Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

REPUBLIC OF THE PHILIPPINES,
Petitioner,

- *versus* -

THE HONORABLE ANIANO A. DESIERTO as OMBUDSMAN,* EDUARDO COJUANGCO, JR.,* JUAN PONCE ENRILE, MARIA CLARA LOBREGAT,* ROLANDO DELA CUESTA, JOSE ELEAZAR, JR.,* JOSE C. CONCEPCION, DANILO URSUA, NARCISO PINEDA, and AUGUSTO OROSA,*
Respondents.

G.R. No. 136506

Present:

HERNANDO,
Acting Chairperson,
ZALAMEDA,
LOPEZ, M.,**
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:

JAN 16 2023

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DECISION

HERNANDO, *J.*:

Challenged in this Petition[1] are the: (a) August 6, 1998 Review and Recommendation[2] of Graft Investigation Officer I Emora C. Pagunuran (GIO I Pagunuran), approved by Ombudsman Aniano A. Desierto (Desierto) on August 14, 1998,[3] dismissing petitioner Republic of the Philippines' (Republic)

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* Deceased.

** Designated additional Member per raffle dated October 10, 2022 vice Chief Justice Alexander G. Gesmundo who recused due to participation in related PCGG cases.

1 *Rollo*, Vol. I, pp. 2-36.

2 Id. at 38-41.

3 Id. at 41.

Complaint[4] for violation of Republic Act No. (RA) 3019,[5] docketed as OMB-0-90-2808, filed against respondents Eduardo M. Cojuangco, Jr. (Cojuangco, Jr.), Juan Ponce Enrile (Enrile), Maria Clara Lobregat (Lobregat), Rolando Dela Cuesta (Dela Cuesta), Jose R. Eleazar, Jr. (Eleazar, Jr.), Jose C. Concepcion (Concepcion), Danilo S. Ursua (Ursua), Narciso M. Pineda (Pineda), and Augusto Orosa (Orosa) (collectively, respondents); and (b) GIO I Pagunuran's September 25, 1998 Order,[6] approved by Ombudsman Desierto on October 9, 1998, denying petitioner Republic's subsequent Motion for Reconsideration[7] of the August 6, 1998 Review and Recommendation.

Procedural Antecedents

The case stemmed from the Complaint[8] dated February 12, 1990 filed by the Office of the Solicitor General (OSG) before the Presidential Commission on Good Government (PCGG) against respondents Cojuangco, Jr., Enrile, Lobregat, Dela Cuesta, Eleazar, Jr., Concepcion, Ursua, Pineda, and Orosa for violation of RA 3019 which was subsequently referred to the Office of the Ombudsman (Ombudsman) and docketed as OMB-0-90-2808.

On August 6, 1998, GIO I Pagunuran issued a Review and Recommendation[9] recommending the dismissal of the Complaint on the ground of prescription of offense.[10] On August 14, 1998, Ombudsman Desierto approved GIO I Pagunuran's Review and Recommendation dated August 6, 1998.[11] Thereafter, petitioner Republic filed a Motion for Reconsideration[12] which was denied by GIO I Pagunuran in an Order dated September 25, 1998, then approved by Ombudsman Desierto on October 9, 1998.[13] Hence, petitioner Republic filed a petition for *certiorari* under Rule 65 before this Court assailing the Ombudsman's dismissal of its Complaint against respondents.[14]

On August 23, 2001, this Court granted[15] Republic's petition which reversed and set aside GIO I Pagunuran's Review and Recommendation dated August 6, 1998 and Order dated September 25, 1998, as approved by Ombudsman Desierto on August 14, 1998 and October 9, 1998, respectively.[16] Consequently, the Ombudsman was directed to proceed with the preliminary investigation of OMB-0-90-2808, to wit:

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4 Id. at 46-54.
5 Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT." Approved: August 17, 1960.
6 *Rollo*, Vol. I, pp. 42-45.
7 Id. at 42.
8 Id. at 46-54.
9 Id. at 38-41.
10 Id. at 39-41.
11 Id. at 41.
12 Id. at 42.
13 Id. at 44.
14 Id. at 2-36.
15 Id. at 300. Penned by Associate Justice Sabino R. De Leon, Jr. and concurred in by Associate Justices Josue N. Bellosillo, Vicente V. Mendoza, Leonardo A. Quisumbing and Arturo B. Buena.
16 Id. at 284-301.

> WHEREFORE, the instant petition is hereby GRANTED. The assailed Review and Recommendation dated August 6, 1998 of Graft Investigation Officer Emora C. Pagunuran, and approved by Ombudsman Aniano A. Desierto, dismissing the petitioner's complaint in OMB-0-90-2808, and the Order dated September 25, 1998 denying the petitioner's motion for reconsideration, are hereby REVERSED and SET ASIDE.
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> The Ombudsman is hereby directed to proceed with the preliminary investigation of the case OMB-0-90-2808.
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> No pronouncement as to costs.
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> SO ORDERED.[17]

Thereafter, respondents Concepcion[18] and Lobregat[19] filed their Manifestations seeking to set aside this Court's August 23, 2001 Decision on the ground of denial of due process as they were not notified of the petition filed by Republic before this Court. In addition, respondent Cojuangco, Jr. filed a Motion for Reconsideration of this Court's August 23, 2001 Decision.[20]

On July 7, 2004, this Court issued a Resolution:[21] (a) setting aside Our August 23, 2001 Decision as the case was not yet ripe for decision; and (b) directing the petitioner Republic to serve copies of the petition on all the respondents. As to Cojuangco, Jr.'s Motion for Reconsideration, the same was rendered moot by this Court, to wit:

> WHEREFORE, the decision of the Court dated August 23, 2001 is SET ASIDE. The petitioner is DIRECTED to serve copies of the petition on the respondents who are directed to file their respective Comments on the petition within ten (10) days from said service. The motion for reconsideration of respondent Eduardo Cojuangco is MOOTED by the resolution of this Court.
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> SO ORDERED.[22]

Thereafter, the Ombudsman and petitioner Republic filed their respective Motion for Reconsideration,[23] and Motion for Partial Reconsideration.[24] Subsequently, this Court issued a Resolution dated March 19, 2008 denying with finality the respective motions for lack of merit.[25]

Hence, respondents filed their respective Comments to Republic's Petition under Rule 65, namely: (a) respondent Concepcion's Comment[26] dated August

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17 Id. at 300.
18 Id. at 302-305.
19 Id. at 380-384.
20 Id. at 307-334.
21 *Rollo*, Vol. II, pp. 797-801.
22 Id. at 800.
23 Id. at 838-843.
24 Id. at 844-864.
25 *Rollo*, Vol. III, pp. 1201-1203.
26 *Rollo*, Vol. II, pp. 884-917.

27, 2004; (b) respondent Dela Cuesta's Comment[27] dated August 11, 2008; and (c) respondents Ursua and Pineda's Comments[28] dated April 13, 2009. Meanwhile, this Court noted respondent Enrile's Comment[29] dated May 6, 1999.

As to respondents Eleazar, Jr., Orosa, Lobregat, and Cojuangco, Jr., they were excluded as respondents of this criminal case in view of their deaths on December 10, 2000, September 18, 2002, January 2, 2004, and June 16, 2020, respectively.[30] The demise of respondents Eleazar, Jr., Orosa, Lobregat, and Cojuangco, Jr. prior to final judgment terminates their criminal liability[31] without prejudice to the right of the State to recover unlawfully acquired properties or ill-gotten wealth, if any.

Background of the Case

Sometime in 1972, Agricultural Investors, Inc. (AII), a private corporation owned and/or controlled by respondent Cojuangco, Jr., allegedly started developing a coconut seed garden in Bugsuk Island, Palawan.[32]

Thereafter, on November 14, 1974, then President Ferdinand E. Marcos issued Presidential Decree No. (PD) 582,[33] which created the Coconut Industry Development Fund (CIDF). CIDF is a permanent fund which shall be deposited with, and administered and utilized by the Philippine National Bank (PNB) through its subsidiary, the National Investment and Development Corporation (NIDC), with the following purposes:

> a) To finance the establishment, operation and maintenance of a hybrid coconut seednut farm under such terms and conditions that may be negotiated by the National Investment and Development Corporation with any private person, corporation, firm or entity as would insure that the country shall have, at the earliest possible time, a proper, adequate and continuous supply of high yielding hybrid seednuts;
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> b) To purchase all of the seednuts produced by the hybrid coconut seednut farm which shall be distributed, for free, by the Authority to coconut farmers in accordance with, and in the manner prescribed in, the nationwide coconut replanting program that it shall devise and implement; Provided, That farmers who have been paying the levy herein authorized shall be given priority;
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> c) To finance the establishment, operation and maintenance of extension services, model plantations and other activities as would insure that the coconut

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27 *Rollo*, Vol. III, pp. 1247-1264.
28 Id. at 1332-1337.
29 *Rollo*, Vol. I, pp. 98-125.
30 *People v. Maylon*, G.R. No. 240664, June 22, 2020.
31 *Benedicto v. Court of Appeals*, 416 Phil. 722, 758 (2001), citing *People v. Bayotas*, 306 Phil. 266, 276 (1994); REVISED PENAL CODE, ARTICLE 89.
32 Rollo, Vol. I, pp. 285-286.
33 Entitled "FURTHER AMENDING PRESIDENTIAL DECREE NO. 232, AS AMENDED." Approved: November 14, 1974.

farmers shall be informed of the proper methods of replanting their farms with the hybrid seednuts.

"The CIDF was envisioned to finance a nationwide coconut-replanting program using 'precocious high-yielding hybrid seednuts' to be distributed for free to coconut farmers. Its initial capital of PHP 100,000,000.00 was to be paid from the Coconut Consumers Stabilization Fund (CCSF), with an additional amount of at least ₱0.20 per kilogram of *copra resecada* out of the CCSF collected by the Philippine Coconut Authority."[34]

On November 20, 1974 or six days after the creation of CIDF, NIDC accepted AII's offer, and contracted the latter's services to implement the vital purpose of PD 582, *i.e.*, to produce precocious high-yielding hybrid seednuts.[35] Thus, NIDC, represented by its then Senior Vice-President, respondent Orosa, and AII, represented by its then Chairman and President, respondent Cojuangco, Jr., entered into and executed a Memorandum of Agreement (MOA)[36] on November 20, 1974. A series of supplemental agreements and amendments subsequent to the MOA dated November 20, 1974 were likewise executed on June 27, 1975, September 10, 1977, April 12, 1979, and September 18, 1980, respectively.[37]

The MOA dated November 20, 1974 principally provides that AII shall develop its coconut seed garden in Bugsuk Island, Palawan to produce high-yielding hybrid seednuts, and thereafter, sell its entire produce to NIDC.[38] On the other hand, NIDC obligated itself to pay AII the cost of the establishment, operation and maintenance of the seed garden, and support facilities; and to buy AII's entire production of high-yielding hybrid seednuts.[39]

However, on June 11, 1978, then President Marcos issued PD 1468,[40] otherwise known as the *Revised Coconut Industry Code*, which created the Philippine Coconut Authority (PCA). PCA was tasked to implement and attain the State's policy "to promote the rapid integrated development and growth of the coconut and other palm oil industry in all its aspects and to ensure that the coconut farmers become direct participants in, and beneficiaries of, such development and growth."[41]

As per Article III, Section 3 of PD 1468, the CIDF shall be administered and utilized by the bank acquired for the benefit of the coconut farmers under PD 755 [42] Correspondingly, United Coconut Planters Bank (UCPB), a

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34 *Rollo*, Vol. I, pp. 286-287.
35 Id. at 287.
36 Id. at 55-73.
37 Id. at 6.
38 Id. at 7.
39 Id.
40 Entitled "REVISING PRESIDENTIAL DECREE NUMBERED NINE HUNDRED SIXTY ONE." Approved: June 11, 1978.
41 PRESIDENTIAL DECREE NO. 1468 (1978), ART. I, SEC. 2.
42 Entitled "APPROVING THE CREDIT POLICY FOR THE COCONUT INDUSTRY AS RECOMMENDED BY THE

commercial bank whose then President was respondent Cojuangco, Jr., was acquired by the government through the CCSF for the benefit of the coconut farmers.[43] As a result, NIDC was substituted by UCPB as the administrator-trustee of the CIDF, and as a party to the MOA dated November 20, 1974 with AII, and its supplements and amendments.[44]

However, on August 27, 1982, President Marcos lifted the CCSF levy which resulted in the depletion of the CIDF.[45] With no financial source, UCPB terminated its MOA dated November 20, 1974 with AII, and its supplements and amendments, effective December 31, 1982.[46]

Aggrieved, AII demanded arbitration as per the arbitration clause provided in the MOA dated November 20, 1974.[47] Accordingly, the Board of Arbitrators (BOA), composed of Atty. Esteban Bautista, Atty. Aniceto Dideles, and Atty. Bartolome Carale, was created to settle AII and UCPB's obligations by reason of the termination of the MOA dated November 20, 1974, and its supplements and amendments.[48]

On March 29, 1983, the BOA rendered its Decision in favor of AII and awarded the latter liquidated damages amounting to PHP 958,650,000.00 from the CIDF. "From this award was deducted the [amount of PHP 426,261,640.00] advanced by the NIDC for the development of the seed garden, leaving a balance due to AII amounting to [PHP 532,388,354.00]."[49] In addition, the BOA ordered that the costs of arbitration and the arbitrator's fee of PHP 150,000.00 be paid out from the CIDF.[50]

"On April 19, 1983, the UCPB Board of Directors, composed of respondents Cojuangco, Jr. as President, Enrile as Chairman, Dela Cuesta, Zayco, Ursua and Pineda as members, adopted Resolution No. 111-83, resolving to 'note' the decision of the Board of Arbitrators, allowing the arbitral award to lapse with finality."[51]

Thereafter, on February 12, 1990, petitioner Republic filed the subject Complaint against respondents Cojuangco, Jr., Enrile, Lobregat, Dela Cuesta, Eleazar, Jr., Concepcion, Ursua, Pineda and Orosa.[52]

PHILIPPINE COCONUT AUTHORITY AND PROVIDING FUNDS THEREFOR." Approved: July 29, 1975.

43 *Rollo*, Vol. I, pp. 287-288.
44 Id.
45 Id.
46 Id.
47 Id. at 288.
48 Id.
49 Id.
50 Id.
51 Id.
52 Id. at 46-54.

Petitioner Republic's Complaint (OMB-0-90-2808)

Republic averred that respondent Cojuangco, Jr. took advantage of his close relationship with then President Marcos for his own personal and business interests through the issuance of favorable decrees.[53] Cojuangco, Jr. caused the Philippine Government, through the NIDC, to enter into a contract with him, through its corporation AII, under terms and conditions grossly disadvantageous to the government and in conspiracy with the members of the UCPB Board of Directors, in flagrant breach of fiduciary duty as administrator-trustee of the CIDF.[54]

Specifically, petitioner Republic averred that the MOA dated November 20, 1974 is a one-sided contract with provisions clearly in favor of AII, and thereby allegedly placed NIDC in a no-win situation.[55] Petitioner cited several stipulations in the MOA dated November 20, 1974 to substantiate its claim, to wit:

1. Under Section 9.1 of the MOA, neither party shall be liable for any loss or damage due to the non-performance of their respective obligations resulting from any cause beyond the reasonable control of the party concerned. However, under Section 9.3, notwithstanding the occurrence of such causes, the obligation of the NIDC to pay AII's share of the development costs amounting to PHP 426,260,000.00 would still remain enforceable.

2. Under Sec. 11.2, if NIDC fails to perform its obligations, for any cause whatsoever, it will be liable out of the CIDF, not only for the development costs, but also for liquidated damages equal to the stipulated price of the hybrid seednuts for a period of five years at the rate of 19,173,000 seednuts *per annum*, totaling PHP 958,650.00.

3. Under Section 11.3, while AII was given the right to terminate the contract in case of *force majeure*, no such right was given in favor of NIDC. Moreover, AII can do so without incurring any liability for damages.

4. AII was only required to exert best efforts to produce a projected number of seednuts while NIDC was required to set aside and reserve from CIDF such amount as would insure full and prompt payment.[56]

As to respondents Enrile, Dela Cuesta, Concepcion, Ursua, and Pineda, petitioner Republic averred that as members of the UCPB Board of Directors, their act of allowing the BOA's March 29, 1983's Decision to lapse into finality

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53 Id. at 46-47.
54 Id. at 46-48.
55 Id. at 48-52.
56 Id. at 48-50.

resulted in the successful siphoning of PHP 840,789,855.33 from CIDF to AII, a corporation owned by respondent Cojuangco, Jr. Thus, respondents, as members and officers of UCPB, a government-owned and controlled corporation having been acquired by the government through the CCSF levy, are considered public officers within the contemplation of RA 3019. Furthermore, respondent Cojuangco, Jr. is considered a public officer being then the Director of PCA, the President of UCPB, and ambassador-at-large.[57]

Petitioner Republic further noted respondents Enrile, Cojuangco, Jr., Dela Cuesta, and Concepcion's respective positions as Chairman/Director, President/Director, Corporate Secretary, and Treasurer/Director of AII until their resignation on November 8, 1982, as well as respondent Orosa's participation as Senior Vice-President of NIDC and the latter's representative to the execution of the MOA dated November 20, 1974.[58]

Petitioner Republic essentially professed that respondents are directly or indirectly interested in personal gain, or had material interest in the transaction requiring the approval of a board, panel, or group in which they were members, in violation of RA 3019 to the grave damage and prejudice of the public interest, the Filipino people, the Republic, and the coconut farmers.[59]

Decision of the Ombudsman (OMB-0-90-2808)

On August 6, 1998, GIO I Pagunuran issued a Review and Recommendation, which was approved by Ombudsman Desierto on August 14, 1998, dismissing petitioner Republic's Complaint against respondents on the ground of prescription.[60] The Ombudsman reckoned the prescriptive period from the execution of the MOA on November 20, 1974. Since the case was filed only on February 12, 1990, the Ombudsman ruled that the same was filed beyond the prescriptive period of 10 years under Sec. 11 of RA 3019.[61] Also, the Ombudsman declared that the MOA dated November 20, 1974 was confirmed and ratified by PD 961 and PD 1468 and therefore, was given legislative imprimatur, to wit:

> **It appears, therefore, that the execution of the questioned contracts and substitution of the NIDC by the UCPB were given legislative imprimatur. The ratification of the question[ed] MOA, its amendments and supplements by P.D. Nos. 961 and 1468 was, at the very least, a declaration on the part of the government that the questioned contracts are, in fact, valid, legal and beneficial to the government and the Republic and that the act of the officers of the NIDC of entering into the questioned contracts were, in fact valid and legal. The said laws have not been repealed nor declared constitutional and, therefore, remain valid and effective to date.** Respondents,

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57 Id. at 51-53.
58 Id. at 52.
59 Id. at 53.
60 Id. at 38.
61 Id. at 39-40.

are therefore, protected by the mantle of legality which all valid laws cast upon those who abide by them.

WHEREFORE, premises considered, it is respectfully recommended that the complaint be, as it is hereby, dismissed.[62] (Emphasis supplied)

Petitioner Republic filed its Motion for Reconsideration [63] on the following grounds: (a) the offense charged in the Complaint falls within the category of an ill-gotten wealth case, which under the Constitution is imprescriptible; and (b) void contracts are not subject to ratification and/or confirmation. However, the said motion was denied by GIO I Pagunuran in the Order dated September 25, 1998, which was approved by Ombudsman Desierto on October 9, 1998.[64]

Hence, this Petition under Rule 65.

Issues

Petitioner Republic presented the following issues for Our resolution:

I.
WHETHER THE OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION IN DECLARING THAT THE OFFENSE CHARGED IN THE COMPLAINT FOR VIOLATION OF R.A. NO. 3019 HAD ALREADY PRESCRIBED WHEN THE COMPLAINT WAS FILED.

II.
WHETHER THE OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION IN DECLARING THAT THERE IS NO BASIS TO INDICT PRIVATE RESPONDENTS FOR VIOLATION OF THE ANTI-GRAFT LAW BASED ON THE CONTRACT IN QUESTION.[65]

The Petition

Petitioner Republic opines that although the complaint filed against respondents is for violation of RA 3019, the same is related to the efforts of the government to recover ill-gotten wealth from President Marcos' cronies, or from persons closely and personally associated with him. Thus, the right of the State to recover such properties unlawfully acquired by public officials or employees shall not be barred by prescription, laches, or estoppel as per Sec. 15, Art. XI of the 1987 Constitution.[66]

Furthermore, the Constitutional Commission's intention in drafting Sec. 15, Art. XI of the 1987 Constitution was to make imprescriptibility applicable

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62 Id. at 40-41.
63 Id. at 42-43.
64 Id.
65 Id. at 13.
66 Id. at 14-24.

to both civil and criminal aspects of the case. Thus, while the phrase "or to prosecute offenses in connection therewith" was omitted or deleted in the final version of Sec. 15, Art. XI, such omission or deletion should not override the manifest intent of the Constitutional Commission to make the prosecution of offenses related to ill-gotten wealth imprescriptible.[67]

At the time of the execution of the MOA on November 20, 1974, the period of prescription under Sec. 11 of RA 3019 was 10 years. However, on March 16, 1982, Batas Pambansa Bilang (BP) 195 was enacted amending the prescriptive period of violation of RA 3019 to 15 years. Thus, at the time of the adoption of the 1987 Constitution, the period of prescription for violation of RA 3019 reckoned from the execution of the MOA on November 20, 1974 has not yet set in. Also, Sec. 11 of RA 3019 was similarly amended by Sec. 15, Art. XI of the 1987 Constitution with respect to imprescriptibility of offenses related to ill-gotten wealth.[68]

Nonetheless, granting that the offense committed by respondents is not imprescriptible, the reckoning point shall not be from the execution of the MOA on November 20, 1974, but from the EDSA Revolution in February 1986. The Republic, citing Sec. 2 of Act No. 3326,[69] which provides that "prescription shall begin to run from the day of the commission of the violation of law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings," argues that the reckoning point of the prescriptive period must be from the discovery of the alleged violation, *i.e.*, at the time of the EDSA Revolution in February 1986 and not from the execution of the MOA on November 20, 1974.[70]

Republic explains that the acts complained of were committed during the Marcos regime by persons closely associated with President Marcos, which means that no one could have known the existence of the said MOA dated November 20, 1974 except respondents themselves. Even assuming that third parties knew of the existence of the subject MOA, no one had the reasonable opportunity nor political will to prosecute respondents or the persons involved therein. Considering the peculiar circumstances at that time, the prescriptive period should be reckoned from the discovery of the offense, *i.e.*, immediately after the EDSA Revolution in February 1986. Thus, since the complaint was only filed in 1990 or four years from 1986, the offense charged against respondents has not yet prescribed.[71]

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67 Id.

68 Id. at 24-27.

69 Entitled "AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN." Approved on December 4, 1926.

70 *Rollo*, Vol. I, pp. 24-27.

71 Id.

In addition, the Ombudsman's ruling that the subject MOA is not grossly and manifestly disadvantageous to the government, as it was confirmed and ratified by PD 582 and PD 1468, is not correct. The Ombudsman's conclusion: (a) that the ratification of the subject MOA is at the very least a declaration on the part of the government that the agreement is valid, legal, and beneficial to it; and (b) that the act of the officers of NIDC were valid and legal, is palpable error as it gives upon the lawmaker the power to adjudicate on the validity of contracts which is essentially a judicial function.[72]

Also, the terms and conditions of the subject MOA were on its face grossly and manifestly disadvantageous to the government. The Republic likewise assails the failure of the UCPB BOD to appeal and question the arbitral award in favor of AII to the detriment of the CIDF.[73]

Respondent Enrile's Arguments

Respondent Enrile contends that Republic's Petition under Rule 65 should be dismissed as it is a mere attempt to substitute a lost appeal. He notes that Sec. 27 of RA 6770,[74] otherwise known as the *Ombudsman Act*, provides for the specific mode or manner of assailing orders, directives or decisions issued by the Office of the Ombudsman, specifically, by filing a petition for *certiorari* within 10 days from receipt of the written notice of the order, directive or decision, or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.[75]

Thus, the Republic chose the wrong mode of appeal when it filed a petition under Rule 65. By filing a petition under Rule 65 instead of Rule 45, the Republic has clearly failed to avail of the plain, speedy, and adequate remedy provided by law within the reglementary period, *i.e.*, Sec. 27 of RA 6770 or a petition under Rule 45. Considering the Republic's failure to file a petition under Rule 45 within 10 days from receipt of the Ombudsman's denial of its motion for reconsideration, it lost the right to assail both the Review and Recommendation dated August 6, 1998 and Order dated September 25, 1998.[76]

Even assuming that the petition under Rule 65 is the correct remedy, the same was filed out of time which warrants its outright dismissal. The Republic had 60 days from the receipt of the Review of Recommendation dated August 6, 1998 as approved by Ombudsman Desierto, *i.e.*, from August 28, 1998, within which to file a petition under Rule 65. However, it filed a motion for reconsideration on September 11, 1998 instead which effectively interrupts the filing of the petition under Rule 65. As per Sec. 4, Rule 65, the petitioner has only the balance of the 60-day period from the notice of the denial of the motion

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72 Id. at 27-54.
73 Id.
74 Id. at 98-102.
75 Id.
76 Id. at 102-104.

for reconsideration within which to file a petition under Rule 65 or until December 13, 1998. Hence, Republic's filing of the instant petition only on December 28, 1998 is clearly beyond the reglementary period.[77]

Also, the offense charged in OMB-0-9-2808 has already prescribed. Sec. 15, Art. XI of the 1987 Constitution cannot be given an amending or repealing effect as it would impair vested rights. When the complaint was filed, he had already acquired a vested right to be protected on the ground of prescription of the offense charged against him.[78]

Moreover, the strict application of Sec. 15, Art. XI, *i.e.*, imprescriptibility of criminal offense in relation to ill-gotten wealth, will violate Sec. 22, Art. III of the Constitution which prohibits enactment of bills of attainder and *ex-post facto* laws. Even if the prescriptive period is 15 years as per BP 195, the offense has already prescribed since the running of the prescriptive period has not been interrupted by any judicial proceeding, *i.e.*, filing of the criminal case in court, as required under Sec. 2 of Act No. 3326.[79]

He insists that the running of the prescriptive period should be reckoned from the execution of the MOA on November 20, 1974. The MOA is duly notarized which makes it a public document subject to examination and discovery of anyone. During the execution of the MOA, civil courts were open and functioning which negates Republic's contention that there is no available forum to question the legality of the agreement.[80]

Furthermore, not only did PD 961 and PD 1468 confirm and ratify the MOA dated November 20, 1974, and its supplements and amendments, they also elevated the MOA from a mere agreement binding only between parties to a contract with force and effect of law. Thus, even if Enrile participated in the negotiation, perfection, and enforcement of the MOA dated November 20, 1974, he cannot be made criminally liable because his acts and/or involvement therein were mandated by law.[81]

Lastly, the terms and conditions of the MOA dated November 20, 1974 are fair and reasonable to both parties and are not disadvantageous to the government. No liability may be imputed to him in merely noting the subject arbitral award in favor of AII instead of assailing the same. When he signed Resolution No. 111-83, it was for the sole purpose of attesting to the truth and correctness of the minutes and not for the purpose of approving any action or resolution. He also stresses that UCPB is a commercial and private bank owned by coconut farmers and not by the government. Thus, he cannot be made liable

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77 Id. at 98-104.
78 Id. at 104-108.
79 Id. at 108-109.
80 Id. at 110-117.
81 Id. at 117-118.

as a public officer as defined under Sec. 2 of RA 3019 for his acts as the Chairman of UCPB's BOD.[82]

Respondent Concepcion's Arguments[83]

Respondent Concepcion argues that the petition should be dismissed for failure of the Republic to comply with Sec. 3, Rule 46, that is, the petition shall be filed with proof of service thereof on the respondent. In fact, Republic admitted that it had not served copies of the petition or subsequent pleadings to respondents Concepcion and Lobregat. Moreover, respondent Concepcion contends that since he was served a copy of the petition only on August 3, 2004, the petition is deemed to have been properly filed only on such date. Thus, the petition is filed beyond the 60-day reglementary period under Rule 65.[84]

Further, the Republic has no cause of action against him in view of the dismissal of Civil Case No. 0033-C filed before the Sandiganbayan involving the same acts or omissions as in the present case. The quantum of proof required in civil cases is preponderance of evidence while in criminal cases, as in the case at bar, is proof beyond reasonable doubt. Hence, with the dismissal of SB Civil Case No. 0033-C against him, which only requires a lesser quantum of proof, there is more reason to dismiss the criminal case OMB-0-9-2808 filed against respondent Concepcion.[85]

In addition, his participation in the alleged acts or omissions subject of this criminal case OMB-0-9-2808 was done and/or performed in the course of his professional duties as a lawyer. He cites *Regala v. Sandiganbayan*[86] (*Regala*) wherein this Court declared that the Angara Abello Concepcion Regala & Cruz (ACCRA) lawyers, of which respondent Concepcion is a partner, were being prosecuted solely on the basis of activities and services performed in the course of their duties as lawyers. Hence, the PCGG had no valid cause of action against them, and the ACCRA lawyers were excluded as parties-defendants in SB Civil Case No. 0033-C. Similarly, respondent Concepcion prays for the dismissal of criminal case OMB-0-90-2808 filed against him as there is no reason to prosecute him as a lawyer.[87]

Moreover, the running of the 10-year prescriptive period should be reckoned from the EDSA Revolution in 1986. Thus, the offense shall prescribe in 1996. In order to interrupt the prescription of offense, a criminal proceeding should be instituted before the Sandiganbayan. However, no criminal proceedings have been instituted against respondent Concepcion before the lapse of the prescriptive period in 1996. Hence, he can no longer be validly

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82 Id. at 118-124.
83 *Rollo*, Vol. II, pp. 884-915.
84 Id. at 886-890.
85 Id. at 890-897.
86 330 Phil. 678 (1996).
87 *Rollo*, Vol. II, pp. 897-902.

prosecuted for the acts or omissions subject of OMB-0-90-2808.[88]

Nonetheless, in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,[89] this Court ruled that the prescriptive period was interrupted upon the filing of the complaint with the Ombudsman. Respondent Concepcion, however, contends that this new doctrine should be prospectively applied considering that it was rendered by this Court years after the alleged commission of the subject offense charged and after the filing of OMB-0-90-2808. Thus, to retroactively apply the said ruling would constitutionally impair his substantive right to prescription.[90]

Respondent Dela Cuesta's Arguments[91]

Similarly, respondent Dela Cuesta opines that due to Republic's failure to appeal within the reglementary period, the Ombudsman's Review and Recommendation dated August 6, 1998 became final and executory. Even assuming that the correct remedy is a petition for *certiorari* under Rule 65, the same was filed out of time. Dela Cuesta notes that Republic only served him a copy of the subject Petition on June 27, 2008 or almost nine years and eight months from the time the Republic was notified of the Order dated September 25, 1998. Thus, the petition should be dismissed for being invalid and contrary to Sec. 3, Rule 46 of the Rules of Court.[92]

In the same vein, the time to prosecute the offense charged has already prescribed. The alleged violation of RA 3019 was committed on November 20, 1974. Thus, since no judicial proceedings are instituted against respondents, the running of the prescriptive period has not been interrupted.[93]

He likewise argues that the MOA dated November 20, 1974 is duly notarized which makes it a public document subject to the examination and discovery of any one with the exercise of reasonable diligence. At the time of the execution of the MOA, civil courts are open and functioning. In addition, PD 961 and PD 1468 ratified the subject MOA which negates Republic's allegation that the terms of the MOA are grossly disadvantageous to the government.[94]

Even granting that the reckoning point of the prescriptive period, *i.e.*, 15 years, is in February 1986, the offense charged has still prescribed since he only became a party to the instant petition on June 27, 2008 or three years and four months after the prescription of offense on February 12, 2005.[95]

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88 Id. at 902-911
89 415 Phil. 723 (2001).
90 *Rollo*, Vol. II, pp. 902-911.
91 *Rollo*, Vol. III, pp. 1247-1269.
92 Id. at 1247-1256.
93 Id.
94 Id.
95 Id. at 1256-1263.

Furthermore, the petition should be dismissed for palpable violations of his right to speedy disposition of cases. A period of 17 years reckoned from the filing of the case before the PCGG is a long period of time. Also, the reasons for the delay are all attributable to the Republic. He further contends that this is the only opportune time for him to invoke his right to speedy disposition as he was not served a copy of the instant petition earlier. He adds that he invoked his right to speedy disposition in related cases filed against him.[96]

Lastly, Dela Cuesta opines that Civil Case No. 0033-C, which pertains to the same act or omission alleged in the case at bar, pending before the Sandiganbayan, excluded him as a respondent. He argues that since the quantum of evidence required in civil cases is only preponderance of evidence, the subject criminal case with a higher quantum of evidence cannot prosper.

Respondents Ursua[97] and Pineda's[98] Arguments

Respondents Ursua and Pineda contend that other than self-serving statements, petitioner Republic failed to offer any substantial evidence to support the alleged grave abuse of discretion, manifest partiality, evident bad faith, or inexcusable negligence on the part of the Ombudsman. They cited *Espinosa v. Office of the Ombudsman*[99] and *The Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Desierto*[100] to support their contention that courts consistently refrain from interfering with the Ombudsman's powers and independence.

Lastly, citing *Presidential Commission on Good Government v. Desierto*,[101] they argue that the Ombudsman has the power to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof. The Court will not ordinarily interfere with the Ombudsman's exercise of its investigatory and prosecutorial powers without good and compelling reasons. While there are certain exceptions when the Court may intervene, respondents Ursua and Pineda aver that none applies in the present case.[102]

Our Ruling

We find the petition partly meritorious.

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96 Id.
97 Id. at 1332-1335.
98 Id. at 1369.
99 397 Phil. 829 (2000).
100 Supra.
101 553 Phil. 733 (2007).
102 *Rollo*, Vol. III, pp. 1333-1334.

Death of accused during the pendency of a criminal action

At the outset, respondents Eleazar, Jr., Orosa, Lobregat, and Cojuangco, Jr. died during the pendency of this petition. Article 89 of the Revised Penal Code states that:

> ART. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.]

In *People v. Bayotas*,[103] We explained the effects of the death of the accused pending appeal, to wit:

> 1. Death of the accused pending appeal of his/[her] conviction extinguishes his/[her] criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his/[her] criminal liability and *only* the civil liability *directly* arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto in senso strictiore*."
>
> 2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than *delict*. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:
>
> a) Law
> b) Contracts
> c) Quasi-contracts
> d) [x x x]
> e) Quasi-delicts
>
> 3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.
>
> 4. Finally, the private offended party need not fear a forfeiture of his/[her] right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[104]

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103 Supra note 31.
104 Id. at 282-284.

With the demise of respondents Eleazar, Jr., Orosa, Lobregat, and Cojuangco, Jr., their criminal liabilities and civil liability *ex delicto* are now extinguished. For the civil liability, which may be based on sources other than delict, the Republic may file a separate civil action against the estate of respondents Eleazar, Jr., Orosa, Lobregat, and Cojuangco, Jr. as may be warranted by law and procedural rules; or if already filed, the said separate civil action shall survive notwithstanding the dismissal of the criminal case in view of their deaths.

Apropos, the subsequent discussion pertains only to the imputation of grave abuse of discretion on the Ombudsman as to its order of dismissal of the Complaint against respondents Enrile, Dela Cuesta, Concepcion, Ursua, and Pineda on the ground of prescription.

Propriety of the Petition

Before We delve into the merits of the case, We deem it necessary to determine the propriety of the petition. Sec. 27 of RA 6770 provides that:

> *Effectivity and Finality of Decisions.* — x x x
>
> x x x x
>
> **In all administrative disciplinary cases**, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court. (Emphasis supplied)

However, the above provision was already declared unconstitutional in *Fabian v. Desierto*[105] for expanding the Supreme Court's jurisdiction without its consent in violation of Art. VI, Sec. 30 of the Constitution, to wit:

> Taking all the foregoing circumstances in their true legal roles and effects, therefore, Section 27 of Republic Act No. 6770 cannot validly authorize an *appeal* to this Court from decisions of the Office of the Ombudsman in administrative disciplinary cases. It consequently violates the proscription in Section 30, Article VI of the Constitution against a law which increases the *appellate* jurisdiction of this Court. No countervailing argument has been cogently presented to justify such disregard of the constitutional prohibition which, as correctly explained in *First Lepanto Ceramics, Inc. vs. The Court of Appeals, et al.*, was intended to give this Court a measure of control over cases placed under its appellate jurisdiction. Otherwise, the indiscriminate enactment of legislation enlarging its appellate jurisdiction would unnecessarily burden the Court.[106] (Citations omitted)

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105 356 Phil. 787 (1998).

106 Id. at 806.

Also, Sec. 27 of RA 6770 only relates to administrative disciplinary cases.[107] It does not apply to appeals from Ombudsman's rulings in criminal cases,[108] nor to resolutions on preliminary investigations[109] such as the case at bar. In *Nava v. Commission on Audit*,[110] We declared that the remedy of an aggrieved party in such criminal case is an action for *certiorari* under Rule 65, to wit:

> The remedy availed of by petitioner is erroneous. Instead of a petition for *certiorari* under Rule 65 of the Rules of Court, petitioner filed with this Court the present petition for review on *certiorari* under Rule 45 of the Rules of Court pursuant to the provisions of Section 27 of Republic Act No. 6770.
>
> Rule 45 of the Rules of Court provides that only judgments or final orders or resolutions of the Court of Appeals, Sandiganbayan, the Regional Trial Court and other courts, whenever authorized by law, may be the subject of an appeal by *certiorari* to this Court. It does not include resolutions of the Ombudsman on preliminary investigations in criminal cases. Petitioner's reliance on Section 27 of R.A. No. 6770 is misplaced. **Section 27 is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In other words, the right to appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like the case at bar. Such right is granted only from orders or decisions of the Ombudsman in administrative cases**.
>
> An aggrieved party is not left without any recourse. **Where the findings of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved party may file a petition for *certiorari* under Rule 65 of the Rules of Court**.[111] (Citations omitted, emphases and underscoring supplied)

In *Tirol, Jr. v. Del Rosario*,[112] We explained that although the law is silent as to the remedy of the aggrieved in criminal cases, the party is not without recourse as he or she can assail the Ombudsman's finding of probable cause in a petition for *certiorari* under Rule 65 if the same is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction, *viz.*:

> Section 27 of R.A. No. 6770 provides that orders, directives and decisions of the Ombudsman in administrative cases are appealable to the Supreme Court *via* Rule 45 of the Rules of Court. However, in *Fabian v. Desierto*, we declared that Section 27 is unconstitutional since it expanded the Supreme Court's jurisdiction, without its advice and consent, in violation of Article VI, Section 30 of the Constitution. Hence, all appeals from decisions of the Ombudsman in administrative disciplinary cases may be taken to the Court of

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107 Id. at 799.
108 Id.
109 *Nava v. Commission on Audit*, 419 Phil. 544, 552 (2001).
110 Id.
111 Id. at 552-553.
112 376 Phil. 115 (1999).

Appeals under Rule 43 of the 1997 Rules of Civil Procedure.

> **True, the law is silent on the remedy of an aggrieved party in case the Ombudsman found sufficient cause to indict him in criminal or non-administrative cases.** We cannot supply such deficiency if none has been provided in the law. We have held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. Hence, there must be a law expressly granting such privilege. The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in *Fabian*, the aggrieved party is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.
>
> **However, an aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. An aggrieved party may file a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.**[113] (Citations omitted, emphases and underscoring supplied)

Verily, petitioner Republic correctly availed of the remedy of petition for *certiorari* under Rule 65 when it assailed Ombudsman's August 6, 1998 Review and Recommendation and the September 25, 1998 Order which dismissed the complaint against respondents for violation of RA 3019. Petitioner Republic received a copy of the August 6, 1998 Review and Recommendation on August 28, 1998 and the September 25, 1998 Order on October 28, 1998.

Prior to the Court's promulgation of A.M. No. 00-2-03-SC,[114] Sec. 4, Rule 65 of the Rules of Court provides that in case the aggrieved party's motion for new trial or reconsideration is denied, he or she may file a petition under Rule 65 within the remaining period of 60 days, which in no case shall be less than five days, to wit:

> SEC. 4. *Where and when petition to be filed.* — The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

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113 Id. at 121-122.

114 Amendments to Section 4, Rule 65 of Rules of Civil Procedure, A.M. No. 00-2-03-SC, September 1, 2000.

> **If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.** (Emphasis and underscoring supplied)

Applying the foregoing, petitioner Republic had until December 13, 1998 within which to file a petition for *certiorari* under Rule 65. However, it only filed the instant petition on December 28, 1998 or 15 days beyond the 60-day reglementary period. Patently, petitioner Republic's petition is filed out of time as per the above-quoted provision.

Nevertheless, during the pendency of the petition, the Court promulgated A.M. No. 00-2-03-SC, which amended Sec. 4 of Rule 65 and became effective on September 1, 2000, to wit:

> SECTION 4. *When and where petition filed.* — **The petition shall be filed not later than sixty (60) days from notice of judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.**
>
> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.
>
> **No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.** (Emphases and underscoring supplied)

Settled is the rule that statutes regulating the procedure of the courts are construed as applicable to actions pending and undetermined at the time of their passage.[115] Since A.M. No. 00-2-03-SC relates to the mode of procedure, *i.e.*, the reglementary period within which to file a petition for *certiorari* under Rule 65, it is applicable to pending cases at the time of its adoption.

In the present case, it is apparent that the petition is still pending resolution before this Court when A.M. No. 00-2-03-SC was issued. Similarly, the Court applied A.M. No. 00-2-03-SC retrospectively in *Presidential Commission on Good Government v. Desierto*[116] when it ruled that:

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115 *People v. Sumilang*, 77 Phil. 764, 765-766 (1946).

116 402 Phil. 821 (2001).

Prefatorily, the petition should have been dismissed for late filing. Petitioner received a copy of the assailed resolution on 08 April 1999. A motion for reconsideration was filed by the PCGG on 12 April 1999. On 06 August 1999, it received a copy of the order denying its motion for reconsideration. Pursuant to Section 65 of the 1997 Rules of Civil Procedure, the petition should have been filed on 02 October 1999; instead, the petition was only posted on 05 October 1999. During the pendency of this case, however, the Court promulgated A.M. No. 00-2-03-SC (Further Amending Section 4, Rule 65 of the 1997 Rules on Civil Procedure), made effective on 01 September 2000, that provided:

> SECTION 4. *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

In view of the retroactive application of procedural laws, the instant petition should now be considered timely filed.[117] (Emphasis and underscoring supplied)

In *Ark Travel Express Inc. v. Abrogar*,[118] the Court upheld the retroactive application of A.M. No. 00-2-03-SC to pending cases before it, to wit:

> The issue raised in the present petition concerns the jurisdiction of the RTC in ordering the dismissal of the criminal cases pending before the MTC and therefore, the proper remedy is *certiorari*. As such, the present petition for *certiorari* ought to have been dismissed for late filing. The assailed Order dated October 2, 1998 was received by Ark Travel on October 16, 1998. Ark Travel filed the Motion for Reconsideration fourteen days later or on October 30, 1998. On November 27, 1998, Ark Travel received the Order of the denial of the Motion for Reconsideration. Pursuant to Rule 65 of the 1997 Rules on Civil Procedure, then prevailing, the petition should have been filed on the forty-sixth day (60 days minus 14 days) from November 27, 1998 or on January 12, 1999, the last day of the 60-day reglementary period; instead, the petition was filed on January 26, 1999.
>
> However, during the [sic] pendency of herein petition, the Court promulgated A.M. No. 00-2-03, amending Section 4, Rule 65 of the 1997 Rules on Civil Procedure, effective September 1, 2000, to wit:
>
> > SEC. 4. *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
>
> In which case, the filing of the petition on January 26, 1999 was filed on the 60th day from November 27, 1998, Ark Travel's date of receipt of notice of the order denying Ark Travel's motion for reconsideration.

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117 Id. at 828.

118 457 Phil. 189 (2003).

> **We have consistently held that statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage — procedural laws are retroactive in that sense and to that extent.** In view of such retroactive application of procedural laws, the instant petition should be considered as timely filed.[119] (Emphasis and underscoring supplied)

Therefore, the retroactive application of A.M. No. 00-2-03-SC, specifically, the 60-day period within which to file a petition for *certiorari*, which must be reckoned from the notice of the denial of a motion for reconsideration or new trial, shall also be applied to the present case. Thus, petitioner Republic had 60 days from receipt of the September 25, 1998 Order or until December 27, 1998 within which to file a petition. However, since December 27, 1998 is a Sunday, petitioner Republic's filing of its petition on December 28, 1998 is considered timely filed within the 60-day reglementary period.

As to the alleged failure of the Republic to timely serve copies of the petition to respondents Concepcion and Lobregat, the pertinent provisions of Sec. 6, Rule 65; Sec. 2, Rule 56; and Sec. 2, 3, and 4, Rule 46 of the Rules of Court are particularly instructive of the effects thereof:

Section 6, Rule 65

> SECTION 6. *Order to Comment.* — If the petition is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.
>
> **In petitions for *certiorari* before the Supreme Court and the Court of Appeals, the provisions of Section 2, Rule 56, shall be observed.** Before giving due course thereto, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper. (Emphasis and underscoring supplied)

Section 2, Rule 56

> SECTION 2. *Rules Applicable.* — **The procedure in original cases for *certiorari*,** prohibition, *mandamus*, *quo warranto* and *habeas corpus* **shall be in accordance with the applicable provisions of the Constitution, laws, and Rules 46, 48, 49, 51, 52 and this Rule,** subject to the following provisions:
>
> a) All references in said Rules to the Court of Appeals shall be understood to also apply to the Supreme Court;
> b) The portions of said Rules dealing strictly with and specifically intended for appealed cases in the Court of Appeals shall not

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[119] Id. at 201.

be applicable; and

c) **Eighteen (18) clearly legible copies of the petition shall be filed, together with proof of service on all adverse parties**. (Emphases and underscoring supplied)

Sections 2, 3 and 4, Rule 46

SECTION 2. *To What Actions Applicable.* — **This Rule shall apply to original actions for *certiorari*,** prohibition, *mandamus* and *quo warranto*.

Except as otherwise provided, the actions for annulment of judgment shall be governed by Rule 47, for *certiorari*, prohibition and *mandamus* by Rule 65, and for *quo warranto* by Rule 66.

SECTION 3. *Contents and Filing of Petition; Effect of Non-Compliance with Requirements.* — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

x x x x

It shall be filed in seven (7) clearly legible copies **together with proof of service thereof on the respondent** with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

SECTION 4. *Jurisdiction Over Person of Respondent, How Acquired.* —

The court shall acquire jurisdiction over the person of the respondent by the service on him/[her] of its order or resolution indicating its initial action on the petition or by his/[her] voluntary submission to such jurisdiction. (Emphases and underscoring supplied)

Based on the above-quoted provisions, the petition must be accompanied by a proof of service to respondents. Failure to comply with said requirement shall be a sufficient ground for the dismissal of the petition. The Court shall acquire jurisdiction over the person of the respondent upon service on him or her of its order or resolution indicating its initial action on the petition or by voluntary submission.

As per the records, petitioner Republic served copies of the petition to the respondents through Atty. Estelito Mendoza (Atty. Mendoza). However, respondents Lobregat and Concepcion turned out to have not received their respective copies of the petition and all subsequent pleadings and resolutions. Thus, they failed to file their Comment on the petition.

Patently, petitioner Republic's alleged failure to timely serve copies of the petition to respondents Lobregat and Concepcion shall be sufficient ground for the dismissal of its Petition under Rule 65. However, petitioner Republic clarified that such procedural infirmity was an honest mistake as it relied on what was stated in the August 6, 1998 Review and Recommendation and September 25, 1998 Order directing that copies thereof be sent to respondents through Atty. Mendoza. Hence, petitioner Republic likewise served copies of the petition to Lobregat and Concepcion through Atty. Mendoza.

Nonetheless, instead of dismissing the petition outright, this Court in its July 7, 2004 Resolution consequently reversed and set aside the August 23, 2001 Decision and allowed the filing of the Comments of all the respondents. It is worth noting that notice to adverse party is important to prevent surprise and to afford the latter a chance to be heard in keeping with the principle of procedural due process. However, it is also well-settled that procedural rules may be relaxed when a "stringent application of [the same] would hinder rather than serve the demands of substantial justice."[120]

In *Sanchez v. Court of Appeals*,[121] We listed the elements to be considered to warrant the suspension of the Rules, to wit:

> Aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) the existence of special

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120 *Bases Conversion and Development Authority v. Commissioner of Internal Revenue*, G.R. No. 205466, January 11, 2021.

121 452 Phil. 665 (2003).

> or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby.[122]

In *Ginete v. Court of Appeals*,[123] We explained the rationale in the relaxation of the rules of procedure in case of justifiable instances, to wit:

> Let it be emphasized that the 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 reflect 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 has already declared to be final, as we are now constrained to do in instant case.
>
> Thus, this court is not averse to suspending its own rules in the pursuit of the ends of justice. "[x x x] For when the operation of the Rules will lead to an injustice we have, in justifiable instances, resorted to this extraordinary remedy to prevent it. The rules have been drafted with the primary objective of enhancing fair trials and expediting justice. As a *corollary*, if their application and operation tend to subvert and defeat, instead of promote and enhance it, their suspension is justified. In the words of Justice Antonio P. Barredo in his concurring opinion in Estrada v. Sto. Domingo, "(T)his Court, through the revered and eminent Mr. Justice Abad Santos, found occasion in the case of *C. Viuda de Ordoveza v. Raymundo*, to lay down for recognition in this jurisdiction, the sound rule in the administration of justice holding that 'it is always in the power of the court (Supreme Court) to suspend its own rules or to except a particular case from its operation, whenever the purposes of justice require it [x x x]"
>
> The Rules of Court were 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 in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. As applied to instant case, in the language of Justice Makalintal, technicalities "should give way to the realities of the situation."[124]

Clearly, the present case pertains to the Ombudsman's investigation of respondents' purported violation of RA 3019 allegedly involving government funds and/or property. The Republic should not be faulted by the OSG's failure to timely serve copies of the petition to respondents Concepcion and Lobregat within the reglementary period. Besides, petitioner Republic provided justifiable reason for its failure to comply with the procedural requirements in filing the instant petition. Also, to deny Republic's privilege to question the assailed OMB's August 6, 1998 Review and Recommendation and the

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122 Id. at 674.
123 357 Phil. 36 (1998).
124 Id. at 51-52.

September 25, 1998 Order would frustrate, rather than promote, substantial justice, especially when the case involves purportedly public funds and/or property. Hence, considering the existence of special or compelling circumstance, the technical rules of procedure may be relaxed in this case in order to serve the demands of substantial justice.

Grave abuse of discretion

Having resolved that the instant Petition under Rule 65 was correctly and timely filed in accordance with the rules, We come now to the issue of grave abuse of discretion imputed against the Ombudsman when it ordered the dismissal of OMB-0-90-2808 on the ground of prescription.

Ordinarily, the Court does not interfere with the Ombudsman's determination as to the existence or non-existence of probable cause except when there is grave abuse of discretion.[125] As defined, "grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."[126]

Notably, the Ombudsman's assailed Orders did not specifically rule on the existence or non-existence of probable cause to indict or exonerate respondents Concepcion, Dela Cuesta, Enrile, Ursua, and Pineda of violation of RA 3019. Instead, the Ombudsman ordered the dismissal of the complaint on the ground of prescription.

After a careful review of the records, the Court finds judicial intervention is justified and proper in this case to determine the correctness of the Ombudsman's order of dismissal on the ground of prescription as per relevant laws and jurisprudence.

We emphasize that We are not ruling on the guilt or innocence of the respondents. Instead, Our focus is on the plausible allegations of Republic, which may determine whether a violation of the special law was apparent at the time of its commission.

Prescription of offense

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125 *Presidential Commission on Good Government v. Office of the Ombudsman*, 781 Phil. 643, 654 (2016) & *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 603 Phil. 18, 33 (2009).

126 *Presidential Commission on Good Government v. Office of the Ombudsman*, supra at 654-655, citing *Unilever Philippines, Inc. v. Tan*, 725 Phil. 486, 493-494 (2014).

To resolve the issues concerning prescription of offenses, the Court must determine the following: (a) the prescriptive period of the offense; (b) when the period commenced to run; and (c) when the period was interrupted.[127]

(a) Prescriptive Period of the Offense

At the time of enactment of RA 3019, the original prescriptive period of offenses defined and penalized therein was 10 years.[128] Thereafter, on March 16, 1982, BP 195[129] extended the prescriptive period in filing cases for violation of RA 3019 from 10 years to 15 years. Subsequently, the prescriptive period for violation of RA 3019 was extended to 20 years as per RA 10910,[130] which took effect on July 21, 2016.

It bears stressing that the Complaint charged respondents with violation of RA 3019 on account of the execution of the MOA with AII on November 20, 1974. The prescriptive period during that time for offenses punishable under RA 3019 was 10 years. Clearly, the amendatory laws, *i.e.*, BP 195 and RA 10910, which provide longer periods of prescription, cannot be retroactively applied to crimes committed prior to their passage in 1982 and 2016, respectively.[131] In *People v. Pacificador*,[132] the rule is that "in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted."[133] Therefore, the applicable prescriptive period in the instant case is 10 years.

(b) When the period commenced to run

As to the reckoning point of the prescriptive period, RA 3019 fails to explicitly provide. Thus, reference is to be made to Act No. 3326[134] which governs the prescription of offenses punished by special penal laws.[135]

Sec. 2 of Act No. 3326 provides that prescription commences from: (a) the day of the commission of the violation of the law, which is the general rule; or (b) if the same is not known, from the time of discovery thereof and the

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127 *Perez v. Sandiganbayan*, G.R. No. 245862, November 3, 2020, citing *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, supra note 89 at 728-729.

128 Republic Act No. 3019, Sec. 11.

129 Entitled "AN ACT AMENDING SECTIONS EIGHT, NINE, TEN, ELEVEN, AND THIRTEEN OF REPUBLIC ACT NUMBERED THIRTY HUNDRED AND NINETEEN, OTHERWISE KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT." Approved: March 16, 1982.

130 Entitled "AN ACT INCREASING THE PRESCRIPTIVE PERIOD FOR VIOLATIONS OF REPUBLIC ACT NO. 3019, OTHERWISE KNOWN AS THE 'ANTI-GRAFT AND CORRUPT PRACTICES ACT,' FROM FIFTEEN (15) YEARS TO TWENTY (20) YEARS, AMENDING SECTION 11 THEREOF." Approved: July 21, 2016.

131 *Perez v. Sandiganbayan*, supra, citing *Presidential Commission on Good Government v. Gutierrez*, 835 Phil. 844, 856 (2018).

132 406 Phil. 774, 782 (2001).

133 *Presidential Commission on Good Government v. Carpio-Morales*, 746 Phil. 995, 1003 (2014), citing *People v. Pacificador*, supra.

134 Entitled "AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN." Approved: December 4, 1926.

135 *Perez v. Sandiganbayan*, supra.

institution of judicial proceeding for its investigation and punishment, which is the exception and otherwise known as the discovery rule or the blameless ignorance doctrine. The discovery rule or the blameless ignorance doctrine states:

> SECTION 2. **Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment.**
>
> The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. (Emphasis supplied)

As elucidated in *Del Rosario v. People*,[136] as a general rule, "the fact that any aggrieved person entitled to an action has no knowledge of his/[her] right to sue or of the facts out of which his/[her] right arises does not prevent the running of the prescriptive period."[137] On the other hand, the blameless ignorance rule provides that "the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action."[138]

In *Presidential Commission on Good Government v. Carpio-Morales* (*Carpio-Morales*),[139] the Court explains the construction of the discovery rule or the blameless ignorance doctrine and provides guidelines in the determination of the reckoning point for the period of prescription of violations of RA 3019, to wit:

> The first mode being self-explanatory, We proceed with Our construction of the second mode.
>
> In interpreting the meaning of the phrase "if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation," this Court has, as early as 1992 in *People v. Duque*, held that in cases where the illegality of the activity is not known to the complainant at the time of its commission, Act No. 3326, Section 2 requires that prescription, in such a case, would begin to run only from the discovery thereof, *i.e.*, discovery of the unlawful nature of the constitutive act or acts.
>
> It is also in *Duque* where this Court espoused the raison d'être for the second mode. We said, "[i]n the nature of things, acts made criminal by special laws are frequently not immoral or obviously criminal in themselves; for this reason, the applicable statute requires that if the violation of the special law is not known at the time, the prescription begins to run only from the discovery thereof, *i.e.*, discovery of the unlawful nature of the constitutive act or acts."

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136 834 Phil. 419 (2018).

137 Id. at 429, citing *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 664 Phil. 16, 27 (2011).

138 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, supra at 100.

139 Supra.

Further clarifying the meaning of the second mode, the Court, in *Duque*, held that Section 2 should be read as "[p]rescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and *until* the institution of judicial proceedings for its investigation and punishment." Explaining the reason therefor, this Court held that a contrary interpretation would create the absurd situation where "the prescription period would both begin and be interrupted by the same occurrence; the net effect would be that the prescription period would not have effectively begun, having been rendered academic by the simultaneous interruption of that same period." Additionally, this interpretation is consistent with the second paragraph of the same provision which states that "prescription shall be interrupted when proceedings are instituted against the guilty person, [and shall] begin to run again if the proceedings are dismissed for reasons not constituting jeopardy."

Applying the same principle, We have consistently held in a number of cases, some of which likewise involve behest loans contracted during the Marcos regime, that the prescriptive period for the crimes therein involved generally commences from the discovery thereof, and not on the date of its actual commission.

In the 1999 and 2011 cases of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, the Court, in said separate instances, reversed the ruling of the Ombudsman that the prescriptive period therein began to run at the time the behest loans were transacted and instead, it should be counted from the date of the discovery thereof.

In the 1999 case, We recognized the impossibility for the State, the aggrieved party, to have known the violation of RA 3019 at the time the questioned transactions were made in view of the fact that the public officials concerned connived or conspired with the "beneficiaries of the loans." There, We agreed with the contention of the Presidential Ad Hoc Fact-Finding Committee that the prescriptive period should be computed from the discovery of the commission thereof and not from the day of such commission. It was also in the same case where We clarified that the phrase "if the same be not known" in Section 2 of Act No. 3326 does not mean "lack of knowledge" but that the crime "is not reasonably knowable" is unacceptable. Furthermore, in this 1999 case, We intimated that the determination of the date of the discovery of the offense is a question of fact which necessitates the reception of evidence for its determination.

Similarly, in the 2011 Desierto case, We ruled that the "blameless ignorance" doctrine applies considering that the plaintiff therein had no reasonable means of knowing the existence of a cause of action. In this particular instance, We pinned the running of the prescriptive period to the completion by the Presidential Ad Hoc Fact-Finding Committee of an exhaustive investigation on the loans. We elucidated that the first mode under Section 2 of Act No. 3326 would not apply since during the Marcos regime, no person would have dared to question the legality of these transactions.

Prior to the 2011 Desierto case came Our 2006 Resolution in *Romualdez v. Marcelo*, which involved a violation of Section 7 of RA 3019. In resolving the issue of whether or not the offenses charged in the said cases have already prescribed, We applied the same principle enunciated in *Duque* and ruled that

the prescriptive period for the offenses therein committed began to run from the discovery thereof on the day former Solicitor General Francisco I. Chavez filed the complaint with the PCGG.

This was reiterated in *Disini v. Sandiganbayan* where We counted the running of the prescriptive period in said case from the date of discovery of the violation after the PCGG's exhaustive investigation despite the highly publicized and well-known nature of the Philippine Nuclear Power Plant Project therein involved, recognizing the fact that the discovery of the crime necessitated the prior exhaustive investigation and completion thereof by the PCGG.

In *Republic v. Cojuangco, Jr.*, however, We held that not all violations of RA 3019 require the application of the second mode for computing the prescription of the offense. There, this Court held that the second element for the second mode to apply, *i.e.*, that the action could not have been instituted during the prescriptive period because of martial law, is absent. This is so since information about the questioned investment therein was not suppressed from the discerning eye of the public nor has the Office of the Solicitor General made any allegation to that effect. This Court likewise faulted therein petitioner for having remained dormant during the remainder of the period of prescription despite knowing of the investment for a sufficiently long period of time.

An evaluation of the foregoing jurisprudence on the matter reveals the following guidelines in the determination of the reckoning point for the period of prescription of violations of RA 3019, *viz.*:

> 1. As a general rule, prescription begins to run from the date of the commission of the offense.
>
> 2. If the date of the commission of the violation is not known, it shall be counted form the date of discovery thereof.
>
> **3. In determining whether it is the general rule or the exception that should apply in a particular case, the availability or suppression of the information relative to the crime should first be determined.**
>
> **If the necessary information, data, or records based on which the crime could be discovered is readily available to the public, the general rule applies. Prescription shall, therefore, run from the date of the commission of the crime.**
>
> **Otherwise, should martial law prevent the filing thereof or should information about the violation be suppressed, possibly through connivance, then the exception applies and the period of prescription shall be reckoned from the date of discovery thereof.**[140] (Emphasis supplied)

Applying the foregoing principles and based on Our judicious review of the records, We are convinced that the exception on the date of discovery or the blameless ignorance doctrine applies to the case at bar.

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[140] Id. at 1004-1008.

(i) The Republic could not have questioned the MOA because it was given legislative imprimatur.

It is worth noting that although the MOA dated November 20, 1974 was duly notarized and presumably available to the public for scrutiny and perusal, the same was executed and entered into by the parties pursuant to PD 582 issued by then President Marcos. Respondents even contended, and the Ombudsman ruled in the assailed Orders, that the said MOA was given legislative imprimatur. This allegedly implies that the respondents cannot be prosecuted for their involvement in the execution, implementation, and termination of the said MOA. Hinging from the same argument, the fact that the MOA dated November 20, 1974 was executed pursuant to a legislative enactment, *i.e.*, PD 582, the more it is highly impossible for the Republic to question the same, and the respondents' alleged violation of RA 3019 and involvement in the execution, implementation and termination of the MOA.

Hence, contrary to respondents' contention and the Ombudsman's assailed Orders, We are not persuaded that the prescriptive period began to run in 1974 when the MOA with AII was executed since petitioner Republic could not have possibly questioned the respondents for their alleged violation of RA 3019 because it was given "legislative imprimatur" at that time. In other words, it is not possible for the Republic, as the aggrieved party, to have known respondents' alleged violation of RA 3019 prior to the 1986 Freedom Constitution which specifically mandated the President to prioritize among others the: (a) recovery of ill-gotten properties amassed by the leaders and supporters of the previous regime and protection of the interest of the people through orders of sequestration or freezing of assets of accounts; and (b) eradication of graft and corruption in government and punishment of those guilty thereof.[141] Only then did the Republic have the opportune time to discover acts or violations of RA 3019 in connection with the MOA dated November 20, 1974 executed during the Marcos administration.

Similar to *Disini v. Sandiganbayan*,[142] even arguing that the MOA dated November 20, 1974 is publicly known as it involves government funds and affects the Philippine coconut industry, it would have been futile for petitioner Republic to question the same and charge herein respondents with violation of RA 3019 as no person would have dared to assail the legality of MOA dated November 20, 1974 considering that President Marcos himself, exercising legislative power, issued PD 582 which paved the way for the subject MOA.

Similar to PD 582, the amendments introduced in PD 961 and PD 1468 went unnoticed prior to the date of discovery of the violation of RA 3019. To recall, both PD 961 and PD 1468 gave the MOA an appearance of validity.

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[141] FREEDOM CONSTITUTION, Secs. 1.d and 1.3.
[142] 717 Phil. 638, 663 (2013).

Sec. 3-B of PD 582 authorizes the execution of a contract for the financing of a hybrid coconut seednut farm. Through PD 582, NIDC was given blanket authority to negotiate the contract on behalf of the government.

With the amendments introduced by PD 961, a confirmatory phrase was added: "x x x the contract entered into by NIDC as herein authorized is hereby confirmed and ratified; x x x." While PD 582 paved the way for the MOA, PD 961 confirmed and ratified it.

Finally, upon further amendment by PD 1468, any amendment or supplement to the contract was likewise confirmed and ratified. The phrase reads: " x x x the contract, including the amendments and supplements thereto as provided for herein, entered into by NIDC as herein authorized is hereby confirmed and ratified x x x." In effect, the series of supplemental agreements and amendments subsequent to the MOA were confirmed and ratified.

With the legislative imprimatur of PD 582, PD 961, and PD 1468, it became nearly impossible for petitioner Republic to question the MOA and its series of supplemental agreements and amendments prior to the discovery of the offense. For this reason, the discovery rule or blameless ignorance doctrine applies.

(ii) There were material subsequent events that transpired *after* the execution of the MOA, but prior to the filing of the Complaint.

Apart from the disadvantageous provisions of the MOA, there are material subsequent events in 1982 and 1983 that transpired *after* the execution of the MOA. These material subsequent events suggest the plausibility of a violation of RA 3019.

In the Complaint, petitioner Republic alleged that certain events transpired after the execution of the MOA. These events include the following: (1) UCPB Board of Directors' adoption of Resolution No. 111-83 on April 19, 1983;[143] (2) UCPB Board of Directors' act of allowing the arbitral award to lapse into finality;[144] and (3) directorships of Enrile, Cojuangco, Jr., Dela Cuesta, and Concepcion at AII until November 8, 1982,[145] among many others. These materials events transpired from 1982 to 1983, after the execution of the MOA and well before the filing of the Complaint in 1990.

Appreciation of these events is necessary in determining when the prescriptive period commenced to run because the acts of certain respondents corroborate their direct or indirect participation in violation of RA 3019. We note that respondents Ursua and Pineda were neither signatories to the MOA nor

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143 *Rollo*, Vol. I, p. 288.
144 Id.
145 Id. at 52.

directors of AII. Nonetheless, respondents Ursua and Pineda were members of UCPB's Board of Directors in 1983, whose acts still put the government at a disadvantage. Thus, as to respondents Ursua and Pineda, the action is not barred by prescription whether the general rule on date of commission or the exception on date of discovery is applied.

Taken in its entirety, the material subsequent acts of respondents prove that any information about the violation was suppressed. Thus, the discovery rule or blameless ignorance doctrine applies.

(iii) The Complaint is replete with allegations of conspiracy and connivance.

In *Carpio-Morales*,[146] We recognized that the reckoning point for the period of prescription of violations of RA 3019 may commence on the date of discovery when information about the violation of RA 3019 is suppressed, possibly through connivance.[147]

Here, the Complaint is replete with allegations of conspiracy and connivance in the suppression of information about the violation. Republic alleged as follows: (1) Cojuangco, Jr. took advantage of his close relationship with then President Marcos for his own personal and business interests through the issuance of favorable decrees;[148] (2) Cojuangco, Jr. caused the Philippine Government, through the NIDC, to enter into a contract with him, through AII, under terms and conditions grossly disadvantageous to the government and in conspiracy with the members of the UCPB Board of Directors, in flagrant breach of fiduciary duty as administrator-trustee of the CIDF;[149] (3) Enrile, Dela Cuesta, Concepcion, Ursua, and Pineda, as members of the UCPB Board of Directors, allowed the BOA's March 29, 1983's Decision to lapse into finality, which resulted in the successful siphoning of ₱840,789,855.33 from CIDF to AII;[150] and (4) respondents were directly or indirectly interested in personal gain, or had material interest in the transaction requiring the approval of a board, panel, or group in which they were members, in violation of RA 3019 to the grave damage and prejudice of the public interest, the Filipino people, the Republic, and the coconut farmers.[151]

In Our August 23, 2001 Decision, We deemed that the allegations of conspiracy and connivance were sufficiently established in the pleadings, to wit:

> There are striking parallelisms between the said Behest Loans Case and the present one which lead us to apply the ruling of the former to the latter. *First*, both cases arouse out of seemingly innocent business transactions; *second*, both

146 *Presidential Commission on Good Government v. Carpio-Morales*, supra note 133.
147 Id. at 1009.
148 *Rollo*, Vol. I, pp. 11-12.
149 Id.
150 Id. at 12, 46-48.
151 Id. at 12, 53.

were "discovered" only after the government created bodies to investigate these anomalous transactions; *third*, both involve prosecutions for violations of R.A. No. 3019; and, *fourth*, in both cases, **it was sufficiently raised in the pleadings that the respondents conspired and connived with one another in order to keep the alleged violations hidden from public scrutiny.**

x x x x

R.A. No. 3019, as applied to the instant case, covers not only the alleged one-sidedness of the MOA, but also as to whether the contracts or transactions entered pursuant thereto by private respondents were manifestly and grossly disadvantageous to the government, whether they caused undue injury to the government, and whether the private respondents were interested for personal gain or had material interests in the transactions.

The task to determine and find whether probable cause to charge private respondents exists properly belongs to the Ombudsman. We only rule that the Office of the Ombudsman should not have dismissed the complaint on the basis of prescription which is erroneous as hereinabove discussed. The Ombudsman should have given the Solicitor General the opportunity to present his evidence and then resolve the case for purposes of preliminary investigation. Failing to do so, the Ombudsman acted with grave abuse of discretion.[152] (Emphasis supplied)

Taken in its entirety and in view of the unique circumstance of this case, We declare that the reckoning point of the prescriptive period should be from the promulgation of the 1986 Freedom Constitution, which mandated the President to: (a) recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets of accounts; and (b) eradicate graft and corruption in government and punish those guilty thereof, among others. Only then will the Republic have had the opportune time to discover any alleged acts or violations which would prompt the filing of a necessary action against the culprits.

Therefore, petitioner Republic's Complaint dated February 12, 1990 filed against respondents before the PCGG, which was subsequently referred to the Ombudsman, for violation of RA 3019 is well within the 10-year prescriptive period of an offense for the alleged illegal act committed based on the MOA dated November 20, 1974.

(c) When the period was interrupted

Section 2 of Act No. 3326 clearly provides that prescription shall be interrupted when proceedings are instituted against the accused, to wit:

SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

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152 Id. at 297, 299.

> **The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.** (Emphasis and underscoring supplied)

In *Perez v. Sandiganbayan*[153] (*Perez*) citing *People v. Pangilinan*[154] (*Pangilinan*), We declared that **"prescription is interrupted when the preliminary investigation against the accused is commenced,"** to wit:

> Prescription is interrupted when the preliminary investigation against the accused is commenced. In *People v. Pangilinan*, the Court held as follows:
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> > x x x There is no more distinction between cases under the RPC and those covered by special laws with respect to the interruption of the period of prescription. The ruling in *Zaldivia v. Reyes. Jr.* is not controlling in special laws. **In *Llenes v. Dicdican, Ingco, et al. v. Sandiganbayan, Brillante v. CA, and Sanrio Company Limited v. Lim*, cases involving special laws, this Court held that the institution of proceedings for preliminary investigation against the accused interrupts the period of prescription. In *Securities and Exchange Commission v. Interport Resources Corporation, et al.*, the Court even ruled that investigations conducted by the Securities and Exchange Commission for violations of the Revised Securities Act and the Securities Regulation Code effectively interrupts the prescription period because it is equivalent to the preliminary investigation conducted by the DOJ in criminal cases.**
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> > In fact, in the case of *Panaguiton, Jr. v. Department of Justice*, which is [on] all fours with the instant case, this Court categorically ruled that commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses they had been charged under BP Blg. 22. Aggrieved parties, especially those who do not sleep on their rights and actively pursue their causes, should not be allowed to suffer unnecessarily further simply because of circumstances beyond their control, like the accused's delaying tactics or the delay and inefficiency of the investigating agencies.[155] (Emphasis in the original)

In *Panaguiton, Jr. v. Department of Justice*[156] (*Panaguiton*), the Court explained the rationale for the rule that prescription is interrupted by the commencement of the preliminary investigation, to wit:

> It must be pointed out that when Act No. 3326 was passed on 4 December 1926, preliminary investigation of criminal offenses was conducted by justices of the peace, thus, the phraseology in the law, "institution of judicial proceedings for its investigation and punishment", and the prevailing rule at the

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153 Supra note 127.
154 687 Phil. 95, 104-105 (2012).
155 *Perez v. Sandiganbayan*, supra note 127.
156 592 Phil. 286 (2008).

time was that once a complaint is filed with the justice of the peace for preliminary investigation, the prescription of the offense is halted.

The historical perspective on the application of Act No. 3326 is illuminating. Act No. 3226 was approved on 4 December 1926 at a time when the function of conducting the preliminary investigation of criminal offenses was vested in the justices of the peace. Thus, the prevailing rule at the time, as shown in the cases of *U.S. v. Lazada* and *People v. Joson*, is that the prescription of the offense is tolled once a complaint is filed with the justice of the peace for preliminary investigation inasmuch as the filing of the complaint signifies the institution of the criminal proceedings against the accused. These cases were followed by our declaration in *People v. Parao and Parao* that the first step taken in the investigation or examination of offenses partakes the nature of a judicial proceeding which suspends the prescription of the offense. Subsequently, in *People v. Olarte*, we held that the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on the merits. In addition, even if the court where the complaint or information is filed may only proceed to investigate the case, its actuations already represent the initial step of the proceedings against the offender, and hence, the prescriptive period should be interrupted.

In *Ingco v. Sandiganbayan* and *Sanrio Company Limited v. Lim*, which involved violations of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) and the Intellectual Property Code (R.A. No. 8293), which are both special laws, the Court ruled that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused. In the more recent case of *Securities and Exchange Commission v. Interport Resources Corporation, et al.*, the Court ruled that the nature and purpose of the investigation conducted by the Securities and Exchange Commission on violations of the Revised Securities Act, another special law, is equivalent to the preliminary investigation conducted by the DOJ in criminal cases, and thus effectively interrupts the prescriptive period.[157]

Panaguiton further held that to rule that the running of the prescriptive period is interrupted only through the institution of judicial proceedings would deprive the injured party of his "right to obtain vindication on account of delays that are not under his control."[158] An aggrieved party who actively pursues his or her cause should not be allowed to suffer unnecessarily simply because of accused's delaying tactics or delay, and inefficiency of the investigating agencies.[159]

Nonetheless, We are not unmindful of the rulings of this Court in *Jadewell Parking Systems Corp. v. Judge Lidua, Sr.*[160] (*Jadewell*) and *Zaldivia v. Reyes, Jr.*[161] (*Zaldivia*) which declared that "the running of the prescriptive

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157 Id. at 295-296.
158 Id. at 286 and 297.
159 Id.
160 719 Phil. 1, 16 (2013).
161 286 Phil. 375 (1992).

period shall be halted on the date the case is actually filed in court and not on any date before that"[162] and "[a]s provided in the Revised Rules on Summary Procedure, only the filing of an Information tolls the prescriptive period where the crime charged is involved in an ordinance."[163]

In other words, the Court ruled in *Jadewell* and *Zaldivia* that when the offense involves violation of a municipal or city ordinance, which is governed by the Revised Rules on Summary Procedure, the running of the prescriptive period shall be interrupted only upon the institution of judicial proceedings and not the commencement of the preliminary investigation by the investigating agencies. In ruling so, *Jadewell* and *Zaldivia* mainly anchored on: (a) Sec. 9 of the 1983 Rules on Summary Procedure, which substantially provides that the prosecution of criminal cases falling under the summary procedure shall be either by complaint or by information filed directly in court without need of a prior preliminary examination or preliminary investigation; and (b) Sec. 11 of the 1991 Revised Rules on Summary Procedure which provides that in Metropolitan Manila and in Chartered Cities, the case is commenced only by Information except when the offense cannot be prosecuted *de oficio*.

Patently, *Jadewell* and *Zaldivia* are in apparent conflict with *Panaguiton* which involved a violation of BP 22, which is also within the scope of the Revised Rules on Summary Procedure – the same rules applicable on violation of municipal or city ordinance.

In *People v. Lee, Jr.*,[164] the Court seemingly distinguished and reconciled the conflict between *Jadewell* and *Panaguiton*, which is affirmed in *People v. Pangilinan,*[165] wherein the former involved prescription for violation of ordinance while the latter refers to violation of special laws, to wit:

> The doctrine in the *Panaguiton* case was subsequently affirmed in *People v. Pangilinan*. In this case, the affidavit-complaint for estafa and violation of B.P. Blg. 22 against the respondent was filed before the Office of the City Prosecutor *(OCP)* of Quezon City on September 16, 1997. The complaint stems from respondent's issuance of nine (9) checks in favor of private complainant which were dishonored upon presentment and refusal of the former to heed the latter's notice of dishonor which was made sometime in the latter part of 1995. On February 3, 2000, a complaint for violation of BP Blg. 22 against the respondent was filed before the Metropolitan Trial Court *(MeTC)* of Quezon City, after the Secretary of Justice reversed the recommendation of the OCP of Quezon City approving the "Petition to Suspend Proceedings on the Ground of Prejudicial Question" filed by the respondent on the basis of the pendency of a civil case for accounting, recovery of commercial documents and specific performance which she earlier filed before the Regional Trial Court of Valenzuela City. The issue of prescription reached this Court after the Court of Appeals *(CA)*, citing Section 2 of Act 3326, sustained respondent's position that

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162 *Id.* at 382.
163 *Jadewell Parking Systems Corp. v. Judge Lidua, Sr.*, supra at 15.
164 G.R. No. 234618, September 16, 2019.
165 Supra note 154.

the complaint against her for violation of B.P. Blg. 22 had prescribed.

In reversing the CA's decision, We emphatically ruled that "(t)here is no more distinction between cases under the RPC (Revised Penal Code) and those covered by special laws with respect to the interruption of the period of prescription" and reiterated that the period of prescription is interrupted by the filing of the complaint before the fiscal's office for purposes of preliminary investigation against the accused.

In the case at bar, it was clear that the filing of the complaint against the respondent with the Office of the Ombudsman on April 1, 2014 effectively tolled the running of the period of prescription. Thus, the filing of the Information before the Sandiganbayan on March 21, 2017, for unlawful acts allegedly committed on February 14, 2013 to March 20, 2014, is well within the three (3)-year prescriptive period of R.A. No. 7877. The court *a quo's* reliance on the case of *Jadewell v. Judge Nelson Lidua, Sr.*, is misplaced. *Jadewell* presents a different factual milieu as the issue involved therein was the prescriptive period for violation of a city ordinance, unlike here as well as in the *Pangilinan and other above-mentioned related cases*, where the issue refers to prescription of actions pertaining to violation of a special law. For sure, *Jadewell* did not abandon the doctrine in *Pangilinan* as the former even acknowledged existing jurisprudence which holds that the filing of complaint with the Office of the City Prosecutor tolls the running of the prescriptive period.[166]

It is worth noting that the offense in *Panaguiton, i.e.*, violation of BP 22, was committed in 1993 when BP 22 was not yet covered by the Revised Rules on Summary Procedure. In 2003, the Supreme Court, through A.M. No. 00-11-01-SC,[167] amended the Revised Rules on Summary Procedure to include within its scope violations of BP 22. Thus, revisiting the rule on the interruption of prescriptive period with respect to special laws and those offenses covered by summary procedure is therefore in order.

Section 11 of the Revised Rules on Summary Procedure states that:

SECTION 11. *How Commenced.* — **The filing of criminal cases falling within the scope of this Rule shall be either by complaint or by information: *Provided, however*, that in Metropolitan Manila and in Chartered Cities, such cases shall be commenced only by information, except when the offense cannot be prosecuted *de oficio*.**

The complaint or information shall be accompanied by the affidavits of the complainant and of his witnesses in such number of copies as there are accused plus two (2) copies for the court's files. If this requirement is not complied with within five (5) days from date of filing, the case may be dismissed. (Emphasis supplied)

Patently, the phrase "without need of a prior preliminary examination or preliminary investigation" found in Sec. 9 of the 1983 Rules on Summary

166 *People v. Lee, Jr.*, supra.

167 Entitled "RE: AMENDMENT TO THE RULE ON SUMMARY PROCEDURE OF CRIMINAL CASES TO INCLUDE WITHIN ITS COVERAGE VIOLATIONS OF B.P. BLG. 22, OTHERWISE KNOWN AS THE BOUNCING CHECKS LAW." Effective: April 15, 2003.

Procedure is now deleted in the above-quoted provision. *Jadewell* declared that "[a]s provided in the Revised Rules on Summary Procedure, only the filing of an Information tolls the prescriptive period where the crime charged is involved in an ordinance."[168] Notably, the offense involved in *Jadewell* is a violation of city ordinance which, as provided in the Revised Rules on Summary Procedure, is commenced only by information except when the offense cannot be prosecuted *de oficio*.

In other words, in Metropolitan Manila and in Chartered Cities, prescriptive period is tolled only by the filing of an Information in court and not by the commencement of a preliminary investigation by the investigating body nor the institution of the complaint with the investigating body. Other than Metropolitan Manila and Chartered Cities, the criminal action is commenced by filing a complaint or information before the court. In the same vein, the running of the prescriptive period is interrupted by either the complaint or information filed in court.

Hence, for special laws within the scope of the Revised Rules on Summary Procedure, the principle laid down in *Zaldivia* and *Jadewell* is controlling, *i.e.* violations of municipal or city ordinance, and BP 22. Accordingly, the ruling in *Panaguiton* with respect to interruption of prescription of BP 22 shall govern only those acts committed when BP 22 is not yet covered by the Revised Rules on Summary Procedure, *i.e.* before the effectivity of A.M. No. 00-11-01-SC on April 15, 2003. Thus, for acts committed on April 15, 2003 onwards, the filing of complaint or information in court shall interrupt the running of the prescriptive period and not the institution of the preliminary investigation by investigating agencies or the filing of a complaint before such investigating agencies. However, in Metropolitan Manila and Chartered Cities, only the filing of Information in court shall toll the running of the prescriptive period.

As to other special laws not covered by the Revised Rules on Summary Procedure, such as a violation of RA 3019, the rule is that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation. Plainly, the ruling laid down in *Perez* and *Pangilinan*, as well as the justification elucidated in *Panaguiton*, are relevant and appropriate in the case at bar.

Hence, the filing of the instant complaint against respondents with the Office of the Ombudsman in 1990 effectively tolled the running of the prescriptive period. From the reckoning point, *i.e.* 1986, only four years have lapsed when the Republic filed the Complaint in 1990 against respondents. Clearly, respondents' alleged violation of RA 3019 has not yet prescribed.

Moreover, the Complaint filed before the Ombudsman interrupted the running of the prescriptive period. The respondents cannot, therefore, argue that the offense has already prescribed on the basis of the absence of Information

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168 *Jadewell Parking Systems Corp. v. Judge Lidua, Sr.*, supra note 160.

filed with the Sandiganbayan.

Ombudsman committed grave abuse of discretion when it dismissed the Complaint based on prescription of offense

As a general rule, the Court cannot interfere with the Ombudsman's finding of probable cause without violating the latter's constitutionally-granted investigatory and prosecutorial powers. Sec. 15 of RA 6770, otherwise known as *The Ombudsman Act*, provides for the powers, functions and duties of the Office of the Ombudsman, to wit:

> SECTION 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:
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> **(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;**
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> (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;
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> (3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect 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;
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> (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/[her] 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. (Emphasis supplied)

In *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*,[169] the Court explained the rationale behind the Court's non-interference with the Ombudsman's investigatory and prosecutorial powers, to wit:

The Ombudsman has the power to investigate and prosecute any act or omission of a public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. **In fact, the Ombudsman has the power to dismiss a complaint without going through a preliminary investigation, since he/[she] is the proper adjudicator of the question as to the existence of a case warranting the filing of information in court. The Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. This is basically his/[her] prerogative**.

In recognition of this power, the Court has been consistent not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers.

Various cases held that it is beyond the ambit of this Court to review the exercise of discretion of the Office of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of

[169] 579 Phil. 312 (2008).

the people and preserver of the integrity of the public service.

> The rationale underlying the Court's ruling has been explained in numerous cases. **The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant**. In order to insulate the Office of the Ombudsman from outside pressure and improper influence, the Constitution as well as Republic Act No. 6770 saw fit to endow that office with a wide latitude of investigatory and prosecutory powers, virtually free from legislative, executive or judicial intervention. If the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings unless they are tainted with grave abuse of discretion.[170] (Emphasis supplied)

It is worth noting that the instant petition is elevated before this Court *via* Rule 65 to determine whether the Ombudsman committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it dismissed Republic's Complaint against respondents based on prescription of offense. To reiterate, the Court generally does not interfere with the Office of Ombudsman in its duty of finding the existence of probable cause nor its decision to dismiss the complaint without undergoing preliminary investigation as in the case at bar which was dismissed by reason of prescription of offense. An exception would be a finding of grave abuse of discretion.

As defined in *Casing v. Ombudsman*,[171] "[g]rave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner — which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law — in order to exceptionally warrant judicial intervention." [172]

As extensively discussed, Ombudsman Desierto's approval of the August 6, 1998 Review and Recommendation and the September 25, 1998 Order which recommended the dismissal of the Republic's Complaint based on prescription of offense is so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined, that is, to conduct a preliminary investigation and to determine whether probable cause exists to charge herein respondents with violation of RA 3019. As found by this Court, the dismissal

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170 Id. at 324-325.

171 687 Phil. 468 (2012).

172 *Republic v. Ombudsman*, G.R. No. 198366, June 26, 2019, citing *Casing v. Ombudsman*, supra at 476.

based on prescription of offense is erroneous and inconsistent with applicable law and jurisprudence. Evidently, the Ombudsman should not have dismissed Republic's Complaint based on prescription of offense, and proceeded to determine whether probable cause exists to charge respondents with violation of RA 3019. The OSG should have been given an opportunity to present evidence, and then resolve the case for purposes of preliminary investigation.

Nonetheless, it is premature for this Court to rule on the existence of probable cause and direct the filing of the Information with the Sandiganbayan when the Ombudsman dismissed the complaint not on the non-existence thereof, nor appreciation of the evidence, but on prescription of offense. In other words, this Court cannot rule on whether there is probable cause to indict respondents for violation of RA 3019, without interfering with the Ombudsman's investigatory duty when the same was not even specifically considered as basis for the dismissal of the Republic's Complaint.

In addition, this Court will not rule on respondent Concepcion's contention that he should not be charged with violation of RA 3019 as he was merely impleaded in his capacity as a lawyer and not in his own personal capacity. The issue calls for the discretionary power of the Ombudsman to prosecute respondent Concepcion based on his involvement in the alleged anomaly surrounding the MOA dated November 20, 1974.

Besides, the issue in *Regala*[173] pertains to respondent Concepcion's alleged involvement as lawyer and partner of ACCRA in relation to the Complaint dated July 31, 1987 filed by the Republic against respondent Cojuangco, Jr. for the recovery of alleged ill-gotten wealth, which includes shares of stocks in the named corporations in SB Civil Case No. 0033 entitled *Republic of the Philippines v. Eduardo Cojuangco.*[174]

SB Civil Case No. 0033 alleged that respondents Concepcion and Cojuangco, Jr. and other defendants therein conspired in setting up, through the use of coconut levy funds, the financial and corporate framework and structures that led to the establishment of UCPB, UNICOM, and through insidious means and machinations, ACCRA, using its wholly-owned investment arm, ACCRA Investments Corporation, became the holder of approximately 15 million shares representing roughly 3.3% of the total capital stock of UCPB as of March 31, 1987.[175] In fine, *Regala* excluded respondent Concepcion and other ACCRA lawyers from SB Civil Case No. 0033 based on the privilege of attorney-client confidentiality, constitutional right against self-incrimination, and equal protection clause.[176]

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173 Supra note 86.
174 Id. at 687.
175 Id. at 716.
176 Id. at 721.

On the other hand, the present criminal case concerns respondent Concepcion's alleged involvement in the MOA dated November 20, 1974 which purportedly violated RA 3019. To reiterate, the duty to prosecute respondent Concepcion is within the discretionary power of Ombudsman based on its own finding of probable cause.

Speedy Disposition

Finally, respondents allege that the delay in the filing of the necessary Information before the Sandiganbayan violated their constitutional right to speedy disposition of cases.

The right to speedy disposition of cases is embodied under Sec. 16, Art. III of the Constitution, *viz.*:

> Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Furthermore, Sec. 12, Art. XI of the Constitution requires the Ombudsman to act promptly on all complaints filed before it:

> Section 12. The Ombudsman and his[/her] Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Also, Sec. 13 of RA 6770 mandates the Ombudsman to:

> Section 13. *Mandate.* — The Ombudsman and his[/her] Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

In *Cagang v. Sandiganbayan*[177] (*Cagang*), there was inordinate delay by the Sandiganbayan in the resolution and termination of preliminary investigation. The Court laid down the guidelines to resolve issues involving the right to speedy disposition of cases, to wit:

> *First*, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. **The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial**. What is important is

[177] 837 Phil. 815 (2018).

that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

***Second*, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation**. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

***Third*, courts must first determine which party carries the burden of proof.** If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove first, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and second, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove first, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; second, that the complexity of the issues and the volume of evidence made the delay inevitable; and third, that no prejudice was suffered by the accused as a result of the delay.

***Fourth*, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised**.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

***Fifth*, the right to speedy disposition of cases or the right to speedy trial must be timely raised**. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition

of cases.[178] (Emphasis supplied)

We apply *Cagang* to the case at bar. The Court finds that respondents Concepcion, Dela Cuesta, Enrile, Ursua, and Pineda's constitutional right to speedy disposition of cases was violated by the Ombudsman through the inordinate delay in concluding the preliminary investigation.

Below is a timeline of incidents from the filing of the Complaint:

February 12, 1990	Complaint filed by the Republic, through the OSG, before the PCGG against respondents Cojuangco, Jr., Enrile, Lobregat, Dela Cuesta, Eleazar, Jr., Concepcion, Ursua, Pineda, and Orosa for violation of RA 3019
December 29, 1997	GIO Manuel J. Tablada recommended the dismissal of the case, which was subsequently transferred to GIO I Pagunuran[179]
August 6, 1998	GIO I Pagunuran issued a Review and Recommendation recommending the dismissal of the Complaint on the ground of prescription of offense
August 14, 1998	Ombudsman Desierto approved GIO I Pagunuran's Review and Recommendation dated August 6, 1998
September 11, 1998	Republic, through OSG, filed its Motion for Reconsideration from the Review and Recommendation dated August 6, 1998[180]
September 25, 1998	GIO I Pagunuran denied the Republic's Motion for Reconsideration
October 9, 1998	Ombudsman Desierto approved the Order dated September 25, 1998, which denied Republic's motion for reconsideration

Based on this timeline, it is apparent that the preliminary investigation spanned for over eight years. It was only in 1997 that any movement or action on the case actually began.

Cagang emphasizes that it is important to determine who has the burden of proving delay. If the delay is beyond the time periods provided in the rules, then the burden shifts to the State, or in this case, to petitioner Republic.

Here, respondents argue that their right to speedy disposition of cases was violated by the Ombudsman. To determine whether the delay is inordinate, *Cagang* instructs the Court to examine whether the Ombudsman followed the

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178 Id. at 880-882.
179 *Rollo*, Vol. I, pp. 38, 289.
180 Id. at 42.

specified time periods for the conduct of preliminary investigation.[181] Following *Cagang*, the subsequent rulings in *Javier v. Sandiganbayan*[182] (*Javier*) and *Catamco v. Sandiganbayan*[183] (*Catamco*) emphasized that the Ombudsman rules did not specify time periods to conclude preliminary investigations.[184] Thus, the Court deemed the time periods provided in the Rules of Court to have suppletory application to proceedings before the Ombudsman.[185]

The recent case of *Lorenzo v. Hon. Sandiganbayan Sixth Division*[186] (*Lorenzo*) involves prosecution for violation of RA 3019. The case of *Lorenzo* stemmed from the alleged anomalous procurement of various quantities of fertilizer (granular urea) from the Philippine Phosphate Fertilizer Corporation for the Luzon regions in 2003 by government officials of the Department of Agriculture and National Food Authority.[187]

In *Lorenzo*, the Court elucidated on the right of speedy disposition of cases by applying *Cagang*, *Javier*, and *Catamco*.[188] Thereafter, this Court found that there was a violation of the constitutional right to speedy disposition of cases when the preliminary investigation spanned four years from the filing of the complaint to the approval of an Order denying a motion for reconsideration.[189]

We quote below the discussion in *Lorenzo* and the applicable time periods for fact-finding investigations:

> In the absence of specific time periods in the Rules of the Ombudsman, *Javier* and *Catamco* thus applied Section 3, Rule 112 of the Revised Rules of Criminal Procedure, which provides that the investigating prosecutor has 10 days after the investigation to determine whether there is sufficient ground to hold the respondent for trial. This 10-day period may appear short or unreasonable from an administrative standpoint. However, as held in *Alarilla v. Sandiganbayan* (*Alarilla*), given the Court's duty to balance the right of the State to prosecute violations of its law *vis-à-vis* the rights of citizens to speedy disposition of cases, the citizens ought not to be prejudiced by the Ombudsman's failure to provide for particular time periods in its own Rules of Procedure.
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> Soon after the promulgation of *Javier* and *Catamco*, the Ombudsman issued Administrative Order No. (A.O.) 1 series of 2020 which specified the time periods in conducting its investigations.
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> For fact-finding Investigations, A.O. 1 provides that "[u]nless otherwise provided for in a separate issuance, such as an Office Order creating a special

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181 See *Lorenzo v. Sandiganbayan (Sixth Division)*, G.R. Nos. 242506-10 and 242590-94, September 14, 2022.
182 G.R. No. 237997, June 10, 2020.
183 G.R. No. 243560-62, July 28, 2020.
184 Supra.
185 Id.
186 Supra.
187 Id.
188 Id.
189 Id.

panel of investigators and prescribing therein the period for the completion of an investigation, the period for completion of the investigation shall not exceed six (6) months for simple cases and twelve (12) months for complex cases," subject to considerations on the complexity of the case and the possibility of requesting for extension on justifiable reasons, which shall not exceed one year. Notably, the fact-finding investigation in this case arguably spanned 10 years, or from October 2003 until November 2013 when the Complaint was filed before the Ombudsman, which is clearly beyond the period provided in A.O. 1. Nevertheless, the Court is constrained to disregard this apparent delay following the prevailing doctrine in *Cagang* that the period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.[190]

We reproduce the relevant portions of Administrative Order No. (A.O.) 1, series of 2020[191] on the applicable time periods:

> **Section 7.** ***Commencement of Preliminary Investigation.*** -Without prejudice to the Procedure in Criminal Cases prescribed under Rule II of Administrative Order No. 07, as amended, **a preliminary investigation is deemed to commence whenever a verified complaint, grievance or request for assistance is assigned a case docket number** under any of the following instances:
>
> a) Upon referral by an Ombudsman case evaluator to the preliminary investigation units/offices of the Office of the Ombudsman, after determining that the verified complaint, grievance or request for assistance is sufficient in form and substance and establishes the existence of a *prima facie* case against the respondent/s; or
>
> b) At any time before the lapse of the period for the conduct of a fact-finding investigation whenever the results thereof support a finding of *prima facie* case.
>
> In all instances, the complaint, grievance or request for assistance with an assigned case docket number shall be considered as pending for purposes of issuing an Ombudsman clearance.
>
> **Section 8.** ***Period for the conduct of Preliminary Investigation.*** - Unless otherwise provided for in a separate issuance, such as an Office Order creating a special panel of investigators/prosecutors and prescribing the period for completion of the preliminary investigation, the proceedings **therein shall not exceed twelve (12) months for simple cases or twenty-four months (24) months for complex cases**, subject to the following considerations:
>
> a) The complexity of the case shall be determined on the basis of factors such as, but not limited to, the number of respondents, the number of offenses charged, the volume of documents, the geographical coverage, and the amount of public funds involved.
>
> b) Any delay incurred in the proceedings, whenever attributable to the respondent, shall suspend the running of the period for purposes of completing the preliminary investigation.

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190 Id.

191 Administrative Order No. 1 (2020), "Prescribing the Periods in the Conduct of Investigations by the Office of the Ombudsman" (August 15, 2020).

> c) The period herein prescribed may be extended by written authority of the Ombudsman, or the Overall Deputy Ombudsman/Special Prosecutor/Deputy Ombudsman concerned for justifiable reasons, which extension shall not exceed one (1) year.
>
> **Section 9.** ***Termination of Preliminary Investigation.*** – A preliminary investigation shall be deemed terminated **when the resolution of the complaint, including any motion for reconsideration filed in relation to the result thereof**, as recommended by the Ombudsman investigator/prosecutor and their immediate supervisors, **is approved by the Ombudsman** or the Overall Deputy Ombudsman/Special Prosecutor/Deputy Ombudsman concerned. (Emphasis supplied)

Applying the foregoing to the instant case, preliminary investigation commenced on February 12, 1990 when the Complaint was filed, and terminated on October 9, 1998 when the Ombudsman approved the Order dated September 25, 1998 and denied the Republic's motion for reconsideration. Thus, whether the Court applies the 10-day period in *Javier* and *Catamco*, or the more generous periods of 12 to 24 months under A.O. 1, We arrive at the same conclusion that the Ombudsman exceeded the specified period provided for preliminary investigations.[192]

Consequently, the burden of proof shifted to petitioner Republic. However, petitioner Republic failed to discharge this burden, as petitioner Republic did not establish that the delay was reasonable and justified. In particular, petitioner Republic did not prove that: (1) it followed the prescribed procedure in the conduct of preliminary investigation and the prosecution of the case; (2) the complexity of the issues and the volume of evidence made the delay inevitable; and (3) no prejudice was suffered by the accused as a result of the delay.[193]

Cagang states that Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised. The Court observes that there is no elucidation in petitioner Republic's pleadings as to what specific issue is too complex or what voluminous records are involved to justify the delay. To be sure, matters not involving complex factual or legal issues should not take long to resolve.

By way of exception, if the accused acquiesced to the delay, then the constitutional right to speedy disposition of cases cannot be invoked. As held in *People v. Sandiganbayan*,[194] citing *Cagang*,[195] the invocation of the right to speedy disposition of a case must be timely raised through an appropriate motion; otherwise, the delay would be construed as acquiesced or waived.[196]

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192 *Lorenzo v. Sandiganbayan (Sixth Division)*, supra note 181.
193 Id. Citation omitted.
194 G.R. No. 240776, November 20, 2019.
195 Supra note 177.
196 Id. at 881-882.

It is worth noting that not one of the respondents invoked their right to speedy disposition of cases before the Ombudsman during the preliminary investigation stage prior to the issuance of the assailed August 6, 1998 Review and Recommendation and the September 25, 1998 Order as approved by Ombudsman Desierto on August 14, 1998 and October 9, 1998, respectively. However, as respondents, they had no duty to expedite or follow-up the cases against them since there are determined periods for the termination of the preliminary investigation.[197] Thus, the mere inaction on the part of accused, without more, does not qualify as an intelligent waiver of their constitutionally guaranteed right to the speedy disposition of cases.[198]

In fact, the earliest opportunity for respondents to invoke their constitutional right to speedy disposition of cases was before this Court in response to the present Petition by the Republic. Among the respondents, Dela Cuesta argued that "this is the only opportune time for respondent to invoke his right"[199] because he was not served a copy of the Petition at the outset. Nonetheless, respondents' failure to invoke their constitutional right is not fatal to their cause.

Additionally, the Republic failed to show that petitioners did not suffer any prejudice because of the 8-year delay. *Cagang*, citing *Corpuz v. Sandiganbayan*,[200] explains the concept of prejudice, to wit:

> **Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his [or her] defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.** There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.[201] (Emphasis supplied)

With this case pending for over 30 years and possibly more without assurance of its resolution, the Court recognizes that the tactical disadvantages carried by the passage of time should be weighed against petitioner Republic and in favor of the respondents.[202] Certainly, if this case were remanded for further proceedings, the already long delay would drag on longer. Memories fade, documents and other exhibits can be lost and vulnerability of those who

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197 See *Perez v. Sandiganbayan*, G.R. No. 245862, November 3, 2020.
198 *Lorenzo v. Sandiganbayan (Sixth Division)*, supra note 181.
199 *Rollo*, Vol. III, p. 1256.
200 484 Phil. 899 (2004).
201 Id. at 918.
202 *Coscolluela v. Sandiganbayan*, 714 Phil. 55, 65 (2013); See also *Cojuangco, Jr. v. Sandiganbayan and the Presidential Commission on Good Government (PCGG)*, supra.

are tasked to decide increase with the passing of years.[203] In effect, there would be a general inability to mount an effective defense.

Taken in its entirety, there is a clear violation of the respondents' constitutional right to speedy disposition of cases when petitioner Republic failed to provide sufficient justification for the delay in the termination of the preliminary investigation. Consequently, a dismissal of the case is warranted.

While this Court has no doubt that the Republic had all the resources to pursue cases of corruption and ill-gotten wealth, the inordinate delay in this case may have made the situation worse for respondents.[204]

As the Supreme Court, We dutifully exercise cold impartiality while demanding accountability from the government and protecting the rights of all people.

WHEREFORE, the petition is **PARTIALLY GRANTED**. Accordingly:

1. The August 6, 1998 Review and Recommendation and the September 25, 1998 Order in OMB-0-90-2808, as approved by Ombudsman Aniano A. Desierto on August 14, 1998 and October 9, 1998, respectively, are **REVERSED** and **SET ASIDE**;

2. Due to their supervening deaths, the Complaint for violation of Republic Act No. 3019 docketed as OMB-0-90-2808 is **DISMISSED** and the case is **CLOSED** and **TERMINATED** as against respondents Eduardo M. Cojuangco, Jr., Jose R. Eleazar, Jr., Maria Clara Lobregat, and Augusto Orosa. Consequently, their criminal liabilities and civil liability *ex delicto* are extinguished by Article 89 of the Revised Penal Code. However, for civil liability based on sources other than delict, petitioner Republic of the Philippines may file a separate civil action against the respective estates of Eduardo M. Cojuangco, Jr., Jose R. Eleazar, Jr., Maria Clara Lobregat, and Augusto Orosa as may be warranted by law and procedural rules; or if already filed, the said separate civil action shall survive notwithstanding the dismissal of the criminal case in view of their deaths; and

3. Due to the violation of the constitutional right to speedy disposition of cases, the Ombudsman is hereby ordered to **DISMISS** the Complaint for violation of Republic Act No. 3019 docketed as OMB-0-90-2808 against respondents Jose C. Concepcion, Rolando Dela Cuesta, Juan Ponce Enrile, Narciso M. Pineda, and Danilo S. Ursua.

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203 *Cojuangco, Jr. v. Sandiganbayan and the Presidential Commission on Good Government (PCGG)*, supra.
204 Id.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ATTESTATION

I attest 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's Division.

RAMON PAUL L. HERNANDO
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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's Division.

ALEXANDER G. GESMUNDO
Chief Justice