

EN BANC

[G.R. No. 132601, October 12, 1998]

LEO ECHEGARAY Y PILO, PETITIONER, VS. THE SECRETARY OF JUSTICE AND THE DIRECTOR OF THE BUREAU OF CORRECTIONS, THE EXECUTIVE JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY AND THE PRESIDING JUDGE OF REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 104, RESPONDENTS.

DECISION

PER CURIAM:

On June 25, 1996, this Court affirmed^[1] the conviction of petitioner Leo Echegaray y Pilo for the crime of rape of the 10 year-old daughter of his common-law spouse and the imposition upon him of the death penalty for the said crime.

Petitioner duly filed a Motion for Reconsideration raising mainly factual issues, and on its heels, a Supplemental Motion for Reconsideration raising for the first time the issue of the constitutionality of Republic Act No. 7659^[2] (the death penalty law) and the imposition of the death penalty for the crime of rape.

On February 7, 1998, this Court denied^[3] petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration with a finding that Congress duly complied with the requirements for the reimposition of the death penalty and therefore the death penalty law is not unconstitutional.

In the meantime, Congress had seen it fit to change the mode of execution of the death penalty from electrocution to lethal injection,^[4] and passed Republic Act No. 8177, AN ACT DESIGNATING DEATH BY LETHAL INJECTION AS THE METHOD OF CARRYING OUT CAPITAL PUNISHMENT, AMENDING FOR THE PURPOSE ARTICLE 81 OF THE REVISED PENAL CODE, AS AMENDED BY SECTION 24 OF REPUBLIC ACT NO. 7659.^[5] Pursuant to the provisions of said law, the Secretary of Justice promulgated the Rules and Regulations to Implement Republic Act No. 8177 ("implementing rules")^[6] and directed the Director of the Bureau of Corrections to prepare the Lethal Injection Manual.^[7]

On March 2, 1998, petitioner filed a Petition^[8] for Prohibition, Injunction and/or Temporary Restraining Order to enjoin respondents Secretary of Justice and Director of the Bureau of Prisons from carrying out the execution by lethal injection of petitioner under R.A. No. 8177 and its implementing rules as these are unconstitutional and void for being: (a) cruel, degrading and inhuman punishment per se as well as by reason of its being (b) arbitrary, unreasonable and a violation of due process, (c) a violation of the Philippines' obligations under international covenants, (d) an undue delegation of legislative power by Congress, (e) an unlawful exercise by respondent Secretary of the power to legislate, and (f) an

unlawful delegation of delegated powers by the Secretary of Justice to respondent Director.

On March 3, 1998, petitioner, through counsel, filed a Motion for Leave of Court^[9] to Amend and Supplement Petition with the Amended and Supplemental Petition^[10] attached thereto, invoking the additional ground of violation of equal protection, and impleading the Executive Judge of the Regional Trial Court of Quezon City and the Presiding Judge of the Regional Trial Court, Branch 104, in order to enjoin said public respondents from acting under the questioned rules by setting a date for petitioner's execution.

On March 3, 1998, the Court resolved, without giving due course to the petition, to require the respondents to COMMENT thereon within a non-extendible period of ten (10) days from notice, and directed the parties "to MAINTAIN the *status quo* prevailing at the time of the filing of this petition."

On March 10, 1998, the Court granted the Motion for Leave of Court to Amend and Supplement Petition, and required respondents to COMMENT thereon within ten (10) days from notice.

On March 16, 1998, petitioner filed a Very Urgent Motion (1) To clarify Status Quo Order, and (2) For the Issuance of a Temporary Restraining Order expressly enjoining public respondents from taking any action to carry out petitioner's execution until the petition is resolved.

On March 16, 1998, the Office of the Solicitor General^[11] filed a Comment (On the Petition and the Amended Supplemental Petition)^[12] stating that (1) this Court has already upheld the constitutionality of the Death Penalty Law, and has repeatedly declared that the death penalty is not cruel, unjust, excessive or unusual punishment; (2) execution by lethal injection, as authorized under R.A. No. 8177 and the questioned rules, is constitutional, lethal injection being the most modern, more humane, more economical, safer and easier to apply (than electrocution or the gas chamber); (3) the *International Covenant on Civil and Political Rights* does not expressly or impliedly prohibit the imposition of the death penalty; (4) R.A. No. 8177 properly delegated legislative power to respondent Director; and that (5) R.A. No. 8177 confers the power to promulgate the implementing rules to the Secretary of Justice, Secretary of Health and the Bureau of Corrections.

On March 17, 1998, the Court required the petitioner to file a REPLY thereto within a non-extendible period of ten days from notice.

On March 25, 1998, the Commission on Human Rights^[13] filed a Motion for Leave of Court to Intervene and/or Appear as Amicus Curiae^[14] with the attached Petition to Intervene and/or Appear as Amicus Curiae^[15] alleging that the death penalty imposed under R.A. No. 7659 which is to be implemented by R.A. No. 8177 is cruel, degrading and outside the limits of civil society standards, and further invoking (a) Article II, Section 11 of the Constitution which provides: "*The State values the dignity of every human person and guarantees full respect for human rights.*"; (b) Article III of the Universal Declaration of Human Rights which states that "*Everyone has the right to life, liberty and security of person,*" and Article V thereof, which

states that "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*"; (c) The International Covenant on Civil and Political Rights, in particular, Article 6 thereof, and the *Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming At The Abolition of the Death Penalty*; (d) Amnesty International statistics showing that as of October 1996, 58 countries have abolished the death penalty for all crimes, 15 countries have abolished the death penalty for ordinary crimes, and 26 countries are abolitionists de facto, which means that they have retained the death penalty for ordinary crimes but are considered abolitionists in practice that they have not executed anyone during the past ten (10) years or more, or in that they have made an international commitment not to carry out executions, for a total of 99 countries which are total abolitionists in law or practice, and 95 countries as retentionists;^[16] and (e) Pope John Paul II's encyclical, "*Evangelium Vitae.*" In a Resolution dated April 3, 1998, the Court duly noted the motion.

On March 27, 1998, petitioner filed a Reply^[17] stating that (1) this Court is not barred from exercising judicial review over the death penalty per se, the death penalty for rape and lethal injection as a mode of carrying out the death penalty; (2) capital punishment is a cruel, degrading and inhuman punishment; (3) lethal injection is cruel, degrading and inhuman punishment, and that being the "most modern" does not make it less cruel or more humane, and that the Solicitor General's "aesthetic" criteria is short-sighted, and that the lethal injection is not risk free nor is it easier to implement; and (4) the death penalty violates the *International Covenant on Civil and Political Rights* considering that the Philippines participated in the deliberations of and voted for the *Second Optional Protocol*.

After deliberating on the pleadings, the Court gave due course to the petition, which it now resolves on the merits.

In the Amended and Supplemental Petition, petitioner assails the constitutionality of the mode of carrying out his death sentence by lethal injection on the following grounds:^[18]

I.

DEATH BY LETHAL INJECTION IS UNCONSTITUTIONAL FOR BEING A CRUEL, DEGRADING AND INHUMAN PUNISHMENT.

II.

THE DEATH PENALTY VIOLATES THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, WHICH IS PART OF THE LAW OF THE LAND.

III.

LETHAL INJECTION, AS AUTHORIZED UNDER REPUBLIC ACT NO. 8177 AND THE QUESTIONED RULES, IS UNCONSTITUTIONAL BECAUSE IT IS AN UNNECESSARY AND WANTON INFLICTION OF

PAIN ON A PERSON AND IS, THUS, A CRUEL, DEGRADING, AND INHUMAN PUNISHMENT.

IV.

REPUBLIC ACT NO. 8177 UNDULY DELEGATES LEGISLATIVE POWER TO RESPONDENT DIRECTOR.

V.

RESPONDENT SECRETARY UNLAWFULLY DELEGATED THE LEGISLATIVE POWERS DELEGATED TO HIM UNDER REPUBLIC ACT NO. 8177 TO RESPONDENT DIRECTOR.

VI.

RESPONDENT SECRETARY EXCEEDED THE AUTHORITY DELEGATED TO HIM UNDER REPUBLIC ACT NO. 8177 AND UNLAWFULLY USURPED THE POWER TO LEGISLATE IN PROMULGATING THE QUESTIONED RULES.

VII.

SECTION 17 OF THE QUESTIONED RULES IS UNCONSTITUTIONAL FOR BEING DISCRIMINATORY AS WELL AS FOR BEING AN INVALID EXERCISE BY RESPONDENT SECRETARY OF THE POWER TO LEGISLATE.

VIII.

INJUNCTION MUST ISSUE TO PREVENT IRREPARABLE DAMAGE AND INJURY TO PETITIONER'S RIGHTS BY REASON OF THE EXISTENCE, OPERATION AND IMPLEMENTATION OF AN UNCONSTITUTIONAL STATUTE AND EQUALLY INVALID AND IMPLEMENTING RULES.

Concisely put, petitioner argues that R.A. No. 8177 and its implementing rules do not pass constitutional muster for: (a) violation of the constitutional proscription against cruel, degrading or inhuman punishment, (b) violation of our international treaty obligations, (c) being an undue delegation of legislative power, and (d) being discriminatory.

The Court shall now proceed to discuss these issues in seriatim.

I. LETHAL INJECTION, NOT CRUEL, DEGRADING OR INHUMAN PUNISHMENT UNDER SECTION 19, ARTICLE III OF THE 1987 CONSTITUTION.

The main challenge to R.A. 8177 and its implementing rules is anchored on Article III, Section 19 (1) of the 1987 Constitution which proscribes the imposition of "cruel, degrading or inhuman" punishment. "The prohibition in the Philippine Bill against cruel and unusual punishments is an Anglo-Saxon safeguard against governmental oppression of the subject, which made its first appearance in the reign of William and Mary of England in 'An Act declaring the rights and liberties of the subject, and settling the succession of the crown,' passed in the year 1689. It has been incorporated into the Constitution of the United States (of America) and into most constitutions of the various States in substantially the same language as that used in the original statute. The exact language of the Constitution of the United States is used in the Philippine Bill."^[19] "The counterpart of Section 19 (1) in the 1935 Constitution reads: 'Excessive fines shall not be imposed, nor cruel and inhuman punishment inflicted.' xxx In the 1973 Constitution the phrase became 'cruel or unusual punishment.' The Bill of Rights Committee of the 1986 Constitutional Commission read the 1973 modification as prohibiting 'unusual' punishment even if not 'cruel.' It was thus seen as an obstacle to experimentation in penology. Consequently, the Committee reported out the present text which prohibits 'cruel, degrading or inhuman punishment' as more consonant with the meaning desired and with jurisprudence on the subject."^[20]

Petitioner contends that death by lethal injection constitutes cruel, degrading and inhuman punishment considering that (1) R.A. No. 8177 fails to provide for the drugs to be used in carrying out lethal injection, the dosage for each drug to be administered, and the procedure in administering said drug/s into the accused; (2) R.A. No. 8177 and its implementing rules are uncertain as to the date of the execution, time of notification, the court which will fix the date of execution, which uncertainties cause the greatest pain and suffering for the convict; and (3) the possibility of "botched executions" or mistakes in administering the drugs renders lethal injection inherently cruel.

Before the Court proceeds any further, a brief explanation of the process of administering lethal injection is in order.

In lethal injection, the condemned inmate is strapped on a hospital gurney and wheeled into the execution room. A trained technician inserts a needle into a vein in the inmate's arm and begins an intravenous flow of saline solution. At the warden's signal, a lethal combination of drugs is injected into the intravenous line. The deadly concoction typically includes three drugs: (1) a nonlethal dose of sodium thiopental, a sleep inducing barbiturate; (2) lethal doses of pancuronium bromide, a drug that paralyzes the muscles; and (3) potassium chloride, which stops the heart within seconds. The first two drugs are commonly used during surgery to put the patient to sleep and relax muscles; the third is used in heart bypass surgery.^[21]

Now it is well-settled in jurisprudence that the death penalty per se is not a cruel, degrading or inhuman punishment.^[22] In the oft-cited case of *Harden v. Director of Prisons*,^[23] this Court held that "[p]unishments are cruel when they involve torture or a lingering death; but the punishment of death is not cruel, within the meaning of that word as used in the constitution. It implies there something inhuman and barbarous, something more than the mere extinguishment of life." Would the lack in particularity then as to the details involved in the execution by lethal injection