

venient recourse to technicality that impedes rather than promotes the course and processes of litigation. This new re-interpretation does not appear to be, nor would it be correct to say that it is, a more liberalized one. Rather, it is healthy pragmatism seeking to subserve the requirements of justice for efficient resolution of the merits of a case before the courts.



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REBELLION: OUTSIDE THE PHILIPPINES?

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The crimes of rebellion and sedition are "crimes against public order" and are punished under Title Three, Book Two of the Revised Penal Code. Subversion (R.A. 1700, P.D. 885) is a form of illegal association under Article 147, also under Title Three. They are crimes against the internal security of the State, as distinguished from crimes against national (external) security, like treason. Necessarily then, they can only be committed *within* Philippine territory —

"Rebellion is committed by *rising publicly* and taking arms against the government . . ." (Article 134)

"Sedition is committed by persons who *rise publicly* and tumultuously . . ." (Article 139)

Presidential Decree 1735 (dated September 12, 1980, 78 OG 881, March 1, 1982) substantially alters the nature of these crimes. It imposes additional penalties for rebellion, sedition, subversion and conspiracy to commit rebellion or sedition *whether committed within or outside the territorial jurisdiction of the Philippines*. The law seems to reveal an ignorance of the essence of crimes against public order: that the "public armed uprising" can only be committed within Philippine territory, unlike treason which may be committed "in the Philippines or elsewhere."

The elements of rebellion are as follows:

- 1) public uprising;
- 2) taking arms against the constituted power or the Government; and
- 3) that the purpose of the uprising or movement be to remove from the allegiance of the said Government or its laws, the territory of the Philippines or any part thereof. In other words, to overthrow the Government (*Commentaries on the Revised Penal Code*, Guevara).

Rebellion is distinguished from treason in that the former involves a movement of a lesser magnitude, its object being determinate, whereas the object in treason is widespread and broad. Secondly, rebellion merely involves a public uprising *within* a State, whereas, treason involves war with a definite enemy, usually a foreign power (*Revised Penal Code Annotated*, Nollado). On the other hand, sedition is distinguished from treason as follows: "Treason in its more general sense, is the violation by a subject of his allegiance to his sovereign or to the supreme authori-

ty of the State; sedition, in its more general sense, is the raising of commotions or disturbances *in the State*" (*U.S. v. Abad*, 1 Phil 437). Thus, it can be gleaned from the foregoing that even if Filipinos rise publicly and take up arms abroad for the purpose of overthrowing the government of the Philippines, they cannot commit rebellion or sedition and they cannot be punished for such acts committed abroad.

"A crime is essentially territorial, and is the creature of the law which defines or prohibits it; it is an offense against the sovereignty, and can be taken notice of and punished only by the sovereignty offended. Accordingly, the general rule is that the laws of a country do not take effect beyond its territorial limits because it has neither the interest nor the power to enforce its will" (*The Revised Penal Code, Book I*, Francisco). Article 2 of the Revised Penal Code provides for exceptions to the rule of territoriality in criminal law. The last paragraph of this Article provides that the provisions of the RPC shall be enforced not only within the Philippine Archipelago, but also outside of its jurisdiction against those who "should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two . . ." This exception makes mention *only* of crimes against national security, and rightly so; it cannot be extended to include crimes punished under Title Three.

With respect to the additional penalties imposed by P.D. 1735, Section 1 thereof provides that —

"A person found guilty of subversion, rebellion or insurrection, or sedition or conspiracy to commit rebellion, or insurrection, or sedition, whether committed within or outside of the territorial jurisdiction of the Philippines, shall suffer the penalty of *forfeiture of his rights as a citizen of the Philippines*, if he is a Philippine citizen, and *confiscation of his property, real or personal, in favor of the State*, in addition to the penalties prescribed for the offense under existing law."

As Professor Ambrosio Padilla points out, the RPC provides for accessory penalties, but forfeiture of citizenship is not among them. Furthermore, forfeiture of citizenship may be considered as extraordinary or unusual punishment. Prior to P.D. 1735, only C.A. 63 as amended by R.A. 106 provided for cancellation of citizenship as punishment for, among others, "having been declared by competent authority a deserter of Philippine Armed Forces in time of war." There are those who regard this punishment as cruel and unusual, although no one has questioned the constitutionality of said law, to date. Indeed, to deprive a person of his rights as citizen is to leave him with virtually no rights at all. P.D. 1735 is the second law to provide for this penalty, "in addition to those provided for under existing laws" at that!

It is worth mentioning at this point that rebellion is a political crime. Prior to P.D. 942 (which increased the penalty to *reclusion temporal*), the penalty provided for rebellion was *prision mayor*. The Supreme Court, in *People v. Geronimo*, 100 Phil 90, had the occasion to state the reason why the penalty for rebellion was only *prision mayor*; the Court said:

"The leniency in the case of rebellion is due to the political purpose which impels every rebellious act. Society views with some sympathy political offenses like rebellion. Our history of three centuries of uninterrupted rebellions against Spain suffices to explain why the penalty against rebellion which stood at *reclusion temporal* maximum to death in the Spanish Code of 1890, was reduced to *prision mayor* only in our Revised Penal Code."

P.D. 942 increased the penalty from *prision mayor* to *reclusion temporal* medium (for the leader of a rebellion); P.D. 1735 followed suit and imposed the additional penalties of forfeiture of citizenship and confiscation of real or personal properties of the accused, which, according to the first and only "whereas" clause of the law, "is imperative in the public interest."

The additional penalties provided under P.D. 1735 are imposed on "any person found guilty of subversion, rebellion or insurrection, or sedition or conspiracy to commit rebellion or sedition." The penalties for the above-mentioned crimes are not the same. In fact, the law even makes a distinction between a leader of a rebellion or a sedition and a mere follower, and provides a higher penalty for the former. In other words, the RPC recognizes the differences in the nature and gravity of the offenses as well as the participation of the accused therein, and imposes the punishment accordingly. P.D. 1735 imposes the additional penalties arbitrarily and indiscriminately. Under said law, a leader of a rebellion and a mere follower will both forfeit their citizenship. Similarly, even if the offense committed is merely conspiracy to commit rebellion or sedition, the same additional penalties will attach.

The other additional penalty provided under P.D. 1735 is confiscation of the real or personal properties of the accused in favor of the State. Article 45 of the RPC provides for "confiscation and forfeiture of the *proceeds or instruments* of the crime." When such property has no connection with the crime, confiscation is illegal for it will amount to deprivation of property without due process of law. Forfeiture of private property in favor of the State correctly applies to ill-gotten wealth or unlawfully acquired property by public officers in the government services, but not in political crimes, unless the property was used in furtherance thereof.