

ANTONIO A. NEPOMUCENO, ALEXANDER C. AREVALO, MANUEL F. DAEZ, MARCELO C. FERRER, MARCELO V. GALLARIN, ROMUALDO B. INDUCTIVO, RODOLFO G. MACASALABANG, POLICARPO A. ROSALES, FAUSTI...

G.R. No. L-45487. October 30, 1981

Ponente: DE CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b4a41283a776/>

DE CASTRO, J.:

Before Us is petitioners' Motion for Reconsideration of the Resolution of the Court en banc dated August 10, 1978 which reads:

"L-45487 (Antonio A. Nepomuceno, et al. vs. The Secretary of National Defense, et al.) - Following the holding of this Court in *Aquino, Jr. vs. Enrile*, 59 SCRA 183, considering that, as ordered by the President, petitioners Faustino Samonte, Manuel Daez, Marcelo Ferrer, Marcelo Gallarin, Romualdo Inductivo and Rodolfo Macasalabang were released on June 21, 1978 and petitioner Antonio Nepomuceno was released on June 22, 1978, and that none of the petitioners remains under detention, the instant petition for Habeas Corpus and Mandamus is hereby DISMISSED for being moot and academic."

Petitioners impugned the applicability of *Aquino, Jr. vs. Enrile*, 59 SCRA 183, to the case at bar as according to them, the former "was a petition for habeas corpus, whereas, the instant case, aside from being a petition for habeas corpus and mandamus is also a petition for prohibition with preliminary injunction,"[1] in which they sought to enjoin their prosecution and trial for any offense which they may have allegedly committed prior to arrest. Petitioners insist that questions concerning the right of the State to prosecute them have not been resolved by their release and should be decided by this Court on the merits, considering that their petition for prohibition remains unaffected by their release "because until now, they remain charged before Military Commission No. 5, the case against them can come up for trial at any future time, and they continue facing the prospect of being sent back to prison for having allegedly committed crimes which they have not, in fact, committed, and for which they can no longer be made accountable because the Government has forfeited its right to prosecute them,"[2] as a consequence of the alleged gross and unconscionable violation of their constitutional right to speedy trial.

The aforementioned motion was filed despite the dismissal of the instant petition, which originally was one solely for a writ of habeas corpus, on the ground of mootness, petitioners having been ordered temporarily released by the President during the pendency of the petition, following the *Aquino Jr.* doctrine cited in the Resolution of dismissal above-quoted. What is raised therein is the sole issue of whether the petitioners have been denied their right to speedy trial which would, according to their contention, result in the forfeiture of the Government of its right to prosecute them any further.

The Court cannot sustain petitioners' contention.

1. The contention of the petitioners that the Government has forfeited its right to prosecute them suggests the idea of prescription, which is the only known ground by which the State's right to prosecute an offense may be

lost. Clearly, the crime charged has not prescribed, and petitioners never have intimated the prescription of the offense with which they are charged.

2. What in reality petitioners submit as ground for the dismissal of the charge against them before the Military Commission is the alleged denial of their right to speedy trial. True it is, that criminal cases have been dismissed on this ground, but not one has been found to be where the accused have not been even arraigned. Petitioners have not been arraigned as yet because upon the filing of the charges with Military Commission No. 5, they filed a motion to quash in which they challenged the validity of the constitution and competence of the Military Commission. Much less has the Commission set the case for trial since petitioners themselves, after the denial of their motion to quash, filed a supplemental petition^[3] impleading the Military Commission as a party respondent, raising before this Court the question of the Commission's legality and competence. Petitioners even asked for the issuance of a writ of preliminary injunction^[4] to suspend proceedings before the Commission, which this Court did not issue because the President himself ordered^[5] the suspension of said proceedings, following his order for the temporary release^[6] of the petitioners. Any delay in the trial of petitioners' case is therefore, attributable to their own action, more than to anybody else.

3. A delay in the trial of the case, to constitute a denial of the right to speedy trial must be vexatious, capricious and oppressive.^[7] No such delay has been committed here, not even as to the filing of charges which is the main complaint of petitioners.^[8] The suspension of the privilege of the writ of habeas corpus affords a valid excuse for any delay in the filing of the charges, the crime charged being of such a nature involving a nationwide conspiracy and a continuing one, that numerous offenders could be brought before the law and detained, so numerous that the normal dispatch of filing charges cannot be attained, the reason also why their prolonged detention has to be given legal justification as was done with the grant by the Constitution of the power to the President to suspend the privilege of the writ of habeas corpus in case of rebellion. The legality of their continued detention, otherwise arbitrary under normal conditions, makes the delay in the filing of charges against them certainly not one that is arbitrary, capricious and oppressive. As plausibly argued by the Solicitor General,^[9] the delay in the filing of the charges against them was not deliberate but was rendered reasonably necessary by the exigencies of martial law and by the circumstances of their case, their arrest being not necessarily for punishment, but was by way of pre-caution to prevent the exercise of hostile acts, measures which, if conceived in good faith and in the honest belief that they are needed in order to quell the rebellion, or to prevent its continuance, fall within the discretion of the Chief Executive in the exercise of his authority to maintain peace, the central matter involved being not merely the liberty of isolated individuals but the collective peace, tranquility and security of the entire nation, which could not be under-estimated, and any rebellious activity did call for certain individuals being confined as a preventive measure. Unless there be a showing of the arbitrariness of such a move, good faith being presumed, the judiciary has to respect the actuation.

4. Speedy trial, like fair trial, is necessarily relative and is consistent with reasonable delays, the Constitution having been envisioned to prohibit only unreasonable delays, the circumstances of each case not susceptible to be quantified into a specified number of days or months and which, as obtaining in this case, do not warrant a pronouncement that the State has forfeited its right to prosecute the petitioners by having deprived the latter of their right to speedy trial.

5. The right to speedy trial as any other constitutionally or statutory conferred right, except when otherwise expressly so provided by law, may be waived. It must, therefore, be asserted. The records do not disclose that at any time the petitioners themselves moved for the setting of the case for trial in assertion of such right. This they could not have done, with their attack against the validity and constitutionality of the existence of the Commission itself. Hence, if there has been any delay in the filing of the action, or in the trial of the case itself, petitioners are

not entirely without blame.

6. In the cases in which denial of the right to speedy trial resulted in the dismissal of the case, the prosecution, after arraignment and in the trial set for the case, failed to enter into trial or otherwise to present its evidence without valid excuse, and instead asked for postponement repeatedly. Trial could not, therefore, proceed notwithstanding the insistence of the accused or the Court. This could give rise to the reasonable presumption that the prosecution counts with no evidence to support conviction. Dismissal of the case must reasonably follow if the accused's right to speedy trial is not to be violated. There is, however, no such presumption nor violation in the instant case.

ACCORDINGLY, the Motion for Reconsideration is denied.

SO ORDERED.

Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

Fernando, C.J., while concurring in the denial of the motion for reconsideration, cannot subscribe to the view expressed in the resolution that the issue of the alleged denial of the right to speedy trial is foreclosed in a subsequent proceeding, if any. To that extent, he dissents.

Teehankee, Barredo, and Abad Santos, JJ., see concurring and dissenting opinion.

[1] p. 3, Motion for Reconsideration; p. 1429, rollo.

[2] p. 4, *ibid*.

[3] pp. 1016-1059, rollo.

[4] pp. 1292-1311; pp. 1324-1333, *ibid*.

[5] Solicitor General's comment on the Third Urgent Report, Manifestation and Motion of Petitioners, pp. 1410-1416, *ibid*.

[6] Manifestation of Solicitor General, p. 1406, *ibid*.

[7] *Flores v. People*, 61 SCRA 331 (1974); *Acebedo v. Sarmiento*, 36 SCRA 247 (1970); *Kalaw v. Apostol*, 64 Phil. 853 (1937); *Conde v. Rivera*, 45 Phil. 650 (1924).

[8] p. 89, Petitioners' Memorandum, pp. 108-239, rollo.

[9] pp. 23-29, Respondents' Memorandum, pp. 323-357; pp. 7-15, 18-45, Respondents' Reply Memorandum; pp. 466-528, *ibid*.

Normal 150 Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING AND DISSENTING OPINION

TEEHANKEE, BARREDO, AND ABAD SANTOS, JJ.:

We concur with the Resolution penned by Mr. Justice De Castro to deny petitioners' motion for reconsideration of the Resolution of August 10, 1978 dismissing their petition for having become moot and academic since petitioners were already released and none of them remains under detention.

We dissent, however, from the Resolution insofar as it would hold that there has been no denial of petitioners' right to speedy trial. Our vote is simply to deny reconsideration of the Court's original Resolution of August 10, 1978 due to the petition having become moot and academic and to leave open the question of the alleged denial of petitioners' right to speedy trial for determination in the proper forum, considering the announced phaseout of the military tribunals and the transfer of their pending cases to the civil courts (see *Jose Ma. Sison vs. Hon. Juan Ponce Enrile*, G.R. No. L-49579, January 15, 1981).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.