

**CHIEF SUPT. ROMEO ACOP AND SENIOR SUPT. FRANCISCO G. ZUBIA,
PETITIONERS, VS. THE OFFICE OF THE OMBUDSMAN AND HON.
MANUEL B. CASACLANG, IN HIS CAPACITY AS THE DEPUTY
OMBUDSMAN FO...**

G.R. No. 120422. September 27, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

These cases, both filed under Rule 65 of the Rules of Court, were consolidated as they arose from the same factual milieu. At the oral arguments on 5 July 1995, the Court defined the common issues within which the parties agreed to limit their arguments:

- Whether it is the Office of the Ombudsman or the Office of the Special Prosecutor which has jurisdiction over the complaint in question; and
- Whether or not public respondent Deputy Ombudsman for Military Manuel Casaclang committed grave abuse of discretion when he set the case for preliminary investigation and required the petitioners to submit their counter-affidavits before any preliminary evaluation of the complaint as required by Section 2, Rule II of Administrative Order No. 07 of the Office of the Ombudsman.

The first is the kernel issue raised in G.R. No. 120422 and the petitioners therein pray that this Court re-examine the holding in *Zaldivar vs. Sandiganbayan*.^[1] Provoked during oral arguments was the corollary issue of whether the Deputy Ombudsman for the Military can conduct investigations involving civilian personnel of the Government.

The undisputed facts which gave rise to this controversy are summarized in the Consolidated Comment of the Office of the Solicitor General as follows:

On May 18, 1995, eleven (11) suspected members of the notorious robbery gang, "Kuratong Baleleng," were killed in an alleged shootout with composite teams of the National Capital Regional Command (NCRC), Traffic Management Command (TMC), Presidential Anti-Crime Commission (PACC), Central Police District Command (CPDC) and Criminal Investigation Command (CIC).

On May 22, 1995, Senior Police Officer (SPO) 2 Eduardo de los Reyes of the Central Intelligence Command (CIC) made an expose', stating that there was no shootout. De los Reyes stated that the eleven (11) suspected members of the "Kuratong Baleleng" gang were victims of summary execution. The following day, he executed a sworn statement to this effect. ...

On May 24, 1995, the Commission on Human Rights (CHR) received the separate sworn statements of Myrna Abalora, Nenita G. Alap-ap and Imelda Pancho Montero, who are relatives of the slain suspected gang members, accusing the PACC, NCRC, TMC, CIC and CPDC of murder.

On May 26, 1995, Acting Ombudsman Francisco A. Villa, in a handwritten note, directed public respondent Deputy Ombudsman Casclang to monitor the investigations being conducted by the Commission on Human Rights, the Senate Committee on Justice and Human Rights, and the Philippine National Police (PNP) Director for Investigation regarding the alleged shootout. ...

In response to the above directive, public respondent Casclang issued on the same date Office Order No. 95-17, Series of 1995, directing Ombudsman Investigator Bienvenido C. Blancaflor and Associate Graft Investigation Officers Richard U. Correos and Ricardo A. Sullano to monitor the investigations being conducted by the above-mentioned agencies. ...

On May 29, 1995, public respondent Casclang sent written requests to Senator Raul Roco, Chairman of the Senate Committee on Justice and Human Rights, and Hon. Sedfrey Ordoñez, Chairman of the Commission on Human Rights, for documents relative to the May 18, 1995, alleged shootout incident. ...

On May 30, 1995, the CHR, through Commissioner Narciso Monteiro, furnished public respondent Casclang with copies of the sworn statements of the relatives of the slain suspected "Kuratong Baleleng" gang. ...

On May 30, 1995, SPO2 Corazon de la Cruz appeared and testified before the Joint Senate Committee conducting a legislative inquiry into the May 18, 1995 incident. SPO2 De la Cruz corroborated the statements of SPO2 De los Reyes stating that no shootout had taken place and that the eleven (11) slain suspected "Kuratong Baleleng" gang members were summarily executed by the composite teams. ...

On June 1, 1995, public respondent Casclang issued Office Order No. 95-18, creating a panel of investigators with Ombudsman Investigator Bienvenido Blancaflor as head of the panel and Investigators Avelino C. Macamus, Jr. and Domingo Doctor Jr. as members. ...

On the same date, respondent P/Chief Supt. Job A. Mayo, Jr., in a letter-complaint addressed to the Ombudsman, charged petitioners and several others with murder in connection with the killing of the eleven (11) suspected "Kuratong Baleleng" gang members. He attached to his letter-complaint the Investigation Report dated May 31, 1995, signed by him in his capacity as Chairman of the Special Investigating Committee, PNP. ...

The letter-complaint was docketed at the Office of the Ombudsman as case OMB-AFP-CRIM-95-0084.

On June 2, 1995, respondent Casclang directed the Panel of Investigator[s] to terminate the investigation and submit its resolution within 60 days from receipt of his order. ...

On June 5, 1995, public respondent Casclang was furnished by the Senate Committee on Justice and Human Rights with copies of various documents, as well as transcripts of its proceedings, relative to its investigation of the May 18, 1995 incident. Respondents undertake to submit the documents and transcripts if this Honorable Court so requires as they are voluminous and reproduction and sorting thereof will take time.

On June 7, 1995, respondent Casclang issued a subpoena duces tecum/ad testificandum addressed to PNP Director General Recaredo Sarmiento, directing him or his duly authorized representative to appear before the Panel of Investigators and to submit the "After Operations Report" of the PNP relative to the operations which resulted in the May 18, 1995, incident. ...

On June 8, 1995, the Panel of Investigators submitted their Evaluation Report in OMB-AFP-CRIM-95-0084 to public respondent Casclang. The report recommended that a preliminary investigation be conducted against herein petitioners and all the participating personnel of the NCRC, PACC, CIC, TMC and CPDC listed in the After Operations Report of the PNP. ...

On June 13, 1995, respondent Mayo, in behalf of the PNP Director General, submitted to the Ombudsman the

required After Operations Report of the PNP. The report contained the list of personnel and officers involved in the May 18, 1995, operations against the "Kuratong Baleleng" gang. ...

On June 14, 1995, public respondent Casaclang issued the questioned order directing petitioner[s] and nine others to submit their counter-affidavits and controverting evidence within ten days from receipt thereof ...[2]

The petitioners did not comply with the 14 June 1995 order, neither did they move for reconsideration. Instead, the petitioners questioned the conduct of the preliminary investigation without the required preliminary evaluation in their respective petitions filed with this Court on: 19 June 1995 in G.R. No. 120422; 20 June 1995 in G.R. No. 120428; and on 3 July 1995, a supplemental petition in G.R. No. 120428.

After the oral arguments on 5 July 1995, we ordered the parties to submit their respective memoranda. The petitioners in G.R. No. 120422 complied on 17 July 1995, while the petitioners in G.R. No. 120428 and the public respondents on 19 July 1995. On 17 July 1995, we required the respondents in G.R. No. 120428 to comment on the supplemental petition filed therein.

Further developments in G.R. No. 120428 which lead to the status quo are as follows: On 26 July 1995, Acting Ombudsman Francisco Villa ordered the petitioners in G.R. No. 120428 to file their counter-affidavits to the complaint within ten days from notice. Consequently, on 27 July 1995, the petitioners filed a motion with this Court to cite Acting Ombudsman Villa in contempt of court. The petitioners contended that the 26 July 1995 order preempted this Court from ruling on the issue regarding the Ombudsman's jurisdiction to conduct a preliminary investigation on the complaint filed against the petitioners. Thus, the petitioners concluded, the order contravened Section 3 (a), (c), and (d), Rule 71 of the Rules of Court and prayed that Villa be cited in contempt and a temporary restraining order be issued to enjoin him from implementing his order.

Anent the turn of events in G.R. No. 120422, the progress of the case may be traced in this wise: On 23 June 1995, the petitioners filed a motion with respondent Casaclang to suspend the preliminary investigation against them pending resolution of the petition for certiorari filed with the Supreme Court. On 28 June 1995, respondent Casaclang granted the motion, only to be reversed by Acting Ombudsman Villa. In a memorandum dated 21 July 1995, Acting Ombudsman Villa took over "the direct supervision and control of the preliminary investigation" and subsequently issued the questioned 26 July 1995 order.

In a Manifestation and Omnibus Motion filed with this Court on 28 July 1995, the petitioners in G.R. No. 120422 challenged the take-over, asserting: First, that it violated Section 3, Rule II of Administrative Order No. 07 issued by the Ombudsman. The petitioners emphasized that the enumeration in the said Section does not include the Ombudsman himself nor the Acting Ombudsman among those authorized to conduct preliminary investigations. Second, that in so doing, Villa effectively denied the petitioners the different appellate levels within the Office of the Ombudsman. And third, that Villa's take-over and order in question prejudged the very issues pending before the Supreme Court and was, therefore, contemptuous. Hence, the petitioners in G.R. No. 120422 joined cause with the prayer of the petitioners in G.R. No. 120428.

On 31 July 1995, we required the respondents to comment on the motions for contempt, and in compliance, Acting Ombudsman Villa filed his comment on 7 August 1995. He asserted that pursuant to *Peza vs. Alikpala*,^[3] the mere pendency of a special civil action for certiorari before this Court, commenced in relation to a case pending before a lower court, does not interrupt the latter's course when no writ of injunction restraining it has been issued -- as in the present case. The public respondents filed their Comment on 15 August 1995.

I.

As to the first issue, the petitioners in G.R. No. 120422 concede that in the light of this Court's decision in Zaldivar,[4] it is the Ombudsman, and not the Office of the Special Prosecutor, which has jurisdiction to conduct the preliminary investigation on the complaint filed against them. The petitioners plead, however, for this Court re-examine the conclusion reached in Zaldivar, i.e., that under the 1987 Constitution, the Tanodbayan no longer has the authority to conduct preliminary investigations except upon order of the Ombudsman. Said conclusion, the petitioners assert, "is based on a wrong premise."

In substance, the petitioners forward two propositions in support of their plea: First, the petitioners posit that the Ombudsman's "duty to investigate on its own or on complaint of any person"[5] is separate and distinct from "the power to conduct preliminary investigations,"[6] and maintain that the latter "remains with the Tanodbayan, now the Special Prosecutor"; and second, that based on the pertinent provisions of the 1987 Constitution, it is erroneous to conclude that the Special Prosecutor is a subordinate of or may be subsumed by the Ombudsman under the Constitution.[7]

As to the first proposition, the petitioners refer to the Record of the Constitutional Commission of 1986 (hereinafter Commission) on the debates relative to the powers of the Ombudsman proposed by the Committee on Accountability of Public Officers. The petitioners extensively quote the admissions of Commissioners Christian S. Monsod and Jose S. Colayco (Chairman and Vice-Chairman, respectively, of the Committee) during the interpellations to the effect that it was the intention of the Committee not to grant to the proposed Ombudsman prosecutorial powers which would, instead, be left to the proposed Office of the Special Prosecutor. Thus:

MR. MONSOD: (sponsorship speech)

x x x x x x x x

With respect to the Sandiganbayan and the Tanodbayan, the Committee decided to make a distinction between the purely prosecutory function of the Tanodbayan and the function of a pure Ombudsman who will use the prestige and persuasive powers of his office. To call the attention of government officials to any impropriety, misconduct or injustice, we conceive the Ombudsman as a champion of the citizens... The concept of the Ombudsman here is admittedly a little bit different from the 1973 concept...[8]

x x x x x x x x

MR. RODRIGO:

I noticed that the proposed provisions of the Ombudsman retain the Tanodbayan, and there seems to be an overlapping in the functions of the Tanodbayan and the Ombudsman. What is the clear-cut dividing line between the functions of the Ombudsman and the Tanodbayan, so that our people will know when to go to the Tanodbayan and when to go to the Ombudsman?

MR. MONSOD:

Madam President, essentially, the difference lies in one being a prosecutory arm and the other a champion of the citizen who is not bound by legal technicalities of legal forms, but I would like to ask Commissioner Nollado to explain this in detail.[9]

MR. RODRIGO:

So, the Ombudsman does not have a prosecutory function nor punitive powers.

MR. COLAYCO:

None.

MR. RODRIGO:

All that he relies upon is his persuasive power.

MR. COLAYCO:

Yes. Persuasive power plus the ability to require that the proper legal steps be taken to compel the officer to comply.

MR. RODRIGO:

Yes, but what is meant by "required" is that the Ombudsman cannot compel.[10]

Then Commissioner, now a highly respected Member of the Court, Florenz D. Regalado, also remarked:

MR. REGALADO:

In connection also with that concern of Commissioner Rodrigo regarding the Ombudsman being merely a duplication, I have here the records of the former Ombudsman to show that one of the reasons he could not function in his administrative or recommendatory capacity was the number of cases for prosecution which took almost all his time. So I believe that there should really be an Ombudsman to take care of the recommendatory, policy-determining, policy-suggesting or administrative aspect of his position. The whole task of prosecution should be left to a regular Tanodbayan.[11]

The petitioners hardly persuade us on this matter. While the intention to withhold prosecutorial powers from the Ombudsman was indeed present,[12] the Commission did not hesitate to recommend that the Legislature could, through statute, prescribe such other powers, functions, and duties to the Ombudsman. Paragraph 6, Section 12 of the original draft of the proposed Article on Accountability of Public Officers, which the Committee recommended for incorporation in the Constitution, reads:

SEC. 12. The Office of the Ombudsman shall have the following powers, functions and duties:

x x x x x x x x

(6) To exercise such powers and perform such functions or duties as may be provided by law.[13]

As finally approved by the Commission after several amendments, this is now embodied in paragraph 8, Section 13, Article XI (Accountability of Public Officers) of the Constitution, which provides:

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

x x x x x x x x

(8) Promulgate its rules of procedure and exercise such other functions or duties as may be provided by law.
(Italics supplied)

Expounding on this power of Congress to prescribe other powers, functions, and duties to the Ombudsman, we quote Commissioners Colayco and Monsod during interpellation by Commissioner Rodrigo:

MR. RODRIGO:

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

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

The powers of the Ombudsman are enumerated in Section 12.

MR. COLAYCO:

They are not exclusive.

MR. RODRIGO:

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

MR. COLAYCO:

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

MR. RODRIGO:

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

MR. COLAYCO:

Yes.

MR. MONSOD:

Yes.

MR. RODRIGO:

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

MR. COLAYCO:

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

MR. RODRIGO:

Law.

MR. COLAYCO:

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

MR. RODRIGO:

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

MR. COLAYCO:

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

MR. RODRIGO:

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

MR. COLAYCO:

That is correct.

MR. RODRIGO:

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

MR. COLAYCO:

Madam President, that is correct.

MR. MONSOD:

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

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

MR. RODRIGO:

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

MR. MONSOD:

I agree with the Commissioner.

MR. RODRIGO:

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

MR. MONSOD:

Yes, because we want to avoid what happened in 1973. I read the committee report which recommended the approval of the 27 resolutions for the creation of the office of the Ombudsman, but notwithstanding the explicit purpose enunciated in that report, the implementing law — the last one, P.D. No. 1630 — did not follow the main thrust; instead it created the Tanodbayan.[14] (emphasis supplied)

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MR. MONSOD (reacting to statements of Commissioner Blas Ople):

May we just state that perhaps the honorable Commissioner has looked at it in too much of an absolutist position. The Ombudsman is seen as a civil advocate or a champion of the citizens against the bureaucracy, not against the President. On one hand, we are told he has no teeth and he lacks other things. On the other hand, there is the interpretation that he is a competitor to the President, as if he is being brought up to the same level as the President.

With respect to the argument that he is a toothless animal, we would like to say that we are promoting the concept in its form at the present, but we are also saying that he can exercise such powers and functions as may be provided by law in accordance with the direction of the thinking of Commissioner Rodrigo. We do not think that at this time we should prescribe this, but we leave it up to Congress at some future time if it feels that it may need to designate what powers the Ombudsman need in order that he be more effective. This is not foreclosed.

So, this is a reversible disability, unlike that of a eunuch; it is not an irreversible disability.[15] (*italics supplied*)

In view of the foregoing, it is evident that the petitioners have not borne out any distinction between "the duty to investigate" and "the power to conduct preliminary investigations"; neither have the petitioners established that the latter remains with the Tanodbayan, now the Special Prosecutor. Thus, this Court can only reject the petitioners' first proposition.

At bottom, the second proposition raised by the petitioners in G.R. No. 120422 is that the Office of the Special Prosecutor is not a subordinate agency to the Ombudsman and is, in fact, separate and distinct from the Ombudsman. The petitioners call this Court's attention to the fact that, on one hand, the former is not at all mentioned in Section 5, Article XI of the Constitution, while Sections 6, 8, 9, 10, 11, and 12 thereof only speak of the Ombudsman and his deputies (with the composition of the Office of the Ombudsman enumerated in Section 5). On the other hand, the petitioners note, Section 7 recognizes the continued existence of the Tanodbayan, thereafter known as the Office of the Special Prosecutor. Thus, the petitioners deduce that Section 7 does not imply that the Office of the Special Prosecutor is absorbed by nor subsumed under the Office of the Ombudsman.[16]

By way of elaboration, the petitioners contend further that the intent of the framers of the 1987 Constitution was to place the Office of the Special Prosecutor under the Office of the President, as shown by the following excerpts of the proceedings of the Commission:

THE PRESIDENT:

May the Chair inquire from the Chairman of the Committee what office would have administrative supervision now over the Tanodbayan? Is there any office that would have administrative supervision over the Tanodbayan, as described in Section 5?

MR. ROMULO:

Madam President, as the decree now reads, no one has jurisdiction over the Tanodbayan. He may be removed by the President for a cause.

THE PRESIDENT:

So he is directly under the Office of the President?

MR. ROMULO:

Yes, because it is the President who may remove him for a cause. In effect, he comes under the Office of the President.[17]

For these reasons, the petitioners conclude that the inclusion of the Office of the Special Prosecutor as among the offices under the Office of the Ombudsman in Section 3[18] of R.A. No. 6770 ("An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman and for Other Purposes") is unconstitutional and void.

The contention is not impressed with merit. Firstly, the petitioners misconstrue Commissioner Romulo's statement as authority to advocate that the intent of the framers of the 1987 Constitution was to place the Office of the Special Prosecutor under the Office of the President. The said statement obviously referred to the Tanodbayan under P.D. No. 1630 -- note how specific the erstwhile Commissioner was in stating: "... as the decree now reads" Further, in complete contrast to the petitioners' stand, one of the principal reasons for the proposal to withhold prosecutorial powers from the Ombudsman was precisely to remove the office from presidential control. This was explained by then Commissioner Florenz D. Regalado as follows:

MR. REGALADO:

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

X X X X X X X X

It is said here that the Tanodbayan or the Ombudsman would be a toothless or a paper tiger. That is not necessarily so. If he is toothless, then let us give him a little more teeth by making him independent of the Office of the President because it is now a constitutional creation, so that the insidious tentacles of politics, as has always been our problem, even with PARGO, PCAPE and so forth, will not deprive him of the opportunity to render service to Juan de la Cruz....[19] (*italics supplied*)

In the second place, Section 7 of Article XI expressly provides that the then existing Tanodbayan, to be henceforth known as the Office of the Special Prosecutor, "shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution." The underscored phrase evidently refers to the Tanodbayan's powers under P.D. No. 1630 or subsequent amendatory legislation. It follows then that Congress may remove any of the Tanodbayan's/Special Prosecutor's powers under P.D. No. 1630 or grant it other powers, except those powers conferred by the Constitution on the Office of the Ombudsman.

Pursuing the present line of reasoning, when one considers that by express mandate of paragraph 8, Section 13, Article XI of the Constitution, the Ombudsman may "exercise such other powers or perform functions or duties as may be provided by law," it is indubitable then that Congress has the power to place the Office of the Special Prosecutor under the Office of the Ombudsman. In the same vein, Congress may remove some of the powers granted to the Tanodbayan by P.D. No. 1630 and transfer them to the Ombudsman; or grant the Office of the Special Prosecutor such other powers and functions and duties as Congress may deem fit and wise. This Congress did through the passage of R.A. No. 6770.

Through the said law, the Office of the Special Prosecutor was made an organic component of the Office of the

Ombudsman,[20] while the Ombudsman was granted the following powers,[21] among others:

(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 its primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

x x x x x x x x

(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.

Likewise, R.A. No. 6770 authorized the Office of the Special Prosecutor, under the supervision and control and upon the authority of the Ombudsman, to:

(a)

[C]onduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;

(b)

[E]nter into plea bargaining agreements; and

(c)

[P]erform such other duties assigned to it by the Ombudsman.[22] (*Italics supplied*)

In fine, this Court holds that the plea to re-examine *Zaldivar vs. Sandiganbayan* is bereft of merit and deserves no further consideration.

II.

Before we enter into a discussion of the second principal issue raised in these cases, the corollary issue of whether respondent Casaclang as Deputy Ombudsman for Military Affairs has the authority to conduct a preliminary investigation involving civilian personnel of the Government must first be resolved.

In view of Section 6, Article XVI of the Constitution[23] and the law implementing it, R.A. No. 6975,[24] the petitioners, who are officers of the Philippine National Police (PNP), are civilian personnel of the Government.[25] It is thus suggested that the Deputy Ombudsman for Military Affairs does not have jurisdiction over them, for by the description of his office, his authority is or must be confined to the military. At first blush, the suggestion seems logical.

The proposal to have a separate Deputy Ombudsman for the military establishment came by way of an amendment by Commissioner Blas Ople. This was introduced during the period of individual amendments at the time the Commission deliberated on the proposed Article on Accountability of Public Officers. Commissioner Ople's original idea was to authorize the Ombudsman to designate the said deputy; however, the amendment to the amendment introduced by this writer, who was then a member of the Commission, was to authorize the President to appoint the said deputy. Thus:

MR. OPLE:

With the indulgence of Commissioner Rodrigo and of the Committee, may I proceed to read the amendment which is to add a last sentence to Section 11, line 21: THE OMBUDSMAN MAY DESIGNATE A SEPARATE DEPUTY FOR THE MILITARY ESTABLISHMENT, so that the entire Section 11 will now read as follows: "The Ombudsman and his Deputies, as champions of the people, shall act promptly on the complaints filed, in any form or manner, against public officials or employees of the government, including government-owned corporations, agencies or instrumentalities, and shall notify the complainants of the action taken and the results thereof. THE OMBUDSMAN MAY DESIGNATE A SEPARATE DEPUTY FOR THE MILITARY ESTABLISHMENT."

May I state a brief reason for this amendment, Madam President.

THE PRESIDENT:

The Commissioner has five minutes to explain his proposed amendment.

MR. OPLE:

Thank you.

The original Ombudsman was created in Sweden in 1810 and has survived practically unchanged for over 170 years. The military Ombudsman appeared for the first time in history in Norway in 1952 and in West Germany in 1956. In Norway, the military Ombudsman, known as ombudsmannen for forsvaret, was superimposed on an existing structure of enlisted spokesmen chosen by each unit of the Norwegian Armed Forces.

In our own Philippine Armed Forces, there has arisen in recent years a type of fraternal association outside the chain of command proposing reformist objectives. They constitute, in fact, an informal grievance machinery against injustices to the rank and file soldiery and perceive graft in higher rank[s] and neglect of the needs of troops in combat zones. The Reform the Armed Forces Movement or RAM has kept precincts for pushing logistics to the field, the implied accusation being that most of the resources are used up in Manila instead of sent to soldiers in the field. The Guardians, the El Diablo and other organizations dominated by enlisted men function, more or less, as grievance collectors and as mutual aid societies.

This proposed amendment merely seeks to extend the office of the Ombudsman to the military establishment, just as it champions the common people against bureaucratic indifference. The Ombudsman can designate a deputy to help the ordinary foot soldier get through with his grievance to higher authorities. This deputy will, of course, work in close cooperation with the Minister of National Defense and the Armed Forces of the Philippines' Chief of Staff because of the necessity to maintain the integrity of the chain of command. Ordinary soldiers, when they know they can turn to a military Ombudsman for their complaints, may not have to fall back on their own informal devices to obtain redress for their grievances. The Ombudsman will help raise troop morale in accordance with a major professed goal of the President and the military authorities themselves. I seek the Committee's kind concurrence to this proposal.

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THE PRESIDENT:

Commissioner Davide is recognized.

MR. DAVIDE:

I would have no objection to the proposed amendment, but it should not be on Section 11. It should be placed on Section 6 because if we put it here, the appointing authority will no longer be the President but the Ombudsman, and that is not, I think, the philosophy of the provision.

So it should also be covered by the manner by which an appointment may be extended to it. So I would

propose that it be transferred principally to Section 6.

MR. OPLE:

The Committee has no jurisdiction; personally, I have no objection, Madam President.

MR. DAVIDE:

But I would propose that the wording would be: A SEPARATE DEPUTY FOR THE MILITARY ESTABLISHMENT MAY BE APPOINTED, after "Mindanao" on Section 6, line 16, page 3.

MR. OPLE:

I accept the amendment, Madam President.

THE PRESIDENT:

Commissioner Ople has accepted the amendment. How about the Committee?

MR. MONSOD:

We accept, Madam President.

x x x x x x x x

THE PRESIDENT:

May we have the amendment now as phrased by the Committee.

MR. MONSOD:

May we ask Commissioner Davide to restate the amendment, as amended.

THE PRESIDENT:

Commissioner Davide is recognized.

MR. DAVIDE:

Madam President, on line 16, page 3, add a new sentence after the period (.) following "Mindanao" to read as follows: A SEPARATE DEPUTY FOR THE MILITARY ESTABLISHMENT MAY LIKEWISE BE APPOINTED.

VOTING

THE PRESIDENT:

Those in favor of this particular amendment, as amended, please raise their hand. (Several Members raised their hand.)

x x x x x x x x

The results show 22 votes in favor and 11 against; the proposed amendment, jointly submitted by Commissioners Ople and Davide and accepted by the Committee, is approved.[26]

The approved amendment is now found in Section 5, Article XI of the Constitution, which reads:

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

The deliberations on the Deputy for the military establishment do not yield conclusive evidence that such deputy is prohibited from performing other functions or duties affecting non-military personnel. On the contrary, a review of the relevant Constitutional provisions reveals otherwise.

As previously established, the Ombudsman "may exercise such other powers or perform such functions or duties"[27] as Congress may prescribe through legislation. Therefore, nothing can prevent Congress from giving the Ombudsman supervision and control over the Ombudsman's deputies, one being the deputy for the military establishment.[28] In this light, Section 11 of R.A. No. 6770 provides:

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

While Section 31 thereof declares:

SEC. 31. Designation of Investigators and Prosecutors. — The Ombudsman may utilize the personnel of his office and/or designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him herein provided shall be under his supervision and control.

Accordingly, the Ombudsman may refer cases involving non-military personnel for investigation by the Deputy for Military Affairs. In these cases at bench, therefore, no irregularity attended the referral by the Acting Ombudsman of the Kuratong Baleleng case to respondent Casaclang who, in turn, created a panel of investigators.

III.

We will now address the second principal issue.

We do not share the petitioners' view that respondent Casaclang set the case for preliminary investigation and required the petitioners to file their counter-affidavits without the conduct of a preliminary evaluation of the complaint as required by the Rules of the Office of the Ombudsman. In the case before us, no evidence to that effect was adduced. On the contrary, as shown by the summary of antecedent facts earlier quoted, the Panel of Investigators submitted its evaluation report on 8 June 1995, and it was only on 14 June 1995 that respondent Casaclang issued the questioned order. Section 2, Rule II of Administrative Order No. 07 of the Office of the Ombudsman (Rules of Procedure of the Office of the Ombudsman), on the process and nature of the evaluation required, reads as follows:

SEC. 2. Evaluation. — Upon evaluating the complaint, the investigating officer shall recommend whether it may be

- (a) dismissed outright for want of palpable merit;
- (b) referred to respondent for comment;
- (c) indorsed to the proper government office or agency which has jurisdiction over the case;
- (d) forward to the appropriate office or official for fact-finding investigation;
- (e) referred for administrative adjudication; or
- (f) subjected to a preliminary investigation.

It cannot be denied that the evaluation required is merely preliminary in nature and scope, not a detailed inquiry.

Likewise, the conduct of such evaluation involves the exercise of discretion which has not been shown to be abused in the instant case.

IN VIEW OF THE FOREGOING, these two petitions and the motion to cite Acting Ombudsman Francisco Villa in contempt of court are DENIED for want of merit. This decision is immediately executory.

Costs against the petitioners.

SO ORDERED.

Padilla, (Chairman), Bellosillo, and Kapunan, JJ., concur.
Hermosisima, Jr., J., on official leave.

[1] 160 SCRA 843 [1988].

[2] Rollo, 265-271.

[3] 160 SCRA 31 [1988].

[4] Supra note 1.

[5] Paragraph 1, Section 13, Article XI, 1987 Constitution.

[6] Sections 10(e) and 17, P.D. No. 1630.

[7] Rollo, 402-403.

[8] Record of the Constitutional Commission, vol. 2, 265 (hereinafter 2 Record).

[9] Id., 268.

[10] 2 Record, 270.

[11] Id., 274. See also, 295-297 for a longer disquisition on his thesis.

[12] Id., 266, 268, 284, 295, and 317, wherein the Commission originally envisioned the adoption of the traditional Ombudsman as known in Europe.

[13] 2 Record, 264.

[14] 2 Record, 270-271.

[15] Id., 295.

[16] Rollo, 17-18.

[17] 2 Record, 336.

[18] It provides:

SEC. 3. Office of the Ombudsman.— The Office of the Ombudsman shall include the Office of the overall Deputy, the Office of the Deputy for Luzon, the Office of the Deputy for Visayas, the Office of the Deputy for Mindanao, the Office of the Deputy for the Armed Forces, and the Office of the Special Prosecutor. The President may appoint the Deputies as the necessity for it may arise, as recommended by the Ombudsman.

[19] 2 Record, 295-296.

[20] Section 3.

[21] Section 15.

[22] Section 11(4).

[23] The provision reads, in part:

SEC. 6. The State shall establish and maintain one police force, which shall be national in scope and civilian in character ... (*Italics supplied*)

[24] Entitled, "An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government and For Other Purposes," otherwise known as the Department of the Interior and Local Government Act of 1990.

[25] See *Republic vs. Asuncion*, 231 SCRA 211 [1994].

[26] 2 Record, 317-320.

[27] Paragraph 8, Section 13, Article XI, 1987 Constitution.

[28] Section 5, *Id.*, *Id.*

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