

**MANUEL R. CRUZ; PAULINO M. ARCEO; ELPIDIO G. CACHO;
ROGELIO P. GARCIA; MANUEL M. DELA CRUZ; WILLIAM H.
LORENZANA; PABLO P. GARCIA; RODRIGO A. HALASAN; ADRIANO B.
CASTILLO; LEONA...**

G.R. No. 75983. April 15, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

Habeas corpus proceedings were commenced in this Court on October 1, 1986[1] to test the legality of the continued detention of some 217 so-called “political detainees”[2] arrested in the nine-year span of official martial rule and committed to the New Bilibid Prisons in Muntinlupa. All had been made to stand trial for common crimes[3] before various courts martial;[4] if any of these offenses had any political color, this had neither been pleaded nor proved.

Of the 217 prisoners, 157 are civilians, and only 26 confirmed as military personnel.[5] One hundred and fifteen (115) accused had been condemned to die. Forty-six (46) were sentenced to life imprisonment. To nine (9) others were meted prison terms of from twenty to thirty years; to forty-one (41), prison terms of ten to twenty years; and to three (3), less than ten years.

The present statuses of their cases are disparate, as might be expected. As of the date of filing of the petitions in this Court, the sentences of sixty-eight (68) had become final upon their approval by the Office of the President,[6] seventy-five (75) cases were pending review in either that Office or before the Board of Military Review, while the appeal or review of the remaining seventy-three (73) cases either had been expressly suspended pending the outcome of these petitions, or are simply not dealt with in the records.

Presidential amnesty was granted to petitioner Virgilio Alejandrino,[7] yet to this date he remains a prisoner at the Penitentiary, as do Domingo Reyes, Antonio Pumar, Teodoro Patano, Andres Parado and Daniel Campus, although they were acquitted of the charges against them,[8] and Reynaldo C. Reyes and Rosalino de los Santos, who appear to have fully served the sentences imposed on them by the military commissions which convicted them.[9]

The petitioners urge the Court to declare unconstitutional the establishment of all military tribunals as well as General Order No. 8 ordaining their creation, and the nullity of all the proceedings had against them before these bodies as a result of which they had been illegally deprived of their liberty. Their plea is for the grant of a retrial of their respective cases in the civil courts, where their right to due process may be accorded respect.[10] The writ of habeas corpus issued on July 31, 1987, two weeks after an amended petition[11] was filed with leave of court, reiterating the arguments originally pleaded, and setting forth the additional claim that the pronouncement of this Court of the lack of jurisdiction of military tribunals to try cases of civilians even during martial rule, as declared in *Olaguer, et al. vs. Military Commission No. 34, et al.*,[12] entitled the petitioners to be unconditionally freed from detention.

The Solicitor General's return of the writ in behalf of the public respondents stated that the latter "offer no objection or opposition to the release from detention of petitioners-civilians * * (which) may be immediately effected, unless there are other legal causes that may warrant their detention * * (while) the other petitioners who are military personnel * * should not be released." [13] This return was shortly amended however [14] to urge that this Court take a "second look" and undertake a "thorough" re-examination of the Olaguer decision," suggesting the inapplicability of the ruling to "cases involving civilians charged with, and convicted of common crimes and * * cases where the detained accused have, in effect, fully served the sentence by their continued detention for the duration of the penalty imposed." Also suggested was the giving of "limited retroactive" effect to the decision, considering the consequences "of voiding earlier convictions, * * (such as) the grant of immunity from prosecution as a result of prescription or of the Statute of (L)imitations having run, witnesses having been scattered and no longer available, * * memories hav(ing) also been taxed beyond permissible limits, * * and (the annulment) of acquittal decisions, * * to the great prejudice of the rights of the accused." [15]

In Olaguer, this Court in no uncertain terms affirmed that -

"* * a military commission or tribunal cannot try and exercise jurisdiction, even during the period of martial law, over civilians for offenses allegedly committed by them as long as the civil courts are open and functioning, and that any judgment rendered by such body relating to a civilian is null and void for lack of jurisdiction on the part of the military tribunal concerned (People v. Navarro, 63 SCRA 264, 274 [1975]). For the same reasons, Our pronouncement in Aquino, Jr. v. Military Commission No. 2 (L-37364, 63 SCRA 546) and all decided cases affirming the same, in so far as they are inconsistent with this pronouncement, should be deemed abandoned." [16]

Such is the statement of the doctrine squarely applicable in these cases.

- Clearly, no right to relief under Olaguer exists in favor of the 26 petitioners who were admittedly in the military service. [17] Over them the courts martial validly exercised jurisdiction. It need only be said that these tribunals were created precisely to try and decide cases of military personnel, and the validity of General Order No. 8 ordaining their creation, although repeatedly challenged on constitutional grounds, has as many times been upheld by the Court, either expressly or impliedly. [18] As to these petitioners, the writ is thus unavailing.

- Deference to the Olaguer decision impels on the other hand the application thereof to all civilians, without distinction, who were haled before military tribunals. To be sure, due consideration was given to the submittal that the doctrine is, or should be declared as, limited in applicability to "political offenders," and not "ordinary crimes" such as those of which the civilian petitioners were convicted. 18-A But distinctions should not be set where none were clearly intended. The issue in Olaguer, as here, is the jurisdiction of courts martial over the persons of civilians, and not merely over the crimes imputed to them, regardless of which they are entitled to trial by judicial, not executive or military process. Conformably with this holding, the disposition of these cases would necessarily have, as a premise, the invalidity of any and all proceedings had before courts martial against the civilian petitioners. There is all the more reason to strike down the proceedings leading to the conviction of these non-political detainees who should have been brought before the courts of justice in the first place, as their offenses are totally unrelated to the insurgency avowedly sought to be controlled by martial rule.

Due regard for consistency likewise dictates rejection of the proposal to merely give "prospective effect" to Olaguer. No distinction should be made, as the public respondents propose, between cases still being tried and those finally decided or already under review. All cases must be treated alike, regardless of the stage they happen to be in, and since according to Olaguer, all proceedings before courts martial in cases involving civilians are null and void, the court deems it proper to adhere to that unequivocal pronouncement, perceiving no cogent reason to deviate from the doctrine.

The fact cannot be ignored, however, that crimes appear to have been committed, and there are accusations against herein petitioners for those offenses. Olaguer cannot and does not operate to absolve the petitioners of these charges, or establish that the same are baseless, so as to entitle them to immediate release from detention. It is not to be forgotten that the victims in offenses ascribed to the petitioners have as much interest as the State has to prosecute the alleged authors of the misdeeds. Justice will be better served if the detention of such of the petitioners as are not hereby ordered released or excepted, is continued until their cases are transferred to the ordinary courts having jurisdiction, and the necessary informations have been filed against them therein, as has already been done in the case of petitioners Imperial D. Usman and Samu Gumal.[19] The State should be given a reasonable period of time to accomplish this transfer, at which time the petitioners may apply for bail for their temporary release.

The Solicitor General not unreasonably anticipates questions to arise as to the availability of certain defenses to the petitioners upon their prosecution before the civil courts. It seems evident, however, that no breach of the constitutional prohibition against twice putting an accused in jeopardy of punishment for the same offense[20] would result from the retrial of the petitioners' cases, for the simple reason that the absence of jurisdiction of the courts martial to try and convict the petitioners prevented the first jeopardy from attaching.[21] Valid previous proceedings are required in order that the defense of double jeopardy can be raised by the accused in the second prosecution.[22]

Neither does the defense of prescription appear to be available to the petitioners who, except for a handful, were charged with offenses punishable by death or reclusion perpetua, which prescribe in twenty years.[23] Even the few not so charged cannot raise such defense since the filing of the first indictments suspended the running of the prescriptive period, and the prosecutions under the informations to be filed should be regarded as mere continuations of the previous proceedings.[24] At the very least, the filing of the first charges should be considered as having interrupted the prescriptive period notwithstanding the lack of jurisdiction of the military tribunal in which they were filed, applying, by analogy, the ruling in *People vs. Olarte*. [25]

In fine, the Court holds that the merits of the indictments against all these civilians are solely for the civil courts to weigh and decide upon after due proceedings. Otherwise stated, they are entitled to the retrial they have explicitly requested of their respective cases in the civil courts.

WHEREFORE, the petition is hereby GRANTED insofar as petitioners Virgilio Alejandrino,[26] Domingo Reyes, Antonio Pumar, Teodoro Patono, Andres Parado, Daniel Campus,[27] Reynaldo C. Reyes and Rosalino de los Santos[28] are concerned. The Director of the Bureau of Prisons is hereby ordered to effect the immediate release of the above-mentioned petitioners, unless there are other legal causes that may warrant their detention.

The petition is DISMISSED as to petitioners Elpidio Cacho, William Lorenzana, Benigno Bantolino, Getulio B. Braga, Jr., Tomas C. Amarte, Rogelio L. Caricungan, Ernesto Baradiel, Isabelo Narne, Eric F. Pichay, Pablo Callejo, Russel A. Paulino, Laurel Lamaca, Tirso F. Bala, Calixto Somera, Edulino Lacsina (Draftee), Ronnie A. Celiz, Elpidio Urbano, Sofronio Galo, Aquilino Leyran, Leopoldo Arcadio, Rolando Tudin, Rosendo I. Ramos, Pacifico Batacan, Edilberto Liberato, Jimmy C. Realis, Democrito Loraña who are all military personnel.

As to the other petitioners, the Department of Justice is hereby DIRECTED TO FILE the necessary informations against them in the courts having jurisdiction over the offenses involved, within one hundred eighty (180) days from notice of this decision, without prejudice to the reproduction of the evidence submitted by the parties and admitted by the Military Commission. If eventually convicted, the period of the petitioners' detention shall be credited in their favor.

The Courts wherein the necessary informations are filed are DIRECTED TO CONDUCT with dispatch the

necessary proceedings inclusive of those for the grant of bail which may be initiated by the accused.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, and Griño-Aquino, JJ., concur.

Gutierrez, Jr., J., see separate opinion.

[1] The original proceeding was docketed as G.R. No. 75983. Subsequent petitions having been filed, consolidation of all proceedings was directed by this Court's Resolutions dated August 25, 1987 (G.R. Nos. 79077), September 24, 1987 (G.R. Nos. 79862 and 79599-79600) and November 27, 1987 (G.R. No. 80565)

[2] p. 7, Rollo of G.R. No. 75983

[3] With the exception of PAF Staff Sergeant Pablo Callejo, who was convicted of "Assaulting and Wilfully Disobeying a Superior Officer", all the rest were charged with such crimes as robbery, murder, arson, kidnapping, illegal possession of firearms, etc.

[4] created under General Order No. 8

[5] namely, Elpidio Cacho, William Lorenzana, Benigno Bantolino, Getulio B. Braga, Jr., Tomas C. Amarte, Rogelio L. Caricungan, Ernesto Baradiel, Isabelo Narne, Eric F. Pichay, Pablo Callejo, Russel A. Paulino, Laurel Lamaca, Tirso F. Bala, Calixto Somera, Edulino Lacsina (Draftee), Ronnie A. Celiz, Elpidio Urbano, Sofronio Galo, Aquilino Leyran, Leopoldo Arcadio, Rolando Tudin, Rosendo I. Ramos, Pacifico Batacan, Edilberto Liberato, Jimmy C. Realis, Democrito Loraña; the records do not indicate the status of the 34 remaining petitioners

[6] But the sentences of 37 were reduced

[7] p. 326, Record

[8] consequent upon the disapproval of their sentences by the Office of the President; p. 108 and p. 257, Record

[9] p. 119 and p. 259, respectively, of the Record

[10] original petition, p. 2, et seq., Rollo of G.R. No. 75983; an amended petition was filed on July 14, 1987, infra

[11] p. 114, et seq., Rollo of G.R. No. 75983

[12] 150 SCRA 144

[13] p. 130, Rollo of G.R. No. 75983

[14] p. 155 et seq., Ibid.

[15] pp. 155-156, 156-157, Ibid.

[16] Olaguer vs. Military Commission, supra, at p. 165

[17] see footnote 5, supra

[18] SEE Olaguer vs. Military Commission, supra, and the cases cited therein, particularly Aquino, Jr. vs. Military Commission No. 2, 63 SCRA 546

18-A SEE footnotes 3 and 4, and related text, at p. 4, supra

[19] petitioners in G.R. No. 79077

[20] sec. 21, Art. III, 1987 Constitution

[21] the requisites of double jeopardy being (a) a first jeopardy must have attached prior to the second; (b) the first jeopardy must have been validly terminated; and (c) the second jeopardy must be for the same offense as that of the first. Legal jeopardy attaches only (a) upon a valid indictment (b) before a competent court (c) after arraignment, (d) a valid plea having been entered and (e) the case was dismissed or otherwise terminated without the consent of the accused (People v. Bocar, 138 SCRA 166 citing People v. Ylagan, 58 Phil. 85; People v. Galano, 75 SCRA 193; People v. Brecinio, 125 SCRA 182

[22] People v. Brecinio, supra

[23] Article 92, Revised Penal Code

[24] Hickey v. State 174 SW 269

[25] 19 SCRA 494, 500.

[26] who was granted Presidential amnesty

[27] who were acquitted of the charges against them by the Military Tribunal

[28] who appear to have fully served their respective sentences as imposed by the Military Commissions

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