

**ERDITO QUARTO, PETITIONER, VS. THE HONORABLE OMBUDSMAN
SIMEON MARCELO, CHIEF SPECIAL PROSECUTOR DENNIS VILLA
IGNACIO, LUISITO M. TABLAN, RAUL B. BORILLO, AND LUIS A.
GAYYA, RESP...**

G.R. No. 169042. October 05, 2011

Ponente: BRION, J.

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BRION, J.:

Before the Court is a petition for certiorari and mandamus[1] filed by Erdito Quarto (petitioner) assailing the Ombudsman's January 7, 2004[2] and November 4, 2004[3] resolutions which granted Luisito M. Tablan, Raul B. Borillo, and Luis A. Gayya (collectively, respondents) immunity from prosecution, resulting in the respondents' exclusion from the criminal informations filed before the Sandiganbayan. The petitioner seeks to nullify the immunity granted to the respondents, and to compel the Ombudsman to include them as accused in the informations for estafa through falsification of public documents[4] and for violation of Section 3(e), Republic Act (RA) No. 3019.[5]

FACTUAL ANTECEDENTS

The petitioner is the Chief of the Central Equipment and Spare Parts Division (CESPD),[6] Bureau of Equipment (BOE), Department of Public Works and Highways (DPWH), Port Area, Manila. As CESPD Chief, he is also the Head of the Special Inspectorate Team (SIT) of the DPWH.[7] The respondents are members of the SIT.[8]

On January 9, 2002, DPWH Secretary Simeon Datumanong created a committee to investigate alleged anomalous transactions involving the repairs and/or purchase of spare parts of DPWH service vehicles in 2001.[9] On January 17, 2002, the committee designated the DPWH Internal Audit Service (IAS) as its Technical Working Group to conduct the actual investigation.[10]

In the course of its investigation, the DPWH-IAS[11] learned that the emergency repairs and/or purchase of spare parts of DPWH service vehicles basically undergo the following documentary process:

I. Determination of repairs and/or spare parts needed

- The end-user requesting repair brings the service vehicle to the Motorpool Section, CESPD for initial inspection and preparation of Job Order; and
- Based on the Job Order, the SIT conducts a pre-repair inspection (to determine the necessity of repair and whether the repair is emergency in nature) and prepares a Pre-Repair Inspection Report, with a recommendation for its approval by the CESPD Chief.

II. Preparation and Approval of Requisition for Supplies and/or Equipment with accompanying documents (Job Order and Pre-Inspection Report)

- The Procurement Section, Administrative Manpower Management Service (AMMS) prepares the Requisition for Supplies and Equipment (RSE), the Canvass Quotation of three Suppliers, the Certificate of Emergency Purchase, and the Certificate of Fair Wear and Tear;
- The end-user signs the RSE with the recommending approval of the concerned head of office; and
- The AMMS Director approves the RSE.

III. Repair of Vehicles

- The end-user selects the repair shop/auto supply from accredited establishments;
- The selected repair shop/auto supply repairs the service vehicle and issues the corresponding sales invoice and/or official receipt;
- The end-user accepts the repair and executes a Certificate of Acceptance;
- The SIT conducts a post-repair inspection (to check if the vehicle was repaired and whether the repair conformed to specifications) and prepares a Post-Repair Inspection Report, with a recommendation for its approval by the CESPd Chief. The Motorpool and the end-user would prepare the Report of Waste Materials also for the signature of the CESPd Chief; and
- The Assets and Supply Management and Control Division recommends payment of the expense/s incurred.

The processing of the payment of claims for reimbursement follows the above process.

Based on this procedure, the DPWH-IAS discovered that from March to December 2001, several emergency repairs and/or purchase of spare parts of hundreds of DPWH service vehicles, which were approved and paid by the government, did not actually take place, resulting in government losses of approximately P143 million for this ten-month period alone.[12]

Thus, Atty. Irene D. Ofilada of the DPWH-IAS filed before the Office of the Ombudsman[13] a Complaint-Affidavit[14] and a Supplemental Complaint-Affidavit[15] charging several high-ranking DPWH officials and employees - including the petitioner, the respondents, and other private individuals who purportedly benefited from the anomalous transactions - with Plunder, Money Laundering, Malversation, and violations of RA No. 3019 and the Administrative Code.[16]

Atty. Ofilada imputed the following acts to the petitioner:

With dishonesty and grave misconduct, [the petitioner] x x x approved four (4) job orders for [the] repairs [and/or] purchase of spare parts of [the vehicle assigned to Atty. Ofilada,] noted the certificate of urgency of said repairs [and/or] purchase[,] concurred with both the pre-repair and post repair inspection reports thereon, participated in the accomplishment of the supporting Requisition for Supplies and Equipment (RSE) x x x[,] and participated in the approval of the disbursement voucher authorizing payment of said repairs as necessary and lawful [even if said vehicle was never referred to the Motorpool Section, CESPd for repair].

The documents relating to [this vehicle] were filed within a period of one month (between September to October 2001) [and] were used to authorize the payment of said non existent ghost repairs to the damage and prejudice of the [DPWH.][17] (emphases ours)

On the other hand, Atty. Ofilada charged the respondents with the following:

With dishonesty and grave misconduct, [respondents] as members of the [SIT] xxx accomplished and signed Pre-Repair Inspection and Post Repair Inspection Reports in support of the four job orders [and made] it appear that the vehicle was inspected prior and after the alleged repair [although they knew that the vehicle

was never turned over for inspection]. The accomplishment of the Pre-Repair and Post-Repair Inspection Report[s] led to the preparation of the Request for Supplies and Equipment which was the basis of the preparation of the disbursement vouchers ultimately authorizing the payment of the said repairs thru reimbursement scheme to the damage and prejudice of the DPWH.

x x x the [P]re-[R]epair and [P]ost-[R]epair [I]nspection [R]eports of the [SIT] xxx are fictitious and falsified as no actual inspection could have transpired[.][18] (emphasis ours)

The petitioner denied the allegations against him, claiming that he merely relied on his subordinates when he signed the job orders and the inspection reports.[19] In contrast, the respondents admitted the existence of irregularities in the repairs and/or purchase of spare parts of DPWH service vehicles, and offered to testify and to provide evidence against the DPWH officials and employees involved in the anomaly in exchange for their immunity from prosecution. The respondents submitted:

5.2 x x x since we assumed our duties as members of the SIT xxx, we observed that [the] DPWH vehicles were being sent to the repair shop in violation of the prescribed guidelines governing the emergency repair of a service vehicle. In most instances, service vehicles are immediately brought to a car repair shop of the end-user's choice without bringing it first to the [Motorpool Section, CESP, BOE] for the preparation of the required job order by [Gayya] of the Motorpool Section and the pre-repair inspection to be conducted by the SIT. After the purported repairs are done, SIT members are made to sign a post-repair inspection report which already includes a typed-in recommendation for the payment of repairs, and the signature of the Head of the [SIT] indicating his alleged concurrence with the findings of the SIT despite the absence of an actual inspection. The post-repair inspection report is accompanied by the following attachments, to wit: a) a falsified job order signed by the head of the [SIT] and the Chief of the Motorpool Section x x x [and] e) an empty or falsified [p]re-repair inspection report[.]

5.3 Initially[,] we tried to curb the above anomalous practices being perpetrated by suppliers and officials of the DPWH x x x [by making] known [our] objections to the questionable job orders for the proposed repairs of DPWH service vehicles[,] thus:

- On July, 9, 1999, [Tablan] wrote the Head of the SIT a memorandum x x x stating that the job orders for [several identified vehicles] x x x violated the prohibition against splitting of job orders x x x. [Tablan recommended for public bidding the proposed repairs for the said vehicles].

- In connection with the job orders involving [several identified vehicles] x x x Tablan and Borillo wrote the Head of the SIT a Memorandum x x x recommending that the whereabouts of the end-user be verified, and the service vehicle be re-inspected and/or disposed of.

- Since the July 9, 1999 Memorandum was returned to x x x Tablan without any action being undertaken by the SIT Chief, [Tablan and Borillo] reiterated the recommendation for the public bidding of the proposed repairs described therein[.]

6. In our attempts to perform our sworn duties, however, we incurred the displeasure of the suppliers, the head of [SIT] and other officials of the DPWH who threatened various administrative sanctions against us if we should not accede to their wishes. x x x

7. In addition to the foregoing, there are other factors which conspired to prevent us from properly performing our duties. For one, the DPWH processes an average of 3,000 repairs per calendar year. Given the staggering number and extent of repairs, including the volume of paperwork, it was practically impossible for [us] to implement the rules which proved too tedious under the circumstance. As such, a "short-cut" of the rules was necessary to accommodate the demands of the end-user, the suppliers, our superiors, and other executives of the DPWH. x x x

8. The anomalous practices of the DPWH executives and suppliers in the purported repair of DPWH service vehicles were indeed more widespread and rampant in the year 2001. As a precautionary measure, we took the initiative of photocopying these sets of falsified documents as they were presented to us before we affixed our respective signatures thereon. We grouped these documents into Sets A and B[.]

x x x x

11. x x x That the service vehicle x x x has not been actually inspected by [Tablan and Borillo] is attested to by the pre and post repair inspection reports initially bearing the signature of the head of the SIT as concurring official without the required signatures of Borillo and Tablan. More importantly, these DPWH officials did not bother, in a majority of cases, to "cover their tracks" when they prepared and signed the pre and post repair inspection reports on the same dates. Based on proper procedure, a post repair inspection report is to be accomplished only after the preparation and approval of the Job Order, pre-repair inspection report, RSE, Cash Invoice and Acceptance by the end-user. In this case, the RSE, Cash Invoice and Certificate of Acceptance are dated much later than the post-repair inspection report. Since xxx there was no actual pre-repair and post-repair inspection conducted, the foregoing sample instances paved the way for the "ghost repairs" of DPWH service vehicles, to the detriment and prejudice of the government.

12. Because of the anomalous transactions, the joke circulating around the DPWH is that we are actually the directors of the DPWH since we are the "last to sign," so to speak. That the signature[s] of the [respondent] SIT members are merely pro forma is all the more pronounced in a sample set consisting of a number of pre-repair inspection reports for a particular month in 2001. The pre-repair inspection reports of the service vehicles indicated therein are empty of any findings and bear the signature of the head of the SIT as concurring official. All the foregoing documents above detailed negate the convenient excuse proffered by DPWH executives that they sign the documents only after the SIT had inspected the service vehicle and prepared the pre and post repair inspection reports.

x x x x

14.1 xxx the above examples are only a representative sampling of the extent of the anomalous transactions involving DPWH service vehicles which can be considered "ghost repairs." There are more instances wherein [we] are willing to testify to in exchange for immunity from prosecution.[20] (emphases ours)

After conducting preliminary investigation, the Ombudsman filed with the Sandiganbayan[21] several informations charging a number of DPWH officials and employees with plunder,[22] estafa through falsification of official/commercial documents and violation of Section 3(e), RA No. 3019. On the other hand, the Ombudsman granted the respondents' request for immunity in exchange for their testimonies and cooperation in the prosecution of the cases filed.

The petitioner initially filed a certiorari petition with the Sandiganbayan, questioning the Ombudsman's grant of immunity in the respondents' favor. The Sandiganbayan, however, dismissed the petition for lack of jurisdiction and advised the petitioner to instead question the Ombudsman's actions before this Court.[23] Hence, this present petition.

THE PETITION

The petitioner argues that the Ombudsman should have included the respondents in the informations since it was their inspection reports that actually paved the way for the commission of the alleged irregularities.[24] The petitioner asserts that the respondents' criminal complicity clearly appears since "no repair could have started" and "no payment for repairs, ghost or not," could have been made without the respondents' pre-repair and post-repair inspection reports. By excluding the respondents in the informations, the Ombudsman is engaged in "selective prosecution" which is a clear case of grave abuse of discretion.

The petitioner claims that before the Ombudsman may avail of the respondents as state witnesses, they must be included first in the informations filed with the court. Thereafter, the Ombudsman can ask the court for their discharge so that they can be utilized as state witnesses under the conditions laid down in Section 17, Rule 119 of the Rules of Court since the court has the "sole province" to determine whether these conditions exist.

These conditions require, inter alia, that there should be "absolute necessity" for the testimony of the proposed witness and that he/she should not appear to be the "most guilty." The petitioner claims that the respondents failed to comply with these conditions as the Ombudsman's "evidence," which became the basis of the informations subsequently filed, shows that the respondents' testimony is not absolutely necessary; in fact, the manner of the respondents' participation proves that they are the "most guilty" in the premises.

THE COMMENTS OF THE OMBUDSMAN AND THE RESPONDENTS

The Ombudsman counters that RA No. 6770 (the Ombudsman Act of 1989) expressly grants him the power to grant immunity from prosecution to witnesses. Given this power, the Ombudsman asserts that Section 17, Rule 119 of the Rules of Court, which presupposes that the witness is originally included in the information, is inapplicable to the present case since the decision on whom to prosecute is an executive, not a judicial, prerogative.[25]

The Ombudsman invokes this Court's policy of non-interference in the Ombudsman's exercise of his discretion in matters involving his investigatory and prosecutorial powers.[26] The petitioner's claim that the respondents are the "most guilty" is a matter of defense which the petitioner may raise not in this proceeding, but in the trial proper.[27]

On the other hand, the respondents submit that the Ombudsman has ample discretion in determining who should be included in the information on the basis of his finding of probable cause. The courts can only interfere in the Ombudsman's exercise of his discretion in case of a clear showing of grave abuse of discretion, which the petitioner failed to establish.[28]

THE PETITIONER'S REPLY[29]

While conceding that the Ombudsman has the power and the discretion to grant immunity to the respondents, the petitioner asserts that this power must be exercised within the confines of Section 17, Rule 119 of the Rules of Court which requires, inter alia, that the proposed witness must not appear to be the "most guilty." By ignoring this provision and extending immunity to the respondents whose false reports ultimately led to the payment for supposed repairs, and who are, thus, the "real culprits,"[30] the Ombudsman gravely abused his discretion - a fatal defect correctible by certiorari.

Amplifying on the respondents' "guilt," the petitioner cites the DPWH's decision in an administrative case which the Civil Service Commission affirmed, finding the respondents guilty of dishonesty and grave misconduct involving the same set of facts.[31]

OUR RULING

We dismiss the petition on two grounds: first, the petitioner did not avail of the remedies available to him before filing this present petition; and, second, within the context of the Court's policy of non-interference with the Ombudsman's exercise of his investigatory and prosecutory powers, the petitioner failed to establish that the grant of immunity to the respondents was attended by grave abuse of discretion.

I. The petitioner did not exhaust remedies available in the ordinary course of law

As extraordinary writs, both Sections 1 (certiorari) and 3 (mandamus), Rule 65 of the Rules of Court require, as a pre-condition for these remedies, that there be no other plain, speedy and adequate remedy in the ordinary course of law. In the present case, the petitioner has not shown that he moved for a reconsideration of the assailed resolutions based substantially on the same grounds stated in this present petition.[32] Neither did the petitioner file a motion for the inclusion of the respondents in the informations before filing the present petition.[33] These are adequate remedies that the petitioner chose to forego; he bypassed these remedies and proceeded to seek recourse through the present petition.[34]

Similarly, the petitioner has not shown that he filed the present petition with this Court within the sixty-day reglementary period[35] from notice of the assailed Ombudsman's resolutions. He did not do so, of course, since he initially and erroneously filed a certiorari petition with the Sandiganbayan. We remind the petitioner that the remedy from the Ombudsman's orders or resolutions in criminal cases is to file a petition for certiorari under Rule 65[36] with this Court.[37]

The petition likewise fails even on the merits.

II. The respondents' exclusion in the informations
is grounded on the Ombudsman's grant of immunity

Mandamus is the proper remedy to compel the performance of a ministerial duty imposed by law upon the respondent.[38] In matters involving the exercise of judgment and discretion, mandamus may only be resorted to, to compel the respondent to take action; it cannot be used to direct the manner or the particular way discretion is to be exercised.[39]

In the exercise of his investigatory and prosecutorial powers, the Ombudsman is generally no different from an ordinary prosecutor in determining who must be charged.[40] He also enjoys the same latitude of discretion in determining what constitutes sufficient evidence to support a finding of probable cause (that must be established for the filing of an information in court)[41] and the degree of participation of those involved or the lack thereof. His findings and conclusions on these matters are not ordinarily subject to review by the courts except when he gravely abuses his discretion,[42] i.e., when his action amounts to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or when he acts outside the contemplation of law.[43]

If, on the basis of the same evidence, the Ombudsman arbitrarily excludes from an indictment some individuals while impleading all others, the remedy of mandamus lies[44] since he is duty-bound, as a rule, to include in the information all persons who appear responsible for the offense involved.[45]

Citing the cases of *Guiiao v. Figueroa*[46] and *Castro, Jr., et al. v. Castañeda and Licalalde*,[47] the petitioner argues for the inclusion of the respondents in the criminal informations, pointing out that the respondents accomplished the inspection reports that allegedly set in motion the documentary process in the repair of the DPWH vehicles; these reports led to the payment by the government and the consequent losses.

In *Guiiao* and *Castro*, we ruled that mandamus lies to compel a prosecutor who refuses (i) to include in the information certain persons, whose participation in the commission of a crime clearly appears, and (ii) to follow the proper procedure for the discharge of these persons in order that they may be utilized as prosecution witnesses.

These cited cases, however, did not take place in the same setting as the present case as they were actions by the public prosecutor, not by the Ombudsman. In the present case, the Ombudsman granted the respondents immunity from prosecution pursuant to RA No. 6770 which specifically empowers the Ombudsman to grant immunity "in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance

or in the furtherance of its constitutional functions and statutory objectives." The pertinent provision - Section 17 of this law - provides:

Sec. 17. Immunities. - x x x.

Under such terms and conditions as it may determine, taking into account the pertinent provisions of the Rules of Court, the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion or removal from office. [emphasis ours]

To briefly outline the rationale for this provision, among the most important powers of the State is the power to compel testimony from its residents; this power enables the government to secure vital information necessary to carry out its myriad functions.[48] This power though is not absolute. The constitutionally-enshrined right against compulsory self-incrimination is a leading exception. The state's power to compel testimony and the production of a person's private books and papers run against a solid constitutional wall when the person under compulsion is himself sought to be penalized. In balancing between state interests and individual rights in this situation, the principles of free government favor the individual to whom the state must yield.[49]

A state response to the constitutional exception to its vast powers, especially in the field of ordinary criminal prosecution and in law enforcement and administration, is the use of an immunity statute.[50] Immunity statutes seek a rational accommodation between the imperatives of an individual's constitutional right against self-incrimination[51] (considered the fount from which all statutes granting immunity emanate[52]) and the legitimate governmental interest in securing testimony.[53] By voluntarily offering to give information on the commission of a crime and to testify against the culprits, a person opens himself to investigation and prosecution if he himself had participated in the criminal act. To secure his testimony without exposing him to the risk of prosecution, the law recognizes that the witness can be given immunity from prosecution.[54] In this manner, the state interest is satisfied while respecting the individual's constitutional right against self-incrimination.

III. Nature of the power to grant immunity

The power to grant immunity from prosecution is essentially a legislative prerogative.[55] The exclusive power of Congress to define crimes and their nature and to provide for their punishment concomitantly carries the power to immunize certain persons from prosecution to facilitate the attainment of state interests, among them, the solution and prosecution of crimes with high political, social and economic impact.[56] In the exercise of this power, Congress possesses broad discretion and can lay down the conditions and the extent of the immunity to be granted.[57]

Early on, legislations granting immunity from prosecution were few.[58] However, their number escalated with the increase of the need to secure vital information in the course and for purposes of prosecution. These statutes[59] considered not only the importance of the testimony sought, but also the unique character of some offenses and of some situations where the criminal participants themselves are in the best position to give useful testimony.[60] RA No. 6770 or the Ombudsman Act of 1989 was formulated along these lines and reasoning with the vision of making the Ombudsman the protector of the people against inept, abusive and corrupt government officers and employees.[61] Congress saw it fit to grant the Ombudsman the power to directly confer immunity to enable his office to effectively carry out its constitutional and statutory mandate of ensuring effective accountability in the public service.[62]

IV. Considerations in the grant of immunity

While the legislature is the source of the power to grant immunity, the authority to implement is lodged elsewhere. The authority to choose the individual to whom immunity would be granted is a constituent part of the process and is essentially an executive function. *Mapa, Jr. v. Sandiganbayan*[63] is instructive on this point:

The decision to grant immunity from prosecution forms a constituent part of the prosecution process. It is essentially a tactical decision to forego prosecution of a person for government to achieve a higher objective. It is a deliberate renunciation of the right of the State to prosecute all who appear to be guilty of having committed a crime. Its justification lies in the particular need of the State to obtain the conviction of the more guilty criminals who, otherwise, will probably elude the long arm of the law. Whether or not the delicate power should be exercised, who should be extended the privilege, the timing of its grant, are questions addressed solely to the sound judgment of the prosecution. The power to prosecute includes the right to determine who shall be prosecuted and the corollary right to decide whom not to prosecute. In reviewing the exercise of prosecutorial discretion in these areas, the jurisdiction of the respondent court is limited. For the business of a court of justice is to be an impartial tribunal, and not to get involved with the success or failure of the prosecution to prosecute. Every now and then, the prosecution may err in the selection of its strategies, but such errors are not for neutral courts to rectify, any more than courts should correct the blunders of the defense. [emphasis ours]

RA No. 6770 fully recognizes this prosecutory prerogative by empowering the Ombudsman to grant immunity, subject to "such terms and conditions" as he may determine. The only textual limitation imposed by law on this authority is the need to take "into account the pertinent provisions of the Rules of Court," - i.e., Section 17, Rule 119 of the Rules of Court.[64] This provision requires that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty; and
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

This Rule is itself unique as, without detracting from the executive nature of the power to prosecute and the power to grant immunity, it clarifies that in cases already filed with the courts,[65] the prosecution merely makes a proposal and initiates the process of granting immunity to an accused-witness in order to utilize him as a witness against his co-accused.[66] As we explained in *Webb v. De Leon*[67] in the context of the Witness Protection, Security and Benefit Act:

The right to prosecute vests the prosecutor with a wide range of discretion -- the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors. We thus hold that it is not constitutionally impermissible for Congress to enact R.A. No. 6981 vesting in the Department of Justice the power to determine who can qualify as a witness in the program and who shall be granted immunity from prosecution. Section 9 of Rule 119 does not support the proposition that the power to choose who shall be a state witness is an inherent judicial prerogative. Under this provision, the court is given the power to discharge a state witness only because it has already acquired jurisdiction over the crime and the accused. The discharge of an accused is part of the exercise of jurisdiction but is not a recognition of an inherent judicial function. [emphasis ours]

Thus, it is the trial court that determines whether the prosecution's preliminary assessment of the accused-witness'

qualifications to be a state witness satisfies the procedural norms.[68] This relationship is in reality a symbiotic one as the trial court, by the very nature of its role in the administration of justice,[69] largely exercises its prerogative based on the prosecutor's findings and evaluation. On this point, the Court's pronouncement in the 1918 case of *United States v. Abanzado*[70] is still very much relevant:

A trial judge cannot be expected or required to inform himself with absolute certainty at the very outset of the trial as to everything which may be developed in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint. If that were practicable or possible there would be little need for the formality of a trial. He must rely in large part upon the suggestions and the information furnished by the prosecuting officer in coming to his conclusions as to the "necessity for the testimony of the accused whose discharge is requested"; as to the availability or nonavailability of other direct or corroborative evidence; as to which of the accused is "most guilty," and the like.

Notably, this cited case also observes that the Rules-provided guidelines are mere express declarations of the conditions which the courts ought to have in mind in exercising their sound discretion in granting the prosecution's motion for the discharge of an accused.[71] In other words, these guidelines are necessarily implied in the discretion granted to the courts.

RA No. 6770 recognizes that these same principles should apply when the Ombudsman directly grants immunity to a witness. The same consideration - to achieve the greater and higher purpose of securing the conviction of the most guilty and the greatest number among the accused[72] - is involved whether the grant is secured by the public prosecutor with active court intervention, or by the Ombudsman. If there is any distinction at all between the public prosecutor and the Ombudsman in this endeavor, it is in the specificity of and the higher priority given by law to the Ombudsman's purpose and objective - to focus on offenses committed by public officers and employees to ensure accountability in the public service. This accounts for the Ombudsman's unique power to grant immunity by itself and even prior to the filing of information in court, a power that the public prosecutor himself generally does not enjoy.[73]

V. Extent of judicial review of a bestowed immunity

An immunity statute does not, and cannot, rule out a review by this Court of the Ombudsman's exercise of discretion. Like all other officials under our constitutional scheme of government, all their acts must adhere to the Constitution.[74] The parameters of our review, however, are narrow. In the first place, what we review are executive acts of a constitutionally independent Ombudsman.[75] Also, we undertake the review given the underlying reality that this Court is not a trier of facts. Since the determination of the requirements under Section 17, Rule 119 of the Rules of Court is highly factual in nature, the Court must, thus, generally defer to the judgment of the Ombudsman who is in a better position (than the Sandiganbayan or the defense) to know the relative strength and/or weakness of the evidence presently in his possession and the kind, tenor and source of testimony he needs to enable him to prove his case.[76] It should not be forgotten, too, that the grant of immunity effectively but conditionally results in the extinction of the criminal liability the accused-witnesses might have incurred, as defined in the terms of the grant.[77] This point is no less important as the grant directly affects the individual and enforces his right against self-incrimination. These dynamics should constantly remind us that we must tread softly, but not any less critically, in our review of the Ombudsman's grant of immunity.

From the point of view of the Court's own operations, we are circumscribed by the nature of the review powers granted to us under the Constitution and the Rules of Court. We rule on the basis of a petition for certiorari under Rule 65 and address mainly the Ombudsman's exercise of discretion. Our room for intervention only occurs when a clear and grave abuse of the exercise of discretion is shown. Necessarily, this limitation similarly reflects on the petitioner who comes to us on the allegation of grave abuse of discretion; the petitioner himself is bound to clearly

and convincingly establish that the Ombudsman gravely abused his discretion in granting immunity in order to fully establish his case.[78]

As a last observation, we note the unique wording of the grant of the power of immunity to the Ombudsman. It is not without significance that the law encompassed (and appears to have pointedly not separated) the consideration of Section 17, Rule 119 of the Rules of Court within the broader context of "such terms and conditions as the Ombudsman may determine." This deliberate statutory wording, to our mind, indicates the intent to define the role of Section 17, Rule 119 in the Ombudsman's exercise of discretion. It suggests a broad grant of discretion that allows the Ombudsman's consideration of factors other than those outlined under Section 17, Rule 119; the wording creates the opening for the invocation, when proper, of the constitutional and statutory intents behind the establishment of the Ombudsman.

Based on these considerations, we shall now proceed to determine whether the petitioner has clearly and convincingly shown that the Ombudsman gravely abused his discretion in granting immunity to the respondents.

Va. Absolute necessity for testimony of the respondents

Under the factual and legal situation before us, we find that the petitioner miserably failed to clearly and convincingly establish that the Ombudsman gravely abused his discretion in granting immunity to the respondents. While he claims that both conditions (a) and (d) of Section 17, Rule 119 of the Rules of Court are absent, we observe his utter lack of argument addressing the "absolute necessity" of the respondents' testimony. In fact, the petitioner simply concluded that the requirement of "absolute necessity" does not exist based on the Ombudsman's "evidence," without even attempting to explain how he arrived at this conclusion.

We note in this regard that the respondents' proposed testimony tends to counteract the petitioner's personal defense of good faith (i.e., that he had no actual participation and merely relied on his subordinates) in approving the job orders and in his concurrence with the inspection reports. In their Joint Counter-Affidavit, the respondents narrated the accused DPWH officials/employees' flagrant disregard of the proper procedure and the guidelines in the repair of DPWH service vehicles which culminated in losses to the government. Particularly telling is the respondents' statement that a number of pre-repair inspection reports for a particular month in 2001 bear the petitioner's signature despite the fact that these reports are not supported by findings from the respondents as SIT members.[79] This kind of statement cannot but impact on how the Ombudsman viewed the question of "absolute necessity" of the respondents' testimony since this testimony meets the defense of good faith head-on to prove the prosecution's allegations. Under these circumstances, we cannot preempt, foreclose, nor replace with our own the Ombudsman's position on this point as it is clearly not without basis.

Vb. The respondents do not appear to be the "most guilty"

Similarly, far from concluding that the respondents are the "most guilty," we find that the circumstances surrounding the preparation of the inspection reports can significantly lessen the degree of the respondents' criminal complicity in defrauding the government. Again, this is a matter that the Ombudsman, in the exercise of his discretion, could not have avoided when he considered the grant of immunity to the respondents.

We note, too, that while the petitioner incessantly harped on the respondents' role in the preparation of the inspection reports, yet, as head of the SIT, he was eerily silent on the circumstances surrounding this preparation, particularly on the respondents' explanation that they tried "to curb the anomalous practices"[80] in the DPWH. We are aware, of course, that the present petition merely questions the immunity granted to the respondents and their consequent exclusion from the informations; it does not assail the finding of probable cause against the petitioner himself. This current reality may explain the petitioner's silence on the respondents' assertions; the

respondents' allegations, too, still have to be proven during the trial. However, these considerations are not sufficient to save the petitioner from the necessity of controverting the respondents' allegations, even for the limited purpose of the present petition, since his counter-assertion on this basic ground (that the respondents bear the most guilt) is essential and critical to the viability of his petition.

In considering the respondents' possible degree of guilt, we are keenly aware of their admission that they resorted to a "short-cut"[81] in the procedure to be observed in the repairs and/or purchase of emergency parts of DPWH service vehicles. To our mind, however, this admission does not necessarily result in making the respondents the "most guilty" in the premises; not even a semblance of being the "most guilty" can be deduced therefrom.

In sum, the character of the respondents' involvement vis-à-vis the crimes filed against the DPWH officials/employees, coupled with the substance of the respondents' disclosures, compels this Court to take a dim view of the position that the Ombudsman gravely abused his discretion in granting immunity to the respondents. The better view is that the Ombudsman simply saw the higher value of utilizing the respondents themselves as witnesses instead of prosecuting them in order to fully establish and strengthen its case against those mainly responsible for the criminal act, as indicated by the available evidence.

VI. The respondents' administrative liability has no bearing at all on the immunity granted to the respondents

The fact that the respondents had previously been found administratively liable, based on the same set of facts, does not necessarily make them the "most guilty." An administrative case is altogether different from a criminal case, such that the disposition in the former does not necessarily result in the same disposition for the latter, although both may arise from the same set of facts.[82] The most that we can read from the finding of liability is that the respondents have been found to be administratively guilty by substantial evidence - the quantum of proof required in an administrative proceeding. The requirement of the Revised Rules of Criminal Procedure (which RA No. 6770 adopted by reference) that the proposed witness should not appear to be the "most guilty" is obviously in line with the character[83] and purpose[84] of a criminal proceeding, and the much stricter standards[85] observed in these cases. They are standards entirely different from those applicable in administrative proceedings.

VII. The policy of non-interference with the Ombudsman's investigatory and prosecutory powers cautions a stay of judicial hand

The Constitution and RA No. 6770 have endowed the Office of the Ombudsman with a wide latitude of investigatory and prosecutory powers, freed, to the extent possible within our governmental system and structure, from legislative, executive, or judicial intervention, and insulated from outside pressure and improper influence.[86] Consistent with this purpose and subject to the command of paragraph 2, Section 1, Article VIII of the 1987 Constitution,[87] the Court reiterates its policy of non-interference with the Ombudsman's exercise of his investigatory and prosecutory powers (among them, the power to grant immunity to witnesses[88]), and respects the initiative and independence inherent in the Ombudsman who, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service." [89] *Ocampo IV v. Ombudsman*[90] best explains the reason behind this policy:

The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.

Following this policy, we deem it neither appropriate nor advisable to interfere with the Ombudsman's grant of immunity to the respondents, particularly in this case, where the petitioner has not clearly and convincingly shown the grave abuse of discretion that would call for our intervention.

WHEREFORE, the petition is hereby DISMISSED. Costs against the petitioner.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

[1] Under Sections 1 and 3, Rule 65 of the Rules of Court.

[2] Rollo, pp. 103-135.

[3] Id. at 178-222.

[4] Criminal Case Nos. 28098-28100; id. at 257-284.

[5] Criminal Case Nos. 28251-28253; id. at 424, 426.

[6] Id. at 77.

[7] Id. at 80, 84.

[8] The SIT members represent different divisions/services in DPWH, viz.: the Supplies Property Management Division, the Administrative Manpower and Management Service, the Asset and Supply Management and Control Division, the Comptrollership and Financial Management Service, and the CESP-BOE; id. at 80-81.

[9] Per Department Order No. 15, Series of 2002; id. at 21, 70.

[10] Id. at 70.

[11] January 7 and March 1, 2004 resolutions of the Ombudsman; id. at 117-119, 150-151. Petitioner's Reply; id. at 464-466.

[12] Id. at 23.

[13] OMB-C-C-02-0507-H.

[14] Filed on August 7, 2002.

[15] Dated October 9, 2002; rollo, pp. 17-68.

[16] Section 43, Chapter V, Book VI.

[17] Rollo, p. 28.

[18] Id. at 30-31.

[19] Id. at 83-84.

[20] Id. at 94-101.

[21] Id. at 257-284.

[22]. On January 20, 2005, the Sandiganbayan, Second Division dismissed, without prejudice to the filing of

appropriate charges, Criminal Case No. 27969, for lack of probable cause; id. at 235-256.

[23] Id. at 285-292.

[24] Relying on Section 4, Rule 112 of the Revised Rules of Criminal Procedure.

[25] Rollo, p. 413.

[26] Ibid.

[27] Id. at 415.

[28] Id. at 479.

[29] The petitioner replied thrice (dated November 21, 2005 and May 15, 2007 and October 4, 2007) to the Ombudsman's and the respondents' Comments.

[30] Rollo, p. 425.

[31] Id. at 468, 500.

[32] Section 7, Rule II of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman) allows the filing of a motion for reconsideration in criminal cases.

[33] *Sanchez v. Demetriou*, G.R. Nos. 111771-77, November 9, 1993, 227 SCRA 627.

[34] See *Delos Reyes v. Flores*, G.R. No. 168726, March 5, 2010, 614 SCRA 270.

[35] See rollo, pp. 6-7; Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC reads:

SEC. 4. When and Where to file the petition. -- The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

[36] RULES OF COURT.

[37] *Baviera v. Zoleta*, G.R. No. 169098, October 12, 2006, 504 SCRA 281; *Estrada v. Desierto*, 487 Phil. 169 (2004); *Perez v. Office of the Ombudsman*, 473 Phil. 372 (2004); *Mendoza-Arce v. Office of the Ombudsman (Visayas)*, 430 Phil. 101 (2002); and *Kuizon v. Hon. Desierto*, 406 Phil. 611 (2001).

[38] RULES OF COURT, Rule 65, Section 3.

[39] Under exceptional circumstances however, as where there is gross abuse of discretion, manifest injustice or palpable excess of authority, courts may direct the exercise of this discretion. See *Angchangco, Jr. v. Hon. Ombudsman*, 335 Phil. 766 (1997).

[40] *Metropolitan Bank and Trust Company v. Reynado*, G.R. No. 164538, August 9, 2010, 627 SCRA 88.

[41] *Raro v. Sandiganbayan*, 390 Phil. 917 (2000).

[42] *Sanrio Company Limited v. Lim*, G.R. No. 168662, February 19, 2008, 546 SCRA 303; and *Angeles v. Desierto*, G.R. No. 133077, September 8, 2006, 501 SCRA 202.

[43] See *Hegerty v. Court of Appeals*, 456 Phil. 542 (2003); and *D.M. Consunji, Inc. v. Esguerra*, 328 Phil. 1168 (1996).

[44] *Baylosis v. Chavez, Jr.*, G.R. No. 95136, October 3, 1991, 202 SCRA 405.

[45] REVISED RULES OF CRIMINAL PROCEDURE, Rule 110, Section 2.

[46] 94 Phil. 1018 (1954).

[47] 111 Phil. 765 (1961).

[48] In *United States v. Kastigar* (406 U.S. 441), the United States Supreme Court noted that "the power to compel testimony, and the corresponding duty to testify, are recognized in the Sixth Amendment requirements that an accused be confronted with the witnesses against him, and have compulsory process for obtaining witnesses in his favor." The Sixth Amendment is substantially reproduced in Section 14(2), Article III, 1987 Constitution.

[49] See *United States v. North*, 910 F.2d 843C.A.D.C., 1990; and Cruz, Isagani, *Philippine Constitutional Law*, pp. 307-308, 2007 ed.

[50] The privilege can be claimed in any proceeding, be it criminal, civil, or administrative (*Rosete v. Lim*, G.R. No. 136051, June 8, 2006, 490 SCRA 125).

[51] CONSTITUTION, Art. III, Section 17.

[52] Varon, Joseph A., *Searches, Seizures and Immunities*, p. 731.

[53] *United States v. Kastigar*, supra note 48. [54] *Commission on Elections v. Hon. Espanol*, 463 Phil. 245 (2003).

[55] A legislature is empowered to deprive a witness of the constitutional privilege against self-incrimination by according him complete immunity from prosecution for the offense to which the testimony relates (81 Am. Jur. 2d § 142, the power to suspend a criminal law by the tender of immunity to a witness is a legislative power, citing *Doyle v. Hofstader*, 257 NY 244).

[56] *Mapa, Jr. v. Sandiganbayan*, G.R. No. 100295, April 26, 1994, 231 SCRA 783.

[57] *Tanchanco v. Sandiganbayan* (Second Division), 512 Phil. 590 (2005).

[58] In Philippine constitutional law, the concept of immunity is firmly established. For one, although the 1935 Constitution did not provide for the doctrine of sovereign immunity, it was considered part of the legal system brought to the country by the Americans (Fr. Joaquin Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines, A Commentary*, 2003, p. 1268). On the other hand, the President's immunity from suit is recognized as early as 1910 in *Forbes, etc. v. Chuoco Tiaco and Crossfield*, 16 Phil. 534 (1910). Similarly, the parliamentary immunity of the Members of Congress already exists under Section 15, Article VI of the 1935 Constitution.

In the field of ordinary law enforcement and criminal prosecution, relatively few immunity laws were enacted then: Commonwealth Act No. 83 (Securities Act, October 26, 1936); RA No. 602 (Minimum Wage Law, April 6, 1951); RA No. 1379 (An Act Declaring Forfeiture in Favor of the State any Property Found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor, June 18, 1955); and Presidential Decree (PD) No. 63 (Amending Certain Sections of Act Numbered Twenty-Four Hundred and Twenty-Seven, otherwise Known as the Insurance Act, as Amended, November 20, 1972).

[59] PD No. 749 (Granting Immunity from Prosecution to Givers of Bribes and Other Gifts and to their Accomplices in Bribery and Other Graft Cases against Public Officers, July 18, 1975); PD No. 1731 (Providing for Rewards and Incentives to Government Witnesses and Informants and other Purposes, October 8, 1980); PD

No. 1732 (Providing Immunity from Criminal Prosecution to Government Witnesses and for other Purposes, October 8, 1980); PD No. 1886 (creating the Agrava Fact-Finding Board, October 22, 1983); 1987 Constitution, Article XIII, Section 18(8) (empowering the Commission on Human Rights to grant immunity); RA No. 6646 (An Act Introducing Additional Reforms in the Electoral System and for other Purposes, January 5, 1988); Executive Order No. 14, August 18, 1986; RA No. 6770 (Ombudsman Act of 1989, November 17, 1989); RA No. 6981 (Witness Protection, Security and Benefit Act, April 24, 1991); RA No. 7916 (The Special Economic Zone Act of 1995, July 25, 1994); RA No. 9165 (Comprehensive Dangerous Drugs Act of 2002, June 7, 2002); RA No. 9416 (An Act Declaring as Unlawful Any Form of Cheating in Civil Service Examinations, etc., March 25, 2007); and RA No. 9485 (Anti-Red Tape Act of 2007, June 2, 2007).

[60] See *United States v. Kastigar*, supra note 48; and *Chua v. CA*, 329 Phil. 841 (1996).

[61] *Atty. Ledesma v. Court of Appeals*, 503 Phil. 396 (2005).

[62] See CONSTITUTION, Art. XI, Section 13.

[63] Supra note 56, at 802.

[64] See *Pontejos v. Office of the Ombudsman*, 518 Phil. 251 (2006).

[65] Depending on how broad the statutory power to grant immunity is worded, the power to grant immunity may be exercised even during the trial of the criminal case. In *Mapa v. Sandiganbayan* (supra note 56, at 800-803), the Court, taking into account the exclusivity of the Presidential Commission on Good Government's power to grant immunity, ruled that while the Sandiganbayan has jurisdiction to review the PCGG-granted immunity, it can only determine the "procedural regularity" thereof and nothing more.

[66] Section 17, Rule 119 reads:

Discharge of accused to be state witness.--When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied[.]

[67] G.R. No. 121234, August 23, 1995, 247 SCRA 652, 685.

[68] In *United States v. Enriquez* (40 Phil. 603, 608 [1919]), the Court ruled that the "sole and principal object of the law (Act 2709) is, not to restrain and limit the action of the prosecuting officer, but especially to impose conditions whereby an accused, already charged in the information, may not be arbitrarily and capriciously [be] excluded therefrom x x x and to remedy the evil consequence of an unreasonable and groundless exclusion which produces the real impunity perhaps of the most guilty criminal and subjects to prosecution the less wicked, who have not found protection in whims and arbitrariness unlike others who have secured unfounded and unjust exclusion when they really deserved severe punishment."

Likewise, in *United States v. Abanzado* (37 Phil. 658, 664 [1918]), the Court said "that it was not the intention of the legislator xxx to deprive the prosecution and the state of the right to make use of accomplices and informers as witnesses, but merely to regulate the exercise of that right by establishing the conditions under which it may properly be exercised" and "to rest the manner of the enforcement of these conditions in the sound judicial discretion of the courts."

[69] In *Mapa v. Sandiganbayan* (supra note 56, at 802), the Court ruled that the court's business is to be an "impartial tribunal, and not to get involved with the success or failure of the prosecution" since due process

"demands that courts keep the scales of justice at equipoise between and among all litigants."

[70] *Supra* note 68, at 664.

[71] *Id.* at 667.

[72] *People v. Feliciano*, 419 Phil. 324 (2001).

[73] Under RA No. 6981 (Witness Protection, Security and Benefit Act), the grant of immunity to a witness who has participated in the commission of a crime is merely one of the consequences of the witness' admission into the Witness Protection Program administered by the Department of Justice (Sections 10 and 12, RA No. 6981).

[74] *Tanchanco v. Sandiganbayan* (Second Division), 512 Phil. 590 (2005).

[75] The pertinent sections of Article XI of the 1987 Constitution read:

Section 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of recognized probity and independence, and members of the Philippine Bar, and must not have been candidates for any elective office in the immediately preceding election. The Ombudsman must have, for ten years or more, been a judge or engaged in the practice of law in the Philippines.

During their tenure, they shall be subject to the same disqualifications and prohibitions as provided for in Section 2 of Article 1X-A of this Constitution.

Section 10. The Ombudsman and his Deputies shall have the rank of Chairman and Members, respectively, of the Constitutional Commissions, and they shall receive the same salary which shall not be decreased during their term of office.

Section 11. The Ombudsman and his Deputies shall serve for a term of seven years without reappointment. They shall not be qualified to run for any office in the election immediately succeeding their cessation from office.

Section 14. The Office of the Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released. (emphases ours)

Under Section 12, Article XI of the Constitution, the Office of the Ombudsman is envisioned as "protector of the people" to function essentially as a complaints and action bureau. (*Office of the Ombudsman v. Samaniego*, G.R. No. 175573, September 11, 2008, 564 SCRA 567, 573.) The Philippine Ombudsman is considered at "a notch above other grievance-handling [investigative] bodies" (*Department of Justice v. Liwag*, G.R. No. 149311, February 11, 2005, 451 SCRA 83, 96) given independence that is never enjoyed by his predecessors; by giving him an "active role" in the enforcement of laws on anti-graft and corrupt practices and related offenses (*Uy v. Sandiganbayan*, 407 Phil. 154, 172 [2001]); by making his recommendation to a concerned public officer of taking an appropriate action against an erring subordinate as not merely advisory but actually mandatory within the bounds of law (*Ledesma v. Office of the Ombudsman*, 503 Phil. 396, 407 [2005]; Section 13[3], Article XI of the 1987 Constitution; Section 15[3] of RA No. 6770). The Ombudsman's disciplinary authority extends over all elective and appointive officials of the government and its subdivisions, instrumentalities and agencies, except for impeachable officers, members of Congress and the Judiciary (Section 21 of RA No. 6770). As the Ombudsman is expected to be an "activist watchman," (*Office of the Ombudsman v. Lucero*, G.R. No. 168718, November 24, 2006, 508 SCRA 106, 115) his actions, though not falling squarely under the broad powers granted him by the Constitution and RA No. 6770, but are reasonable in line with his official function, and consistent with law and with the constitution, have been upheld by the court (*Office of the Ombudsman v. Samaniego*, *supra*).

[76] See *People v. Ocimar*, GR No. 94555, August 17, 1992.

[77] *Commission on Elections v. Judge Español*, 463 Phil. 240 (2003). See *Brown v. Walker*, 161 U.S. 591, 595 (1896). The grant of immunity simply "operates" as a conditional pardon. Pardon and immunity are conceptually different from each other. Unlike pardon which the President may grant only after conviction by final judgment (Section 19, Article VII, 1987 Constitution), immunity may be granted even before the filing of an information (See *Tanchanco v. Sandiganbayan*, supra note 57) or even during the trial of the criminal case (See *Mapa v. Sandiganbayan*, supra note 56). Under the 1981 Amendment to the 1973 Constitution, pardon may be granted at any time after the commission of the offense, whether before or after conviction. The 1987 Constitution reverted to the 1935 and 1973 Constitutions, which require "conviction" or "final conviction" before pardon may be granted. Specifically, the 1987 Constitution requires conviction by final judgment to prevent the President from exercising executive power in derogation of the judicial power (See *People v. Salle, Jr.*, G.R. No. 103567, December 4, 1995, 250 SCRA 590). While immunity would substantially have the same effect as pardon, there will be no "derogation of judicial power" considering that the immunity is granted not purely for immunity's sake but, most importantly, for the purpose of securing the conviction of the other accused who are the most guilty.

[78] Should the petitioner clearly and convincingly establish that the Ombudsman gravely abused his discretion in granting immunity to the witness, the latter cannot invoke double jeopardy once he is subsequently included in the information, even assuming that all the other requisites of double jeopardy exist (Section 7, Rule 117 of the Revised Rules of Criminal Procedure). Double jeopardy may be invoked only if the accused has been previously convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent. Since the grant of immunity operates as a conditional pardon (for the offenses covered by the immunity) and, thus, requires acceptance by the grantee (Joaquin G. Bernas, S.J. *The 1987 Constitution of the Republic of the Philippines, A Commentary*, p. 810), it is clear that the dismissal of the case against the immune witness is with his express consent.

[79] Rollo, p. 99.

[80] Supra note 20.

[81] Rollo, p. 96.

[82] *People v. Sandiganbayan*, G.R. No. 164577, July 5, 2010, 623 SCRA 147.

[83] In a criminal case, the accused is indicted for an act which constitutes an offense against the State; thus, criminal cases are brought in the name of the People of the Philippines (Rule 110, Section 2, Revised Rules of Criminal Procedure). In an administrative (disciplinary) case, the respondent is charged for an act or omission which constitutes an infraction of civil service rules and regulations necessary to maintain the standards in government service.

[84] The purpose of the criminal prosecution is the punishment of crime. On the other hand, the purpose of administrative (disciplinary) proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust (*Judge Caña v. Gebusion*, 385 Phil. 773 [2000]). Since their purpose is different, the kind of penalty imposable is likewise different consistent with their respective purpose.

[85] The quantum of proof required in criminal proceedings is proof beyond reasonable doubt; whereas in administrative proceedings, substantial evidence is all that is required. The technical rules of criminal procedure together with all the rights of an accused come to the fore in criminal cases, unlike in administrative proceedings where technical rules of evidence and procedure are not strictly applied (*Ocampo v. Office of the Ombudsman*, 379 Phil. 21 [2000]).

[86] Quiambao v. Desierto, G.R. No. 149069, 20 September 2004, 482 Phil. 157; The Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Ombudsman Aniano Desierto, G. R. No. 136192, August 14, 2001.

[87] Section 1, Article VIII, 1987 Constitution reads:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[88] Pontejos v. Office of the Ombudsman, G.R. Nos. 158613-14, February 22, 2006.

[89] Quiambao v. Desierto, G.R. No. 149069, 20 September 2004, 482 Phil. 157; The Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Ombudsman Aniano Desierto, G. R. No. 136192, August 14, 2001.

[90] G.R. Nos. 103446-47, August 30, 1993.

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