PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS REPRESENTED BY MAGTANGGOL C. GUNIGUNDO, PCGG CHAIRMAN AND ORLANDO C. SALVADOR, AS CONSULTANT, TECHNICAL WORKING GROUP ...

G.R. No. 130140. October 25, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

The core issue in this special civil action for certiorari is whether public respondent Ombudsman Aniano A. Desierto (hereafter OMBUDSMAN) committed grave abuse of discretion in holding that the offenses with which the other respondents were charged in OMB-0-96-0968 had already prescribed.

This case originated as G.R. No. 129763, the docket number given to the Motion for Extension of Time to File Petition for Review filed by the Presidential Commission on Good Government (PCGG).[1] The motion was granted. However, what was filed was a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, with the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (hereafter COMMITTEE) as petitioner. The petition was docketed as G.R. No. 130140. Accordingly, G.R. No. 129763 is now deemed functus officio.

Initially, the Court dismissed the petition in this case on technical grounds. But, upon petitioner's motion for reconsideration, the petition was reinstated, and the respondents were required to comment on the petition.

In its Manifestation (In Lieu of Comment),[2] the Development Bank of the Philippines (DBP) manifested that it would "rel[y] on the evaluation and exercise of the discretionary power conferred on Petitioner in the prosecution of the instant petition."

In its Manifestation and Motion[3] of 16 February 1998, the Office of the Solicitor General (OSG) informed the Court that it could not represent the OMBUDSMAN for the following reasons: (a) the Solicitor General is the Vice-Chairman of petitioner COMMITTEE; (b) being an agency of the Government, the COMMITTEE is entitled to be represented by the OSG; and (c) the petition was signed by Associate Solicitor Salvador C. Guevarra, who is presently on detail with the PCGG, and by Commissioner Herminio A. Mendoza of the PCGG, which is also a client of the OSG. The Court then required the OMBUDSMAN to file his own comment, which he did on 11 June 1998.[4]

Copies of the resolution requiring comment on the petition sent to the other respondents were returned to sender because the said respondents had "MOVED." Since the challenged resolution and order of the OMBUDSMAN were issued before said other respondents were even required to submit their counter-affidavits, impleading them in this case is not necessary; hence, this case can be resolved without their inclusion as respondents.

As culled from the initiatory pleadings and MEMORANDA of the COMMITTEE and the OMBUDSMAN, the undisputed facts are as follows:

On 8 October 1992, President Fidel V. Ramos issued Administrative Order No. 13, creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, with the Chairman of the PCGG as Chairman; the Solicitor General as Vice Chairman; and one representative each from the Office of the Executive Secretary, Department of Finance, Department of Justice, Development Bank of the Philippines, Philippine National Bank, Asset Privatization Trust, Government Corporate Counsel, and the Philippine Export and Foreign Loan Guarantee Corporation as members. The Committee was directed to perform the following functions:

> 1. Inventory all behest loans; identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for granting the loans or who influenced the grant thereof;
>
> 2. Identify the borrowers who were granted "friendly waivers," as well as the government officials who granted these waivers; determine the validity of these waivers.
>
> 3. Determine the courses of action that the government should take to recover those loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from the date hereof.

On 9 November 1992, President Ramos issued Memorandum Order No. 61 directing the COMMITTEE to "include in its investigation, inventory, and study all non-performing loans which shall embrace both behest and non-behest loans." It likewise provided for the following criteria which might be "utilized as a frame of reference in determining a behest loan," to wit:

> a. It is undercollateralized.
>
> b. The borrower corporation is undercapitalized.
>
> c. Direct or indirect endorsement by high government officials like presence of marginal notes.
>
> d. Stockholders, officers or agents of the borrower corporation are identified as cronies.
>
> e. Deviation of use of loan proceeds from the purpose intended.
>
> f. Use of corporate layering.
>
> g. Non-feasibility of the project for which financing is being sought.
>
> h. Extraordinary speed in which the loan release was made.

x x x

Moreover, a behest loan may be distinguished from a non-behest loan in that while both may involve civil liability for non-payment or non-recovery, the former may likewise entail criminal liability."

In its FOURTEENTH (14TH) REPORT ON BEHEST LOANS to President Ramos, dated 15 July 1993,[5] the COMMITTEE reported that the Philippine Seeds, Inc., (hereafter PSI) of which the respondents in OMB-0-96-0968 were the Directors, was one of the twenty-one corporations which obtained behest loans.

In his instructions handwritten on the cover of the aforementioned Report, President Ramos directed COMMITTEE Chairman Magtanggol C. Gunigundo to, inter alia, "proceed with administrative and judicial actions against the twenty-one firms (out of 21) in this batch with positive findings ASAP."[6]

On 2 March 1996, the COMMITTEE through Orlando O. Salvador, the PCGG consultant detailed with the COMMITTEE, filed with the OMBUDSMAN a sworn complaint[7] against the Directors of PSI namely, Jose Z. Osias, Pacifico E. Marcos, Eduardo V. Romualdez, Fernando C. Ordoveza, and Juanito Ordoveza; and the Directors of the Development Bank of the Philippines who approved the loans for violation of paragraphs (e) and

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(g) of Section 3 of Republic Act No. 3019, as amended, which read:

> Sec. 3. Corrupt Practices of Public Officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> . . .
>
> e. Causing any undue injury to any party, including the Government or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.
>
> . . .
>
> g. Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The complaint, later docketed as OMB-0-96-0968, alleged as follows:

> 4. The evidence submitted to us show that:
>
> a) Philippine Seeds, Inc. (PSI) obtained its initial loan guarantee on April 17, 1969 under B/R 2805 (Annex 1, Evidence 3) with an aggregate amount of $3,452,535. or P13,568,463. (P3.93 to $1) . . . .

Based on the foregoing DBP approved Guarantee Loans, PSI still had a collateral deficiency of P5,444,432, and likewise DBP infused the amount of P3,824,911 as against the corporation's paid-up capital of P2,225,000 only.

b) Subsequent loans/guarantees were extended by DBP for the benefit and/or advantage of PSI under the following Board Resolutions:

> 1) B/R 3353 dated August 13, 1975 (Annex 2, Evidence 4) for the following purposes:
>
> (a) DBP to extend a loan of P215,000 at 12% interest per annum for repairs & rehabilitation of the PSI plant within a period of four (4) months from the full release of the amount.
>
> (b) DBP to extend a short term of P6 million at 12% interest per annum for its working capital.
>
> (c) DBP to assume PSI loans with commercial banks.
>
> (d) DBP to restructure PSI existing obligations if after 6 months of trial period, operations proved profitable and viable.
>
> (e) DDBP to suspend foreclosure for 10 months.

2) B/R 883 series 1978, (Annex 3, Evidence 9) DBP Board approved a P2.9 million loan for the following purposes:

> (a) P1.9 million to liquidate PSI's obligation with other creditors.
>
> (b) P1.0 million to finance PSI's special projects.
>
> (c) DBP initiated PSI foreclosures starting March 1975 but it was not implemented by virtue of then President Marcos' marginal notes dated April 1975 (Annex 4, Evidence 6) and June 1995 (Annex 5, Evidence 7).
>
> (d) Pacifico Marcos and Eduardo Romualdez, relatives of the late President Marcos, were the principal stockholders and officers of the subject firm.

5. As a private entity, Philippine Seeds, Inc., did not deserve the concessions given it without sufficient collateral for the loan and adequate capital to ensure not only the viability of its operations but its ability to repay all its loans.

In the resolution[8] dated 14 May 1996 and approved on 9 June 1996, the OMBUDSMAN dismissed the complaint in OMB-0-96-0968 on the ground of prescription. Relying on People v. Dinsay,[9] a case decided by the Court of Appeals, he ratiocinated that since the questioned transactions were evidenced by public instruments and were thus open for the perusal of the public, the prescriptive period commenced to run from the time of the commission of the crime, not from the discovery thereof. Reckoning the prescriptive period from 1969, 1970, 1975, and 1978, when the disputed transactions were entered into, the OMBUDSMAN ruled that the offenses with which respondents were charged had already prescribed.

Its motion for reconsideration having been denied by the OMBUDSMAN in the Order[10] of 19 May 1997, the COMMITTEE filed this case raising this sole issue:

> WHETHER OR NOT THE PUBLIC RESPONDENT OMBUDSMAN GRAVELY ABUSED HIS DISCRETION IN HOLDING THAT THE PRESCRIPTIVE PERIOD IN THIS CASE SHOULD BE COUNTED FROM THE DATE OF THE GRANT OF THE BEHEST LOANS INVOLVED, AND NOT FROM THE DATE OF DISCOVERY OF THE SAME BY THE COMMITTEE.

The COMMITTEE argues that the right of the Republic of the Philippines to recover behest loans as ill-gotten wealth is imprescriptible pursuant to the mandate of Section 15 of Article XI of the Constitution, which provides:

> The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees as transferees, shall not be barred by prescription, laches, or estoppel.

Behest loans are part of the ill-gotten wealth which former President Marcos and his cronies accumulated and which the Government through the PCGG seeks to recover. Besides, even assuming ex gratia that the right to file criminal charges against the respondents is prescriptible, the prescriptive period should be counted from the discovery of the crimes charged, and not from the date of their commission. The ruling in Dinsay is not applicable to the case at bar. First, it is a decision of the Court of Appeals; hence, it does not establish a doctrine and can only have a persuasive value. Second, it involved a prosecution for estafa in that the accused disposed of his property claiming that it was free from any lien or encumbrance despite the fact that a notice of lis pendens was registered with the Registry of Deeds. The sale, cancellation of the accused's title, and issuance of a new title to the buyer could not have been concealed from the offended parties or their lawyers because these transactions took place when the civil case involving the said property and the offended parties was in progress. Third, Dinsay involved private parties, while the instant case involves the Government and public officers. Fourth, the ruling is not absolute, since no less than this Court in People vs. Monteiro[11] said:

> [T]he period of prescription for the offense of failure to register with the SSS shall begin from the day of the discovery of the violation if this was not shown at the time of its commission. A contrary view would be dangerous as the successful concealment of an offense during the period fixed for its prescription would be the very means by which the offender may escape punishment. (Emphasis supplied)

Also, in People v. Duque,[12] which involved a prosecution for illegal recruitment under Article 38 of the Labor Code, this Court held:

> Even if it be assumed arguendo that ordinary prudence required that a person seeking overseas employment ought to check the authority or status of persons pretending to be authorized or to speak for a recruitment or placement agency, the offended parties' failure to do so did not start the running of the prescriptive period. In the nature of things, acts made criminal by special laws are frequently not immoral or obviously criminal in

> themselves; for this reason, the applicable statute requires that if the violation of the special law is not known at that time, the prescription begins to run only from the discovery thereof, i.e., discovery of the unlawful nature of the constitutive act or acts. (Emphasis supplied)

Finally, the COMMITTEE asserts that even assuming that the discovery rule does not apply, still, because of the principle of "equitable tolling," prescription has not yet set in for the offenses with which respondents in OMB-0-96-0960 were charged. This principle is based on the doctrine "contra non valentem agere nulla currit praescriptio," i.e., "no prescription shall run against a person unable to bring an action." The COMMITTEE was unable to bring the action, for the cause therefor was not known or reasonably known to it owing to the fact that (1) the loans, being behest, were concealed; (2) both parties to the loan transactions were in conspiracy to perpetrate the fraud against the State; and (3) the loans were granted at the time then President Marcos was at the threshold of his authority when no one dared question, much less investigate, any of his orders.

The OMBUDSMAN takes a different view. For one, he asserts that Section 15 of Article XI of the Constitution is not applicable, since what the COMMITTEE seeks in OMB-0-96-0968 is not to recover the unlawfully acquired wealth from the respondents therein but to hold them criminally liable for violation of R.A. No. 3019. The dismissal of the case is not a bar to the institution of forfeiture proceedings against the concerned former government officials and cronies.

For another, the OMBUDSMAN insists that the offenses with which the respondents were charged had already prescribed. As a matter of fact it prescribed in ten years pursuant to the original provision of Section 11 of R.A. No. 3019, which fixed the prescriptive period at ten years. B.P. Blg. 195, which increased the prescriptive period to fifteen years, became effective only on 16 March 1982 and cannot be given retroactive effect; hence, the offenses which might have arisen from the grant of the assailed loans in 1969, 1975 and 1978 prescribed in 1979, 1985 and 1988, respectively.

The OMBUDSMAN points to Section 2 of Act No. 3326, which governs prescription of crimes under special laws and which reads as follows:

> Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof . . .

According to him, the computation of the prescriptive period from the date of discovery would only be resorted to if the commission of the crime be not known at the day of the commission. The phrase "if the same be not known" does not mean "lack of actual knowledge," but that the crime "is not reasonably knowable" by reason of the nature of the crime or the environmental circumstances thereof. In the case filed by the COMMITTEE, the crimes alleged to have been committed were "reasonably knowable" because the transactions were "never conducted clandestinely ... [but] carried out in the open, leaving a trail of public instruments/documents accessible and susceptible to evaluation." Moreover, as can be drawn from the allegation in the COMMITTEE's complaint that the DBP initiated PSI foreclosures starting March 1975, the corresponding mortgages were executed and registered. Hence, the doctrine laid down in Dinsay is applicable. Likewise, in People v. Sandiganbayan,[13] this Court ruled that the prescriptive period for the violation of R.A. No. 3019, which was allegedly committed by Paredes by misrepresenting in an application for land patent that the subject land was disposable, started to run from the date of the filing of the application. Yet, in said case the falsity of Paredes' representation regarding the disposability of the land was not capable of being drawn from the application alone; nevertheless, this Court was not deterred from holding that prescription started to run from the filing of the application.

Finally, the OMBUDSMAN maintains that any confidential relationship between the former strongman and the respondents DBP officials ceased altogether after the February 1986 EDSA revolution. Even assuming then that

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the running of the 10-year period of prescription was suspended by reason of the said confidential relationship, the same re-started in February 1986 and went on to lapse in February 1996. However, the complaint of the COMMITTEE in OMB-0-96-0968 was filed only on 2 March 1996.

We agree with the OMBUDSMAN that Section 15 of Article XI of the Constitution applies only to civil actions for recovery of ill-gotten wealth, and not to criminal cases, such as the complaint against the respondents in OMB-0-96-0968. This is clear from the proceedings of the Constitutional Commission of 1986.

What is now Section 15 of Article XI of the Constitution was originally Section 13 of the proposed Article on Accountability of Public Officers in Committee Report No. 17 submitted to the Constitutional Commission by its Committee on Accountability of Public Officers,[14] viz:

The right of the State to recover properties unlawfully acquired by public officials or employees shall not be barred by prescription.

At the plenary session, Commissioner Hilario G. Davide, Jr., succeeded in having that Section amended. Thus:

> MR. DAVIDE. Madam President.
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> MR. DAVIDE. Would the proponent accept some amendments?
>
> MR MAAMBONG. Gladly.
>
> MR. DAVIDE. The amendment of Section 13 will consist of the following: On line 25, after the word "employees," add the following: OR THEIR CO-PRINCIPALS, ACCOMPLICES OR ACCESSORIES OR TO PROSECUTE OFFENSES IN CONNECTION THEREWITH; then on line 25, after the word "prescription," add a comma (,) and the words LACHES OR ESTOPPEL. So the entire Section 13 will read as follows: "The right of the State to recover properties unlawfully acquired by public officials or employees OR THEIR CO-PRINCIPALS, ACCOMPLICES OR ACCESSORIES OR TO PROSECUTE OFFENSES IN CONNECTION THEREWITH shall not be barred by prescription, LACHES OR ESTOPPEL."
>
> . . .
>
> MR. DAVIDE. I would like to insist on my proposal for the plain and simple reason that the republic act on forfeiture of ill-gotten wealth would cover only the civil aspect. As a matter of fact, any prosecution for the criminal aspect of that will have to be taken under the Anti-Graft and Corrupt Practices Act. That is why it is necessary to include here, specifically, the criminal action and the imprescriptibility of the criminal action. Besides, what is stated in the law on ill-gotten wealth and recovery thereof would refer to prescription or statute of limitations. We know for a fact that there are two other concepts in Civil Law. We have laches and estoppel. Laches, for instance, is a concept entirely different from prescription. While an action may not prescribe, it may be barred by laches and while an action may not prescribe or may not be barred by laches, it may also be a limitation because of estoppel. So, if we really want to strengthen this particular concept, we should be very specific in having it related to both criminal and civil actions. In addition to prescription, we should also include laches and estoppel.
>
> . . .
>
> THE PRESIDENT. Is it accepted by the Committee?
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> MR. NOLLEDO. After consultations, the Committee is happy to announce that we are accepting the amendment.
>
> MR. DAVIDE. Thank you, Madam President; I also thank the members of the Committee.
>
> THE PRESIDENT. Is there any objection? (Silence) The Chair hears none; the amendment is approved.[15]

(Emphasis supplied).

As shown, the amendment made the provision applicable as well to criminal actions arising from, relating or incident to, or involving ill-gotten wealth.

However, on motion for reconsideration by Commissioner Christian Monsod, who explained that the intention of the Committee was to limit the proposed Section 13 to civil actions, and without objection on the part of Commissioner Davide, the motion for reconsideration was granted. As a consequence, the amendment of Commissioner Davide regarding the applicability of the Section to criminal actions was deleted. After further proceedings the Section was further amended by the insertion of the phrase "from them or from their transferees." Thus:

MR. BENGZON. There is just one loose thread hanging in the Article on Accountability of Public Officers and I would like to get this out of the way. May I suggest that Commissioner Monsod be recognized.

THE PRESIDING OFFICER. (Mr. de los Reyes). Commissioner Monsod is recognized.

MR. MONSOD. We circulated to the Commissioners a memorandum that was unanimously endorsed by the members of the committee, except for one member who [was] absent. In this memorandum, we suggested the deletion of a phrase which we consider redundant in the context of the intent of the committee. We wanted to ask the body for any comment it may have on it because we feel we do not need to reopen the article if the body agrees with us that it is not a substantial change, but a change to reflect the intention of the body and the committee on this matter.

THE PRESIDING OFFICER (Mr. de los Reyes). On what article is that, Commissioner Monsod?

MR. MONSOD. It is on the Article on Accountability of Public Officers which was circulated a couple of days ago.

On Section 13, lines 7 and 8, we propose to delete the phrase "or to prosecute offenses in connection therewith." The committee considers this phrase redundant with its intent on the recovery of property illegally acquired. The action contemplated by the committee is a civil action. However, since jurisprudence considers such action for recovery as partaking of a criminal action, we believe that it is not necessary to mention "or to prosecute offenses in connection therewith." Hence, we ask the body if there is any objection to delete that phrase.

THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Monsod, what is the phrase sought to be deleted?

MR. MONSOD. The phrase "or to prosecute offenses in connection therewith."

. . .

MR. MONSOD. May we ask Commissioner Davide, the proponent of some of these amendments, on this article?

THE PRESIDING OFFICER (Mr. de los Reyes) Commissioner Davide is recognized.

MR. DAVIDE. Thank you, Mr. Presiding Officer.

After deeper reflection on the consequences of the amendments which I introduced and which are now sought to be deleted, and taking into account the massive consensus of opinions on the part of the committee which is now seeking for its reconsideration, I would have no objection to it. However, there is a point to be taken up and I understand that Commissioner Regalado has also a point to take up on this.

THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Regalado is recognized.

MR. REGALADO. Thank you, Mr. Presiding Officer.

I move for the deletion of the phrase "co-principals, accomplices or accessories," because what is contemplated in that amendment is a civil action. The phrase "co-principals, accomplices and accessories" is proper only in a criminal action. So, I have asked the committee to delete those words.

THE PRESIDING OFFICER (Mr. de los Reyes). So, how will the section now read?

MR. MONSOD. The section as amended by deletion will now read: "Sec. 13. The right of the State to recover properties unlawfully acquired by public officials or employees shall not be barred by prescription, laches or estoppel."

THE PRESIDING OFFICER (Mr. de los Reyes). So for the information of the Members of the Commission, what phrases are deleted?

MR. MONSOD. The phrases that are deleted are as follows: "or to prosecute offenses in connection therewith" and "or their co-principals, accomplices or accessories."

THE PRESIDING OFFICER (Mr. de los Reyes). So, in effect, the Commissioner is asking for a reconsideration.

MR. MONSOD. It has been suggested that that would be appropriate in order to make sure that this is properly regularized.

RECONSIDERATION OF APPROVAL

OF PROPOSED RESOLUTION NO. 456

(Article on the Accountability of Public Officers)

THE PRESIDING OFFICER (Mr. de los Reyes). As many as are in favor of reconsidering Section 13, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand).

The results show 27 votes in favor and 1 against; the reconsideration is approved.[16]

Commissioner Monsod is again recognized.

MR MONSOD. I propose that we delete the phrases: "or their co-principals, accomplices or accessories" and "or to prosecute offenses in connection therewith." So, the entire article will now read: "The right of the State to recover properties unlawfully acquired by public officials or employees shall not be barred by prescription, laches or estoppel."

. . .

THE PRESIDING OFFICER (Mr. de los Reyes). Is there any objection to the amendment of Commissioner Monsod?

Commissioner Azcuna is recognized.

MR AZCUNA. Mr. Presiding Officer, the phrase "co-principals, accomplices and accessories" refers to criminal cases. So I propose to insert the phrase "OR THEIR TRANSFEREES IN BAD FAITH" in order to be able to recover these properties even from transferees of the public officers if they are done in bad faith. Hence, the amended section will read: "The right of the State to recover properties unlawfully acquired by public officials or employees OR THEIR TRANSFEREES IN BAD FAITH."

THE PRESIDING OFFICER (Mr. de los Reyes). What does Commissioner Monsod say?

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MR. MONSOD. We have no objection to that, but I understand there is a comment on this matter.

. . .

THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Monsod is recognized.

MR MONSOD. In order to clarify the intent of the amendment, we suggest that the amendment be stated this way: "FROM THEM OR FROM THEIR TRANSFEREES." So, the entire section will read: "The right of the State to recover properties unlawfully acquired by public officials or employees FROM THEM OR FROM THEIR TRANSFEREES shall not be barred by prescription, laches or estoppel."

THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Azcuna is recognized.

MR AZCUNA. I accept the amendment.

THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Maambong is recognized.

MR. MAAMBONG. Mr. Presiding Officer, I recall I presented an amendment precisely on this provision. I gave way to Commissioner Davide at that time because the imprescriptibility provision was supposed to cover both criminal and civil actions. I just want to clarify this from Commissioner Monsod or from Commissioner Davide if in the present formulation, what is covered is only imprescriptibility of civil action and not of criminal action. Commissioner Davide can probably answer that.

MR. MONSOD. Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Monsod is recognized.

MR. MONSOD. Yes, it is just the imprescriptibility of the civil action.

MR. MAAMBONG. If only civil action, it does not cover imprescriptibility of criminal action.

MR. MONSOD. Yes, that is right.

MR. MAAMBONG. Thank you.

THE PRESIDING OFFICER (Mr. de los Reyes). Is the Commission now prepared to vote on the issue?

MR. RAMA. Yes.

THE PRESIDING OFFICER (Mr. de los Reyes). Is there any objection to the amendment of Commissioner Monsod? (Silence) The Chair hears none; the amendment is approved.[17] (Emphasis supplied).

Then, on motion of the Committee on Style, the Section 13 which became Section 15, was approved; thus:

MR. RODRIGO. In Section 15, we inserted: "FROM THEM OR FROM THEIR NOMINEES OR TRANSFEREES" and we deleted "co-principals, accomplices or accessories or to prosecute offenses in connection therewith." So, Section 15 reads: "The right of the State to recover properties unlawfully acquired by public officials or employees, FROM THEM OR FROM THEIR NOMINEES OR TRANSFEREES shall not be barred by prescription, laches, or estoppel."

I move for its approval.

THE PRESIDING OFFICER (Mr. Jamir). Is there any objection? (Silence). The Chair hears none; the amendment is approved.[18]

The upshot of the foregoing discussion is that the prosecution of offenses arising from, relating or incident to, or involving ill-gotten wealth contemplated in Section 15, Article XI of the Constitution may be barred by

prescription.

Since the law alleged to have been violated, i.e., paragraphs (e) and (g) of Section 3, R.A. No. 3019, as amended, is a special law, the applicable rule in the computation of the prescriptive period is Section 2 of Act No. 3326,[19] as amended, which provides:

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

This simply means that if the commission of the crime is known, the prescriptive period shall commence to run on the day it was committed.

In the present case, it was well-nigh impossible for the State, the aggrieved party, to have known the violations of R.A. No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the "beneficiaries of the loans." Thus, we agree with the COMMITTEE that the prescriptive period for the offenses with which the respondents in OMB-0-96-0968 were charged should be computed from the discovery of the commission thereof and not from the day of such commission.

The assertion by the OMBUDSMAN that the phrase "if the same be not known" in Section 2 of Act No. 3326 does not mean "lack of knowledge" but that the crime "is not reasonably knowable" is unacceptable, as it provides an interpretation that defeats or negates the intent of the law, which is written in a clear and unambiguous language and thus provides no room for interpretation but only application.

The OMBUDSMAN's reliance on Dinsay is misplaced. The estafa committed by the accused was known to the offended party from the very start; hence, it could even be said that the commission and the discovery of the offense were simultaneous.[20] Neither is People v. Sandiganbayan[21] of any help to OMBUDSMAN. We ruled therein that the prescriptive period commenced to run from the filing of the application for the following reasons:

> The theory of the prosecution that the prescriptive period should not commence upon the filing of Paredes' application because no one could have known about it except Paredes and Lands Inspector Luison, is not correct for, as the Sandiganbayan pointedly observed: "it is not only the Lands Inspector who passes upon the disposability of public land x x x other public officials pass upon the application for a free patent including the location of the land and, therefore, the disposable character thereof" (p. 30, Rollo). Indeed, practically all the department personnel, who had a hand in processing and approving the application, namely: (1) the lands inspector who inspected the land to ascertain its location and occupancy; (2) the surveyor who prepared its technical description; (3) the regional director who assessed the application and determined the land classification; (4) the Director of Lands who prepared the free patent; and (5) the Department Secretary who signed it, could... have helped "discovering" that the subject of the application was non disposable public agricultural land.

There was no showing that Paredes had connived with "all the department personnel, who had a hand in processing and approving the application" of Paredes. Consequently, such personnel could have easily discovered the falsity in Paredes' claim and denounced it. It would have been entirely different if the public officials concerned conspired with him, in which case, they would have hidden the misdeed to escape culpability.

People v. Duque[22] is more in point, and what was stated there stands reiteration: In the nature of things, acts made criminal by special laws are frequently not immoral or obviously criminal in themselves; for this reason, the applicable statute requires that if the violation of the special law is not known at the time, the prescription begins

to run only from the discovery thereof, i.e., discovery of the unlawful nature of the constitutive act or acts.

In the case at bar the OMBUDSMAN forthwith dismissed the complaint in Case No. OMB-0-96-0968 without even requiring the respondents to submit their counter-affidavits and solely on the basis of the dates the alleged behest loans were granted, or the dates of the commission of the alleged offense was committed.

Since the computation of the prescriptive period for the filing of the criminal action should commence from the discovery of the offense, the OMBUDSMAN clearly acted with grave abuse of discretion in dismissing outright Case No. OMB-0-96-0968. It should have first received the evidence from the complainant and the respondents to resolve the case on its merits and on the issue of the date of discovery of the offense.

IN LIGHT OF ALL THE FOREGOING, judgment is hereby rendered GRANTING the petition, and SETTING ASIDE the resolution of 14 May 1996 and the Order of 19 May 1997 of the public respondent OMBUDSMAN in Case No. OMB-0-96-0968.

The OMBUDSMAN is hereby directed to proceed with the preliminary investigation of the case OMB-0-96-0968 taking into account the foregoing disquisitions.

No pronouncement as to costs.

SO ORDERED.

Mendoza, Panganiban, Quisumbing, Purisima, Buena, Gonzaga-Reyes, and De Leon, Jr., JJ., concur.

Melo, J., see concurring and dissenting opinion.

Puno, J., see concurring and dissenting opinion.

Vitug, J., see concurring opinion.

Bellosillo, J., joins J. Melo in his concurring and dissenting opinion.

Kapunan, Pardo, and Ynares-Santiago, JJ., joins J. Puno in his concurring and dissenting opinion.

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[1] Rollo, G.R. No. 129763, 2-3.

[2] Rollo, G.R. No. 130140, 170-171. Henceforth, references to rollo shall mean the rollo in this case.

[3] Id., 186-188.

[4] Rollo, 203-214.

[5] Annex “F” of Petition: Rollo, 40, et seq.

[6] Id., 40.

[7] Annex “G” of Petition; Rollo, 78-81.

[8] Annex “C” of Petition; Rollo, 55-58. This was signed by Atty. Roline M. Ginez-Jabalde, Graft Investigation Officer II; recommended for approval by Angel C. Mayoralgo, Jr., Director of the Evaluation and Preliminary Investigation Bureau; and reviewed by Nicanor J. Cruz, Jr., Asst. Ombudsman, PACPO, OIC, EIO.

[9] C.A., 40 O.G., 12th Supp., 50

[10] Annex “A” of Petition; Rollo, 24-26.

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[11] 192 SCRA 548[1990].

[12] 212 SCRA 607[1992].

[13] 211 SCRA 243[1992].

[14] 2 Record of the Constitutional Commission, 263-264.

[15] 2 Record of the Constitutional Commission, 346-348.

[16] 4 Record of the Constitutional Commission, 40-41.

[17] 4 Record of the Constitutional Commission, 41-44.

[18] 5 Record of the Constitutional Commission, 801-802.

[19] Entitled “An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances to Provide When Prescription Shall Begin to Run.”

[20] People v. Monteiro, supra note 11, at 553.

[21] Supra note 13, at 246-247.

[22] Supra note 12, at 613-614.

CONCURRING AND DISSENTING OPINION

MELO, J.:

I join in the initial premise of the ponencia of Mr. Chief Justice Hilario G. Davide, Jr. for whom I only have the highest respect for his scholarly and in-depth resolution of the issues at hand, particularly its commanding interpretation of Section 15, Article XI of the 1987 Constitution which declares that the imprescriptibility of "[t]he right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees ..." only refers to the civil action that may be brought against the erring parties, and not to the criminal action. However, I beg to disagree with the conclusion that the case must be remanded to the Ombudsman to reopen the proceedings. My humble position on the matter is that the offense or offenses herein involved have already prescribed.

The ponencia adverts to the view that the period of prescription for the offenses should be reckoned from the discovery of the offense by the State and not from the time the questioned transactions were made. It notes that, as alleged, the public officials concerned connived or conspired with the "beneficiaries of the loans" (p. 16) and concludes that the Ombudsman clearly acted with grave abuse of discretion in dismissing Case No. OMB-0-96-0968 outrightly since he should have first received the evidence from complainant and respondents to resolve the case on its merits and on the issue of the date of discovery of the offense.

The material facts are succinctly presented in the ponencia, which I now further capsulize. On October 8, 1992, President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, which was directed, inter alia, to inventory all behest loans, and identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for granting the loans or who influenced the grant thereof. On November 9, 1992, he issued Memorandum Order No. 61 directing the Committee to "include in its investigation, inventory, and study all

non-performing loans which shall embrace both behest and non-behest loans." Specific criteria which may be “utilized as a frame of reference in determining a behest loan” were likewise included in the directive. The investigation resulted in the finding that twenty-one (21) corporations, including the Philippine Seeds, Inc. (PSI), obtained behest loans. Subsequently, the Committee filed with the Ombudsman a sworn complaint against PSI's Directors, as well as the Directors of the DBP who approved the loans for violation of Paragraphs (e) and (g), Section 3 of Republic Act No. 3019, as amended. The questioned transactions took place in 1969, 1975, and 1978; the criminal complaint was filed on March 2, 1996. In dismissing the same, the Ombudsman ratiocinated that the offenses charged against respondents had already prescribed considering the 10-year prescriptive period provided by Section 11 of Republic Act No. 3019.

There is no question that the applicable law is Section 2 of Act No. 3326 (An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances to Provide When Prescription Shall Begin to Run) which reads:

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

By the text of the aforestated provision, the general rule is that prescription shall begin to run "from the day of the commission of the violation of the law ..." If the performance of an act constitutes the violation of the law, then prescription starts from the performance of that act; if the violation of the law consists of an omission to perform an act, then prescription is counted from the date the omitted act ought to have been done.

Upon the other hand, if the commission of the violation of the law "be not known at the time [of the commission]," then prescription shall begin to run "from the discovery thereof," that is, the discovery of the commission or non-performance of the act which constitutes the violation of the law.

Based on the above premises, the following conclusions are respectfully submitted:

I

Prescription begins to run from the day of the "commission of the violation of the law," or the performance of the act which constitutes the violation of the law, and not from "discovery" of the illegal character of the act committed, for verily, the illegality of an act is not "discovered"; only the commission of an act can be "discovered".

The rulings laid down in the cases of Zaldivia vs. Reyes, Jr. (211 SCRA 277[1992]) and Llenes vs. Dicdican (260 SCRA 207[1996]) pertinently enunciate the principle that prescription begins from the discovery of the act, whether the act charged be a violation of a special law or the Revised Penal Code.

A strict construction of Section 2 of Act No. 3326, as amended, compels the application of the rule that “[p]rescription shall begin to run from the day of the commission of the violation” and not “from the discovery thereof” which comes into play only when the commission of the violation of the law “be not known” at the time of its commission.

I agree with the Ombudsman's argument that the transactions were "never conducted clandestinely ... [but] carried out in the open, leaving a trail of public instruments/documents accessible and susceptible to evaluation." There were corresponding mortgages which were executed and registered (and obviously notarized and hence deemed

public instruments). These documents even became part of the coverage of the citizenry's right to information (Section 7, Article III, 1987 Constitution; Section 6, Article IV, 1973 Constitution) since these are deemed official records, documents, and papers pertaining to official acts, transactions, or decisions. Notably, the loan documents had been open to public scrutiny for essentially three presidential regimes.

In point is the ruling in People vs. Sandiganbayan (211 SCRA 241[1992]) where the accused Paredes was charged with violation of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, for allegedly filing a false application for a land patent. In said case, we held that the prescriptive period started to run from the date of the filing of the application. We disagreed with the theory that the prescriptive period should not commence upon the filing of Paredes' application because no one could have known about it except Paredes and the Lands Inspector, for the following reasons:

> . . . Indeed, practically all the department personnel, who had a hand in processing and approving the application, namely: (1) the lands inspector who inspected the land to ascertain its location and occupancy; (2) the surveyor who prepared its technical description; (3) the regional director who assessed the application and determined the land classification; (4) the Director of Lands who prepared the free patent; and (5) the Department Secretary who signed it, could not have helped "discovering" that the subject of the application was nondisposable public agricultural land.

The foregoing ratio decidendi is applicable to the cases involving behest loans. In applying for any type of loan with the Government, the necessary bureaucratic procedures must be followed and thus a loan would have to be assessed and approved by the loan agency and later subject to some form of internal or external audit. Therefore, as in the aforecited case, a number of public officials were aware of the loans from the time of their approval.

Additionally, the above-cited case articulates the rationale of the doctrine of prescription in criminal cases:

The reason for the extinction of the State's right to prosecute for a crime after the lapse of the statutory limitation period for the filing of the criminal action, is that:

> "Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity." (22 CJS 573-574.)
>
> "In the absence of a special provision otherwise, the statute of limitations begins to run on the commission of an offense and not from the time when the offense is discovered or when the offender becomes known, or it normally begins to run when the crime is complete." (22 CJS 585; Italics ours.)

As a corollary principle, whenever the State or the agency of Government charged with the duty to prosecute offenses takes the position that the commission of an act was "not known at the time" and that, therefore, prescription shall commence to run only "from the discovery thereof" (that is, the discovery of the commission of the act), it assumes the burden of showing that the commission of the violation of the law was "not known at the time." It is respectfully submitted that the State has failed to exhibit in this task. There was not the least effort on its part to show that the offenses were not discoverable at the time of commission.

In this regard, I find it inaccurate to say that the obtaining a behest loan constitutes a continuing offense. This view subscribes to the postulate that the reckoning date for prescription is not fixed at the date of approval of the loans considering that other elements of the act occurred at later dates. Similar to a transitory offense, in a

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continuing offense, some acts material and essential to a continuing crime occur in one province and some in another (Parulan vs. Director of Prisons, 22 SCRA 638[1968]). This concept is based on the theory that there is a continuance or repetition of the offense wherever the defendant may be found. However, it must be emphasized that a continuing crime is only deemed a single crime, consisting of a series of acts but all arising from one criminal resolution (Reyes, The Revised Penal Code, Vol. I, 1993 ed., p. 680). It is an unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy (Ibid., p. 681, citing 22 C.J.S. 52). For purposes of venue in criminal procedure, a continuing crime is one which is consummated in one place, yet by reason of the nature of the offense, the violation of the law is deemed continuing. Examples are evasion of service of sentence, where the prisoner moves from one place to another; kidnapping and illegal detention, where the deprivation of liberty is persistent and continuing from one place to another; and libel, where the libelous matter is published or circulated from one province to another (Parulan vs. Director of Prisons, supra). Violation of B.P. Blg. 22 also falls under this definition when the dishonored check was issued in one place but delivered in another (People, et al. vs. Grospe, et al., 157 SCRA 154[1988]).

On the contrary, the procurement of a behest loan is consummated at the time the transaction was entered into, or more specifically, at the time the parties to the loan transaction came into agreement as to the terms thereof. Hence, the violation of the law cannot be considered as continuing, in contrast to the examples mentioned above. Its time and place of consummation are fixed and definite.

II

Granting arguendo that the State had no knowledge of the violation of Republic Act No. 3019 in the exact years of approval of the loans, that is, in 1969, 1975, and 1978, discovery of the violation should be counted, at the very latest, from February 28, 1986, where by virtue of Executive Order No. 1, the Aquino Administration disclosed its knowledge of the "vast resources of the government ... amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad." Definitely not as late as 1992 when the Committee was convened, but as early as February, 1986, the date of the fall of the Marcos regime.

In the case at bar, it is indubitable that the moment the loans were approved during the presidency of President Marcos, such approval, which was done by the DBP, amounted to official governmental action, which, under Section 3, paragraph (m) of Rule 131 of the Rules of Court, bears the presumption of regularity. The subsequent change in the administration definitely did not make such acts unofficial or clandestine.

The following queries now present themselves: In the first place, what brought about the issuance of Administrative Order No. 13 which created the Committee that reported the alleged behest loans obtained by the PSI? What prompted President Ramos to convene such kind of fact-finding committee? The Committee itself admits that behest loans are part of the alleged ill-gotten wealth which former President Ferdinand Marcos and his cronies accumulated and which the Government, through the Presidential Commission on Good Government (PCGG), seeks to recover under Section 15, Article XI of the 1987 Constitution. Hence, the answers are to be found in the Constitution itself and in the circumstances surrounding the framing thereof, particularly the aforestated provision on the right of the State to recover behest loans as ill-gotten wealth. Such provision was included in our Constitution because as early as the 1986 EDSA Revolution, and even antedating such historical event, there was already knowledge of the accumulation of ill-gotten wealth, including the grant of behest loans. Viewed by the Marcos Administration, such loans were not behest. However, in the eyes of the framers of the 1987 Constitution, as well as the Aquino and the Ramos administrations, the former even pre-dating the drafting of the Constitution, such loans bore the apparent stamp of illegality, and hence must be investigated. Ergo, the creation of the Committee which, in the course of its investigation, "discovered" the behest loans subject of the instant case.

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It is quite illogical to state that prescription of the criminal action against private respondents commenced to run only from the time the Committee was organized by former President Fidel V. Ramos. It is true that in cases of fraud or concealment of an offense, the statute of limitations begins to run only when the culpable act is actually discovered unless in the exercise of reasonable diligence it might have been sooner discovered. However, I cannot accept the view that although the defrauded party (in this case, the Philippine government) had the opportunity or the power to investigate and discover the fraud, it is not sufficient to charge the same with such notice or knowledge since it only had a suspicion of fraud which is not sufficient to constitute a discovery that will set the State in motion.

The premise on which Executive Order No. 1 is based was not mere suspicion of fraud. Could mere suspicion be enough basis for the significant empowerment of the PCGG to conduct investigation and require submission of evidence in order to ascertain the facts germane to its objective? The PCGG was categorically vested with the power to “sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto . . .” (Underscoring supllied) Why not start then with its own backyard, by investigating all financial institutions in government? Instead, it ran after private property of cronies, leaving out said lending institutions that may have favored said cronies due to the latter’s relationship or close affiliation with former President Marcos.

Saliently, there exists not only a suspicion or a badge of fraud, but also a historical antecedent of fraud which even became the basis of a law. Yet the government institution which was charged with the duty of uncovering all ill-gotten wealth failed to act comprehensively.

III

With the highest respect, I must express my disagreement with the statement in the ponencia that it was "well-nigh impossible for the State, the aggrieved party, to have known the violations of Republic Act No. 3019 at the time the questioned transactions were made ..." Precisely because the approval of the loans were deemed official governmental action, there was no concealment. But, as discussed above, granting that no one at that time could question the transactions because no one dared to assail the authority of then President Marcos who may have facilitated the approval of the loans, still, upon the overthrow of the Marcos regime in February, 1986, the State had all the opportunities to question the subject transactions. During that time, the State already had information that Marcos and his cronies acquired ill-gotten wealth, which clearly includes loans approved during the Marcos regime. Such undeniable knowledge is manifested as follows:

> (1) Executive Order No. 1 issued on February 28, 1986. -- The very first executive order issued by then President Corazon C. Aquino after her assumption to office and the ouster of President Marcos on February 25, 1986 emphasized the "urgent need to recover all ill-gotten wealth" which was premised on her administration's assertion that "vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad." Upon such premises, the Presidential Commission on Good Government (PCGG) was created and was charged with the task of assisting the President in regard to the "recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship."

Manifestly, as early as February 28, 1986, the PCGG already had the power and authority to "sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or

disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task;" "[t]o provisionally take over in the public interest or to prevent the disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities"; and "[t]o enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate, or otherwise make ineffectual the efforts of the Commission to carry out its tasks under this order." The PCGG was likewise granted the power, inter alia, to conduct investigation and require submission of evidence in order to ascertain the facts germane to its objective.

Thereafter, the PCGG could have easily dragooned governmental financial institutions and investigated the same to recover ill-gotten wealth. It could have with the least effort handily placed the DBP under investigation. But inexplainably, it failed to do so at that time.

> (2) Executive Order No. 2 issued on March 12, 1986. -- This executive order gives additional and more specific data and directions on the recovery of ill-gotten properties amassed by the leaders and supporters of the previous regime. It provided that "... the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines; ..." (Italics supplied)
>
> (3) Proclamation No. 3 issued on March 25, 1986 creating the Freedom Constitution. -- Article II of the Provisional Constitution, otherwise known as the Freedom Constitution, mandates that "[t]he President shall give priority to measures to achieve the mandate of the people to: ... (d) recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts..."
>
> (4) Executive Order No. 14 issued on May 7, 1986. -- This executive order empowered the PCGG, "with the assistance of the Office of the Solicitor General and other government agencies, ... to file and prosecute all cases investigated by it ... as may be warranted by its findings."
>
> (5) Aside from Section 15, Article XI of the 1987 Constitution (which was ratified by the people in the February 2, 1987 plebiscite), the framers thereof included Section 26, Article XVIII regarding the recovery of the funds and properties plundered during the Marcos regime, as follows:
>
> Sec. 26. The authority to issue sequestration or freeze orders under Proclamation No. 3, dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.
>
> Sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.
>
> The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

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The foregoing historical antecedents were surveyed in Presidential Commission on Good Government v. Peña (159 SCRA 556[1988]) where this Court charged the PCGG "with the herculean task of bailing the country out of the financial bankruptcy and morass of the previous regime and returning to the people what is rightfully theirs"; and in Bataan Shipyard & Engineering Co., Inc. v. PCGG (150 SCRA 181[1987]) confirming the Aquino Administration's knowledge of the ill-gotten properties amassed by the leaders and supporters of the previous regime and the urgent need to recover the same.

Going back to the case at bar, it is clear that Administrative Order No. 13, as supplemented by Memorandum Order No. 61, was the first formal act of the Government that dealt exclusively with the inventory of all behest loans for the primary purpose of determining the courses of action that the Government should take to recover those loans. But patently, this act should have been done during the Aquino Administration. Unfortunately, no one in government thought of such act until 1992.

The ponencia, citing People v. Duque (212 SCRA 607[1992]), further suggests that prescription for offenses penalized under special laws begins to run only from the discovery of the unlawful nature of the acts constituting the offense, seemingly suggesting that discovery of the unlawful nature of "behest loans" came about only when the Committee investigated the transactions using the criteria prescribed in the November 9, 1992 Memorandum Order No. 61 of President Ramos. With the highest respect, this intimation, in my opinion, leads to incongruity and peculiar circumstances.

It is my position that when Section 2 of Act No. 3326 speaks of the "commission of the violation of the law" not being known at the time of its commission, it does not refer to "the commission of the violation of the law" not being known by any specific agency or instrumentality of government. It could not have conceivably intended, with respect to loans granted by government financial institutions, that the knowledge be that of the Committee created in 1992. The Committee could not have known of them when they were granted and committed in 1969, 1975, and 1978 since the Committee did not exist yet at the time.

Inversely, if no committee had been created, does it follow that the violation of the law would not have been known and that prescription would not even start to run? And what if the committee was to be created only after the turn of the century? Does it likewise follow that the prosecution of the offenses would not prescribe until after we are into the next millenium?

Moreover, the Committee did not "discover" the granting of the loans. This was never concealed. The approval of the loans has always been known. What the Committee found, or concluded, was that the loans were "behest loans", or allegedly in violation of the law, and only on the basis of criteria prescribed in the November 9, 1992 Memorandum Order No. 61 of President Ramos.

As explained hereinabove, the illegality of an act is not "discovered"; whether an act is legal or illegal is a matter of opinion and an opinion is not "discovered". In the instant case, that opinion could not have been made earlier than 1992 since it was only in that year when the criteria for "behest loans" were prescribed by executive pronouncement (not by law). Had the Committee not been created, and the criteria prescribed, would it mean that prescription would never have commenced to run?

In this light, precisely to avoid such dissonance created by the circumstances discussed above, People vs. Duque (supra) itself dictates that "[a] statute on prescription of crimes is an act of liberality on the part of the State in favor of the offender. The applicable well-known principles of statutory interpretation are that statutes must be construed in such a way as to give effect to the intention of the legislative authority, and so as to give a sensible meaning to the language of the statute and thus avoid nonsensical or absurd results, departing to the extent unavoidable from the literal language of the statute." (Italics supplied)

With due respect, I disagree with my distinguished colleague, Mr. Justice Puno, who opines that "the facts before the public respondent were too little and too lean to enable him to render a just judgment," therefore necessitating a remand of the case to public respondent for further investigation, thus sharing the view of the ponencia that the Ombudsman must proceed with the preliminary investigation to receive evidence on the issue of the date of discovery of the offense. My distinguished colleague points out specific issues that must be settled in the case at bar, to wit: (a) whether the offense in the instant case was not known at the time of its commission; (b) whether or not the PCGG exercised due diligence to discover the offense; and (c) the date of the discovery of the offense. While I agree with the observation that each "behest loans" case has its own topography of facts, I believe that the issues mentioned above can satisfactorily be resolved by the data that we have on hand.

At the outset, it must be settled that the term "ill-gotten wealth" as used in the early issuances of former President Corazon C. Aquino, necessarily includes proceeds from behest loans (as admitted by the Committee), particularly benefiting borrowers who were granted such loans because of no other reason except their close association with former President Marcos. However, it must be noted that the such loans had not yet been named as "behest", although the concept of such undercollateralized loans already existed.

Section 1, paragraph (a) of the Rules and Regulations issued by then Minister of the PCGG Jovito R. Salonga provides:

> SECTION 1. Definition. (A) "Ill-gotten wealth" is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of Executive Order Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes:
>
> (1) Through misappropriation, conversion, or misuse or malversation of public funds or raids on the public treasury;
>
> (2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by the reason of the office or position of the official concerned;
>
> (3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;
>
> (4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;
>
> (5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and
>
> (6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.

(Underscoring supplied)

Proceeds from behest loans undoubtedly fall under the third paragraph of the enumeration. In terms of manner of procurement, the sixth paragraph applies since the borrower may have taken advantage of relationship with former President Marcos or any of his immediate family members.

Obviously, the PCGG had all the means and the power to run after the proceeds of behest loans by virtue of Executive Order No. 1. It had the power to recover all ill-gotten wealth accumulated by former President Marcos, his immediate family, relatives, subordinates, and close associates, whether located in the Philippines or abroad,

including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship. And pursuant thereto, the PCGG had the power and authority to conduct investigations as may be necessary in order to accomplish and carry out the purposes of said executive order. It even had the power to sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task.

Pragmatically speaking, the PCGG had a list of all the known and conspicuous cronies of the former President Marcos. Sequestration proceedings were initiated left and right against them. In fact, some of the accounts frozen by the PCGG may have consisted of proceeds from behest loans. Ultimately the problem, however, boils down to the failure of the PCGG to institutionalize and categorize such loans. The PCGG definitely knew about them but had failed to act on them. The mentality of the government on the technical nature of these loans was yet to evolve.

It was only in 1992 when the government realized the void. Thus, the creation of the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, with the Chairman of the PCGG as Chairman, on October 8, 1992, and the conceptualization and categorization of a behest loan by virtue of Memorandum Order No. 61 issued on November 9, 1992. Notably, the following criteria were set as a frame of reference in determining said kind of loan:

a. It is undercollateralized;

b. The borrower corporation is undercapitalized;

c. Direct or indirect endorsement by high government officials like presence of marginal notes;

d. Stockholders, officers or agents of the borrower corporation are identified as cronies;

e. Deviation of use of loan proceeds from the purpose intended;

f. Use of corporate layering;

g. Non-feasibility of the project for which financing is being sought;

h. Extraordinary speed in which the loan release was made.

Emphasis is placed on the fourth characteristic of a behest loan. Clearly, cronies had been the object of pursuit of the PCGG since the issuance of Executive Order No. 1. A crony would definitely refer to a close associate of former President Marcos, if not a family member or a subordinate. Whether it be 1986 or 1992, the meaning of the term has not changed. Why then did the PCGG not run after these borrowers earlier? As earlier stated, the PCGG could have easily placed the DBP under investigation, the same being a government financial institution, just like the Land Bank of the Philippines or the PNB.

Going now to the details of the case at bar, who were the Directors of the PSI involved herein? We are referring to names such as, but not limited to, Pacifico E. Marcos, brother of former President Marcos, and Eduardo V. Romualdez, related to the former First Lady; names that manifestly fall under the term “crony”.

In fine, let me reiterate my position that the PCGG failed to exercise due diligence in discovering the behest loan subject of this case. It could have done so with its huge powers. With the issuance of Executive Order No. 2 on March 12, 1986 based on the premise that the government was already in possession of evidence showing that

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there are assets and property purportedly pertaining to former President Marcos, and/or his wife, their close relatives, subordinates, business associates, dummies, agents or nominees, which had been acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the people and the Republic, and giving the PCGG power to freeze all assets and property in the Philippines in which former President Marcos and/or his wife, their close relatives, subordinates, business associates, dummies, agents, or nominees had any interest and participation, the PCGG could have exhausted all possibilities of acquiring said assets and thus run after the financial institutions that may have made the acquisition possible.

No investigation on the loans was made when it was within its power to do so during the Aquino Administration. If the Ad Hoc Committee could do it in 1992, why could not the PCGG have done it in 1986? My distinguished colleague, Mr. Justice Puno, himself posits that "[i]t is easily demonstrable that even before the creation of said committee, the State thru the PCGG, the DOJ, the OSG, and the Ombudsman, has already discovered similar offenses." (Underscoring supplied)

To recapitulate, it must be remembered that during the Marcos regime, the assailed loans bore the stamp of legality since it was the former President himself who facilitated the grant thereof. It was the following regime which contemplated illegality in their nature. Unfortunately, in 1986 and in the years thereafter, no criteria were set for the behest nature of loans. It took the State two regimes (and essentially six years) to finally get down the drawing board and to set concrete criteria to determine a loan as behest, as contained in President Ramos' Memorandum Order No. 61 which was issued on November 9, 1992, and to inventory the loans characterized as such. In fact, if we choose to be more analytical about it, the fact that said Memorandum Order provides that non-payment of a behest loan may entail not only civil but criminal liability inescapably characterizes the Memorandum Order as an ex post facto law which is proscribed by our Constitution (Section 22, Article III, 1987 Constitution). Significantly, the application of the criteria prescribed under Memorandum Order No. 61 (November 9, 1992) to transactions entered into prior to said order violates this constitutional proscription since said Memorandum Order provides for the infliction of punishment upon a person for an act done which, when it was committed, was innocent (People v. Sandiganbayan, supra, at p. 249, citing Black's Law Dictionary, 5th edition).

There is thus no need to direct the Ombudsman to reopen the matter for the purpose of receiving evidence on when the government discovered the offense. The facts are unequivocal. The government knew about behest loans as evidenced by law, particularly the first executive orders of the Aquino Administration.

To be sure, we are all in unity as to the nobility of the task of the Committee, and as to the national importance and significance thereof. But all criminal prosecutions are governed by the Statute of Limitations, whereby, for reasons of grace and liberality, at one point, the State sets down and sheathes the sword of Damocles, which would otherwise eternally and endlessly hang over the heads of the citizenry. The instant case is one perfect example where, by clear provision of law, this mystic blade necessarily must cease to dangle. Dura lex sed lex.

I, therefore, vote to dismiss the instant petition.

CONCURRING AND DISSENTING OPINION

PUNO, J.:

I concur with the majority opinion that section 15 of Article XI of the Constitution applies only to civil actions for recovery of ill-gotten wealth and not to criminal cases. I also agree that the case at bar should be remanded to the public respondent for reception of evidence on the issue of prescription. I respectfully submit that the public respondent committed grave abuse of discretion in prematurely dismissing motu proprio the sworn complaint filed by petitioner PCGG.

The law on prescription of special crimes like violation of R.A. No. 3019 (Anti-Graft Law) is provided for in Section 2 of Act No. 3326, viz:

> "SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof . . . "

The application of this provision is not simple and each case must be decided according to its facts. It involves a careful study and analysis of contentious facts: (a) when the commission of the violation of the law happened; (b) whether or not the violation was known at the time of its commission, and (c) if not known then, the time of its discovery. In addition, there is the equally difficult problem of choice of legal and equitable doctrines to apply to the above elusive facts. For the general rule is that the mere fact that a person entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises, does not prevent the running of the statute.[1] This stringent rule, however, admits of an exception. Under the "blameless ignorance" doctrine, the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, courts decline to apply the statute of limitations where the plaintiff neither knew nor had reasonable means of knowing the existence of a cause of action.[2] Given all these factual and legal difficulties, the public respondent should have ordered private respondents to answer the sworn complaint, required a reply from the petitioners and conducted such hearings as may be necessary so he could have all the vital facts at his front and, upon their basis, resolve whether the offense charged has already prescribed.

In failing to follow this procedure, I respectfully submit that the facts before the public respondent were too little and too lean to enable him to render a just judgment. The public respondent's ruling that the offense charged against private respondents has already prescribed is principally predicated on the finding that the loans in question were evidenced by public documents, like duly registered mortgaged contracts, which were easily discoverable. The ruling is at best arguable considering that the "behest" nature of the loans could not be reasonably known by a mere eye examination of the mortgage contracts. The "behest" nature of the loans appeared to petitioners with certainty only upon their discovery, among others, of the marginal notes made by former President Marcos to facilitate the grant of the loans to private respondents. These marginal notes, addressed to then DBP Chairman Leonides Virata, were contained in two (2) letters[3] of private respondent PSI to then President Marcos requesting assistance for the restructuring of the loans. Beyond doubt, these marginal notes are not for public consumption and are not readily discoverable. I therefore submit that it would have been more prudent for the public respondent if he inquired more exhaustively on the confidential character of these marginal notes, i.e., whether they were concealed by private respondents and whether due diligence was exercised by petitioners to discover them.

With due respect, however, I do not agree with the majority that prescription should start to run from the discovery of the crime at bar. He opines that the crime at bar was discovered "x x x only after the Committee, pursuant to its authority under the 8 October 1992 Administrative Order No. 13 of President Ramos, conducted an investigation into the loans or guarantees granted or extended to the Philippine Seeds, Inc., using inter alia, the

criteria prescribed in the 9 November 1992 Memorandum Order No. 61 of President Ramos." To start with, it is not fair to use as an assumption the allegation that "the public officials concerned connived or conspired with beneficiaries of the loans" to justify the conclusion that "it was well nigh impossible for the state x x x to have known the violations of R.A. 3019." There is absolutely no factual basis for this conclusion inasmuch as the accused public officials were never given an opportunity to answer the charge of the PCGG. It is thus premature for the court to rule that the commission of the crime at bar was not known to the State. In addition, the suggested date of discovery --- i.e., after the creation of the Presidential Ad Hoc Fact Finding Committee --- is too arbitrary a date. It is easily demonstrable that even before the creation of said committee, the State thru the PCGG, the DOJ, the OSG, and the Ombudsman, has already discovered similar offenses. The cases filed with the Ombudsman and the Sandiganbayan are unmistakable evidence of these discovered crimes.

There is another reason why I do not agree with the suggested date. The suggested date may work to the advantage of some of the contracting parties to the behest loans which have already been discovered before the creation of the said committee. In such cases, the prescriptive period of their crime will still not run since the proffered thesis suggests that the period will start to be counted only after the creation of the said committee.

Be that as it may, I agree with the majority that in dismissing the case at bar, the public respondent erroneously applied the decisions in the two cases of Dinsay and Sandiganbayan. The public respondent leaned heavily on the ruling of the Court of Appeals in the 1940 case of Dinsay[4] that the prescriptive period for the crime charged therein began from the time the offense was committed as the transactions were evidenced by public instruments and notarization of these documents constituted constructive notice to the whole world. He also relied on People vs. Sandiganbayan[5] and held that when the "behest" loans were applied for, the loan documents passed through several departments and the accompanying mortgage contracts were duly registered. He then concluded that as no concealment was committed by the parties in the grant of the "behest" loans, there is no "discovery of crime" to speak of and the prescriptive period for the filing of the cases against them should be reckoned from the time of the commission of the offense. It is, however, respectfully submitted that the cases of Dinsay and People vs. Sandiganbayan are inapplicable to the case at bar whose factual milieu is entirely different. Dinsay involves falsification of a document, a crime penalized under the Revised Penal Code, while the Sandiganbayan case involves false application for title to a reserved land. In both cases, the fraudulent acts of defendants therein could not have been unknown to complainants. In Dinsay, the fraud committed clearly appeared on the very face of the public instrument covering the transaction. In the Sandiganbayan case, the nondisposable character of the subject lot could not have escaped the attention of several public officials who inspected the location of the lot and processed the false application. In Dinsay, defendant blatantly exercised acts of ownership over the disputed property from the very first time he came into possession. Hence, in the words of the Court, "there was nothing that was concealed or needed to be discovered" by the plaintiff therein. He knew from the start that defendant committed estafa but chose to sleep on his rights. Thus, Dinsay and Sandiganbayan bear a significant dissimilarity to the case at bar where petitioner PCGG contends that the offense committed by private respondents was not immediately known to it.

With due respect too, I do not agree with my esteemed colleague, Mr. Justice Melo, who ventures the view that the prescriptive period of the crime at bar should start to be counted from February 1986 or after the authoritarian government was toppled down. He cites both the Freedom and the 1987 Constitutions, as well as various proclamations, executive orders and issuances, to support his thesis that the government was aware of these "behest" loans thru agencies like the PCGG that were created to recover these illegal loans and prosecute the guilty parties. All these, however, are generalizations which cannot concretely settle the specific issues in the case at bar - - - i.e., (a) whether the offense in the instant case is not known at the time of its commission, and (b) whether or not PCGG exercised due diligence to discover the offense and (c) the date of discovery of the offense.

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These "behest" cases are many and each has its own topography of facts different from the others. They cannot be resolved on the basis of generalities that are indifferent to the distinct slopes of each case.

In conclusion, I wish to stress that the offenses ascribed to private respondents are not the ordinary variety. They involve "behest" loans which bled white the economy of the country, one of the excesses of the authoritarian regime that led to the EDSA revolution, a serious evil that the 1987 Constitution aimed to extirpate. It is more in accord with the spirit of the Constitution for the public respondent to accord the petitioners a fair chance to prove that the offenses of private respondents were not readily knowable and that they exercised reasonable diligence in discovering them. The records show that on August 15, 1996, petitioner Orlando Salvador wrote a letter[6] to public respondent. He informed public respondent that on May 29, 1996, he requested for an update on the status of the "behest" loan cases he filed with said office "in order that (he may) be able to submit other documents needed x x x to facilitate the filing of appropriate criminal actions x x x." Said May 29, 1996 letter was not acted upon by public respondent for a few days before, or on May 14, 1996, the sworn complaint against the private respondents has already been dismissed on the ground of prescription.

It is not too late for public respondent to give the petitioners a fair chance to prove that prescription has not barred the filing of charges against private respondents. The case at bar is yet at the preliminary investigation stage where strict rules of procedure need not be applied at the expense of justice. As repeatedly stressed, the case at bar involves nothing less than the interest of the people and under the Constitution, public respondent is the protector of the people. As protector of the people, the public respondent possesses a vast arsenal of powers to prosecute wrongful acts or omissions of public officials and employees. The power to prosecute includes the power to investigate and gather evidence motu proprio. Public respondent's role should be pro-active when it comes to fulfilling his role of protecting the people's interest.

IN VIEW WHEREOF, I respectfully submit that the facts of the case at bar are incomplete and I vote that it be remanded to the public respondent for further reception of evidence. On the basis of the parties' evidence, the respondent Ombudsman should determine the date of the commission of the crime and if the same be not known at the time, he should determine the date of its discovery and from the totality of the facts rule on whether the crime at bar has prescribed.

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[1] 21 AM JUR 2d, 715-716.

[2] Ibid., 716.

[3] Rollo, pp. 107-108 and pp. 109-110.

In one of the letters, former President Marcos made the following notations for DBP Chairman Virata: "This is the kind of project we need. Suspend foreclosure and study restructuring and refinancing."

[4] 40 O.G. Suppl. 50.

[5] 211 SCRA 241 (1992).

[6] Rollo, at p. 27.

SEPARATE (CONCURRING) OPINION

VITUG, J.:

In the instant petition, differing views have been expressed, given the circumstances involved in the case, on whether the prescriptive period applicable to the contemplated criminal action should be reckoned from the time the acts believed to constitute an offense are done or from the time the proper authorities are able to actually ascertain that the offense has been committed. The ruling of the public respondent that the offense charged against private respondents has already prescribed is predicated on the finding that the questioned "behest" loans are contained in public documents, some being duly recorded, that render them easily discernable or discoverable. Petitioner contends otherwise.

Article XI, Section 15, of the Constitution provides that the "right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees as transferees, shall not be barred by prescription, laches, or estoppel." This provision does seem to indicate that what is imprescriptible is the corresponding civil action to recover "ill-gotten" wealth but not the criminal action that may relate thereto. The criminal action, i.e., violation of Section 3 (c) and (g), Republic Act (R.A.) No. 3019, can prescribe conformably with the pertinent statute applicable which, in this instance, is Batas Pambansa Blg. 195, effective as of 16 March 1982, providing for a fifteen-year prescriptive period and thereby modifying to the above extent the ten-year period prescribed under R.A. No. 3019. In computing the prescriptive period, Act No. 3326, as amended, states:

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

"The prescription shall be interrupted when proceedings are instituted against the guilty person and shall begin to run again if the proceedings are ismissed for reasons not constituting double jeopardy."

In People vs. Sandiganbayan,[1] on the basis of its factual settings, the Court concluded that "the date of the violation of the law becomes the operative date of the commencement of the period of prescription" which, in that case, was the date of the filing of the application. There, the charge was for the violation of Republic Act No. 3019 allegedly committed through misrepresentation in an application for land patent (by wrongly stating that the land applied for was disposable in character). The Court said:

> "The theory of the prosecution that the prescriptive period should not commence upon the filing of Paredes' application because no one could have known about it except Paredes and Lands Inspector Luison, is not correct for, as the Sandiganbayan pointedly observed: 'it is not only the Lands Inspector who passes upon the disposability of public land x x x other public officials pass upon the application for a free patent including the location of the land and, therefore, the disposable character thereof' (p. 30, Rollo). Indeed, practically all the department personnel, who had a hand in processing and approving the application, namely: (1) the lands inspector who inspected the land to ascertain its location and accupancy; (2) the surveyor who prepared its technical description; (3) the regional director who assessed the application and determined the land classification; (4) the Director of Lands who prepared the free patent; and (5) the Department Secretary who signed it, could not have helped 'discovering' that the subject of the application was nondisposable public agricultural land."[2]

In People vs Duque,[3] upon the other hand, the Court held that the applicable prescriptive period "began to run from the time the recruitment activities of appellant Duque (charged with illegal recruitment) were ascertained by the complainants and by the POEA to have been carried out without any license or authority from the government."[4] The Court ruled that the crime for which he was convicted had not prescribed because

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recruitment -

> "x x x for overseas employment is not in itself necessarily immoral or unlawful. It is the lack of necessary license or permit that renders such recruitment activities unlawful and criminal. Such lack of necessary permit or authority, while certainly known to appellant Duque back in January 1986, was not known to private complainants at that time. Indeed, private complainants discovered that appellant did not possess such authority or permit only when they went to the offices of the POEA for the purpose of filing a claim for return of the money they had delivered to appellant Duque. Since good faith is always presumed, the complainants were entitled to assume that appellant Duque was acting in good faith when he presented himself as a recruiter for overseas placement. Even if it be assumed arguendo that ordinary prudence required that a person seeking overseas employment ought to check the authority or status of persons pretending to be authorized or to speak for a recruitment or placement agency, the offended parties' failure to do so did not start the running of the prescriptive period. In the nature of things, acts made criminal by special laws are frequently not immoral or obviously criminal in themselves; for this reason, the applicable statute requires that if the violation of the special law is not known at the time, then prescription begins to run only from the discovery thereof, i.e., discovery of the unlawful nature of the constitutive act or acts."[5]

Similar to Duque was the case of People vs. Monteiro,[6] where the Court said that the period of prescription for the offense (failure to register with the SSS) should be deemed to have commenced from the day of the discovery of the violation if this was not evident at the time of its commission, and that a "contrary view would be dangerous as the successful concealment of an offense during the period fixed for its prescription would be the very means by which the offender (might) escape punishment."[7]

It seems quite obvious to me that the case at bar is more akin to Duque and Monteiro than it is to the situation in People vs. Sandiganbayan. The supposed "behest" loans where involved, contracted in 1969, 1975 and 1978, could not be deemed illegal per se nor evident to be as such. Verily, in this instance, certain criteria or frame of reference had yet to be formulated and adopted, indeed by no less than a COMMITTEE created and constituted for the purpose, before the nature and character of the loans as being unlawful, if at all, could be clearly drawn. I am, therefore, inclined to agree with petitioner that the start of the prescriptive period is the day of actual discovery of the commission of the crime.

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[1] 211 SCRA 241.

[2] At p. 247.

[3] 212 SCRA 607.

[4] At p. 615.

[5] 5 At p. 613.

[6] 192 SCRA 548.

[7] At p. 551.

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