



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

DENNIS M. VILLA-IGNACIO, G.R. No. 222469
Petitioner,

-versus-

Members:
 LEONEN, *Acting Chief Justice,**
 LAZARO-JAVIER,
 LOPEZ, M.,**
 LOPEZ, J., and
 KHO, JR., *JJ.*

**WENDELL E. BARRERAS-
 SULIT,**
Respondent.

Promulgated:

SEP 21 2022

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DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari*¹ seeks to reverse the following dispositions of the Court of Appeals in CA-G.R. SP No. 117703:

- 1) **Decision**² dated February 4, 2014, affirming the rulings of the Internal Affairs Board (*IAB*) of the Office of the Ombudsman

* As per Special Order No. 2914 dated September 15, 2022.

** On official business.

¹ *Rollo*, pp. 11-61.

² Penned by Associate Justice Myra V. Garcia-Fernandez, concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta, *id.* at 64-83.

(OMB) finding petitioner Dennis M. Villa-Ignacio guilty of dishonesty, grave misconduct, conduct prejudicial to the best interest of the service, and habitual absenteeism; and consequently, dismissing him from the service; and

- 2) **Resolution**³ dated January 13, 2016, denying petitioner's motion for reconsideration.

The Proceedings before the Internal Affairs Board

In 2008, petitioner was holding the position of Special Prosecutor of the Office of the Special Prosecutor (OSP) at the Office of the Ombudsman (OMB). Respondent Wendell E. Barreras-Sulit (*Barreras-Sulit*) was the Acting Deputy Special Prosecutor and Officer-in-Charge of the Administrative Division of the OSP.

IAB Case No. IAB-08-0013 on petitioner's alleged failure to report to work on various dates and leaving work early

Under an anonymous letter dated July 16, 2008, "supposed concerned employees" complained that petitioner failed to report to work on various dates and had a penchant for leaving work early. The letter cited the entries in the Security Logbooks of the dates and times when petitioner entered and left his place of work.⁴ The letter was treated as a complaint and docketed as IAB Case No. IAB-08-0013.

Per IAB Fact-Finding Investigation Report dated July 3, 2013,⁵ then Deputy Ombudsman for Luzon Gerard A. Mosquera (*Mosquera*) ruled that the logbook entries were not sufficient, nor accurate evidence of absences, tardiness, or under times allegedly incurred by petitioner. Too, by the nature of petitioner's office and functions, there were times he was *necessarily impelled to perform* his official duties *outside* the office.⁶ Thus, the complaint was dismissed and considered closed and terminated.

OMB-C-A-080534-J on petitioner's alleged habitual unauthorized absences and submission of falsified Certificates of Service from January 2008 to July 2008

³ Id. at 86-87.

⁴ Id. at 15-16.

⁵ Id. at 390-394.

⁶ Id. at 16.

Assistant Special Prosecutor Rabendranath T. Uy (*Uy*) charged petitioner with dishonesty, falsification of public documents, *estafa*, and violation of Section 3(e)⁷ of Republic Act (*RA*) No. 3019, the “Anti-Graft and Corrupt Practices Act,” for his supposed habitual and unauthorized absences and submission of falsified Certificates of Service from January 2008 to July 2008. The case was captioned *Rabendranath T. Uy v. Dennis M. Villa-Ignacio* and docketed as OMB-C-A-080534-J.⁸ As in IAB Case No. IAB-08-0013, the charges were similarly anchored on exactly the same entries in the Security Logbook.

Under IAB Consolidated Resolution⁹ dated September 26, 2014, the IAB also dismissed the charge of dishonesty for lack of evidence, the charges of falsification of public documents, and violation of Section 3(e), RA 3019 for lack of probable cause.¹⁰

The IAB held that the security logbooks were not a reliable source of petitioner’s attendance and could not be utilized as evidence of such fact since they were by nature inaccurate and incomplete. Further, the IAB ruled that the attendant circumstances negated petitioner’s alleged criminal intent and malice. Petitioner’s admission that he resorted to working outside his office due, among others, to the hostile environment created by respondent and colleagues indicated his good faith.¹¹

OMB-C-C-06-0296-F¹² on petitioner’s alleged habitual unauthorized absences and submission of falsified Certificates of Service from August 2008 to December 2008;

OMB-C-A-09-0313-F on petitioner’s alleged violation of Section 3(e) of RA 3019

Except for the period covered, these cases were essentially the same as the complaints in IAB Case No. IAB-08-0013 and OMB-C-A-080534-J.

⁷ Section 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. (Republic Act No. 3019, Anti-Graft and Corrupt Practices Act, Approved on August 17, 1960).

⁸ *Rollo*, p. 16.

⁹ *Id.* at 404–417.

¹⁰ *Id.* at 17.

¹¹ *Id.*

¹² Sometimes as “OMB-C-C-09-0296-F” in the records.

In her Complaint-Affidavit¹³ dated June 17, 2009, the respondent charged petitioner before the IAB¹⁴ with violations of Articles 171¹⁵ and 174¹⁶ of the Revised Penal Code; serious dishonesty,¹⁷ grave misconduct,¹⁸ conduct prejudicial to the best interest of the service,¹⁹ frequent unauthorized absences/habitual absenteeism²⁰ under the Uniform Rules on Administrative Cases in the Civil Service;²¹ and violation of Section 3(e) of RA 3019. The criminal and administrative cases, both entitled *Wendell E. Barreras-Sulit v. Dennis M. Villa-Ignacio*, were docketed OMB-C-C-06-0296-F²² and OMB-C-A-09-0313-F, respectively.²³

Respondent averred that petitioner falsified his certificates of service from August 2008 to December 2008. As indicated in these certificates, he rendered full-time service during the covered period, except for the indicated 36 days when he took a leave of absence. In truth, according to the complaint,

¹³ Id. at 811–816.

¹⁴ In accordance with its powers and functions under Administrative Order No. 16, Series of 2003, Creation of an Internal Affairs Board.

¹⁵ Article 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* - The penalty of *prision mayor* and a fine not to exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;
5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons. (ACT No. 3815, Revised Penal Code, Approved on December 8, 1930).

¹⁶ Article 174. *False medical certificates, false certificates of merits or service, etc.* - The penalties of *arresto mayor* in its maximum period to *prision correccional* in its minimum period and a fine not to exceed ₱1,000 pesos shall be imposed upon:

1. Any physician or surgeon who, in connection, with the practice of his profession, shall issue a false certificate; and
2. Any public officer who shall issue a false certificate of merit of service, good conduct or similar circumstances.

The penalty of *arresto mayor* shall be imposed upon any private person who shall falsify a certificate falling within the classes mentioned in the two preceding subdivisions, id.

¹⁷ Section 52(1), Classification of Offenses. (Rule IV Penalties, Civil Service Commission Resolution No. 991936, Uniform Rules on Administrative Cases in the Civil Service, September 14, 1999).

¹⁸ Section 52(3), id.

¹⁹ Section 52(20), id.

²⁰ Section 52(17), id.

²¹ Civil Service Commission Resolution No. 991936, Uniform Rules on Administrative Cases in the Civil Service, September 14, 1999.

²² For violation of Sec. 3(e), Republic Act No. 3019 and falsification of public/official documents, *rollo*, p. 212.

²³ For grave misconduct, falsification of official documents, conduct prejudicial to the best interest of the service, and unauthorized absences/habitual absenteeism, id.

he was actually absent for 64 days from August 2008 to December 2008, or an absence of 28 days without approved leave.²⁴

In support of these charges, respondent submitted the five certificates of service executed by petitioner corresponding to the period of August 2008 to December 2008. Except for the specific month covered, these certificates of service were uniformly worded, *viz.*:

I HEREBY CERTIFY upon my honor that I have rendered full time service for the period [of] _____, except on the following days, leave application for which has been filed/duly approved.²⁵

Respondent also submitted: (a) petitioner's applications for leave from September 2008 to December 2008;²⁶ (b) Medical Certifications dated October 18 and 22, 2008 stating that petitioner was confined at the Chinese General Hospital from October 14 to 18, 2008 for surgery;²⁷ (c) **Information Report dated January 19, 2009 of the security guards** at the Office of the Ombudsman showing petitioner's ingress and egress at the OSP from January 2008 to December 2008;²⁸ (d) **Joint Affidavit of the security guards** assigned at the OSP attesting the veracity of the entries in the Information Report;²⁹ and (e) Summary of Attendance and Absences for the months of August 2008 to December 2008.³⁰

Respondent filed similar complaints against petitioner's daughter and executive assistant Atty. Monica C. Villa-Ignacio *via* OMB-C-A-09-0312-F for violations of Civil Service Rules and OMB-C-C-06-0295-F, Section 3(e) of RA 3019, and falsification of public documents.³¹

On December 23, 2009, petitioner received the Order³² dated November 24, 2009 of the IAB in OMB-C-C-06-0296-F and OMB-C-A-09-0313-F, directing him to file his counter-affidavit and the affidavits of his witnesses within ten (10) days from notice.³³ A similar order of even date was also issued in OMB-C-A-09-0312-F and OMB-C-C-06-0295-F and served on his daughter, Atty. Monica C. Villa-Ignacio.

²⁴ Id. at 813.

²⁵ Id. at 817-821.

²⁶ Id. at 822-828.

²⁷ Id. at 829-830.

²⁸ Id. at 831-844.

²⁹ Id. at 845-847.

³⁰ Id. at 848-849.

³¹ Id. at 67.

³² Id. at 68.

³³ Id.

In response, petitioner and Atty. Monica C. Villa-Ignacio filed their Joint Counter-Affidavit *Ex Abundanti Ad Cautelam*³⁴ dated January 18, 2010. Insofar as petitioner is concerned, he assailed as illegal the Order³⁵ dated November 24, 2009 of the IAB allegedly because:

- (1) Its service on him on December 23, 2009, was irregular, unfair, and impelled by sinister motives as it effectively required him to prepare his pleadings and evidence during the holidays, thus, amounting to a denial of due process;
- (2) The complaint was handled in a highly irregular and anomalous manner as it did not undergo proper evaluation soon after it was filed; it was docketed with undue haste, in violation of III. Procedures in Handling Complaints of Administrative Order No. 16 (*AO16*), Series of 2003, the Creation of an Internal Affairs Board; and
- (3) Under III(F)³⁶ Action on Evaluation Report of AO16, Series of 2003, the Ombudsman should personally sign orders in cases involving respondents with Salary Grades of 25 and higher, as in his case. But the Order dated November 24, 2009 was signed only by Overall Deputy Ombudsman and IAB Chairman Orlando C. Casimiro (*Casimiro*). Although AO21, Series of 2009, deleted the proviso, the revised rule, which was

³⁴ Id. at 212–251.

³⁵ Id. at 145–146.

³⁶ III. PROCEDURES IN HANDLING COMPLAINTS

F. Action on the Evaluation Report –

1. Where the Evaluation Report recommends the conduct of a preliminary investigation and/or administrative adjudication against any official or employee of the Office of the Ombudsman, the Chairman shall approve the same, and the case shall immediately be docketed and assigned by raffle, with the assistance of the IAB Administrative Officer, to an IAB Investigator or panel, or to the IAB, either in division or *en banc*, when proper;
2. Where the Evaluation Report recommends the conduct of a fact-finding investigation, the case shall immediately be assigned by raffle with the assistance of the IAB Administrative Officer, to an IAB-IS investigator or a panel of IAB-IS investigators, at the discretion of the IAB Chairman;
3. In case the IAB Chairman disagrees with the recommendation to conduct an intelligence operation, fact-finding investigation, preliminary investigation and/or administrative adjudication, the decision of the IAB Chairman shall prevail. The report shall be approved by the following:
 - a. The IAB Chairman, where the respondent or highest ranking respondent occupies a position belonging to the first level in the career service, or who is in the non-career service with Salary Grade 13 and below;
 - b. The IAB *en banc*, where the respondent or highest ranking respondent occupies a position belonging to the second level of the career service with Salary Grade not higher than 24, or who is in the non-career service with Salary Grade 14 to 24; and
 - c. The Ombudsman, upon recommendation of the IAB, where the respondent or the highest ranking respondent occupies a position with Salary Grade 25 or above.
4. The preventive suspension order, when proper, shall be approved in accordance with the immediately preceding section; and
5. Where the evaluation report recommends any action other than the conduct of preliminary investigation and/or administrative adjudication or fact-finding investigation/intelligence operation, the approval required in part (IV)(F)(3) above should likewise be obtained. (Administrative Order No. 16, Series of 2003, the Creation of an Internal Affairs Board).

promulgated only after the complaint-affidavit was filed, cannot be applied to him.³⁷

Petitioner also questioned the title of Casimiro as Overall Deputy Ombudsman and IAB Chairman, since he (Casimiro) was previously Deputy Ombudsman for Military and Other Law Enforcement Officers (*MOLEO*). This was purportedly a violation of Section 7³⁸ of RA 6770, The Ombudsman Act, and Section 11, Article XI of the Constitution,³⁹ which prohibited Casimiro's reappointment.

More, the IAB had no jurisdiction over petitioner as the OSP was directly under the control and supervision of the Office of the President pursuant to Section 8 of RA 6770.

Refuting the alleged falsification of his certificates of service, he asserted that these documents accurately reflected the dates when he rendered service to the OSP. The *entries in the logbook or Information Report of the OSP security guards* were *inaccurate and unreliable* since they were not notarized nor written by public officers in their official capacities. He admitted though there were certain days he was *compelled to work at home* because respondent subjected him to harassment and created a hostile work environment for him at the OSP.

In her Consolidated Reply,⁴⁰ respondent countered: (a) There was nothing unfair in the service of the Order dated November 24, 2009, on petitioner on December 23, 2009. After all, petitioner and his daughter were given an extension to file their counter-affidavit. Thus, there was no denial of due process to speak of; (b) AO21, Series of 2009, now allows the IAB Chairman to issue the aforesaid order without regard to the salary grade of the respondent. This amendment is applicable to petitioner's case as he had no vested right under the previous rule; (c) Petitioner cannot collaterally attack the title assigned to Casimiro as Overall Deputy Ombudsman and IAB Chairman; (d) Petitioner and his daughter were not being persecuted; (e) The Ombudsman has the power to investigate the Special Prosecutor under Section 13(1), Article XI of the Constitution,⁴¹ as implemented under Section

³⁷ Administrative Order No. 21, Series of 2009 dated July 28, 2009, provided that the Internal Affairs Board Chairman shall approve/disapprove the recommendation to conduct preliminary investigation and/or administrative adjudication, regardless of the rank of the respondent or highest ranking respondent. The Complaint-Affidavit of respondent was filed on June 17, 2009, *rollo*, pp. 472-477.

³⁸ Section 7. Term of Office. — The Ombudsman and his Deputies, including the Special Prosecutor, shall serve for a term of seven (7) years without reappointment. (Republic Act No. 6770, The Ombudsman Act, Approved on November 17, 1989).

³⁹ Section 11. The Ombudsman and his Deputies shall serve for a term of seven years without reappointment. They shall not be qualified to run for any office in the election immediately succeeding their cessation from office. (Constitution, Article XI).

⁴⁰ *Rollo*, pp. 572-617.

⁴¹ Sec. 13. Accountability of Public Officers. The Office of the Ombudsman shall have the following powers, functions, and duties. (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient. (Constitution, Article XI).

15,⁴² RA 6770; and (f) Petitioner's certificates of service did not accurately reflect his actual service; the Information Reports of the security guards were reliable sources of information on his attendance.

Decision of the IAB in OMB-C-A-09-0313-F

Under Decision⁴³ dated April 30, 2010, the IAB,⁴⁴ as approved by the Ombudsman and her two deputies, found petitioner guilty of the offenses charged in OMB-C-A-09-0313-F and consequently ordered his dismissal from the service, *viz.*:

WHEREFORE, in view of the foregoing, the Internal Affairs Board hereby finds *Special Prosecutor* Dennis M. Villa-Ignacio **GUILTY** of Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service[,] and Habitual Absenteeism. Pursuant to Section 52, paragraph (A), sub-paragraph (1 and 3)[,] and Section 55 of the Uniform Rules on Administrative Cases in the Civil Service, the offenses of Dishonesty and Grave Misconduct being classified as grave, respondent is consequently meted the penalty of **DISMISSAL FROM SERVICE**. As aforesaid, the non-imposition of the penalty of dismissal on the respondent shall be without prejudice to the application of the accessory penalties of perpetual disqualification to hold public office, cancellation of civil service eligibility, and forfeiture of benefits, effective upon the finality of this Decision.

SO ORDERED.⁴⁵ (Emphases in the original)

According to the IAB, there was nothing irregular with the issuance and service of the Order dated November 24, 2009 on petitioner on December 23, 2009. Nothing under AO16, Series of 2003, proscribed the service of petitioner of the Order on December 23, 2009, a regular working day; petitioner even got to file a Motion for Extension which the IAB granted. The IAB's failure to immediately assign a case number to the complaint and subject the same to preliminary evaluation was not fatal to the case either. Further, Casimiro's title as Overall Deputy Ombudsman and IAB Chairperson may not be collaterally attacked. Too, Section 8(2) of RA 6770 does not prohibit the Ombudsman from exercising administrative disciplinary power

⁴² Sec. 15. *Powers, Functions and Duties*. The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

(Republic Act No. 6770, The Ombudsman Act, Approved, November 17, 1989).

⁴³ Approved by Ombudsman Ma. Mercedes N. Gutierrez, Deputy Ombudsman for MOLEO Vice Chairman Emilio A. Gonzalez, and Overall Deputy Ombudsman and Internal Affairs Board Chairman Orlando C. Casimiro; *rollo*, pp. 330-347.

⁴⁴ Internal Affairs Board composition: (1) Assistant Ombudsman Rodolfo M. Elman, (2) Assistant Ombudsman Virginia Palanca-Santiago, (3) Assistant Ombudsman Evelyn A. Baliton, and (4) Deputy Special Prosecutor Robert E. Kallos (On Leave); *id.* at 346.

⁴⁵ *Id.*

over the Special Prosecutor as Section 11(3)⁴⁶ of the same law places the OSP under the supervision and control of the Ombudsman. Finally, petitioner declared in his certificates of service that he rendered full-time service from August 2008 to December 2008, although he himself admitted that on certain days, he did not physically report to the office without applying for leave. This constituted dishonesty, grave misconduct, conduct prejudicial to the best interest of the service, and habitual absenteeism.

Under Order⁴⁷ dated August 18, 2010, petitioner's motion for reconsideration was denied.

Proceedings before the Court of Appeals

In his Petition for Review under CA–G.R. SP No. 117703,⁴⁸ petitioner faulted the IAB for giving due course to the complaint despite its alleged glaring irregularities. He questioned anew the constitution of the IAB since Casimiro had no authority to head the same, much less, to participate in the proceedings therein,⁴⁹ and the jurisdiction of the IAB over him considering that **under Section 8 of the Ombudsman Act, it is the President who is authorized to remove the Special Prosecutor** from service and only for culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust after due process.⁵⁰

Petitioner also reiterated there was nothing irregular with his certificates of service for the period of August 2008 to December 2008. He argued that except for those days covered by his leave of absence, he rendered full service on the days declared in his certificates of service. He cited that no law restricted his workspace to be only at his office. Thus, he concluded, on certain days though he was not in the office, he still rendered full service at his house, free from hostility, persecution, harassment, and general ill caused by respondent and her cohorts.⁵¹

Petitioner asserted that the IAB erred when it relied on the **Information Report based on the security logbook alone** since its due execution was doubtful as it was incomplete, unauthenticated, and unreliable.⁵²

⁴⁶ Sec. 11. *Structural Organization*. The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said office.

x x x x

(3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his prosecution staff. The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman. (Republic Act No. 6770, The Ombudsman Act, Approved, November 17, 1989).

⁴⁷ *Rollo*, pp. 141–144.

⁴⁸ *Id.* at 89–122.

⁴⁹ *Id.* at 77.

⁵⁰ *Id.* at 32–36.

⁵¹ *Id.* at 37–39.

⁵² *Id.* at 54–55.

In her Comment/Opposition,⁵³ respondent defended the dispositions of the IAB. She admitted that while Section 8 of the Ombudsman Act empowers the President to remove the Special Prosecutor, this power is not exclusively vested in the President. This removal power is shared by the Ombudsman per Section 1 I(3) of the same law.

In his Reply,⁵⁴ petitioner posited that based on the congressional deliberations, insofar as the Special Prosecutor is concerned, the legislative intent was to confine the Ombudsman's power of supervision and control to the prosecutorial functions of the OSP, excluding the exercise of disciplinary authority over this office and the Special Prosecutor.

Dispositions of the Court of Appeals

By Decision⁵⁵ dated February 4, 2014, in CA-G.R. SP No. 117703, the Court of Appeals affirmed. It ruled that the power of the Ombudsman to remove any erring public official from the service is set forth under Section 15, RA 6770. On this score, the **Office of the Ombudsman has the power to promulgate its own rules of procedure for the effective exercise of its powers, functions, and duties.** The alleged unreasonable service of the Order dated November 24, 2009, on December 23, 2009, was negated by the 15-day extension granted to petitioner within which to file his reply affidavit. More, the retroactive application of AO21, Series of 2009, did not violate petitioner's right to due process as no person could have a vested right to any procedural rules.

On the substantive issue, the Court of Appeals agreed that petitioner is guilty of serious dishonesty. For he allegedly knew that the entries in his certificates of service were false. He himself admitted that on certain days he opted to work within the confines of his house. Despite this admission, he did not make any effort to rectify his certificates of service by filing his corresponding leave applications. Based on his false certificates of service, he was able to collect his full salary from August 2008 to December 2008.

In closing, the Court of Appeals expressed its adherence to the principle of non-interference in the exercise by the Office of the Ombudsman of its power to prosecute offenses committed by public officers and the general rule that "findings of fact of the Office of the Ombudsman when supported by substantial evidence are conclusive."

⁵³ Id. at 647-666.

⁵⁴ Id. at 667-691.

⁵⁵ Id. at 64-83.



By Resolution⁵⁶ dated January 13, 2016, the Court of Appeals denied petitioner's motion for reconsideration.

The Present Petition

Petitioner now invokes⁵⁷ the discretionary appellate jurisdiction of the Court under Rule 45 of the Rules of Court to review and reverse the foregoing dispositions of the Court of Appeals. He claims that this case arose in 2008 from a very public rift between him and then Ombudsman Merceditas Gutierrez (*Ombudsman Gutierrez*). Various news agencies documented how the Ombudsman, including respondent and Casimiro systematically tried to force him to resign. Ombudsman Gutierrez herself undercut the authority of the OSP by adopting a no-hire policy and merely filled up 72 out of 113 prosecutorial positions for lawyers. She also appointed him to handle the controversial tax credit certificate scam cases, only to sack him after three months.⁵⁸

Ombudsman Gutierrez and her cohorts also purportedly conspired to initiate several baseless complaints of similar import to have him removed, viz.:

- a) IAB Case No. IAB-08-0013, based on an anonymous letter dated 16 July 2008 of concerned employees regarding his supposed penchant to leave work early;⁵⁹
- b) OMB-C-A-080534-J (IAB-08-0120) entitled *Rabendranath T. Uy v. Dennis M. Villa-Ignacio* for dishonesty, falsification of public documents, *estafa*, and violation of Section 3(e), RA 3019, based on his supposed habitual unauthorized absences, and submission of falsified certificates of service from January 2008 to July 2008;⁶⁰ and
- c) OMB-C-C-06-0296-F and OMB-C-A-09-0313-F (the subject of this petition) pertaining to the Complaint-Affidavit⁶¹ dated June 17, 2009, entitled *Wendell E. Barreras-Sulit v. Dennis M. Villa-Ignacio*, for violation of Articles 171 and 174, Revised Penal Code, serious dishonesty, grave misconduct, conduct prejudicial to the best interest of the service, frequent unauthorized absences/habitual absenteeism, and violation of Section 3(e), RA 3019, all based on

⁵⁶ Id. at 86-87.

⁵⁷ Id. at 11-56.

⁵⁸ Id. at 14-15.

⁵⁹ Id. at 15-16.

⁶⁰ Id. at 16-17.

⁶¹ Id. at 472-477.

his supposed habitual unauthorized absences and submission of falsified certificates of service for August 2008 to December 2008.⁶²

Most of these cases were already dismissed by the IAB, then headed by Chairman and Deputy Ombudsman Mosquera. IAB-08-0013 were subsequently dismissed under IAB Fact Finding Investigation Report⁶³ dated July 3, 2013, while OMB-C-A-080534-J and OMB-C-C-06-0296-F were dismissed under Consolidated Resolution⁶⁴ dated September 26, 2014. None of these resolutions of dismissal was appealed. Petitioner reiterates that the power of the Ombudsman does not include the power to dismiss the Special Prosecutor as this power belongs to the President under Section 8, RA 6770. At any rate, this is a mere harassment suit to force him out of office. This was made manifest by the IAB's anomalous handling of the case. Finally, there is nothing wrong with his certificates of service as he had rendered full service as reflected therein, albeit on certain days, at his house.

In her Comment,⁶⁵ respondent defends the assailed dispositions of the Court of Appeals. She argues that petitioner failed to sufficiently establish that the Court of Appeals committed reversible error in ruling against him.

Core Issues

- 1) Does the Ombudsman have disciplinary power over the Special Prosecutor?
- 2) Was petitioner denied his right to due process of law during the IAB proceedings?
- 3) Is petitioner administratively liable for the alleged falsification of his certificates of service?

Our Ruling

We reverse.

The Ombudsman has the power to remove the Special Prosecutor.

⁶² Id. at 17-18.

⁶³ Id. at 390-394.

⁶⁴ Id. at 404-416.

⁶⁵ Id. at 943-993.



Petitioner invariably asserts that under Section 8(2), RA 6770, the Ombudsman does not have disciplinary authority over the Special Prosecutor like himself, thus:

Section 8. Removal; Filling of Vacancy. —

x x x x

(2) A Deputy or the **Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.**

But respondent insists otherwise. She invokes the following constitutional and statutory provisions, viz.:

Article XI, Section 13(1) of the 1987 Constitution:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

Sections 8(2), 11(3) and 15(1) of RA 6770:

Section 8. Removal; Filling of Vacancy. —

x x x x

(2) A Deputy or the Special Prosecutor, **may** be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

x x x x

Section 11. Structural Organization. — The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said office.

x x x x

(3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his prosecution staff. **The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman** and shall be under the supervision and control of the Ombudsman.

Section 15. Powers, Functions, and Duties.— The Office of the Ombudsman shall have the following powers, functions and duties:

- (1) **Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.** It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases; (Emphases supplied)

According to respondent, the Ombudsman has the power to investigate the Special Prosecutor under Section 13(1), Article XI of the Constitution, as implemented under Section 15 of RA 6770. And while Section 8, RA 6770, empowers the President to remove a Special Prosecutor, such authority is not exclusive; it is shared by the Ombudsman pursuant to Section 11(3) of the same law, thus:

SECTION 11. *Structural Organization.*— The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said office.

x x x x

- (3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his prosecution staff. The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman.

Respondent identifies another source of this concurrent authority – the power of the Office of the Ombudsman to promulgate its own rules of procedure for the effective exercise of its powers, functions, and duties.

We affirm that this is **not** the proper case to revisit the constitutionality of the power of the President to remove the Special Prosecutor. To start, neither petitioner nor respondent argues that this power is unconstitutional. Both of them agree that the President has this power, only that respondent believes it is concurrent with the Office of the Ombudsman. In any event, this issue is **not** necessary for the resolution of this case. As will be shown below, this case can be decided on the merits of the evidence proffered against petitioner.

To address petitioner's argument, suffice it to state at this time that the Ombudsman has the power to remove the Special Prosecutor. This is found both in the Constitution and RA 6770. The Office of the Ombudsman is constitutionally envisioned to be an independent agency. This has been

affirmed in *Gonzales III v. Office of the President (Gonzales 2012)*,⁶⁶ and the Resolution dated January 28, 2014, in the same case (*Gonzales 2014*).⁶⁷ The Ombudsman's power to remove the Special Prosecutor is in line with and supportive of this institutional independence as discussed in these precedents.

The Gonzales rulings and the origin of the Ombudsman

The authority of the Office of the Ombudsman to conduct administrative investigations proceeds from its constitutional mandate to be an effective protector of the people against inept and corrupt government officers and employees. This power looms over the Office of the Special Prosecutor, as well.

In *Gonzales 2012*,⁶⁸ the Court traced the origin of the Office of the Ombudsman, viz.:

The ombudsman traces its origins to the primitive legal order of Germanic tribes. The Swedish term, which literally means “agent” or “representative,” communicates the concept that has been carried on into the creation of the modern-day ombudsman, that is, someone who acts as a neutral representative of ordinary citizens against government abuses. This idea of a people's protector was first institutionalized in the Philippines under the 1973 Constitution with the creation of the Tanodbayan, which wielded the twin powers of investigation and prosecution. Section 6, Article XIII of the 1973 Constitution provided thus:

Sec. 6. The Batasang Pambansa shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body.⁶⁹

Per records of the 1986 Constitutional Commission, Commissioner Jose C. Colayco looked back on the 1971 Constitutional Convention and its endeavors to create an honest-to-goodness Office of the Ombudsman. Meantime, Presidential Decree (PD) No. 1630⁷⁰ was enacted, creating the Tanodbayan and placing this office **under the Office of the President**. This office, however, was seen, perceived, and judged to have failed to implement the specific and explicit proposal to create a body that would act as a guardian

⁶⁶ 694 Phil. 52–147 (2012). [Per J. Perlas-Bernabe, *En Banc*]

⁶⁷ 725 Phil. 380–452 (2014). [Per J. Brion, *En Banc*]

⁶⁸ *Supra* note 66.

⁶⁹ *Id.* at 81.

⁷⁰ PRESIDENTIAL DECREE No. 1630, FURTHER REVISING PRESIDENTIAL DECREE NO. 1487, AS REVISED BY PRESIDENTIAL DECREE NO. 1607, CREATING THE OFFICE OF THE TANODBAYAN, JULY 18, 1979.

A

and protector of the rights of the people, especially of the underprivileged.⁷¹ Commissioner Florenz D. Regalado pointed out that PD 1630 placed too much stress on the Tanodbayan's prosecutorial functions, and less on its administrative fiscalization functions. It was the reason seen to have caused the immense failure of the Tanodbayan to effectively and independently discharge its duties.⁷²

In *Gonzales 2012*,⁷³ the Court aptly recognized that the framers of the present Constitution envisioned a more effective Ombudsman vested with the authority to "act in a quick, inexpensive, and effective manner on complaints against administrative officials," and to function purely with the "prestige and persuasive powers of his office" in correcting improprieties, inefficiencies, and corruption in government freed from the hampering effects of prosecutorial duties.⁷⁴ The 1986 Constitutional Commission provided the concept,⁷⁵ viz.:

⁷¹ II Record, Constitutional Commission, Proceedings and Debates, 266, 1986.

x x x I would like to read a portion of the report of the Committee which submitted this proposal to the then Constitutional Convention. By the way, during the 1971 Convention, 27 resolutions were filed for the creation of the office of the Ombudsman and the thrust behind these resolutions was stated very eloquently in this passage of the report. After saying that it is the duty of the State to provide a system whereby poor people can have grievances, the report said:

What we find, however, is a system characterized by the supremacy of the powerful and the wealthy; respect for the dignity and personality of the elite, the ruling feudal master, and superabundance of opportunity for the oppression of the weak, the poor and the "unconnected."

Present reliefs for the protection of citizen's rights are expensive, cumbersome, circuitous and usually available only to the rich and the powerful. Government is plagued by graft and corruption, callous indifference and gross inefficiency, political meddling, immorality, compartmentalization of justice and bankruptcy in national and local leadership. The helpless disillusioned citizen may not bear more, already he has raised his voice in protest and defiance. Because this voice has not reached an official ear, he registers his protest in the streets. Disillusion turns into antagonism and antagonism to bitterness towards the government and the people in the government. The people's faith in our institutions now hangs by a slim thread and is being stretched to the breaking point.

This in fine is the collective plaint of 27 resolutions submitted to this Convention and referred to the Committee seeking the establishment of a constitutional office with two definite objectives, namely: One, the promotion of higher efficiency and justice in the administration of the laws; and, two, the protection of the constitutional rights of the people by securing the right of the citizens to petition the government for redress of grievances.

So, what happened to this beautiful proposal? What came out of it is Presidential Decree No. 1630, creating the Office of the Tanodbayan. There was, therefore, a failure to implement this specific, explicit proposal to create a body that would act as guardian and protector of the rights, especially of the underprivileged.

The Constitutional Commission of 1986, Records of the Constitutional Commission, Proceedings and Debates, Volume Two.

<<https://ia800405.us.archive.org/28/items/record-of-the-constitutional-commission-volume-2/fullRecordOfTheConstitutionalCommissionVolumeli.pdf>>.

⁷² Id. at 295.

⁷³ Supra note 66.

⁷⁴ Id. at 82.

⁷⁵ II Record, Constitutional Commission, Proceedings and Debates, 265-267, 1986.

<<https://ia800405.us.archive.org/28/items/record-of-the-constitutional-commission-volume-2/fullRecordOfTheConstitutionalCommissionVolumeli.pdf>>.

SPONSORSHIP SPEECH
OF COMMISSIONER COLAYCO

MR. COLAYCO. Thank you. Madam President.

The Committee is proposing the creation of an office which can act in a quick, inexpensive and effective manner on complaints against the administrative inaction, abuse and arbitrariness of government officials and employees in dealing with the people. x x x

x x x x

Under our proposal, the Ombudsman is empowered to investigate, to inquire into[,] and to demand the production of documents involving transactions and contracts of the government where disbursement of public funds is reported. We read almost everyday of how certain buildings have been constructed improperly and of many other irregularities which are merely reported but which nobody in the government dares or bothers to look into. That role which should have been performed by our own Tanodbayan is not attended to because the Tanodbayan is swamped with work this was confessed to us during our hearing. The main thrust is action; the disciplinary or punitive remedy is secondary. On a higher level then, the Ombudsman is going to be the eyes and ears of the people. Where administrative action demanded is not forthcoming because under our rules the Ombudsman is required to ask the government official concerned to impose the disciplinary action on the employee at fault and to follow it up and to see to it that it is complied with, he is authorized to make public the nature of the complaint and the inaction of the official concerned, because generally, public officials are afraid of publicity. This measure is commonly followed in the European system of Ombudsman, as well as in the United States.

To give the Ombudsman stature and a certain clout, we are proposing that he be given the status, the role or the rank of a chairman of a constitutional commission, as well as the same salary. If we are going to create an office which will have a lower rank than this, not even an ordinary employee of the government will bother to obey him. Second, to free him from political pressure, the Ombudsman cannot be removed except by impeachment. We hope that with the help of this body, we will receive better and more practical ideas. But we certainly appeal to the Members not to fail our people.⁷⁶

Thus, Section 13, Article XI on Accountability of Public Officers of the Constitution provides:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

- 1. Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.***

⁷⁶ Id.



2. *Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.*
3. Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
4. Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
5. Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
6. Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
7. Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
8. Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.⁷⁷
(Emphases and italics supplied)

Meantime, the prosecutorial arm of the Ombudsman, the Tanodbayan under PD 1630, became the Office of the Special Prosecutor under Section 7, Article XI on Accountability of Public Officers of the Constitution:

Section 7. The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.⁷⁸

On November 17, 1989, the legislature enacted RA 6770, to implement the Ombudsman provisions of the Constitution and enhance its institutional strength, granting it “full administrative disciplinary power over public officials and employees,”⁷⁹ thus:

⁷⁷ Constitution, Article XI, Sec. 13.

⁷⁸ Id, Sec. 7.

⁷⁹ Supra note 66 at 83.

Section 15. *Powers, Functions, and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:

- (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient, has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;
- (2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;
- (3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect[s] to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: provided, that the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;
- (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;
- (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;
- (6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: provided, that the Ombudsman under its rules and regulations may determine what cases may not be made public: provided, further, that any publicity issued by the Ombudsman shall be balanced, fair and true;
- (7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency;
- (8) Administer oaths, issue subpoena and subpoena *duces tecum*, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

- (9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;
- (10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;
- (11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein.

The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.

x x x x

Section 21. *Officials Subject to Disciplinary Authority; Exceptions.* - The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.⁸⁰

In the exercise of its administrative disciplinary authority, the Office of the Ombudsman is explicitly conferred the statutory power to conduct administrative investigations under Section 19 of the same law:

Section 19. *Administrative complaints.* - The Ombudsman shall act on all complaints relating, but not limited, to acts or omissions which:

- (1) Are contrary to law or regulation;
- (2) Are unreasonable, unfair, oppressive or discriminatory;
- (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
- (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
- (5) Are in the exercise of discretionary powers but for an improper purpose; or
- (6) Are otherwise irregular, immoral or devoid of justification.⁸¹

The extent of its power is circumscribed in Section 21:

Section 21. *Official Subject to Disciplinary Authority; Exceptions.* — The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their

⁸⁰ Republic Act No. 6770, The Ombudsman Act, Approved on November 17, 1989.

⁸¹ Id.

subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.⁸²

Insofar as administrative investigations affecting the Ombudsman Deputies and the Special Prosecutor, however, Section 8(2) of RA 6770 states:

Section 8. Removal; Filling of Vacancy. —

- (1) In accordance with the provisions of Article XI of the Constitution, the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.
- (2) **A Deputy or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.**
- (3) In case of vacancy in the Office of the Ombudsman due to death, resignation, removal or permanent disability of the incumbent Ombudsman, the Overall Deputy shall serve as Acting Ombudsman in a concurrent capacity until a new Ombudsman shall have been appointed for a full term. In case the Overall Deputy cannot assume the role of Acting Ombudsman, the President may designate any of the Deputies, or the Special Prosecutor, as Acting Ombudsman.
- (4) In case of temporary absence or disability of the Ombudsman, the Overall Deputy shall perform the duties of the Ombudsman until the Ombudsman returns or is able to perform his duties.⁸³
(Emphasis supplied)

This provision was the subject of a constitutional challenge in *Gonzales 2012*. The case stemmed from two separate petitions involving the exercise by the President of the power to remove the following officials: (1) In G.R. No. 196231, *Gonzalez III v. Office the President*, Deputy Ombudsman for the MOLEO Emilio A. Gonzales III who was found guilty of Gross Neglect of Duty and Grave Misconduct constituting Betrayal of Public Trust and meted the penalty of dismissal relating to his role in the hostage-taking incident on August 23, 2010, by Police Senior Inspector Rolando Mendoza (*PSI Mendoza*); he allowed PSI Mendoza's motion for reconsideration to languish for more than nine months without any justification.⁸⁴ The petition primarily

⁸² Id.

⁸³ Id.

⁸⁴ Supra note 66 at 66–67, In the morning of August 23, 2010, news media scampered for a minute-by-minute coverage of a hostage drama that had slowly unfolded right at the very heart of the City of Manila. While initial news accounts were fragmented, it was not difficult to piece together the story on the hostage-taker, Police Senior Inspector Rolando Mendoza. He was a disgruntled former police officer attempting to secure his reinstatement in the police force and to restore the benefits of a life-long, and erstwhile bemedaled, service. The following day, broadsheets and tabloids were replete with stories not just of the deceased hostage-taker but also of the hostage victims, eight of whom died during the bungled police operation to rescue the hapless innocents. Their tragic deaths triggered word wars of foreign relation proportions.

sought to declare as unconstitutional Section 8(2) of RA 6770 granting the President the power to dismiss a Deputy Ombudsman; and (2) In G.R. No. 196232, *Barreras-Sulit v. Ochoa Jr*, Special Prosecutor Barreras-Sulit was ordered by the Office of the President to submit a written explanation with respect to alleged acts or omissions constituting serious or grave offenses in relation to a Plea Bargaining Agreement entered into with Major General Carlos F. Garcia whose children were caught smuggling \$100,000.00 in the United States, and to a Notice of Preliminary Investigation.⁸⁵ The petition also sought to declare as unconstitutional Section 8(2) of RA 6770 vesting the President with the power to dismiss the Special Prosecutor.

Ultimately, the Court sustained the constitutionality of Section 8(2), RA 6770 for the following reasons:

First, in an effort to harmonize the provisions of Section 8(2) and Section 21 of RA 6770, the Court ruled that the Ombudsman and the President exercise concurrent disciplinary jurisdiction over a Deputy Ombudsman and the Special Prosecutor. This sharing of authority goes into the wisdom of the legislature,⁸⁶ hence, beyond judicial inquiry.

Second, by granting express statutory power to the President to remove a Deputy Ombudsman and the Special Prosecutor, the Legislature merely filled an obvious gap in the law: the Constitution provides the avenue and grounds for the removal of the Ombudsman, but not a Deputy Ombudsman and the Special Prosecutor.

⁸⁵ Supra note 66 at 69–70, In a completely separate incident much earlier in time, more particularly in December of 2003, 28-year-old Juan Paolo Garcia and 23-year-old Ian Carl Garcia were caught in the United States smuggling \$100,000 from Manila by concealing the cash in their luggage and making false statements to US Customs Officers. The Garcia brothers pleaded guilty to bulk cash smuggling and agreed to forfeit the amount in favor of the US Government in exchange for the dismissal of the rest of the charges against them and for being sentenced to time served. Inevitably, however, an investigation into the source of the smuggled currency conducted by US Federal Agents and the Philippine Government unraveled a scandal of military corruption and amassed wealth -- the boys' father, Retired Major General Carlos F. Garcia, former Chief Procurement Officer of the Armed Forces, had accumulated more than ₱300M during his active military service. Plunder and Anti-Money Laundering cases were eventually filed against Major General Garcia, his wife, and their two sons before the Sandiganbayan.

⁸⁶ Supra note 66 at 85. Senator Angara explained that the phrase was added to highlight the fact that the Deputy Tanodbayan may only be removed for cause and after due process. He added that the President alone has the power to remove the Deputy Tanodbayan.

Reacting thereto, Senator Guingona observed that this might impair the independence of the Tanodbayan and suggested that the procedural removal of the Deputy Tanodbayan x x x; and that he can be removed not by the President but by the Ombudsman.

However, the Chair expressed apprehension that the Ombudsman and the Deputy Ombudsman may try to protect one another. The Chair suggested the substitution of the phrase "after due process" with the words after due notice and hearing with the President as the ultimate authority.

Senator Guingona contended, however, that the Constitution provides for an independent Office of the Tanodbayan, and to allow the Executive to have disciplinary powers over the Tanodbayan Deputies would be an encroachment on the independence of the Tanodbayan.

Replying thereto, Senator Angara stated that originally, he was not averse to the proposal, however, considering the Chair's observation that vesting such authority upon the Tanodbayan itself could result in mutual protection, it is necessary that an outside official should be vested with such authority to effect a check and balance.

Third, the power of the President to remove a Deputy Ombudsman and the Special Prosecutor is implied from his or her power to appoint them.

Finally, granting the President the power to remove a Deputy Ombudsman and the Special Prosecutor does not diminish the independence of the Office of the Ombudsman.

On motion for reconsideration, however, the Court reversed its September 4, 2012 Decision and declared Section 8(2), RA 6770 unconstitutional but only insofar as the President's disciplinary power over the Deputies of the Ombudsman was concerned; the Court sustained the President's disciplinary authority over the Special Prosecutor. The Resolution dated January 28, 2014, *Gonzales 2014*⁸⁷ explained:

b. "Independence" of constitutional bodies vis-a-vis the Ombudsman's independence

Under the Constitution, several constitutional bodies have been expressly labeled as "independent." The extent of the independence enjoyed by these constitutional bodies however varies and is to be interpreted with two significant considerations in mind: first, the functions performed or the powers involved in a given case; and second, consistency of any allowable interference to these powers and functions, with the principle of checks and balances.

Notably, the independence enjoyed by the Office of the Ombudsman and by the Constitutional Commissions shares certain characteristics – they do not owe their existence to any act of Congress, but are created by the Constitution itself; additionally, they all enjoy fiscal autonomy. In general terms, the framers of the Constitution intended that these "independent" bodies be insulated from political pressure to the extent that the absence of "independence" would result in the impairment of their core functions.

In *Bengzon v. Drilon*, involving the fiscal autonomy of the Judiciary, we ruled against the interference that the President may bring and maintained that the independence and the flexibility of the Judiciary, the Constitutional Commissions and the Office of the Ombudsman are crucial to our legal system.

The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based.

⁸⁷ *Supra* note 67.

The constitutional deliberations explain the Constitutional Commissions' need for independence. In the deliberations of the 1973 Constitution, the delegates amended the 1935 Constitution by providing for a constitutionally-created Civil Service Commission, instead of one created by law, on the premise that the effectivity of this body is dependent on its freedom from the tentacles of politics. In a similar manner, the deliberations of the 1987 Constitution on the Commission on Audit highlighted the developments in the past Constitutions geared towards insulating the Commission on Audit from political pressure.

Notably, the Constitution also created an "independent" Commission on Human Rights, although it enjoys a lesser degree of independence since it is not granted fiscal autonomy in the manner fiscal autonomy is granted to the constitutional commissions. The lack of fiscal autonomy notwithstanding, the framers of the 1987 Constitution clearly expressed their desire to keep the Commission independent from the executive branch and other political leaders:

MR. MONSOD. We see the merits of the arguments of Commissioner Rodrigo. If we explain to him our concept, he can advise us on how to reconcile his position with ours. The position of the committee is that we need a body that would be able to work and cooperate with the executive because the Commissioner is right. Many of the services needed by this commission would need not only the cooperation of the executive branch of the government but also of the judicial branch of government. This is going to be a permanent constitutional commission over time. We also want a commission to function even under the worst circumstance when the executive may not be very cooperative. However, the question in our mind is: Can it still function during that time? Hence, we are willing to accept suggestions from Commissioner Rodrigo on how to reconcile this. We realize the need for coordination and cooperation. We also would like to build in some safeguards that it will not be rendered useless by an uncooperative executive.

x x x x

MR. GARCIA. x x x Very often, when international commissions or organizations on human rights go to a country, the most credible organizations are independent human rights bodies. Very often these are private organizations, many of which are prosecuted, such as those we find in many countries in Latin America. In fact, what we are proposing is an independent body on human rights, which would provide governments with credibility precisely because it is independent of the present administration. Whatever it says on the human rights situation will be credible because it is not subject to pressure or control from the present political leadership.

Secondly, we all know how political fortunes come and go. Those who are in power yesterday are in opposition today and those who are in power today may be in the opposition tomorrow. Therefore, if we have a Commission on Human Rights that would investigate and make sure that the rights of each one is protected, then we shall have a body

that could stand up to any power, to defend the rights of individuals against arrest, unfair trial, and so on.

These deliberative considerations abundantly show that the independent constitutional commissions have been consistently intended by the framers to be independent from executive control or supervision or any form of political influence. At least insofar as these bodies are concerned, jurisprudence is not scarce on how the “independence” granted to these bodies prevents presidential interference.

In *Brillantes, Jr. v. Yorac*, we emphasized that the Constitutional Commissions, which have been characterized under the Constitution as “independent,” are not under the control of the President, even if they discharge functions that are executive in nature. The Court declared as unconstitutional the President’s act of temporarily appointing the respondent in that case as Acting Chairman of the Comelec “however well-meaning” it might have been.

In *Bautista v. Senator Salonga*, the Court categorically stated that the tenure of the commissioners of the independent Commission on Human Rights could not be placed under the discretionary power of the President:

Indeed, the Court finds it extremely difficult to conceptualize how an office conceived and created by the Constitution to be independent – as the Commission on Human Rights – and vested with the delicate and vital functions of investigating violations of human rights, pinpointing responsibility and recommending sanctions as well as remedial measures therefor, can truly function with independence and effectiveness, when the tenure in office of its Chairman and Members is made dependent on the pleasure of the President. Executive Order No. 163-A, being antithetical to the constitutional mandate of independence for the Commission on Human Rights has to be declared unconstitutional.

Again, in *Atty. Macalintal v. Comelec*, the Court considered even the mere review of the rules of the Commission on Elections by Congress a “trampling” of the constitutional mandate of independence of this body. Obviously, the mere review of rules places considerably less pressure on a constitutional body than the Executive’s power to discipline and remove key officials of the Office of the Ombudsman, yet the Court struck down the law as unconstitutional.

The kind of independence enjoyed by the Office of the Ombudsman certainly cannot be inferior – but is similar in degree and kind – to the independence similarly guaranteed by the Constitution to the Constitutional Commissions since all these offices fill the political interstices of a republican democracy that are crucial to its existence and proper functioning.

c. Section 8(2) of RA No. 6770 vesting disciplinary authority in the President over the Deputy Ombudsman violates the independence of the Office

of the Ombudsman and is thus unconstitutional

Our discussions, particularly the Court's expressed caution against presidential interference with the constitutional commissions, on one hand, and those expressed by the framers of the 1987 Constitution, on the other, in protecting the independence of the Constitutional Commissions, speak for themselves as overwhelming reasons to invalidate Section 8(2) of RA No. 6770 for violating the independence of the Office of the Ombudsman.

In more concrete terms, we rule that subjecting the Deputy Ombudsman to discipline and removal by the President, whose own alter egos and officials in the Executive Department are subject to the Ombudsman's disciplinary authority, cannot but seriously place at risk the independence of the Office of the Ombudsman itself. The Office of the Ombudsman, by express constitutional mandate, includes its key officials, all of them tasked to support the Ombudsman in carrying out her mandate. Unfortunately, intrusion upon the constitutionally-granted independence is what Section 8(2) of RA No. 6770 exactly did. By so doing, the law directly collided not only with the independence that the Constitution guarantees to the Office of the Ombudsman, but inevitably with the principle of checks and balances that the creation of an Ombudsman office seeks to revitalize.

What is true for the Ombudsman must be equally and necessarily true for her Deputies who act as agents of the Ombudsman in the performance of their duties. The Ombudsman can hardly be expected to place her complete trust in her subordinate officials who are not as independent as she is, if only because they are subject to pressures and controls external to her Office. This need for complete trust is true in an ideal setting and truer still in a young democracy like the Philippines where graft and corruption is still a major problem for the government. For these reasons, Section 8(2) of RA No. 6770 (providing that the President may remove a Deputy Ombudsman) should be declared void.

The deliberations of the Constitutional Commission on the independence of the Ombudsman fully support this position. Commissioner Florenz Regalado of the Constitutional Commission expressed his apprehension that any form of presidential control over the Office of the Ombudsman would diminish its independence. The following exchanges between Commissioners Blas Ople and Christian Monsod further reveal the constitutional intent to keep the Office of the Ombudsman independent from the President:

MR. OPLE. x x x

May I direct a question to the Committee? x x x [W]ill the Committee consider later an amendment x x x, by way of designating the office of the Ombudsman as a constitutional arm for good government, efficiency of the public service and the integrity of the President of the Philippines, instead of creating another agency in a kind of administrative limbo which would be accountable to no one on the pretext that it is a constitutional body?

MR. MONSOD. The Committee discussed that during our committee deliberations and when we prepared the report, it was the opinion of the Committee — and I believe it still is

— that it may not contribute to the effectiveness of this office of the Ombudsman precisely because many of the culprits in inefficiency, injustice and impropriety are in the executive department. Therefore, as we saw the wrong implementation of the Tanodbayan which was under the tremendous influence of the President, it was an ineffectual body and was reduced to the function of a special fiscal. The whole purpose of our proposal is precisely to separate those functions and to produce a vehicle that will give true meaning to the concept of Ombudsman. Therefore, we regret that we cannot accept the proposition.

The statements made by Commissioner Monsod emphasized a very logical principle: the Executive power to remove and discipline key officials of the Office of the Ombudsman, or to exercise any power over them, would result in an absurd situation wherein the Office of the Ombudsman is given the duty to adjudicate on the integrity and competence of the very persons who can remove or suspend its members. Equally relevant is the impression that would be given to the public if the rule were otherwise. A complainant with a grievance against a high-ranking official of the Executive, who appears to enjoy the President's favor, would be discouraged from approaching the Ombudsman with his complaint; the complainant's impression (even if misplaced), that the Ombudsman would be susceptible to political pressure, cannot be avoided. To be sure, such an impression would erode the constitutional intent of creating an Office of the Ombudsman as champion of the people against corruption and bureaucracy.⁸⁸

Verily, the Court held that subjecting a Deputy Ombudsman to discipline and removal by the President, whose own alter egos and officials in the Executive Department are subject to the Ombudsman's disciplinary authority, cannot but seriously place at risk the independence of the Office of the Ombudsman itself.

Gonzales 2014 rejected the earlier espoused theory that the President's disciplinary authority over the Deputies of the Ombudsman was put in place to act as an external check against mutual protection between the latter and the Ombudsman. The Court decreed that this theory stands on shaky grounds given that the deputies cannot protect the Ombudsman from impeachment. Finally, while the Court recognized the legislature's power to determine the manner and causes for the removal of non-impeachable officers, this power must be consistent with constitutional guarantees and principles.

The Court, however, did not adopt this line of reasoning insofar as the Special Prosecutor was concerned.⁸⁹ By another vote of 8-7, the Court resolved to sustain the constitutionality of Section 8(2) of RA 6770 insofar as the Special Prosecutor was concerned. The Court did not consider the Special Prosecutor to be constitutionally within the Office of the Ombudsman, hence, it is not entitled to the independence the Office of the Ombudsman enjoys

⁸⁸ *Id.* at 398–405.

⁸⁹ *Id.* at 423.

under the Constitution.⁹⁰ This rationalization was aptly discussed in the Concurring and Dissenting Opinion of then Associate Justice, now Senior Associate Justice Marvic M.V.F. Leonen in *Gonzales 2014*,⁹¹ thus:

The treatment of the Office of the Special Prosecutor is, however, different. In my view, the Office of the Special Prosecutor may by law be removed by the President. This is what Section 8, Paragraph (2) of the Ombudsman Act provides.

This conclusion can be seen simply by examining the provisions of Article XI of the Constitution. There are two constitutional organs created: the Office of the Ombudsman and the Tanodbayan, which is the current Office of the Special Prosecutor:

Section 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

Section 6. The officials and employees of the Office of the Ombudsman, other than the Deputies, shall be appointed by the Ombudsman, according to the Civil Service Law.

Section 7. The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.

Section 5 of Article XI provides that the composition of the Office of the Ombudsman includes the Office of the Ombudsman, the overall Deputy Ombudsman for Luzon, Visayas, and Mindanao as well as a separate Deputy for the military establishment. Section 6 of Article XI states that the other officials and employees of the Office of the Ombudsman, outside of the Deputies, shall be appointed by the Ombudsman in accordance with the Civil Service Law. Section 7 of Article XI provides that what was then known as the Tanodbayan shall now be known as the Office of the Special Prosecutor. It is allowed to exercise its powers as provided by law except those explicitly provided for in the 1987 Constitution.

Section 7 even distinguishes between all the other officials and employees of the Ombudsman and that of the Office of the Special Prosecutor.

The Office of the Ombudsman's powers are more proactive than the prosecutorial powers of the Office of the Special Prosecutor. This can be seen in the enumeration of her powers in the Constitution. Thus, in Article XI, Section 13:

⁹⁰ Id.

⁹¹ Id.

Sec.13. The Office of the Ombudsman shall have the following powers, functions, and duties:

- (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
- (2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
- (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
- (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts and transactions entered into by this office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
- (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
- (6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
- (7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
- (8) Promulgate its rules and procedure and exercise such other powers or perform such functions or duties as may be provided by law.

By clear constitutional design, the Tanodbayan or the Office of the Special Prosecutor is separate from the Office of the Ombudsman. Section 7 is explicit on this point, in that the Office of the Special Prosecutor is allowed to exercise its powers, except for those conferred on the Office of the Ombudsman. While the Office of the Special Prosecutor is not automatically a part of the Office of the Ombudsman, there is, however, no reason that Congress and the President may, by law and in their political wisdom, attach the Office of the Special Prosecutor with the Office of the Ombudsman. There is also no constitutional prohibition for the Office of

the Special Prosecutor to be functionally separate from the Office of the Ombudsman. This is a matter to be addressed by the political departments. This may also be viewed as a check of both Congress and the President on the powers of the Ombudsman.

By clear provision of the Constitution, it is only the Office of the Ombudsman, which includes her Deputies, that is endowed with constitutional independence. The inclusion of the Office of the Special Prosecutor with the Office of the Ombudsman in Section 3 of Republic Act No. 6770 does not ipso facto mean that the Office of the Special Prosecutor must be afforded the same levels of constitutional independence as that of the Ombudsman and the Deputy Ombudsman. The law simply defines how the Office of the Special Prosecutor is attached and, therefore, coordinated with the Office of the Ombudsman.

Thus, the provision of Section 8, Paragraph (2) of Republic Act No. 6770 which provides for the power of the President to remove the Special Prosecutor is valid and constitutional.⁹²

While *Gonzales 2014* upheld the power of the President to remove the Special Prosecutor, it **did not rule** that the Office of the Ombudsman lacked such power. In fact, as will be explained below, **the Special Prosecutor enjoys the same independence as the Deputies of the Ombudsman.**

We emphasize that the disciplinary authority of the Ombudsman proceeds from a constitutional *imprimatur*. It is not a mere statutory power. For even without Section 15, 19, or 21 of the Ombudsman Act, the Ombudsman is empowered no less by the Constitution to investigate and discipline **all** public officers and employees, **save only** impeachable officers and the officials and employees of the Judiciary and each of the Constitutional Commissions. On the other hand, Section 8(2) which grants the President disciplinary authority over the Special Prosecutor is a statutory grant which erodes the independence of the Ombudsman as mandated by the Constitution.

As canvassed by the 1986 Constitutional Commission, the 1971 Constitutional Convention, as previously discussed, sought an honest-to-goodness Ombudsman. But the intervening creation of the Tanodbayan under the Office of the President derailed this opportunity.⁹³ Commissioner Florenz D. Regalado pointed this out:⁹⁴

MR. REGALADO. Thank you, Madam President.

I fully concur in the observations of Commissioner Maambong regarding the background of the creation of the Ombudsman or the Tanodbayan.

⁹² Id. at 448–451.

⁹³ II Record, Constitutional Commission, Proceedings and Debates, 295, 1986. (<https://ia800405.us.archive.org/28/items/record-of-the-constitutional-commission-volume-2/fullRecordOfTheConstitutionalCommissionVolumeI.pdf>).

⁹⁴ Id.

10

As originally envisioned, it was supposed to perform the function of fiscalizing the different departments of the government as well as governmental offices in the traditional Scandinavian concept. Unfortunately, however, it was not a constitutional creation but a constitutionally mandated body. Therefore, it needed legislative support. Then we had, of course, the creation by presidential decree of the Tanodbayan. Unfortunately, by presidential decree enumerating the functions and duties of the Ombudsman, too much stress was placed on his prosecutory functions and less on his administrative fiscalization functions. *That is where, I think, the Ombudsman as the Tanodbayan failed to discharge that other part of its duties, aside from the consideration that, taking into account the political ambiance at the time, while the President with the right hand granted it administrative fiscalization powers, with the left hand, he withdrew from those functions the capability of the Tanodbayan to perform what was granted by law.*

This is just like the practice of heads of law offices, telling their assistants: "You will be paid so much; you are free to have private practice." However, office cases must be given priority. Therefore, the statement "I allow you private practice" is, in effect, a hollow grant of assistance.

I have gone over the records of the Tanodbayan in its annual report to the President in connection with its prosecutory and administrative functions in fiscalizing the different offices of the government. I have talked with two former justices of the Tanodbayan and they gave me the same complaint: They are so swamped with prosecution work such that even if they work up to six or seven o'clock in the evening, they still cannot finish their work as prosecutors, especially in serious cases which they cannot just delegate to their deputies. Tanodbayan Justices Ericeta and Fernandez were never able to submit policy recommendations because they were, in effect, preempted by their prosecutory duties.

In the last report of the Tanodbayan, the percentage of work that they performed were as follows: prosecutory functions under Title VII of the Revised Penal Code; that is, crimes committed by public officers-1,198 cases (27.62 percent); other crimes in relation to public office-1,127 (25.98 percent); violation of corrupt law practices-1,049 (24.18 percent); complaints not involving other crimes-439 (10.12 percent) and which they were not able to attend to; request for assistance-249 cases (5.74 percent); administrative complaints on acts in relation to the office of the public officer but which do not amount to crimes and, therefore, are not supposed to be within their prosecutory functions-60.62 percent.

In other words, Madam President, what actually spawned or caused the failure of the justices of the Tanodbayan insofar as monitoring and fiscalizing the government offices are concerned was due to two reasons: First, almost all their time was taken up by criminal cases; and second, since they were under the Office of the President, their funds came from that office. *I have a sneaking suspicion that they were prevented from making administrative monitoring because of the sensitivity of the then head of that office, because if the Tanodbayan would make the corresponding reports about failures, malfunctions or omissions of the different ministries, then that would reflect upon the President who wanted to claim the alleged confidence of the people.*




Not only in the Philippines but anywhere in the world, bureaucratic red tape has always been the bane of democratic institutions, and this bureaucratic red tape, omissions or nonfeasance, malfeasance or misfeasance do not amount to a crime.

The purpose of the Tanodbayan, on its secondary function, is to respond to the complaints of the common citizen. It has been said here that Juan de la Cruz, if he has not been given attention by the head of a bureau or office, could always make the corresponding complaints to the head of that office. If even a minor clerk will not listen to poor little Juan de la Cruz, does the Commissioner expect him to go to the bureau director or to the minister? What will he do? It has been said here that he can go to the Ministry of Justice. That bureaucratic practice does not amount to a crime so the Minister of Justice will just tell him that it is outside of his jurisdiction.

Again, it has also been said here that the Tanodbayan would, in effect, be competing with the President in the performance of executive powers because he would be in confrontation with the President. I think a sincere President who is fully dedicated to public service would appreciate his attention being called by the Tanodbayan about the shortcomings of his ministries, bureaus or offices over which under the Constitution he is supposed to have full control. But the President is only a human being; he has to work for and protect those different appointive officials under him.

The myriad of details that go to the Office of the President are such that they are enough to break his health, they are back-breaking burdens, such that so many things never actually reach the personal attention of the President. They are supposed to have been taken care of by his alter egos, but sometimes right in his alter egos lies the fault or the cause of bureaucratic red tape.

It is said here that the Tanodbayan or the Ombudsman would be a toothless or a paper tiger. That is not necessarily so. If he is toothless, then let us give him a little more teeth by making him independent of the Office of the President because it is now a constitutional creation, so that the insidious tentacles of politics, as has always been our problem, even with PARGO, PCAPE and so forth, will not deprive him of the opportunity to render service to Juan de la Cruz. We are more concerned about the little men; we are not concerned about those of the middle income, upper middle income classes or the rich, for they can always hire lawyers. But the moral suasion of a letter from the Tanodbayan or the Ombudsman addressed to a head of the ministry or a bureau or office, telling him that it has come to the former's attention, whether by letter or of his own knowledge, that Mr. So and So has been following up for the last three months his salary voucher which he intends to use for the support of his family who cannot live forever on one meal or no meals at all in one day, invites action. "Will you please take action on this matter or explain to us why no action has been taken? Or are there any other supporting papers necessary to justify his claim? "We can be sure that a letter from such a personality addressed even to a minister will make him sit up and take notice. But if Mr. Juan de la Cruz, poor as he is and benighted in education, would send a letter, I doubt very much if even a well-meaning head of a ministry would be able to attend to that because it will just pass through the lower echelons who will say, "this is a minor matter." So, it goes into the wastebasket. There is supposed to be created a constitutional office - constitutionalized to free it from those tentacles of politics - and we give it more teeth and have the corresponding legislative



provisions for its budget, not a budget under the Office of the President. This will not require a confrontation. Confrontation presupposes contradictory motives or contradictory objectives. If the President is really interested in good government, the more he will welcome the fact that here is an arm of his, independent from him as known to the people, but in cooperation with him for the purpose of good government, where the little men in the street, a member of the Great Unwashed, can always go to and lay his head on a shoulder and say, "*Mr. Ombudsman, ang pamilya ko po ay tatlong araw nang hindi kumakain. Hindi ko na masabing no more rice tayo, magmemorize na lang kayo.*" That is actually the purpose of the office of the Ombudsman.

Of course, there is a question of whether it is, as it was in the past, only to be constitutionally mandated or must be of constitutional creation. The former Tanodbayan was only constitutionally mandated, hence it required an enabling legislative act to exist and to operate. The purpose of this is to have it constitutionalized to free it from any inroads of pressures with the corresponding logistical support given to it.

Bureaucratic red tape has been with us for generations, as far as per can recall, and am old enough to have had that experience. Try following up your papers in the government. Even judges and justices have to go through the hegira of rounds of offices and bureaus just to collect their retirement pay, and these are people who stand tall in stature in society. If that could happen even to those people of eminence, what chance has a member of the Great Unwashed, like little Juan de la Cruz, who cannot even express himself properly in either English or Tagalog? For that reason, Madam President, I support this committee report on a constitutionally created Ombudsman and I further ask that to avoid having a toothless tiger, there should be further provisions for statistical and logistical support.

Thank you, Madam President.⁹⁵ (Emphasis and italics supplied)

The reintroduction of the Office of the Ombudsman under the 1987 Constitution as an independent body free from possible future interference from anyone but the Ombudsman was precisely the point.⁹⁶ Hence, if at all, contrary to petitioner's argument, it is the **Office of the Ombudsman that has the true power to remove the Special Prosecutor** in line with the constitutionally guaranteed **institutional independence**.

When the present Constitution converted the existing Tanodbayan into the Office of the Special Prosecutor, it did so with the notion that it has been created and tasked as a subordinate of the Ombudsman, specifically as the Ombudsman's prosecutorial arm. The 1986 Constitutional Commission even agreed that the functions of the Office of the Special Prosecutor may be taken over by the Ombudsman himself or herself.⁹⁷

⁹⁵ Id. at 295-297.

⁹⁶ Id. at 269.

⁹⁷ Id.

MR. RODRIGO. Let us go back to the division between the powers of the Tanodbayan and the Ombudsman which says that:

The Tanodbayan x x x shall continue to function and exercise its powers as provided by law, except those conferred on the office of the Ombudsman created under this Constitution.

The powers of the Ombudsman are enumerated in Section 12.

MR. COLAYCO. They are not exclusive.

MR. RODRIGO. So, these powers can also be exercised by the Tanodbayan?

MR. COLAYCO. No, I was saying that the powers enumerated here for the Ombudsman are not exclusive.

MR. RODRIGO. Precisely, I am coming to that. The last of the enumerated functions of the Ombudsman is: "to exercise such powers or perform such functions or duties as may be provided by law." So, the legislature may vest him with powers taken away from the Tanodbayan, may it not?

MR. COLAYCO. Yes.

MR. MONSOD. Yes.

MR. RODRIGO. And it is possible that pretty soon the Tanodbayan will be a useless appendage and will lose all his powers.

MR. COLAYCO. No. I am afraid the Gentleman has the wrong perception of the system. We are leaving to the Tanodbayan the continuance of his functions and the exercise of the jurisdiction given to him pursuant to x x x

MR. RODRIGO. Law.

MR. COLAYCO. No. Pursuant first to the Constitution and the law which mandated the creation of the office.


MR. RODRIGO. Madam President. Section 5 reads: "The Tanodbayan shall continue to function and exercise its powers as provided by law."

MR. COLAYCO. That is correct, because it is under P.D. No. 1630.

MR. RODRIGO. So, if it is provided by law, it can be taken away by law, I suppose.

MR. COLAYCO. That is correct.

MR. RODRIGO. *And precisely, Section 12 (6) says that among the functions that can be performed by the Ombudsman are "such functions or duties as may be provided by law." The sponsors admitted that the legislature later on might remove some powers from the Tanodbayan and transfer these to the Ombudsman.*



MR. COLAYCO. Madam President, that is correct.

MR. MONSOD. Madam President, perhaps, it might be helpful if we give the spirit and intendment of the Committee. What we wanted to avoid is the situation where it deteriorates into a prosecution arm. We wanted to give the idea of the Ombudsman a chance, with prestige and persuasive powers, and also a chance to really function as a champion of the citizen.

However, we do not want to foreclose the possibility that in the future, the Assembly, as it may see fit, may have to give additional powers to the Ombudsman; we want to give the concept of a pure Ombudsman a chance under the Constitution.

MR. RODRIGO. Madam President, what I am worried about is, if we create a constitutional body which has neither punitive nor prosecutory powers but only persuasive powers, we might be raising the hopes of our people too much and then disappoint them.

MR. MONSOD. I agree with the Commissioner.

MR. RODRIGO. Anyway, since we state that the powers of the Ombudsman can later on be implemented by the legislature, why not leave this to the legislature?

MR. MONSOD. Yes, because we want to avoid what happened in 1973. I read the committee report which recommended the approval of the 27 resolutions for the creation of the office of the Ombudsman, but notwithstanding the explicit purpose enunciated in that report, the implementing law - the last one, P.D. No. 1630 - did not follow the main thrust; instead it created the Tanodbayan.⁹⁸ (Emphases and italics supplied)

The Special Prosecutor became the subordinate of the Ombudsman with a mandate to continue to be the prosecuting arm of the Ombudsman under PD 1630. In doing so, the Office of the Special Prosecutor is subject to the Ombudsman's disciplining authority. We cannot erode the independence of the Ombudsman by not allowing the latter to remove the Special Prosecutor. Further, the 1986 Constitutional Commission precisely guarded against this by subjecting the appointment of the Special Prosecutor to the vetting of and nomination by the Judicial and Bar Council to maintain this public officer's independence.

Indeed, for purposes of emphasizing the Ombudsman's power to remove the Special Prosecutor, We say that the Special Prosecutor has the **same rank and salary** as a Deputy Ombudsman over whom the Ombudsman has the sole power to remove.⁹⁹ With more reason must the Special Prosecutor

⁹⁸ Id. at 270-271.

⁹⁹ Section 11. *Structural Organization*. — The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said office.

(1) The Office of the Ombudsman may organize such directorates for administration and allied services as may be necessary for the effective discharge of its functions. Those appointed as directors or heads shall have the rank and salary of line bureau directors.

enjoy the same level of independence as the Ombudsman and the Deputies – to insulate the Special Prosecutor’s **prosecutorial discretion** every step of the way institutionally and in individual cases. For another, the Special Prosecutor is **very special** because he or she **prosecutes the high officers** whom the Ombudsman and the Deputies are tasked to investigate to establish **administrative culpability**. The **Special Prosecutor** pursues these **high public officials in criminal cases**.

This responsibility **certainly deserves as much if not more protection** in terms of independence as the Ombudsman and the Deputies who at the first instance deal **only with the administrative culpabilities** of these high officials. Criminal justice results in jail terms and other punitive consequences; administrative proceedings could also be harsh but definitely not equally monumental as a criminal conviction.

Hence, We **confirm the rationale** in *Gonzales 2014* as being relevant to both the Deputies of the Ombudsman and the Special Prosecutor. The **rationale applies equally to both if not with more reason** to the Special Prosecutor.

The Office of the Ombudsman must stand at par with other government offices whose independence has been constitutionally guaranteed. In the case of the Judiciary and the Constitutional Commissions, they have **plenary disciplinary authority** over their own officials and employees.

In view of the foregoing considerations, **the IAB and the Offices of the Ombudsman and her Deputies** here exercised the powers which **properly belong to them, i.e.**, the power to investigate the complaints filed against the Special Prosecutor and impose disciplinary sanctions on him, if proper.

(2) The Office of the Overall Deputy shall oversee and administer the operations of the different offices under the Office of Ombudsman. It shall likewise perform such other functions and duties assigned to it by the Ombudsman.

(3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his prosecution staff. The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman.

(4) The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers:

(a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;

(b) To enter into plea bargaining agreements; and

(c) To perform such other duties assigned to it by the Ombudsman.

The Special Prosecutor shall have the rank and salary of a Deputy Ombudsman.

(5) The position structure and staffing pattern of the Office of the Ombudsman, including the Office of the Special Prosecutor, shall be approved and prescribed by the Ombudsman. The Ombudsman shall appoint all officers and employees of the Office of the Ombudsman, including those of the Office of the Special Prosecutor, in accordance with the Civil Service Law, rules and regulations. (Republic Act No. 6770, The Ombudsman Act, Approved on November 17, 1989).

Section 11 of RA 6770 unmistakably supports the authority exercised by the Ombudsman. It vests the Ombudsman with the power of supervision and control over the Special Prosecutor in order to aid the mandate of the Office of the Ombudsman in the discharge of its powers and functions, principally in the conduct of preliminary investigation and prosecution of criminal cases within the jurisdiction of the Sandiganbayan. Thus, the meaning of “*supervision and control*” under Section 11(3) of RA 6770 does not only refer to the prosecutorial powers of the Special Prosecutor but also to the exercise of disciplinary authority over the Special Prosecutor.

Petitioner was not denied his constitutional right to due process of law

The Constitution guarantees that “No person shall be deprived of life, liberty, or property without due process of law nor shall any person be denied the equal protection of the law.”¹⁰⁰

Procedural due process is that which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property.¹⁰¹

In administrative proceedings, due process is satisfied when persons are notified of the charge against them and given an opportunity to explain or defend themselves. In such proceedings, notice and hearing afforded to these persons constitute the minimum requirements of due process. In *Ang Tibay v. Court of Industrial Relations*,¹⁰² the Court ordained that one of the requisites for due process compliance is that the decision must be rendered on the basis of the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

The essence of due process, therefore, as applied to administrative proceedings, is an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Thus, a violation of that right occurs when a court or tribunal rules against a party without giving the person the opportunity to be heard.¹⁰³

Petitioner claims that he was not afforded due process. He questioned the manner by which the IAB handled the complaint, alleging there were irregularities in the handling of the complaint that totally disregarded its rules.

¹⁰⁰ Constitution, Art. III, Section I.

¹⁰¹ *Office of the Ombudsman v. Conti*, 806 Phil. 384, 395 (2017) [Per J. Mendoza, Second Division], citing *Luzon Surety Co., Inc. v. Jesus Panaguiton*, 173 Phil. 355, 360 (1978) [Per J. Guerrero, First Division].

¹⁰² Id, citing *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940) [Per J. Laurel].

¹⁰³ Id. at 395.

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These allegations, however, even if true, do not amount to any violation of due process. In *Cesa v. Office of the Ombudsman*,¹⁰⁴ the Court ruled that the standards of due process in administrative proceedings allow certain latitude as long as fairness had been practiced. There is no denial of due process if records show that hearings were held with prior notice to the parties. Even without notice, there would be no denial of procedural due process if the parties were given the opportunity to be heard.¹⁰⁵ Due process in administrative proceedings simply means an opportunity to seek a reconsideration of the order complained of and cannot be fully equated with strict court proceedings. A respondent is not entitled to be informed of the preliminary findings and recommendations of the investigating agency; he is entitled only to a fair opportunity to be heard and a decision based on substantial evidence. No more, no less.¹⁰⁶

Admittedly here, petitioner was granted an extension of time to file a counter-affidavit. Thereafter, he duly filed a Joint Counter-Affidavit *Ex Abundanti Ad Cautelam*¹⁰⁷ dated January 18, 2010. When he received the IAB ruling, he also filed a motion for reconsideration. Verily, petitioner cannot claim denial of due process.

More, the supposed unreasonable service of the IAB Order dated November 24, 2009, before the holidays was negated by the approval of petitioner's request for an extension of 15 days. The retroactive effect given to AO21, Series of 2009, is not a violation of any right of a person who may feel adversely affected as no vested right may attach to, nor arise from, procedural laws.

On the other hand, petitioner's allegations of malicious prosecution and harassment owing to his "public rift" with then Ombudsman Gutierrez cannot be given credence. For such allegations require proof that the suit was truly prompted by legal malice – an inexcusable intent to injure, oppress, vex, annoy, or humiliate. Otherwise, citizens would be discouraged from exercising their right to litigate and avail of peaceful recourses before the courts for fear of being unjustly penalized.¹⁰⁸

Here, petitioner enumerated at least three cases filed against him and one against his daughter Atty. Monica C. Villa-Ignacio as proof of legal malice. Needless to say, this circumstance, by itself, could hardly convince.

The various articles of news agencies on their supposed rift cannot be given credence either. Newspaper articles amount to "*hearsay evidence, twice*

¹⁰⁴ 576 Phil. 345 (2008) [Per J. Quisumbing, *En Banc*].

¹⁰⁵ *Id.* at 354.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 212–251.

¹⁰⁸ *Sec Odrada v. Lazaro, et al.*, G.R. No. 205515, January 20, 2020 [Per J. Reyes Jr., First Division].

*removed*¹⁰⁹ and, hence, not only inadmissible but without any probative value at all, whether objected to or not,¹¹⁰ unless offered for a purpose other than proving the truth of the matter asserted. They are admissible only as evidence that such publication does exist as well as the tenor of the news therein stated.

As for the alleged irregularity in the appointment of Honorable Casimiro as IAB Chairperson, suffice it to state that the same may not be collaterally attacked in this proceeding.

Procedural rules were not violated. Petitioner posits that this is a mere harassment suit as manifested by the previous IAB's alleged anomalous handling of the case to force him to resign from his post as Special Prosecutor.

This accusation is at best speculative. The fact alone that the three complaints were lodged against him and AO21, Series of 2009, was retroactively applied to these cases do not substantiate his allegation that the cases were only meant to harass him.

In any event, the observance of fairness in the conduct of any investigation is at the very heart of the procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process does not require due process in its strict judicial sense. Administrative hearings are not done with a trial-type hearing; technical rules of procedure are not even strictly applied.¹¹¹

Here, petitioner actively participated in the entire course of the investigation conducted. Assisted by counsel, he filed numerous pleadings in defense of his position. He was given every opportunity to be heard, including the grant of extension to file pleadings. He filed an appeal before the Court of Appeals and the Supreme Court. Denial of due process cannot be successfully invoked by a party who was in fact afforded the opportunity to be heard and took part in it.¹¹²

At any rate, as held in *Autencio v. Mañara*,¹¹³ whatever defects in procedural due process are deemed cured when the party had the opportunity to appeal or seek a reconsideration of the action or ruling complained of.

¹⁰⁹ See *Feria v. CA*, 382 Phil. 412, 423 (2000) [Per *J. Quisumbing*, Second Division].

¹¹⁰ *Id.*

¹¹¹ See *Vivo v. PAGCOR*, 721 Phil. 34, 39 (2013) [Per *J. Bersamin*, *En Banc*].

¹¹² *Id.* at 43.

¹¹³ 489 Phil. 752 (2005) [Per *J. Panganiban*, Third Division].

However, there is simply no substantial evidence to find petitioner liable – he must be exonerated.

The factual findings of the Office of the Ombudsman are generally accorded great weight and respect, if not finality, by the courts because of their special knowledge and expertise over matters falling under their jurisdiction. When supported by **substantial evidence**, its **findings of fact** are deemed **conclusive**.¹¹⁴

More than a mere scintilla of evidence, **substantial evidence** means such **relevant evidence** as a **reasonable mind might accept as adequate** to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.¹¹⁵ The requirement is satisfied where there is **reasonable ground to believe** that the respondent is guilty of the act or omission complained of, even if the evidence might not be overwhelming.¹¹⁶ Applying this standard of proof, there is **no substantial evidence** to support petitioner's administrative liability.

We quote anew petitioner's certificates of service from August 2008 to December 2008 which, except for the relevant dates, bore the same wording, thus:

I HEREBY CERTIFY upon my honor that I have rendered full time service for the period of _____, except on the following days, leave application for which has been filed/duly approved.¹¹⁷

Under Section 3, Rule XVII of the Omnibus Rules Implementing Book V of EO No. 292,¹¹⁸ **Chiefs and Assistant Chiefs** of agencies who are **appointed by the President**, officers who rank higher than these chiefs and assistant chiefs in the three branches of the government, and other presidential appointees, are **not required to record their entry and exit times** using the bundy clock or any other time stamping and recording device. The attendance and all absences of these officers, however, must be **recorded by some other means**.

Under Office Order No. 95-47, Series of 1995, **officials** and employees of the **Office of the Ombudsman** who are members of the Philippine Bar shall **record their attendance** by accomplishing **Certificates of Service** every end of each month.

¹¹⁴ *Diaz v. The Office of the Ombudsman*, 834 Phil. 735, 743 (2018) [Per J. Tijam, First Division].

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 817-821.

¹¹⁸ RULE XVII-Government Office Hours, Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, 1995.

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Petitioner maintains that per his certificates of service from August 2008 to December 2008, he had rendered full service for all the days declared therein. True, he may **not have been physically present in the office on certain days specified by respondent**, but he **still rendered full service** then within the confines of his home, free from the hostility, persecution, harassment, and ill will mostly caused by respondents Assistant Special Prosecutor Uy, Pilarita T. Lapitan, Luz L. Quiñonez-Marcos, and Elivera Chua, who had filed numerous criminal and administrative cases against him.

Petitioner also questions the due execution and reliability of the Information Report of the security logbook as it was incomplete, unauthenticated, and unreliable. He asserts that there is nothing in the certificates stating that his service should be done only within the premises of his office as Special Prosecutor.

On the other hand, respondent counters that petitioner's certificates of service were falsified. The same showed that only 36 days of absence were covered by petitioner's leave applications, and 28 days were not. On this score, respondent refers to the security guards' Information Report dated January 19, 2009, showing petitioner's ingress (time-in) and egress (time-out) at the OSP from January 2008 to December 2008 and their joint affidavit attesting to the veracity of the said Information Report. Based thereon, the IAB and the Ombudsman adopted the submission of respondent that petitioner violated Articles 171 and 174 of the Revised Penal Code, and committed serious dishonesty, grave misconduct, conduct prejudicial to the best interest of the service, frequent unauthorized absences/habitual absenteeism, and violation of Section 3(e), RA 3019.

We find for petitioner.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.¹¹⁹ Well-entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee.¹²⁰ The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded by his position.¹²¹

¹¹⁹ *DOH v. Aquintey, et. al.*, 806 Phil. 763, 772 (2017) [Per J. Peralta, Second Division].

¹²⁰ *Id.*

¹²¹ *Id.* at 772-773.

The Information Report is not a reliable source of attendance. This has already been pointed out by the Office of the Ombudsman itself. In the Fact-Finding Investigation Report¹²² dated July 3, 2013, the IAB then headed by its Chairperson and Deputy Ombudsman Mosquera dismissed IAB Case No. IAB-08-0013, citing the following reasons:

*Given the nature of the functions of Atty. Villa[–]Ignacio as Special Prosecutor, it cannot be denied that he has to perform some of his official duties outside his office at the Sandiganbayan Bldg. located along Commonwealth Avenue, Quezon City. x x x. In addition, thereto, entries in the logbooks are usually limited to matters seen or observed by the security guards. Therefore, persons or events/dealings that were unnoticed are not recorded in the logbook. Likewise, entries in the logbooks only establish the fact that a particular official or employee went inside or outside his/her workplace but not the fact that he/she actually reported for work or was just in the premises for a visit or some other unofficial business. In fine, logbook entries of security guards at the Office of the Special Prosecutor are not sufficient and accurate proof of the absences, tardiness or under time incurred by Atty. Villa-Ignacio and Monica Villa-Ignacio.*¹²³

On the other hand, in the Consolidated Resolution¹²⁴ dated September 26, 2014, the IAB dismissed OMB-C-C-08-0498-J (IAB-08-0120) and OMB-C-C-06-0296-F (IAB-09-0026) for Falsification of Public Documents, *Estafa*, and Violation of Section 3(e), RA 3019, *viz.*:

The sole basis for the alleged unauthorized absences of the respondent is the Information Report of the security guards culled from the entries in their logbook. However, said logbook entries, by themselves, are not a reliable source for determining respondent's attendance and cannot be utilized as the sole evidence or proof of such because the same may be inaccurate or incomplete. Even granting that it is the duty of the security guards on duty to record every single entry and exit of every employee of this Office, there may still be instances where the security guards fail to record the ingress or egress of an employee, considering the volume of foot traffic within the building, as well as certain interruptions such as clients asking for information, directions, and the like, which may very well distract the security guards from monitoring and entering in the logbook every single movement in the premises. In other words, the logbook entries contained in the Information Report cannot be used as the only evidence to prove that herein respondent was absent on the days in question.

x x x x

In the present cases, the **circumstances negate respondent's criminal intent or malice in purportedly "falsifying" his Certificates of Service in order to collect his salaries for the days when he allegedly did not report for work at the Sandiganbayan Building.** It is undisputed that respondent had filed leaves of absences for days when he was absent

¹²² *Rollo*, pp. 390–394.

¹²³ *Id.* at 392.

¹²⁴ *Id.* at 404–416.

from work, albeit not for all of his absences, as alluded to by the complainants. Nonetheless, if indeed respondent was spurred by malicious and criminal intent to defraud the government by collecting unearned salaries or leave credits, then he should have altogether omitted to declare or file any leave of absence. Moreover, respondent's good faith is also demonstrated by his admission that he had resorted to performing his work even outside his work station because of the hostile work environment created by the complainants and their colleagues, coupled with his demoralization due to gradual clipping of his functions. Likewise, **nowhere in the questioned Certificates of Service did the respondent state that he performed his work within the confines of his work station. It was his honest belief that he made an accurate report in his Certificates of Service, since he was not required to punch in his attendance in the bundy clock, and he had indeed performed his work even outside his office during the alleged "unauthorized absences."** The act itself does not make a man guilty unless his intention were so. Article 3 of the RPC clearly states that malice or criminal intent (*dolo*) in some form is an essential requisite of all crimes and offenses defined therein, except in those cases where the elements required is negligence (*culpa*).

Corollary thereto, there is no sufficient evidence to indict the respondent for *Estafa* and violation of Section 3(e) of R.A. No. 3019. The complainants did not submit evidence as to the actual receipt by the respondent of salaries for the days when he was allegedly absent without leave or the amount or value of the injury purportedly sustained by the government as a result of his supposed unauthorized absences. Thus, **this Board has no other recourse except to dismiss the unsubstantiated charges.**¹²⁵ (Emphases supplied)

The Fact-Finding Investigation Report dated July 3, 2013, and the Consolidated Resolution dated September 26, 2014, had **become final and executory**. Under Rule III(M),¹²⁶ AO16, Series of 2003, findings of fact of the Office of the Ombudsman, when supported by substantial evidence, **shall be conclusive**.

In *CSC v. Moralde*,¹²⁷ the Court ruled that immutability of judgment applies to decisions of agencies like the IAB exercising quasi-judicial powers, *viz.*:

Social Security System v. Isip articulated the basic parameters[,] of and the rationale for[,] adhering to the doctrine of immutability of a final judgment:

¹²⁵ Id. at 413–415.

¹²⁶ III. PROCEDURES IN HANDLING COMPLAINTS
M. Motion for Reconsideration

x x x

Findings of fact of the Office of the Ombudsman, when supported by substantial evidence, shall be conclusive. Any order, directive or decision imposing the penalty of public censure, reprimand, suspension of not more than one month and/or forfeiture of not more than one month salary, shall be final and unappealable

(Administrative Order No. 16, Series of 2003, the Creation of an Internal Affairs Board).

¹²⁷ 838 Phil. 840 (2018) [Per J. Leonen, Third Division].

A judgment becomes “final and executory” by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period. As a consequence, *no court (not even this Court) can exercise appellate jurisdiction to review a case or modify a decision that has bec[o]me final.*

When a final judgment is executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the court which rendered it or even by this Court. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.

The doctrine of immutability and inalterability of a final judgment has a two-fold purpose: (1) *to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business* and (2) *to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies cannot drag on indefinitely.* The rights and obligations of every litigant must not hang in suspense for an indefinite period of time. (Emphases supplied, citations omitted)

In staying its own hand in disturbing final judgments, this Court emphasized that the immutability of final judgments is not a matter of mere technicality, “but of substance and merit.” *In Peña v. Government Service Insurance System:*

[I]t is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, so also the winning party has the correlative right to enjoy the finality of the resolution of the case.

x x x x

The rule on finality of decisions, orders[,] or resolutions of a judicial, quasi-judicial or administrative body is “not a question of technicality but of substance and merit,” [as its] ***underlying consideration [is] x x x protecti[n]g x x x the winning party[’s substantive rights] x x x*** *Nothing is more settled in law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.* (Emphases supplied)

As is clear from *Peña*, the doctrine of inmutability of judgments applies as much to decisions of agencies exercising quasi-judicial powers as they do to judicial decisions. Jurisprudence is categorical: “the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.” Specifically concerning the Civil Service Commission, this Court has stated that:

The [Civil Service Commission] has no power or authority to reconsider its decision which has become final and executory. More so in this case when more than a period of one year had lapsed since the [Civil Service Commission] decision became final and executory. Even ordinary

courts may not, as a rule, set aside or even modify its decision that have become final and executory. The duty of the [Civil Service Commission] in such instance is to enforce its final decision rather than disturb it. (Emphasis supplied)

Likewise, in *Provincial Government of Aurora v. Marco*:

The doctrine of immutability of final judgments applies to decisions rendered by the Civil Service Commission. A decision of the Civil Service Commission becomes final and executory if no motion for reconsideration is filed within the 15-day reglementary period under Rule VI, Section 80 of the Uniform Rules on Administrative Cases in the Civil Service:

Section 80. Execution of Decision. —The decisions of the Commission Proper or its Regional Offices shall be immediately executory after fifteen (15) days from receipt thereof, unless a motion for reconsideration is seasonably filed, in which case the execution of the decision shall be held in abeyance. (Emphasis supplied)

The doctrine of immutability of judgments is not itself absolutely and inescapably immutable. “While firmly ingrained as a basic procedural tenet in Philippine jurisprudence, [it] was never meant to be an inflexible tool to excuse and overlook prejudicial circumstances.” This Court has recognized that it “must yield to practicality, logic, fairness and substantial justice.”

Jurisprudence enumerates instances in which a final judgment’s execution may be disturbed: (1) the correction of clerical errors; (2) *nunc pro tunc* entries that do not prejudice a party; (3) void judgments; and (4) whenever supervening events or circumstances transpire after the decisions’ finality, making the decision’s execution unjust and inequitable.


This Court’s enumeration of exceptions reveals a grounded consideration of, and a commitment to honor, matters at the heart of “serv[ing] substantial justice.” *In Barnes v. Padilla*:

Such failure carries with it the result that no court can exercise appellate jurisdiction to review the case. Phrased otherwise, a final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.

However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby. (Citations omitted)

Still in *Barnes*, this Court expounded on how the recognized exceptions serve as instruments of equity, countervailing conventional rigidities:

Invariably, rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflects this principle. The power to suspend or even disregard rules



can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final.

In *De Guzman vs. Sandiganbayan*, this Court, speaking through the late Justice Ricardo J. Francisco, had occasion to state:

The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why *courts in rendering justice have always been, as they ought to be guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, "should give way to the realities of the situation."* (Emphasis supplied, citations omitted)

This Court acknowledges the need to temper obdurate insistence on black letter mechanics. To strangle a party's access to legitimate exceptions to the immutability doctrine would be to frustrate the higher ends of justice and to condone the triumph of hollow, procedural niceties. While maintaining restraint, this Court, nevertheless, rightly esteems itself in not being "precluded from rectifying errors of judgment if blind and stubborn adherence to the doctrine of immutability of final judgments would involve the sacrifice of justice for technicality."

Thus, in *Industrial Timber Corp. v. National Labor Relations Commission*, this Court acknowledged that the immutability doctrine may be suspended as long as it has been sufficiently established that:

[F]acts and circumstances [have] transpire[d] which render [a final judgment's] execution impossible or unjust and [that] it [is] therefore ... necessary, "in the interest of justice, to direct [the final judgment's] modification in order to harmonize the disposition with the prevailing circumstances."¹²⁸ (Emphases and italics in the original)

In any event, evidence **cannot be inadequate and unreasonable in one instance but adequate and reasonable in another**. In *Valencia v. Sandiganbayan*,¹²⁹ wherein the Court reversed the denial of Valencia's demurrer to evidence on the ground that Valencia's co-accused had already been acquitted on demurrer in the related Sandiganbayan case of *Macapagal-Arroyo v. People*, we ruled:¹³⁰

x x x One of the key issues behind the Court's disposition was: Even assuming that the elements of plunder were not proven beyond reasonable doubt, the evidence presented by the People established at least a case for malversation against *Arroyo and Aguas*.

In addressing the said issue in its April 18, 2017 Resolution, the Court ruled:

¹²⁸ Id. at 854–859.

¹²⁹ See G.R. No. 220398, June 10, 2019 [Per *J. Del Castillo*, First Division].

¹³⁰ Id., *citing* 808 Phil. 1042 (2017). [Per *J. Bersamin, En Banc*].

x x x x

In thereby averring the predicate act of malversation, the State did not sufficiently allege the aforementioned essential elements of malversation in the information. The omission from the information of factual details descriptive of the aforementioned elements of malversation highlighted the insufficiency of the allegations. Consequently, the State's position is entirely unfounded.

x x x x

The Court judiciously believes that the foregoing ruling squarely applies in the instant petition since one of the issues raised in the latter is the denial of petitioner's constitutional right to due process. He asserts that he cannot be held liable for malversation in view of the insufficiency of the allegations of its elements in the information. It is well to note that the Information subject of the aforementioned cases of Arroyo and Aguas is the very same information under scrutiny in the present case wherein petitioner is their co-accused and where all the incidental matters stemmed and had their origin. Hence, there is no reason not to apply the afore-quoted ruling in the present petition since it has reached its finality, per Entry of Judgment, on May 30, 2017. **We are therefore not free to disregard it in any related case which involves closely similar factual evidence. Otherwise, we would jettison the doctrine of immutability of final judgment and, further, obviate the possibility of rendering conflicting rulings on the same set of facts and circumstances in the same information.**¹³¹ (Emphases supplied)

Notably, IAB Case No. IAB-08-0013, OMB-C-C-080498-J (IAB-08-0120), and OMB-C-C-06-0296-F (IAB-09-0026), and the present case are not just closely related. They involve the same respondent, the same subject matter, the same issues, and exactly the same factual circumstances and pieces of evidence adduced against petitioner. The only difference is the attendance dates covered by the complaints. As what we did in *Valencia*, we cannot ignore here the subsequent verdict of dismissal handed down by the IAB (though constituted differently) not once, but twice, in favor of petitioner. Surely, the same IAB office cannot come out with patently opposite findings and conclusions here, *sans* any justification.

Thus, contrary to the Decision dated April 30, 2010, and Order dated November 24, 2009 of the IAB, as approved by the Ombudsman and her deputies, the **Information Report** that was used to track petitioner's attendance in the office is not a reliable, accurate, or complete source for determining petitioner's attendance and rendition of service. At the most, it only established the fact that a particular official or employee went inside or outside his/her workplace **but not the fact that he or she actually reported for work or was just on the premises for a visit or some other unofficial business**. To refute the declaration of petitioner in his certificates of services, his **mere physical absence or absence is not enough** as one must prove that

¹³¹ Supra note 129.

the high-ranking public official did not actually and fully render services. The nature of the work of petitioner as the Special Prosecutor may require him to be outside of his workstation. Allegations of absence from one's workplace do not prove that he or she did not render the services required by his or her job or position.


We cannot make those in charge of watching over our respective parking slots the superintendents of whether we do or do not perform our jobs. **They do not watch us; they watch over our parking slots. They do not see us work**, they keep our parking slots open whenever our cars, **not us**, need a parking space. **We shudder** at the thought that we are slacking in our work, or worse, absent from our jobs and lying when we affirm our certificates of service, solely on the basis of whether our parking slots have been used or unused.

We therefore declare that petitioner was illegally dismissed from his post as the Special Prosecutor. But he can no longer be reinstated to this high office. His term of office had expired. There have been new appointees to this office. By way of remedies, nonetheless, petitioner must be paid back salaries from the time he was prevented from working as Special Prosecutor until the end of his term of office, which we shall refer to as the date of his separation from the service. He is also entitled to all the benefits accruing to him as a retired Special Prosecutor. The total amounts shall earn legal interest.


ACCORDINGLY, the petition is **GRANTED**. The Decision dated February 4, 2014, and Resolution dated January 13, 2014 of the Court of Appeals in CA-G.R. SP No. 117703 are **REVERSED**.

The Office of the Ombudsman is ordered to pay the back salaries of petitioner Dennis M. Villa-Ignacio and all the benefits which should have accrued to him from the date of his separation from the service until the date of the expiration of his term of office, with twelve percent (12%) legal interest *per annum* from the date of separation from the service until June 30, 2013, and thereafter, six percent (6%) legal interest *per annum* until fully paid. He shall also be paid all the retirement benefits accruing to a retired Special Prosecutor.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:



MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice
Chairperson

On official business
MARIO V. LOPEZ
Associate Justice



JHOSEP V. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARVIC MARIO VICTOR F. LEONEN
Acting Chief Justice

