

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. EDUARDO M. COJUANGCO, JR., JUAN PONCE ENRILE, MARIA CLARA LOBREGAT, JOSE ELEAZAR, JR., JOSE CONCEPCION, ROLANDO P. DELA CUESTA, EMMA...*G.R. No. 139930. June 26, 2012*

Ponente: ABAD, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-139930/>**ABAD, J.:**

This case, which involves another attempt of the government to recover ill-gotten wealth acquired during the Marcos era, resolves the issue of prescription.

The Facts and the Case

On April 25, 1977 respondents Teodoro D. Regala, Victor P. Lazatin, Eleazar B. Reyes, Eduardo U. Escueta and Leo J. Palma incorporated the United Coconut Oil Mills, Inc. (UNICOM)[1] with an authorized capital stock of P100 million divided into one million shares with a par value of P100 per share. The incorporators subscribed to 200,000 shares worth P20 million and paid P5 million.

On September 26, 1978 UNICOM amended its capitalization by (1) increasing its authorized capital stock to three million shares without par value; (2) converting the original subscription of 200,000 to one million shares without par value and deemed fully paid for and non-assessable by applying the P5 million already paid; and (3) waiving and abandoning the subscription receivables of P15 million.[2]

On August 29, 1979 the Board of Directors of the United Coconut Planters Bank (UCPB) composed of respondents Eduardo M. Cojuangco, Jr., Juan Ponce Enrile, Maria Clara L. Lobregat, Jose R. Eleazar, Jr., Jose C. Concepcion, Rolando P. Dela Cuesta, Emmanuel M. Almeda, Hermenegildo C. Zayco, Narciso M. Pineda, Iñaki R. Mendezona, and Danilo S. Ursua approved Resolution 247-79 authorizing UCPB, the Administrator of the Coconut Industry Investment Fund (CII Fund), to invest not more than P500 million from the fund in the equity of UNICOM for the benefit of the coconut farmers.[3]

On September 4, 1979 UNICOM increased its authorized capital stock to 10 million shares without par value. The Certificate of Increase of Capital Stock stated that the incorporators held one million shares without par value and that UCPB subscribed to 4 million shares worth P495 million.[4]

On September 18, 1979 a new set of UNICOM directors, composed of respondents Eduardo M. Cojuangco, Jr., Juan Ponce Enrile, Maria Clara L. Lobregat, Jose R. Eleazar, Jr., Jose Concepcion, Emmanuel M. Almeda, Iñaki R. Mendezona, Teodoro D. Regala, Douglas Lu Ym, Sigfredo Veloso, and Jaime Gandiaga, approved another amendment to UNICOM's capitalization. This increased its authorized capital stock to one billion shares divided into 500 million Class "A" voting common shares, 400 million Class "B" voting common shares, and 100 million Class "C" non-voting common shares, all with a par value of P1 per share. The paid-up subscriptions of 5 million shares without par value (consisting of one million shares for the incorporators and 4 million shares for UCPB)

were then converted to 500 million Class “A” voting common shares at the ratio of 100 Class “A” voting common shares for every one without par value share.[5]

About 10 years later or on March 1, 1990 the Office of the Solicitor General (OSG) filed a complaint for violation of Section 3(e) of Republic Act (R.A.) 3019[6] against respondents, the 1979 members of the UCPB board of directors, before the Presidential Commission on Good Government (PCGG). The OSG alleged that UCPB’s investment in UNICOM was manifestly and grossly disadvantageous to the government since UNICOM had a capitalization of only P5 million and it had no track record of operation. In the process of conversion to voting common shares, the government’s P495 million investment was reduced by P95 million which was credited to UNICOM’s incorporators. The PCGG subsequently referred the complaint to the Office of the Ombudsman in OMB-0-90-2810 in line with the ruling in *Cojuangco, Jr. v. Presidential Commission on Good Government*,[7] which disqualified the PCGG from conducting the preliminary investigation in the case.

About nine years later or on March 15, 1999 the Office of the Special Prosecutor (OSP) issued a Memorandum,[8] stating that although it found sufficient basis to indict respondents for violation of Section 3(e) of R.A. 3019, the action has already prescribed. Respondents amended UNICOM’s capitalization a third time on September 18, 1979, giving the incorporators unwarranted benefits by increasing their 1 million shares to 100 million shares without cost to them. But, since UNICOM filed its Certificate of Filing of Amended Articles of Incorporation with the Securities and Exchange Commission (SEC) on February 8, 1980, making public respondents’ acts as board of directors, the period of prescription began to run at that time and ended on February 8, 1990. Thus, the crime already prescribed when the OSG filed the complaint with the PCGG for preliminary investigation on March 1, 1990.

In a Memorandum[9] dated May 14, 1999, the Office of the Ombudsman approved the OSP’s recommendation for dismissal of the complaint. It additionally ruled that UCPB’s subscription to the shares of stock of UNICOM on September 18, 1979 was the proper point at which the prescription of the action began to run since respondents’ act of investing into UNICOM was consummated on that date. It could not be said that the investment was a continuing act. The giving of undue benefit to the incorporators prescribed 10 years later on September 18, 1989. Notably, when the crime was committed in 1979 the prescriptive period for it had not yet been amended. The original provision of Section 11 of R.A. 3019 provided for prescription of 10 years. Thus, the OSG filed its complaint out of time.

The OSG filed a motion for reconsideration on the Office of the Ombudsman’s action but the latter denied the same;[10] hence, this petition.

Meanwhile, the Court ordered the dismissal of the case against respondent Maria Clara L. Lobregat in view of her death on January 2, 2004.[11]

The Issue Presented

The pivotal issue in this case is whether or not respondents’ alleged violation of Section 3(e) of R.A. 3019 already prescribed.

The Court’s Ruling

Preliminarily, the Court notes that what Republic of the Philippines (petitioner) filed in this case is a petition for review on certiorari under Rule 45. But the remedy from an adverse resolution of the Office of the Ombudsman in a preliminary investigation is a special civil action of certiorari under Rule 65.[12] Still, the Court will treat this petition as one filed under Rule 65 since a reading of its contents reveals that petitioner imputes grave abuse of discretion and reversible jurisdictional error to the Ombudsman for dismissing the complaint. The Court has

previously treated differently labeled actions as special civil actions for certiorari under Rule 65 for acceptable reasons such as justice, equity, and fair play.[13]

As to the main issue, petitioner maintains that, although the charge against respondents was for violation of the Anti-Graft and Corrupt Practices Act, its prosecution relates to its efforts to recover the ill-gotten wealth of former President Ferdinand Marcos and of his family and cronies. Section 15, Article XI of the 1987 Constitution provides that the right of the State to recover properties unlawfully acquired by public officials or employees is not barred by prescription, laches, or estoppel.

But the Court has already settled in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*[14] that Section 15, Article XI of the 1987 Constitution applies only to civil actions for recovery of ill-gotten wealth, not to criminal cases such as the complaint against respondents in OMB-0-90-2810. Thus, the prosecution of offenses arising from, relating or incident to, or involving ill-gotten wealth contemplated in Section 15, Article XI of the 1987 Constitution may be barred by prescription.[15]

Notably, Section 11 of R.A. 3019 now provides that the offenses committed under that law prescribes in 15 years. Prior to its amendment by Batas Pambansa (B.P.) Blg. 195 on March 16, 1982, however, the prescriptive period for offenses punishable under R.A. 3019 was only 10 years.[16] Since the acts complained of were committed before the enactment of B.P. 195, the prescriptive period for such acts is 10 years as provided in Section 11 of R.A. 3019, as originally enacted.[17]

Now R.A. 3019 being a special law, the 10-year prescriptive period should be computed in accordance with Section 2 of Act 3326,[18] which provides:

Section 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 the institution of judicial proceedings for its investigation and punishment.

The above-mentioned section provides two rules for determining when the prescriptive period shall begin to run: first, from the day of the commission of the violation of the law, if such commission is known; and second, from its discovery, if not then known, and the institution of judicial proceedings for its investigation and punishment.[19]

Petitioner points out that, assuming the offense charged is subject to prescription, the same began to run only from the date it was discovered, namely, after the 1986 EDSA Revolution. Thus, the charge could be filed as late as 1996.

In the prosecution of cases of behest loans, the Court reckoned the prescriptive period from the discovery of such loans. The reason for this is that the government, as aggrieved party, could not have known that those loans existed when they were made. Both parties to such loans supposedly conspired to perpetrate fraud against the government. They could only have been discovered after the 1986 EDSA Revolution when the people ousted President Marcos from office. And, prior to that date, no person would have dared question the legality or propriety of the loans.[20]

Those circumstances do not obtain in this case. For one thing, what is questioned here is not the grant of behest loans that, by their nature, could be concealed from the public eye by the simple expedient of suppressing their documentations. What is rather involved here is UCPB's investment in UNICOM, which corporation is allegedly owned by respondent Cojuangco, supposedly a Marcos crony. That investment does not, however, appear to have been withheld from the curious or from those who were minded to know like banks or competing businesses. Indeed, the OSG made no allegation that respondent members of the board of directors of UCPB connived with

UNICOM to suppress public knowledge of the investment.

Besides, the transaction left the confines of the UCPB and UNICOM board rooms when UNICOM applied with the SEC, the publicly-accessible government clearing house for increases in corporate capitalization, to accommodate UCPB's investment. Changes in shareholdings are reflected in the General Information Sheets that corporations have been mandated to submit annually to the SEC. These are available to anyone upon request.

The OSG makes no allegation that the SEC denied public access to UCPB's investment in UNICOM during martial law at the President's or anyone else's instance. Indeed, no accusation of this kind has ever been hurled at the SEC with reference to corporate transactions of whatever kind during martial law since even that regime had a stake in keeping intact the integrity of the SEC as an instrumentality of investments in the Philippines.

And, granted that the feint-hearted might not have the courage to question the UCPB investment into UNICOM during martial law, the second element—that the action could not have been instituted during the 10-year period because of martial law—does not apply to this case. The last day for filing the action was, at the latest, on February 8, 1990, about four years after martial law ended. Petitioner had known of the investment it now questions for a sufficiently long time yet it let those four years of the remaining period of prescription run its course before bringing the proper action.

Prescription of actions is a valued rule in all civilized states from the beginning of organized society. It is a rule of fairness since, without it, the plaintiff can postpone the filing of his action to the point of depriving the defendant, through the passage of time, of access to defense witnesses who would have died or left to live elsewhere, or to documents that would have been discarded or could no longer be located. Moreover, the memories of witnesses are eroded by time. There is an absolute need in the interest of fairness to bar actions that have taken the plaintiffs too long to file in court.

Respondents claim that, in any event, the complaint against them failed to show probable cause. They point out that, prior to the third amendment of UNICOM's capitalization, the stated value of the one million shares without par value, which belonged to its incorporators, was P5 million. When these shares were converted to 5 million shares with par value, the total par value of such shares remained at P5 million. But, the action having prescribed, there is no point in discussing the existence of probable cause against the respondents for violation of Section 3(e) of R.A. 3019.

WHEREFORE, the Court DENIES the petition and AFFIRMS the Memorandum dated May 14, 1999 of the Office of the Ombudsman that dismissed on the ground of prescription the subject charge of violation of Section 3(e) of R.A. 3019 against respondents Eduardo M. Cojuangco, Jr., Juan Ponce Enrile, Jose R. Eleazar, Jr., Jose C. Concepcion, Rolando P. Dela Cuesta, Emmanuel M. Almeda, Hermenegildo C. Zayco, Narciso M. Pineda, Iñaki R. Mendezona, Danilo S. Ursua, Teodoro D. Regala, Victor P. Lazatin, Eleazar B. Reyes, Eduardo U. Escueta, Leo J. Palma, Douglas Lu Ym, Sigfredo Veloso, and Jaime Gandiaga.

SO ORDERED.

Del Castillo, Villarama, Jr., Perez, and Reyes, JJ., concur.

Carpio, J., no part, prior inhibitor in related case.

Velasco, Jr., and Peralta, JJ., no part.

Leonardo-De Castro, J., no part due to participation in related cases in the Sandiganbayan.

Brion, J., please see concurring & dissenting opinion.

Bersamin, J., please see concurring opinion.

Mendoza, J., on official leave.

Sereno, J., join J. Bernabe; I dissent.

Perlas-Bernabe, J., pls. see separate dissenting opinion.

[1] Rollo, pp. 51-60. It was registered with the Securities and Exchange Commission (SEC) on April 26, 1977.

[2] Id. at 61-72. It was registered with the SEC on September 28, 1978 as evidenced by the Certificate of Filing of Amended Articles of Incorporation.

[3] Id. at 73-78.

[4] Id. at 79-83.

[5] Id. at 84-102. It was registered with the SEC on February 8, 1980 as evidenced by the Certificate of Filing of Amended Articles of Incorporation.

[6] Anti-Graft and Corrupt Practices Act. Approved on August 17, 1960.

Section 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:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, 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.

[7] G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226.

[8] Rollo, pp. 43-47.

[9] Id. at 39-42.

[10] Id. at 48-50.

[11] Id. at 877-879.

[12] Presidential Commission on Good Government v. Desierto, G.R. No. 139296, November 23, 2007, 538 SCRA 207, 212-213.

[13] Id. at 213.

[14] 375 Phil. 697 (1999).

[15] Id. at 296.

[16] People v. Pacificador, 406 Phil. 774, 782 (2001).

[17] Romualdez v. Marcelo, G.R. Nos. 165510-33, July 28, 2006, 497 SCRA 89, 100.

[18] An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances, and to Provide When Prescription Shall Begin to Run. Approved on December 4, 1926.

[19] Presidential Commission on Good Government v. Desierto, 484 Phil. 53, 60 (2004).

[20] Republic of the Philippines v. Desierto, 438 Phil. 201, 212 (2002); see also Republic v. Desierto, 416 Phil. 59, 77-78 (2001); Romualdez v. Sandiganbayan, 479 Phil. 265, 294 (2004).

CONCURRING OPINION

BERSAMIN, J.:

I CONCUR with the Majority Opinion written by Justice Abad. Like him, I find and hold that the State already lost the right to prosecute respondents for violating Section 3(e) of Republic Act No. 3019 by February 8, 1990, or ten years after UNICOM filed its Amended Articles of Incorporation.

Respondents were charged with violating Section 3 (e) of Republic Act No. 3019 for allegedly watering down the P495 million worth of no-par value stocks in UNICOM by United Coconut Planters Bank (UCPB) with funds taken from the Coconut Industry Investment Fund (CIIF). But the offense charged clearly prescribed upon the lapse of ten years from the date of its commission on February 8, 1980, the prescriptive period applicable to the offense charged.[1]

The issue of when to reckon the commission of the offense charged is not difficult to determine. I disagree that the commission of the offense should be reckoned from the filing of the 1980 General Information Sheet (GIS). Instead, I find it more logical to reckon the commission of the offense to the filing of the Amended Articles of Incorporation on February 8, 1980 in the Securities and Exchange Commission (SEC). Indeed, the Certificate of Increase of Capital Stock that UNICOM filed on September 17, 1979 involved the affected shareholdings.[2] The second page of the certificate clearly showed that UCPB had subscribed to 4,000,000 no-par value shares worth P495 million.[3] The certificate is significant because it reflected the very same shareholdings that respondents allegedly diluted by increasing UNICOM's capital stock from 10 million to one billion shares.

Although it did not reflect the subject investment of UCPB, the Amended Articles of Incorporation filed on February 8, 1980 is indisputably the only trustworthy evidence that proved the dilution. I note that the State itself presented the Amended Articles of Incorporation to establish its allegations because the Amended Articles of Incorporation showed that UNICOM had increased its capital stock to P1,000,000,000.00, divided as follows: 500,000,000 Class "A" voting common shares; 400,000,000 Class "B" voting common shares; and 100,000,000 Class "C" non-voting common shares, all having a par value of P1.00 per share.[4] The filing in the SEC and the subsequent approval by the SEC of the Amended Articles of Incorporation on February 8, 1980 indubitably consummated the unlawful transaction alleged in the information. Reckoning the prescription period from February 8, 1980 was really warranted by the records.

As to whether or not the criminal action prescribed as to Eduardo M. Cojuangco, Jr. because his supposed absence from the country in the period from 1986 to 1991 had interrupted the running of the period of prescription, I respectfully submit that there was no interruption even assuming that said respondent had truly been absent from the country in that period.

The applicable rule for computing the prescriptive period of a violation of Republic Act No. 3019 is Act No. 3326 (An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run).[5] The relevant provision is Section 2, which states:

Section 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 the institution of judicial proceeding 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 jeopardy.

It is noticeable that Section 2, *supra*, does not state the effect on the prescriptive period of an accused's absence from the country.

Yet, the Minority insist that respondent Cojuangco, Jr.'s purported absence from the country interrupted the running of the prescriptive period, citing Article 91 of the Revised Penal Code, which pertinently provides that "[t]he term of prescription shall not run when the offender is absent from the Philippine Archipelago." The Minority justify their insistence by relying on Article 10 of the Revised Penal Code that declares the Revised Penal Code to be supplementary to special laws unless such special laws should specially provide the contrary.

I cannot accept the Minority's insistence. I certainly doubt that the omission by the Legislature from Act No. 3326 of the effect on the running of the prescriptive period of the absence of the accused from the country was an inadvertent drafting error on the part of the Legislature. As such, the omission does not give to the Court the license to apply Article 91 of the Revised Penal Code at will in order to supply the omission. *Casus omissus pro habendus est*. A person, object, or thing omitted from an enumeration in a statute must be held to have been intentionally omitted.[6] It is settled that if cases should arise for which Congress has made no provision, the courts cannot supply the omission.[7] A *casus omissus* does not justify judicial legislation,[8] most particularly in respect of statutes defining and punishing criminal offenses.[9]

Bearing in mind that prescription is a matter of positive legislation and cannot be established by mere implications or deductions,[10] I construe the silence of Act No. 3326 on the effect of the absence of the accused from the country as a clear and undeniable legislative statement that such absence does not interrupt the running of the prescriptive period for violations of special penal laws. In *Romualdez v. Marcelo*,[11] the Court clearly declared so, holding that Section 2, *supra*, was:

xxx conspicuously silent as to whether the absence of the offender from the Philippines bars the running of the prescriptive period. The silence of the law can only be interpreted to mean that Section 2 of Act No. 3326 did not intend such an interruption of the prescription unlike the explicit mandate of Article 91. Thus, as previously held:

"Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because a legislative lacuna cannot be filled by judicial fiat. Indeed, courts may not, in the guise of the interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission." [12]

This construction entirely precludes the application of Article 91 of the Revised Penal Code even in a suppletory manner.

Section 2 of Act No. 3326 expressly provides only one instance in which the prescriptive period is interrupted, that is, when criminal proceedings are instituted against the guilty person.[13] In that regard, the filing of the complaint for purposes of preliminary investigation interrupts the period of prescription.[14] Hence, the prescriptive period for criminal violations of R.A. No. 3019 is tolled only when the Office of the Ombudsman either receives a complaint, or initiates its own investigation of the violations.[15]

Herein, the running of the 10-year prescriptive period was tolled only when the Office of the Ombudsman actually received the complaint filed by the Office of the Solicitor General. Although the records do not bear the date of

receipt by the Office of the Ombudsman, I am nonetheless sure that the date was definitely not March 1, 1990, when the complaint was wrongly filed with the Presidential Commission on Good Government (PCGG). Rather, the date could only be after October 2, 1990, when the Court promulgated the decision in *Cojuangco, Jr. v. Presidential Commission on Good Government*,^[16] simply because that decision was what caused the PCGG to transfer the wrongly-filed complaint to the Office of the Ombudsman in order to commence the criminal prosecution.^[17] To recall, the Court said in *Cojuangco, Jr. v. Presidential Commission on Good Government* that it would be more in the interest of a just and fair administration of justice if the PCGG was prohibited from conducting a preliminary investigation and instead to just allow the Office of the Ombudsman to investigate and take appropriate action.^[18] Yet, by that time (i.e., October 2, 1990), prescription had already set in (as of February 8, 1990).

I cannot subscribe to the Minority's submission that the period of prescription should run from the date of discovery instead of the date of the commission of the offense.

The transaction in question was evidenced by public instruments and records. There is good authority for the view that when the offense has not been concealed, such as when it is evidenced by public documents or is a matter of public record open to inspection, the State will not be permitted to plead ignorance of the act of the accused in order to evade the operation of the Statute of Limitations.^[19] Nor may we presume a connivance among respondents from the fact that the boards of directors of UNICOM and UCPB had interlocking members who might have effectively concealed the transaction from the public in order to justify the reckoning from the date of discovery. As Justice Abad's Majority Opinion sufficiently indicates, this case was not like a criminal prosecution based on the secretive granting of behest loans as to which reckoning the period from the date of discovery of the offense would be justified. The transaction in question had already left the boardrooms of both UCPB and UNICOM when the SEC approved the increase in capitalization. In *People v. Sandiganbayan*,^[20] the Court applied the date-of-commission rule as the start of the reckoning because the illegal transaction involved had passed the hands of several public officials. Here, the fact that the increased capitalization was approved and certified by no less than the SEC, the government agency established to protect both domestic and foreign investments and the public,^[21] called for the use of the date-of-commission rule.

Having interlocking directors between UNICOM and UCPB was insignificant considering that the transaction in question was not done only within the two corporations, but involved the participation of the SEC, a third party with the express duty to ensure the legality of corporate transactions like increased capitalization.

Lastly, I need to remind that in the interpretation of the law on prescription of crimes, that which is most favorable to the accused is to be adopted.^[22] As between Section 2 of Republic Act No. 3326 and Article 91 of the Revised Penal Code, therefore, the former is controlling due to its being more favorable to the accused. This interpretation also accords most with the nature of prescription as a statute of repose whose object is to suppress fraudulent and stale claims from springing up at great distances of time and surprising the parties or their representatives when the facts have become obscure from the lapse of time or the defective memory or death or removal of witnesses.^[23] More than being an act of grace, prescription, as a statute of limitation, is equivalent to an act of amnesty, which shall begin to run upon the commission of the offense rather than upon the discovery of the offense.^[24]

I VOTE to deny the petition.

[1] Prior to March 16, 1982, the applicable prescriptive period for all offenses punishable under Republic Act No. 3019 was ten years (Section 11 of Republic Act No. 3019). Batas Pambansa Blg. 195 (which took effect upon its

approval on March 16, 1982) raised the period of prescription to fifteen years.

[2] Rollo, pp. 80-83.

[3] Id., p. 81.

[4] Rollo, p. 92.

[5] Republic v. Desierto, G.R. No. 136506, August 23, 2001, 363 SCRA 585, 597-598; Domingo v. Sandiganbayan, G.R. No. 109376, January 20, 2000, 322 SCRA 655, 663.

[6] Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte, G.R. No. 169435, February 27, 2008, 547 SCRA 71, 94; Commission on Audit of the Province of Cebu v. Province of Cebu, G.R. No. 141386, November 29, 2001, 371 SCRA 196, 205.

[7] Del Monte Mining Co. v. Last Chance Mining Co., 171 U.S. 55, 66 (1898).

[8] Ebert v. Poston, 266 U.S. 548, 543 (1925).

[9] Black, Handbook on the Construction and Interpretation of Laws (2008), p. 59 citing Broadhead v. Holdsworth, L.R. 2 Ex. Div. 321 and State v. Peters, 37 La. Ann. 730.

[10] Hermanos v. Dela Riva, G.R. No. L-19827, April 6, 1923.

[11] G.R. No. 165510-33, July 28, 2006, 497 SCRA 89.

[12] Quoting Canet v. Decena, G.R. No. 155344, January 20, 2004, 420 SCRA 388, 394.

[13] See People v. Romualdez, G.R. No. 166510, April 29, 2009, 587 SCRA 123; Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, G.R. No. 130817, August 22, 2001, 363 SCRA 489.

[14] Sanrio Company Limited v. Lim, G.R. No. 168662, February 19, 2008, 546 SCRA 303; Brillante v. Court of Appeals, G.R. Nos. 118757 & 121571, October 19, 2004, 440 SCRA 541.

[15] People v. Romualdez, G.R. No. 166510, April 29, 2009, 587 SCRA 123, 134.

[16] G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226.

[17] Rollo, pp. 43-44.

[18] Supra, note 16, at p. 257.

[19] I Feria & Gregorio, Comments on the Revised Penal Code, 1958 First Edition, pp. 666-667, citing People v. Dinsay, 40 O.G. No. 18, 63.

[20] G.R. No. 101724, July 3, 1992, 211 SCRA 241, 246-247.

[21] See P.D. No. 902-A.

[22] People v. Reyes, G.R. Nos. 74226-27, July 27, 1989, 175 SCRA 597, 608-609.

[23] Bergado v. Court of Appeals, G.R. No. 84051, May 19, 1989, 173 SCRA 497, 503; Sinaon v. Soroñgon, G.R. No. L-59879, May 13, 1985, 136 SCRA 407, 410.

[24] People v. Sandiganbayan, G.R. No. 101724, July 3, 1992, 211 SCRA 241, 247.

CONCURRING AND DISSENTING OPINION

BRION, J.:

I concur with the majority except on the question of prescription with respect to respondent Eduardo M. Conjuangco, Jr.

The primary issue in this case with respect to respondent Eduardo M. Conjuangco is on the question of whether the right of the State to prosecute the respondents for violation of Section 3(e) of Republic Act No. (RA) 3019[1] or the Anti-Graft and Corrupt Practices Act has prescribed. Corollary to this issue are the questions -

- when the prescriptive period provided by law should begin to run; and
- whether the prescriptive period should be tolled or interrupted when the offender is outside the country's jurisdiction.

The case of *Domingo v. Sandiganbayan*[2] instructs us that, in resolving the issue of prescription of the offense charged, the following should be considered:

- the period of prescription for the offense charged;
- the time the period of prescription starts to run; and
- the time the prescriptive period was interrupted.

The period of prescription for the offense charged

Prior to its amendment by Batas Pambansa Bilang 195 in 1982 and insofar as it applies to the facts of this case, Section 11 of RA 3019 provided for a 10-year prescriptive period for all offenses punishable under it.[3] Any criminal proceeding for violation of RA 3019, initiated after the 10-year period, is barred and the State forfeits its power to prosecute and penalize the offender.

The time the period of prescription starts to run

Since RA 3019 is a special penal law, the applicable law for the computation of the prescriptive period is Section 2, Act No. 3326:[4]

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 the institution of judicial proceeding 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 jeopardy. [emphasis supplied].

Applied to the present case, the ponencia considers February 8, 1980 as the point when the 10-year prescriptive period began to run, as it was at this time that the Securities and Exchange Commission (SEC) issued to Unicom the Certificate of Filing of the Amended Articles of Incorporation (AAOI), which reflected the increase in Unicom's capitalization, as well as the conversion and classification of its shares. The ponencia considered the filing of the AAOI with a public office as the equivalent of the "discovery" of the crime because the document supposedly evidencing the acts charged then became accessible to the public, thus providing it with sufficient notice. Since ten years lapsed from the time the crime charged was deemed "discovered" on February 8, 1980 up to time when the complaint was filed with the Ombudsman on March 1, 1990, the ponencia concluded that the criminal charge had already prescribed and, therefore, it found the Ombudsman's dismissal of the complaint proper.

I agree with the ponencia's explanation, but only to the extent that the filing of Unicom's AAOI with the SEC provided the public constructive notice of the increase of its capitalization and the conversion of its shares. The disclosure of these facts in the AAOI alone, however, did not establish or at least give reasonable notice to the public of any undue injury to the government that constitutes the crime penalized under Section 3(e) of RA 3019.

The gravamen of the crime penalized under Section 3(e) of RA 3019 is the undue injury caused to the government, which, in the present case is allegedly the dilution of UCPB's investment in Unicom's shares of stock when Unicom increased its capitalization from 10 million shares to 1 billion shares and converted the shares into three different classes. The undue injury could be discovered only upon the filing, not of the AAOI on February 8, 1980 (which does not contain a listing of the shareholders and the amount of their shareholdings), but of Unicom's General Information Sheet (GIS) for 1980. Notably, the AAOI does not contain a listing of the corporation's shareholders and the amount of their shareholdings;^[5] these are matters properly reported and reflected instead in the corporation's GIS – a matter the ponencia recognized when it declared that “[c]hanges in shareholdings are reflected in the GIS that corporations have been mandated to submit annually to the SEC.”^[6]

The alleged undue injury to the public through the dilution of United Coconut Planters Bank's (UCPB's) investment in Unicom's shares of stock would thus be “discovered” only upon a review of Unicom's GIS for 1980 (the year when the increase of capital stock was approved), whose filing does not necessarily coincide with the filing of the AAOI. It was only at this point that the public could be deemed to have constructive notice of the acts constituting the crime. Thus, the proper period to reckon the running of the prescriptive period should be from the filing of Unicom's GIS for 1980, which date would definitely be later than February 8, 1980.

Section 2 of Act No. 3326 provides for two instances when the prescriptive period shall begin to run – from the date of the commission of the crime, and, if not known, from the date of its discovery. Although the violation of Section 3(e), RA 3019 appears to have been consummated and completed by February 8, 1980, insofar as the public is concerned, the crime could have only been discovered when Unicom's GIS for 1980 was filed. The public would have access to the documents bearing the pertinent facts constituting the crime upon the filing of Unicom's GIS for 1980; only then could the public have known of the undue injury caused to the government.

In his concurring opinion, Justice Bersamin states that the transaction subject of the criminal charge was evidenced by the Certificate of Increase of Capital Stock filed on September 17, 1979 and the AAOI filed on February 8, 1980, both of which are public records under the SEC's custody. Hence, he posits that the illegal transaction was made known to the public as soon as these documents were filed, and the prescription period began to run on those dates.

However, I find the Certificate of Increase of Capital Stock filed on September 17, 1979 immaterial because it does not pertain to the increase of capitalization of September 18, 1979, which supposedly caused the dilution of UCPB's shares. From 1978 to 1979, Unicom increased its capitalization thrice: (1) in 1978, from 1 million shares to 3 million shares with par value of P100 per share; (2) on September 4, 1979, from 3 million to 10 million shares, without par value; and (3) on September 18, 1979, from 10 million to 1 billion shares, divided into three classes. The Certificate of Increase of Capital Stock dated September 17, 1979 only reflected the September 4, 1979 increase and did not document the assailed dilution of shares caused by the September 18, 1979 increase.

Jurisprudence has in fact set a much later date when to reckon the running of the prescriptive period of crimes punished under RA 3019, committed by the cohorts and cronies of the deposed President Ferdinand Marcos during Martial Law. The circumstances prevailing at the time of the questioned transaction do not provide reasonable opportunity for anyone curious and bold enough to assail the cronies' acts. The Court thus declared in *Domingo v. Sandiganbayan*^[7] that –

[I]t was well-nigh impossible for the government, the aggrieved party, to have known the violations committed at the time the questioned transactions were made because both parties to the transactions were allegedly in conspiracy to perpetrate fraud against the government. The alleged anomalous transactions could only have been discovered after the February 1986 Revolution when one of the original respondents, then President Ferdinand Marcos, was ousted from office. Prior to said date, no person would have dared to question the legality or propriety of those transactions. Hence, the counting of the prescriptive period would commence from the date of discovery of the offense, which could have been between February 1986 after the EDSA Revolution and 26 May 1987 when the initiatory complaint was filed. [Emphases ours.]

The ponencia sought to exempt the present case from the application of the principle settled in *Domingo* by contending that the questioned transaction in the present case does not involve the grant of behest loans that was the subject of *Domingo* and similar cases.[8] To the ponencia, “the grant of behest loans, by their nature, could be concealed from the public eye[.]” The investment questioned in the present case, on the other hand, “does not appear x x x to have been withheld from the curious x x x [since] no allegation that the SEC denied public access to UCPB’s investment in Unicom during martial law at the President’s or anyone else’s instance.” The ponencia also observed that there was “no allegation that the respondent members of the board of directors of UCPB connived with Unicom to suppress public knowledge of the investment.”

I disagree.

Although by nature, a difference exists between the grant of behest loans and UCPB’s investments in Unicom’s shares of stock, both transactions nonetheless involve public funds (i.e., coconut levy funds) and are evidenced by public instruments and records. Indeed, even if these transactions are of public record (hence, presumably of public knowledge), the Court declared that the principle in *Domingo* should still apply: the running of the prescriptive period should be computed from the presumed discovery (i.e., after the February 1986 Revolution) of the crime and not from the day of such commission.[9]

The lack of allegation that the members of the board of directors of UCPB connived with Unicom to suppress public knowledge of the investment is rendered unnecessary by the fact that majority of the board of directors of UCPB also served as board of directors of Unicom during the relevant period:

UCPB

Board of Directors as of
August 29, 1979

UNICOM

Board of Directors as of
September 18, 1979

- Eduardo M. Cojuangco, Jr.
- Juan Ponce Enrile
- Maria Clara L. Lobregat
- Jose R. Eleazar, Jr.
- Jose C. Concepcion
- Emmanuel M. Almeda
- Inaki R. Mendezona

- Rolando P. Dela Cuesta
- Hermenegildo C. Zayco
- Narciso M. Pineda
- Danilo S. Ursua
- Eduardo M. Cojuangco, Jr.
- Juan Ponce Enrile
- Maria Clara L. Lobregat
- Jose R. Eleazar, Jr.
- Jose C. Concepcion
- Emmanuel M. Almeda
- Inaki R. Mendezona
- Teodoro D. Regala
- Douglas Lu Ym
- Sigfredo Veloso
- Jaime Gandianga

The surrounding circumstances and the interlocking members of the board of directors of the two corporations provide reasonable ground to presume the existence of connivance. These factors make it likely that the questioned transaction was indeed “withheld from the curious or from those who were minded to know.”

The time the prescriptive period was interrupted

A matter of significant consideration in the resolution of this case but has been glaringly omitted from the discussion of the facts is the publicly-known fact[10] that from 1986 to 1991, respondent Eduardo Cojuangco, Jr. was “absent from Philippine Archipelago.”[11]

Notably, the second paragraph of Section 2, Act No. 3326 is silent on the effect of the offender’s absence from the country on the running of the prescriptive period. The law simply states that –

Sec. 2. x x x

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 jeopardy.

The silence of the law, however, does not preclude the suppletory application of Article 91 of the Revised Penal Code (RPC). Article 91 of the RPC provides that “[t]he term of prescription shall not run when the offender is absent from the Philippine Archipelago.” The suppletory application of Article 91 of the RPC is authorized and even mandated under Article 10 of the same Code, which states:

Art. 10. Offenses not subject to the provisions of this Code. – Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specifically provide the contrary. [Emphasis ours.]

The only instance when the application of the RPC to special penal laws (like RA 3019) is barred is when the

special penal law itself should specifically provide the contrary. The silence of Act No. 3326 and RA 3019, however, cannot be construed as specifically providing terms contrary to Article 91 of the RPC.

The combined application of these provisions, therefore, dictates that the 10-year period to file charges for violation of RA 3019 should not run when the offender was absent from the Philippines. Otherwise stated, the offender's absence from the country's jurisdiction interrupts the running of the prescriptive period, and shall begin to run again only upon his return.

Does the application of Article 91 of the RPC to violation of special penal laws violate the rule that penal laws should be construed strictly against the state and liberally in favor of the accused? I do not believe so.

As already mentioned, the suppletory application of Article 91 of the RPC is mandated by the law itself. Indeed, the law's express command precludes the application of statutory rules of construction, which are used only when the law is ambiguous.[12] Assuming there was an ambiguity, the liberal construction of penal laws in favor of the accused is not the only factor in the interpretation of criminal laws:

A [liberal construction] should not be permitted to defeat the intent, policy, and purpose of the statute. The court should consider the spirit and reason of a statute where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the law, for [liberal construction] of a criminal statute does not mean such construction as to deprive it of the meaning intended.[13]

More importantly, to literally construe Act No. 3326's silence on the effect of the accused's absence from our jurisdiction as not interrupting the running of the prescriptive period is discriminatory and goes against public interest. I agree with Justice Antonio T. Carpio's explanation in his dissent in *Romualdez v. Hon. Marcelo*: [14]

The accused should not have the sole discretion of preventing his own prosecution by the simple expedient of escaping from the State's jurisdiction. x x x. An accused cannot acquire legal immunity by being a fugitive from the State's jurisdiction.

To allow an accused to prevent his prosecution by simply leaving this jurisdiction unjustifiably tilts the balance of criminal justice in favor of the accused to the detriment of the State's ability to investigate and prosecute crimes. In this age of cheap and accessible global travel, this Court should not encourage individuals facing investigation or prosecution for violation of special laws to leave Philippine jurisdiction to sit-out abroad the prescriptive period.[15] [Emphases ours.]

Accordingly, the charge – insofar as it involves respondent Eduardo M. Cojuangco, Jr. – was filed within the prescriptive period. He was absent from the country from 1986 to 1991. Hence, the filing of the charge on March 1, 1990 was well within the 10-year prescriptive period, even assuming it began to run on February 8, 1980.

[1] Section 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:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, 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.

[2] 379 Phil. 708, 717 (2000).

- [3] As amended by Batas Pambansa Bilang 195 on March 16, 1982, the period of prescription is now 15 years.
- [4] An Act To Establish Periods Of Prescription For Violations Penalized By Special Acts And Municipal Ordinances And To Provide When Prescription Shall Begin To Run.
- [5] Only the shareholdings of the original incorporators are stated in the AAOI.
- [6] Report for Deliberation, p. 5.
- [7] Supra note 2, at 718-719.
- [8] See Presidential Ad Hoc Committee v. Hon. Desierto, 375 Phil. 697 (1999). See also Rep. of the Philippines v. Hon. Desierto, 416 Phil. 59 (2001); and Republic of the Philippines v. Hon. Desierto, 438 Phil. 201 (2002).
- [9] The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto, 519 Phil. 15 (2006).
- [10] New-old UCPB boss alarms coco farmers; Exec linked to Eduardo Cojuangco Jr. takes over bank Tuesday, Philippine Daily Inquirer, November 14, 2011, <http://newsinfo.inquirer.net/93943/new-old-ucpb-boss-alarms-coco-farmers>:
- In 1983, while he was UCPB president, Cojuangco, Mr. Aquino's uncle and a major financial supporter during his run for the presidency last year, acquired the SMC shares for P2 billion.
- The shares were sequestered by Corazon Aquino, the President's mother, in a bid to recover ill-gotten wealth after the EDSA People Power Revolution in 1986 forced the dictator into exile in Hawaii, along with Cojuangco.
- The businessman returned in November 1991, seven months before the end of the first Aquino administration. He denounced the "frivolity and baselessness" of the charges against him and vowed to vindicate himself in courts.
- [11] Under Section 2, Rule 129 of the Rules of Court, a court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.
- [12] Ruben Agpalo, Statutory Construction (Third Edition), p. 227, citing United States v. Go Chico, 14 Phil. 128 (1909).
- [13] Id. at 230, citing People v. Manantan, 115 Phil. 657 (1962); and People v. Gatchalian, 104 Phil. 664 (1958).
- [14] 529 Phil. 90 (2006).
- [15] Id. at 119.

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.