State Practice of Asian Countries in International Law

Philippines

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CRIMINAL LAW – EXTRADITION – DOUBLE CRIMINALITY – EXTRADITABLE OFFENCES

Government of Hong Kong Special Administrative Region, Represented by the Philippine Department of Justice, v. Juan Antonio Muñoz [G.R. No. 207342, 7 November 2017]

In a previous decision in 2016, the Supreme Court ruled that under the Hong Kong Special Administrative Region under the terms of the Agreement Between the Government of the Republic of the Philippines and the Government of Hong Kong for the Surrender of Accused and Convicted Persons (RP-HK Agreement), the respondent Juan Antonio Muñoz could be extradited for purposes of trial in Hong Kong for seven counts of the crime of conspiracy to defraud under Hong Kong law, but not the associated three counts of the crime of accepting an advantage as an agent. The latter was due to non-compliance with the dual-criminality rule expressed in Article 2 of the RP-HK Agreement which provided that extradition by the Requested State shall only be for an offense within the descriptions of offenses punishable by detention or imprisonment for more than one year, or by a more severe penalty, according to the laws of both countries. The crime as charged in Hong Kong related to bribery by a member of the private sector, but Muñoz was a civil servant employed by the Central Bank in the Philippines who should be charged and prosecuted with a public sector offense under Philippine law.

The petitioner moved for reconsideration of the Court's ruling, arguing that under Hong Kong jurisprudence in the case of *B. v. The Commissioner of the Independent Commission Against Corruption*, the offense of accepting an advantage as an agent also covered public servants in another jurisdiction. The Court denied the motion on the ground that acceptance of the argument would require the court to take judicial notice of the ruling of the Hong Kong courts. This could not be done as the Court was without liberty to take judicial

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notice of the ruling without contravening its own rules on evidence under which foreign judgments and laws are not considered as matter of a public or notorious nature that proved themselves. Instead, such judgments and laws have to be duly alleged and competently proved like any other disputed fact. Moreover, opinion testimonies of qualified experts in Hong Kong law testified before the trial court that the crime of accepting an advantage as an agent was a private sector offense that did not have an equivalent in Philippine criminal law. The Court thus reaffirmed its previous judgment, that Muñoz could only be extradited for the offenses of conspiracy to defraud, but not accepting an advantage as an agent, on the ground of the dual-criminality rule.

HUMAN RIGHTS – TREATIES AND COVENANTS – RELATED INSTRUMENTS

Saturnino Ocampo et al. v. Rear Admiral Ernesto Enriquez, et al. [G.R. No. 225973, 8 August 2017]

In an earlier decision promulgated in 2016, the Supreme Court dismissed several petitions of numerous private citizens questioning the burial of former President Ferdinand E. Marcos at the Libingan ng mga Bayani (National Heroes Cemetery) on the ground, among others, that such act violated the rights of the petitioners and other victims of human rights violations under Marcos' rule to "full and effective" reparations under numerous human rights instruments. These included the *International Convention on Civil and Political Rights* (ICCPR), the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Basic Principles and Guidelines), and the *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (UN Principles on Impunity). In dismissing the petition, the Supreme Court ruled that the Philippines was more than compliant with its international obligations, citing the 1987 Constitution's provisions on human rights, laws passed by the legislature, judicial remedies afforded by the courts, and administrative and executive issuances of the Executive Branch.

The petitioners moved for reconsideration of the dismissal, and on this point argued that the mere existence of human rights laws, administrative rules, and judicial issuances was not equivalent to full compliance with international law standards. They contended that the victims of human rights violations must be given full satisfaction and guarantees of non-repetition, and are

entitled to restitution, compensation, rehabilitation, and satisfaction as contemplated in the international instruments invoked.

The Supreme Court denied the motion, pointing out that the Basic Principles and Guidelines and UN Principles on Impunity are neither treaties nor have attained the status of general accepted principles of international law and/or international customs. It also determined that they are merely expressions of non-binding norms, principles, and practices that influence state behavior, but cannot be validly considered as sources of international law binding upon the Philippines under Art. 38(1), Chapter 2 of the Statute of the International Court of Justice. The plain text of these instruments also stated that they are recommendatory in character. The Court declared that if Congress intended to incorporate these recommendations, it could have done so by expressly mentioning the instruments in human rights legislation it had enacted. Besides, even if the Basic Principles and Guideline and UN Principles on Impunity were binding international law, they did not prohibit the Marcos' burial at the LNMB. It added that the protection of a person's human rights and dignity must not trample upon that of another, and the Bill of Rights should have the same interpretation for both unloved and despised persons on one hand and the rest who are not so stigmatized on the other.

TREATIES – AGREEMENTS CONCURRED IN BY THE SENATE IN 2017

13 February 2017

The Philippine Senate issued Resolution No. 38 concurring in the ratification of the Agreement between Japan and the Philippines on Social Security. The Agreement guarantees the application of basic social security principles such as Equality of Treatment between their nationals, Export of Benefits in case such nationals decide to reside in the other country, and Totalization of Periods of Coverage which allows the tacking of creditable periods of covered periods under the social security schemes of the two parties.

14 March 2017

The Philippine Senate issued Resolution No. 42 concurring in the ratification of the Paris Agreement. The Agreement sets out a plan to limit the increase in the global average temperature to well below 2°C. To this end, state parties must determine their own contributions to the global effort to combat climate change.

14 August 2017

The Philippine Senate passed Resolution No. 58 concurring in the ratification of the Convention Concerning Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service. The Convention grants protection to public employees against acts of anti-union discrimination in respect of their employment. It also provides facilities and rights to be granted to public sector organizations and their members.

TREATIES – FORM – CONCLUSION – BINDING EFFECT

Mitsubishi Corporation – Manila Branch v. Commissioner of Internal Revenue, [G.R. No. 175772, 5 June 2017]

The governments of Japan and the Philippines executed an Exchange of Notes in 1987 through which the former extended a loan for the construction of a coal-fired thermal power plant project. In the said Exchange of Notes, the Philippine government undertook to assume all taxes imposed by the Philippines on all Japanese firms and nationals operating as suppliers, contractors, or consultants engaged in the project. The National Power Corporation, a government-owned and controlled corporation that implemented the project on behalf of the Philippine government, engaged the petitioner Mitsubishi Corporation as a contractor for the steam generator, auxiliaries, and civil works of project. In 1998, Mitsubishi filed its income tax returns reflecting, among others, income from its operations in connection with the project. It paid all of the income taxes due thereon, but subsequently filed an administrative claim for refund of the taxes erroneously paid. It also filed a petition for review with the Court of Tax Appeals. The Court of Tax Appeals ultimately denied the petitioner's claim for refund, noting that the Exchange of Notes did not clearly grant a tax exemption to the petitioner, and in any case could not be read as a treaty granting a tax exemption in the absence of Senate concurrence.

The Supreme Court reversed the decision of the Court of Tax Appeals and declared Mitsubishi to be entitled to a tax refund. It noted that an Exchange of Notes is considered as a form of executive agreement, which is a valid and binding international agreement even without Senate concurrence. In accordance with its terms, the Philippine government must assume the tax liability of Mitsubishi with respect to the project. Thus, the taxes were indeed erroneously collected from Mitsubishi and subject to refund.