

**RODRIGO R. DUTERTE AND BENJAMIN C. DE GUZMAN,
PETITIONERS, VS. THE HONORABLE SANDIGANBAYAN,
RESPONDENT.**

G.R. No. 130191. April 27, 1998

Ponente: KAPUNAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-130191/>

KAPUNAN, J.:

The right to preliminary investigation is not a mere formal right, it is a substantive right. To deny the accused of such right would be to deprive him of due process.

In this special civil action for certiorari with preliminary injunction, petitioners seek to set aside the Order of the Sandiganbayan dated 27 June 1997 denying the Motion to Quash the information filed against them for violating Sec. 3(g) of R.A. No. 3019, otherwise known as the Anti-Graft And Corrupt Practices Act. Petitioners similarly impugn the Resolution of the Sandiganbayan dated 5 August 1997 which denied their Motion for Reconsideration thereof.

Pertinent to this case are the following facts:

In 1990, the Davao City Local Automation Project was launched by the city government of Davao. The goal of said project was to make Davao City a leading center for computer systems and technology development. It also aimed to provide consultancy and training services and to assist all local government units in Mindanao set up their respective computer systems.

To implement the project, a Computerization Program Committee, composed of the following was formed:

Chairman : Atty. Benjamin C. de Guzman, City Administrator

Members : Mr. Jorge Silvosa, Acting City Treasurer

Atty. Victorino Advincula, City Councilor

Mr. Alexis Almendras, City Councilor

Atty. Onofre Francisco, City Legal Officer

Mr. Rufino Ambrocio, Jr., Chief of Internal Control Office

Atty. Mariano Kintanar, COA Resident Auditor.[1]

The Committee's duty was to "conduct a thorough study of the different computers in the market, taking into account the quality and acceptability of the products, the reputation and track record of the manufacturers and/or their Philippine distributors, the availability of service centers in the country that can undertake preventive maintenance of the computer hardwares to ensure a long and uninterrupted use and, last but not the least, the capability of the manufacturers and/or Philippine distributors to design and put into place the computer system – complete with the flow of paperwork, forms to be used and personnel required." [2]

Following these guidelines, the Committee recommended the acquisition of Goldstar computers manufactured by Goldstar Information and Communication, Ltd., South Korea and exclusively distributed in the Philippines by Systems Plus, Inc. (SPI).

After obtaining prior clearance from COA Auditor Kintanar, the Committee proceeded to negotiate with SPI, represented by its President Rodolfo V. Jao and Executive Vice President Manuel T. Asis, for the acquisition and installation of the computer hardware and the training of personnel for the Electronic Data-Processing Center. The total contract cost amounted to P11,656,810.00

On 5 November 1990, the City Council (Sangguniang Panlungsod) of Davao unanimously passed Resolution No. 1402 and Ordinance No. 173 approving the proposed contract for computerization between Davao City and SPI. The Sanggunian, likewise, authorized the City Mayor (petitioner Duterte) to sign the said contract for and in behalf of Davao City.[3]

On the same day, the Sangguniang issued Resolution No. 1403 and Ordinance No. 174, the General Fund Supplemental Budget No. 07 for CY 1990 appropriating P3,000,000.00 for the city's computerization project.

Given the go-signal, the contract was duly signed by the parties thereto and on 8 November 1990, petitioner City Administrator de Guzman released to SPI PNB Check No. 65521 in the amount of P1,748,521.58 as downpayment.

On 27 November 1990, the Office of the Ombudsman-Mindanao received a letter-complaint from a "concerned citizen," stating that "some city officials are going to make a killing" in the transaction.[4] The complaint was docketed as OMB-MIN-90-0425. However, no action was taken thereon.[5]

Thereafter, sometime in February 1991, a complaint docketed as Civil Case No. 20,550-91, was instituted before the Regional Trial Court of Davao City, Branch 12 by Dean Pilar Braga, Hospicio C. Conanan, Jr. and Korsung Dabaw Foundation, Inc. against the petitioners, the City Council, various city officials and SPI for the judicial declaration of nullity of the aforesaid resolutions and ordinances and the computer contract executed pursuant thereto.

On 22 February 1991, Goldstar, through its agent, Mr. S.Y. Lee sent a proposal to petitioner Duterte for the cancellation of the computerization contract.

Consequently, on 8 April 1991, the Sangguniang issued Resolution No. 449 and Ordinance No. 53 accepting Goldstar's offer to cancel the computerization contract provided the latter return the advance payment of P1,748,521.58 to the City Treasurer's Office within a period of one month. Petitioner Duterte, as city mayor, was thus authorized to take the proper steps for the mutual cancellation of the said contract and to sign all documents relevant thereto.[6]

Pursuant to the aforesaid authority, on 6 May 1991, petitioner Duterte, in behalf of Davao City, and SPI mutually rescinded the contract and the downpayment was duly refunded.

In the meantime, a Special Audit Team of the Commission on Audit was tasked to conduct an audit of the Davao City Local Automation Project to determine if said contract conformed to government laws and regulations.

On 31 May 1991, the team submitted its Special Audit Report (SAR) No. 91-05 recommending rescission of the subject contract. A copy of the report was sent to petitioner Duterte by COA Chairman Eufemio C. Domingo on 7 June 1991. In the latter's transmittal letter, Chairman Domingo summarized the findings of the special audit team, thus:

1. The award of the contract for the "Davao City Local Automation Project" to Systems Plus, Inc., for

P11,656,810 was done thru negotiated contract rather than thru competitive public bidding in violation of Sections 2 and 8 of PD 526. Moreover, there was no sufficient appropriation for this particular contract in violation of Sec. 85 of PD 1445.

2. Advance payment of P1.7M was made to Systems Plus, Inc. covering 15% of the contract cost of P11.6M in violation of Sec. 45 of PD 477 and Sec. 88 of PD 1445.

3. The cost of computer hardware and accessories under contract with “Systems Plus, Inc. (SPI)” differed from the team’s canvass by as much as 1200% or a total of P1.8M.

4. The City had no Information System Plan (ISP) prior to the award of the contract to SPI in direct violation of Malacañang Memo. Order No. 287 and NCC Memo. Circular 89-1 dated June 22, 1989. This omission resulted in undue disadvantage to the City Government.

5. To remedy the foregoing deficiencies, the team recommends that the contract with Systems Plus, Inc. be rescinded in view of the questionable validity due to insufficient funding. Further, the provisions of NCC-Memorandum Circular 89-1 dated June 22, 1989 regarding procurement and/or installation of computer hardware/system should be strictly adhered to.[7]

The city government, intent on pursuing its computerization plan, decided to follow the audit team’s recommendation and sought the assistance of the National Computer Center (NCC). After conducting the necessary studies, the NCC recommended the acquisition of Philips computers in the amount of P15,792,150.00. Davao City complied with the NCC’s advice and hence, was finally able to obtain the needed computers.

Subsequently, on 1 August 1991, the Anti-Graft League-Davao City Chapter, through one Miguel C. Enriquez, filed an unverified complaint with the Ombudsman-Mindanao against petitioners, the City Treasurer, City Auditor, the whole city government of Davao and SPI. The League alleged that the respondents, in entering into the computerization contract, violated R.A. No. 3019 (Anti-Graft and Corrupt Practices Act), PD No. 1445 (Government Auditing Code of the Philippines), COA circulars and regulations, the Revised Penal Code and other pertinent laws. The case was docketed as OMB-3-91-1768.[8]

On 9 October 1991, Graft Investigation Officer (GIO) Pepito A. Manriquez of the Office of the Ombudsman sent a letter[9] to COA Chairman Domingo requesting the Special Audit Team to submit their joint affidavit to substantiate the complaint in compliance with Section 4, par. (a) of the Rules of Procedure of the Office of the Ombudsman (A. O. No. 07).

On 14 October 1991, Judge Paul T. Arcangel, issued an Order dismissing Civil Case No. 20,550-91. The dispositive portion reads, thus:

WHEREFORE, in view of all the foregoing, this case is hereby dismissed on the ground of prematurity and that it has become moot and academic with the mutual cancellation of the contract. The other claims of the parties are hereby denied. No pronouncement as to costs.

SO ORDERED.[10]

On 12 November 1991, Graft Investigator Manriquez issued an order in OMB-3-91-1768 directing petitioners, Jorge Silvosa (City Treasurer), Mariano Kintanar (City Auditor) and Manuel T. Asis of SPI to:

xxx file in ten (10) days (1) their respective verified point-by-point comment under oath upon every allegation of the complaint in Civil Case No. 20,550-91 in the Regional Trial Court (RTC), Branch 12, Davao City “Dean Pilar C. Braga, et al. vs. Illegality of City Council of Davao Resolutions and Ordinances, and the Computer Contract executed Pursuant Thereto, for Recovery of Sum of Money, Professional Fees and Costs – with Injunctive Relief, including the Issuance of a Restraining Order and/or a Writ of Preliminary Prohibitory

Injunction in which they filed a motion to dismiss, not an answer and (2) the respective comments, also under oath, on the Special Audit Report No. 91-05, a copy of which is attached.[11]

On 4 December 1991, the Ombudsman received the affidavits of the Special Audit Team but failed to furnish petitioners copies thereof.

On 18 February 1992, petitioners submitted a manifestation adopting the comments filed by their co-respondents Jorge Silvosa and Mariano Kintanar dated 25 November 1991 and 17 January 1992, respectively.

Four years after, or on 22 February 1996, petitioners received a copy of a Memorandum prepared by Special Prosecution Officer I, Lemuel M. De Guzman dated 8 February 1996 addressed to Ombudsman Aniano A. Desierto regarding OMB-MIN-90-0425 and OMB-3-91-1768. Prosecutor De Guzman recommended that the charges of malversation, violation of Sec. 3(e), R.A. No. 3019 and Art. 177, Revised Penal Code against petitioners and their co-respondents be dismissed. He opined that any issue pertaining to unwarranted benefits or injury to the government and malversation were rendered moot and academic by the mutual rescission of the subject contract before the COA submitted its findings (SAR No. 91-05) or before the disbursement was disallowed. However, Prosecutor De Guzman recommended that petitioners be charged under Sec. 3(g) of R.A. No. 3019 “for having entered into a contract manifestly and grossly disadvantageous to the government, the elements of profit, unwarranted benefits or loss to government being immaterial.”[12]

Accordingly, the following information dated 8 February 1996 was filed against petitioners before the Sandiganbayan (docketed as Criminal Case No. 23193):

That on or about November 5, 1990, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, accused Benjamin C. De Guzman being then the City Administrator of Davao City, committing the crime herein charged in relation to, while in the performance and taking advantage of their official functions, and conspiring and confederating with each other, did then and there willfully, unlawfully and criminally enter into a negotiated contract for the purchase of computer hardware and accessories with the Systems Plus, Incorporated for and in consideration of the amount of PESOS: ELEVEN MILLION SIX HUNDRED FIFTY-SIX THOUSAND EIGHT HUNDRED TEN (P11,656,810.00), which contract is manifestly and grossly disadvantageous to the government, said accused knowing fully-well that the said acquisition cost has been overpriced by as much as twelve hundred (1200%) percent and without subjecting said acquisition to the required public bidding.

CONTRARY TO LAW.[13]

On 27 February 1996, petitioners filed a motion for reconsideration and on 29 March 1996, a Supplemental Motion for Reconsideration on the following grounds:

1. Petitioners were deprived of their right to a preliminary investigation, due process and the speedy disposition of their case;
2. Petitioner Duterte acted in good faith and was clothed with authority to enter into the subject contract;
3. There is no contract manifestly and grossly disadvantageous to the government since the subject contract has been duly rescinded.

On 19 March 1996, the Ombudsman issued a Resolution denying petitioners’ motion for reconsideration.

On 18 June 1997, petitioners filed a Motion to Quash which was denied by the Sandiganbayan in its Order dated 27 June 1997. The Sandiganbayan ruled:

It appears, however, that the accused were able to file motions for the reconsideration of the Resolution

authorizing the filing of the Information herein with the Ombudsman in Manila. This would mean, therefore, that whatever decision which might have occurred with respect to the preliminary investigation would have been remedied by the motion for consideration in the sense that whatever the accused had to say in their behalf, they were able to do in that motion for reconsideration.

Considering the denial thereof by the Office of the Ombudsman, the Court does not believe itself empowered to authorize a reinvestigation on the ground of an inadequacy of the basic preliminary investigation nor with respect to a dispute as to the proper appreciation by the prosecution of the evidence at that time.

In view hereof, upon further representation by Atty. Medialdea that he represents not only Mayor Duterte but City Administrator de Guzman as well, upon his commitment, the arraignment hereof is now set for July 25, 1997 at 8:00 o'clock in the morning.[14]

On 15 July 1997, petitioners moved for reconsideration of the above order but the same was denied by the Sandiganbayan for lack of merit in its Resolution dated 5 August 1997.[15]

Hence, the present recourse.

Petitioners allege that:

THE HONORABLE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONERS' MOTION TO QUASH AND MOTION FOR RECONSIDERATION, CONSIDERING THAT:

A

(1) PETITIONERS WERE EFFECTIVELY DEPRIVED OF THEIR RIGHT TO A PRELIMINARY INVESTIGATION PURSUANT TO SEC. 4, RULE II OF ADMINISTRATIVE ORDER NO. 07 (RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN); AND

(2) ASSUMING THAT A PRELIMINARY INVESTIGATION WAS PROPERLY CONDUCTED, THERE WAS AN INORDINATE DELAY IN TERMINATING THE SAME THEREBY DEPRIVING THEM OF THEIR RIGHT TO DUE PROCESS AND SPEEDY DISPOSITION OF THE CASE.

B

THERE IS NO SUFFICIENT BASIS, IN FACT AND IN LAW, TO CHARGE PETITIONERS DUTERTE AND DE GUZMAN OF VIOLATING SEC. 3 (G) OF R.A. 3019 IN THAT:

(1) PETITIONER DUTERTE ACTED IN GOOD FAITH AND WAS CLOTHED WITH FULL LEGAL AUTHORITY FROM THE CITY COUNCIL TO ENTER INTO A CONTRACT WITH SYSTEMS PLUS, INC.,

(2) THERE IS NO CONTRACT MANIFESTLY AND GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT TO SPEAK OF AS THE SAME HAS BEEN RESCINDED AND NO DAMAGE WAS SUFFERED BY THE CITY GOVERNMENT;

(3) ASSUMING THAT THE CONTRACT WAS NOT RESCINDED, THE SAME CANNOT BE CONSIDERED AS MANIFESTLY AND GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT.[16]

On 4 September 1997, the Court issued a Temporary Restraining Order enjoining the Sandiganbayan from further proceeding with Criminal Case No. 23193.

The Court finds the petition meritorious.

We have judiciously studied the case records and we find that the preliminary investigation of the charges against petitioners has been conducted not in the manner laid down in Administrative Order No. 07.

In the 12 November 1991 Order of Graft Investigator Manriquez, petitioners were merely directed to submit a point-by-point comment under oath on the allegations in Civil Case No. 20,550-91 and SAR No. 91-05. The said order was not accompanied by a single affidavit of any person charging petitioners of any offense as required by law.[17] They were just required to comment upon the allegations in Civil Case No. 20,550-91 of the Regional Trial Court of Davao City which had earlier been dismissed and on the COA Special Audit Report. Petitioners had no inkling that they were being subjected to a preliminary investigation as in fact there was no indication in the order that a preliminary investigation was being conducted. If Graft Investigator Manriquez had intended merely to adopt the allegations of the plaintiffs in the civil case or the Special Audit Report (whose recommendation for the cancellation of the contract in question had been complied with) as his basis for criminal prosecution, then the procedure was plainly anomalous and highly irregular. As a consequence, petitioners' constitutional right to due process was violated.

Sections (2) and (4), Rule II of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman) provide:

Sec. 2. Evaluation. – Upon evaluating the complaint, the investigating officer shall recommend whether or not it may be:

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

xxx

Sec. 4. Procedure. – The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

- a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.
- b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondent to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.
- c) If the respondent does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.
- d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If respondent desires any matter in the complainant's affidavit to be clarified, the

particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

e) If the respondent cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on record.

f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.

g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.

No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or the proper Deputy Ombudsman in all other cases.

In what passes off as application of the foregoing rules, all that petitioners were asked to do was merely to file their comment upon every allegation of the complaint in Civil Case No. 20,550-91 in the Regional Trial Court (RTC) and on the COA Special Audit Report. The comment referred to in Section 2(b) Rule II, of A.O. No. 07 is not part of or is equivalent to the preliminary investigation contemplated in Sec. 4, Rule II, of the same Administrative Order. A plain reading of Sec. 2 would convey the idea that upon evaluation of the complaint, the investigating officer may recommend its outright dismissal for palpable want of merit; otherwise, or if the complaint appears to have some merit, the investigator may recommend action under any of those enumerated from (b) to (f), that is, the investigator may recommend that the complaint be: referred to respondent for comment, or endorsed to the proper government office or agency which has jurisdiction over the case; or forwarded to the appropriate office of official for fact-finding investigation. Now, if the investigator opts to recommend the filing of a comment by the respondent, it is presumably because he needs more facts and information for further evaluation of the merits of the complaint. That being done, the investigating officer shall again recommend any one of the actions enumerated in Section 2, which include the conduct of a preliminary investigation.

A preliminary investigation, on the other hand, takes on an adversarial quality and an entirely different procedures comes into play. This must be so because the purpose of a preliminary investigation or a previous inquiry of some kind, before an accused person is placed on trial, is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of public trial.[18] It is also intended to protect the state from having to conduct useless and expensive trials.[19] While the right is statutory rather than constitutional in its fundament, it is a component part of due process in criminal justice. The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and hence, formally at risk of incarceration or some other penalty, is not a mere formal or technical right; it is a substantive right. To deny the accused's claim to a preliminary investigation would be to deprive him of the full measure of his right to due process.[20]

Note that in preliminary investigation, if the complaint is unverified or based only on official reports (which is the

situation obtaining in the case at bar), the complainant is required to submit affidavits to substantiate the complaint. The investigating officer, thereafter, shall issue an order, to which copies of the complaint-affidavit are attached, requiring the respondent to submit his counter-affidavits. In the preliminary investigation, what the respondent is required to file is a counter-affidavit, not a comment. It is only when the respondent fails to file a counter-affidavit may the investigating officer consider the respondent's comment as the answer to the complaint. Against the foregoing backdrop, there was a palpable non-observance by the Office of the Ombudsman of the fundamental requirements of preliminary investigation.

Apparently, in the case at bar, the investigating officer considered the filing of petitioner's comment as a substantial compliance with the requirements of a preliminary investigation. Initially, Graft Investor Manriquez directed the members of the Special Audit Team on 9 October 1991 to submit their affidavits relative to SAR No. 91-05. However, on 12 November 1991, before the affidavits were submitted, Manriquez required petitioners to submit their respective comments on the complaint in the civil case and on Special Audit Report (SAR) 91-05. Even when the required affidavits were filed by the audit team on 4 December 1991, petitioners were still not furnished copies thereof. The Ombudsman contends that failure to provide petitioners the complaint-affidavits is immaterial since petitioners were well aware of the existence of the civil complaint and SAR No. 91-05. We find the Ombudsman's reasoning flawed. The civil complaint and the COA Special Audit Report are not equivalent to the complaint-affidavits required by the rules. Moreover, long before petitioners were directed to file their comments, the civil complaint (Civil Case No. 20, 550-91) was rendered moot and academic and, accordingly, dismissed following the mutual cancellation of the computerization contract. In SAR No. 91-05, on the other hand, petitioners were merely advised to rescind the subject contract – which was accomplished even before the audit report came out. In light of these circumstances, the Court cannot blame petitioners for being unaware of the proceedings conducted against them.

In *Olivas vs. Office of the Ombudsman*,^[21] this Court, speaking through Justice Vicente V. Mendoza, emphasized that it is mandatory requirement for the complaint to submit his affidavit and those of his witnesses before the respondent can be compelled to submit his counter-affidavits and other supporting documents. Thus:

Even in investigations looking to the prosecution of a party, Rule I, § 3 can only apply to the general criminal investigation, which in the case at bar was already conducted by the PCGG. But after the Ombudsman and his deputies have gathered evidence and their investigation has ceased to be a general exploratory one and they decide to bring the action against a party, their proceedings become adversary and Rule II § 4(a) then applies. This means that before the respondent can be required to submit counter-affidavits and other supporting documents, the complaint must submit his affidavit and those of his witnesses. This is true not only of prosecutions of graft cases under Rep. Act No. 3019 but also of actions for the recovery of unexplained wealth under Rep. Act No. 1379, because § 2 of this latter law requires that before a petition is filed there must be a “previous inquiry similar to preliminary investigation in criminal cases.”

Indeed, since a preliminary investigation is designed to screen cases for trial, only evidence may be considered. While reports and even raw information may justify the initiation of an investigation, the stage of preliminary investigation can be held only after sufficient evidence has been gathered and evaluated warranting the eventual prosecution of the case in court. As this Court held in *Cojuangco, Jr. v. PCGG*:

Although such a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused. Indeed, a preliminary investigation is in effect a realistic judicial appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound as a matter of law to order an acquittal. A preliminary investigation has then been called a judicial

inquiry. It is a judicial proceeding. An act becomes judicial when there is opportunity to be heard and for the production and weighing of evidence, and a decision is rendered thereof.

II

Compounding the deprivation of petitioners of their right to a preliminary investigation was the undue and unreasonable delay in the termination of the irregularly conducted preliminary investigation. Petitioners' manifestation adopting the comments of their co-respondents was filed on 18 February 1992. However, it was only on 22 February 1996 or four (4) years later, that petitioners received a memorandum dated 8 February 1996 submitted by Special Prosecutor Officer I Lemuel M. De Guzman recommending the filing of information against them for violation of Sec. 3(g) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act). The inordinate delay in the conduct of the "preliminary investigation" infringed upon their constitutionally guaranteed right to a speedy disposition of their case.[22] In *Tatad vs. Sandiganbayan*,[23] we held that an undue delay of close to three (3) years in the termination of the preliminary investigation in the light of the circumstances obtaining in that case warranted the dismissal of the case:

We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutional guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Rights (both in the 1973 and 1987 Constitution), the inordinate delay is violative of the petitioner's constitutional rights. A delay of close to three (3) years can not be deemed reasonable or justifiable in the light of the circumstances obtaining in the case at bar. We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and grueling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high-ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liabilities required by Republic Act No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and grueling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. The other two charges relating to alleged bribery and alleged giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, certainly do not warrant or justify the period of three years, which it took the Tanodbayan to resolve the case.

It has been suggested that the long delay in terminating the preliminary investigation should not be deemed fatal, for even the complete absence of a preliminary investigation does not warrant dismissal of the information. True – but the absence of a preliminary investigation can be corrected by giving the accused such investigation. But an undue delay in the conduct of the preliminary investigation can not be corrected, for until now, man has not yet invented a device for setting back time.

In the recent case of *Angchangco, Jr. vs. Ombudsman*,[24] the Court upheld Angchangco's right to the speedy disposition of his case. Angchangco was a sheriff in the Regional Trial Court of Agusan del Norte and Butuan City. In 1990 criminal complaints were filed against him which remained pending before the Ombudsman even after his retirement in 1994. The Court thus ruled:

Here, the Office of the Ombudsman, due to its failure to resolve the criminal charges against petitioner for more than six years, has transgressed on the constitutional right of petitioner to due process and to a speedy disposition of the cases against him, as well as the Ombudsman's own constitutional duty to act promptly on

complaints filed before it. For all these past 6 years, petitioner has remained under a cloud, and since his retirement in September 1994, he has been deprived of the fruits of his retirement after serving the government for over 42 years all because of the inaction of respondent Ombudsman. If we wait any longer, it may be too late for petitioner to receive his retirement benefits, not to speak of clearing his name. This is a case of plain injustice which calls for the issuance of the writ prayed for.[25]

We are not persuaded by the Ombudsman's argument that the Tatad ruling does not apply to the present case which is not politically motivated unlike the former, pointing out the following findings of the Court in the Tatad decision:

A painstaking review of the facts can not but leave the impression that political motivations played a vital role in activating and propelling the prosecutorial process in this case. Firstly, the complaint came to life, as it were, only after petitioner Tatad had a falling out with President Marcos. Secondly, departing from established procedures prescribed by law for preliminary investigation, which require the submission of affidavits and counter-affidavits by the complainant and the respondent and their witnesses, the Tanodbayan referred the complaint to the Presidential Security Command for fact-finding investigation and report.

We find such blatant departure from the established procedure as dubious, but revealing attempt to involve an office directly under the President in the prosecutorial process lending credence to the suspicion that the prosecution was politically motivated. We cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends, or other purposes alien to, or subversive of, the basic and fundamental objective observing the interest of justice evenhandedly, without fear or favor to any and all litigants alike whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may be public's perception of the impartiality of the prosecutor be enhanced.[26]

The Ombudsman endeavored to distinguish the present suit from the Angchangco case by arguing that in the latter, Angchangco filed several motions for early resolution, implying that in the case at bar petitioners were not as vigilant in asserting or protecting their rights.

We disagree. The constitutional right to speedy disposition of cases does not come into play only when political considerations are involved. The Constitution makes no such distinction. While political motivation in Tatad may have been a factor in the undue delay in the termination of the preliminary investigation therein to justify the invocation of their right to speedy disposition of cases, the particular facts of each case must be taken into consideration in the grant of the relief sought. In the Tatad case, we are reminded:

In a number of cases, this Court has not hesitated to grant the so-called "radical relief" and to spare the accused from the undergoing the rigors and expense of a full-blown trial where it is clear that he has been deprived of due process of law or other constitutional guaranteed rights. Of course, it goes without saying that in the application of the doctrine enunciated in those cases, particularly regard must be taken of the facts and circumstances peculiar to its case.[27]

In *Alviso vs. Sandiganbayan*,[28] the Court observed that the concept of speedy disposition of cases "is a relative term and must necessarily be a flexible concept" and that the factors that may be considered and balanced are the "length of the delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay."

Petitioners in this case, however, could not have urged the speedy resolution of their case because they were completely unaware that the investigation against them was still on-going. Peculiar to this case, we reiterate, is the fact that petitioners were merely asked to comment, and not file counter-affidavits which is the procedure to follow in a preliminary investigation. After giving their explanation and after four long years of being in the dark,

petitioners, naturally, had reason to assume that the charges against them had already been dismissed.

On the other hand, the Office of the Ombudsman failed to present any plausible, special or even novel reason which could justify the four-year delay in terminating its investigation. Its excuse for the delay—the many layers of review that the case had to undergo and the meticulous scrutiny it had to entail – has lost its novelty and is no longer appealing, as was the invocation in the Tatad case. The incident before us does not involve complicated factual and legal issues, specially in view of the fact that the subject computerization contract had been mutually cancelled by the parties thereto even before the Anti-Graft League filed its complaint.

The Office of the Ombudsman capitalizes on petitioners' three motions for extension of the time to file comment which it imputed for the delay. However, the delay was not caused by the motions for extension. The delay occurred after petitioners filed their comment. Between 1992-1996, petitioners were under no obligation to make any move because there was no preliminary investigation within the contemplation of Section 4, Rule II of A.O. No. 07 to speak of in the first place.

III

Finally, under the facts of the case, there is no basis in the law or in fact to charge petitioners for violation of Sec. 3(g) of R.A. No. 3019. To establish probable cause against the offender for violation of Sec. 3(g), the following elements must be present: (1) the offender is a public officer; (2) he entered into a contract or transaction in behalf of the government; (3) the contract or transaction is grossly and manifestly disadvantageous to the government. The second element of the crime – that the accused public officers entered into a contract in behalf of the government – is absent. The computerization contract was rescinded on 6 May 1991 before SAR No. 91-05 came out on 31 May 1991 and before the Anti-Graft League filed its complaint with the Ombudsman on 1 August 1991. Hence, at that time the Anti-Graft League instituted their complaint and the Ombudsman issued its Order on 12 November 1991, there was no longer any contract to speak of. The contract, after 6 May 1991 became in contemplation of the law, non-existent, as if no contract was ever executed.

WHEREFORE, premises considered, the petition is GRANTED and Criminal Case No. 23193 is hereby DISMISSED. The temporary restraining order issued on 4 September 1997 is made PERMANENT.

SO ORDERED.

Narvasa, C.J., Romero, and Purisima, JJ., concur.

[1] Rollo, p. 7.

[2] Ibid.

[3] Id., at 38-41.

[4] Id., at 42.

[5] Ibid.

[6] Id., at 43-45.

[7] Id., at 46-47.

[8] Id., at 48-62.

[9] Id., at 71-72.

[10] *Id.*, at 68.

[11] *Id.*, at 69.

[12] *Id.*, at 75.

[13] *Id.*, at 76.

[14] *Id.*, at 143.

[15] *Id.*, at 162-164.

[16] *Id.*, at 16.

[17] A.O. No. 07, Rule II, Sec. 4(b).

[18] *Rodis, Sr. vs. Sandiganbayan*, 166 SCRA 618 (1988); *People vs. Poculan*, 167 SCRA 155 (1988).

[19] *Tandoc vs. Resultan*, 175 SCRA 37 (1989).

[20] *Doromal vs. Sandiganbayan*, 177 SCRA 354 (1980); *Go vs. Court of Appeals*, 206 SCRA 138 (1992).

[21] 239 SCRA 283 (1994).

[22] Section 16, Article III of the 1987 Constitution mandates that:

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

[23] 159 SCRA 70 (1988).

[24] 268 SCRA 301 (1997).

[25] *Id.*, at 306.

[26] See note 23 at 81.

[27] *Id.*, at 80.

[28] 220 SCRA 55 (1993).

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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