

MIRIAM DEFENSOR SANTIAGO, PETITIONER, VS. HON. JUSTICE FRANCIS GARCHITORENA, SANDIGANBAYAN (FIRST DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 109266. December 02, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court to set aside: (a) the Resolution dated March 3, 1993 in Criminal Case No. 16698 of the Sandiganbayan (First Division) and to declare Presiding Justice Francis Garchitorena of the Sandiganbayan, disqualified from acting in said criminal case; and (b) the Resolution of said court promulgated on March 14, 1993, which deemed as "filed" the 32 Amended Informations against petitioner (Rollo, pp. 2-35 and pp. 36-94).

On May 1, 1991, petitioner was charged in Criminal Case No. 16698 of the Sandiganbayan with violation of Section 3(e) of R.A. No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, allegedly committed by her favoring "unqualified" aliens with the benefits of the Alien Legalization Program (Rollo, p. 36).

On May 24, 1991, petitioner filed with us a petition for certiorari and prohibition, docketed as G.R. No. 99289--99290 (*Santiago v. Vasquez*, 205 SCRA 162 [1992]), to enjoin the Sandiganbayan from proceeding with Criminal Case No. 16698 on the ground that said case was intended solely to harass her as she was then a presidential candidate. She alleged that this was in violation of Section 10, Article IX-C of the Constitution which provides that "(b)ona fide candidates for any public office shall be free from any form of harassment and discrimination." The petition was dismissed on January 13, 1992.

On October 16, 1992, petitioner filed a motion for inhibition of Presiding Justice Garchitorena, which motion was set for hearing on November 13, 1992 at 8:00 A.M. (Rollo, pp. 38-41).

On October 27, 1992, the Sandiganbayan (First Division), of which Presiding Justice Garchitorena is a member, set the criminal case for arraignment on November 13, 1992 at 8:00 A.M. (Rollo, p. 42)

On November 6, 1992, petitioner moved to defer the arraignment on the grounds that there was a pending motion for inhibition, and that petitioner intended to file a motion for a bill of particulars (Rollo, pp. 43-44).

On November 9, 1992, the Sandiganbayan (First Division) denied the motion to defer the arraignment (Rollo, p. 45).

On November 10, 1992, petitioner filed a motion for a bill of particulars (Rollo, pp. 47-48). The motion stated that while the information alleged that petitioner had approved the application for legalization of "aliens" and gave them indirect benefits and advantages it lacked a list of the favored aliens. According to petitioner, unless she was furnished with the names and identities of the aliens, she could not properly plead and prepare for trial.

On November 12, 1992 and upon motion of petitioner in G.R. No. 107598 (Miriam Defensor Santiago v. Sandiganbayan, et al.), we directed the Sandiganbayan (First Division) to reset the arraignment to a later date and to dispose of the two incidents pending before it (Re: disqualification of Presiding Justice Garchitorena and the motion for bill of particulars).

At the hearing on November 13, 1992 on the motion for a bill of particulars, the prosecution stated categorically that they would file only one amended information against petitioner.

However, on December 8, 1992, the prosecution filed a motion to admit the 32 Amended Informations (Criminal Cases Nos. 18371 to 18402; Rollo, pp. 61-126).

On March 3, 1993, Presiding Justice Garchitorena issued the questioned Resolution dated March 11, 1993, denying the motion for his disqualification (Rollo, pp. 151-164).

On March 14, 1993, the Sandiganbayan (First Division) promulgated a resolution, admitting the 32 Amended Informations and ordering petitioner to post the corresponding bail bonds within ten days from notice (Rollo, pp. 165-185). Petitioner's arraignment on the 32 Amended Informations was set for April 12, 1993 at 8:00 A.M. (Rollo, p. 186).

Hence, the filing of the instant petition.

Acting on the petition for the issuance of a restraining order, we issued the Resolution dated March 25, 1993, ordering Presiding Justice Garchitorena "to CEASE and DESIST from sitting in the case until the question of his disqualification is finally resolved by this Court and from enforcing the resolution dated March 11, 1993, ordering petitioner to post bail bonds for the 32 Amended Informations and from proceeding with the arraignment on April 12, 1993" (Rollo, p. 194).

Re: Disqualification of the Sandiganbayan Presiding Justice

The petition for the disqualification of Presiding Justice Garchitorena is based on the publication of his letter in the July 29, 1992 issue of the Philippine Star, which to petitioner "prejudged" the validity of the information filed against her. Petitioner claims that Presiding Justice Garchitorena "cannot be expected to change the conclusions he has subconsciously drawn in his public statements x x x when he sits in judgment on the merits of the case x x x" (Rollo, pp. 16-17).

The letter in question was written in response to an item in Teodoro Benigno's column in the July 22, 1992 issue of the Philippine Star, criticizing the Sandiganbayan for issuing on July 11, 1992 a hold-departure order against petitioner. Benigno wrote that said order reflected a "perverse morality" of the Sandiganbayan and the lack of "legal morality" of its Presiding Justice, thus:

"I cannot, for example accept the legal morality of Sandiganbayan Justice Francis Garchitorena who would stop Miriam Defensor Santiago from going abroad for a Harvard scholarship because of graft charges against her. Some of the most perfidious Filipinos I know have come and gone, left and returned to these shores without Mr. Garchitorena kicking any kind of rumpus. Compared to the peccadilloes of this country's outstanding felons, what Miriam is accused of is kindergarten stuff. The Sandiganbayan Supremo got a lot of headlines for stopping Miriam but I contend this is the kind of perverse morality we can do without" (Rollo, p. 156).

The portion of the letter of Presiding Justice Garchitorena, which petitioner finds objectionable, reads as follows:

"(c) Mrs. Santiago has never informed any court where her cases are pending of her intention to travel, whether the Regional Trial Court where she is charged with soliciting donations from people transacting with her office

at Immigration or before the Sandiganbayan where she is charged with having favored unqualified aliens with the benefits of the Alien Legalization Program nor even the Supreme Court where her petition is still pending" (Rollo, p. 158).

In particular, petitioner considered as prejudgment the statement of Presiding Justice Garchitorena that petitioner had been charged before the Sandiganbayan "with having favored unqualified aliens with the benefits of the Alien Legalization Program."

The statement complained of was just a restatement of the Information filed against petitioner in Criminal Case No. 16698 in connection with which the hold-departure order was issued. Said Information specified the act constituting the offense charged, thus:

"That on or about October 17, 1988, or for sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Miriam Defensor-Santiago, being then the Commissioner of the Commission on Immigration and Deportation, with evident bad faith and manifest partiality, did then and there willfully, unlawfully and criminally approve the application for legalization of aliens who arrived in the Philippines after January 1, 1984 in violation of Executive Order No. 324 dated April 13, 1988 which does not allow the legalization of the same, thereby causing undue injury to the government and giving unwarranted benefits and advantages to said aliens in the discharge of the official and administrative functions of said accused" (Rollo, p. 36).

It appears that petitioner tried to leave the country without first securing the permission of the Sandiganbayan, prompting it to issue the hold-departure order which Benigno viewed as uncalled for. The letter of Presiding Justice Garchitorena, written in defense of the dignity and integrity of the Sandiganbayan, merely stated that all persons facing criminal charges in court, with no exception, have to secure permission to leave the country. Nowhere in the letter is the merit of the charge against petitioner ever touched. Certainly, there would have been no occasion for the letter had Benigno not written his diatribe, unfair at that, against the Sandiganbayan.

Notwithstanding petitioner's misgiving, it should be taken into consideration that the Sandiganbayan sits in three divisions with three justices in each division. Unanimity among the three members is mandatory for arriving at any decision of a division (P.D. No. 1606, Sec. 5). The collegiate character of the Sandiganbayan thus renders baseless petitioner's fear of prejudice and bias on the part of Presiding Justice Garchitorena (*Paredes v. Gopengco*, 29 SCRA 688 [1969]).

Re: Claim of denial of due process

Petitioner cannot complain that her constitutional rights to due process were violated by reason of the delay in the termination of the preliminary investigation. According to her, while the offense was allegedly committed "on or before October 17, 1988", the information was filed only on May 9, 1991 and the amended informations on December 8, 1992 (Rollo, p. 14).

Tatad v. Sandiganbayan, 159 SCRA 70 [1988] is inapplicable to petitioner's case. In *Tatad*, there indeed was an unexplained inaction on the part of the public prosecutors in spite of the simplicity of the legal and factual issues involved therein.

In the case at bench, there was a continuum of the investigatory process but it got snarled because of the complexity of the issues involved. The act complained of in the original information came to the attention of the Ombudsman only when it was first reported in the January 10, 1989 issue of the *Manila Standard*. Immediately thereafter, the investigatory process was set in motion. The investigation was first assigned to Special Prosecutor Gualberto dela Llana but on request of petitioner herself the investigation was re-assigned to the Office of the Deputy Ombudsman for Luzon. The case was handled by a panel of four prosecutors, who submitted a draft

resolution for the filing of the charges on March 29, 1990. The draft resolution had to undergo the hierarchy of review, normal for a draft resolution with a dissenting vote, until it reached the Ombudsman in March 1991.

We note that petitioner had previously filed two petitions before us involving Criminal Case No. 16698 (G.R. Nos. 99289-99290; G.R. No. 107598). Petitioner has not explained why she failed to raise the issue of the delay in the preliminary investigation and the filing of the information against her in those petitions. A piece-meal presentation of issues, like the splitting of causes of action, is self-defeating.

Petitioner next claims that the Amended Informations did not charge any offense punishable under Section 3 (e) of R.A. No. 3019 because the official acts complained of therein were authorized under Executive Order No. 324 and that the Board of Commissioners of the Bureau of Investigation adopted the policy of approving applications for legalization of spouses and unmarried, minor children of "qualified aliens" even though they had arrived in the Philippines after December 31, 1983. She concludes that the Sandiganbayan erred in not granting her motion to quash the informations (Rollo, pp. 25-31).

In a motion to quash, the accused admits hypothetically the allegations of fact in the information (People v. Supnad, 7 SCRA 603 [1963]). Therefore, petitioner admitted hypothetically in her motion that:

- (1) She was a public officer;
- (2) She approved the application for legalization of the stay of aliens, who arrived in the Philippines after January 1, 1984;
- (3) Those aliens were disqualified;
- (4) She was cognizant of such fact; and
- (5) She acted in "evident bad faith and manifest partiality in the execution of her official functions."

The foregoing allegations of fact constitute the elements of the offense defined in Section 3 (e) of R.A. No. 3019.

The claims that the acts complained of were indeed authorized under Executive Order No. 324, that petitioner merely followed in good faith the policy adopted by the Board of Commissioners and that the aliens were spouses or unmarried minor children of persons qualified for legalization of stay, are matters of defense which she can establish at the trial.

Anent petitioner's claim that the Amended Informations did not allege that she had caused "undue injury to any party, including the Government," there are two ways of violating Section 3 (e) of R.A. No. 3019. These are: (a) by causing any undue injury to any party, including the Government; and (b) by giving any private party any unwarranted benefit, advantage or preference.

In *Uy v. Sandiganbayan*, G.R. No. 100334, December 5, 1991, we held:

"The use of the distinctive term "or" connotes that either act qualifies as a violation of Section 3 (a). In other words the act of giving any private party any unwarranted benefit, advantage or preference is not an indispensable element of the offense of 'causing any undue injury to any party' as claimed by petitioners although there may be instances where both elements concur."

Re: Delito Continuado

Be that as it may, our attention was attracted by the allegation in the petition that the public prosecutors filed 32 Amended Informations against petitioner, after manifesting to the Sandiganbayan that they would only file one amended information (Rollo, pp. 6-61). We also noted that petitioner questioned in her opposition to the motion to

admit the 32 Amended Informations, the splitting of the original information (Rollo, pp. 127-129). In the furtherance of justice, we therefore proceed to inquire deeper into the validity of said plaint, which petitioner failed to pursue with vigor in her petition.

We find that, technically, there was only one crime that was committed in petitioner's case, and hence, there should only be one information to be filed against her.

The 32 Amended Informations charge what is known as *delito continuado* or "continued crime" and sometimes referred to as "continuous crime."

In fairness to the Ombudsman's Office of the Special Prosecutor, it should be borne in mind that the concept of *delito continuado* has been a vexing problem in Criminal Law – difficult as it is to define and more difficult to apply.

According to Cuello Calon, for *delito continuado* to exist there should be a plurality of acts performed during a period of time; unity of penal provision violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provisions are united in one and the same intent or resolution leading to the perpetration of the same criminal purpose or aim (II Derecho Penal, p. 520; I Aquino, Revised Penal Code, 630, 1987 ed).

According to Guevarra, in appearance, a *delito continuado* consists of several crimes but in reality there is only one crime in the mind of the perpetrator (Commentaries on the Revised Penal Code, 1957 ed., p. 102; Penal Science and Philippine Criminal Law, p. 152).

Padilla views such offense as consisting of a series of acts arising from one criminal intent or resolution (Criminal Law, 1988 ed. pp. 53-54).

Applying the concept of *delito continuado*, we treated as constituting only one offense the following cases:

- (1) The theft of 13 cows belonging to two different owners committed by the accused at the same place and at the same period of time (People v. Tumlos, 67 Phil. 320 [1939]).
- (2) The theft of six roosters belonging to two different owners from the same coop and at the same period of time (People v. Jaranillo, 55 SCRA 563 [1974]).
- (3) The theft of two roosters in the same place and on the same occasion (People v. De Leon, 49 Phil. 437 [1926]).
- (4) The illegal charging of fees for services rendered by a lawyer every time he collects veteran's benefits on behalf of a client, who agreed that the attorney's fees shall be paid out of said benefits (People v. Sabbun, 10 SCRA 156 [1964]). The collections of the legal fees were impelled by the same motive, that of collecting fees for services rendered, and all acts of collection were made under the same criminal impulse (People v. Lawas, 97 Phil. 975 [1955]).

On other hand, we declined to apply the concept to the following cases:

- (1) Two estafa cases, one of which was committed during the period from January 19 to December 1955 and the other from January 1956 to July 1956 (People v. Dichupa, 113 Phil. 306 [1961]). The said acts were committed on two different occasions.
- (2) Several malversations committed in May, June and July, 1936, and falsifications to conceal the said offenses committed in August and October 1936. The malversations and falsifications "were not the result of only one purpose or of only one resolution to embezzle and falsify x x x" (People v. Cid, 66 Phil. 354 [1938]).

(3) Two estafa cases, one committed in December 1963 involving the failure of the collector to turn over the installments for a radio and the other in June 1964 involving the pocketing of the installments for a sewing machine (*People v. Ledesma*, 73 SCRA 77 [1976])

(4) 75 estafa cases committed by the conversion by the agent of collections from customers of the employer made on different dates (*Gamboa v. Court of Appeals*, 68 SCRA 308 [1975]).

The concept of *delito continuado*, although an outcrop of the Spanish Penal Code, has been applied to crimes penalized under special laws, e.g. violation of R.A. No. 145 penalizing the charging of fees for services rendered following up claims for war veteran's benefits (*People v. Sabbun*, 10 SCRA 156 [1964]).

Under Article 10 of the Revised Penal Code, the Code shall be supplementary to special laws, unless the latter provide the contrary. Hence, legal principles developed from the Penal Code may be applied in a supplementary capacity to crimes punished under special laws.

The question of whether a series of criminal acts over a period of time creates a single offense or separate offenses has troubled also American Criminal Law and perplexed American courts as shown by the several theories that have evolved in theft cases.

The trend in theft cases is to follow the so-called "single larceny" doctrine, that is, the taking of several things, whether belonging to the same or different owners, at the same time and place constitutes but one larceny. Many courts have abandoned the "separate larceny doctrine," under which there was a distinct larceny as to the property of each victim. Also abandoned was the doctrine that the government has the discretion to prosecute the accused for one offense or for as many distinct offenses as there are victims (*Annotation*, 37 ALR 3rd 1407, 1410-1414).

The American courts following the "single larceny" rule, look at the commission of the different criminal acts as but one continuous act involving the same "transaction" or as done on the same "occasion" (*State v. Sampson*, 157 Iowa 257, 138 NW 473; *People v. Johnson*, 81 Mich. 573, 45 NW 1119; *State v. Larson*, 85 Iowa 659, 52 NW 539).

An American court held that a contrary rule would violate the constitutional guarantee against putting a man in jeopardy twice for the same offense (*Annotation*, 28 ALR 2d 1179). Another court observed that the doctrine is a humane rule, since if a separate charge could be filed for each act, the accused may be sentenced to the penitentiary for the rest of his life (*Annotation*, 28 ALR 2d 1179).

In the case at bench, the original information charged petitioner with performing a single criminal act - that of her approving the application for legalization of aliens not qualified under the law to enjoy such privilege.

The original information also averred that the criminal act: (i) committed by petitioner was in violation of a law - Executive Order No. 324 dated April 13, 1988, (ii) caused an undue injury to one offended party, the Government, and (iii) was done on a single day, i.e., on or about October 17, 1988.

The 32 Amended Informations reproduced verbatim the allegation of the original information, except that instead of the word "aliens" in the original information each amended information states the name of the individual whose stay was legalized.

At the hearing of the motion for a bill of particulars, the public prosecutors manifested that they would file only one amended information embodying the legalization of stay of the 32 aliens. As stated in the Order dated November 12, 1992 of the Sandiganbayan (First Division):

"On the matter of the Bill of Particulars, the prosecution has conceded categorically that the accusation against Miriam Defensor Santiago consists of one violation of law represented by the approval of the applications of

32 foreign nationals for availment (sic) of the Alien Legalization Program. In this respect, and responding directly to the concerns of the accused through counsel, the prosecution is categorical that there will not be 32 accusations but only one x x x" (Rollo, p. 59).

The 32 Amended Informations aver that the offenses were committed on the same period of time, i.e., on or about October 17, 1988. The strong probability even exists that the approval of the application for the legalization of the stay of the 32 aliens was done by a single stroke of the pen, as when the approval was embodied in the same document.

Likewise, the public prosecutors manifested at the hearing of the motion for a bill of particulars that the Government suffered a single harm or injury. The Sandiganbayan in its Order dated November 13, 1992 stated as follows:

"x x x Equally, the prosecution has stated that insofar as the damage and prejudice to the government is concerned, the same is represented not only by the very fact of the violation of law itself but because of the adverse effect on the stability and security of the country in granting citizenship to those not qualified" (Rollo, p. 59).

WHEREFORE, the Resolution dated March 3, 1993 in Criminal Case No. 16698 of the Sandiganbayan (First Division) is AFFIRMED and its Resolution dated March 11, 1993 in Criminal Case No. 16698 is MODIFIED in the sense that the Office of the Special Prosecutor of the Office of the Ombudsman is directed to consolidate the 32 Amended Informations (Criminal Cases Nos. 18371 to 18402) into one information charging only one offense under the original case number, i.e., No. 16698. The temporary restraining order issued by this Court on March 25, 1993 is LIFTED insofar as to the disqualification of Presiding Justice Francis Garchitorena is concerned.

SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Bidin, Regalado, Davide, Jr., Nocon, Bellosillo, Melo, and Puno, JJ., concur.
Romero, J., join J. Feliciano, in his dissenting opinion.
Vitug, J., see separate opinion.

Defensor-Santiago vs Garchitorena : 109266 : December 2, 1993 : J. Feliciano : En Banc : Dissenting Opinion 6
pt 6 pt 0 3

DISSENTING OPINION

Feliciano, J.:

I dissent from the opinion written for the majority by Mr. Justice Quason, to the extent that that opinion directed the Office of the Special Prosecutor of the Office of the Ombudsman to consolidate the thirty-two (32) Amended Informations (Criminal Cases Nos. 18371 to 18402) into one Information under the original case number, i.e., No. 16698.

I believe that the Court should order the Sandiganbayan to dismiss the thirty-two (32) Amended Informations, for that court seriously erred in not granting petitioner's Motion to Quash those Informations. The grounds for my submission in this respect were spelled out in detail in my dissenting opinion[1] in *Miriam Defensor-Santiago v. Conrado M. Vasquez, Ombudsman, et al.* (205 SCRA 162 at 174-180 [1992]), which I beg leave to reproduce here:

"The information filed before the Sandiganbayan in Criminal Case No. 16698 charges the petitioner as

follows:

‘That on or about October 17, 1988, or for sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Miriam Defensor-Santiago, being then the Commissioner of the Commission on Immigration and Deportation, with evident bad faith and manifest partiality, did then and there wilfully, unlawfully and criminally approve the application for legalization of aliens who arrived in the Philippines after January 1, 1984 in violation of Executive Order No. 324 dated April 13, 1988 which does not allow the legalization of the same, thereby causing undue injury to the government and giving unwarranted benefits and advantage to the said aliens in the discharge of the official and administrative functions of said accused.

Contrary to law.’

Essentially, the above information charges that petitioner had, in violation of the provisions of Executive Order No. 324 approved applications for legalization of the stay of aliens who had arrived in the Philippines after January 1, 1984. The information takes the position that that Executive Order ‘does not allow the legalization of the same.’

Executive Order No. 324 entitled ‘Waiving Passport Requirements for Immigrants under Certain Conditions,’ dated April 13, 1988, was promulgated pursuant to Section 47 (A) (3) of C.A. No. 613, as amended, the Philippine Immigration Act of 1940, which provides that

‘Notwithstanding the provisions of this Act, the President is authorized:

(a) when the public interest to warrants:

x x x x x x x x

(3) to waive the passport requirements for immigrants, under such conditions as he may prescribe.’

Executive Order No. 324 provides that an alien may apply with the Commissioner of Immigration and Deportation for waiver of passport requirements during a 12-month period beginning on a date to be designated by the Commissioner. The Order provides, among other things, that the alien ‘must establish that he entered the Philippines before January 1, 1984 and that he has resided continuously in the Philippines in an unlawful status from such date to the filing of his application.’

Petitioner is charged with having unlawfully waived the passport requirements of certain aliens who arrived after January 1, 1984. It is clear from the record of this case, especially of the preliminary investigation conducted by the Office of the Special Prosecutor, that petitioner herself stated that she had allowed aliens who had arrived in the Philippines after January 1, 1984, but who were the spouses or minor children of qualified aliens -- the latter being alien spouses or parents who had entered the Philippines before January 1, 1984 and who were themselves qualified for waiver of passport requirements under Executive Order No. 324 -- to apply for waiver of passport requirements and, after compliance with requirements of Executive Order No. 324, approved such ‘legalization.’

Executive Order No. 324 is not itself a statute prescribing penal sanctions for certain acts. Thus, disregard of Executive Order No. 324 would not, by itself, give rise to criminal liability. The criminal information in this case in effect links up Executive Order No. 324 with Section 3(e) of Republic Act No. 3019, known as the Anti-Graft and Corrupt Practices Act. Section 3(e) of the Anti-Graft Act reads as follows:

x x x x x x x x

It must be noted, firstly, that petitioner, as the then Commissioner of Immigration and Deportation, was expressly authorized and obliged by Executive Order No. 324 to apply and administer and enforce its

provisions. Indeed, petitioner was authorized to issue rules and regulations to implement that Executive Order (paragraph 16). Secondly, the application and administration of Executive Order No. 324 involve, not ministerial or mechanical acts, but rather the exercise of judgment and discretion, adjudicatory and hence quasi-judicial in nature. Thirdly, and perhaps most notably, paragraphs 11 and 12 of the Executive Order provide as follows:

‘11. Except as provided in Paragraph 12, herein, the Commissioner of Immigration and Deportation may waive exclusion grounds under the Immigration Act in the case of individual aliens for humanitarian purposes to assure family unity or for the public interest.

12. The following grounds for exclusion may not be waived by the Commissioner of Immigration and Deportation, namely, (a) those relating to criminals; (b) those relating to aliens likely to become public charges; (c) those relating to drug offenses, except for so much of those provisions as relates to a single offense of simple possession of marijuana; and (d) those relating to national security and members of subversive organization.

x x x x x x x x

(Italics supplied)

Paragraph 11, it will be seen, expressly authorizes petitioner to waive grounds for exclusion of aliens under the Immigrations Act in two (2) cases: (a) ‘for humanitarian purposes to assure family unity;’ and (b) ‘for the public interest.’ Under Section 29(a) of the Philippine Immigration Act of 1940, as amended, the classes of aliens excluded from entry into the Philippines include:

‘(17) Persons not properly documented for admission as may be required under the provisions of this Act.’¹

Upon the other hand, paragraph 12 specifies the categories of persons in whose cases no waiver of grounds of exclusion may be granted.

It will be seen then that the acts of petitioner, which the information assumes to be criminal in nature, constituted official acts of petitioner done in the course of applying, interpreting and construing Executive Order No. 324. There is no question that the applications for waiver of passport requirements by the spouses and minor children of qualified aliens were admitted and approved by petitioner ‘for humanitarian purposes to assure family unity.’ It is also not disputed that the said alien spouses and minor children did not fall under any of the (non-waivable) excluded classes listed in paragraph 12 of Executive Order No. 324. It is similarly undisputed that no one has pretended that petitioner had any personal or corrupt interest in any of the cases of alien spouses and minor children of qualified aliens she had acted upon. No one has suggested, for instance, that the fees specified in paragraph 9 of Executive Order No. 324 either were not collected by the Government or were misappropriated by petitioner and converted to her own use. It may be noted, incidentally, that paragraph 9 expressly authorizes the Commissioner ‘in her discretion, [to] charge a lower fee for the spouses and minor children below 21 years old of the applicant.’ The criminal information, as noted above, included an allegation of ‘evident bad faith and manifest partiality.’ It is clear, however, that the facts brought out in the preliminary investigation offered absolutely no basis for such an allegation which is actually a conclusion offered by the Special Prosecutor, much like the words ‘wilfully, unlawfully and criminally’ which are recited redundantly in the criminal information here. Again, the facts disclosed in the preliminary investigation showed no undue injury.’ to the Government and no unwarranted benefit or advantage’ to the alien wives and minor children of qualified aliens outside of the simple acceptance and approval of the applications for waiver of passport requirements (so called ‘legalization’) by petitioner. In other words, if the interpretation or construction given by petitioner to Executive Order No. 324 is correct -- i.e., that applications for waiver of passport requirements by alien wives and minor children, arriving after January 1, 1984, of qualified aliens who had themselves arrived in the Philippines before January 1, 1984 and who were otherwise eligible under the terms and conditions of Executive Order No. 324 may be granted for humanitarian purposes in the interest

of allowing or restoring family unity -- there would be no 'injury,' let alone an 'undue injury,' to the Government. Neither can the benefit of waiver of passport requirements in the cases of such spouses and minor children of qualified aliens be deemed to be an 'unwarranted' benefit to such aliens if petitioner's interpretation of Executive Order No. 324 be held to be correct.

It is a rule too firmly established to require documentation that contemporaneous interpretations of a statute or implementing regulation by the executive or administrative officials precisely charged with the implementation of such a statute or regulation, are entitled to great weight and respect from the courts. This Court itself has in many instances deferred to such interpretations rendered by such administrative officers. (See, e.g., *Ramos v. Court of Industrial Relations*, 21 SCRA 1282 [1967]; *Salavaria v. Buenviaje*, 81 SCRA 722 [1978]; *Asturias Sugar Central, Inc. v. Commissioner of Customs*, 29 SCRA 617 [1969]; *University of the Philippines v. Court of Appeals*, 37 SCRA 54 [1971]; *Lim Hao Ting v. Central Bank*, 104 Phil. 573 [1958]). But even if an administrative interpretation be ultimately found to be incorrect as a matter of law by this Court, the official responsible for such interpretation is not, for that reason alone, to be held liable personally, whether civilly or criminally or administratively. It is just as firmly settled that to impose liability upon the public officer who has so acted, something far graver than error of law or error of judgment must be clearly shown and that is corrupt personal intentions, personal malice or bad faith. (See generally *Marcelo v. Sandiganbayan*, 185 SCRA 346 [1990]). As noted above, no such allegations were made during the preliminary investigation in Criminal Case No. 16698.

My submission, with respect, is that whether the acts admittedly done by petitioner were criminal in nature, is a legal question, on which petitioner in effect asks us to rule in this Petition. I believe, further, that there is nothing to prevent this Court from addressing and ruling on this legal issue. There is no real need for proof of any additional essential facts apart from those already admitted by petitioner. It seems to me that a public officer is entitled to have legal questions like that before this Court resolved at the earliest possible opportunity, that a public officer should not be compelled to go through the aggravation, humiliation and expense of the whole process of criminal trial, if the legal characterization of the acts charged as criminal is the very issue at stake.

I respectfully submit, still further, that the acts charged do not, as a matter of law, constitute a crime. Indeed, if the acts which petitioner admits having done constitute a criminal offense, very serious consequences would follow for the administration of law and government rules and regulations in general. For the thrust of the criminal information here would appear to be that public officers interpret and apply statutory and regulatory provisions at their own peril and at the risk of criminal liability, notwithstanding the absence of any corrupt intent to profit personally by any such interpretation and application." (Underscoring in the penultimate and ultimate paragraphs supplied)

The Information, quoted internally above, was filed in Criminal Case No. 16698 back in 1 May 1991. Approximately two-and-a-half (2-1/2) years later, the proceedings before the Sandiganbayan are still going on, and indeed appear to me to be back to where the case was at the time the original Information was filed. Had this Court ruled on the legal question which petitioner in effect had asked us to rule in *Santiago v. Vasquez* (supra), this case should be terminated by now, one way or the other. Once more, I respectfully submit that a public officer should not be compelled to go through the aggravation, humiliation and expense of the whole process of criminal trial, if the legal nature of the acts charged as criminal is the very issue at stake.

I vote to grant the Petition for Certiorari and to require the Sandiganbayan to dismiss the thirty-two (32) Amended Informations.

[1] Gutierrez, Griño-Aquino and Romero, JJ. joined in the dissent. Melencio-Herrera, J. wrote a separate opinion, but adopted the substantive points made in my dissenting opinion.

1 It is also pertinent to note the following classes of excluded aliens:

‘(10) Persons who are members of a family accompanying an excluded alien, unless in the opinion of the Commissioner of Immigration no hardship would result from their admission;

(11) Persons accompanying an excluded person who is helpless from mental or physical disability or infancy, when the protection or guardianship of such accompanying person or persons is required by the excluded person, as shall be determined by the Commissioner of Immigration;

(12) Children under fifteen years of age, unaccompanied by or not coming to a parent, except that any such children may be admitted in the discretion of the Commissioner of Immigration, if otherwise admissible;

x x x x x x x x’

(Section 29 (a), C.A. No. 613, as amended; italics supplied)

Defensor-Santiago vs Garchitorena : 109266 : December 2, 1993 : J. Vitug : En Banc : Separate Opinion 250 6 pt 6 pt 0 3

SEPARATE OPINION

VITUG, J.:

While I share the view expressed by Mr. Justice Florentino P. Feliciano in his dissent from the majority opinion in *Miriam Defensor-Santiago vs. Conrado Vasquez, et al.* (205 SCRA 162), the decision in said case, however, having become final, has, in my view, the effect of foreclosing the issues there involved.

Accordingly, in this petition now at bench (G.R. No. 109266), I vote with the majority in simply directing, for the reasons expressed for the Court by Mr. Justice Camilo D. Quiason, the consolidation of the thirty-two Amended Informations into a single Information.

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