

VII. CONCLUSION

All in all, the general rule regarding questions of what economic policies should be implemented, there should always be a strong presumption in favor of liberalization and non-intervention by the government. From this perspective, Central Bank Circular No. 905, therefore, is in order, and the Supreme Court, in the cases of *Pascual* and *Puerto*, has to a considerable extent, supported this proposition. This is not really surprising in view of the decision's firm grounding both on economic principles and the individual's rights to property. To be sure, one cannot discount the possibility of abnormal circumstances, such those involving war or natural disaster, when government intervention would be necessary for the restoration of normalcy. Nevertheless, government intervention should always be the exception to the general rule favoring a free market system. Hence; absent such abnormal circumstances, the lifting of the suspension of the Usury Law would not be justified.

The Mark of Jimenez: On the Rights of a Prospective Extraditee Pending Extradition Proceedings

Archelle F. Lagsub*

INTRODUCTION	119
I. THE CASE: GOVERNMENT OF THE <i>United States v. Purganan</i>	123
A. <i>The Facts Involved</i>	
B. <i>Restating the Issues</i>	
C. <i>The Prior Jimenez Extradition Cases: An Integration</i>	
D. <i>The Court's Decision</i>	
II. PHILIPPINE EXTRADITION: THE LEGAL FRAMEWORK	140
A. <i>The Extradition Proceeding</i>	
B. <i>Philippine Jurisprudence on Extradition</i>	
III. THE CASE IN ANALYSIS	144
A. <i>In the Absence of Express Grant of Powers</i>	
B. <i>In A Class of Its Own</i>	
C. <i>Pacta Sunt Servanda</i>	
CONCLUSION	152

INTRODUCTION

The bedrock of criminal jurisdiction rests on territoriality,¹ that is the authority of the State to exercise jurisdiction with respect to all persons or things within its territory.² Being rooted on territoriality, the assertion and

* '04 J.D., cand., Ateneo de Manila University School of Law. Executive Editor, *Ateneo Law Journal*.

Cite as 48 ATENEO L.J. 119 (2003).

1. IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 301, 303 (5d ed. 1998). See M. C. Bassiouni, *Theories of Jurisdiction and Their Application in Extradition Law and Practice*, 5 CA. W. INTL L. J. 1, 3-34 (1974); C. Blakesley, *A Conceptual Framework for Extradition and Jurisdiction over Extraterritorial Crimes*, UTAH L. REV. 685, 688-701 (1985). See also An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE] arts. 2, 114-123; An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE] art. 11.
2. LOUIS HENKIN, ET AL., *INTERNATIONAL LAW CASES AND MATERIALS* 826 (2d ed. 1987). In the language of *The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116, 136 (1812):

exercise of criminal jurisdiction is thus one of the most zealously guarded aspects of State sovereignty.³ With the increase of transnational and international crime, however, came the evolution of the international community's response through the expanding mechanisms of the international criminal justice system designed to outlaw crime, afford criminal accountability, and strengthen mutual legal assistance amongst States.⁴

The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself.

And in the words of the Philippine Supreme Court:

Nothing is better settled than that the Philippines being independent and sovereign, its authority may be exercised over its entire domain. There is no portion thereof that is beyond its power. Within its limits, its decrees are supreme, its command paramount. Its laws govern therein, and everyone to whom it applies must submit to its term. That is the extent of its jurisdiction, both territorial and personal. Necessarily, likewise, it has to be exclusive. If it were not thus, there is diminution of its sovereignty.

People v. Gozo, 53 SCRA 476, 484 (1973) (citing Reagan v. Commissioner of Internal Revenue, 30 SCRA 968, 973 (1969)).

3. Antonio Cassese, *On the Current Trends Towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law*, 9 E. J. INTL L. 2, 11-12 (1982).
4. Distinct methods employed by States, along with their varying levels of zeal as to criminal prosecutions, have led to the creation of a patchwork system of addressing criminal accountability. This patchwork system is composed of domestic courts, third State courts, truth commissions, *ad hoc* tribunals, and more recently, an international criminal court. STEVEN RATNER & JASON ABRAMS, *ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY* 291 (1997).

For the creation of the international military tribunals as those in Nuremberg and Tokyo, see Charter of the International Military Tribunal for the Trial of the Major War Criminals, Appended to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 82 U.N.T.S. 279 (1945); International Military Tribunal for the Far East, Jan. 19, 1946, amended Apr. 26, 1946, T.I.A.S. No. 1589, 4 BEVANS 20.

As regards contemporary international criminal tribunals in Rwanda and Yugoslavia, see International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International

As part of the international judicial assistance framework, extradition proceedings remains to be an effective, albeit at times controversial, means of bringing fugitives to justice. International extradition is the process "whereby one sovereign surrenders to another sovereign a person sought as an accused criminal or a fugitive offender."⁵ The proceedings generally intrude into the territorial integrity and delimit the sovereign power of the host State within its own territory.⁶ As such, international law recognizes no right of extradition apart from that arising from treaty.⁷ Since the criminal accountability of fugitives hinges mainly upon the willingness of the host State to apprehend and surrender them to the requesting State, jurisdiction over such fugitives and subsequent enforcement of penal laws are effectively accomplished only through such treaties of extradition between the States concerned.⁸ Most of the problems thereby raised by extradition are mainly questions of treaty interpretation.⁹

Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, Between 1 January 1994 and 1 December 1994, S.C. Res. 995, Annex, U.N. SCOR, 49th Sess., U.N. Doc. S/INF/50 (1994); International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, Annex, U.N. Doc. S/25704 (1993).

See also Rome Statute of the International Criminal Court, U.N. Doc A/CONF.183/9 (1998) for the creation of the international criminal court. And for the establishment of the Europol, see Council on the Act on the Establishment of a European Police Office, O.J. (C. 316) 1 (1995).

5. M. C. BASSIOUNI, *INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE* 5 (2d ed. 1987) [hereinafter BASSIOUNI, *INTERNATIONAL EXTRADITION*]. See *Terlinden v. Ames*, 184 U.S. 270, 289 (1902). The Philippine Extradition Law 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 [S]tate 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 [S]tate or government.

Prescribing the Procedure for the Extradition of Persons Who Have Committed Crimes in a Foreign Country, Presidential Decree No. 1069, § 1(a) (1977).

6. *Wright v. CA*, 235 SCRA 341, 344 (1994) (citing L. OPPENHEIM, *INTERNATIONAL LAW: A TREATISE* 362-69 (1912)).
7. *Factor v. Laubenheimer*, 270 U.S. 276 (1933).
8. *Wright*, 239 SCRA at 344. Typically, extradition treaties include the following: (1) list of extraditable offenses; (2) list of non-extraditable offenses, as when an offense is covered by the political offense exception; (3) general procedural

Notwithstanding the significant role played by extradition proceedings in the criminal justice system, still inherent therein is the tension between the demand for a more effective international cooperation in the suppression of crime vis-à-vis the protection of human rights in the process.¹⁰ A balancing of these competing interests is thus *apropos* to pave the way for a criminal process rooted not on mere intuition, politics, or diplomacy alone, but on a clear recognition of the issues and interests involved.

From the two *Secretary of Justice v. Lantion* decisions¹¹ to *Government of the United States v. Purganan*,¹² no Philippine extradition case has remained as contentious as that of Mark Jimenez's.¹³ Events have unfolded since then. Jimenez has left the country after being taken into custody by the agents of the Federal Bureau of Investigation on 26 December 2002.¹⁴ He has been held in a United States (U.S.) federal detention facility in Guam before being flown to Florida for his trial.¹⁵ He has then posted bail in the Florida court¹⁶ and was thereafter placed under house arrest¹⁷ during the continuance of the criminal proceedings against him. In the meantime, he has been unseated as Manila's sixth district representative for failing to comply with the residence

guidelines, including required supporting documentation; and (4) provisional arrest provision, which allows arrest of the accused prior to receipt by the requested State of supporting documentation. See generally, M.C. Bassiouni, *International Extradition: A Summary of the Contemporary American Practice and a Proposed Formula*, 15 WAYNE L. REV. 733, 739-50 (1969).

9. HENKIN, *supra* note 2, at 886.

10. See PRINCIPLES AND PROCEDURE FOR A NEW TRANSNATIONAL CRIMINAL LAW 489-710 (A. Eser & O. Lagodny eds., 1992); M. Shea, *Expanding Judicial Scrutiny of Human Rights in Extradition Cases After Soering*, 17 YALE L. INT'L L. 85 (1992); J. Quigley, *The Rule of Non-Inquiry and the Impact of Human Rights on Extradition Law*, 15 N. C. J. INT'L L. & COM. REG. 401 (1991); C. Van den Wyngaert, *Applying the European Convention on Human Rights to Extradition: Opening Pandora's Box?*, 39 INT'L & COMP. L. Q. 757 (1990).

11. 322 SCRA 160 (2000); 322 SCRA 377 (2000).

12. G.R. No. 148571, Sept. 24, 2002.

13. For a detailed timeline of the extradition case against Mark Jimenez, see M. Cuccio & R. Leyesa, *The Case vs. Jimenez*, PHILIPPINE DAILY INQUIRER, Sept. 25, 2002, at A18.

14. J. Diaz, *Jimenez: I Shall Return*, PHILIPPINE STAR, Dec. 27, 2002, at 1, 4.

15. N. Bordadora & J. Javellana, *U.S. Marshals Jail Jimenez in Guam*, PHILIPPINE DAILY INQUIRER, Dec. 28, 2002, at 1.

16. J. San Juan, *Jimenez Bail Raised to \$600,000*, MANILA TIMES, Feb. 4, 2003, at A3.

17. A. Calica, *MJ Posts Bail But Under House Arrest*, PHILIPPINE STAR, Feb. 2, 2003, at 1.

requirement,¹⁸ and prior to his departure to the United States, he has filed a barrage of charges against former Secretary of Justice Hernando Perez, whom he had earlier accused of extorting from him two million pesos (PhP 2M).¹⁹ In light of Jimenez's extradition, House of Representatives Senior Deputy Minority Leader Constantino Jaraula has likewise authored House Bill No. 5254 which seeks to amend the 25-year old Philippine Extradition Law.²⁰

Despite these subsequent events, however, Jimenez's case is far from being moot and academic. Rather, it is the continuing interplay of politics, legal reasoning, and factual circumstances that manage to shed light and illustrate how the stance of the Supreme Court in the *Purganan* decision can be deemed innovative, yet strictly literal; flawed yet justified at the same time.

I. THE CASE: GOVERNMENT OF THE *United States v. Purganan*

A. *The Facts Involved*

Mark B. Jimenez, also known as Mario Batacan Crespo, has been indicted in the United States District Court for the Southern District of Florida (Florida court) for several charges of conspiracy to defraud, tax evasion, wire fraud, false statements, and illegal campaign contributions.²¹ Pursuant to the existing Extradition Treaty Between the Government of the Philippines and the Government of the United States of America (RP-US Extradition

18. K. Tiongson, *House Electoral Tribunal Unseats Mark Jimenez*, TODAY, March 7, 2003, at 1, 12.

19. J. Cadacio & R. Mercene, *Mark on Rampage, Filing Raps vs. Nani*, TODAY, Dec. 23, 2002, at 1, 10.

20. B. Rosario, *Solons Seek Extradition Law Amendment*, MANILA BULLETIN, Oct. 10, 2002, at 1, 14.

21. Based on the papers submitted by the U.S. Government, Jimenez is charged 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).

Secretary of Justice v. Lantion, 322 SCRA 160, 170 (2000).

Treaty),²² the U.S. Government, through diplomatic channels, sent to the Philippine Government several note verbales accompanied by duly authenticated documents requesting for Jimenez's extradition. Upon receipt of the notes and documents, the Secretary of Foreign Affairs (SFA) then transmitted them to the Secretary of Justice (SOJ) for appropriate action.

Pending evaluation of these extradition documents, Jimenez then requested the SOJ to furnish him with copies of the official extradition request from the U.S. Government and all the other documents attached therewith; and that he be given ample time to comment on the request. The SOJ, however, denied Jimenez's request, to which denial, Jimenez filed a petition for *mandamus* to compel the SOJ, SFA and the NBI Director to furnish him with the extradition documents and to afford him the opportunity to comment on or oppose to the extradition request; as well as an application for the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction. The Manila RTC, Branch 25, issued the assailed TRO, prohibiting the Department of Justice (DOJ) from filing with the RTC a petition for Jimenez's extradition. It is against this backdrop that the first Mark Jimenez extradition case reached the Supreme Court.²³ The Court, by a vote of nine to six, dismissed the SOJ's petition, thereby ordering the SOJ to furnish Jimenez copies of the extradition request and its supporting papers and to grant the latter a reasonable period within which to file a comment and supporting evidence.

Acting on the Motion for Reconsideration filed by the SOJ, the Court in a subsequent resolution, by an identical vote of 9-6, reconsidered and reversed its earlier decision.²⁴ This is the second Mark Jimenez extradition case, where the Court categorically ruled that Jimenez was bereft of the right to notice and hearing during the evaluation stage of the extradition process.

With the finality of this resolution, the U.S. Government, represented by the Philippine DOJ, then filed with the RTC, the appropriate 'Petition for Extradition,' praying for the issuance of an order for Jimenez's immediate

22. Signed on Nov. 13, 1994, and concurred in by the Philippine Senate on Nov. 29, 1995.

23. *Lantion*, 322 SCRA at 160. The 40-page decision was penned by Justice Melo with the concurrence of Justices Bellosillo, Vitug, Kapunan, Quisumbing, Purisima, Buena, Ynares-Santiago, and de Leon Jr. Dissenting were Chief Justice Davide Jr. and Justices Puno, Mendoza, Panganiban, Pardo and Reyes, with Justices Puno and Panganiban writing separate dissents.

24. *Secretary of Justice v. Lantion*, 343 SCRA 377 (2000) [hereinafter *Lantion Resolution*]. Justice Puno penned the resolution which was concurred in by Chief Justice Davide and Justices Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Reyes, and De Leon Jr. Dissenting were Justices Bellosillo, Melo, Vitug, Kapunan, Buena and Santiago, with Justices Melo and Santiago writing separate dissents.

arrest, as provided by Section 6 of the Philippine Extradition Law. Before the RTC could act on the petition, Jimenez filed before it an 'Urgent Manifestation/Ex-Parte Motion' requesting that the application for an arrest warrant be set for hearing, which motion was granted by the RTC. The RTC subsequently directed the issuance of a warrant for Jimenez's arrest while at the same time allowing bail at one million pesos (PhP 1M) in cash for Jimenez's temporary liberty.

B. Restating the Issues

In this petition for *certiorari*, petitioner U.S. Government assailed the two orders issued by RTC Judge Purganan: (a) the Order of May 23, 2001, setting for hearing Jimenez's application for the issuance of the warrant for his arrest and (b) the Order of July 3, 2001, directing the issuance of a warrant while allowing Jimenez provisional liberty upon posting of a cash bond. In essence, petitioner prays for the lifting of the bail order, cancelling of the bond, and taking of Jimenez into legal custody.

The *Purganan* decision, through the *ponencia* of Justice Panganiban, addressed two main substantive issues. First, are prospective extraditees entitled to notice and hearing prior to the issuance of their warrants of arrest? Second, are they entitled to the right of bail and provisional liberty pending extradition proceedings against them?

C. The Prior Jimenez Extradition Cases: An Integration

The *Purganan* decision is but a sequel to the previous *Lantion* rulings of the Court. As these latter cases provide the framework upon which the Court subsequently ruled in *Purganan*, their respective *ratio decidendi* shall hereinafter be discussed.

I. Secretary of Justice v. Lantion²⁵

The first Jimenez extradition case, resolved three issues, to wit:

- (1) Is Jimenez, as prospective extraditee, entitled to the due process rights of notice and hearing during the evaluation stage of the extradition proceedings?
- (2) In the event that Jimenez is adjudged entitled to due process, would this entitlement constitute a breach of the commitments under the extradition treaty?

25. 322 SCRA 160 (2000).

(3) Assuming that there would indeed be a breach, is there a conflict between Jimenez's right to due process and the provisions of the extradition treaty?

As to the first issue, the Court ruled that inasmuch as the evaluation partakes of the nature of a criminal investigation, private respondent's right to notice and hearing come into play. As Justice Melo puts it:

[I]n 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.... *Second*, the temporary arrest of the prospective extraditee during the pendency of the extradition petition in court....

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... 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....

[A] favorable action in an extradition request [also] 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.²⁶

As for the second issue, the Court ruled that compliance with due process requirements cannot be deemed non-compliance with treaty commitments. According to the Court, the fact that Jimenez was granted the right to have access to the extradition documents and to comment or oppose thereon even during the evaluation stage of the proceedings does not necessarily mean that he is being afforded an opportunity to delay and control the proceedings, in violation of the Philippine treaty obligation to extradite him as promptly as possible. Thus, while both the United States and the Philippines share a mutual concern on the suppression and punishment of crimes within their respective jurisdictions, both States also accord common due process protection to their citizens. As emphasized by the Court:

26. *Id.* at 183-85.

[W]here 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.²⁷

Finally, the Court disposed of the third issue by ruling that there really is no conflict between the extradition treaty and the Constitution but rather a void in the provisions of the RP-US Extradition Treaty as regards the basic due process rights of a prospective extraditee at the evaluation stage of extradition proceedings. The Court continued:

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.²⁸

Justice Puno dissented from the majority, stressing that since in an extradition proceeding, there is no accused to speak of nor is there a determination of guilt or innocence, constitutional rights that are only relevant to determine the guilt or innocence of the accused cannot therefore be invoked by the extraditee. And while the courts may hold an extraditee extraditable, the ultimate decision to extradite the individual still lies with the executive. Hence:

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.²⁹

He further noted that Jimenez is not being denied an opportunity to know the basis of the request for his extradition. P.D. 1069 in fact fixes the specific time when the extraditee will be given the papers constituting the basis for his extradition: when he is summoned by the extradition court and required to answer the petition for extradition. Thus, it is only upon his receipt of the summons and the petition for extradition, that Jimenez is thus

27. *Id.* at 192 (citing *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343, 375-76 (1989)).

28. *Id.* at 198.

29. *Id.* at 224 (Puno, J., dissenting).

free to foist all defenses available to him. This opportunity thereby affords him fairness, which is the essence of due process of law.³⁰

Justice Panganiban also dissented, starting with the distinctions in the two different stages of extradition proceedings. As Jimenez's extradition is still in the evaluation stage, Jimenez is not granted, by both extradition treaty and law, the right to due process by demanding that he be given a copy of the extradition documents and be allowed to comment or oppose thereon.

Justice Panganiban further notes the untenability of the majority's apprehension of Jimenez's deprivation of liberty that thereby warrants the grant of due process to him. As provided by both the extradition treaty and the law, there are two possible situations wherein the prospective extraditee may be deprived of liberty: (1) in case of a provisional arrest pending the submission of the extradition request³¹ and (2) his temporary arrest during the pendency of the extradition petition in court.³²

This case does not fall under first instance because urgency plus a corresponding request prior to the presentation of the request for extradition are pre-requisites for the provision to apply. There appears to be no urgency that characterizes the nature of Jimenez's extradition. Neither does the second situation arise since the petition for extradition has yet to be filed in court. As such, there is really no threat to Jimenez's liberty during the preliminary stage to which the constitutional right to due process finds application.³³ To grant his request for copies of the extradition documents and for an opportunity to comment would only constitute "over-due process" which necessarily delays the proceedings.³⁴

2. Secretary of Justice v. Lantion Resolution³⁵

Ruling on the motion for reconsideration filed by the SOJ, the Court in an identical vote of 9-6,³⁶ reversed its earlier decision in the *Lantion* case and conclusively ruled: "We now hold that private respondent is bereft of the right to notice and hearing during the *evaluation stage* of the extradition process."³⁷ In so ruling, the majority adopted a six-tiered approach, with the

30. *Lantion*, 322 SCRA at 228-29 (Puno, J., dissenting) (2000).

31. RP-US Extradition Treaty, art. 9; P.D. No. 1069, § 20.

32. P.D. No. 1069, § 6.

33. *Lantion*, 322 SCRA at 231-34 (Panganiban, J., dissenting).

34. *Id.* at 234-35.

35. 343 SCRA 377 (2000).

36. Three justices, namely, Justices Quisumbing, Reyes, and De Leon, Jr. changed their votes and denied Jimenez the right to notice and hearing during the evaluation stage of the extradition proceeding against him.

37. *Lantion Resolution*, 343 SCRA at 382.

previous dissenting opinions of Justices Puno and Panganiban in the *Lantion* case incorporated into the majority opinion of the *Lantion* resolution, penned by Justice Puno himself.

First, in implementing the RP-US Extradition Treaty, P.D. No. 1069 provides the time when an extraditee shall be furnished with the extradition and other supporting papers, that is, after the filing of the petition for extradition in the extradition court and not during the evaluation stage of the extradition proceedings.³⁸ Nothing in the RP-US Extradition Treaty and P.D. No. 1069 gives the prospective extraditee the right to demand from the SOJ copies of the extradition request and other supporting documents and to comment thereon, pending evaluation of the extradition request. The Court thus sums, "We cannot write a provision in the treaty giving private respondent that right when there is none."³⁹

Second, the Court then proceeded to interpret the treaty in light of its intent,⁴⁰ that is, in line with the summary nature of extradition proceedings *vis-à-vis* the commitment that the suppression and punishment of crimes will not be frustrated by the frontiers of territorial jurisdiction.⁴¹ It thereby follows, according to the *ponencia*, that the RP-US Extradition Treaty calls for an interpretation that will minimize, if not prevent the escape of extraditees and expedite their trial.

Pending evaluation of the extradition request, granting Jimenez the right to be furnished copies of the extradition request and its supporting documents fails to meet the intent of the treaty as it allows Jimenez to delay the summary process of executive evaluation of the extradition request.

38. P.D. No. 1069, § 6.

39. *Lantion Resolution*, 343 SCRA at 383. The Court elaborated that a court "cannot alter, amend, or add to a treaty by the insertion of any clause, small or great, or dispense with any of its conditions and requirements or take away any qualification, or integral part of any stipulation, upon any motion of equity, or general convenience or substantial justice." *The United States v. The Libelants and Claimants of the Schooner Amistad*, 10 L. Ed. 826 (1841) (citing *The Amiable Isabella*, 6 Wheat 1).

40. Basic is the rule that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose." *Vienna Convention on the Law of Treaties*, May 23, 1969, art. 31 (1), 8 I.L.M. 698 [hereinafter *Law of Treaties*].

41. Under the second preambular paragraph of the Philippine Extradition Law: the suppression of the crime is the concern not only of the [S]tate where it is committed but also of any other [S]tate 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 the intent of civilized communities that crimes should not go unpunished.

P.D. No. 1069, Whereas Clause, ¶ 2.

Justice Puno concludes, "[w]e erode no right of an extraditee when we do not allow time to stand still on his prosecution. Justice is best served when done without delay."⁴²

Third, the Court upheld the understanding of the parties themselves to the RP-US Extradition Treaty⁴³ and the general interpretation of the issue in question by other countries with similar treaties with the Philippines⁴⁴ that there is no grant of a right to notice and hearing during the evaluation stage of an extradition process.

Fourth, the Court highlighted the flexibility of the concept of due process since "not all situations calling for procedural safeguards call for the same kind of procedure."⁴⁵ Ascertaining the required procedural due process of a situation begins with the precise nature of the government function involved *vis-à-vis* the private interest affected by such governmental action.⁴⁶ In Jimenez's case, "[a]n extradition proceeding is not criminal in character and the evaluation stage therein is not akin to a preliminary investigation, the due process safeguards in the latter do not necessarily apply to the former."⁴⁷ Adopting Justice Puno's dissent in the *Lantion* case, the majority stressed:

An extradition proceeding is *sui generis*. It is not a criminal proceeding which will call into operation all the rights of an accused as guaranteed by the Bill of Rights. To begin with, the process of extradition does not involve the determination of the guilt or innocence of an accused. His guilt or innocence will

42. *Lantion Resolution*, 343 SCRA at 385 (2000). At this juncture, the Court took the foresight of Justice Oliver Wendell Holmes when he held:

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

Glucksman v. Henkel, 221 U.S. 508, 511 (1911).

43. The Court applied the rule that while the courts have the power to interpret treaties, the meaning given them by the executive branch particularly charged with their negotiation and enforcement is accorded great weight. *Kolovrat v. Oregon*, 366 U.S. 187, 192 (1961). See *Santos III v. Northwest Orient Airlines*, 210 SCRA 256 (1992).

44. The Canadian and Hongkong authorities, for instance, through appropriate note verbales communicated to the DFA, stated in unequivocal terms that it is not an international practice for States to afford potential extraditees the right to notice and hearing during the evaluation stage of the extradition proceedings. *Lantion Resolution*, 343 SCRA at 386.

45. *Cafeteria Restaurants Workers Union v. McElroy*, 367 U.S. 886, 895 (1961).

46. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

47. *Lantion Resolution*, 343 SCRA at 347.

be adjudged in the court of the [S]tate where he will be extradited. Hence, as a rule, constitutional rights that are only relevant to determine the guilt or innocence of the accused cannot be invoked by an extraditee especially by one whose extradition papers are still undergoing evaluation.⁴⁸

The Court made further distinctions between an extradition proceeding and a criminal proceeding:

An extradition proceeding is summary in nature while criminal proceedings, involve a full-blown trial. In contradistinction to a criminal proceeding, the rules of evidence in an extradition proceeding allow admission of evidence under less stringent standards. In terms of quantum of evidence to be satisfied, a criminal case requires proof beyond reasonable doubt for conviction while a fugitive may be ordered extradited "upon showing of the existence of a prima facie case." Finally, unlike in a criminal case where judgment becomes executory upon being rendered final, in an extradition proceeding, our courts may adjudge an individual extraditable but the President has the final discretion to extradite him.⁴⁹

Fifth, the Court denied the urgency of Jimenez's right to notice and hearing as the threat to his liberty is "merely hypothetical,"⁵⁰ and "more imagined than real."⁵¹ As interpreted by the Court, both the RP-US Extradition Treaty⁵² and P.D. No. 1069⁵³ provide that a potential extraditee

48. *Id.* at 386 (2000). As held in *United States v. Galanis*, "[a]n extradition proceeding is not a criminal prosecution, and the constitutional safeguards that accompany a criminal trial... do not shield an accused from extradition pursuant to a valid treaty." 429 F. Supp. 1215 (D. Conn., 1977).

49. *Id.* at 387.

50. *Id.* at 390.

51. *Id.* at 388.

52. The provisional arrest provision of the RP-US Extradition Treaty states:

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.

may be provisionally arrested only pending receipt of the request for extradition. DFA has long received the extradition request and has turned it over to the DOJ; the U.S. Government has not requested for Jimenez's provisional arrest. The threat to his liberty has thereby passed.⁵⁴

The Court further noted that under Section 6 of the Philippine Extradition Law, a warrant of arrest for the temporary detention of the accused pending the extradition hearing may only be issued by the presiding judge of the extradition court upon filing of the petition for extradition. Since the extradition process is still in the evaluation stage, there is thus no threat to Jimenez's liberty as there is no certainty that an extradition petition will be filed in the appropriate extradition court.⁵⁵

Finally, the Court resorted to a balancing of interests approach,⁵⁶ as the case involved the competing interests of the individual's exercise of his basic freedoms as against the government's promotion of fundamental public interest or policy objective.⁵⁷ According to the Court, considering that "the extradition proceeding is only at its evaluation stage, the nature of the right being claimed by the private respondent is nebulous and the degree of prejudice he will allegedly suffer is weak, we accord greater weight to the interests espoused by the government."⁵⁸ The majority, through Justice Puno, however took pains to emphasize that:

In tilting the balance in favor of the interests of the State, the Court stresses that it is not ruling that the private respondent has no right to due process at all throughout the length and breadth of the extrajudicial proceedings. Procedural due process requires a determination of what process is due, when it is due, and the degree of what is due....

[Both the Extradition Treaty and Extradition Law] affords an extraditee sufficient opportunity to meet the evidence against him once the petition is filed in court. The time for the extraditee to know the basis of the request for his extradition is merely moved to the filing in court of the formal petition for extradition. The extraditee's right to know is momentarily

RP-US Extradition Treaty, art. 9 (1),(2) (emphasis supplied).

53. P.D. No. 1069, § 20 provides: "[i]n case of urgency, the requesting [S]tate 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..." (emphasis supplied)

54. *Lantion Resolution*, 343 SCRA at 389.

55. *Id.* at 390.

56. See *Zaldivar v. Sandiganbayan*, 170 SCRA 1 (1989); *Malayan Insurance Co. v. Smith, Bell & Co. (Phil.) Inc.*, 101 SCRA 61 (1980); *Lagunzad v. Vda. De Gonzales*, 92 SCRA 476 (1979); *Republic v. Purisima*, 78 SCRA 470 (1977).

57. *Adiong v. Commission on Elections*, 207 SCRA 712 (1992).

58. *Lantion Resolution*, 343 SCRA at 391.

withheld during the evaluation stage of the extradition process to accommodate the more compelling interest of the State to prevent the escape of potential extraditees.... No less compelling at that stage is the need to be more deferential to the judgment of a co-equal branch of the government, the Executive... over matters involving our foreign relations....

This balance of interests is [nevertheless] not a static but a moving balance which can be adjusted as the extradition process moves from the administrative stage to the judicial stage and to the execution stage depending on factors that will come into play.... [T]he temporary hold on private respondent's privilege of notice and hearing is a soft restraint on his right to due process which will not deprive him of fundamental fairness should he decide to resist the request for his extradition to the United States. There is no denial of due process as long as fundamental fairness is assured a party.⁵⁹

Justice Melo, *ponente* of the first *Lantion* case, dissented in the subsequent *Lantion* resolution, arguing that while there can be excessive layers of appeals and remedies, "the observance of due process can hardly be tagged as excessive" considering that it is either afforded to a citizen or not.⁶⁰ He emphasized that due process during the evaluation stage forms part of administrative due process while the notice and hearing upon filing on the extradition request in court forms part of the judicial process. Invoking *Lao Gi v. Court of Appeals*,⁶¹ he noted that even proceedings not partaking the nature of a criminal action call for the application of an individual's due process rights, if said proceedings are harsh and extraordinary administrative matters affecting the freedom and liberty of the person.

Justice Ynares-Santiago, though previously concurring in the *Lantion* case, dissented in the *Lantion* resolution stating that there is "nothing unreasonable, illegal or repugnant for a man about to be brought to trial to ask for the charges raised against him."⁶² The silence of the extradition treaty as to the potential extraditee's right to due process during the evaluation stage should be interpreted as not expressly prohibiting the grant of such a right, the grant being in keeping with the basic principles of fairness and even-handed justice. Mere silence of the treaty on the matter does not mean it cannot be done.⁶³ She adds that notwithstanding the *sui generis* character of extradition proceedings, still, "[a] person's good name, dignity, reputation, and honor are at stake. In no way should these values be treated simply

59. *Id.* at 392-93.

60. *Id.* at 397 (Melo, J., dissenting).

61. 180 SCRA 756 (1989).

62. *Lantion Resolution*, 343 SCRA at 404 (Ynares-Santiago, J., dissenting).

63. *Id.* at 406.

because proceedings have not yet reached the criminal trial is proper.... [T]he right to some kind of proper notice is fundamental."⁶⁴

D. The Court's Decision⁶⁵

The *Purganan* decision begins with the *ponencia's* discussion of the five postulates of extradition. *One*, extradition is a major instrument for the suppression of crime by facilitating the arrest and the custodial transfer of a fugitive from one State to another.⁶⁶ *Two*, the requesting State will accord due process to the accused.⁶⁷ *Three*, the proceedings are not criminal in nature but "in a class of its own" or *sui generis* in character.⁶⁸ *Four*,

64. *Id.* at 407.

65. *Government of the United States v. Purganan*, G.R. No. 148571, Sept. 24, 2002. Justice Panganiban penned the decision. Nine justices, namely Chief Justice Davide Jr. and Justices Panganiban, Mendoza, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo Sr., and Azcuna, voted for denial of Jimenez's right to notice and hearing prior to the issuance of a warrant of arrest and the cancellation of his posted bail. Justices Bellosillio, Puno, and Quisumbing voted for the remand of the case to the lower court while the three other justices, namely Justices Ynares-Santiago, Vitug, and Sandoval-Gutierrez granted Jimenez's prayer for bail and subsequent provisional liberty.

66. As Shearer comments:

For to the extent that efficient means of detection and the threat of punishment play a significant role in the deterrence of crime within the territorial limits of a State, so the existence of effective extradition arrangements and the consequent certainty of return to the *locus delicti commissi* play a corresponding role in the deterrence of flight abroad in order to escape the consequence of crime.

I. A. SHEARER, *EXTRADITION IN INTERNATIONAL LAW* 19-20 (1971).

67. This flows from the presumption that in entering into an extradition treaty, both parties thereto have examined such agreement, and that both accept and trust, each other's legal system and judicial process. Jorge Coquia, *On Implementation of the US-RP Extradition Treaty*, 14 *LAW. REV.* 4 (2000). The signing of the treaty thus signifies confidence in the capacity and willingness of the other State to protect the basic rights of the person sought to be extradited. BASSIOUNI, *INTERNATIONAL EXTRADITION* *supra* note 5, at 546.

68. Extradition proceedings in court have for their ultimate purpose the mere determination of whether the extradition request complies with the extradition treaty, and whether the person sought is extraditable. SHEARER, *supra* note 91, at 545. It is therefore not part of the function of the assisting authorities to enter into questions that are the prerogative of the requesting State. *Id.* at 157.

compliance with our treaty obligations must be made in good faith.⁶⁹ And *five*, there is an underlying risk of flight.⁷⁰

Set against the backdrop of its two previous decisions and these fundamentals of extradition as provided for in both extradition treaty and law, the Court thereafter proceeded to resolve the two substantive issues of the case.

I. On the Right to Notice and Hearing Before the Issuance of Warrant of Arrest

Ruling in the negative, the Court employed a double-layered reasoning, finding support both in the interpretation of the extradition treaty and the Constitution. According to the Court, any discussion of the potential extraditee's rights prior to the issuance of the warrant of arrest rests on the interpretation of Section 6 of P.D. 1069. Said provision states:

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. [H]e may issue a warrant for the immediate arrest of the accused which may be served any where 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, or should the accused after having received the summons fail to answer within the time fixed, the presiding judge shall hear the case or set another date for the hearing thereof.
- (2) The order and notice as well as a copy of the warrant of arrest, if issued, shall be promptly served each upon the accused and the attorney having charge of the case.⁷¹

As held by the Court, nowhere is it provided in the Philippine Extradition Law that a hearing be afforded to the prospective extraditee prior to the issuance of the warrant for his arrest. Rather, the hearing to which the

69. Hence, "[t]he demanding government, when it has done all that the treaty and the law require it to do, is entitled to the delivery of the accused on the issue of the proper warrant, and the other government is under obligation to make the surrender." *Wright v. Henkel*, 190 U.S. 40, 62 (1903).

70. According to the Court, Jimenez's prior acts demonstrate that "he has the capacity and the will to flee." *Purganan*, G.R. No. 148571 at 20. The Court observed that Jimenez left the requesting State right before the conclusion of his indictment proceedings therein and has remained in the requested State despite knowledge that the requesting State is seeking his return and that the crimes he is charged with are bailable.

71. P.D. No. 1069, § 6.

presiding judge is mandated to conduct pertains to that of the extradition petition itself, that is, an ascertainment of the extraditability of the accused individual.

In the absence of such an express mandate, the majority then ruled that in view of the summary nature of extradition proceedings,⁷² the arrest of the accused is qualified by immediacy so as to impart a sense of urgency and swiftness in the determination of whether a warrant of arrest should be issued. Hearing involves the sending of notices to the opposing parties, receiving facts and arguments and given from said parties, and affording them time to prepare and present their respective sides. Thus, arrest subsequent to such hearing can no longer be considered "immediate" within the purview of the extradition law.⁷³

The Court also noted that before the issuance of the warrant of arrest, the trial court is not expected to make an exhaustive determination but only a *prima facie* finding sufficient to make a speedy initial determination as regards the arrest and detention of the accused. Already manifest from the extradition petition itself and its supporting documents⁷⁴ is the *prima facie* existence of probable cause for the hearing of the extradition petition and issuance of the arrest warrant. It was thus grave abuse of discretion on respondent judge to set the matter for hearing upon Jimenez's motion.

The majority hastened to underscore that the hearing set by the extradition court in Section 6 of P.D. No. 1069 pertains to the hearing of the extradition petition upon receipt of the prospective extraditee's answer or upon failure of the accused to answer after receiving the summons and not as regards the matter of the prospective extraditee's immediate arrest. This silence of the law, coupled with the summary nature of extradition

72. P.D. No. 1069, § 9.

73. *Purganan*, G.R. No. 148571 at 22.

74. Attached to the Petition for Extradition, with a Certificate of Authentication among others, were the following: (1) Annex H, the Affidavit executed on May 26, 1999 by Mr. Michael E. Savage — trial attorney in the Campaign Financing Task Force of the Criminal Division of the US Department of Justice; (2) Annexes H to G, evidentiary Appendices of various exhibits that constituted evidence of the crimes charged in the Indictment, with Exhibits 1 to 120 (duly authenticated exhibits that constituted evidence of the crimes charged in the Indictment); (3) Annex BR, the Exhibit I "Appendix of Witness [excerpts] Statements Referenced in the Affidavit of Angela Byers" and enclosed Statements in two volumes; (4) Annex GG, the Exhibit J "Table of Contents for Supplemental Evidentiary Appendix" with enclosed Exhibits 121 to 132; and (5) Annex MM, the Exhibit L "Appendix of Witness [excerpts] Statements Referenced in the Affidavit of Betty Steward" and enclosed Statements in two volumes. *Id.* at 23.

proceedings, leads to a more reasonable interpretation not to punctuate each and every little step of the entire extradition proceedings with a hearing.⁷⁵

On the basis meanwhile of the Constitution, the Court held that in determining the probable cause for the issuance of an arrest warrant, all that is required by the Constitution is that "judge must have sufficient supporting documents upon which to make his independent judgment, or at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause."⁷⁶ In cases of clear insufficiency of evidence on record, judges are merely required, at most, to further examine complainants and their witnesses.⁷⁷ There is no requirement to notify and hear the accused before issuing the warrant for his arrest.⁷⁸ To sanction otherwise would only convert the determination of a *prima facie* case into a full-blown trial of the entire proceedings and render the trial of the main case superfluous, contrary to the summary nature of extradition proceedings.⁷⁹

In conclusion, the Court restated the proper procedure, following receipt of the extradition petition and its supporting documents:⁸⁰

- a. Upon receipt of the necessary documents, the judge shall make a *prima facie* finding on whether (a) they are sufficient in form; (b) they show compliance with the extradition treaty and law; and (c) the person being sought is extraditable.
- b. Depending on the discretion of the judge, he may require the submission of further documentation or may personally examine the affiants and witnesses of the petitioner.
- c. If he finds no *prima facie* finding despite previous examination, the petition may be dismissed according to the judge's discretion.

75. *Id.* at 23.

76. *Id.* at 26 (citing *Ho v. People*, 280 SCRA 365, 381 (1997)).

77. *Id.* at 27 (citing *Allado v. Diokno*, 233 SCRA 192 (1994)).

78. *Purganan*, G.R. No. 148571 at 26. As previously highlighted by the Court: Again, we stress that before issuing warrants of arrest, judges merely determine personally the probability, not the certainty of guilt of an accused. In doing so, judges do not conduct a *de novo* hearing to determine the existence of probable cause. They just personally review the initial determination of the prosecutor finding a probable cause to see if it is supported by substantial evidence.

Id. (citing *Webb v. De Leon*, 247 SCRA 652, 680 [1995]).

79. *Purganan*, G.R. No. 148571 at 28.

80. *Id.* at 28-29.

- d. Meanwhile should there be a *prima facie* case, the judge shall immediately issue a warrant for the arrest of the prospective extraditee, who shall also be simultaneously summoned to answer the petition for extradition and to appear at scheduled summary hearings.
- e. In any case, before the issuance of the warrant, the judge shall not inform nor notify the potential extraditee of the pendency of the petition for to do otherwise would give said extraditee the opportunity to escape and frustrate the proceedings.

2. On the Right to Bail

As for the second substantive issue, the Court rejected Jimenez's theory that the right to bail applies to all persons except those punishable by death, life imprisonment or *reclusion perpetua*, when evidence of guilt is strong.⁸¹ The Court instead stressed that the right to bail applies only in criminal proceedings, as the use of the word "conviction" both in the Constitution and Rules of Court means that the right applies only when a person has been arrested and detained for violating Philippine criminal law.⁸² Moreover, the right inherently "flows from the presumption of innocence in favor of every accused who should not be subjected to the loss of freedom as thereafter he would be entitled to acquittal, unless his guilt be proved beyond reasonable doubt."⁸³ As extradition proceedings are distinct from criminal proceedings in that the presumption of innocence as well as the rendering of judgment of

81. The Constitution provides:

All 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. Excessive bail shall not be required.

PHIL. CONST. art III, § 13.

The Rules of Court likewise states:

All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment.

Rules of Court, Rule 114, § 4.

82. *Purganan*, G.R. No. 148571 at 31.

83. *Id.* (citing *De La Camara v. Enage*, 41 SCRA 1, 6 (1971)).

conviction or acquittal are not at issue, the right to bail does not therefore come into operation in case of a prospective extraditee.⁸⁴

The Court further noted that even if the offenses for which Jimenez is sought to be extradited are bailable in the United States, Jimenez would still not be entitled to bail in the present case. As underscored by the Court, extradition proceedings are separate from the trial for the offenses for which the extraditee is charged. The right to bail exists in the requesting State's courts which try the criminal cases against the extraditee, and not before the extradition court of the requested State.⁸⁵

The *ponencia* also ruled that the denial of Jimenez's right to bail does not amount to a violation of his right to due process. The essence of due process lies in either a prior or subsequent⁸⁶ opportunity to be heard.⁸⁷ In Jimenez's case, he would be given full opportunity to be heard subsequently when the extradition court decides on the petition for extradition.⁸⁸ Furthermore, the non-arbitrariness of Jimenez's arrest and detention is adequately ensured by:

- (1) the DOJ's filing in court the Petition with its supporting documents after a determination that the extradition request meets the requirements of the law and the relevant treaty; (2) the extradition judge's independent *prima facie* determination that his arrest will best serve the ends of justice before the issuance of a warrant for his arrest; and (3) his opportunity, once he is under the court's custody, to apply for bail as an exception to the no-initial-bail rule.⁸⁹

Likewise, Jimenez's detention pending the resolution of extradition proceedings corresponds to the summary nature of the extradition proceedings, the need for their speedy disposition,⁹⁰ and the mandate of the extradition treaty to surrender the person as expeditiously as possible,

84. *Id.*

85. *Id.* at 32.

86. See *Central Bank of the Philippines v. Court of Appeals*, 220 SCRA 536 (1993); *Busuego v. Court of Appeals*, 304 SCRA 473 (1999).

87. See *Paat v. Court of Appeals*, 266 SCRA 167 (1997); *Philippine National Construction Corporation v. Court of Appeals*, 272 SCRA 183 (1997); *Roces v. Apotadera*, 243 SCRA 108, (1995); *Vallende v. NLRG*, 245 SCRA 662 (1995); *Navarro III v. Damasco*, 246 SCRA 260 (1995); *Stayfast Sunset View Condominium Corporation v. NLRG*, 228 SCRA 466 (1993); *Villareal v. CA*, 219 SCRA 292 (1993); *Philippines Corporation v. NLRG*, 218 SCRA 596 (1993).

88. *Purganan*, G.R. No. 148571 at 33.

89. *Id.* at 34.

90. *Id.* at 35.

without further proceedings.⁹¹ No violation of Jimenez's fundamental right to due process thereby exists in this case.

In conclusion, the Court summarized the applicable rules in the right to bail in extradition proceedings:⁹²

- a. The right to bail, as a rule, is not a matter of right in extradition proceedings because of the summary and non-criminal nature of extradition proceedings.
- b. However, a potential extraditee who has been arrested or placed under the custody of the law may, by exception, apply for and be granted bail, provided that there is a clear and convincing showing that: (1) there is no flight risk or danger to the community; and (2) there exist as a matter of reciprocity or special, humanitarian and compelling circumstances warranting the grant of bail.
- c. As the exceptions have no express statutory basis but are derived mainly from general principles of justice, the applicant thus bears the burden of proving the application of the exception with clarity, precision, and forcefulness.

II. PHILIPPINE EXTRADITION: THE LEGAL FRAMEWORK

The legal right to demand extradition as well as the correlative duty to surrender an individual to another jurisdiction exists only in the presence of treaty,⁹³ operating either as internal law or alongside the presence of an enacted statute providing for extradition.⁹⁴ In the Philippines, extradition proceedings are governed by: (1) the relevant extradition treaty entered into with the requesting State⁹⁵ and (2) Presidential Decree No. 1069, the Philippine Extradition Law. The extradition treaty regulates the substantive

91. RP-US Extradition Treaty, art. 14.

92. *Purganan*, G.R. No. 148571 at 36-37.

93. *Factor v. Laubenheimer*, 270 U.S. 276 (1933).

94. HENKIN, *supra* note 2, at 886 (citing *Valentine v. United States ex rel. Neidecker*, 299 U.S. 5 (1936)).

95. As of 1999, the Philippines has extradition treaties with Australia, Canada, the Federated States of Micronesia, Hong Kong, Indonesia, Republic of Korea, Switzerland, the United States of America, and the Kingdom of Thailand. It has also treaties on mutual legal assistance on criminal matters with Australia and the United States of America. Still pending in the Senate are two treaties on transfer of sentenced persons, one with Hong Kong and another with Thailand. S. Gaña, Jr., *Extradition and Legal Assistance: The Philippine Experience*, Resource Material Series No. 57, 55 (114th International Training Course Visiting Experts' Paper, 1999).

aspect⁹⁶ of the extradition process while the extradition law provides for the procedural side of extradition.⁹⁷

A. The Extradition Proceeding

Extradition is aimed at the criminal prosecution and subsequent conviction or acquittal of the accused in the requesting State⁹⁸ for an offense committed within the jurisdiction of the requesting State by the accused who has fled from such jurisdiction and who is currently in the territory of the requested State. There are basically two stages in any extradition proceeding.⁹⁹ The first stage involves the *preliminary or evaluation stage*. At this stage, the executive authority of the requested State, particularly the SFA, determines whether the extradition request complies with the prescribed requirements through submission, *inter alia*, of the original or authenticated copy of the decision or sentence imposed upon an accused; the criminal charge and the warrant of arrest; a recital of the acts for which extradition is requested containing the name and identity of the accused; his whereabouts in the Philippines; the acts or omissions complained of; the time and place of the commission of those acts; the text of the applicable law or a statement of the contents; and such other documents or information in support thereof.¹⁰⁰ Upon compliance with these, the request and the supporting documents are then forwarded to the SOJ for the filing of the extradition petition with the RTC, acting as the extradition court.¹⁰¹

Pending presentation of the request for extradition, however, a request for provisional arrest may be made on the ground of urgency. Such request

96. The Extradition Treaty Between the Government of the Philippines and the Government of the United States of America (RP-US Extradition Treaty), for instance, provides who (Article 1) and what offenses (Article 2) are extraditable. It furthermore establishes the fundamental principles in extradition as the political offense exception (Article 3); the proscription against double jeopardy (Article 4); and the specialty rule, that is, that the State requesting the extradition of a fugitive from another State must specify the crime for which the accused is to be extradited and try the individual only for the crime specified in the extradition request (Article 13).

97. The Decree, in substance, lays down the manner on how the extradition will proceed: the request for extradition (Section 4), issuance of summons (Section 6), provisional arrest (Section 20), extradition case proper (Sections 5-11), appeal (Section 12), surrender of the accused (Section 16), and seizure of the properties of the accused (Section 17).

98. P.D. No. 1069, § 3.

99. See *Lantion*, 322 SCRA at 231 (Panganiban, J., dissenting).

100. P.D. No. 1069, § 4; RP-US Extradition Treaty, art. 7.

101. P.D. No. 1069, § 5.

may be transmitted either through the diplomatic channel or directly between the Philippine DOJ and the U.S. DOJ.¹⁰² The accused shall, however, be released from custody, if within a period of 20 days after the provisional arrest, the SFA has not received the request for extradition and the necessary documents.¹⁰³ Moreover, release from provisional arrest shall not prejudice re-arrest and extradition of the accused if a request for extradition is received subsequently in accordance with the extradition treaty and law.¹⁰⁴

At the juncture of compliance with the submission of the required documents and information, the extradition process proceeds to the second stage: the *extradition hearing*, whereby the petition for extradition is heard before the court for the purpose of determining whether the accused should be extradited to the requesting State. Upon receipt of the petition, the judge shall summon the accused for appearance and if said judge finds it will best serve the ends of justice, issue a warrant for the immediate arrest of the accused.¹⁰⁵ The hearing for the extradition petition shall thereafter be conducted following the summary nature of the proceedings.¹⁰⁶ Upon showing of the existence of a *prima facie* case, the court shall render a decision granting the extradition; otherwise, it shall dismiss the petition.¹⁰⁷ With the finality of the decision, absent appeal or stay of execution,¹⁰⁸ the accused may either voluntarily consent to surrender¹⁰⁹ or be involuntarily placed by the requested State at the disposal of the authorities of the requesting State,¹¹⁰ with his property seized by the requested State to the extent permitted under its law.¹¹¹

B. Philippine Jurisprudence on Extradition

Aside from the three cases on Jimenez's extradition, there are only two others dealing with the extradition of accused individuals found within Philippine territory. While the issues respectively discussed therein do not fall squarely with those raised in the Jimenez extradition cases, these two cases remain significant to the extent that they provide the foundation for

102. *Id.* § 20; RP-US Extradition Treaty, art. 9.

103. P.D. No. 1069, § 20 (d).

104. *Id.* § 20 (e).

105. *Id.* § 6.

106. *Id.* §§ 8-9

107. *Id.* § 10.

108. *Id.* § 12.

109. RP-US Extradition Treaty, art. 14.

110. P.D. No. 1069, § 16; RP-US Extradition Treaty, arts. 10-11.

111. P.D. No. 1069, § 17; RP-US Extradition Treaty, art. 15.

what the Court would subsequently highlight in Jimenez's extradition: the non-criminal nature of extradition proceedings, treaty compliance, and urgency of arrest *vis-à-vis* risk of flight.

I. Wright v. Court of Appeals¹¹²

The *Wright* case involved the extradition of Paul Joseph Wright to Australia for numerous counts of obtaining property by deception, in violation of the Victorian Crime Act of 1958. Petitioner argued in the main that the extradition treaty violates the *ex post facto* prohibition as it covers offenses alleged to have been committed by petitioner at the time when there was no extradition treaty between the Philippines and Australia. The Court overruled petitioner's contention stating that the Constitutional prohibition against *ex post facto* laws applies only to criminal legislation which affects the substantial rights of the accused.¹¹³ As the extradition treaty is neither a piece of criminal legislation nor a criminal procedure statute,¹¹⁴ the prohibition does not apply. The Court further observed that the offenses for which petitioner is sought by his government were clearly extraditable by express provision of Article 2(4) of the Treaty,¹¹⁵ which are correspondingly penalized under Philippine penal laws as swindling/estafa and false testimony/perjury.

112. 235 SCRA 341 (1994).

113. See *Calder v. Bull*, 3 Dall. 3 U.S. 386 (1798); *Mekin v. Wolfe*, 2 Phil. 74 (1903); *In re Kay Villegas Kami*, 35 SCRA 429 (1970).

114. Quoting the Court of Appeals decision, the Court noted that the Extradition Treaty merely provides for the extradition of persons wanted for prosecution of an offense or a crime, which was already committed or consummated at the time of the ratification of the treaty. *Wright*, 235 SCRA at 354.

115. Extradition may be granted pursuant to provisions of this Treaty irrespective of when the offense in relation to which extradition is requested was committed, provided that:

(a) it was an offense in the Requesting State at the time of the acts or omissions constituting the offense; and

(b) the acts or omissions alleged would, if they had taken place in the territory of the Requested State at the time of the making of the request for extradition, have constituted an offense against the laws in force in that [S]tate.

Treaty of Extradition Between Australia and the Republic of the Philippines, art. 2 (4) (1988).

2. Cuevas v. Muñoz¹¹⁶

In this case, Hong Kong sought for the extradition of Juan Antonio Muñoz for charges of bribery and conspiracy to defraud. Private respondent questioned the urgency of his provisional arrest which the Court deemed as untenable, stating that "urgency" in the absence of an exact definition in the existing treaty, should be construed using reasonable standards of interpretation. On such basis, "urgency" thus connotes

such conditions relating to the nature of the offense charged and the personality of the prospective extraditees which would make him susceptible to the inclination to flee or escape from the jurisdiction if he were to learn about the impending request for his extradition and/or likely to destroy the evidence pertinent to the said request or his eventual prosecution and without which the later could not proceed.¹¹⁷

These conditions existed in Muñoz's case thereby warranting his provisional arrest. The Court, moreover, noted that for the provisional arrest of an accused to continue, the formal request for extradition is not required to be filed in court. It would suffice that such request be received by the requested State as provided for by the extradition law and the extradition treaty, without the additional requisite that the same be already filed in the court.

III. THE CASE IN ANALYSIS

The *Purganan* decision is and remains to be a case of first impression. It involved distinct but interrelated interests of the State's fulfillment of its extradition obligations and its equally imperative duty to protect its citizens' basic human rights, as well as the international community's emphasis on international cooperation for criminal accountability. Set against this backdrop, the Court then contended with the novel issues dealing with the rights to liberty and due process of a prospective extraditee. Accordingly, in the silence of the law, politics, diplomacy, and expediency came into the picture.

In deciding against Jimenez, the Court notably considered three salient points: non-express grant of power along with intent-based treaty interpretation, the summary and *sui generis* nature of extradition proceedings, and compliance with Philippine treaty obligations. In underscoring these aspects, the Court may have ingeniously but fallaciously restructured the State-individual dynamics embedded in the hierarchy of constitutional values. If left unexplained and misunderstood, *Purganan* may very well create a dangerous precedent.

¹¹⁶ 348 SCRA 543 (2000).

¹¹⁷ *Id.* at 552.

A. In the Absence of Express Grant of Powers

In denying Jimenez of his rights to due process and provisional liberty, the majority in *Purganan* ruled that the grant of such rights should not be allowed for two reasons: *first*, because there is no express treaty and statutory conferment, and *second*, because such absence is to be deemed as a prohibition of the enjoyment of said rights.

As the obligation to extradite is treaty-based, the nature and extent of such obligation is thereby ascertained according to what is provided by the extradition treaty between the States involved. In this instance, reference is once again made to Section 6 of P.D. 1609, as regards the potential extraditee's right to due process prior to the issuance of the warrant for his arrest.

Contrary to the majority's ruling, the extradition treaty is not in fact silent nor ambivalent as regards this issue. The very provision of Section 6 itself behooves the lower court to exercise a permissible amount of reasonable discretion as it allows the judge to issue a warrant for the immediate arrest of the accused *if it appears to him that the immediate arrest will best serve the ends of justice.*¹¹⁸ It must be noted that "immediate" as used in the provision precedes and qualifies "arrest," and not the "issue" of the warrant of arrest. As such, the judge is not duty bound to immediately order Jimenez's arrest, without any judicial discretion to conduct or not to conduct a hearing prior to the issuance of the warrant of arrest. Since discretion implies freedom of action, the judge should thereby be allowed to use such procedures as he deems sufficient in determining whether the immediate arrest of the potential extraditee will best serve the ends of justice.

As Justice Puno noted in his separate opinion, "[t]he call for a hearing is not mandatory but neither is it prohibited. *Ergo*, the matter of whether there ought to be a hearing before the issuance of warrant of arrest is addressed to the discretion of the extraditing judge."¹¹⁹ To impose needless limits on the judge's freedom of action by prohibiting him from the conduct of a hearing would only be to unduly negate the essence of such discretion.

Furthermore, it was too simplistic an approach for the Court to stress that:

the *prima facie* existence of probable cause for hearing the petition and, *a priori*, for issuing an arrest warrant was already evident from the Petition itself and its supporting documents. Hence, after having already determined therefrom that a *prima facie* finding did exist, respondent judge gravely abused his discretion when he set the matter for hearing upon motion of Jimenez.

¹¹⁸ *Id.* at 8 (Puno, J., sep. op.).

¹¹⁹ *Id.* at 12.

In the first place, the determination of probable cause for the issuance of a warrant of arrest lies with the judge¹²⁰ and not with the DOJ nor the DFA.¹²¹ Secondly, the submitted documents do not by themselves establish a conclusive finding for the issuance of Jimenez's arrest, in the absence of proof of the probability of his flight. These documents merely evince Jimenez's guilt in the cases filed against him in the United States but not Jimenez's propensity to flee while the extradition petition is being heard. "In other words, the petition for extradition may be in due form but it does not establish sufficient factual basis to justify the immediate issuance of warrant of arrest against the private respondent."¹²² There was thus no grave abuse of discretion on Judge Purganan's part in calling for a hearing so that the parties can adduce evidence on the issue.

In any case, even if one were to accede to the Court's interpretation that the extradition treaty does not explicitly provide for such right, the failure to provide for the same does not automatically translate to prohibition. While the right and obligation to extradite is solely treaty-based, the manner of extradition application is not. Procedural rules in extradition are governed by the treaty between the two States, domestic legislation on extradition, and other municipal laws that may be applied by analogy.¹²³ To fill certain gaps in extradition proceedings, resort to other laws may be had,¹²⁴ provided it is essential in such particular case.¹²⁵

Section 9 of the Philippine Extradition Law in fact 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

120. JOAQUIN G. BERNAS S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 178 (1996) [hereinafter BERNAS, COMMENTARY]. As the Constitution explicitly provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or 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 place to be searched and the persons or things to be seized.

PHIL. CONST. art. III, § 2.

121. *Purganan*, G.R. No. 148571 at 10 (Ynares-Santiago, J., dissenting).

122. *Id.* at 11.

123. SHEARER, *supra* note 91, at 195.

124. *Re Diaz*, 22 I.L.R. 517 (Fed. Ct. Venezuela, 1954); *Re Lobo*, 16 I.L.R. 277 (S. Ct. Brazil, 1949); *Re Alvarez*, 30 I.L.R. 390 (S. Ct. Chile, 1960).

125. *First National City Bank v. Aristueguiela*, 287 F. 2d. 219 (2nd Cir., 1960).

proceedings, shall apply. Rule 135, Section 6 of the Rules of Court, in turn, explicitly empower the extraditing judge to exercise discretion in conducting a hearing prior to the issuance of the warrant as a necessary means to carry its jurisdiction into effect.¹²⁶

The same is true as regards the non-conferment of the right to bail on a prospective extraditee. Notwithstanding such absence of express provision, Rule 136, Section 6 of the Rules of Court allows for the granting of bail as part of the adoption of a process deemed suitable by the judge in filling in legal gaps. Said power is deemed part of the court's inherent power to amend and control its process and orders so as to make them conformable to law and justice.¹²⁷

The power to admit bail is likewise embraced as a necessary incident of the power to hear and determine cases.¹²⁸ As Justice Belosillo points out, "[a] *fortiori*, even in the absence of express statutory grant of authority to courts, judicial power to admit to bail parties properly within their jurisdiction must be deemed to exist."¹²⁹

In the absence of an express statutory provision or Philippine jurisprudence on the prospective extraditee's right to bail, resort may also be had to State practice, extradition being imbued with an international character. At present, no customary rule of international law prohibits the grant of bail in extradition cases,¹³⁰ leaving such matter best to the discretion of the respective domestic courts.¹³¹

Moreover, it is a dangerous position to tread for the Court to fill in gaps through resort to the need for swiftness and urgency in the summary nature

126. As provided in Rule 135, § 6 of the Rules of Court:

When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules. (emphasis supplied)

127. Rules of Court, Rule 135, § 5(g).

128. *United States v. Evans*, 2 F.147 (6th Cir., 1880); *In re Gannon*, 27 F.2d 362 (1928); *In re Ah Kee*, 21 F. 701 (9th Cir., 1884); *Ewing v. United States*, 240 F. 241 (6th Cir., 1917).

129. *Purganan*, G.R. No. 148571 at 3 (Bellosillo, J., sep. op.).

130. Gaña, *supra* note 23.

131. Harvard Research in International Law, *Draft Convention on Extradition*, 29 AM. J. INT'L L. 15, 213 (Supp. 1935).

of extradition proceedings. Expediency alone has never been the gauge in depriving an individual of his constitutionally protected rights.¹³² Thus:

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...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.¹³³

Moreso in this case where one's life and liberty is at stake should the Court be more circumspect in not laying down a doctrine that prefers speed over accuracy; "for speed breeds recklessness and we cannot be reckless with our right to life and liberty."¹³⁴

B. In A Class of Its Own

The *Purganan* Court, moreover, emphasizes that an extradition proceeding is not criminal in nature; thus, all the constitutionally guaranteed rights of the accused are not called into operation. Again, this is a dodgy summation to make. Mere characterization of the proceedings as *sui generis* "does not mean that the procedural guarantees available in criminal prosecutions, civil trials, or administrative proceedings are thereby waived or become irrelevant."¹³⁵ The constitutional rights of a prospective extraditee cannot therefore be cavalierly swept aside on the bare assertion that extradition proceedings are a distinct class of its own.¹³⁶

The Bill of Rights, in providing for each and every individual's right to due process¹³⁷ and to bail,¹³⁸ comes into play for so long as the legal issue involves the relationship between the individual and the State,¹³⁹ regardless of whether the proceedings are criminal, civil, or administrative in nature.¹⁴⁰

132. *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343 (1989).

133. *Stanley v. Illinois*, 404 U.S. 645, 656 (1972).

134. *Purganan*, G.R. No. 148571 at 10 (Puno, J., sep. op.).

135. *Id.* at 6 (Ynares-Santiago, J., dissenting).

136. See Joaquin G. Bernas S.J., *Extradition Fundamentals*, TODAY, Oct. 7, 2002, at 6 [hereinafter Bernas, *Fundamentals*].

137. PHIL. CONST. art. III, §§ 1 & 2.

138. PHIL. CONST. art. III, §13.

139. JOAQUIN G. BERNAS, S.J., *THE INTENT OF THE FRAMERS OF THE 1987 CONSTITUTION* 164 (1996).

140. ISAGANI CRUZ, *CONSTITUTIONAL LAW* 295 (2000 ed.).

In the right to due process, for instance, no distinction is made between warrants in criminal or administrative cases,¹⁴¹ or even a *sui generis* warrant for that matter. It is thus but proper to apply the same constitutional safeguards in an extradition proceeding. Furthermore, if one suspected of having committed a crime is entitled to a determination of the probable cause against him,¹⁴² with more reason should there be to afford the same protection in favor of an extraditee who has not committed a crime in the requested State and who is therefore presumed to pose less danger than an accused.

As regards the right to bail, the *Purganan* majority correctly held that such right applies only in criminal cases where there is a possibility of conviction.¹⁴³ This, however, is only the general rule.

In a long line of cases, the Court has upheld the fundamental right of individuals to bail even in non-criminal proceedings, when the circumstances partake of a criminal nature or are such as to unduly deprive the individual of his personal liberty.¹⁴⁴ *Teehankee v. Rovira*¹⁴⁵ categorically rejected the view which limits the right to bail to persons charged with

141. *Qua Chee Gan v. Deportation Board*, 85 SCRA 35 (1963).

142. PHIL. CONST. art. III, §14.

143. BERNAS, COMMENTARY, *supra* note 120, at 429.

144. *United States v. Go Siaco*, 12 Phil. 490 (1909); *Teehankee v. Rovira*, 75 Phil. 634 (1945); *United States v. Benito*, 37 Phil. 53 (1917); *Pagado v. Aldanese*, 42 Phil. 415 (1921); *Lao Gi v. Court of Appeals*, 180 SCRA 756 (1989); *Cabal v. Kapunan*, 67 SCRA 1059 (1962); *Pascual, Jr. v. Board of Medical Examiners*, 28 SCRA 344 (1969); *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951).

145. 75 Phil. 634 (1945). In the language of the Court:

This constitutional mandate refers to all persons, not only to persons against whom a complaint or information has already been filed.... From the moment he is placed under arrest, detention or restraint by officers of the law, he can claim this guarantee of Bill of Rights, and this right he retains unless and until he is charged with a capital offense and the evidence against him is strong. Indeed, if, as admitted on all sides, the precept protects those already charged under a formal complaint or information, there seems to be no legal or just reason for denying its benefit to one against whom the proper authorities may yet conclude that there exists no sufficient evidence of guilt. To place the former in a more favored position than the latter would be, to say the least, anomalous and absurd. If there is presumption of innocence in favor of one already formally charged with a criminal offense, *a fortiori* this presumption should be induced in favor of one yet so charged although arrested or detained.

Id. at 640.

criminal offenses. Meanwhile, the *Go-Siaco* case¹⁴⁶ held that while deportation proceedings are not criminal in nature, an alien deportee may still avail of the constitutional right to bail. *Mejoff v. Director of Prisons*¹⁴⁷ ruled that while "temporary detention is a necessary step in the process of exclusion and expulsion of undesirable aliens and that pending arrangements for his deportation, the Government has a right to hold the undesirable alien under confinement for a reasonable length of time, too long a detention may justify the issuance of a writ of *habeas corpus* and entitle an alien to be released on bail."¹⁴⁸ Similarly, in *Chirskoff v. Commission of Immigration*,¹⁴⁹ the Court released the alien deportee on bail because his prolonged detention violates his right to liberty. Likewise, the *Lao Gi* ruling¹⁵⁰ held that although a deportation proceeding does not partake of a criminal action, the constitutional right of a person to due process should be protected therein.

Considering the surrounding circumstances in an extradition proceeding, there is no reason why an extraditee should be denied the right to apply for bail. While an extradition proceeding is not criminal in nature, it is nevertheless a harsh and extraordinary process, involving as it does a restraint of liberty. In the first place, although intended to be summary in nature, these proceedings are not always terminated in a short amount of time, making the regulatory nature of the detention of an accused-extraditee punitive in character. Several Filipinos have in fact been held in jail for years

146. 12 Phil. 490 (1909). According to the Court:

We see no reason why bail should not be allowed in this class of cases. As is said by the Supreme Court, the defendant has committed no crime... To refuse him bail is to treat him as a person who has committed the most serious crime known to the law, and while we do not intend to say that this is a criminal proceeding, we do say that some of the machinery used for making the investigation required by Act No. 702 is the machinery of the criminal law.

Id. at 496.

147. 90 Phil. 70 (1951).

148. *Id.* at 72.

149. 90 Phil. 257 (1951).

150. 180 SCRA 756 (1989). Thus:

Although a deportation proceeding does not partake of the nature of a criminal action, however, considering that it is a harsh and extraordinary administrative proceeding affecting the freedom and liberty of a person, the constitutional right of such person to due process shall not be denied. Thus, the provisions of the Rules of Court of the Philippines particularly on criminal procedure are applicable to deportation proceedings.

Id. at 763-63.

pending for years without the benefit of being released on bail.¹⁵¹ Moreover, the restraint in one's liberty can even be more severe than in an ordinary criminal case entailing as it does protracted proceedings in both the asylum and demanding States as well as a forced transportation in between.¹⁵² Clearly, potential extraditees, owing to their circumstances, do have a substantial interest in their provisional liberty pending the proceedings.¹⁵³

C. *Pacta Sunt Servanda*

The *Purganan* majority, in denying Jimenez of his right to due process and provisional liberty, also highlighted the primacy of complying with the country's treaty obligations in good faith. According to the Court, granting Jimenez such rights would be tantamount to an abdication of the State's duty to cooperate and assist in criminal law enforcement in the international community as to afford him said rights would unduly prolong the extradition process and allow the possibility of his escape. At the outset, it bears emphasis that the minority in recognizing Jimenez's constitutionally protected rights is not in any way refusing to extradite Jimenez to the United States. The apprehensions of "breach of an international obligation, rupture of [S]tate relations, forfeiture of confidence, national embarrassment, and a plethora of other equally undesirable consequences'... are more illusory than real."¹⁵⁴ What is simply being stressed at this juncture is the fact that pending the extradition case proper, Jimenez is still entitled to the rights to due process and bail, just like any other individual to whom the rights are vested by law.

The fact that international law has been made part of the law of the land, particularly through the doctrine of incorporation,¹⁵⁵ does not necessarily imply supremacy of international law over municipal law in the domestic sphere. Rather, rules of international law are given equal standing with national legislative enactments. As domestic law, they cannot thus depart

151. Bernas, *Fundamentals*, *supra* note 136.

152. J. Hall, *A Recommended Approach to Bail in International Extradition Cases*, 86 MICH. L. REV. 599, 607 (1987).

153. See *Michigan v. Doran*, 439 U.S. 282 (1978). As opined by the US Supreme Court, "[t]he extradition process involves an extended restraint of liberty following arrest even more severe than that accompanying detention with a single State. Extradition involves, at a minimum, administrative processing in both the asylum State and the demanding State, and forced transportation in between. It surely is a significant restraint on liberty." *Id.* at 296.

154. *Lantion*, 322 SCRA 160, 212 (Ynares-Santiago, J., concurring).

155. Under this doctrine, rules of international law form part of the law of the land with no need for further legislative action to make such rules applicable in the domestic sphere.

from the mandate of the Constitution, the latter being the highest law of the land.¹⁵⁶ Any interpretation of the treaty must thereby be made in accordance with the constitutionally provided safeguards, limitations, and guarantees.¹⁵⁷ A fair and reasonable reading of the RP-US Extradition Treaty, as well as the Philippine Extradition Law, necessarily conforms to the application of this principle. Thus, the constitutional rights to due process and liberty should be deemed read into the present extradition treaty.

Both the extradition treaty and law should likewise be read in the context of existing rules of international law that are applicable in the relations between the parties.¹⁵⁸ As both the Philippines and the United States are signatories to the Charter of the United Nations,¹⁵⁹ the Universal Declaration of Human Rights,¹⁶⁰ and the International Covenant on Civil and Political Rights,¹⁶¹ they both have the duty to respect the individual's right to liberty and due process.¹⁶²

CONCLUSION

In denying Jimenez of his right to due process and liberty in the pendency of the extradition case proper, the Court in *Purganan* may have set a dangerous precedent in overemphasizing the absence of an express statutory grant of rights, the non-criminal character of extradition proceedings, and treaty compliance of extradition obligations. Nevertheless, what ultimately brought saving grace to the majority ruling was the factual circumstance that Jimenez had the propensity and proclivity to flee.

All the procedural rights afforded to a prospective extraditee rests on the assumption that the latter would not frustrate the ends of justice by fleeing

156. JOVITA SALONGA & PEDRO YAP, PUBLIC INTERNATIONAL LAW 12-13 (1992).

157. Bernas, *Fundamentals*, *supra* note 136.

158. Law of Treaties, *supra* note 65, art. 31 (1). See LORD MCNAIR, THE LAW OF TREATIES 365 (1961).

159. June 26, 1945, 50 STAT. 101, T.S. 993, BEVANS 1153, entered into force Oct. 24, 1945.

160. G.A. Res. 2171(III), U.N. Doc A/810, at 71 (1948). Article 3 provides that "[e]veryone has the right to life, liberty and security of person." Article 9 further states that "[n]o one shall be subjected to arbitrary arrest, detention or exile."

161. G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. Article 9(1) recognizes that: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

162. *Purganan*, G.R. No. 148571 at 20 (Puno, J., sep. op.).

from the jurisdiction of the requested State. The essence of extradition being the facilitation of the arrest and the custodial transfer of a fugitive from one State to the other, any grant of right during the pendency of the proceedings that affords a window of opportunity for the accused to flee should therefore be sealed so as not to jeopardize the interests not only of the requesting and requested States but that of the international community as well.

Given the factual background, the Court was thus justified in considering Jimenez as an imminent flight risk, thereby necessitating the denial of the rights he was praying for. He fled from U.S. jurisdiction after committing several counts of federal offenses and learning that a Federal Grand Jury investigation was on-going. He also knew of the present indictment and yet, obstinately refused to clear his name. He is clearly a *fugitive from justice* since he committed a crime within a State and withdrew himself from such jurisdiction.¹⁶³ Furthermore, the term fugitive from justice "includes not only those who flee after conviction to avoid punishment but likewise those who, after being charged, flee to avoid prosecution."¹⁶⁴ Being a fugitive from justice, there is no guarantee that once granted provisional liberty, Jimenez will not once more flee and escape criminal prosecution. Notably, even prior to his departure for the United States on the 26th of December last year, he still managed to put up a last minute resistance, only to give up his three-year extradition battle in the face of imminent arrest by the National Bureau of Investigation and the Philippine National Police.¹⁶⁵

Considering further the gravity of the penalty that may be imposed on Jimenez if convicted of the charges as well as the availability of sufficient resources at his disposal,¹⁶⁶ the Court indeed appropriately denied Jimenez's prayer to be released on bail owing to the urgency of his arrest¹⁶⁷ and his great likelihood of flight.¹⁶⁸

163. *Ex Parte Montoya*, 135 F. 2d 281, 282, 170 Or. 499 (1943).

164. See *Marquez, Jr. v. Commission on Elections*, 243 SCRA 538 (1995).

165. Diaz, *supra* note 14, at 1; See C. Felipe et al., *NBI to Jimenez: Leave in 48 Hours or Face Arrest*, PHILIPPINE STAR, Dec. 20, 2002, at 1.

166. See *People v. Berg*, 79 Phil. 842 (1947).

167. As previously discussed, *Cuevas v. Muñoz* laid down the doctrine that in extradition cases, urgency connotes "such conditions relating to the nature of the offense charged and the personality of the prospective extraditees which would make him susceptible to the inclination to flee or escape from the jurisdiction." 348 SCRA 543, 552 (2000).

168. As held in the same *Cuevas* decision:

[T]he gravity of the impossible penalty upon an accused is a factor to consider in determining the likelihood that the accused will abscond if allowed provisional liberty. It is, after all, but human to fear a lengthy, if not a lifetime, incarceration. Furthermore, it has also not escaped the

The Court may have therefore ingeniously, yet fallaciously, argued against Jimenez's case but in the face of subsequent events, the Court had successfully vindicated itself. Notwithstanding this, it bears emphasis that while *Purganan* was a case of first impression as regards the novel issue of a potential extraditee's rights pending extradition case, such decision does not establish a sweeping and precedent-setting rule in all extradition proceedings, clashes between a treaty and the Constitution, and conflicts between the individual's rights and pursuit of governmental interests.

Extradition, by and large, is a matter of factual circumstance and political consideration. As such, *Purganan* is distinctly the law in Jimenez's case only. While Jimenez might have thus left his mark, it would not be so much on Philippine jurisprudence but on domestic politics.

The Three-Term Limit Rule in Review and the Confusion between Term and Tenure

Clarence Rommel C. Nanquil*

- I. INTRODUCTION 155
- II. THE THREE-TERM LIMIT RULE 157
- III. THE THREE-TERM LIMIT RULE CASES 162
 - A. Borja v. COMELEC and Lonzanida v. COMELEC: *Term is Not Equivalent to Tenure*
 - B. Adorneo v. COMELEC: *Recall Term is Not One Term*
 - C. Socrates v. COMELEC: *Disqualification is "Involuntary Severance"*
 - D. Mendoza and Ibarra v. COMELEC: *Resolution of a Confused Court*
- IV. SUMMARY OF THE CASES 183
- V. ANALYSIS 184
 - A. *Term and Tenure Distinguished*
 - B. *Succession to Office*
 - C. *Recall Elections*
 - D. *Borja Doctrine Revisited*
 - E. *Succession, Recall and Term of Office*
- VI. PROPOSED SOLUTION 197
 - A. *Chief Justice Davide's dissent in Socrates*
 - B. *Three-Term Limit Rule as a Mechanical Rule*
 - C. *Application to the Cases*
- VII. CONCLUSION 206

I. INTRODUCTION

Ideas and opinions are not spontaneously "born" in each individual brain: they have had a center of formation, of irradiation, of dissemination, of persuasion — a group of men, or a single individual even, which has developed them in the political form of existing reality.

- Antonio Gramsci^I

* '05 J.D., cand., Ateneo de Manila University School of Law. Editor, *Ateneo Law Journal*.

Cite as 48 ATENEO L.J. 155 (2003).

1. ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 192-93 (Quintin Hoare and Geoffrey Nowell Smith eds. and trans., 1971).

attention of this Court that respondent (Muñoz in this case) appears to be affluent and possesses of sufficient resources to facilitate an escape from jurisdiction.

Id. at 553.