

**SALVADOR M. PEREZ AND JUANITA A. APOSTOL, PETITIONERS, VS.
HON. SANDIGANBAYAN (2ND DIVISION) AND PEOPLE OF THE
PHILIPPINES REPRESENTED BY THE SPECIAL PROSECUTOR OF THE
OFFICE OF...**

G.R. NO. 166062. September 26, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court, questioning the twin Resolutions[1] of the Sandiganbayan dated 7 May 2004 (promulgated 18 May 2004),[2] and 27 September 2004 (promulgated 1 October 2004).[3]

The following facts were culled from the records of the case:

In a resolution dated 24 April 2001, the Office of the Deputy Ombudsman for Luzon resolved to file charges of violation of Section 3(e)[4] of Republic Act No. 3019[5] against petitioners, San Manuel, Pangasinan Mayor Salvador M. Perez, and Municipal Treasurer Juanita Apostol. The Information alleges a crime committed as follows:

That on or about September of 1998, or sometime prior or subsequent thereto, in the Municipality of San Manuel, Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, SALVADOR PEREZ, being then the Municipal Mayor and JUANITA APOSTOL, ZAPANTA, Municipal Treasurer of said municipality, conspiring and confederating with one another, committing the crime herein charged in relation to and taking advantage of their official functions, and through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there, wilfully, unlawfully and criminally cause the purchase of one (1) computer unit costing P120,000.00 acquisition by personal canvass which is in violation of Secs. 362 and 367 of R.A. 7160, thereby causing undue injury to the Municipality of San Manuel, Pangasinan.[6]

On 16 January 2002, prior to the scheduled arraignment, petitioners filed with the Sandiganbayan a Motion for Leave of Court to File Motion for Reconsideration/Reinvestigation alleging the discovery of new evidence which will change the outcome of the case if presented and appreciated. The alleged newly discovered evidence consists in the reassessment by the auditors of the Commission on Audit (COA) that, though the prices between the subject computer and that canvassed by the COA are different, such difference is "not really that material." [7]

The Sandiganbayan denied the Motion for Leave of Court to File Motion for Reconsideration/Reinvestigation in an Order dated 4 April 2002. On a subsequent Motion for Reconsideration, however, the Sandiganbayan reconsidered the 4 April 2002 Order, and granted petitioners ten days from receipt of the current 6 September 2002 Resolution within which to formalize their Motion for Reconsideration in the Office of the Ombudsman.

Complying with the 6 September 2002 Resolution, petitioners formalized their Motion for Reconsideration in the

Office of the Ombudsman.

Accordingly, the Office of the Special Prosecutor conducted a reinvestigation. Assistant Special Prosecutor Warlito F. Galisanao prepared a Memorandum dated 23 October 2003, recommending the withdrawal of the Information.[8] However, in the portion of the Memorandum earmarked for the Special Prosecutor's action, Special Prosecutor Dennis M. Villa-Ignacio chose the action "DO NOT CONCUR" by drawing two lines on the action "I CONCUR," and wrote the following marginal note:

I am, instead adopting the enclosed memorandum of Pros. Chua dated Jan. 22, 2004 recommending that in the meantime, further fact-finding be conducted, and an administrative case be filed against accused Apostol, after withdrawing the Information for viol. of Sec. 3(e) R.A. 3019.[9]

On the other hand, new Ombudsman Simeon V. Marcelo crossed out both actions (APPROVED/DISAPPROVED), and wrote the following marginal note dated 16 February 2004:

The resolution of this case is deferred. There are two modes of violating Section 3(e) of RA 3019, to wit: a) causing undue injury or b) giving unwarranted benefits, advantage or preference. OSP should study whether the accused, assuming arguendo that there was no overprice, gave unwarranted benefits, advantage or preference to the seller of the subject computer. Kindly submit your recommendation soonest. [10]

In an 8 March 2004 Supplemental Memorandum, Assistant Special Prosecutor III Warlito F. Galisanao recommended an amendment of the Information, instead of a withdrawal thereof, to wit:

This is a Supplemental Memorandum to an earlier Memorandum dated October 23, 2003 to the Honorable Tanodbayan, Simeon V. Marcelo who directed the deferment of action on undersigned's recommendation for the withdrawal of the Information.

As earlier found, the acquisition of the unbranded computer set was questionable on the following grounds:

- There was no public bidding and the mode of procurement was by canvass.
- Under Sec. 367 of the Local Government Code, procurement through Personal Canvass requires approval of the Committee on Awards. There was no committee approval to speak of in this case because none has been constituted. This committee is supposed to be composed of :
 - Local General Services Officer or the Municipal Treasurer;
 - Local Accountant;
 - The head of office of department for whose use the supplies are being procured.
- Purchases under this section allows municipalities outside Metro Manila with the following limits:

Second and Third Class - Forty Thousand Pesos

(P40,000.00)

Fourth Class and Below - Twenty Thousand Pesos

(P20,000.00)

These limits are applicable for all items procured by any one (1) month period only. The local government of San Manuel, Pangasinan, incidentally, is a fourth class municipality.

It must be noted that the canvass made on all the stores/suppliers were done by accused Treasurer Juanita Apostol and attested by Mayor, Salvador Perez. To attest means to affirm to be correct, true or genuine (Blacks

Law Dictionary, Fifth Edition)[.]

In the earlier memorandum, there is no unanimity of conclusion as far as the reasonableness of the purchase price of the computer set is concern[ed]. However, the circumstances of its acquisition clearly indicate that the public officials involved gave the supplier, Mobil Link Enterprises/Starlet Sales Center, a private party, unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence by paying much more than the prevailing price for a comparable computer set in the market.

This conclusion is derived from accused's deliberate disregard of the rules on procurement discussed above. The Information must, therefore, be amended to reflect the manner of the commission of the offense. In regard to Prosecutor Elvira Chua's recommendation which is endorsed by the Special Prosecutor, the issue of overpricing must be referred to the appropriate office for further fact-finding and probable administrative investigation for violation of COA rules and RA 7160 otherwise, known as the Local Government Code of 1991.

In light of the foregoing, it is recommended that the Information be amended instead of withdrawing the same. Further, the case of overpricing be referred for fact-finding and possible administrative investigation for violation of Secs. 362 and 367 of RA 7160, otherwise known as the Local Government Code of 1991.[11]

This time around, Special Prosecutor Villa-Ignacio approved the Supplemental Memorandum and, pursuant thereto, Assistant Special Prosecutor Galisanao filed a Motion for Leave to File Amended Information dated 12 March 2004. The Amended Information, which again charges petitioners Perez and Apostol for violation of Sec. 3(e) of Republic Act No. 3019, provides:

That on or about January 21, 1998, or sometime prior or subsequent thereto, in the Municipality of San Manuel, Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, SALVADOR PEREZ, being then the Municipal Mayor and JUANITA A. APOSTOL, Municipal Treasurer of said municipality, conspiring and confederating with one another, committing the crime herein charged in relation to and taking advantage of their official functions, through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally, give unwarranted benefits, advantage or preference in the discharge of official functions to Mobil Link Enterprises/Starlet Sales Center causing the purchase of one (1) computer unit costing P120,000.00, an acquisition by personal canvass which is in violation of Sections 362 and 367 of RA 7160, thereby causing damage and prejudice to the Municipality of San Manuel, Pangasinan.[12]

The Sandiganbayan granted the motion in the first assailed resolution, thus:

There having been no arraignment yet and the pre-maturity of the amendment is of the prosecution's risk, the motion to Amend the Information is GRANTED.

Accordingly, the Amended Information submitted by the prosecution is admitted.[13]

Petitioners filed a motion for reconsideration, but the same was denied in the second assailed resolution:

The Court resolves to deny the Motion for Reconsideration filed by the accused. Indeed, the power of a prosecuting prosecutor to amend or cause the amendment of the information does not need the approving authority of the Ombudsman. The Information was maintained only with some amendments made which the Court feels do not violate any law since there was no arraignment yet.

Accordingly, accused Motion for Reconsideration dated June 4, 2004 is denied for lack of merit.[14]

Petitioners assail the foregoing Resolutions before this Court, presenting the following issues for resolution:

- Whether or not there is a denial of procedural due process on the part of the petitioners when the Special

Prosecutor filed the Amended Information without authority from or the approval of the Honorable Ombudsman, and against the latter's specific instruction;

- Whether or not the Amended Information is valid in the absence of such authority or approval of the Ombudsman under the circumstances; and

- Whether or not respondent Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction, when it admitted the Amended Information which bears no approval of the Honorable Ombudsman, and against the latter's written instruction to submit to him for approval the result of the re-study before the filing of said Amended Information.[15]

This is not the first time the respective powers of the Ombudsman and the Special Prosecutor were pitted at loggerheads against each other since these positions were reinvented in the 1987 Constitution. The Offices of the Ombudsman (now also called the Tanodbayan) and the Special Prosecutor (then called the Tanodbayan) were reintroduced, with modified powers and designation, in the following provisions of Article XI of the Constitution:

Sec. 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy, and at least one Deputy each for Luzon, Visayas and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

x x x x

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

A judicial examination of the prosecutorial powers of these two Constitutional positions came barely a year after the effectivity of the 1987 Constitution, when then Special Prosecutor Raul Gonzalez filed criminal cases against Antique Governor Enrique Zaldivar. Zaldivar claimed that said cases were filed without legal and constitutional authority since, under the 1987 Constitution, it is only the Ombudsman (not the incumbent Tanodbayan who should now be called the Special Prosecutor) who has the authority to file the cases with the Sandiganbayan. In granting the petitions and nullifying the criminal informations filed against Zaldivar, this Court held:

Under the 1987 Constitution, the Ombudsman (as distinguished from the incumbent Tanodbayan) is charged with the duty to:

"Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient." (Sec. 13, par. 1)

The Constitution likewise provides that:

"The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution." (Art. XI, Section 7) (Italics ours).

Now then, inasmuch as the aforementioned duty is given to the Ombudsman, the incumbent Tanodbayan (called Special Prosecutor under the 1987 constitution and who is supposed to retain powers and duties NOT GIVEN to the Ombudsman) is clearly without authority to conduct preliminary investigations and to direct the filing of criminal cases with the Sandiganbayan, except upon orders of the Ombudsman. This right to do so was lost effective February 2, 1987. From that time, he has been divested of such authority.

Under the present constitution, the Special Prosecutor (Raul Gonzalez) is a mere subordinate of the Tanodbayan (Ombudsman) and can investigate and prosecute cases only upon the latter's authority or orders.

The Special Prosecutor cannot initiate the prosecution of cases but can only conduct the same if instructed to do so by the Ombudsman. Even his original power to issue subpoena, which he still claims under Section 10(d) of PD 1630, is now deemed transferred to the Ombudsman, who may, however, retain it in the Special Prosecutor in connection with the cases he is ordered to investigate.[16] (Emphasis supplied.)

The following year, Republic Act No. 6770,[17] otherwise known as The Ombudsman Act of 1989, was passed into law. Among other things, said law:

- 1) expressly included the Special Prosecutor under the Office of the Ombudsman;[18]
- 2) gave the Special Prosecutor the power, under the supervision and control and upon the authority of the Ombudsman, to conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan, and to perform such other duties assigned to it by the Ombudsman;[19] and, most importantly,
- 3) granted the Ombudsman the powers to:

Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of its primary jurisdiction, it may take over, at any stage, from any investigatory agency of the Government, the investigation of such cases.[20]

A few years later, several persons charged in a complaint filed with the Office of the Ombudsman (in connection with the alleged summary execution of Kuratong Baleleng gang members) instituted petitions for certiorari with this Court, claiming that it is the Special Prosecutor which has jurisdiction to conduct the preliminary investigation and file the proper information against them. In the oral arguments, the parties agreed to limit the issues, with petitioners praying for the re-examination of the Zaldivar ruling on the argument that the Constitution did not give the Ombudsman prosecutorial functions, and contending that the inclusion of the Office of the Special Prosecutor as among the offices under the Office of the Ombudsman in Section 3 of Republic Act No. 6770 is unconstitutional.

In upholding Zaldivar, we held that while there was indeed an intention to withhold prosecutorial functions from the Ombudsman, the legislature nevertheless recommended that the Legislature could, through statute, prescribe such other powers, functions and duties to the Ombudsman.[21] Thus, paragraph 8, Section 13, Article XI of the Constitution, provides that the Ombudsman may exercise other functions and duties as may be provided by law.[22] Pursuant to this authority, the Legislature enacted Republic Act No. 6770, which granted prosecutorial powers to the Ombudsman.

On the claim that the inclusion of the Office of the Special Prosecutor as among the offices under the Office of the Ombudsman in Section 3 of Republic Act No. 6770 is unconstitutional, we ratiocinated that:

The contention is not impressed with merit. Firstly, the petitioners misconstrue Commissioner Romulo's statement as authority to advocate that the intent of the framers of the 1987 Constitution was to place the Office of the Special Prosecutor under the Office of the President. The said statement obviously referred to the Tanodbayan under P.D. No. 1630 "note how specific the erstwhile Commissioner was in stating; ". . . as the decree now reads . . ." Further, in complete contrast to the petitioner's stand, one of the principal reasons for the proposal to withhold prosecutorial powers from the Ombudsman was precisely to remove the office from presidential control. x x x

x x x x

In the second place, Section 7 of Article XI expressly provides that the then existing Tanodbayan, to be henceforth known as the Office of the Special Prosecutor, "shall continue to function and exercise its powers

as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution." The underscored phrase evidently refers to the Tanodbayan's powers under P.D. No. 1630 or subsequent amendatory legislation. It follows then that Congress may remove any of the Tanodbayan's/Special Prosecutor's powers under P.D. No. 1630 or grant it other powers, except those powers conferred by the Constitution on the Office of the Ombudsman.

Pursuing the present line of reasoning, when one considers that by express mandate of paragraph 8, Section 13, Article XI of the Constitution, the Ombudsman may "exercise such other powers or perform functions or duties as may be provided by law," it is indubitable then that Congress has the power to place the Office of the Special Prosecutor under the Office of the Ombudsman. In the same vein, Congress may remove some of the powers granted to the Tanodbayan by P.D. No. 1630 and transfer them to the Ombudsman; or grant the Office of the Special Prosecutor such other powers and functions and duties as Congress may deem fit and wise. This Congress did through the passage of R.A No. 6770.[23]

While it is clear that *Acop v. Office of the Ombudsman* upheld *Zaldivar v. Sandiganbayan* insofar as the power of the Ombudsman to prosecute cases is concerned, there has been a shift in its ratio decidendi. Hence, it was pronounced that the authority of the Ombudsman to prosecute was based on Republic Act No. 6770, as authorized by paragraph 8, Section 13, Article XI of the Constitution. This being the case, and considering that Republic Act No. 6770 also gives the Special Prosecutor the power to prosecute criminal cases (albeit under the supervision and control and under the authority of the Ombudsman), was there likewise a modification of our ruling in *Zaldivar* prohibiting the then Special Prosecutor to initiate criminal cases unless authorized by the Ombudsman? Or should there now be a presumed authority, pursuant to Republic Act No. 6770, to prosecute cases unless prohibited by the Ombudsman?

The determination of this question is necessary in the case at bar, where it is the petitioners' central contention that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess in jurisdiction when it admitted the Amended Information which, according to petitioners, bears no approval of the Ombudsman, thus, constituting denial of procedural due process.[24]

Particularly, petitioners allege that the amendment of the Information and the admission of the Amended Information is premature, since the Ombudsman has not yet acted with finality on the 23 October 2003 Memorandum.[25] The Ombudsman, by stating in the marginal notes of the 23 October 2003 Memorandum that "(t)he resolution of this case is deferred," and "(k)indly submit your recommendation soonest," allegedly decreed that the reinvestigation stage would not be completed until his final determination.[26]

Respondent People's defense is that compliance with the specific instructions of the Ombudsman is merely an internal matter and the alleged failure to heed the specific instructions of the Ombudsman is speculative.[27]

The marginal notes of Ombudsmen to the recommendations of investigating prosecutors are hardly internal matters. In *Cruz, Jr. v. People*,^[28] *Olivarez v. Sandiganbayan*,^[29] and *Gallardo v. People*,^[30] the marginal notes, even one-liners as in the case of *Gallardo*, were judicially considered sufficient dispositions by the Ombudsmen and Special Prosecutors concerned. We held in *Olivarez* that:

The mere fact that the order to file the information against petitioner was contained in a marginal note is not sufficient to impute arbitrariness or caprice on the part of respondent special prosecutors, absent a clear showing that they gravely abused their discretion in disapproving the recommendation of the investigating prosecutors to dismiss or withdraw the case against petitioner. x x x.[31]

Was there, as petitioners assert, a violation of the orders of the Ombudsman as stated in his marginal note?

For reference, we reiterate the marginal note of Ombudsman Marcelo dated 16 February 2004:

The resolution of this case is deferred. There are two modes of violating Section 3(e) of RA 3019, to wit: a) causing undue injury or b) giving unwarranted benefits, advantage or preference. OSP should study whether the accused, assuming *arguendo* that there was no overprice, gave unwarranted benefits, advantage or preference to the seller of the subject computer. Kindly submit your recommendation soonest. [32]

Assistant Special Prosecutor Galisanao's Special Memorandum, quoted in full in the narration of facts, show complete compliance with Ombudsman Marcelo's order to "study whether the accused, assuming *arguendo* that there was no overprice, gave unwarranted benefits, advantage or preference to the seller of the subject computer." Assistant Special Prosecutor Galisanao answered the query in the affirmative, stating that unwarranted benefits, advantage or preference were given to Mobil Link Enterprises/Starlet Sales Center through the "deliberate disregard of the rules on procurement discussed above."

Ombudsman Marcelo's order, however, to "(k)indly submit your recommendation soonest," is another matter. The marginal note did not indicate to whom the recommendation should be submitted. As the recommendation was prepared by a subordinate in the Office of the Special Prosecutor, would a submission to the Special Prosecutor be sufficient compliance with the order of the Ombudsman? What is imperative is that the recommendation be submitted to someone who has the authority to implement such recommendation, by authorizing the filing of the proper information.

Republic Act No. 6770, by conferring upon the Ombudsman the power to prosecute, likewise grants to the Ombudsman the power to authorize the filing of informations. As to the Special Prosecutor, respondent People invokes the aforesaid authority of the Ombudsman in Section 15(10) to delegate his powers, and claim that there was a general delegation of the authority to approve the filing of informations in Office Order No. 03-97, series of 2003 (dated 15 September 2003), and Office Order No. 40-05, series of 2005 (dated 4 April 2005).

Office Order No. 40-05 is a consolidation of several office orders, including the aforementioned Office Order No. 03-97, which is thus superseded by the former.[33] Office Order No. 40-05 provides:

In the exigency of the service, except when otherwise ordered by the Ombudsman, the disposition of administrative and criminal cases involving any of the following, viz:

1) City and Municipal mayors;

x x x x

as the highest ranking respondent, where the offense charged involves injury or damage amounting to, or valued at Two Million Pesos (P2,000,000.00) or less, or where the maximum imposable penalty for any of the offense charged does not exceed twenty (20) years imprisonment, shall be subject to the final approval of the Deputy Ombudsman concerned; provided, that, where the offense charged involves injury or damage amounting to, or valued at, more than Two Million Pesos (P2,000,000.00), or where the maximum imposable penalty for any of the offense charged is more than twenty (20) years imprisonment, the disposition shall be subject to the final approval of the Ombudsman.

In the foregoing dispositions that are subject to the final approval of the Deputy Ombudsman concerned, the undersigned hereby delegates to the latter further authority to approve and sign any corresponding criminal information, whether to be filed with the regular courts or the Sandiganbayan; provided, however, that, preparatory to the filing of the information with the Sandiganbayan, the Office of the Special Prosecutor may review and modify the same, subject to the approval of the Special Prosecutor, without departing from, or varying in any way, the contents of the basic Resolution, Order or Decision.[34]

Contrary to the contention of respondent People, the delegation of the power to authorize the filing of informations under Office Order No. 40-05 was only made to Deputy Ombudsmen, and not to the Special

Prosecutor. All that was delegated to the Special Prosecutor was the discretionary^[35] authority to review and modify the Deputy Ombudsmen-authorized information, but even this is subject to the condition that such modification must be "without departing from, or varying in any way, the contents of the basic Resolution, Order or Decision." Even the title of Office Order No. 40-05 betray the contention of delegation to the Special Prosecutor: "DELEGATION OF FINAL APPROVING AUTHORITY TO THE DEPUTY OMBUDSMAN FOR LUZON, DEPUTY OMBUDSMAN FOR VISAYAS AND DEPUTY OMBUDSMAN FOR MINDANAO."

Neither does it help that, under Section 11(4) of Republic Act No. 6770, the Special Prosecutor was given the rank and salary of Deputy Ombudsman. In *Office of the Ombudsman v. Valera*,^[36] this Court held:

The petitioner's contention that since the Special Prosecutor is of the same rank as that of a Deputy Ombudsman, then the former can rightfully perform all the functions of the latter, including the power to preventively suspend, is not persuasive. Under civil service laws, rank classification determines the salary and status of government officials and employees. Although there is substantial equality in the level of their respective functions, those occupying the same rank do not necessarily have the same powers nor perform the same functions.^[37]

There being no express delegation of the power to prosecute, we are constrained to go back to our main query: Is there an implied delegation of the power to prosecute under Republic Act No. 6770, such that Special Prosecutors are presumed to have been delegated such power, in the absence of a prohibition from the Ombudsman?

Republic Act No. 6770 provides:

(4) The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers:

- (a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;
- (b) To enter into plea-bargaining agreements; and
- (c) To perform such other duties assigned to it by the Ombudsman.^[38]

This Court has defined the power of control as "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."^[39] The power of supervision, on the other hand, means "overseeing, or the power or authority of an officer to see that subordinate officers perform their duties."^[40] Under the Administrative Code of 1987^[41]:

Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. x x x

Springing from the power of control is the doctrine of qualified political agency, wherein the acts of a subordinate bears the implied approval of his superior, unless actually disapproved by the latter.^[42] Thus, taken with the powers of control and supervision, the acts of Department Secretaries in the performance of their duties are presumed to be the act of the President, unless and until the President alters, modifies, or nullifies the same. By arguing that "[w]hat is important is that the amended Information has not been withdrawn, and or recalled by the Honorable Ombudsman, [a] clear showing that the latter acknowledged/upheld the act of the Special Prosecutor in signing the Amended Information,"^[43] respondent People claims that the doctrine of qualified political agency should be applied as well to the relationship between the Ombudsman and the Special Prosecutor.

Petitioners counter that the doctrine of qualified political agency does not apply to the Office of the Ombudsman, since the latter is an apolitical agency, and is far different from the bureaucracy to which said doctrine applies.[44]

Petitioners are correct.

The doctrine of qualified political agency was adopted in our system of government on the following pronouncement of this Court in *Villena v. The Secretary of the Interior*[45]:

After serious reflection, we have decided to sustain the contention of the government in this case on the broad proposition, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. (*Runkle vs. United States* [1887]. 122 U.S., 543; 30 Law. ed., 1167; 7 Sup. Ct. Rep., 1141; see also *U. S. vs. Eliason* [1839], 16 Pet., 291; 10 Law. ed., 968; *Jones vs. U. S.* [1890], 137 U.S., 202; 34 Law. ed., 691; 11 Sup. Ct., Rep., 80; *Wolsey v. Chapman* [1880], 101 U.S., 755; 25 Law. ed., 915; *Wilcox vs. Jackson* [1836], 13 Pet., 498; 10 Law. ed., 264.) [46]

While we do not underestimate the quantity of work in the hands of the Office of the Ombudsman, the same simply does not measure up to the workload of the Office of the President as to necessitate having the Special Prosecutor as an alter ego of the Ombudsman. In any case, the Office of the Ombudsman could very well make a general delegation of powers to the Special Prosecutor, if it is so desired. An examination of the office orders issued by the Ombudsman, however, reveal that there had been no such intention to make a general delegation.

Indeed, a statute granting powers to an agency created by the Constitution should be liberally construed for the advancement of the purposes and objectives for which it was created.[47] Yet, the Ombudsman would be severely hampered from exercising his power of control if we are to allow the Special Prosecutor to authorize the filing of informations in the first instance. This is because while the Ombudsman has full discretion to determine whether or not a criminal case should be filed in the Sandiganbayan, once the case has been filed with said court, it is the Sandiganbayan, and no longer the Ombudsman, which has full control of the case so much so that the informations may not be dismissed, without the approval of the said court.[48]

We, therefore, resolve to grant the Petition. We realize that, once transmitted to the new Ombudsman, she can so easily approve the 8 March 2004 Supplemental Memorandum of Assistant Special Prosecutor Galisanao, and the same Amended Information can be filed in no time. However, when the law entails a specific procedure to be followed, unwarranted shortcuts lead to the violation of the sacred right to due process, which we cannot countenance.

Finally, as regards other informations authorized by the Special Prosecutor to be filed without the approval of the Ombudsman, we also recognize that the former prevailing interpretation of the law may shield these informations from illegality. Such reliance upon the operative fact, however, would cease upon the finality of this Decision.

WHEREFORE, the instant Petition for Certiorari is GRANTED. The assailed Resolutions of the Sandiganbayan admitting the Amended Information is SET ASIDE. Let the 8 March 2004 Supplemental Memorandum of Assistant Special Prosecutor III Warlito F. Galisanao be TRANSMITTED to the Office of the Ombudsman for approval or disapproval.

SO ORDERED.

Panganiban, C. J. (Chairperson), Ynares-Santiago, Austria-Martinez and Callejo, Sr. JJ., concur.

[1] Both Resolutions were penned by Sandiganbayan Associate Justice Edilberto G. Sandoval with Associate Justices Francisco H. Villaruz, Jr. and Efren N. dela Cruz, concurring.

[2] Records, p. 213.

[3] Id. at 242.

[4]

SEC. 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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 officers or government corporations charged with the grant of licenses or permits or other concessions.

[5] Anti-Graft and Corrupt Practices Act.

[6] Rollo, pp. 20-21.

[7] Petitioner's Memorandum, p. 3.

[8] Rollo, pp. 60-69.

[9] Id. at 69.

[10] Id.

[11] Id. at 70-73.

[12] Records, pp. 202-204.

[13] Id. at 213.

[14] Id. at 242.

[15] Petitioner's Memorandum, p. 7.

[16] Zaldivar v. Sandiganbayan, G.R. Nos. L-79690-707, 27 April 1988, 160 SCRA 843, 846-847.

[17] Approved on 17 November 1989.

[18] Republic Act No. 6770, Section 3: "The Office of the Ombudsman shall include the Office of the Overall Deputy, the Office of the Deputy for Luzon, the Office of the Deputy for the Visayas, the Office of the Deputy for Mindanao, the Office of the Deputy for the Armed Forces, and the Office of the Special Prosecutor. The President may appoint other Deputies as the necessity for it may arise, as recommended by the Ombudsman."

[19] Republic Act No. 6770, Section 11 (4): "The Office of the Special Prosecutor shall, under the supervision

and control and under the authority of the Ombudsman, have the following powers:

- (a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;
- (b) To enter into plea bargaining agreements; and
- (c) To perform such other duties assigned to it by the Ombudsman.

[20] Republic Act No. 6770, Section 11(1); In *Uy v. Sandiganbayan* (G.R. Nos. 105965-70, 20 March 2001, 354 SCRA 651, 659), we set aside our earlier Decision (312 SCRA 77, 9 August 1999) and Resolution (unreported, 20 February 2000), and held that Section 11(1) gives the Ombudsman the power to prosecute criminal cases not only within the jurisdiction of the Sandiganbayan, but also those within the jurisdiction of regular courts.

[21] *Acop v. Office of the Ombudsman*, G.R. Nos. 120422 & 120428, 27 September 1995, 248 SCRA 566, 575-576.

[22]

SEC. 13. The office of the Ombudsman shall have the following powers, functions, and duties:

x x x x

Promulgate its rules and procedures and exercise such other functions or duties as may be provided by law.
(Emphasis supplied.)

[23] *Acop v. Office of the Ombudsman*, supra note 21 at 581-582.

[24] *Rollo*, p. 155.

[25] *Id.* at 161.

[26] *Id.* at 161.

[27] *Id.* at 175.

[28] G.R. No. 110436, 27 June 1994, 233 SCRA 439, 450-451.

[29] 319 Phil. 45 (1995).

[30] G.R. No. 142030, 21 April 2005, 456 SCRA 494, 504-505.

[31] *Olivarez v. Sandiganbayan*, supra note 29 at 58-59.

[32] *Rollo*, p. 69.

[33] Office Order No. 40-05 states: "This Office Order is being issued to consolidate the contents of existing officer orders, to wit: Office Order No. 05-11, dated 19 January 2005; Office Order No. 03-97, dated 15 September 2003; Office Order No. 03-116, dated 17 October 2003; Office Order No. 04-32, dated 12 May 2004; and Office Order No. 04-45, dated 8 July 2004. Said Office Orders are deemed superseded by this Office Order." (Emphasis supplied.)

[34] *Rollo*, pp. 218-220.

[35] "x x x [T]he Office of the Special Prosecutor may review and modify the same." (*Id.* at 219.)

[36] G.R. No. 164250, 30 September 2005, 471 SCRA 715.

[37] *Id.* at 746-747.

[38] Republic Act No. 6770, Section 11(4).

[39] Mondano v. Silvosa, 97 Phil. 143, 148 (1955).

[40] Id.

[41] Executive Order No. 292, Book 4, Chapter 7, Section 38 (1).

[42] See Kilusang Bayan sa Paglilingkod ng mga Magtitinda ng Bagong Pamilihan Bayan ng Muntinlupa, Inc. (KBMBPM) v. Dominguez, G.R. No. 85439, 13 January 1992, 205 SCRA 92, 110.

[43] Rollo, p. 175.

[44] Id. at 164.

[45] 67 Phil. 451 (1939).

[46] Id. at 463-464.

[47] Buenaseda v. Flavie, G.R. No. 106719, 21 September 1993, 226 SCRA 645, 653.

[48] Domondon v. Sandiganbayan, G.R. No. 129904, 16 March 2000, 328 SCRA 292, 300, citing Ocampo, v. Ombudsman, 225 SCRA 725, 730 (1993)

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