt for conviction^[18] while a fugitive may be ordered extradited "upon showing of the existence of a prima facie case."^[19] Finally, unlike in a criminal case where judgment becomes executory upon being rendered final, in an extradition proceeding, our courts may adjudge an individual extraditable but the President has the final discretion to extradite him.^[20] The United States adheres to a similar practice whereby the Secretary of State exercises wide discretion in balancing the equities of the case and the demands of the nation's foreign relations before making the ultimate decision to extradite.^[21]

As an extradition proceeding is not criminal in character and the evaluation stage in an extradition proceeding is not akin to a preliminary investigation, the due process safeguards in the latter do not necessarily apply to the former. This we hold for the procedural due process required by a given set of circumstances "must begin with a determination of the **precise nature of the government function involved as well as the private interest that has been affected by governmental action.**"^[22] The concept of due process is flexible for "not all situations calling for procedural safeguards call for the same kind of procedure."^[23]

Fifth. Private respondent would also impress upon the Court the urgency of his right to notice and hearing considering the alleged threat to his liberty "which may be more priceless than life."^[24] The supposed threat to private respondent's liberty is perceived to come from several provisions of the RP-US Extradition Treaty and P.D. No. 1069 which allow provisional arrest and temporary detention.

We first deal with provisional arrest. The RP-US Extradition Treaty provides as follows:

"PROVISIONAL ARREST

1. In case of urgency, a Contracting Party may request the provisional arrest of the person sought **pending presentation of the request for extradition.** A request for provisional arrest may be transmitted through