

OLIVIA B. CAMANAG, PETITIONER, VS. THE HONORABLE JESUS F. GUERRERO IN HIS OFFICIAL CAPACITY AS CITY PROSECUTOR OF MANILA, NESTOR GONZALES, IN HIS OFFICIAL CAPACITY AS ASSISTANT ...

G.R. No. 121017. February 17, 1997

Ponente: HERMOSISIMA, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-121017/>

HERMOSISIMA, JR., J.:

This case asks for and includes: (1) a Petition for Declaratory Relief under Rule 64 of the Revised Rules of Court which seeks the declaration of nullity of Sections 15 and 17 of the Ombudsman Act (R.A. No. 6770), insofar as it empowers the Ombudsman to conduct preliminary investigations and to directly undertake criminal prosecutions; (2) a Petition for Certiorari to declare as null and void, for allegedly having been rendered with grave abuse of discretion, the Resolution dated June 21, 1995 rendered in I.S. No. 95-D-12930 by respondent Assistant City Prosecutor Nestor D. Gonzales and approved by respondent City Prosecutor Jesus F. Guerrero; (3) a Petition for Mandamus to compel respondents City Prosecutor and Assistant City Prosecutor to conduct a preliminary investigation on the complaint for Falsification of Public Documents filed against petitioner; and (4) a Petition for Prohibition to enjoin respondent judge of the City of Manila from further proceeding with the cases stemming from the information charging petitioner with three (3) counts of falsification lodged with the trial court and to order the dismissal thereof.

The facts, as summarized in the Comment of the Office of the Solicitor General, are as follows:

"On August 2, 1993, the Professional Regulations Commission (PRC) issued the Table of Results of those who failed the May, 1993 Certified Public Accountant (CPA) Licensure Examinations. On Page 11 thereof, Sequence No. 493, petitioner Olivia B. Camanag was listed as having failed with a general average of 50.00% (Annex "1").

However, on December 15, 1993, petitioner in accomplishing her Personal Data sheet (CSC form No. 212) as employee of the Bureau of Internal Revenue (BIR) indicated under question No. 18 that she passed the May, 1993 Board Examinations with a rating of 75.42% (Annex "2").

On July 4, 1994, an anonymous letter was sent to PRC Chairman Hermogenes P. Pobre 'claiming that certain BIR employees allegedly passed the CPA Licensure Exams under anomalous circumstances' (Annex "3").

Still, on July 28, 1994, petitioner claimed to have received what was purportedly a 'Certified True Copy' of her passing rating sheet, allegedly signed by PRC Acting Assistant Chief Leandro O. Ordenes (Mr. Leandro O. Ordenes is actually the Records Officer of the PRC) (Pet., Annex "C").

On August 24, 1994, PRC Chairman Pobre wrote Ombudsman Conrado Vasquez that BIR employees Marilyn Lee, Connie Dimapilis, Eilene Purification, Elenita Villamor, Lodiminda Crizaldo, petitioner Olivia Camanag and Maria Rosario de los Reyes, did not actually pass the CPA licensure examinations (Annex "3").

On October 5, 1994, Associate Ombudsman Investigator (AOI) Joaquin S. Bumanlag set the fact-finding investigation of the matter on October 11, 1994 at 10:00 a.m. He also issued a Subpoena Duces Tecum to the Chief of the BIR Personnel Division (Annex "4").

On December 1, 1994, AOI Bumanglag concluded his fact-finding investigation with a Report finding probable cause against petitioner for violation of Article 171(4) of the Revised Penal Code. AOI Bumanglag recommended a preliminary investigation (Annex "5") to be conducted on the case, and at the same time, he executed under oath the corresponding affidavit-complaint against petitioner (Annex "6").

On December 19, 1994, Ombudsman Investigator (OI) Rainier C. Almazan, acting on the said affidavit-complaint, directed petitioner to submit her counter-affidavit (Annex "7").

On January 13, 1995, petitioner submitted her counter-affidavit with annexes alleging that she passed the CPA licensure examinations with a grade of 75.42% (Annex "8").

On January 31, 1995, PRC Records Section Chief Leandro O. Ordenes, issued a Certification, stating that petitioner failed in the CPA licensure examinations (Annex "9").

On February 27, 1995, OI Almazan issued a Resolution, finding ' . . . sufficient ground to engender a well-founded belief that the crimes of falsification of public documents . . . have been committed . . .' (Petition, Annex "F").

Under a 1st Indorsement of even date, Deputy Ombudsman for the Armed Forces of the Philippines (AFP) Manuel B. Casaclang deputized respondent City Prosecutor of Manila Jesus Guerrero to file the corresponding charges against petitioner and to handle the prosecution of the cases (Annex "10").

On April 11, 1995, the Office of the City Prosecutor of Manila docketed the case as IS No. 95-D-12930 and herein respondent Nestor Gonzales, Assistant City Prosecutor of Manila, set it for another round of preliminary investigation on May 5 and 12, 1995 (Annex "11").

While the preliminary investigation was ongoing before the City Prosecutor, petitioner filed a motion to reset preliminary investigation (Annexes "11-A" and "12"), Motion to Issue Subpoena and Subpoena Duces Tecum to Leandro Ordenes [OIC, Records Section] and Ernesto Jaurique [Exec. Director] (Petition, Annex "G"); and a Comment/Manifestation stating, among others, that 'another round of preliminary investigation should be conducted by the City Prosecutor.' Why petitioner should demand another round of preliminary investigation while one was already on-going is not clear on record.

At any rate, the preliminary investigation conducted by the City Prosecutor yielded additional evidence of falsification against petitioner, to wit: Ordenes' Certification (Annex "9"), and the Table of Results-Failed, CPA Licensure Exams (Annex "1"), both submitted by the PRC showing that petitioner did flunk the CPA Licensure Exam of May, 1993.

On June 21, 1995, respondent City Prosecutor issued the questioned Resolution, 'x x x finding sufficient ground to hold petitioner for trial' and ordering the filing of the Information in court (Pet., Annex "I").

On July 17, 1995, three (3) Informations for falsification of public documents were filed against petitioner docketed as Criminal Cases No. 95-143922-24. The cases were raffled off to the sala of respondent Judge Marino M. dela Cruz, Regional Trial Court, Branch 22, Manila (Annex "13-A" - "13-C").

On July 25, 1995, petitioner filed a Motion to Reduce Bail Bond (Annex "14").

But even before respondent judge could act on his motion to reduce bail bond, petitioner filed the instant petition.

Thereafter, petitioner posted her cash bond with 'Waiver' viz:

"Pursuant to Letter of Instructions No. 40 dated November 10, 1972, issued by the President of the Philippines, following annotation is hereby incorporated in the CASH BOND posted for the account in the above-entitled cases.

The herein accused hereby agreed that in case she jumps bail or fails to appear for trial/arraignment despite due notice to her counsel, her right to be present is deemed waived, which failure shall to all intents and purposes authorize the Court to proceed with the hearing as if she were personally present."^[1]

The issues raised in the instant case are the following:

I

"WHETHER OR NOT SECTIONS 15 AND 17 OF REPUBLIC ACT 6770 WHICH EMPOWERS (SIC) THE OMBUDSMAN TO CONDUCT PRELIMINARY INVESTIGATIONS OF MATTERS AND/OR REFERRED TO IT IS (SIC) NULL AND VOID FOR BEING CONTRARY TO AND VIOLATIVE OF THE PROVISIONS OF THE CONSTITUTION.

II

"WHETHER OR NOT UNDER THE CIRCUMSTANCES OBTAINING IN THE INSTANT CASE, THE HONORABLE PUBLIC RESPONDENTS CITY PROSECUTOR AND ASSISTANT CITY PROSECUTOR ARE DUTY BOUND AS SUCH TO BE DIRECTED TO CONDUCT THE REQUISITE PRELIMINARY INVESTIGATION OF THE ANONYMOUS COMPLAINT FILED AGAINST HEREIN PETITIONER.

III

WHETHER OR NOT THE INFORMATIONS FILED BEFORE THE SALA OF THE HONORABLE RESPONDENT JUDGE WITHOUT THE BENEFIT OF A PRELIMINARY INVESTIGATION CONDUCTED BY RESPONDENT CITY PROSECUTOR ARE CHARACTERIZED BY SUCH FATAL DEFECTS AS TO WARRANT A WRIT OF PROHIBITION TO ENJOIN RESPONDENT JUDGE FROM TAKING ANY FURTHER ACTION THEREON EXCEPT TO ORDER THE OUTRIGHT DISMISSAL THEREOF."

I

As to the first issue, petitioner assails as unconstitutional Sections 15 and 17 of the Ombudsman Act (R.A. No. 6770) insofar as it empowers the Office of the Ombudsman to conduct preliminary investigation and to directly undertake criminal prosecutions on three grounds: (1) such grant of powers to the Office of the Ombudsman has no constitutional basis and runs directly counter to the intent of the framers of the Constitution; (2) it violates the principle of separation of powers; and (3) it is in direct contravention of Article XI, Section 7 of the Constitution.

The assailed provisions of the Ombudsman Act read:

"SEC. 15. Powers, functions and duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

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

xxx xxx xxx

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects 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 of 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 ground for disciplinary action against said officer."

xxx xxx xxx

"SEC. 17. Immunities. — In all hearings, inquiries, and proceedings of the Ombudsman, including preliminary investigations of offenses, no person subpoenaed to testify as a witness shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and/or other records on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to prosecution: Provided, That no person shall be prosecuted criminally for or on account of any matter concerning which he is compelled, after having claimed the privilege against self-incrimination, to testify and produce evidence, documentary or otherwise.

Under such terms and conditions as it may determine, taking into account the pertinent provisions of the Rules of Court, the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceedings being conducted by the Ombudsman or under its authority, in the performance of or in the furtherance of its constitutional functions and statutory objectives. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion or removal from office.

Any refusal to appear or testify pursuant to the foregoing provisions shall be subject to punishment for contempt and removal of the immunity from criminal prosecution."

The Ombudsman Act, petitioner concedes, clearly empowers the Office of the Ombudsman to conduct preliminary investigation and to prosecute individuals on matters and/or complaints referred to it or filed before the said government agency. But, the vesting of powers to the Office of the Ombudsman to conduct preliminary investigations and to directly undertake criminal prosecutions, petitioner argues, is totally bereft of any constitutional basis. In support of this stand, petitioner cites that, under the 1987 Philippine Constitution, specifically in Section 13, Article XI, entitled "Accountability of Public Officers," the only powers of the present day Ombudsman are enumerated as follows:

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

- (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
- (2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct, any abuse or impropriety in the performance of duties.
- (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
- (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office

involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in government and make recommendation for their elimination and the observance of high standards of ethics and efficiency.

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

From the above-quoted provision of the 1987 Philippine Constitution, petitioner claims that the powers of the Ombudsman are clearly defined or delineated. More particularly, petitioner alleges that the extent of the power of the Ombudsman, insofar as criminal prosecutions are concerned, is clearly spelled out in paragraphs (1) and (3) as emphasized. But while, petitioner alleges, Section 13, paragraph (1) of the aforementioned Article XI of the Constitution duly empowers the Ombudsman to conduct investigations, the power to directly undertake criminal prosecutions has been clearly withheld by the framers of the Constitution from the Ombudsman in no uncertain terms under paragraph (3) of the aforementioned article, which merely empowers the Office of the Ombudsman "to direct the officer concerned to take appropriate action and recommend prosecution". Thus, according to petitioner, while it is clear that the Office of the Ombudsman has no power to directly undertake criminal prosecutions, there is a question as to whether the power lodged in it to investigate under paragraph (1) is tantamount to a grant of power to conduct preliminary investigations.

Petitioner submits that consonant to the withholding of the power to directly undertake criminal proceedings, the Ombudsman does not possess the power to conduct formal preliminary investigation proceedings for the simple reason that formal preliminary investigation proceedings constitute an integral part of the process of criminal prosecutions. This is so, according to petitioner, inasmuch as the term prosecution is defined by Black's Law Dictionary as:

"x x x (a) criminal action: a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime x x x"[2]

More precisely, petitioner continues, "to prosecute" has been defined as "to begin and to carry on a legal proceeding,"[3] and "it marks the commencement of a criminal prosecution and precedes and determines the filing of an information."[4]

Additionally, petitioner asserts that the unqualified grant of prosecutorial powers to the Ombudsman runs directly against the intent of the framers of the Constitution, particularly, to lodge prosecutorial powers in other governmental officers, i.e., the public prosecutors. In further support of this argument, petitioner relies heavily on the records of the proceedings of the Constitutional Commission of 1986, particularly, on the debates and interpellations of the Committee on Accountable Officers which drafted Section 13, Article XI of the 1987 Philippine Constitution.

Indeed, the proceedings so indicate:

"MR.. RODRIGO: Madam President.

The President: Commissioner (Francisco A.) Rodrigo is recognized.

MR. RODRIGO: I noticed that the proposed provisions on 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 or legal forms, but I would like to ask Commissioner Nolleto to explain this in detail.

MR. NOLLEDO: If we go over the provision of P.D. No. 1607, which amended P.D. No. 1487, creating the Office of the Tanodbayan, also called by Mr. Marcos as Ombudsman, there are two parts in the functions of the Tanodbayan: First, to act as prosecutor of anti-graft cases, and to entertain complaints from the public. The second part constitutes the basic function of the Ombudsman. And if we turn to page 3 of the report of the Committee, Section 5 provides and I quote:

'The Tanodbayan created pursuant to the mandate of Section 6 of Article XIII of the Constitution 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.'

This means that we are removing the second part of the functions of the Tanodbayan and vesting the same in the office of the Ombudsman; and therefore, the Tanodbayan shall continue to discharge his functions under the first part merely as prosecutor, like a fiscal, of anti-graft cases, which are filed with the Anti-Graft Court.

MR. RODRIGO: So, the Ombudsman cannot prosecute?

MR. NOLLEDO: No, he cannot. He can refer the cases that should be prosecuted to the appropriate official — he may be the Tanodbayan or he may be the ordinary fiscal.

MR. RODRIGO: Has the Ombudsman any power to compel the prosecuting arm to prosecute or can he only recommend?

MR. NOLLEDO: He can direct.

MR. RODRIGO: Can he command?

MR. NOLLEDO: That is equivalent to commanding the fiscal if the fiscal refuses to file the case. And then in that case, if the fiscal refuses, then there are available remedies. He may appeal to the Ministry of Justice.

MR. RODRIGO: Can the Ombudsman act on his own?

MR. NOLLEDO: Yes, even without a complaint.

MR. RODRIGO: If the fiscal refuses to file the information, can the Ombudsman file the information?

MR. NOLLEDO: No. I understand he will appeal to the Minister of Justice and the Ministry of Justice will correspondingly decide on the appeal. If the Ministry of Justice, for example, upholds the Ombudsman, there is no question about that. But if the Ministry of Justice does not uphold him, the Ombudsman perhaps, based on the presidential form of government, may appeal to the President. And the President, where the Ministry of Justice is merely his alter ego, may overrule the Minister of Justice xxx."[5]

In view of the above-quoted records of the proceedings of the Constitutional Commission, it is clear, petitioner argues, that the power of the Ombudsman is limited to the mere issuance of the directives to the appropriate officer, i.e., the Prosecutor, to cause the filing of the information and the prosecution thereof. This allegedly clearly portrays the intent of the Constitutional Commission members to withhold prosecutorial powers from the Ombudsman and to lodge it with other governmental officers.

Anent the second ground, petitioner argues that the unqualified grant of prosecutorial powers to the Office of the

Ombudsman violates the principle of separation of powers enshrined in the Constitution. This, inasmuch as, according to petitioner, the Office of the Ombudsman is a constitutional body, and is a part neither of the legislative, executive nor judiciary branches. As such, petitioner claims, in the absence of an express constitutional provision to the contrary, it is not empowered to conduct preliminary investigations, as these pertain exclusively to the executive branch.

Anent the third ground, which petitioner claims as perhaps the strongest argument against the constitutionality of R.A. No. 6770, petitioner argues that the unqualified grant of prosecutorial powers on the Office of the Ombudsman is in direct contravention of Article XI, Section 7 of the 1987 Philippine Constitution. Article XI, Section 7 of the 1987 Philippine Constitution reads:

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

In support of this argument, petitioner claims that in the interpretation of this particular provision and those pertaining to the office of the Ombudsman, Fr. Joaquin Bernas, an eminent authority on constitutional law and a member of the 1986 Constitutional Commission, had occasion to write:

"The 1973 Constitution also enjoined the Batasang Pambansa to create an office of the Ombudsman or Tanodbayan. Again the Batasang Pambansa was anticipated by the President in P.D. 1630 creating the office then of Tanodbayan. The broad discretion of the legislative authority to expand or contract the power of the Tanodbayan under the 1973 Constitution was recognized in *Inting v. Tanodbayan*.

The 1987 Constitution changed much of that. The title Tanodbayan has been retained for the Ombudsman. He has also been given one over-all deputy and at least one deputy each for Luzon, Visayas, and Mindanao. He retains the functions of the Tanodbayan of the 1973 Constitution except the prosecutorial functions.

The Ombudsman and his deputies are appointed by the President from a list of nominees presented by the judicial and Bar Council and they have rank of Chairman and Member respectively of the Constitutional Commissions. They serve for a term of seven years.

The prosecutorial functions have been given over to a Special Prosecutor from the Ombudsman. (The Constitution of the Republic of the Philippines, Bernas, Joaquin, Vol. II, 1990 p. 408) [emphasis supplied]"[6]

If prosecutorial functions have in fact been retained by the Office of the Special Prosecutor, petitioner opines, the unqualified grant of power to exercise such prosecutorial functions given by R.A. No. 6770 to the office of the Ombudsman invariably diminishes the authority and power lodged in the office of the Special Prosecutor. In this light, petitioner argues, R.A. No. 6770, insofar as it unqualifiedly vests prosecutorial functions to the office of the Ombudsman, infringes on Section 7, Article XI of the fundamental law, and is hence, unconstitutional.

We are visibly impressed by the ratiocinations of petitioner, but, unfortunately, we are bound by stare decisis.

I

Anent petitioner's contention that the vesting of prosecutorial powers to the Ombudsman finds no basis in the 1987 Constitution and that it runs counter to the intent of the framers of the Constitution to withhold such powers from the Ombudsman, suffice it to state that a similar contention had already been overruled by this Court in the case of *Acop v. Office of the Ombudsman*.^[7] In upholding the validity of the grant of prosecutorial powers on the Ombudsman, notwithstanding the intent of the framers of the 1987 Constitution to withhold such powers from him, this Court declared, that:

"xxx (w)hile the intention to withhold prosecutorial powers from the Ombudsman was indeed present, 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:

xxx xxx xxx

(6) To exercise such powers and perform such functions or duties as may be provided by law (2 Record, 264).

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:

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

xxx xxx xxx

Promulgate its rules and procedure and exercise such other functions or duties as may be provided by law. (emphasis 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 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, (2 record, 270-271.) (Emphasis supplied)

xxx xxx xxx

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 did 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, his is a reversible disability, unlike that of a eunuch; it is not an irreversible disability (Emphasis supplied)."[8]

The inevitable conclusion is that the Ombudsman, under the 1987 Constitution, particularly under paragraph 8, Section 13, Article XI,[9] may be validly empowered with prosecutorial functions by the legislature, and this the latter did when it passed R.A. No. 6670, which gave the Ombudsman, among others, the power to investigate and prosecute individuals on matters and/or complaints referred or filed before it.Sdaad

II

Turning now to the second ground, petitioner contends that the Office of the Ombudsman, being a constitutional body, cannot exercise executive functions, such as conducting preliminary investigation in criminal cases. The contention is devoid of merit. As conceded by the petitioner, the Office of the Ombudsman is a distinct constitutional body whose duties and functions are provided for by the Constitution itself. Considering that the power of the Ombudsman to investigate and prosecute criminal cases emanates as it does from the Constitution itself, particularly, under paragraph 8, Section 13, Article XI as above-quoted, which empowers the Ombudsman to "exercise such other powers or perform such other functions or duties" as Congress may prescribe through legislation, it cannot be logically argued that such power or the exercise thereof is unconstitutional or violative of the principle of separation of powers enshrined in the Constitution.

Equally devoid of merit is the contention of petitioner that R.A. No. 6770, insofar as it unqualifiedly vests

prosecutorial functions on the Ombudsman, infringes on Section 7, Article XI of the Constitution, in that it invariably diminishes the authority and power lodged in the Office of the Special Prosecutor. This ground relied upon by petitioner, like the first ground, has also been extensively dealt with and answered in, the aforecited case of *Acop v. Office of the Ombudsman*.^[10] Addressing the contention raised by petitioners that the Office of the Special Prosecutor is not subordinate to the Ombudsman and is, in fact, separate and distinct from the Ombudsman, such that Congress may not, under the present Constitution, validly place the Office of the Special Prosecutor under the Office of the Ombudsman, this court has upheld not only the power of Congress to so place the Office of the Special Prosecutor under the Ombudsman, but also the power of the Congress to remove some of the powers granted to the then Tanodbayan, now Office of the Special Prosecutor, under P.D. 1630, and transfer them to the Ombudsman. Thus, this Court said:

"xxx 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."^[11]

Continuing, this Court further said:

"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" (Emphasis supplied).^[12]

III

The other question raised herein pertains to whether or not under the circumstances obtaining in the instant case, public respondents City Prosecutor and Assistant City Prosecutor are duty bound to conduct another preliminary investigation of the anonymous complaint filed against herein petitioner. Substantially, petitioner alleges that, inasmuch as the refusal by respondents City Prosecutor and Assistant City Prosecutor to conduct a preliminary investigation was predicated on the assumption that R.A. No. 6770 duly empowers the Office of the Ombudsman to conduct a preliminary investigation, which petitioner asserts is unconstitutional, said respondents are compellable by mandamus to conduct their own preliminary investigation, and their refusal to a preliminary investigation of the charges against petitioner is tantamount to a denial of due process. Additionally, petitioner alleges that the conduct of a preliminary investigation is mandated further by the inherent weakness in complainant's case

These contentions of petitioner are devoid of merit.

Firstly, as have been extensively discussed above, petitioner's attack on the validity or constitutionality of R.A. No. 6770 is without merit. Thus, there is no more question on the validity or constitutionality of the power of the Ombudsman to conduct the preliminary investigation of the charges against respondent. It is not pretended further by petitioner that the Ombudsman did not actually conduct a preliminary investigation of the charges against her, although petitioner alleged certain defects in the conduct of the preliminary investigation.

In the second place, as correctly observed by the Office of the Solicitor General in its Comment, there is sufficient showing that another round of preliminary investigation, apart from the one conducted by the Office of the Ombudsman, was actually conducted by the Office of the City Prosecutor of Manila in the cases a quo. Thus, on record are petitioner's various Motions filed before the City Prosecutor to reset preliminary investigation[13] and to subpoena a certain witness.[14] Petitioner had likewise filed her comment on the cases against her then pending with the City Prosecutor.[15] Complainant PRC also submitted evidence against petitioner in the same proceedings. Finally, a memo of preliminary investigation conducted by the City Prosecutor was attached to the Informations eventually filed against petitioner before the Ombudsman.[16] These pieces of evidence clearly indicate that a second round of preliminary investigation was conducted by the City Prosecutor.

There is no basis, therefore, to petitioner's allegations, and petitioner cannot validly claim, that she had been denied due process either by the Office of the Ombudsman or by the City Prosecutor.

Neither is the alleged inherent weakness of complainant's case, a ground to compel the City Prosecutor to conduct another preliminary investigation, apart from the one already conducted and the one conducted earlier by the Ombudsman. On this score, suffice it to state that this Court has adopted a policy of non-interference in the conduct of preliminary investigations, and leaves to the investigating prosecutor sufficient latitude of discretion in the exercise of determination of what constitute sufficient evidence as will establish "probable cause" for filing of information against a supposed offender. In *Tabujara v. Office of the Special Prosecutor*,[17] it was ruled that:

"Courts cannot interfere with the discretion of the (fiscal) Ombudsman to determine the specificity and adequacy of the averments of the offense charged. He may xxx proceed with the investigation of the complaint if it is, in his view, in due and proper form.

xxx xxx xxx

"The Ombudsman x x x is the proper adjudicator of the question as to the existence of a case warranting the filing of information in court." [18]

As this Court held in the case of *Cruz, Jr. v. People*,[19] "(t)he rule is based not only upon 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 could be compelled to review the exercise of discretion on the part of the prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant."

IV

With respect to the issue as to whether or not the Informations filed before the sala of respondent judge, allegedly without the benefit of a preliminary investigation conducted by respondent City Prosecutor, are characterized by such fatal defects that would warrant a writ of prohibition to enjoin respondent judge from taking any further action thereon except to order the case's outright dismissal, suffice it to state that the pronouncements of this court aforesaid, for obvious reasons, no longer need a discussion as to the merit or the lack thereof. Besides, petitioner's prayer for injunction to restrain the criminal action against her is not legally permissible:

"xxx an injunction will not generally lie to restrain a criminal action (*Paderanga v. Drilon*, 196 SCRA 86 [1991]; *Brocka v. Enriel*, 192 SCRA 183 [1990]; *Crespo v. Mogul*, 151 SCRA 462 [1987]). In the *Brocka* case, we laid the following exceptions to the rule (1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused; (2) when it is necessary for the orderly administration of justice or to

avoid oppression or multiplicity of actions; (3) when there is a prejudicial question which is subjudice; (4) when the acts of the officer are without or in excess of authority; (5) where the prosecution is under an invalid law, ordinance or regulation; (6) when double jeopardy is clearly apparent; (7) where the Court has no jurisdiction over the offense; (8) where it is a case of persecution rather than prosecution; (9) where the charges are manifestly false and motivated by the lust for vengeance; and (10) when there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied." [20]

Petitioner has not shown that her case falls within any of the recognized exceptions. Perforce, her prayer for injunction to restrain the criminal actions against her must be denied.

WHEREFORE, for lack of merit, the instant Petition is DENIED.
SO ORDERED.

Padilla, (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Rollo, pp. 100-105.

[2] Rollo, p. 20.

[3] Caw v. Benedicto, 63 O.G. 3393; 8 C.A.R (Zs) 814, cited in Petition, p 19, Rollo, p. 21.

[4] City Fiscal v. Philippine Banking Corp., 53694-R, Sept. 28, 1977 cited in Moreno, Philippine Law Dictionary, cited in Petition, p. 19, Rollo, p. 21.

[5] Rollo, pp. 24-25, citing Record of Proceedings of Constitutional Commission on July 26, 1986, Record of the Constitutional Commission, Vol. 2, p. 268.

[6] Rollo, p. 29.

[7] 248 SCRA 566.

[8] Id., pp. 575-579.

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

"x x x (8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law."

[10] 248 SCRA 566.

[11] Acop v. Office of the Ombudsman, 248 SCRA 566, 582.

[12] Ibid.

[13] Annex "12", Comment of the Office of the Solicitor General, hereinafter OSG.

[14] Annex "G", Petition.

[15] Annex "H", Petition.

[16] Annex "11", Comment of the OSG.

[17] G.R. No. 87912, January 18, 1990 Minute Resolution, cited in the Comment of the OSG.

[18] Rollo, p. 116.

[19]233 SCRA 439.

[20] Rollo, p. 119, citing *Mercado v. CA*, G.R. No. 109036, July 5, 1995.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.