CAN CRUEL AND UNUSUAL PUNISHMENT EXIST BY REASON OF SUBHUMAN PRISON CONDITIONS?

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PREFATORY STATEMENT

Section 21 of Article IV (Bill of Rights) of the 1973 Constitution provides: "Excessive fines shall not be imposed nor cruel or unusual punishment inflicted."

Philippine jurisprudence has furnished very little specific guidance in this area of the law for which reason this article is heavily based upon American jurisprudence.

The term "prison conditions," as used herein, encompasses all treatments and practices to which inmates are subjected, and all situations in which they are placed, that are alleged to be attributable to the independent decisions, act, or omissions of prison personnel and of the inmates themselves, – and of the prison system as a whole. Excluded from coverage are inmates – affecting practices, treatments, and conditions which are mandated by the specific terms of a statute (as opposed to a regulation of the particular prison or prison system) or, in the case of a convicted prisoner, by the specific terms of his sentence.

CONCEPT

While our Constitution contains a provision prohibiting the infliction of cruel and unusual punishment, it has been said that difficulty attends any effort to define with exactness the extent of the limitation imposed by this constitutional provision. Various tribunals have established several different criteria governing the determination of when punishment is cruel and unusual.

In *People v. Etoista*[1], our Supreme Court held that such punishment, to be violative of the constitution, must be "flagrantly and plainly oppressive" and "wholly disproportionate to the nature of the offense as to shock the moral sense of the community."

The United States Supreme Court, in *Furman v. Georgia*[2] laid down its own guidelines, to wit:

1) whether the method of punishment is inherently cruel or severe:

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[1] 193 Phil 647

[2] (1972) 408 US 238, 33 L Ed 2d 346, 92 S Ct 2726

2) whether the punishment is excessive, disproportionate (to the offense) or unnecessary;
3) whether the punishment is unacceptable to society; and,
4) whether the punishment is, being inflicted arbitrarily.

Incidentally, the same Court stated in the case of *Trop v Dulles*[3] that it was not clear whether the word "unusual" had any qualitative meaning different from "cruel". Prior cases revealed that the Court simply examined the particular punishment involved in the light of the basic prohibition against inhuman treatment, without regard to any subleties of meaning which might be latent in the word "unusual". Thus, if the word "unusual" was to have any meaning apart from the word "cruel", it should be understood in its ordinary sense signifying something different from that which is generally done.

However, the cruel and unusual punishment clause is a progressive constitutional provision which does not prohibit merely the cruel and unusual punishments known in the past but allows a wider meaning as public opinion becomes enlighted by humane justice.[4]

SUBHUMAN PRISON CONDITIONS AS CRUEL AND UNUSUAL PUNISHMENT

Early American jurisprudence appears to support the proposition that proscriptions against cruel and unusual punishment are directed against punishments imposed by sentencing tribunals. Thus, for example, in *Negrich v Hohn*[5], which involved an allegation that treatments to which a convicted inmate was subjected by prison authorities constituted cruel and unusual punishment, the court indicated that no issue involving the Eighth Amendment[6] had been raised, since the term "punishment", as used therein, connotes "a penalty inflicted by a judicial tribunal in accordance with law in retribution for criminal conduct."

Similarly, in *Hill v State*[7], the court was of the opinion that the cruel and unusual provisions "have relation to punishment imposed by sentences on conviction for criminal offenses."

In earlier decisions,[8] U.S. courts have routinely refused to assume subject matter jurisdiction over petitions from prisoners complaining of the conditions of

[3](1958) 356 US 86, 2 L Ed 2d 630, 78 S Ct 590

[4]33 L Ed 932

[5](1965, DC Pa) 246 F Supp 173, affd (CA3) 379 F2d 213

[6]Cruel and Unusual Punishment provision in the Federal Constitution

[7](1969) 119 Ga App 612, 168 SE2d 327

[8]A Critique of Judicial Refusal to Review the Complaints of Convicts 72 Yale LJ 506; ALR 3d 111

their confinement in adherence to the "hands-off" doctrine wherein matters relating to the supervision of internal prison affairs were regarded as beyond judicial competence and scrutiny. It was only in later years that the courts came to recognize that although the "hands-off" doctrine might operate reasonably to the extent that it prevents judicial review of treatments or deprivations which are necessary concomitants of prison life, it should no longer be invoked in cases involving serious infringements of inmate rights.[9]

An express rejection of the view that prison conditions are not encompassed within the definition of cruel and unusual punishment is found in *Jackson v Bishop*[10] where the court refused to draw "any meaningful distinction between punishment by way of sentence statutorily prescribed and punishment imposed for prison disciplinary purposes."

With the passage of time, courts gradually assumed that conditions of confinement which are not directly attributable to the execution of a sentence can result in cruel and unusual punishment.

Without making any reference to the cruel and unusual clause in our Constitution, the Philippine Supreme Court, speaking through Justice J.B.L. Reyes, in *People v De Los Santos,* indicated *(obiter):* "Society must not close its eyes to the fact that if it has the right to exclude from its midst those who attack it, it has no right at all to confine them under circumstances that strange all sense of decency, reduce convicts to the level of animals, and convert a prison term into prolonged torture and slow death."

In the case of *People v De Los Santos,* infra, the trial judge, Hon. Andres Reyes, had made an ocular inspection of the national penitentiary and held sessions there. The Supreme Court took note of the impressions of the judges part of which follows:

> The whole compound was a scene of one big congestion, made more repulsive by the fact that as one enters . . . the smell of human flesh and perspiration owing to the congestion contaminates the air. The overflow of prisoners in each cell was no ordinary one. There was hardly any space for anyone to move. . . A lot of prisoners had to sleep – if they sleep at all – on the cold cement floor. The whole cells itself is one big sleeping, dining, living, toilet and drainage room . . . In the bartolina, conditions were even worse. The prisoners were actually sleeping and stepping over each other like a bunch o canned sardines. Each prisoner has an allocation of thirty centavos worth of food per day.
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> Hardened criminals were mixed with light offenders. Extortions and all sorts of crimes were being committed sometimes right under the very noses of the guards who, to top it all, could not maintain even a semblance of order and/or discipline as they were so outnumbered and themselves afraid that they might also be stabbed or liquidated.
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> All these contributed to augment the growing feeling of the inmates that they

[9]60 Am Jur 3d, Penal and Correctional Institutions

[10](1969, CA8 Ark) 404 F2d 571

are living in a world of outcasts where only the mighty and the strong survive, where hope of redemption is illusory and where life has been subjected to the law of the jungle or the law of the survival of the fittest.

Based on those impressions of the trial judge, the Supreme Court further stated: "The government cannot evade responsibility for keeping prisoners under such subhuman and dantesque conditions".

Noteworthy is the fact that U.S. courts, on the basis of prison conditions similar and sometimes even less severe than those existing in our national penitentiary as described in the *De Los Santos* case, have granted relief to inmates invoking proscriptions against cruel and unusual punishment.

In *Holt v Sarver,*[12] the Court determined that the totality of conditions surrounding confinement within the Arkansas Penal System – involving an unsupervised and corrupt "trusty" system (hardened convicts constituted 99 per cent of the security force), a barracks housing arrangement inimical to prisoners safety, the lack of any sort of rehabilitation program, inadequate medical and dental facilities, unsanitary food preparation procedures, and the failure to furnish prisoners with anything but the basic necessities of life – rendered the system itself violative of the Eighth Amendment's proscription against cruel and unusual punishment and called for the granting of declaratory and injunctive relief in consolidated class actions brought by inmates of the system under the Civil Rights Act.

Similarly, the totality of conditions under which the inmates of a county jail were required to live – including confinement in cramped and overcrowded quarters which were lightless, airless, damp with leaking water, and filthy with human wastes; slow starvation; deprivation of most human contact and medical attention, etc. – was determined to result in the infliction of cruel and unusual punishment in *Jones v Wittenburg.*[13]

It was also determined that conditions existing at a parish jail were so shocking to the conscience as a matter of elemental decency, and so much more severe than necessary to achieve legitimate penal aims, that confinement therein constituted cruel and unusual punishment, in *Hamilton v Schiro*[14], where it was developed that cells and dormitories within the jail were severely overcrowded, permeated with foul odors, infested with rats, roaches, and vermin, and inadequately ventilated, lighted and supplied with water.

Finally, the disgusting, degrading, and dangerous conditions under which inmates were required to live at a certain county prison were held to cumulatively result in their subjection to cruel and unusual punishment, and an order granting two such inmates habeas corpus relief in the form of a transfer to another institution was affirmed, in Commonwealth ex rel. *Bryant v Hendrick.*[15]

[11] 14 SCRA 702

[12] (1970, DC Ark) 309 F Supp 362, affd CA8 442 F2d 304

[13] (1971, DC Ohio) 323 F Supp 93

[14] (1970, DC, La) 338 F Supp 1016

CONCLUSION

The foregoing cases show that in the United States, prisoners have been permitted to challenge the conditions of their confinements in various forms of actions. Thus, inmates have initiated habeas corpus proceedings under federal and state tort claims statutes.

Additionally, prisoners have proceeded against prison officials in common-law actions for damages, injunctions, or writs of mandamus; contempt proceedings; suits for monetary, declaratory or injunctive relief under the Civil Rights Act.[16]

The courts, for their part have responded by granting declaratory and injunctive relief by ordering the reduction of inmate population or the increase of prison capacity or granting habeas corpus in the form of transfer to another penitentiary.

In other words, U.S. courts in general have overwhelmingly subscribed to the view that those confined within penal institutions can be subjected to the cruel and unusual punishment prohibited by the Constitution by reason of offensive practices, treatments or conditions which originate within the prison setting itself which are not in any way mandated by the express terms of a court-imposed sentence.

In the Philippines, there are only a handful of cases in which the cruel and unusual punishment clause has been put in issue. A perusal of these cases will show that none of the prisoners or their representatives have attempted to directly challenge in a court of law the constitutionality of the conditions of their confinement. Perhaps, this can be attributed to the fact that only a few have a full grasp of the legal implications of the "cruel and unusual punishment" clause.

It would be interesting to think of how our courts would resolve the issue if someone filed an action attacking the constitutionality of prison conditions.

It is anticipated that the Supreme Court would be in a quandary because as in previous decisions[17], it took judicial notice of the subhuman conditions existing

[15] (1971) 444 Pa 83, 280 A2d 110; 51 ALR 3d 98

[16] 51 ALR 3d 111; Goldfarb and Singer, Redressing Prisoners' Grievances 39 George Washington L Rev 1270

[17] People v De Los Santos 14 SCRA 702; People v Simeon 47 SCRA 129; People v Dahil 90 SCRA 553; People v Abella 93 SCRA 25

at the national penitentiary and even went as far as stating, although merely in *obiter*, that society has no right to subject the prisoners to such a miserable existence. Moreover, the Supreme Court would most probably not just ignore pronouncements of foreign tribunals on the matter on the pretext that these courts' line of reasoning is not applicable to the Philippine situation.

On the other hand, the Court may hesitate to declare prison conditions as constitutive of cruel and unusual punishment on account of the virtual inability of prison administrators to remedy such objectionable conditions of confinement because of lack of funds. Unlike U.S. courts which can order the transfer of inmates or the improvement of prison facilities and the increase of prison capacity or the reduction of inmate population without having any second thoughts, our Supreme Court would readily acknowledge the fact that the issuance of similar orders could prove futile because our country does not possess the financial capabilities which the American states have and which is necessary for the enforcement of any such orders.

Perhaps, the Court can simply declare the conditions of confinement in our penitentiaries as resulting in cruel and unusual punishment and let the executive and/or legislative branches of the government do the rest. After all, the Supreme Court can only do so much.

Premises considered with due regard to the growing concern on the issue of human rights, will the Philippine Supreme Court confronted with the problem of subhuman prison conditions consider the same as cruel and unusual punishment?[18]

[18]Will the proper party please come up and file the proper action at least if not in the belief that the concept of cruel and unusual punishment could become one of the principal devices through which improvements in the quality of prison life may be sought, then for the sake of the enrichment of Philippine jurisprudence.

IS P.D. 1396, CREATING THE MINISTRY OF HUMAN SETTLEMENTS, TAINTED WITH CONSTITUTIONAL INFIRMITY?

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The Constitution provides that "every bill shall embrace only one subject which shall be expressed in the title thereof."[1]

Presidential Decree No. 1396, dated June 2, 1978, carries the title: CREATING THE DEPARTMENT (now MINISTRY)[2] OF HUMAN SETTLEMENTS AND THE HUMAN SETTLEMENTS DEVELOPMENT CORPORATION, APPROPRIATING FUNDS THEREFOR, AND ACCORDINGLY AMENDING CERTAIN PRESIDENTIAL DECREES.

The same presidential decree provides:

> "Sec. 3. **Establishment of the National Capital Region.**– In view of the critical importance of the Metropolitan Manila Region in human settlements development, it is hereby declared and established as the National Capital Region of the Republic of the Philippines, and its administration as such is hereby vested in the Secretary (now Minister)[3] of Human Settlements. The pertinent provisions of Presidential Decree No. 824[4], creating the Metropolitan Manila Commission, are hereby accordingly amended."

From the foregoing provisions of law, the question of constitutionality readily presents itself. Does the P.D. 1396 embrace more than one subject? Is it possible that P.D. 1396 suffers from insufficiency of title under the aforequoted constitutional provision?

It seems that the question of constitutionality in the intstant case is susceptible of being viewed in, at least, two ways.

[1]Article VIII, sec. 19, par. (1).

[2]Pres. Decree No. 1397 (June 2, 1978)

[3]*Supra*

[4]Creating the Metropolitan Manila and the Metropolitan Manila Commission and for Other Purposes, November 7, 1975, as amended by P.D. 1274, dated December 27, 1977.