ISMAEL G. KHAN, JR. AND WENCESLAO L. MALABANAN, PETITIONERS, VS. OFFICE OF THE OMBUDSMAN, DEPUTY OMBUDSMAN (VISAYAS), ROSAURO F. TORRALBA AND CELESTINO BANDALA, RESPONDENTS.

G.R. NO. 125296. July 20, 2006

Ponente: CORONA, J.

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CORONA, J.:

This petition for certiorari under Rule 65 of the Rules of Court addresses the issue of whether public respondents Deputy Ombudsman (Visayas) and the Ombudsman have jurisdiction over petitioners Ismael G. Khan, Jr. and Wenceslao L. Malabanan, former officers of Philippine Airlines (PAL), for violation of Republic Act No. (RA) 3019[1] (the Anti-Graft and Corrupt Practices Act).

In February 1989, private respondents Rosauro Torralba and Celestino Bandala charged petitioners before the Deputy Ombudsman (Visayas) for violation of RA 3019. In their complaint, private respondents accused petitioners of using their positions in PAL to secure a contract for Synergy Services Corporation, a corporation engaged in hauling and janitorial services in which they were shareholders.

Petitioners filed an omnibus motion to dismiss the complaint on the following grounds: (1) the Ombudsman had no jurisdiction over them since PAL was a private entity and (2) they were not public officers, hence, outside the application of RA 3019.

In a resolution dated July 13, 1989,[2] the Deputy Ombudsman[3] denied petitioners' omnibus motion to dismiss.

On petitioners' first argument, he ruled that, although PAL was originally organized as a private corporation, its controlling stock was later acquired by the government through the Government Service Insurance System (GSIS).[4] Therefore, it became a government-owned or controlled corporation (GOCC) as enunciated in Quimpo v. Tanodbayan.[5]

On the second argument, the Deputy Ombudsman held that petitioners were public officers within the definition of RA 3019, Section 2 (b). Under that provision, public officers included "elective, appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the Government."

The dispositive portion of the Deputy Ombudsman's order read:

> WHEREFORE, finding no merit to [petitioners'] OMNIBUS MOTION TO DISMISS, the same is hereby DENIED and petitioners are hereby ordered to submit their answer within ten (10) days from receipt hereof.[6]

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Petitioners appealed the order to the Ombudsman. There, they raised the same issues. Treating the appeal as a

motion for reconsideration, the Ombudsman dismissed it on February 22, 1996. He held that petitioners were officers of a GOCC, hence, he had jurisdiction over them.[7] He also affirmed the Deputy Ombudsman's ruling that Quimpo was applicable to petitioners' case.

In this petition for certiorari, with prayer for issuance of a temporary restraining order, petitioners assail the orders dated July 13, 1989 and February 22, 1996 of the Deputy Ombudsman (Visayas) and the Ombudsman, respectively. They claim that public respondents acted without jurisdiction and/or grave abuse of discretion in proceeding with the investigation of the case against them although they were officers of a private corporation and not "public officers."[8]

In support of their petition, petitioners argue that: (1) the Ombudsman's jurisdiction only covers GOCCs with original charters and these do not include PAL, a private entity created under the general corporation law; (2) Quimpo does not apply to the case at bar and (3) RA 3019 only concerns "public officers," thus, they cannot be investigated or prosecuted under that law.

We find merit in petitioners' arguments and hold that public respondents do not have the authority to prosecute them for violation of RA 3019.

JURISDICTION OF THE OMBUDSMAN
OVER GOCCS IS CONFINED ONLY TO
THOSE WITH ORIGINAL CHARTERS

> The 1987 Constitution states the powers and functions of the Office of the Ombudsman. Specifically, Article XI, Section 13(2) provides:
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> Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:
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> xxx xxx xxx
>
> (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 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. (italics supplied)

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Based on the foregoing provision, the Office of the Ombudsman exercises jurisdiction over public officials/ employees of GOCCs with original charters. This being so, it can only investigate and prosecute acts or omissions of the officials/employees of government corporations. Therefore, although the government later on acquired the controlling interest in PAL, the fact remains that the latter did not have an "original charter" and its officers/employees could not be investigated and/or prosecuted by the Ombudsman.

In Juco v. National Labor Relations Commission,[9] we ruled that the phrase "with original charter" means "chartered by special law as distinguished from corporations organized under the Corporation Code." PAL, being originally a private corporation seeded by private capital and created under the general corporation law, does not fall within the jurisdictional powers of the Ombudsman under Article XI, Section 13(2) of the Constitution. Consequently, the latter is devoid of authority to investigate or prosecute petitioners.

QUIMPO NOT APPLICABLE TO THE CASE AT BAR

Quimpo[10] is not applicable to the case at bar. In that case, Felicito Quimpo charged in 1984 two officers of PETROPHIL in the Tanodbayan (now Ombudsman) for violation of RA 3019. These officers sought the dismissal

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of the case on the ground that the Tanodbayan had no jurisdiction over them as officers/employees of a private company. The Court declared that the Tanodbayan had jurisdiction over them because PETROPHIL ceased to be a private entity when Philippine National Oil Corporation (PNOC) acquired its shares.

In hindsight, although Quimpo appears, on first impression, relevant to this case (like PETROPHIL, PAL's shares were also acquired by the government), closer scrutiny reveals that it is not actually on all fours with the facts here.

In Quimpo, the government acquired PETROPHIL to "perform functions related to government programs and policies on oil."[11] The fact that the purpose in acquiring PETROPHIL was for it to undertake governmental functions related to oil was decisive in sustaining the Tanodbayan's jurisdiction over it. This was certainly not the case with PAL. The records indicate that the government acquired the controlling interest in the airline as a result of the conversion into equity of its unpaid loans in GSIS. No governmental functions at all were involved.

Furthermore, Quimpo was decided prior to the 1987 Constitution. In fact, it was the 1973 Constitution which the Court relied on in concluding that the Tanodbayan had jurisdiction over PETROPHIL's accused officers. Particularly, the Court cited Article XIII, Section 6:

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

The term "government-owned or controlled corporations" in the 1973 Constitution was qualified by the 1987 Constitution to refer only to those with original charters.[12]

PETITIONERS, AS THEN OFFICERS OFPAL, WERE NOT PUBLIC OFFICERS

Neither the 1987 Constitution nor RA 6670 (The Ombudsman Act of 1989) defines who "public officers" are. Instead, its varied definitions and concepts are found in different statutes[13] and jurisprudence.[14] Usually quoted in our decisions is Mechem, a recognized authority on the subject. In the 2002 case of Laurel v. Desierto,[15] the Court extensively quoted his exposition on the term "public officers":

> A public office is the right, authority and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.
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> The characteristics of a public office, according to Mechem, include the delegation of sovereign functions, its creation by law and not by contract, an oath, salary, continuance of the position, scope of duties, and the designation of the position as an office.
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> xxx xxx xxx
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> Mechem describes the delegation to the individual of the sovereign functions of government as "[t]he most important characteristic" in determining whether a position is a public office or not.
>
> The most important characteristic which distinguishes an office from an employment or contract is that the creation and conferring of an office involves a delegation to the individual of some of the sovereign functions of government to be exercised by him for the benefit of the public; that some portion of the sovereignty of the country, either legislative, executive, or judicial, attaches, for the time being, to be exercised for the public benefit. Unless the powers conferred are of this nature, the individual is not a public officer.[16] (italics

supplied)

From the foregoing, it can be reasonably inferred that "public officers" are those endowed with the exercise of sovereign executive, legislative or judicial functions.[17] The explication of the term is also consistent with the Court's pronouncement in Quimpo that, in the case of officers/employees in GOCCs, they are deemed "public officers" if their corporations are tasked to carry out governmental functions.

In any event, PAL has since reverted to private ownership and we find it pointless to scrutinize the implications of a legal issue that technically no longer exists.

WHEREFORE, the petition is hereby GRANTED. Public respondents Deputy Ombudsman (Visayas) and Office of the Ombudsman are restrained from proceeding with the investigation or prosecution of the complaint against petitioners for violation of RA 3019. Accordingly, their assailed orders of July 13, 1989 and February 22, 1996, respectively, are SET ASIDE and ANNULLED.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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* In a resolution dated March 24, 1999, the Court dismissed the petition against Rosauro Torralba who died in December 1997. The resolution became final and executory on June 10, 1999. Entry of judgment was accordingly made on the same day.

** Respondent died on April 23, 1999 per certified true copy of his death certificate furnished by his counsel. Rollo, p. 220.

[1] Approved on August 17, 1960.

[2] Rollo, pp. 20-24.

[3] Hon. Juan M. Hagad.

[4] GSIS converted PAL's outstanding loans into equity shares.

[5] 230 Phil. 232 (1986). In this case, the Philippine National Oil Corporation (PNOC) acquired PETROPHIL, a private corporation. Here, the Court declared that PETROPHIL shed off its private status and became a subsidiary of PNOC. Its officers, who were then accused of violating the Anti-Graft and Corrupt Practices Act (RA 3019), were considered "public officers" under the jurisdiction of the Tanodbayan (now Ombudsman).

[6] Supra at note 1.

[7] Rollo, pp. 25-29. Issued by Marilou Ancheta-Mejica, Graft Investigation Officer I, as approved by then Ombudsman Aniano A. Desierto.

[8] Id., p. 5.

[9] 343 Phil. 307 (1997).

[10] Supra at note 5.

[11] Id.

[12] See Juco, supra at note 9.

[13] Public officials include elective and appointive officials and employees, permanent or temporary, whether in the career and non-career service, including military and police personnel whether or not they receive compensation, regardless of amount. (Section 2[b], RA 6713 [Code of Conduct and Standards for Public Officials]).

Public officer is any person holding any public office in the Government of the Republic of the Philippines by virtue of an appointment, election or contract. (Section 1[a], RA 7080 [Act Defining and Penalizing the Crime of Plunder]).

Public officers include elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government x x x (Section 2[b], RA 3019 [Anti-Graft and Corrupt Practices Act]).

Any person who, by direct provision of law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in the said Government or any of its branches public duties as an employee, agent or subordinate official, of any rank or class, shall be deemed to be a public officer. (Article 203, Revised Penal Code).

[14] The term includes only persons who perform some of the functions of the Government of the Philippine Islands. (U.S. v. Smith, 39 Phil. 537 [1919]).

One who has a duty to perform concerning the public; and he is not less a public officer when his duty is confined to narrow limits, because it is his duty and its nature which makes him a public officer and not the extent of his authority. (Manila Terminal Co. v. CIR, 83 Phil. 567 [1949]).

[15] 430 Phil. 658 (2002).

[16] Id., pp. 672-673. Citing F.R. MECHEM, A TREATISE ON THE LAW OF PUBLIC OFFICES AND OFFICERS, § 1.

[17] Supra.

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