379 Phil. 165

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[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.

D E C I S I O N

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 breach, is there any conflict between private respondent's basic due process rights and the provisions of the RP-US Extradition Treaty?

The issues having transcendental importance, the Court has elected to go directly into the substantive merits of the case, brushing aside peripheral procedural matters which concern the proceedings in Civil Case No. 99-94684, particularly the propriety of the filing of the petition therein, and of the issuance of the TRO of August 17, 1999 by the trial court.

To be sure, the issues call for a review of the extradition procedure. The RP-US Extradition Treaty which was executed only on November 13, 1994, ushered into force the implementing provisions of Presidential Decree No. 1069, also called as the Philippine Extradition Law. Section 2(a) thereof defines extradition as "the removal of an accused from the Philippines with the object of placing him at the disposal of foreign authorities to enable the requesting state or government to hold him in connection with any criminal investigation directed against him or the execution of a penalty imposed on him under the penal or criminal law of the requesting state or government." The portions of the Decree relevant to the instant case which involves a charged and not convicted individual, are abstracted as follows:

The Extradition Request

The request is made by the Foreign Diplomat of the Requesting State, addressed to the Secretary of Foreign Affairs, and shall be accompanied by:

1. The original or an authentic copy of the criminal charge and the warrant of arrest issued by the authority of the Requesting State having jurisdiction over the matter, or some other instruments having equivalent legal force;

2. A recital of the acts for which extradition is requested, with the fullest particulars as to the name and identity of the accused, his whereabouts in the Philippines, if known, the acts or omissions complained of, and the time and place of the commission of these acts;

3. The text of the applicable law or a statement of the contents of said law, and the designation or description of the offense by the law, sufficient for evaluation of the request; and

4. Such other documents or information in support of the request.

(Section 4, Presidential Decree No. 1069.)

Section 5 of the Presidential Decree, which sets forth the duty of the Secretary of Foreign Affairs, pertinently provides:

> . . . (1) Unless it appears to the Secretary of Foreign Affairs that the request fails to meet the requirements of this law and the relevant treaty or convention, he shall forward the request together with the related documents to the Secretary of Justice, who shall immediately designate and authorize an attorney in his office to take charge of the case.

The above provision shows only too clearly that the executive authority given the task of evaluating the sufficiency of the request and the supporting documents is the Secretary of Foreign Affairs. What then is the coverage of this task?

In accordance with Paragraphs 2 and 3, Article 7 of the RP-US Extradition Treaty, the executive authority must ascertain whether or not the request is supported by:

1. Documents, statements, or other types of information which describe the identity and probable location of the person sought;

2. A statement of the facts of the offense and the procedural history of the case;

3. A statement of the provisions of the law describing the essential elements of the offense for which extradition is requested;

4. A statement of the provisions of law describing the punishment for the offense;

5. A statement of the provisions of the law describing any time limit on the prosecution or the execution of punishment for the offense;

6. Documents, statements, or other types of information specified in paragraph 3 or paragraph 4 of said Article, as applicable.

(Paragraph 2, Article 7, Presidential Decree No. 1069.)

7. Such evidence as, according to the law of the Requested State, would provide probable cause for his arrest and committal for trial if the offense had been committed there;

8. A copy of the warrant or order of arrest issued by a judge or other competent authority; and

9. A copy of the charging document.

(Paragraph 3, *ibid*.)

The executive authority (Secretary of Foreign Affairs) must also see to it that the accompanying documents received in support of the request had been certified by the principal diplomatic or consular officer of the Requested State resident in the Requesting State (Embassy Note No. 052 from U. S. Embassy; Embassy Note No. 951309 from the Department of Foreign Affairs).

In this light, Paragraph 3, Article 3 of the Treaty provides that "[e]xtradition shall not be granted if the executive authority of the Requested State determines that the request is politically motivated, or that the offense is a military offense which is not punishable under non-military penal legislation."

The Extradition Petition

Upon a finding made by the Secretary of Foreign Affairs that the extradition request and its supporting documents are sufficient and complete in form and substance, he shall deliver the same to the Secretary of Justice, who shall immediately designate and authorize an attorney in his office to take charge of the case (Paragraph [1], Section 5, P. D. No. 1069). The lawyer designated shall then file a written petition with the proper regional trial court of the province or city, with a prayer that the court take the extradition request under consideration (Paragraph [2], *ibid*.).

The presiding judge of the regional trial court, upon receipt of the petition for extradition, shall, as soon as practicable, issue an order summoning the prospective extraditee to appear and to answer the petition on the day and hour fixed in the

order. The judge may issue a warrant of arrest if it appears that the immediate arrest and temporary detention of the accused will best serve the ends of justice (Paragraph [1], Section 6, *ibid*.), particularly to prevent the flight of the prospective extraditee.

The Extradition Hearing

The Extradition Law does not specifically indicate whether the extradition proceeding is criminal, civil, or a special proceeding. Nevertheless, Paragraph [1], Section 9 thereof provides that in the hearing of the extradition petition, the provisions of the Rules of Court, insofar as practicable and not inconsistent with the summary nature of the proceedings, shall apply. During the hearing, Section 8 of the Decree provides that the attorney having charge of the case may, upon application by the Requesting State, represent the latter throughout the proceedings.

Upon conclusion of the hearing, the court shall render a decision granting the extradition and giving the reasons therefor upon a showing of the existence of a *prima facie* case, or dismiss the petition (Section 10, *ibid*.). Said decision is appealable to the Court of Appeals, whose decision shall be final and immediately executory (Section 12, *ibid*.). The provisions of the Rules of Court governing appeal in criminal cases in the Court of Appeals shall apply in the aforementioned appeal, except for the required 15-day period to file brief (Section 13, *ibid*.).

The trial court determines whether or not the offense mentioned in the petition is extraditable based on the application of the dual criminality rule and other conditions mentioned in Article 2 of the RP-US Extradition Treaty. The trial court also determines whether or not the offense for which extradition is requested is a political one (Paragraph [1], Article 3, RP-US Extradition Treaty).

With the foregoing abstract of the extradition proceedings as backdrop, the following query presents itself: What is the nature of the role of the Department of Justice at the evaluation stage of the extradition proceedings?

A strict observance of the Extradition Law indicates that the only duty of the Secretary of Justice is to file the extradition petition after the request and all the supporting papers are forwarded to him by the Secretary of Foreign Affairs. It is the latter official who is authorized to evaluate the extradition papers, to assure their sufficiency, and under Paragraph [3], Article 3 of the Treaty, to determine whether or not the request is politically motivated, or that the offense is a military offense which is not punishable under non-military penal legislation. *Ipso facto*, as expressly provided in Paragraph [1], Section 5 of the Extradition Law, the Secretary of Justice has the ministerial duty of filing the extradition papers.

However, looking at the factual milieu of the case before us, it would appear that there was failure to abide by the provisions of Presidential Decree No. 1069. For while it is true that the extradition request was delivered to the Department of

Foreign Affairs on June 17, 1999, the following day or less than 24 hours later, the Department of Justice received the request, apparently without the Department of Foreign Affairs discharging its duty of thoroughly evaluating the same and its accompanying documents. The statement of an assistant secretary at the Department of Foreign Affairs that his Department, in this regard, is merely acting as a post office, for which reason he simply forwarded the request to the Department of Justice, indicates the magnitude of the error of the Department of Foreign Affairs in taking lightly its responsibilities. Thereafter, the Department of Justice took it upon itself to determine the completeness of the documents and to evaluate the same to find out whether they comply with the requirements laid down in the Extradition Law and the RP-US Extradition Treaty. Petitioner ratiocinates in this connection that although the Department of Justice had no obligation to evaluate the extradition documents, the Department also had to go over them so as to be able to prepare an extradition petition (tsn, August 31, 1999, pp. 24-25). Notably, it was also at this stage where private respondent insisted on the following: (1) the right to be furnished the request and the supporting papers; (2) the right to be heard which consists in having a reasonable period of time to oppose the request, and to present evidence in support of the opposition; and (3) that the evaluation proceedings be held in abeyance pending the filing of private respondent's opposition to the request.

The two Departments seem to have misread the scope of their duties and authority, one abdicating its powers and the other enlarging its commission. The Department of Foreign Affairs, moreover, has, through the Solicitor General, filed a manifestation that it is adopting the instant petition as its own, indirectly conveying the message that if it were to evaluate the extradition request, it would not allow private respondent to participate in the process of evaluation.

Plainly then, the record cannot support the presumption of regularity that the Department of Foreign Affairs thoroughly reviewed the extradition request and supporting documents and that it arrived at a well-founded judgment that the request and its annexed documents satisfy the requirements of law. The Secretary of Justice, eminent as he is in the field of law, could not privately review the papers all by himself. He had to officially constitute a panel of attorneys. How then could the DFA Secretary or his undersecretary, in less than one day, make the more authoritative determination?

The evaluation process, just like the extradition proceedings proper, belongs to a class by itself. It is *sui generis*. It is not a criminal investigation, but it is also erroneous to say that it is purely an exercise of ministerial functions. At such stage, the executive authority has the power: (a) to make a technical assessment of the completeness and sufficiency of the extradition papers; (b) to outrightly deny the request if on its face and on the face of the supporting documents the crimes indicated are not extraditable; and (c) to make a determination whether or not the request is politically motivated, or that the offense is a military one which is not punishable under non-military penal legislation (tsn, August 31, 1999, pp. 28-29; Article 2 & and Paragraph [3], Article 3, RP-US Extradition Treaty). Hence, said

process may be characterized as an investigative or inquisitorial process in contrast to a proceeding conducted in the exercise of an administrative body's quasi-judicial power.

In administrative law, a quasi-judicial proceeding involves: (a) taking and evaluation of evidence; (b) determining facts based upon the evidence presented; and (c) rendering an order or decision supported by the facts proved (De Leon, Administrative Law: Text and Cases, 1993 ed., p. 198, citing *Morgan vs. United States*, 304 U.S. 1). Inquisitorial power, which is also known as examining or investigatory power, is one of the determinative powers of an administrative body which better enables it to exercise its quasi-judicial authority (*Cruz*, Phil. Administrative Law, 1996 ed., p. 26). This power allows the administrative body to inspect the records and premises, and investigate the activities, of persons or entities coming under its jurisdiction (*Ibid*., p. 27), or to require disclosure of information by means of accounts, records, reports, testimony of witnesses, production of documents, or otherwise (*De Leon, op. cit.,* p. 64).

The power of investigation consists in gathering, organizing, and analyzing evidence, which is a useful aid or tool in an administrative agency's performance of its rule-making or quasi-judicial functions. Notably, investigation is indispensable to prosecution.

In *Ruperto v. Torres* (100 Phil. 1098 [1957], unreported), the Court had occasion to rule on the functions of an investigatory body with the sole power of investigation. It does not exercise judicial functions and its power is limited to investigating the facts and making findings in respect thereto. The Court laid down the test of determining whether an administrative body is exercising judicial functions or merely investigatory functions: Adjudication signifies the exercise of power and authority to adjudicate upon the rights and obligations of the parties before it. Hence, if the only purpose for investigation is to evaluate evidence submitted before it based on the facts and circumstances presented to it, and if the agency is not authorized to make a final pronouncement affecting the parties, then there is an absence of judicial discretion and judgment.

The above description in *Ruperto* applies to an administrative body authorized to evaluate extradition documents. The body has no power to adjudicate in regard to the rights and obligations of both the Requesting State and the prospective extraditee. Its only power is to determine whether the papers comply with the requirements of the law and the treaty and, therefore, sufficient to be the basis of an extradition petition. Such finding is thus merely initial and not final. The body has no power to determine whether or not the extradition should be effected. That is the role of the court. The body's power is limited to an initial finding of whether or not the extradition petition can be filed in court.

It is to be noted, however, that in contrast to ordinary investigations, the evaluation procedure is characterized by certain peculiarities. Primarily, it sets into motion the wheels of the extradition process. Ultimately, it may result in the deprivation of

liberty of the prospective extraditee. This deprivation can be effected at two stages: *First*, the provisional arrest of the prospective extraditee pending the submission of the request. This is so because the Treaty provides that in case of urgency, a contracting party may request the provisional arrest of the person sought pending presentation of the request (Paragraph [1], Article 9, RP-US Extradition Treaty), but he shall be automatically discharged after 60 days if no request is submitted (Paragraph 4). Presidential Decree No. 1069 provides for a shorter period of 20 days after which the arrested person could be discharged (Section 20[d]). Logically, although the Extradition Law is silent on this respect, the provisions only mean that once a request is forwarded to the Requested State, the prospective extraditee may be continuously detained, or if not, subsequently rearrested (Paragraph [5], Article 9, RP-US Extradition Treaty), for he will only be discharged if no request is submitted. Practically, the purpose of this detention is to prevent his possible flight from the Requested State. *Second*, the temporary arrest of the prospective extraditee during the pendency of the extradition petition in court (Section 6, Presidential Decree No. 1069).

Clearly, there is an impending threat to a prospective extraditee's liberty as early as during the evaluation stage. It is not only an imagined threat to his liberty, but a very imminent one.

Because of these possible consequences, we conclude that the evaluation process is akin to an administrative agency conducting an investigative proceeding, the consequences of which are essentially criminal since such technical assessment sets off or commences the procedure for, and ultimately, the deprivation of liberty of a prospective extraditee. As described by petitioner himself, this is a "tool" for criminal law enforcement (p. 78, Rollo). In essence, therefore, the evaluation process partakes of the nature of a criminal investigation. In a number of cases, we had occasion to make available to a respondent in an administrative case or investigation certain constitutional rights that are ordinarily available only in criminal prosecutions. Further, as pointed out by Mr. Justice Mendoza during the oral arguments, there are rights formerly available only at the trial stage that had been advanced to an earlier stage in the proceedings, such as the right to counsel and the right against self-incrimination (tsn, August 31, 1999, p. 135; *Escobedo vs. Illinois,* 378 U.S. 478; *Gideon vs. Wainwright,* 372 U.S. 335; *Miranda vs. Arizona,* 384 U.S. 436).

In *Pascual v. Board of Medical Examiners* (28 SCRA 344 [1969]), we held that the right against self-incrimination under Section 17, Article III of the 1987 Constitution which is ordinarily available only in criminal prosecutions, extends to administrative proceedings which possess a criminal or penal aspect, such as an administrative investigation of a licensed physician who is charged with immorality, which could result in his loss of the privilege to practice medicine if found guilty. The Court, citing the earlier case of *Cabal vs. Kapunan* (6 SCRA 1059 [1962]), pointed out that the revocation of one's license as a medical practitioner, is an even greater deprivation than forfeiture of property.

Cabal vs. Kapunan (*supra*) involved an administrative charge of unexplained wealth against a respondent which was filed under Republic Act No. 1379, or the Anti-Graft Law. Again, we therein ruled that since the investigation may result in forfeiture of property, the administrative proceedings are deemed criminal or penal, and such forfeiture partakes the nature of a penalty. There is also the earlier case of *Almeda, Sr. vs. Perez* (5 SCRA 970 [1962]), where the Court, citing American jurisprudence, laid down the test to determine whether a proceeding is civil or criminal: If the proceeding is under a statute such that if an indictment is presented the forfeiture can be included in the criminal case, such proceeding is criminal in nature, although it may be civil in form; and where it must be gathered from the statute that the action is meant to be criminal in its nature, it cannot be considered as civil. If, however, the proceeding does not involve the conviction of the wrongdoer for the offense charged, the proceeding is civil in nature.

The cases mentioned above refer to an impending threat of deprivation of one's property or property right. No less is this true, but even more so in the case before us, involving as it does the possible deprivation of liberty, which, based on the hierarchy of constitutionally protected rights, is placed second only to life itself and enjoys precedence over property, for while forfeited property can be returned or replaced, the time spent in incarceration is irretrievable and beyond recompense.

By comparison, a favorable action in an extradition request exposes a person to eventual extradition to a foreign country, thus saliently exhibiting the criminal or penal aspect of the process. In this sense, the evaluation procedure is akin to a preliminary investigation since both procedures may have the same result – the arrest and imprisonment of the respondent or the person charged. Similar to the evaluation stage of extradition proceedings, a preliminary investigation, which may result in the filing of an information against the respondent, can possibly lead to his arrest, and to the deprivation of his liberty.

Petitioner's reliance on *Wright vs. Court of Appeals* (235 SCRA 241 [1992]) (p. 8, Petitioner's Memorandum) that the extradition treaty is neither a piece of criminal legislation nor a criminal procedural statute is not well-taken. Wright is not authority for petitioner's conclusion that his preliminary processing is not akin to a preliminary investigation. The characterization of a treaty in Wright was in reference to the applicability of the prohibition against an *ex post facto* law. It had nothing to do with the denial of the right to notice, information, and hearing.

As early as 1884, the United States Supreme Court ruled that "any legal proceeding enforced by public authority, whether sanctioned by age or custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law" (*Hurtado vs. California*, 110 U.S. 516). Compliance with due process requirements cannot be deemed non-compliance with treaty commitments.

The United States and the Philippines share a mutual concern about the

suppression and punishment of crime in their respective jurisdictions. At the same time, both States accord common due process protection to their respective citizens.

The due process clauses in the American and Philippine Constitutions are not only worded in exactly identical language and terminology, but more importantly, they are alike in what their respective Supreme Courts have expounded as the spirit with which the provisions are informed and impressed, the elasticity in their interpretation, their dynamic and resilient character which make them capable of meeting every modern problem, and their having been designed from earliest time to the present to meet the exigencies of an undefined and expanding future. The requirements of due process are interpreted in both the United States and the Philippines as not denying to the law the capacity for progress and improvement. Toward this effect and in order to avoid the confines of a legal straitjacket, the courts instead prefer to have the meaning of the due process clause "gradually ascertained by the process of inclusion and exclusion in the course of the decisions of cases as they arise" (*Twining vs. New Jersey,* 211 U.S. 78). Capsulized, it refers to "the embodiment of the sporting idea of fair play" (*Ermita-Malate Hotel and Motel Owner's Association vs. City Mayor of Manila,* 20 SCRA 849 [1967]). It relates to certain immutable principles of justice which inhere in the very idea of free government (*Holden vs. Hardy,* 169 U.S. 366).

Due process is comprised of two components – substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal (*Cruz*, Constitutional Law, 1993 Ed., pp. 102-106).

True to the mandate of the due process clause, the basic rights of notice and hearing pervade not only in criminal and civil proceedings, but in administrative proceedings as well. Non-observance of these rights will invalidate the proceedings. Individuals are entitled to be notified of any pending case affecting their interests, and upon notice, they may claim the right to appear therein and present their side and to refute the position of the opposing parties (*Cruz*, Phil. Administrative Law, 1996 ed., p. 64).

In a preliminary investigation which is an administrative investigatory proceeding, Section 3, Rule 112 of the Rules of Court guarantees the respondent's basic due process rights, granting him the right to be furnished a copy of the complaint, the affidavits, and other supporting documents, and the right to submit counter-affidavits and other supporting documents within ten days from receipt thereof. Moreover, the respondent shall have the right to examine all other evidence submitted by the complainant.

These twin rights may, however, be considered dispensable in certain instances, such as:

1. In proceedings where there is an urgent need for immediate action, like the summary abatement of a nuisance *per se* (Article 704, Civil Code), the preventive suspension of a public servant facing administrative charges (Section 63, Local Government Code, B. P. Blg. 337), the padlocking of filthy restaurants or theaters showing obscene movies or like establishments which are immediate threats to public health and decency, and the cancellation of a passport of a person sought for criminal prosecution;

2. Where there is tentativeness of administrative action, that is, where the respondent is not precluded from enjoying the right to notice and hearing at a later time without prejudice to the person affected, such as the summary distraint and levy of the property of a delinquent taxpayer, and the replacement of a temporary appointee; and

3. Where the twin rights have previously been offered but the right to exercise them had not been claimed.

Applying the above principles to the case at bar, the query may be asked: Does the evaluation stage of the extradition proceedings fall under any of the described situations mentioned above?

Let us take a brief look at the nature of American extradition proceedings which are quite noteworthy considering that the subject treaty involves the U.S. Government.

American jurisprudence distinguishes between interstate rendition or extradition which is based on the Extradition Clause in the U.S. Constitution (Art. IV, §2 cl 2), and international extradition proceedings. In interstate rendition or extradition, the governor of the asylum state has the duty to deliver the fugitive to the demanding state. The Extradition Clause and the implementing statute are given a liberal construction to carry out their manifest purpose, which is to effect the return as swiftly as possible of persons for trial to the state in which they have been charged with crime (31A *Am Jur* 2d 754-755). In order to achieve extradition of an alleged fugitive, the requisition papers or the demand must be in proper form, and all the elements or jurisdictional facts essential to the extradition must appear on the face of the papers, such as the allegation that the person demanded was in the demanding state at the time the offense charged was committed, and that the person demanded is charged with the commission of the crime or that prosecution has been begun in the demanding state before some court or magistrate (35 C.J.S. 406-407). The extradition documents are then filed with the governor of the asylum state, and must contain such papers and documents prescribed by statute, which essentially include a copy of the instrument charging the person demanded with a crime, such as an indictment or an affidavit made before a magistrate. Statutory requirements with respect to said charging instrument or papers are mandatory since said papers are necessary in order to confer jurisdiction on the governor of the asylum state to effect the extradition (*35 C.J.S.* 408-410). ***A statutory***

provision requiring duplicate copies of the indictment, information, affidavit, or judgment of conviction or sentence and other instruments accompanying the demand or requisitions be furnished and delivered to the fugitive or his attorney is directory. However, the right being such a basic one has been held to be a right mandatory on demand (*Ibid*., p. 410, citing Ex parte Moore, 256 S.W. 2d 103, 158 Tex. Cr. 407 and *Ex parte Tucker,* Cr., 324, S.W.2d 853).

In international proceedings, extradition treaties generally provide for the presentation to the executive authority of the Requested State of a requisition or demand for the return of the alleged offender, and the designation of the particular officer having authority to act in behalf of the demanding nation (31A *Am Jur* 2d 815).

In petitioner's memorandum filed on September 15, 1999, he attached thereto a letter dated September 13, 1999 from the Criminal Division of the U.S. Department of Justice, summarizing the U.S. extradition procedures and principles, which are basically governed by a combination of treaties (with special reference to the RP-US Extradition Treaty), federal statutes, and judicial decisions, to wit:

1. All requests for extradition are transmitted through the diplomatic channel. In urgent cases, requests for the provisional arrest of an individual may be made directly by the Philippine Department of Justice to the U.S. Department of Justice, and *vice-versa.* In the event of a provisional arrest, a formal request for extradition is transmitted subsequently through the diplomatic channel.

2. The Department of State forwards the incoming Philippine extradition request to the Department of Justice. Before doing so, the Department of State prepares a declaration confirming that a formal request has been made, that the treaty is in full force and effect, that under Article 17 thereof the parties provide reciprocal legal representation in extradition proceedings, that the offenses are covered as extraditable offenses under Article 2 thereof, and that the documents have been authenticated in accordance with the federal statute that ensures admissibility at any subsequent extradition hearing.

3. A judge or magistrate judge is authorized to issue a warrant for the arrest of the prospective extraditee (18 U.S.C. §3184). Said judge or magistrate is authorized to hold a hearing to consider the evidence offered in support of the extradition request (*Ibid*.)

4. At the hearing, the court must determine whether the person arrested is extraditable to the foreign country. The court must also determine that (a) it has jurisdiction over the defendant and jurisdiction to conduct the hearing; (b) the defendant is being

sought for offenses for which the applicable treaty permits extradition; and (c) there is probable cause to believe that the defendant is the person sought and that he committed the offenses charged (*Ibid*.)

5. The judge or magistrate judge is vested with jurisdiction to certify extraditability after having received a "complaint made under oath, charging any person found within his jurisdiction" with having committed any of the crimes provided for by the governing treaty in the country requesting extradition (*Ibid*.) [In this regard, it is noted that a long line of American decisions pronounce that international extradition proceedings partake of the character of a preliminary examination before a committing magistrate, rather than a trial of the guilt or innocence of the alleged fugitive (31A *Am Jur* 2d 826).]

6. If the court decides that the elements necessary for extradition are present, it incorporates its determinations in factual findings and conclusions of law and certifies the person's extraditability. The court then forwards this certification of extraditability to the Department of State for disposition by the Secretary of State. The ultimate decision whether to surrender an individual rests with the Secretary of State (18 U.S.C. §3186).

7. The subject of an extradition request may not litigate questions concerning the motives of the requesting government in seeking his extradition. However, a person facing extradition may present whatever information he deems relevant to the Secretary of State, who makes the final determination whether to surrender an individual to the foreign government concerned.

From the foregoing, it may be observed that in the United States, extradition begins and ends with one entity – the Department of State – which has the power to evaluate the request and the extradition documents in the beginning, and, in the person of the Secretary of State, the power to act or not to act on the court's determination of extraditability. In the Philippine setting, it is the Department of Foreign Affairs which should make the initial evaluation of the request, and having satisfied itself on the points earlier mentioned (see pp. 10-12), then forwards the request to the Department of Justice for the preparation and filing of the petition for extradition. Sadly, however, the Department of Foreign Affairs, in the instant case, perfunctorily turned over the request to the Department of Justice which has taken over the task of evaluating the request as well as thereafter, if so warranted, preparing, filing, and prosecuting the petition for extradition.

Private respondent asks what prejudice will be caused to the U.S. Government should the person sought to be extradited be given due process rights by the Philippines in the evaluation stage. He emphasizes that petitioner's primary concern

is the possible delay in the evaluation process.

We agree with private respondent's citation of an American Supreme Court ruling:

> The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause, in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.
>
> (*Stanley vs. Illinois*, 404 U.S. 645, 656)
>
> The United States, no doubt, shares the same interest as the Philippine Government that no right – that of liberty – secured not only by the Bills of Rights of the Philippines Constitution but of the United States as well, is sacrificed at the altar of expediency.
>
> (pp. 40-41, Private Respondent's Memorandum.)

In the Philippine context, this Court's ruling is invoked:

> One of the basic principles of the democratic system is that where the rights of the individual are concerned, the end does not justify the means. It is not enough that there be a valid objective; it is also necessary that the means employed to pursue it be in keeping with the Constitution. Mere expediency will not excuse constitutional shortcuts. There is no question that not even the strongest moral conviction or the most urgent public need, subject only to a few notable exceptions, will excuse the bypassing of an individual's rights. It is no exaggeration to say that a person invoking a right guaranteed under Article III of the Constitution is a majority of one even as against the rest of the nation who would deny him that right (*Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform,* 175 SCRA 343, 375-376 [1989].

There can be no dispute over petitioner's argument that extradition is a tool of criminal law enforcement. To be effective, requests for extradition or the surrender of accused or convicted persons must be processed expeditiously. Nevertheless, accelerated or fast-tracked proceedings and adherence to fair procedures are, however, not always incompatible. They do not always clash in discord. Summary does not mean precipitous haste. It does not carry a disregard of the basic principles inherent in "ordered liberty."

Is there really an urgent need for immediate action at the evaluation stage? At that

point, there is no extraditee yet in the strict sense of the word. Extradition may or may not occur. In interstate extradition, the governor of the asylum state may not, in the absence of mandatory statute, be compelled to act favorably (37 C.J.S. 387) since after a close evaluation of the extradition papers, he may hold that federal and statutory requirements, which are significantly jurisdictional, have not been met (31 Am Jur 2d 819). Similarly, under an extradition treaty, the executive authority of the requested state has the power to deny the behest from the requesting state. Accordingly, if after a careful examination of the extradition documents the Secretary of Foreign Affairs finds that the request fails to meet the requirements of the law and the treaty, he shall not forward the request to the Department of Justice for the filing of the extradition petition since non-compliance with the aforesaid requirements will not vest our government with jurisdiction to effect the extradition.

In this light, it should be observed that the Department of Justice exerted notable efforts in assuring compliance with the requirements of the law and the treaty since it even informed the U.S. Government of certain problems in the extradition papers (such as those that are in Spanish and without the official English translation, and those that are not properly authenticated). In fact, petitioner even admits that consultation meetings are still supposed to take place between the lawyers in his Department and those from the U.S. Justice Department. With the meticulous nature of the evaluation, which cannot just be completed in an abbreviated period of time due to its intricacies, how then can we say that it is a proceeding that urgently necessitates immediate and prompt action where notice and hearing can be dispensed with?

Worthy of inquiry is the issue of whether or not there is tentativeness of administrative action. Is private respondent precluded from enjoying the right to notice and hearing at a later time *without prejudice to him*? Here lies the peculiarity and deviant characteristic of the evaluation procedure. On one hand, there is yet no extraditee, but ironically on the other, it results in an administrative determination which, if adverse to the person involved, may cause his immediate incarceration. The grant of the request shall lead to the filing of the extradition petition in court. The "accused" (as Section 2[c] of Presidential Decree No. 1069 calls him), faces the threat of arrest, not only after the extradition petition is filed in court, but even during the evaluation proceeding itself by virtue of the provisional arrest allowed under the treaty and the implementing law. The prejudice to the "accused" is thus blatant and manifest.

Plainly, the notice and hearing requirements of administrative due process cannot be dispensed with and shelved aside.

Apart from the due process clause of the Constitution, private respondent likewise invokes Section 7 of Article III which reads:

> Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents

> and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

The above provision guarantees political rights which are available to citizens of the Philippines, namely: (1) the right to information on matters of public concern, and (2) the corollary right of access to official records and documents. The general right guaranteed by said provision is the right to information on matters of public concern. In its implementation, the right of access to official records is likewise conferred. These cognate or related rights are "subject to limitations as may be provided by law" (*Bernas*, The 1987 Phil. Constitution A Reviewer-Primer, 1997 ed., p. 104) and rely on the premise that ultimately it is an informed and critical public opinion which alone can protect the values of democratic government (*Ibid*.).

Petitioner argues that the matters covered by private respondent's letter-request dated July 1, 1999 do not fall under the guarantee of the foregoing provision since the matters contained in the documents requested are not of public concern. On the other hand, private respondent argues that the distinction between matters vested with public interest and matters which are of purely private interest only becomes material when a third person, who is not directly affected by the matters requested, invokes the right to information. However, if the person invoking the right is the one directly affected thereby, his right to information becomes absolute.

The concept of matters of public concern escapes exact definition. Strictly speaking, every act of a public officer in the conduct of the governmental process is a matter of public concern (*Bernas*, The 1987 Constitution of the Republic of the Philippines, 1996 ed., p. 336). This concept embraces a broad spectrum of subjects which the public may want to know, either because these directly affect their lives or simply because such matters arouse the interest of an ordinary citizen (*Legaspi v. Civil Service Commission*, 150 SCRA 530 [1987]). Hence, the real party in interest is the people and any citizen has "standing".

When the individual himself is involved in official government action because said action has a direct bearing on his life, and may either cause him some kind of deprivation or injury, he actually invokes the basic right to be notified under Section 1 of the Bill of Rights and not exactly the right to information on matters of public concern. As to an accused in a criminal proceeding, he invokes Section 14, particularly the right to be informed of the nature and cause of the accusation against him.

The right to information is implemented by the right of access to information within the control of the government (*Bernas*, The 1987 Constitution of the Republic of the Philippines, 1996 ed., p. 337). Such information may be contained in official records, and in documents and papers pertaining to official acts, transactions, or decisions.

In the case at bar, the papers requested by private respondent pertain to official government action from the U. S. Government. No official action from our country has yet been taken. Moreover, the papers have some relation to matters of foreign relations with the U. S. Government. Consequently, if a third party invokes this constitutional provision, stating that the extradition papers are matters of public concern since they may result in the extradition of a Filipino, we are afraid that the balance must be tilted, at such particular time, in favor of the interests necessary for the proper functioning of the government. During the evaluation procedure, no official governmental action of our own government has as yet been done; hence the invocation of the right is premature. Later, and in contrast, records of the extradition hearing would already fall under matters of public concern, because our government by then shall have already made an official decision to grant the extradition request. The extradition of a fellow Filipino would be forthcoming.

We now pass upon the final issue pertinent to the subject matter of the instant controversy: Would private respondent's entitlement to notice and hearing during the evaluation stage of the proceedings constitute a breach of the legal duties of the Philippine Government under the RP-Extradition Treaty? Assuming the answer is in the affirmative, is there really a conflict between the treaty and the due process clause in the Constitution?

First and foremost, let us categorically say that this is not the proper time to pass upon the constitutionality of the provisions of the RP-US Extradition Treaty nor the Extradition Law implementing the same. We limit ourselves only to the effect of the grant of the basic rights of notice and hearing to private respondent on foreign relations.

The rule of *pacta sunt servanda,* one of the oldest and most fundamental maxims of international law, requires the parties to a treaty to keep their agreement therein in good faith. The observance of our country's legal duties under a treaty is also compelled by Section 2, Article II of the Constitution which provides that "[t]he Philippines renounces war as an instrument of national policy, 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." Under the doctrine of incorporation, rules of international law form part of the law of the land and no further legislative action is needed to make such rules applicable in the domestic sphere (*Salonga & Yap*, Public International Law, 1992 ed., p. 12).

The doctrine of incorporation is applied whenever municipal tribunals (or local courts) are confronted with situations in which there appears to be a conflict between a rule of international law and the provisions of the constitution or statute of the local state. Efforts should first be exerted to harmonize them, so as to give effect to both since it is to be presumed that municipal law was enacted with proper regard for the generally accepted principles of international law in observance of the Incorporation Clause in the above-cited constitutional provision (Cruz, Philippine Political Law, 1996 ed., p. 55). In a situation, however, where the conflict is

irreconcilable and a choice has to be made between a rule of international law and municipal law, jurisprudence dictates that municipal law should be upheld by the municipal courts (*Ichong vs. Hernandez,* 101 Phil. 1155 [1957]; *Gonzales vs. Hechanova,* 9 SCRA 230 [1963]; *In re: Garcia,* 2 SCRA 984 [1961]) for the reason that such courts are organs of municipal law and are accordingly bound by it in all circumstances (*Salonga & Yap, op. cit.,* p. 13). The fact that international law has been made part of the law of the land does not pertain to or imply the primacy of international law over national or municipal law in the municipal sphere. The doctrine of incorporation, as applied in most countries, decrees that rules of international law are given equal standing with, but are not superior to, national legislative enactments. Accordingly, the principle lex posterior derogat priori takes effect – a treaty may repeal a statute and a statute may repeal a treaty. In states where the constitution is the highest law of the land, such as the Republic of the Philippines, both statutes and treaties may be invalidated if they are in conflict with the constitution (*Ibid*.).

In the case at bar, is there really a conflict between international law and municipal or national law? *En contrario*, these two components of the law of the land are not pitted against each other. There is no occasion to choose which of the two should be upheld. Instead, we see a void in the provisions of the RP-US Extradition Treaty, as implemented by Presidential Decree No. 1069, as regards the basic due process rights of a prospective extraditee at the evaluation stage of extradition proceedings. From the procedures earlier abstracted, after the filing of the extradition petition and during the judicial determination of the propriety of extradition, the rights of notice and hearing are clearly granted to the prospective extraditee. However, prior thereto, the law is silent as to these rights. Reference to the U.S. extradition procedures also manifests this silence.

Petitioner interprets this silence as unavailability of these rights. Consequently, he describes the evaluation procedure as an "*ex parte* technical assessment" of the sufficiency of the extradition request and the supporting documents.

We disagree.

In the absence of a law or principle of law, we must apply the rules of fair play. An application of the basic twin due process rights of notice and hearing will not go against the treaty or the implementing law. Neither the Treaty nor the Extradition Law precludes these rights from a prospective extraditee. Similarly, American jurisprudence and procedures on extradition pose no proscription. In fact, in interstate extradition proceedings as explained above, the prospective extraditee may even request for copies of the extradition documents from the governor of the asylum state, and if he does, his right to be supplied the same becomes a demandable right (35 *C.J.S.* 410).

Petitioner contends that the United States requested the Philippine Government to prevent unauthorized disclosure of confidential information. Hence, the secrecy surrounding the action of the Department of Justice Panel of Attorneys. The

confidentiality argument is, however, overturned by petitioner's revelation that everything it refuses to make available at this stage would be obtainable during trial. The Department of Justice states that the U.S. District Court concerned has authorized the disclosure of certain grand jury information. If the information is truly confidential, the veil of secrecy cannot be lifted at any stage of the extradition proceedings. Not even during trial.

A libertarian approach is thus called for under the premises.

One will search in vain the RP-US Extradition Treaty, the Extradition Law, as well as American jurisprudence and procedures on extradition, for any prohibition against the conferment of the two basic due process rights of notice and hearing during the evaluation stage of the extradition proceedings. We have to consider similar situations in jurisprudence for an application by analogy.

Earlier, we stated that there are similarities between the evaluation process and a preliminary investigation since both procedures may result in the arrest of the respondent or the prospective extraditee. In the evaluation process, a provisional arrest is even allowed by the Treaty and the Extradition Law (Article 9, RP-US Extradition Treaty; Sec. 20, Presidential Decree No. 1069). Following petitioner's theory, because there is no provision of its availability, does this imply that for a period of time, the privilege of the writ of habeas corpus is suspended, despite Section 15, Article III of the Constitution which states that "[t]he privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it"? Petitioner's theory would also infer that bail is not available during the arrest of the prospective extraditee when the extradition petition has already been filed in court since Presidential Decree No. 1069 does not provide therefor, notwithstanding Section 13, Article III of the Constitution which provides that "[a]ll persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended …" Can petitioner validly argue that since these contraventions are by virtue of a treaty and hence affecting foreign relations, the aforestated guarantees in the Bill of Rights could thus be subservient thereto?

The basic principles of administrative law instruct us that "the essence of due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the actions or ruling complained of (*Mirano vs. NLRC*, 270 SCRA 96 [1997]; *Padilla vs. NLRC*, 273 SCRA 457 [1997]; *PLDT vs. NLRC*, 276 SCRA 1 [1997]; *Helpmate, Inc. vs. NLRC*, 276 SCRA 315 [1997]; *Aquinas School vs. Magnaye*, 278 SCRA 602 [1997]; *Jamer vs. NLRC*, 278 SCRA 632 [1997]). In essence, procedural due process refers to the method or manner by which the law is enforced (*Corona vs. United Harbor Pilots Association of the Phils.*, 283 SCRA 31 [1997]). This Court will not tolerate the least disregard of constitutional guarantees in the enforcement of a law or treaty. Petitioner's fears that the Requesting State may have valid objections to the Requested State's non-

performance of its commitments under the Extradition Treaty are insubstantial and should not be given paramount consideration.

How then do we implement the RP-US Extradition Treaty? Do we limit ourselves to the four corners of Presidential Decree No. 1069?

Of analogous application are the rulings in *Government Service Insurance System vs. Court of Appeals* (201 SCRA 661 [1991]) and *Go vs. National Police Commission* (271 SCRA 447 [1997]) where we ruled that in summary proceedings under Presidential Decree No. 807 (Providing for the Organization of the Civil Service Commission in Accordance with Provisions of the Constitution, Prescribing its Powers and Functions and for Other Purposes), and Presidential Decree No. 971 (Providing Legal Assistance for Members of the Integrated National Police who may be charged for Service-Connected Offenses and Improving the Disciplinary System in the Integrated National Police, Appropriating Funds Therefor and for other purposes), as amended by Presidential Decree No. 1707, although summary dismissals may be effected without the necessity of a formal investigation, the minimum requirements of due process still operate. As held in *GSIS vs. Court of Appeals*:

> ... [I]t is clear to us that what the opening sentence of Section 40 is saying is that an employee may be removed or dismissed even without formal investigation, in certain instances. It is equally clear to us that an employee must be informed of the charges preferred against him, and that the normal way by which the employee is so informed is by furnishing him with a copy of the charges against him. This is a basic procedural requirement that a statute cannot dispense with and still remain consistent with the constitutional provision on due process. The second minimum requirement is that the employee charged with some misfeasance or malfeasance must have a reasonable opportunity to present his side of the matter, that is to say, his defenses against the charges levelled against him and to present evidence in support of his defenses. …
>
> (at p. 671)

Said summary dismissal proceedings are also non-litigious in nature, yet we upheld the due process rights of the respondent.

In the case at bar, private respondent does not only face a clear and present danger of loss of property or employment, but of liberty itself, which may eventually lead to his forcible banishment to a foreign land. The convergence of petitioner's favorable action on the extradition request and the deprivation of private respondent's liberty is easily comprehensible.

We have ruled time and again that this Court's equity jurisdiction, which is aptly described as "justice outside legality," may be availed of only in the absence of, and

never against, statutory law or judicial pronouncements (*Smith Bell & Co., Inc. vs. Court of Appeals,* 267 SCRA 530 [1997]; *David-Chan vs. Court of Appeals,* 268 SCRA 677 [1997]). The constitutional issue in the case at bar does not even call for "justice outside legality," since private respondent's due process rights, although not guaranteed by statute or by treaty, are protected by constitutional guarantees. We would not be true to the organic law of the land if we choose strict construction over guarantees against the deprivation of liberty. That would not be in keeping with the principles of democracy on which our Constitution is premised.

Verily, as one traverses treacherous waters of conflicting and opposing currents of liberty and government authority, he must ever hold the oar of freedom in the stronger arm, lest an errant and wayward course be laid.

WHEREFORE, in view of the foregoing premises, the instant petition is hereby DISMISSED for lack of merit. Petitioner is ordered 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. The incidents in Civil Case No. 99-94684 having been rendered moot and academic by this decision, the same is hereby ordered dismissed.

SO ORDERED.

Davide, Jr., C.J., joins Mr. Justice Puno in his dissent.

Bellosillo, Purisima, Buena, and *De Leon, Jr., JJ.,* concur.

Puno, J., please see dissent.

Vitug, J., see separate opinion.

Kapunan, and *Ynares-Santiago, JJ.,* see separate concurring opinion.

Mendoza, Pardo, and *Gonzaga-Reyes, JJ.,* join dissenting opinion of J. Puno and J. Panganiban.

Panganiban, J., please see dissenting opinion.

Quisumbing, J., with concurring opinion.

DISSENTING OPINION

PUNO, J.:

If the case at bar was strictly a criminal case which involves alone the right of an accused to due process, I would have co-signed the ponencia of our esteemed colleague, Mr. Justice Jose A.R. Melo, without taking half a pause. **But the case at bar does not involve the guilt or innocence of an accused but the interpretation of an extradition treaty where at stake is our government's international obligation to surrender to a foreign state a citizen of its own so he can be tried for an alleged offense committed within that jurisdiction.** The issues are of first impression and the majority opinion dangerously takes us to unknown shoals in constitutional and international laws, hence this dissenting opinion.

Extradition is well-defined concept and is more a problem in international law. It is the "process by which persons charged with or convicted of crime against the law of a State and found in a foreign State are returned by the latter to the former for trial or punishment. It **applies** to those who are merely charged with an offense but have not been brought to trial; to those who have been tried and convicted and have subsequently escaped from custody; and those who have been convicted in absentia. It does **not apply** to persons merely suspected of having committed an offense but against whom no charges has been laid or to a person whose presence is desired as a witness or for obtaining or enforcing a civil judgment."[1] The **definition covers the private respondent** who is charged with two (2) counts of conspiracy to commit offense or to defraud the United States, four (4) counts of attempt to evade or defeat tax, two (2) counts of fraud by wire, radio or television, six (6) counts of false statements or entries and thirty-three (33) counts of election contributions in the name of another. There is an outstanding warrant of arrest against the private respondent issued by the US District Court, southern District of Florida.

A brief review of the history of extradition law will illumine our labor. Possibly the most authoritative commentator on extradition today, M. Cherif Bassiouni, divides the history of extradition into four (4) periods: "(1) ancient times to seventeenth century --- a period revealing almost exclusive concern for political and religious offenders; (2) the eighteenth century and half of the nineteenth century --- a period of treaty-making chiefly concerned with military offenders characterizing the condition of Europe during that period; (3) from 1833 to 1948 --- a period of collective concern in suppressing common criminality; and (4) post-1948 developments which ushered in a greater concern for protecting the human rights of persons and revealed an awareness of the need to have international due process of law regulate international relations."[2]

It is also rewarding to have a good grip on the changing slopes in the landscape of extradition during these different periods. Extradition was first practiced by the Egyptians, Chinese, Chaldeans and Assyro-Babylonians but their basis for allowing extradition was unclear. Sometimes, it was granted due to pacts; at other times, due to plain good will.[3] The **classical commentators** on international law thus

focused their early views on the **nature of the duty** to surrender an extraditee --- whether the duty is legal or moral in character. Grotius and de Vattel led the school of thought that international law imposed a **legal duty** called **civitas maxima** to extradite criminals.[4] In sharp contrast, Puffendorf and Billot led the school of thought that the so-called duty was but an "**imperfect obligation** which could become **enforceable only** by a contract or agreement between states.[5]

Modern nations tilted towards the view of Puffendorf and Billot that under international law there is no duty to extradite in the absence of treaty, whether bilateral or multilateral. Thus, the US Supreme Court in **US v. Rauscher**[6] held: "…. it is **only in modern times** that the nations of the earth have imposed upon themselves the obligation of delivering up these fugitives from justice to the states where their crimes were committed, for trial and punishment. This has been done generally by treaties … Prior to these treaties, and apart from them there was no well-defined obligation on one country to deliver up such fugitives to another; and though such delivery was often made it was upon the principle of comity…"

Then came the long and still ongoing debate on what should be the **subject** of international law. The 20th century saw the dramatic rise and fall of different types and hues of authoritarianism --- the fascism of Italy's Mussolini and Germany's Hitler, the militarism of Japan's Hirohito and the communism of Russia's Stalin, etc. **The sinking of these isms led to the elevation of the rights of the individual against the state.** Indeed, some species of human rights have already been accorded **universal recognition**.[7] Today, the drive to internationalize rights of women and children is also on high gear.[8] The higher rating given to human rights in the hierarchy of values necessarily led to the re-examination of the rightful place of the individual in international law. Given the harshest eye is the moss-covered doctrine that **international law deals only with States and that individuals are not its subject.** For its undesirable corollary is the sub-doctrine that an individual's right in international law is near cipher. Translated in extradition law, the view that once commanded a consensus is that since a fugitive is a mere **object and not a subject** of international law, he is bereft of rights. An extraditee, so it was held, is a mere "object transported from one state to the other as an exercise of the sovereign will of the two states involved."[9] The re-examination consigned this pernicious doctrine to the museum of ideas.[10] The new thinkers of international law then gave a significant shape to the role and rights of the individual in state-concluded treaties and other international agreements. So it was declared by then US Ambassador Philip C. Jessup in audible italics: "A very large part of international affairs and, thus, of the process of international accommodation, concerns the relations between legal persons known as states. This is necessarily so. **But it is no longer novel for the particular interest of the human being to break through the mass of interstate relationship."**[11] The clarion call to re-engineer a new world order whose dominant interest would transcend the parochial confines of national states was not unheeded. Among the world class scholars who joined the search for the elusive ideological underpinnings

of a new world order were Yale professor Myres McDougal and Mr. Justice Florentino Feliciano. In their seminal work, **Law and Minimum World Public Order,** they suggested that the object of the new world order should be "to obtain in particular situations and in the aggregate flow of situations the outcome of a higher degree of conformity with the security goals of preservation, deterrence, restoration, rehabilitation and reconstruction of all societies comprising the world community." [12] **Needless to stress, all these prescient theses accelerated the move to recognize certain rights of the individual in international law.**

We have yet to see the final and irrevocable place of individual rights, especially the rights of an extraditee, in the realm of international law. In careful language, Bassiouni observes that **today**, "institutionalized conflicts between states **are still** rationalized in terms of sovereignty, national interest, and national security, while human interests continue to have **limited**, though growing impact on the decision-making processes which translate national values and goals into specific national and international policy."[13]

I belabor the international law aspect of extradition as the majority opinion hardly gives it a sideglance. It is my humble submission that the first consideration that should guide us in the case at bar is that a bilateral treaty – the RP-US Extradition Treaty – is the subject matter of the litigation. In our constitutional scheme, the making of a treaty belongs to the executive and legislative departments of our government. Between these two departments, **the executive has a greater say in the making of a treaty.** Under Section 21, Article VII of our Constitution, the **President has the sole power** to negotiate treaties and international agreements although to be effective, they must be concurred in by at least two thirds of all the members of the Senate. Section 20 of the same Article empowers the President to contract or guarantee foreign loans with the prior concurrence of the Monetary Board. Section 16 of the same Article gives the President the power to appoint ambassadors, other public ministers and consuls subject to confirmation by the Commission on Appointments. In addition, the President has the power to deport undesirable aliens. **The concentration of these powers in the person of the President is not without a compelling consideration.** The conduct of **foreign relations** is full of complexities and consequences, sometimes with life and death significance to the nation especially in times of war. **It can only be entrusted to that department of government which can act on the basis of the best available information and can decide with decisiveness.** Beyond debate, the President is the single most powerful official in our land for Section 1 of Article VII provides that "the executive power shall be vested in the President of the Philippines," whereas Section 1 of Article VI states that "the legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives x x x except to the extent reserved to the people by the provision on initiative and referendum," while Section 1 of article VIII provides that "judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law." **Thus, we can see that executive power is vested in the president alone whereas**

legislative and judicial powers are shared and scattered. It is also the president who possesses the most comprehensive and the most confidential information about foreign countries for our diplomatic and consular officials regularly brief him on meaningful events all over the world. He has also unlimited access to ultra-sensitive military intelligence data.[14] In fine, the presidential role in a foreign affairs is dominant and the **President is traditionally accorded a wider degree of discretion in the conduct of foreign affairs.** The regularity, nay, validity of his actions are adjudged under **less stringent standards,** lest their judicial repudiation lead to breach of an international obligation, rupture of state relations, forfeiture of confidence, national embarrassment and a plethora of other problems with equally undesirable consequences.

These are some of the **dominant policy considerations** in international law that the Court must balance against the claim of the private respondent that he has a right to be given the extradition documents against him and to comment thereon even while they are still at the **evaluation stage** by the petitioner **Secretary of Justice, an alter ego of the President.** The delicate questions of **what constitutional rights** and to what **degree** they can be claimed by an extraditee do not admit of easy answers and have resulted in **discrete approaches** the world over.[15] On one end of the pole is the more **liberal** European approach. The European Court of Human Rights embraces the view that an extraditee is entitled to the benefit of **all** relevant provisions of the European Convention for the Protection of Human rights and Fundamental Freedoms. It has held that "x x x in so far as a measure of the extradition has consequences adversely affecting the enjoyment of a convention right, it may, assuming that the consequences are not too remote, attract the obligations of a contracting State under the relevant convention guarantee."[16] At the other end of the pole is the **more cautious approach** of the various courts of Appeal in the United States. These courts have been **more conservative** in light of the principle of separation of powers and their faith in the presumptive validity of executive decisions. By and large, they adhere to the **rule of non-inquiry** under which the **extraditing court refuses** to examine the requesting country's criminal justice system or consider allegations that the extraditee will be mistreated or denied a fair trial in that country.[17]

The case at bar, I respectfully submit, **does not involve an irreconcilable conflict** between the RP-US Extradition Treaty and our Constitution where we have to choose one over the other. Rather, it calls for a **harmonization** between said treaty and our Constitution. To achieve this desirable objective, the Court **should consider whether the constitutional rights invoked by the private respondent have truly been violated and even assuming so, whether he will be denied fundamental fairness. It is only when their violation will destroy the respondent's right to fundamental fairness that his constitutional claims should be given primacy.**

Given this **balancing approach,** it is my humble submission that considering all the facts and facets of the case, **the private respondent has not proved**

entitlement to the right he is claiming. The **majority holds** that the Constitution, the RP-US extradition treaty and P.D. No. 1069 **do not prohibit respondent's claim, hence, it should be allowed.** This is too simplistic an approach. **Rights do not necessarily arise from a vacuum.** Silence of the law can even mean an implied denial of a right. Also, constitutional litigations do not always involve a clear cut choice between right and wrong. Sometimes, they involve a difficult choice between right against right. In these situations, there is need to balance the contending rights and primacy is given to the right that will serve the interest of the nation at that particular time. In such instances, the **less compelling right is subjected to soft restraint** but without smothering its essence. Proceeding from this premise of **relativism of rights,** I venture the view that even assuming arguendo respondent's weak claim, still, **the degree of denial of private respondent's rights to due process and to information is too slight to warrant the interposition of judicial power.** As admitted in the ponencia itself, an extradition proceeding is **sui generis.** It is, thus, futile to determine what it is. **What is certain** is that it is **not a criminal proceeding** where there is an accused who can claim the entire array of rights guaranteed by the Bill of Rights. Let it be stressed that **in an extradition proceeding, there is no accused and the guilt or innocence of the extraditee will not be passed upon by our executive officials nor by the extradition judge.** Hence, constitutional rights that are only relevant to determine the guilt or innocence of an accused cannot be invoked by an extraditee. Indeed, an extradition proceeding is **summary in nature** which is untrue of criminal proceedings.[18] Even the **rules of evidence are different** in an extradition proceeding. Admission of evidence is less stringent, again because the guilt of the extraditee is not under litigation.[19] **It is not only the quality but even the quantum of evidence in extradition proceeding is different.** In a criminal case, an accused can only be convicted by **proof beyond reasonable doubt.**[20] In an extradition proceeding, an extraditee can be ordered extradited "upon showing of the existence of a **prima facie** case." [21] If more need be said, the **nature** of an extradition decision is different from a judicial decision whose finality cannot be changed by executive fiat. Our courts[22] may hold an individual extraditable but the **ultimate decision** to extradite the individual lies in the hands of the Executive. Section 3, Article 3 of the RP-US Extradition Treaty specifically provides that "extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated, or that the offense is a military offense which is not punishable under non-military penal legislation." In the United States, the Secretary of State exercises this ultimate power and is conceded considerable discretion. He balances the equities of the case and the demands of the nation's foreign relations. [23] In sum, he is not straitjacketed by strict legal considerations like an ordinary court.

The **type of issue** litigated in extradition proceedings which does not touch on the guilt or innocence of the extraditee, the **limited nature of the extradition proceeding,** the **availability of adequate remedies** in favor of the extraditee,

and the **traditional leeway given to the Executive** in the conduct of foreign affairs have compelled courts to put a **high threshold** before considering claims of individuals that enforcement of an extradition treaty will violate their constitutional rights. Exemplifying such approach is the **Supreme Court of Canada** which has adopted a **highly deferential standard that emphasizes international comity and the executive's experience in international matters.**[24] It continues to deny Canada's charter protection to **extraditees unless the violation can be considered shocking to the conscience.**

In the case, at bar and with due respect, the ponencia inflates with too much significance the **threat to liberty of the private respondent** to prop us its thesis that his constitutional rights to due process and access to information must immediately be vindicated. Allegedly, respondent Jimenez stands in **danger of provisional arrest,** hence, the need for him to be immediately furnished copies of documents accompanying the request for his extradition. **Respondent's fear of provisional arrest is not real.** It is a self-imagined fear for the realities on the ground show that the United States authorities have not manifested any desire to request for his arrest. On the contrary, they filed the extradition request through the regular channel and, even with the pendency of the case at bar, they have not moved for respondent's arrest on the ground of probable delay in the proceedings. **To be sure, the issue of whether respondent Jimenez will be provisionally arrested is now moot.** Under Section 1 of Article 9 of the RP-US Extradition Treaty, in relation to Section 20(a) of PD No. 1069, the general principle is enunciated that a request for provisional arrest must be made **pending receipt of the request for extradition.** By filing the request for extradition, the US authorities have implicitly decided not to move for respondent's provisional arrest. But more important, a **request for respondent's arrest does not mean he will be the victim of an arbitrary arrest. He will be given due process before he can be arrested.** Article 9 of the treaty provides:

"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 the diplomatic channel or directly between the Philippine Department of Justice and the United States Department of Justice.
>
> "2. The application for provisional arrest shall contain:
>
> "a) a description of the person sought;
> "b) the location of the person sought, if known;
> "c) a brief statement of the facts of the case, including, if possible, the time and location of the offense;
> "d) a description of the laws violated;
> "e) a statement of the existence of a warrant of arrest or finding of guilt or judgment of conviction against the person sought;

and

"f) a statement that a request for extradition for the person sought will follow.

"3. The Requesting State shall be notified without delay of the disposition of its application and the reasons for any denial.

"4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 7."

In relation to the above, Section 20 of P.D. No. 1069 provides:

"Sec. 20. *Provisional Arrest*.- (a) In case of urgency, the requesting state may, pursuant to the relevant treaty or convention and while the same remains in force, request for the provisional arrest of the accused, pending receipt of the request for extradition made in accordance with Section 4 of this Decree.

"(b) A request for provisional arrest shall be sent to the Director of the National Bureau of Investigation, Manila, either through the diplomatic channels or direct by post or telegraph.

"(c) **The Director of the National Bureau of Investigation or any official acting on his behalf shall upon receipt of the request immediately secure a warrant for the provisional arrest of the accused from the presiding judge of the Court of first Instance of the province or city having jurisdiction of the place, who shall issue the warrant for the provisional arrest of the accused.** The Director of the National Bureau of Investigation through the Secretary of Foreign Affairs shall inform the requesting state of the result of its request.

"(d) If within a period of 20 days after the provisional arrest, the Secretary of Foreign Affairs has not received the request for extradition and the documents mentioned in Section 4 of this Decree, the accused shall be released from custody."

The due process protection of the private respondent against arbitrary arrest is written in cyrillic letters in these two (2) related provisions. It is self-evident under these provisions that a request for provisional arrest does not mean it will be granted **ipso facto.** The request must comply with certain requirements. It must be based on an "urgent" factor. This is subject to verification and evaluation by our executive authorities. The request can be denied if not based on a real exigency or if the supporting documents are insufficient. The protection of the respondent against arbitrary provisional arrest **does not stop on the**

administrative level. For even if the Director of the National Bureau of Investigation agrees with the request for the provisional arrest of the respondent, still he has to apply for a **judicial warrant** from the "presiding judge of the Court of First Instance (now RTC) of the province or city having jurisdiction of the place. x x x." It is a **judge** who will issue a warrant for the provisional arrest of the respondent. The judge has to comply with Section 2, Article Iii of the Constitution which provides that "no x x x warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the xxx persons or things to be seized." **The message that leaps to the eye is that compliance with this requirement precludes any arbitrary arrest.**

In light of all these considerations, I respectfully submit that denying respondent's constitutional claim to be furnished all documents relating to the request for his extradition by the US authorities during their **evaluation stage** will not subvert his right to **fundamental fairness. It should be stressed that this is not a case where the respondent will not be given an opportunity to know the basis of the request for his extradition.** In truth, and contrary to the impression of the majority, **P.D. No. 1069 fixes the specific time** when he will be given the papers constituting the basis for his extradition. The time is when he is summoned by the extradition court and required to answer the petition for extradition. Thus, Section 6 of P.D. No. 1069 provides:

> "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. He may issue a warrant for the immediate arrest of the accused which may be served anywhere within the Philippines if it appears to the presiding judge that the immediate arrest and temporary detention of the accused will best serve the ends of justice. Upon receipt of the 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."

Upon receipt of the summons and the petition, respondent is free to foist all defenses available to him. **Such an opportunity does not deny him fairness which is the essence of due process of law.**

Thus, with due respect, I submit that **the ponencia failed to accord due importance to the international law aspect of an extradition treaty as it unduly stressed its constitutional law dimension.** This goes against the familiar learning that in balancing the clashing interests involved in extradition

treaty, **national interests is more equal than the others.** While lately, humanitarian considerations are being factored in the equation, still the concept of extradition as a national act is the guiding idea. Requesting and granting extradition remains a power and prerogative of the national government of a State. The process still involves relations between international personalities.[25] Needless to state, **a more deferential treatment should be given to national interest than to individual interest.** Our national interest in extraditing persons who have committed crimes in a foreign country are succinctly expressed in the whereas causes of P.D. No. 1069, viz:

> "WHEREAS, the Constitution of 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.** x x x."

The increasing incidence of international and transnational crimes, the development of new technologies of death, and the speed and scale of improvement of communication are factors which have virtually annihilated time and distance. They make more compelling the vindication of our national interest to insure that the punishment of criminals should not be frustrated by the frontiers of territorial sovereignty. This overriding national interest must be upheld as against respondent's weak constitutional claims which in no way amount to denial of fundamental fairness.

At bottom, this case involves the respect that courts should accord to the Executive that concluded the RP-US Extradition Treaty in the conduct of our foreign affairs. As early as 1800, the legendary John Marshall, then a congressman, has opined that the power to extradite pursuant to a treaty rests in the executive branch as part of its power to conduct foreign affairs.[26] Courts have validated this forward-looking opinion in a catena of unbroken cases. They defer to the judgment of the Executive on the necessities of our foreign affairs and on it view of the requirements of international comity. The **deferential attitude** is dictated by the robust reality that of the three great branches of our government, it **is the Executive that is most qualified to guide the ship of the state on the known and unknown continents of foreign relations.** It is also compelled by considerations of the principle of **separation of powers** for the Constitution has clearly allocated the power to conduct our foreign affairs to the Executive. **I respectfully submit that the majority decision has weakened the Executive by allowing nothing less than an unconstitutional headbutt on the power of**

the Executive to conduct our foreign affairs. The majority should be cautious in involving this Court in the conduct of the nation's foreign relations where the inviolable rule dictated by necessity is that the nation should speak with one voice. We should not overlook the reality that courts, by their nature, are ill-equipped to fully comprehend the foreign policy dimensions of a treaty, some of which are hidden in shadows and silhouettes.

I vote to grant the petition.

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[1] Weston, Falk, D'Amato, International Law and World Order, 2nd ed., p. 630 (1990)

[2] International Extradition, United States Law and Practice, 2nd ed., p. 7 (1987)

[3] The practice of Extradition from Antiquity to Modern France and the United States: A Brief History, 4 B.C. Int'l. & Comp. L. Rev. 39 (1981)

[4] They were supported by scholars like Heineccuis, Burlamaqui, Rutherford, Schmelzing and Kent. See Shearer, Extradition in International Law, p. 24 (1971)

[5] They were supported by scholars like Voet, Martons, Kuber, Leyser, Lint, Sealfied, Schmaltz, Mittermaier and Heffer. **See** Shearer, supra, p. 24.

[6] 119 US 407, 411, 7 S. Ct. 234, 236, 30 L. ed. 425 (1886)

[7] *See* Universal Declaration of Human Rights (1948), The International Covenant on Economic, Social and Cultural Rights (1966) and The International Covenant on Civil and Political Rights (1966)

[8] The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) otherwise known as "Bill of Rights for Women" was adopted by the UN General Assembly in December 1979. As of November 1999, one hundred sixty seven (167) states including the Philippines have ratified or acceded to it. **See** Statement of Angela King, Special Adviser to the Secretary General of the UN on Gender Issues and Advancement of Women, Judicial Colloquium on the Application of International Human Rights Law at the Domestic Level, Vienna, Austria, October 27, 1999.

[9] Blakesly and Lagodny, Finding Harmony Amidst Disagreement Over Extradition, Jurisdiction, The Role of Human Rights and Issues of Extraterritoriality Under International Criminal Law, Vanderbilt Journal of Transnational Law, Vol. 24, No. 1, p. 44 (1991)

[10] **See generally** Kelsen, Principles of International Law, 2nd ed., (1966); Korowicz, The Problem of the International Personality of Individuals, 50 Am. J., Int'l. Law 553 (1966)

[11] The Conquering March of an Idea, Speech before the 72nd Annual Meeting of the American Bar Association, St. Louis, Mo., September 6, 1949.

[12] **See also** R. Falk and S. Mendlovitz, Strategy of World Order, etc. (1966); G. Clark and L. Sohn, World Peace Through World Law (166); Bassiouni, International Extradition in American Practice and World Public Order, 36 Tenn. L. Rev. 1 (1968)

[13] Bassiouni, supra, p. 625.

[14] US v. Curtiss-Wright Expert Corp., 299 US 304, 57 S Ct. 216, 81 L. ed. 255 (1936)

[15] Spencer, The Role of the Charter in Extradition Cases, University of Toronto, L. Rev., vol. 51, pp. 62-63, (Winter, 1993)

[16] Spencer, op cit., citing the decision in Soering, 11 E.H.R.R. 439 (1989)

[17] Semmelman, Federal Courts, the Constitution and the Rule of Non-Inquiry in International Extradition Proceedings, Cornell Law Rev., vol. 76, No. 5, p. 1198 (July 1991)

[18] Section 9, PD No. 1069.

[19] Ibid.

[20] Section 2, Rule 133, Revised Rules of Court.

[21] Section 10, P.D. No. 1069.

[22] Referring to the Regional Trial Courts and the Court of Appeals whose decisions are deemed final and executory. See Section 12, P.D. No. 1069.

[23] Note, Executive Discretion in Extradition, 62 Col. Law Rev., pp. 1314-1329.

[24] Spencer, op cit., citing decided cases.

[25] Weston, Falk and Amato, International Law and World Order, 2nd ed., p. 630 (1990)

[26] Semmelman, op cit., p. 1206.

SEPARATE OPINION

VITUG, J.:

The only real issue before the Court, I would take it, is whether or not private respondent can validly ask for copies of pertinent documents while the application for extradition against him is still undergoing process by the Executive Department.

There is, I agree with the majority, a right of access to such extradition documents conformably with the provisions of Article III, Section 7, of the Philippine Constitution.[1] The constitutional right to free access to information of public concern is circumscribed only by the fact that the desired information is not among the species exempted by law from the operation of the constitutional guaranty and that the exercise of the right conforms with such reasonable conditions as may be prescribed by law.

There is no hornbook rule to determine whether or not an information is of public concern. The term "public concern" eludes exactitude, and it can easily embrace a broad spectrum of matters which the public may want to know either because the subject thereof can affect their lives or simply because it arouses concern.[2]

I am not convinced that there is something so viciously wrong with, as to deny, the request of private respondent to be furnished with copies of the extradition documents.

I add. The constitutional right to due process secures to everyone an opportunity to be heard, presupposing foreknowledge of what he may be up against, and to submit any evidence that he may wish to proffer in an effort to clear himself. This right is two-pronged - substantive and procedural due process - founded, in the first instance, on Constitutional or statutory provisions, and in the second instance, on accepted rules of procedures.[3] Substantive due process looks into the extrinsic and intrinsic validity of the law that figures to interfere with the right of a person to his life, liberty and property. Procedural due process --- the more litigated of the two --- focuses on the rules that are established in order to ensure meaningful adjudication in the enforcement and implementation of the law. Like "public concern," the term due process does not admit of any restrictive definition. Justice Frankfurter has viewed this flexible concept, aptly I believe, as being "… compounded by history, reason, the past course of decisions, and stout confidence

in the democratic faith."[4] The framers of our own Constitution, it would seem, have deliberately intended to make it malleable to the ever-changing milieu of society. Hitherto, it is dynamic and resilient adaptable to every situation calling for its applications that makes it appropriate to accept an enlarged concept of the term as and when there is a possibility that the right of an individual to life, liberty and property might be diffused.[5] Verily, whenever there is an **imminent threat to the life, liberty or property of any person** in any proceeding conducted by or under the auspices of the State, his right to due process of law, when demanded, must not be ignored.

A danger to the liberty of the extraditee, the private respondent, is real. Article 9 of the Extradition Treaty between the Government of the Republic of the Philippines and the Government of the United States of America provides that in case of urgency, a Contracting Party may request the provisional arrest of the person **prior to the presentation of the request for extradition.** I see implicit in this provision that even after the request for extradition is made and before a petition for extradition is filed with the court, the possibility of an arrest being made on the basis of a mere evaluation by the Executive on the request for extradition by the foreign State cannot totally be discounted.

The conclusion reached by the majority, I hasten to add, does not mean that the Executive Department should be impeded in its evaluation of the extradition request. The right of the extraditee to be furnished, upon request, with a copy of the relevant documents and to file his comment thereon is not necessarily anathema to the proceedings duly mandated by the treaty to be made.

I vote to deny the petition.

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[1] Sec 7. The right of the people to information of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

[2] Legaspi vs. Civil Service Commission, 150 SCRA 530; Valmonte vs. Belmonte, Jr., 170 SCRA 256.

[3] Aniag, Jr. vs. Commission on Elections, 237 SCRA 424; Tupas vs. Court of Appeals, 193 SCRA 597.

[4] Abraham, Henry J., Some Basic Guidelines of "Due Process of Law," The Lawyers Review, Vol. IX, 30 April 1995, p.1.

[5] Cruz, Isagani A. Constitutional Law. 1995 Ed. pp. 94-95.

SEPARATE CONCURRING OPINION

KAPUNAN, J.:

I vote to dismiss the petition, both technical and substantial grounds.

The petition in the case at bar raises one and only issue, which is the validity of the Temporary Restraining Order (TRO) issued by respondent Judge Ralph C. Lantion on August 9, 1999 in Civil Case No. 99-94684. The TRO directed respondent in said case to:

> xxx 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 the Regional Trial Court; and from performing any act directed to the extradition of the petitioner to the United States, for a period of twenty days from the service on respondents of this Order, pursuant to Section 5, Rule 58 of the 1997 Rules of Court.[1] (Underscoring ours.)

The petition itself categorically states that "(t)he issue sought to be presented and litigated here is solely-the validity of the TRO."[2]

Notably, there is no allegation in the petition that respondent Judge is without jurisdiction to hear the case below or that he has exceeded his jurisdiction in hearing the same. Nor is there any other act, ruling, order, or decision, apart from the TRO already mentioned, of respondent Judge that is being challenged in the petition before us.

Since, as alleged in the petition, a copy of the TRO was served on respondents below on August 10, 1999, the TRO ceased to be effective on August 30, 1999; consequently, the instant petition has become moot and academic. This Court does not exercise jurisdiction over cases which are moot and academic or those not ripe for judicial consideration.[3]

Assuming that the present case has not become moot and academic, still, it should be dismissed for lack of merit.

The substantive issues raised in this case are: (a) whether a person whose extradition is sought by foreign state has due process rights under Section 2, Article

III of the 1997 Constitution before the Department of Justice as the request for extradition is being evaluated, or whether due process rights maybe invoked only upon the filing of a petition for extradition before a regional trial court; and (b) whether or not private respondent has a right of access to extradition documents under Section 7, Article III of the 1997 Constitution.

Petitioner contends that due process rights such as the right to be informed of the basis of the request for extradition and to have an opportunity to controvert are not provided in the extradition treaty or in P.D 1069 and therefore does not exist in this stage of the proceedings. Further, he argues that the documents sought to be furnished to private respondent only involve private concerns, and not matters of public concern to which the people have a constitutional right to access.

While the evaluation process conducted by the Department of Justice is not exactly a preliminary investigation of criminal cases, it is akin to a preliminary investigation because it involves the basic constitutional rights of the person sought to be extradited. A person ordered extradited is arrested, forcibly taken from his house, separated from his family and delivered to a foreign state. His rights of abode, to privacy, liberty and pursuit of happiness are taken away from him -- a fate as harsh and cruel as a conviction of a criminal offense. For this reason, he is entitled to have access to the evidence against him and the right to controvert them.

While the extradition treaty and P.D. 1069 do not provide for a preliminary investigation, neither does either prohibit it. The right to due process is a universal basic right which is deemed written into our laws and treaties with foreign countries.

Like a preliminary investigation, the evaluation by the Department of Justice of the extradition request and its accompanying documents is to establish probable cause and to secure the innocent against hasty, malicious and oppressive prosecution.

In this connection, it should be stressed that the evaluation procedure of the extradition request and its accompanying documents by the Department of Justice cannot be characterized as a mere "ex-parte technical assessment of the sufficiency" thereof. The function and responsibilities of the Department of Justice in evaluating the extradition papers involve the exercise of judgment. They involve a determination whether the request for extradition conforms fully to the requirements of the extradition treaty and whether the offense is extraditable. These include, among others, whether the offense for which extradition is requested is a political or military offense (Article 3); whether the documents and other informations required under Article 7(2) have been provided (Article 7); and whether the extraditable offense is punishable under the laws of both contracting parties by deprivation of liberty for a period of more than one year (Article 2). Consequently, to arrive at a correct judgment, the parties involved are entitled to be heard if the requirements of due process and equal protection are to be observed.

With respect to petitioner's claim that private respondent has no right to demand access to the documents relating to the request for extradition, suffice it to say, that any document used in a proceeding that would jeopardize a person's constitutional rights is matter of public concern. As Martin Luther King said, "injustice anywhere is a threat to justice everywhere," so any violation of one's rights guaranteed by the Bill of Rights is everybody's concern because they, one way or another, directly or indirectly, affect the rights of life and liberty of all the citizens as a whole.

Due process rights in a preliminary investigation is now an established principle. The respondent has a right of access to all of the evidence. He has the right to submit controverting evidence. The prosecuting official who conducts the preliminary investigation is required to be neutral, objective, and impartial in resolving the issue of probable cause. I see no reason why the same rights may not be accorded a person sought to be extradited at the stage where the Department of Justice evaluates whether a petition for extradition would be filed before a regional trial court. If denied such rights, not only denial of due process rights but of equal protection may be raised.

It is suggested that after a petition for extradition is filed with a regional trial court, the person sought to be extradited may exercise all due process rights. He may then have access to all the records on the basis of which the request for extradition has been made. He may controvert that evidence and raise all defenses he may consider appropriate. That, it is urged, meets the due process requirement.

But why must until the petition for extradition is filed? As succinctly expressed, if the right to notice and hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented[4] Like the filing of an information in a criminal case, the mere filing of a petition for extradition causes immediate impairment of the liberty of the person sought to be extradited and a substantial curtailment of other rights. His arrest may be immediately ordered by the regional trial court. He would be compelled to face an open and public trial. He will be constrained to seek the assistance of counsel and incur other expenses of litigation. The public eye would be directed at him with all the concomitant intrusions to his right to privacy. Where the liberty of a person is at risk, and extradition strikes at the very core of liberty, invocation of due process rights can never be too early.

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[1] Annex "L," petition.

[2] Petition, p. 4.

[3] Edillon vs. Fernandos, 114 SCRA 153 (1982); Pangilinan vs. Zapata, 69 SCRA 334 (1976)

[4] Stanley v. Illinois, 1405 U.S. 645, 647.

CONCURRING OPINION

YNARES-SANTIAGO, J.:

I concur in the *ponencia* of Mr. Justice Jose A.R. Melo with its conceptive analysis of a citizen's right to be given what is due to him. I join in his exposition of this Court's constitutional duty to strike the correct balance between overwhelming Government power and the protection of individual rights where only one person is involved.

However, I am constrained to write this short concurrence if only to pose the question of why there should be any debate at all on a plea for protection of one's liberty which, if granted, will not result in any meaningful impediment of thwarting any state policy and objectives.

I see no reason why respondent Mark Jimenez, or other citizens not as controversial or talked about, should first be exposed to the indignity, expense, and anxiety of a public denunciation in court before he may be informed of what the contracting states in an extradition treaty have against him. There is no question that everything which respondent Jimenez now requests will be given to him during trial. Mr. Jimenez is only petitioning that, at this stage, he should be informed why he may be deported from his own country.

I see no ill effects which would arise if the extradition request and supporting documents are shown to him now, instead of later.

Petitioner Secretary of Justice states that his action on the extradition request and its supporting documents will merely determine whether or not the Philippines is complying with its treaty obligations. He adds that, therefore, the constitutional rights of an accused in all criminal prosecutions are not available to the private respondent.

The July 13, 1999 reply-letter from petitioner states the reasons why he is denying respondent Jimenez's requests. In short, the reasons are:

1. In evaluating the documents, the Department merely determines whether the procedures and requirements under the relevant law and treaty have been complied with by the Requesting Government. The constitutional rights of the accused in all criminal

prosecutions are, therefore, not available.

2. The United States Government has requested the Philippine Government to prevent unauthorized disclosure of certain grand jury information.

3. The petitioner cannot hold in abeyance proceedings in connection with an extradition request. For extradition to be an effective tool of criminal law enforcement, requests for surrender of accused or convicted persons must be processed expeditiously.

I respectfully submit that any apprehensions in the Court arising from a denial of the petition - "breach of an international obligation, rupture of state relations, forfeiture of confidence, national embarrassment, and a plethora of other equally undesirable consequences" - are more illusory than real. Our country is not denying the extradition of a person who must be extradited. Not one provision of the extradition treaty is violated. I cannot imagine the United States taking issue over what, to it, would be a minor concession, perhaps a slight delay, accorded in the name of human rights. On the other hand, the issue is fundamental in the Philippines. A citizen is invoking the protection, in the context of a treaty obligation, of rights expressly guaranteed by the Philippine Constitution.

Until proved to be a valid subject for extradition, a person is presumed innocent or not covered by the sanctions of either criminal law or international treaty. At any stage where a still prospective extraditee only seeks to know so that he can prepare and prove that he should not be extradited, there should be no conflict over the extension to him of constitutional protections guaranteed to aliens and citizens alike.

Petitioner cites as a reason for the denial of respondent’s requests, Article 7 of the Treaty. Article 7 enumerates the required documents and establishes the procedures under which the documents shall be submitted and admitted as evidence. There is no specific provision on how the Secretary of Foreign Affairs should conduct his evaluation. The Secretary of Justice is not even in the picture at this stage. Under petitioner’s theory, silence in the treaty over a citizen’s rights during the evaluation stage is interpreted as deliberate exclusion by the contracting states of the right to know. Silence is interpreted as the exclusion of the right to a preliminary examination or preliminary investigation provided by the laws of either one of the two states.

The right to be informed of charges which may lead to court proceedings and result in a deprivation of liberty is ordinarily routine. It is readily available to one against whom the state’s coercive power has already been focused. I fail to see how silence can be interpreted as exclusion. The treaty is silent because at this stage, the preliminary procedure is still an internal matter. And when a law or treaty is silent, it means a right or privilege may be granted. It is not the other way around.

The second reason alleging the need for secrecy and confidentiality is even less convincing. The explanation of petitioner is self-contradictory. On one hand, petitioner asserts that the United States Government requested the Philippine Government to prevent unauthorized disclosure of certain information. On the other hand, petitioner declares that the United States has already secured orders from concerned District Courts authorizing the disclosure of the same grand jury information to the Philippine Government and its law enforcement personnel.

Official permission has been given. The United States has no cause to complain about the disclosure of information furnished to the Philippines.

Moreover, how can grand jury information and documents be considered confidential if they are going to be introduced as evidence in adversary proceedings before a trial court? The only issue is whether or not Mr. Jimenez should be extradited. His innocence or guilt of any crime will be determined in an American court. It is there where prosecution strategies will be essential. If the Contracting States believed in a total non-divulging of information prior to court hearings, they would have so provided in the extradition treaty. A positive provision making certain rights unavailable cannot be implied from silence.

I cannot believe that the United States and the Philippines with identical constitutional provisions on due process and basic rights should sustain such a myopic view in a situation where the grant of a right would not result in any serious setbacks to criminal law enforcement.

It is obvious that any prospective extraditee wants to know if his identity as the person indicated has been established. Considering the penchant of Asians to adopt American names when in America, the issue of whether or not the prospective extraditee truly is the person charged in the United States becomes a valid question. It is not only identity of the person which is involved. The crimes must also be unmistakably identified and their essential elements clearly stated.

There are other preliminary matters in which respondent is interested. I see nothing in our laws or in the Treaty which prohibits the prospective extraditee from knowing until after the start of trial whether or not the extradition treaty applies to him.

Paraphrasing *Hashim vs. Boncan, 71 Phil. 216; Trocio vs. Manta, 118 SCRA 241 (1941); and Salonga vs. Hon. Paño, 134 SCRA 438 (1985),* the purpose of a preliminary evaluation is to secure an innocent person against hasty, faulty and, therefore, oppressive proceedings; to protect him from an open and extensively publicized accusation of crimes; to spare him the trouble, expense, and anxiety of a public trial; and also to protect the state from useless and expensive trials. Even if the purpose is only to determine whether or not the respondent is a proper subject for extradition, he is nonetheless entitled to the guarantees of fairness and freedom accorded to those charged with ordinary crimes in the Philippines.

The third reason given by petitioner is the avoidance of delay. Petitioner views the

request to be informed as part of undesirable delaying tactics. This is most unfortunate. Any request for extradition must be viewed objectively and impartially without any predisposition to granting it and, therefore, hastening the extradition process.

In the first place, any assistance which the evaluating official may get from the participation of respondent may well point out deficiencies and insufficiencies in the extradition documents. It would incur greater delays if these are discovered only during court trial. On the other hand, if, from respondent's participation, the evaluating official discovers a case of mistaken identity, insufficient pleadings, inadequate complaints, or any ruinous shortcoming, there would be no delays during trial. An unnecessary trial with all its complications would be avoided.

The right to be informed is related to the constitutional right to a speedy trial. The constitutional guarantee extends to the speedy disposition of cases before all quasi-judicial and administrative bodies (*Constitution, Art. III, Sec. 16*). Speedy disposition, however, does not mean the deliberate exclusion of the defendant or respondent from the proceedings. As this Court ruled in *Acebedo vs. Sarmiento, 36 SCRA 247 (1970)*, "the right to a speedy trial, means one free from vexatious, capricious and oppressive delays, its salutary objective being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his guilt (*in this case, his being extradited*) determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose."

The right to be informed and the right to a preliminary hearing are not merely for respondent. They also serve the interests of the State.

In closing, I maintain that the paramount consideration of guaranteeing the constitutional rights of individual respondent override the concerns of petitioner. There should be no hurried or indifferent effort to routinely comply with all requests for extradition. I understand that this is truer in the United States than in other countries. Proposed extraditees are given every legal protection available from the American justice system before they are extradited. We serve under a government of limited powers and inalienable rights. Hence, this concurrence.

DISSENTING OPINION

PANGANIBAN, J.:

With due respect, I dissent.

The main issue before us is whether Private Respondent Mark B. Jimenez is entitled to the due process rights of notice and hearing during the preliminary or evaluation stage of the extradition proceeding against him.

Two Stages in Extradition

There are essentially two stages in extradition proceedings: (1) the preliminary or evaluation stage, whereby the executive authority of the requested state ascertains whether the extradition request is supported by the documents and information required under the Extradition Treaty; and (2) the extradition hearing, whereby the petition for extradition is heard before a court of justice, which determines whether the accused should be extradited.

The instant petition refers only to the first stage. Private respondent claims that he has a right to be notified and to be heard at this early stage. However, even the *ponencia* admits that neither the RP-US Extradition Treaty nor PD 1069 (the Philippine Extradition Law) expressly requires the Philippine government, upon receipt of the request for extradition, to give copies thereof and its supporting documents to the prospective extraditee, much less to give him an opportunity to be heard prior to the filing of the petition in court.

Notably, international extradition proceedings in the United States do not include the grant by the executive authority of notice and hearing to the prospective extraditee at this initial stage. It is the judge or magistrate who is authorized to issue a warrant of arrest and to hold a hearing to consider the evidence submitted in support of the extradition request. In contrast, in interstate rendition, the governor must, upon demand, furnish the fugitive or his attorney copies of the request and its accompanying documents, pursuant to statutory provisions.[1] In the Philippines, there is no similar statutory provision.

Evaluation Stage Essentially Ministerial

The evaluation stage simply involves the ascertainment by the foreign affairs secretary of whether the extradition request is accompanied by the documents stated in paragraphs 2 and 3, Article 7 of the treaty, relating to the identity and the probable location of the fugitive; the facts of the offense and the procedural history of the case; provisions of the law describing the essential elements of the offense charged and the punishment therefor; its prescriptive period; such evidence as would provide probable cause for the arrest and the committal for trial of the fugitive; and copies of the warrant or order of arrest and the charging document. The foreign affairs secretary also sees to it that these accompanying documents have been certified by the principal diplomatic or consular officer of the Philippines in the United States, and that they are in the English language or have English translations. Pursuant to Article 3 of the Treaty, he also determines whether the

request is politically motivated, and whether the offense charged is a military offense not punishable under non-military penal legislation.[2]

Upon a finding of the secretary of foreign affairs that the extradition request and its supporting documents are sufficient and complete in form and substance, he shall deliver the same to the justice secretary, who shall immediately designate and authorize an attorney in his office to take charge of the case. The lawyer designated shall then file a written petition with the proper regional trial court, with a prayer that the court take the extradition request under consideration.[3]

When the Right to Notice and Hearing Becomes Available

According to Private Respondent Jimenez, his right to due process during the preliminary stage emanates from our Constitution, particularly Section 1, Article III thereof, which provides:

> "No person shall be deprived of life, liberty or property without due process of law."

He claims that this right arises immediately, because of the possibility that he may be provisionally arrested pursuant to Article 9 of the RP-US Treaty, which reads:

> "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 the diplomatic channel or directly between the Philippine Department of Justice and the United States Department of Justice.
>
> x x x x x x x x x"

Justice Melo's *ponencia* supports private respondent's contention. It states that there are two occasions wherein the prospective extraditee may be deprived of liberty: (1) in case of a provisional arrest pending the submission of the extradition request and (2) his temporary arrest during the pendency of the extradition petition in court.[4] The second instance is not in issue here, because no petition has yet been filed in court.

However, the above-quoted Article 9 on provisional arrest is not automatically operative at all times, and its enforcement does not depend solely on the discretion of the requested state. From the wordings of the provision itself, there are at least three requisites: (1) there must be an urgency, and (2) there is a corresponding request (3) which must be made prior to the presentation of the request for extradition.

In the instant case, there appears to be no urgency characterizing the nature of the extradition of private respondent. Petitioner does not claim any such urgency. There

is no request from the United States for the provisional arrest of Mark Jimenez either. And the secretary of justice stated during the Oral Argument that he had no intention of applying for the provisional arrest of private respondent.[5] Finally, the formal request for extradition has already been made; therefore, provisional arrest is not likely, as it should really come *before* the extradition request.[6]

Mark Jimenez Not
in Jeopardy of Arrest

Under the outlined facts of this case, there is no open door for the application of Article 9, contrary to the apprehension of private respondent. In other words, there is no actual danger that Jimenez will be provisionally arrested or deprived of his liberty. There is as yet no threat that his rights would be trampled upon, pending the filing in court of the petition for his extradition. Hence, there is no substantial gain to be achieved in requiring the foreign affairs (or justice) secretary to notify and hear him during the *preliminary stage,* which basically involves only the exercise of the ministerial power of checking the sufficiency of the documents attached to the extradition request.

It must be borne in mind that during the preliminary stage, the foreign affairs secretary's determination of whether the offense charged is extraditable or politically motivated is merely *preliminary*. The same issue will be resolved by the trial court.[7] Moreover, it is also the power and the duty of the court, not the executive authority, to determine whether there is sufficient evidence to establish probable cause that the extraditee committed the crimes charged.[8] The sufficiency of the evidence of criminality is to be determined based on the laws of the requested state.[9] Private Respondent Jimenez will, therefore, definitely have his full opportunity before the court, in case an extradition petition will indeed be filed, to be heard on all issues including the sufficiency of the documents supporting the extradition request.[10]

Private respondent insists that the United States may still request his provisional arrest at any time. That is purely speculative. It is elementary that this Court does not declare judgments or grant reliefs based on speculations, surmises or conjectures.

In any event, even granting that the arrest of Jimenez is sought at any time despite the assurance of the justice secretary that no such measure will be undertaken, our local laws and rules of procedure respecting the issuance of a warrant of arrest will govern, there being no specific provision under the Extradition Treaty by which such warrant should issue. Therefore, Jimenez will be entitled to all the rights accorded by the Constitution and the laws to any person whose arrest is being sought.

The right of one state to demand from another the return of an alleged fugitive

from justice and the correlative duty to surrender the fugitive to the demanding country exist only when created by a treaty between the two countries. International law does not require the voluntary surrender of a fugitive to a foreign government, absent any treaty stipulation requiring it.[11] When such a treaty does exist, as between the Philippines and the United States, it must be presumed that the contracting states perform their obligations under it with *uberrimae fidei,* treaty obligations being essentially characterized internationally by comity and mutual respect.

The Need for Respondent Jimenez
To face Charges in the US

One final point. Private respondent also claims that from the time the secretary of foreign affairs gave due course to the request for his extradition, incalculable prejudice has been brought upon him. And because of the moral injury caused, he should be given the opportunity at the earliest possible time to stop his extradition. I believe that any moral injury suffered by private respondent had not been caused by the mere processing of the extradition request. And it will not cease merely by granting him the opportunity to be heard by the executive authority. The concrete charges that he has allegedly committed certain offenses *already exist.* These charges have been filed in the United States and are part of public and official records there. Assuming the existence of moral injury, the only means by which he can restore his good reputation is to prove before the proper judicial authorities in the US that the charges against him are unfounded. Such restoration cannot be accomplished by simply contending that the documents supporting the request for his extradition are insufficient.

Conclusion

In the context of the factual milieu of private respondent, there is really no threat of any deprivation of his liberty at the present stage of the extradition process. Hence, the constitutional right to due process -- particularly the right to be heard -- finds no application. To grant private respondent's request for copies of the extradition documents and for an opportunity to comment thereon will constitute "over-due process" and unnecessarily delay the proceedings.

WHEREFORE, I vote to grant the Petition.

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[1] 35 CJS § 14(1) Extradition 410. See also *ponencia*, p. 25.

[2] See *ponencia*, pp. 11-12.

[3] Ibid.; Section 5, pars. (1) & (2), PD 1069.

[4] *Ponencia*, p. 18.

[5] TSN, p. 76.

[6] *See also* TSN, p. 30.

[7] § 5 (2) & (3) in rel. to §. 10, PD 1069. *See also* last par., p. 13 of **ponencia**.

[8] 18 USCS § 3184, n 58 Criminal Procedure 456; 31A Am Jur 2d § 109 Extradition 828.

[9] 18 USCS § 3184, n 64 Criminal Procedure 458.

[10] See *Wright v. Court of Appeals,* 235 SCRA 341, August 15, 1994.

[11] 31A Am Jur 2d Extradition § 14.

CONCURRING OPINION

QUISUMBING, J.:

As I concur in the result reached by the *ponencia* of Justice Melo, may I just add my modest observations.

The human rights of person, whether citizen or alien, and the rights of the accused guaranteed in our Constitution should take precedence over treaty rights claimed by a contracting state. Stated otherwise, the constitutionally mandated duties of our government to the individual deserve preferential consideration when they collide with its treaty obligations to the government of another state. This is so although we recognize treaties as a source of binding obligations under generally accepted principles of international law incorporated in our Constitution as part of the law of the land.

For this primordial reason, I vote to DENY the petition.

Moreover, considering that the Extradition Treaty between the USA and Philippines appears mute on the specific issue before us, the Court — in the exercise of its judicial power to find and state what the law is — has this rare opportunity of setting a precedent that enhances respect for human rights and strengthens due

process of law.

As both majority and dissenting colleagues in the Court will recognize, American authorities follow two tracks in extradition proceedings: (1) the interstate practice where, pursuant to statute, the state Executive upon demand furnishes the would be extraditee or counsel copies of pertinent documents as well as the request for extradition; and (2) the international practice where the Executive department need not initially grant notice and hearing at all. Rules of reciprocity and comity, however, should not bar us from applying internationally now what appears the more reasonable and humane procedure, that is, the interstate practice among Americans themselves. For in this case the American people should be among the most interested parties.

Truly, what private respondent is asking our Executive department (notice, copies of documents, and the opportunity to protect himself at the earliest time against probable peril) does not, in my view, violate our Extradition Treaty with the USA. His request if granted augurs well for transparency in interstate or intergovernmental relations rather than secrecy which smacks of medieval diplomacy and the inquisition discredited long ago.

That private respondent is a Filipino citizen is not decisive of the issue here, although it is obviously pertinent. Even if he were a resident alien (other than American perhaps), he is, in my view, entitled to our full protection against the hazards of extradition (or deportation, similarly) from the very start. More so because, looking at the facts adduced at the hearing and on the record of this case, the charges against him involve or are co-mingled with, if not rooted in, certain offenses of a political nature or motivation such as the ones involving alleged financial contributions to a major American political party. If so, long established is the principle that extradition could not be utilized for political offenses or politically motivated charges.

There may, of course, be other charges against private respondent in the USA. But then they are, in my view, already tainted there with political color due to the highly charged partisan campaign atmosphere now prevailing. That private respondent’s cases will be exploited as political fodder there is not far-fetched, hence the need here for cautious but comprehensive deliberation on the matter at bar. For, above all, it is not only a Treaty provision we are construing; it is about constitutional and human rights we are most concerned.