

Confusion over Right to Bail in Extradition
 Proceedings: Did Government of Hong Kong
Special Administrative Region v. Olalia
 Overturn Government of the United States of
 America *v. Purganan*?
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I. INTRODUCTION

At first glance, the constitutional provision on the right to bail is clear and requires neither construction nor interpretation. Thus,

[a]ll persons, except those charged with offenses punishable by *reclusion perpetua* when the 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

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privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.¹

While the Rules of Court add the dichotomy that bail may either be a matter of right or a matter of discretion, they suggest no departure from the categorical language of the Constitution.² This, coupled with the Supreme

1. PHIL. CONST. art III, § 13.

2. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 114, §§ 4-5.

Sec. 4. *Bail, a matter of right; exception.* - 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.

Sec. 5. *Bail, when discretionary.* - Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

- That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
- That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;
- That he committed the offense while under probation, parole, or conditional pardon;
- That the circumstances of his case indicate the probability of flight if released on bail; or
- That there is undue risk that he may commit another crime during the pendency of the appeal.

Court's pronouncements to the effect that a person is allowed to petition for bail as soon as he is deprived of his liberty by virtue of his arrest or voluntary surrender,³ left students of the law complacent that jurisprudence on the right to bail would develop with a considerable degree of stability, consistency, and predictability. After all, the time-honored rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no occasion for interpretation: there is only room for application.⁴

Jurisprudence on the right to bail, however, began to take perplexing twists and turns, often in a manner not ascertainable from the language of the constitutional provision. The Court had to deal with an issue of first impression: is there a right to bail in an extradition proceeding?

By way of *obiter dictum*, the Supreme Court implied in *Secretary of Justice v. Lantion*⁵ that there is a right to bail in an extradition proceeding when it sustained the claim of private respondent Mark B. Jimenez that he was entitled to notice and hearing during the evaluation of the request for his extradition at the Department of Justice (DOJ) prior to the filing of a petition for extradition in court.⁶ Thus:

The appellate court may, *motu proprio*, or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case.

3. Serapio v. Sandiganbayan, 396 SCRA 443, 471 (2003); Mendoza v. Court of First Instance of Quezon, 51 SCRA 369, 373 (1973).
4. See, Twin Ace Holdings Corporation v. Rufina and Company, 490 SCRA 368, 371 (2006); Carriaga v. Judge Anasario, 444 Phil. 685, 688 (2003).
5. Secretary of Justice v. Lantion, 322 SCRA 160 (2000).
6. Prescribing the Procedure for the Extradition of Persons Who Have Committed Crimes in a Foreign Country [PHILIPPINE EXTRADITION LAW], Presidential Decree No. 1069, § 5 (1977). It provides for the procedure to be observed following receipt by the Department of Foreign Affairs of a request from a foreign state or government for the extradition of any accused suspected of being in the territorial jurisdiction of the Philippines:

Sec. 5. Duty of Secretary of Foreign Affairs; Referral of Request: Filing of Petition.

- 1) Unless it appears to the Secretary of Foreign Affairs that the request fails to meet the requirements of this law and the relevant treaty or convention, he shall forward the request together with the related documents to the Secretary of Justice, who shall immediately designate and authorize an attorney in his office to take charge of the case.
- 2) The attorney so designated shall file a written petition with the proper Court of First Instance of the province or city having jurisdiction of the place, with a prayer that the court take the

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

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

The basic principles of administrative law instruct us that the essence of due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the actions or ruling complained of. In essence, procedural due process refers to the method or manner by which the law is enforced. This Court will not tolerate the least disregard of constitutional guarantees in the enforcement of a law or treaty. Petitioner's fears that the Requesting State may have valid objections to the Requested State's non-performance of its commitments under the

request under consideration and shall attach to the petition all related documents. The filing of the petition and the service of the summons to the accused shall be free from the payment of docket and sheriff's fees.

- 3) The Court of First Instance with which the petition shall have been filed shall have and continue to have the exclusive power to hear and decide the case, regardless of the subsequent whereabouts of the accused, or the change or changes of his place of residence.

Extradition Treaty are insubstantial and should not be given paramount consideration.⁷

To be sure, the sole issue in this first *Lantion* case was whether, during the evaluation stage of an extradition proceeding, wherein our executive authorities are looking into the legality and sufficiency of the request for extradition before authorizing the filing of a petition for extradition in court, a potential extraditee has the right to notice and hearing. The Court's tangential analogy between the right to *habeas corpus*, on one hand, and the right to bail, on the other, coupled with the suggestion that the right to bail is available during the arrest of the prospective extraditee when the extradition petition has already been filed in court, only appeared in the aforementioned portion of the decision and was nowhere else explained. In the Court's decision on the petitioner's motion for reconsideration,⁸ it reversed the first *Lantion* case and held that there is no right to notice and hearing during the evaluation stage of the extradition process. While the second *Lantion* case was silent about the right to bail, it contained a characterization of an extradition proceeding that would subsequently trigger judicial vacillation. The Court held:

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 be adjudged in the court of the state where he will be extradited.⁹

In two extradition cases that came after the *Lantion* cases and dealt squarely with the issue of right to bail — *Government of the United States of America v. Purganan*¹⁰ and *Government of Hongkong Special Administrative Region v. Olalia*¹¹ — the issue revolved around the characterization of an extradition proceeding as *sui generis* and not criminal in nature. Yet, the Court set aside the order granting bail in *Purganan*, but did not do so in *Olalia*. In this Comment, the author shall analyze whether *Olalia* overturned *Purganan* and shall attempt to clarify the state of the law on the right to bail in an extradition proceeding.

7. *Lantion 1*, 322 SCRA at 199-200 (emphasis supplied).

8. *Secretary of Justice v. Lantion*, 343 SCRA 377, 386 (2000).

9. *Id.* at 386.

10. *Government of the United States of America v. Purganan*, 389 SCRA 623 (2002).

11. *Government of Hong Kong Special Administrative Region v. Olalia*, G.R. No. 153675, Apr. 19, 2007.

II. THE PURGANAN CASE

A. Facts of the Case

After the Court found in the second *Lantion* case that private respondent Jimenez was bereft of the right to notice and hearing during the evaluation stage of the extradition process, the Government of the United States of America, represented by the Philippine Department of Justice (DOJ), filed with the Regional Trial Court (RTC) of Manila, on 18 May 2001, a Petition for Extradition which was docketed as Extradition Case No. 01192061. The petition alleged, *inter alia*, that Jimenez was the subject of an arrest warrant issued by the United States District Court of the Southern District of Florida in connection with the following charges in Indictment No. 99-00281 CR-SEITZ:

(1) conspiracy to defraud the United States and to commit certain offenses in violation of Title 18 US Code Section 371; (2) tax evasion; (3) wire fraud; (4) false statements; and (5) illegal campaign contributions. The petition prayed for the issuance of an order for the "immediate arrest" of Jimenez pursuant to section 6 of P.D. No. 1069.¹²

Before the RTC could act on the petition, Jimenez filed before it an Urgent Manifestation/Ex-Parte Motion which prayed that the application for an arrest warrant be set for hearing.

In its assailed 23 May 2001 order, the RTC granted the motion of Jimenez and set the case for hearing, requiring the parties to submit their respective memoranda. In his memorandum, Jimenez sought an alternative prayer that, in case a warrant should issue, he be allowed to post bail in the

12. PHILIPPINE EXTRADITION LAW, § 6 provides:

Sec. 6. Issuance of Summons; Temporary Arrest; Hearing, Service of Notices.

- 1) Immediately upon receipt of the petition, the presiding judge of the court shall, as soon as practicable, summon the accused to appear and to answer the petition on the day and hour fixed in the order. We may issue a warrant for the immediate arrest of the accused which may be served anywhere within the Philippines if it appears to the presiding judge that the immediate arrest and temporary detention of the accused will best serve the ends of justice. Upon receipt of the answer, 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.

amount of Pnp100,000.00. Thereafter, the RTC issued its questioned 3 July 2001 order, directing the issuance of a warrant for his arrest and fixing bail for his temporary liberty at one million pesos in cash. After he surrendered his passport and posted the required cash bond, Jimenez was granted provisional liberty.

Petitioner went to the Supreme Court to avoid and set aside the RTC's (1) order, dated 23 May 2001, setting the application for an arrest warrant for hearing; and (2) order, dated 3 July 2001, granting Jimenez' prayer for bail.

B. Issues of the Case

The issues for the Court's resolution were:

- 1) whether Jimenez had the right to notice and hearing before the issuance of a warrant of arrest; and
- 2) whether Jimenez was entitled to bail.

C. Decision

The Court stated that the substantive issues raised required an interpretation or construction of the Treaty and the Law on Extradition. The Court then proceeded to lay down certain postulates of extradition that would aid in properly deciding the issues, namely that: (1) extradition is a major instrument for the suppression of crime; (2) the requesting State will accord due process to the accused; (3) the proceedings are *sui generis* (citing the second *Lantion* case); (4) compliance shall be in good faith; and (5) there is an underlying risk of flight.

I. On the Right to Notice and Hearing

The Court held that the conduct of a hearing detracts from the summary nature of an extradition proceeding. Citing section 6 of Presidential Decree No. 1069,¹³ the Court explained that the law uses the word "immediate" to qualify the arrest of the accused. According to the Court, a hearing entails sending notices to the opposing parties, receiving facts and arguments from them, and giving them time to prepare and present such facts and arguments. The Court concluded that arrest subsequent to a hearing can no longer be considered "immediate."

The Court also stated that, from the numerous attachments to the Petition for Extradition, respondent judge could have gotten an impression adequate for him to make an initial determination of whether the accused was someone who should immediately be arrested in order to "best serve the ends of justice." Noting that respondent judge already found from the

13. PHILIPPINE EXTRADITION LAW, § 6.

supporting documents appended to the Petition for Extradition that "probable cause" did exist, the Court stated that respondent judge gravely abused his discretion when he set the issuance of an arrest warrant for hearing.

With respect to Jimenez' invocation of section 2, article III of the Constitution,¹⁴ the Court stated that the Constitution only requires the examination, under oath or affirmation, of complainants and the witnesses they may produce. There is no requirement to notify and hear the accused before the issuance of warrants of arrest.

Considering the matter to be of first impression, the Court reiterated the proper procedure in an extradition proceeding:

Upon receipt of a petition for extradition and its supporting documents, the judge must study them and make, as soon as possible, a *prima facie* finding whether (a) they are sufficient in form and substance, (b) they show compliance with the Extradition Treaty and Law, and (c) the person sought is extraditable. At his discretion, the judge may require the submission of further documentation or may personally examine the affiants and witnesses of the petitioner. If, in spite of this study and examination, no *prima facie* finding is possible, the petition may be dismissed at the discretion of the judge.

On the other hand, if the presence of a *prima facie* case is determined, then the magistrate must immediately issue a warrant for the arrest of the extraditee, who is at the same time summoned to answer the petition and to appear at scheduled summary hearings. Prior to the issuance of the warrant, the judge must not inform or notify the potential extraditee of the pendency of the petition, lest the latter be given the opportunity to escape and frustrate the proceedings. In our opinion, the foregoing procedure will 'best serve the ends of justice' in extradition cases.¹⁵

14. PHIL. CONST. art III, § 2 provides:

Sec. 2. 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.

15. Lessons from the Mark Jimenez Case, at http://www.abogadomo.com/lawprof_mj.html (last accessed July 22, 2007).

2. On Right to Bail

The Court sustained petitioner's contention that there is no provision in the Constitution granting the right to bail to a person who is the subject of an extradition request and arrest warrant. The Court reasoned that, as suggested by the use of the word "conviction," the constitutional provision on bail,¹⁶ as well as section 4 of rule 114 of the Rules of Court,¹⁷ applies only when a person has been arrested and detained for violation of Philippine criminal laws. It does not apply to extradition proceedings because extradition courts do not render judgments of conviction or acquittal.

The Court continued that the constitutional right to bail 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. According to the Court, it follows that the constitutional provision on bail will not apply to a case like extradition, where the presumption of innocence is not at issue.¹⁸

With respect to Jimenez' invocation of his right to due process, the Court stated that Jimenez' detention prior to the conclusion of the extradition proceedings did not amount to a violation of his right to due process. The Court explained that, although the essence of due process is the opportunity to be heard, the doctrine does not always call for a prior opportunity to be heard. Where the circumstances — such as those present in an extradition case — call for it, a subsequent opportunity to be heard is enough. The Court ruled that Jimenez will be given a full opportunity to be heard subsequently, when the extradition court hears the Petition for Extradition. The Court concluded that there was no violation of his right to due process and fundamental fairness.¹⁹

The Court reiterated the rule that bail is not a matter of right in extradition cases. The Court qualified this pronouncement, however, by saying that, to best serve the ends of justice, after a potential extraditee has been arrested or placed under the custody of the law, bail may be applied for and granted as an exception. This is only upon a clear and convincing

16. PHIL. CONST. art III, § 13 provides:

Sec. 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when the 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.

17. 2000 RULES OF CRIMINAL PROCEDURE, rule 114, §§ 3-4.

18. *Secretary of Justice v. Lantion*, 343 SCRA 377, 386 (2000).

19. *Id.* at 392.

showing that: (1) once granted bail, the applicant will not be a flight risk or a danger to the community; and (2) there exist special, humanitarian, and compelling circumstances including, as a matter of reciprocity, those cited by the highest court in the requesting state when it grants provisional liberty in extradition cases therein.²⁰ The Court continued that, since this exception has no express or specific statutory basis, and since it is derived essentially from general principles of justice and fairness, the applicant bears the burden of proving the above two-tiered requirement with clarity, precision, and emphatic forcefulness.

Jimenez contended that there were special circumstances compelling enough for the Court to grant his request for provisional release on bail. He alleged that his detention would disenfranchise the Manila district that elected him as a member of the House of Representatives pending his extradition. The Court, relying mainly on *People v. Jalosjos*,²¹ held that even before Jimenez ran for and won a congressional seat in Manila, it was already public knowledge that the United States was requesting for his extradition. According to the Court, his constituents were or should have been prepared for the consequences of the extradition case against their representative, including his detention pending the final resolution of the case.

Jimenez also argued that extradition proceedings are lengthy and that it would be unfair to confine him during its pendency. On this point, the Court stated that extradition cases are summary in nature and are resorted to merely to determine whether the extradition petition and its annexes conform to the Extradition Treaty, not to determine guilt or innocence. The Court continued by saying that giving premium to delay by considering it as a special circumstance for the grant of bail would be tantamount to giving Jimenez the power to grant bail to himself. It would encourage him to stretch out and unreasonably delay the extradition proceedings even more.

On Jimenez' claim of not being a flight risk, the Court ruled that, while it was true that he had not actually fled during the preliminary stages of the request for his extradition, this fact could not be taken to mean that he would not flee as the process moves forward to its conclusion. Interestingly, however, the Court added that:

In any event, it is settled that bail may be applied for and granted by the trial court at anytime after the applicant has been taken into custody and prior to judgment, even after bail has been previously denied. In the

20. *Government of the United States of America v. Purganan*, 389 SCRA 623, 667 (2002).

21. *People v. Jalosjos*, 324 SCRA 689 (2000).

present case, the extradition court may continue hearing evidence on the application for bail, which may be granted in accordance with the guidelines in this Decision.²²

Despite the aforementioned pronouncement, still, the Court refused to remand the case to the RTC for the reason that a remand would mean that the long, tedious process would be repeated in its entirety. The Court noted that, in all his voluminous pleadings and verbal propositions, Jimenez himself had not asked for a remand. From this, the Court concluded that even Jimenez realized that there was no need to rehear factual matters.

D. Motion for Reconsideration

The Court denied private respondent Jimenez' Motion for Reconsideration.²³ The Court found that Jimenez had not given any compelling reason to warrant a reversal or modification of the decision rendered on 24 September 2002. The Court further stated that Jimenez' allegations were mere rehashes of arguments previously presented or were mere restatements of the separate and dissenting opinions which were already adequately discussed in the original decision.

III. THE OLALIA CASE

A. Facts of the Case

Pursuant to the Philippines' Agreement for the Surrender of Accused and Convicted Persons with the then British Crown Colony of Hong Kong, now Hong Kong Special Administrative Region of the People's Republic of China, the DOJ received, on 13 September 1999, from the Hong Kong Department of Justice, a request for the provisional arrest of private respondent Juan Antonio Muñoz. The DOJ then forwarded it to the National Bureau of Investigation (NBI) which, in turn, filed with the RTC of Manila, Branch 19, an application for the provisional arrest of Muñoz.

Muñoz was charged before the Hong Kong Court with three counts of the offense of "accepting an advantage as agent," in violation of section 9 (1) (a) of the Prevention of Bribery Ordinance, Cap. 201 of Hong Kong. He was also set to face seven counts of the offense of conspiracy to defraud, penalized by the common law of Hong Kong. On 23 August 1997 and 25 October 1999, warrants of arrest were issued against him. Conviction equates to seven to 14 years of jail term for each charge.

On 23 September 1999, the RTC issued an Order of Arrest against Muñoz. That same day, the NBI agents arrested and detained him.

22. *Purganan*, 389 SCRA at 671.

23. *Lantion 2*, 343 SCRA at 377.

On 14 October 1999, Muñoz filed with the Court of Appeals a petition for *certiorari*, prohibition and *mandamus* with application for preliminary mandatory injunction and/or writ of *habeas corpus* questioning the validity of the Order of Arrest. On 9 November 1999, the Court of Appeals rendered its decision declaring the Order of Arrest void.

On 12 November 1999, the DOJ filed with the Supreme Court a petition for review on *certiorari*, docketed as G.R. No. 140520, praying that the decision of the Court of Appeals be reversed. On 18 December 2000, the Supreme Court rendered a decision granting the petition of the DOJ and sustaining the validity of the Order of Arrest against Muñoz. The decision became final and executory on 10 April 2001.

Meanwhile, as early as 22 November 1999, petitioner Hong Kong Special Administrative Region filed with the RTC of Manila a petition for the extradition of Muñoz, docketed as Civil Case No. 99-95733, raffled off to Branch 10. For his part, Muñoz filed, in the same case, a petition for bail. After the hearing, the RTC issued an order denying the petition for bail, holding that there is no Philippine law granting bail in extradition cases and that Muñoz is a high "flight risk."

On 22 October 2001, the presiding judge of Branch 10, Judge Ricardo Bernardo, inhibited himself from further hearing Civil Case No. 99-95733. It was then raffled off to Branch 8, presided by respondent Judge Felixberto T. Olalia, Jr.

On 30 October 2001, Muñoz filed a motion for reconsideration of the order denying his application for bail, which was granted by respondent judge in an order dated 20 December 2001.²⁴ On 21 December 2001,

24. Respondent Judge Olalia ruled:

In conclusion, this Court will not contribute to accused's further erosion of civil liberties. The petition for bail is granted subject to the following conditions:

1. Bail is set at Php750,000.00 in cash with the condition that accused hereby undertakes that he will appear and answer the issues raised in these proceedings and will at all times hold himself amenable to orders and processes of this Court, will further appear for judgment. If accused fails in this undertaking, the cash bond will be forfeited in favor of the government;
2. Accused must surrender his valid passport to this Court;
3. The Department of Justice is given immediate notice and discretion of filing its own motion for hold departure order before this Court even in extradition proceeding; and

petitioner filed an urgent motion to vacate this order, but it was denied by respondent judge in his order dated 10 April 2002.

Petitioner went to the Supreme Court via a Petition for *Certiorari* under rule 65 of the Rules of Court to seek the nullification of the RTC's (1) order, dated 20 December 2001, allowing Muñoz to post bail; and (2) order, dated 10 April 2002, denying petitioner's motion to vacate the said order of 20 December 2001. The sole issue for the Court's resolution was whether Muñoz was entitled to bail.

B. Decision

In a unanimous *en banc* decision, the Court dismissed the petition. The dispositive portion provided for the remand of the case to the trial court to determine whether private respondent was entitled to bail on the basis of "clear and convincing evidence," or if not, to order the cancellation of his bail bond and his immediate detention; and thereafter, conduct the extradition proceedings with dispatch.

The Court stated that jurisprudence on extradition is still in its infancy in this jurisdiction. The Court, however, pointed out that it has had occasion to resolve the question of whether a prospective extraditee may be granted bail in *Purganan*. The Court noted that, while on its face, *Purganan* applies squarely to Muñoz' case, it could not ignore the following trends in international law: (1) the growing importance in public international law of the individual person, who, in the 20th century, has gradually attained global recognition; (2) the higher value now given to human rights in the international sphere; (3) the corresponding duty of countries to observe these universal human rights in fulfilling their treaty obligations; and (4) the duty of the Court to balance the rights of the individual under our fundamental law, on one hand, and the law on extradition, on the other.

The Court, in *Mejoff v. Director of Prisons*,²⁵ granted bail to a prospective deportee and held that, under the Constitution, the principles set forth in the Universal Declaration of Human Rights are part of the law of the land. Citing the Philippines' accession to the Universal Declaration of Human

4. Accused is required to report to the government prosecutors handling this case or if they so desire to the nearest office, at any time and day of the week; and if they further desire, manifest before this Court to require that all the assets of accused, real and personal, be filed with this Court soonest, with the condition that if the accused flees from his undertaking, said assets be forfeited in favor of the government and that the corresponding lien/annotation be noted therein accordingly.

25. *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951).

Rights and International Covenant on Civil and Political Rights,²⁶ which evinces the country's commitment to uphold fundamental rights, the Court continued by saying that a re-examination of the Court's ruling in *Purganan* was in order.

The Court noted that the exercise of the state's power to deprive an individual of his liberty is not necessarily limited to criminal proceedings. The Court further stated that to limit bail to criminal proceedings would be to ignore jurisprudential history wherein the Court has admitted to bail persons in detention during the pendency of administrative proceedings.

The Court considered the 1909 case of *United States of America v. Go-Siaco*²⁷ as illustrative. In this case, a Chinese facing deportation for failure to secure the necessary certificate of registration was granted bail pending his appeal. After noting that the prospective deportee had committed no crime, the Court opined that refusing him bail meant treating him as a person who had committed the most serious crime known to law. Also, the Court said that, while deportation is not a criminal proceeding, some of the machinery used "is the machinery of criminal law." The Court also cited *Mejoff v. Director of Prisons*²⁸ and *Chirskoff v. Commission of Immigration*,²⁹ wherein it ruled that foreign nationals against whom no formal criminal charges have been filed may be released on bail pending the finality of an order of deportation. The Court concluded that, if bail can be granted in deportation cases, there is no justification why it should not also be allowed in extradition cases. According to the Court, both are administrative proceedings where the innocence or guilt of the person detained is not in issue.³⁰

While the Court acknowledged that an extradition proceeding is *sui generis* and not criminal in nature, the Court stated that it is characterized by the following: (a) it entails a deprivation of liberty on the part of the potential extraditee and (b) the means employed to attain the purpose of extradition is also "the machinery of criminal law."³¹ The Court cited section 6 of P.D. No. 1069, which mandates the "immediate arrest and

26. Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. GAOR (1948).

27. *United States of America v. Go-Siaco* 12 Phil. 490 (1909).

28. *Mejoff*, 90 Phil. at 70.

29. *Chirskoff v. Commission of Immigration*, 84 Phil. 161 (1951).

30. *Government of Hong Kong Special Administrative Region v. Olalia*, G.R. No. 153675, Apr. 19, 2007.

31. *Id.*

temporary detention of the accused" if such "will best serve the interest of justice." The Court further noted that section 20 allows the requesting state, "in case of urgency," to ask for the "provisional arrest of the accused, pending receipt of the request for extradition." Also, release from provisional arrest "shall not prejudice re-arrest and extradition of the accused if a request for extradition is received subsequently."³²

The Court also characterized an extradition proceeding as bearing all earmarks of a criminal process — a potential extraditee may be subjected to arrest, to a prolonged restraint of liberty, and forced to transfer to the demanding state following the proceedings. The Court stated that temporary detention may be a necessary step in the process of extradition, but the length of time of the detention should be reasonable. From the records, Muñoz had been detained for over two years without having been convicted of any crime.³³ The Court held that, by any standard, such an extended period of detention is a serious deprivation of his fundamental right to liberty.

32. PHILIPPINE EXTRADITION LAW, § 20 provides:

Sec. 20. Provisional Arrest.

- a) In case of urgency, the requesting state may, pursuant to the relevant treaty or convention and while the same remains in force; request for the provisional arrest of the accused pending receipt of the request for extradition made in accordance with Section 4 of this Decree.
- b) A request for provisional arrest shall be sent to the Director of the National Bureau of Investigation, Manila, either through the diplomatic channels or direct by post or telegraph.
- c) The Director of the National Bureau of Investigation or any official acting on his behalf shall upon receipt of the request immediately secure a warrant for the provisional arrest of the accused from the presiding judge of the Court of First Instance of the province or city having jurisdiction of the place, who shall issue the warrant for the provisional arrest of the accused. The Director of the National Bureau of Investigation through the Secretary of Foreign Affairs shall inform the requesting state of the result of its request.
- d) If within a period of 20 days after the provisional arrest the Secretary of Foreign Affairs has not received the request for extradition and the documents mentioned in Section 4 of this Decree, the accused shall be released from custody.
- e) 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 relevant treaty or convention.

33. Muñoz was arrested on Sept. 23, 1999, and remained incarcerated until Dec. 20, 2001, when the trial court ordered his admission to bail.

The Court explained that the applicable standard of due process in an extradition proceeding should not be the same as that in a criminal proceeding. According to the Court, in a criminal proceeding, the standard of due process is premised on the presumption of innocence of the accused. The Court held that, as *Purganan* correctly pointed out, it is from this major premise that the ancillary presumption in favor of admitting to bail arises. In contrast, the premise behind the issuance of the arrest warrant and the "temporary detention" in an extradition proceeding is the possibility of flight of the prospective extraditee. This is based on the assumption that such extraditee is a fugitive from justice. The Court concluded that the prospective extraditee thus bears the *onus probandi* of showing that he or she is not a flight risk and should be granted bail.

The Court held that an extraditee should not be deprived of his right to apply for bail, provided that a certain standard for the grant is satisfactorily met. The Court reiterated that an extradition proceeding is *sui generis*, hence, the standard of proof required in granting or denying bail can neither be the proof beyond reasonable doubt in criminal cases nor the standard of proof of preponderance of evidence in civil cases. The Court further stated that, while an extradition proceeding is administrative in character, the standard of substantial evidence used in administrative cases cannot likewise apply given the object of extradition law which is to prevent the prospective extraditee from fleeing our jurisdiction. The Court then proceeded to adopt the standard proposed by then Associate Justice, now Chief Justice, Reynato S. Puno in his separate opinion in *Purganan* — "clear and convincing evidence" should be used in granting bail in extradition cases. According to Justice Puno in *Purganan*, this standard should be lower than proof beyond reasonable doubt but higher than preponderance of evidence.³⁴ The

34. *Government of the United States of America v. Purganan*, 389 SCRA 623, 707-09 (2002). In his separate opinion, Justice Puno submitted that the case should be remanded to the RTC for further reception of evidence and explained:

"In granting bail to the private respondent, the standard used by the extraditing court is not clear. An extradition proceeding is *sui generis*, hence, neither the standard of proof beyond reasonable doubt in criminal cases nor the standard of proof of preponderance of evidence in civil cases can apply. Thus, in *Lantion*, we explained:

"We are not persuaded. An extradition proceeding is *sui generis*. It is not a criminal proceeding which will call into operation all the rights of an accused as guaranteed by the Bill of Rights. To begin with, the process of extradition does not involve the determination of the guilt or innocence of an accused. His guilt or innocence will be adjudged in the court of the state where he will be extradited. Hence, as a rule,

potential extraditee must prove by "clear and convincing evidence" that he is not a flight risk and will abide by all the orders and processes of the extradition court.

constitutional rights that are only relevant to determine the guilt or innocence of an accused cannot be invoked by an extraditee especially by one whose extradition papers are still undergoing evaluation. As held by the US Supreme Court in *United States v. Galanis*:

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

There are other differences between an extradition proceeding and a criminal proceeding. An extradition proceeding is summary in nature while a criminal proceeding 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 the 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. The United States adheres to a similar practice whereby the Secretary of State exercises wide discretion in balancing the equities of the case and the demands of the nation's foreign relations before making the ultimate decision to extradite."

With humility, I submit that the Court should fashion out a higher standard to govern the grant of bail to a possible extraditee. The higher standard is demanded by the fact that our extradition treaty obligates us to assure that an extraditee will not abscond from our jurisdiction. Failure to comply with this obligation will expose our country to international embarrassment. It will defeat the purpose of extradition treaties, *i.e.*, the suppression of crimes, especially transnational crimes to which the Philippines is very vulnerable. The standard, I propose, is the standard of clear and convincing evidence which is higher than mere preponderance of evidence but lower than proof beyond reasonable doubt. If this new and stricter standard would be adopted, it ought to follow that the parties should be given a chance to offer evidence to meet the same. Contrary the claim of the majority, the voluminous pleadings already filed by the parties are insufficient to resolve the issue of whether the private respondent is entitled to bail. These pleadings proffer legal arguments but not proof of facts. The remand of the case at bar is therefore not a cop-out but is proper and it will not delay the proceedings. The extradition court can be ordered to finish the hearing on the limited issue of bail within one (1) week. After all, extradition proceedings are summary in nature."

In the final analysis, the Court held that, there being no showing that Muñoz presented evidence to show that he was not a flight risk, the case should be remanded to the trial court to determine whether he may be granted bail on the basis of "clear and convincing evidence."

IV. CONCLUSION

While *Olalia* sought to reexamine *Purganan*, in the end, *Olalia* did not overturn *Purganan*.

To be sure, what the Court held in *Purganan* was not that bail may not be granted in an extradition proceeding, but that bail is not a matter of right in an extradition case. Despite the Court's long disquisition on how an extradition proceeding is *sui generis*, not criminal in nature, and does not call into operation all the rights of the accused guaranteed by the Bill of Rights, in the end, what the Court decreed was that bail may be applied for and granted "upon a clear and convincing showing (1) that, once granted bail, the applicant will not be a flight risk or a danger to the community; and (2) that there exist special, humanitarian and compelling circumstances including, as a matter of reciprocity, those cited by the highest court in the requesting State when it grants provisional liberty in extradition cases therein." In fact, the Court went further to state that bail may be applied for and granted by the trial court at anytime after the applicant has been taken into custody and prior to judgment, even after bail has been previously denied.

It is baffling, however, why the Court refused to remand the case to the RTC, even at least with respect to the issue of bail, in order that the latter "may continue hearing evidence on the application for bail." Be that as it may, it is clear that the *Purganan* Court was not prepared to, and did not, rule that bail may not be granted in an extradition proceeding.

Olalia, on the other hand, despite its laudable incantations about the state's duty to protect the right of every person to liberty and due process, did not rule that bail is a matter of right in an extradition proceeding. While the Court characterized an extradition proceeding as having all earmarks of a criminal proceeding, in the last analysis, the Court only ruled that an extraditee should not be deprived of his right to apply for bail — not the right to bail — provided that a certain standard for the grant is satisfactorily met. The Court then proceeded to explain what standard should be applied in determining whether a potential extraditee should be admitted to bail. Drawing from Justice Puno's separate opinion in *Purganan*, the Court stated that the standard should be clear and convincing evidence that the

prospective extraditee is not a flight risk and will abide by all the orders and processes of the extradition court.

At bottom, after reexamining *Purganan*, the *Olalia* Court was not prepared to lay down a doctrine that will shed new light into existing jurisprudence on extradition, which the Court itself acknowledged to be still in its infancy. In fact, *Purganan* and *Olalia* are the same in principle — there is no right to bail in an extradition proceeding, but bail may be granted as a matter of discretion upon a clear and convincing showing of certain circumstances.

If at all, *Olalia* only modified *Purganan* in that it no longer required a prospective extraditee applying for bail to prove by clear and convincing evidence that there existed special, humanitarian, and compelling circumstances including, as a matter of reciprocity, those cited by the highest court in the requesting State when it grants provisional liberty in extradition cases therein. *Olalia* held that clear and convincing evidence that the potential extraditee is not a flight risk is enough to warrant admission to bail. In truth, human rights advocates ought not to be jubilant just yet. *Olalia* leaves much to be desired.

Regulatory Transition in Employee Stock Options as Exempt Transactions from the Securities Regulation Code

Allan Verman Y. Ong*

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I. INTRODUCTION

Compensating members of the board of directors and officers of public corporations¹ with stock options, rather than through cash or fringe benefits,

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