

**EMILIO A. GONZALES III, PETITIONER, VS. OFFICE OF THE
PRESIDENT OF THE PHILIPPINES, ACTING THROUGH AND
REPRESENTED BY EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.,
SENIOR DEPUTY EX...**

G.R. No. 196231. January 28, 2014

Ponente: BRION, J.

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BRION, J.:

We resolve the Office of the President's (OP's) motion for reconsideration of our September 4, 2012 Decision^[1] which ruled on the petitions filed by Deputy Ombudsman Emilio Gonzales III and Special Prosecutor Wendell Barreras-Sulit. Their petitions challenged the constitutionality of Section 8(2) of Republic Act (RA) No. 6770.^[2]

In the challenged Decision, the Court upheld the constitutionality of Section 8(2) of RA No. 6770 and ruled that the President has disciplinary jurisdiction over a Deputy Ombudsman and a Special Prosecutor. The Court, however, reversed the OP ruling that: (i) found Gonzales guilty of Gross Neglect of Duty and Grave Misconduct constituting betrayal of public trust; and (ii) imposed on him the penalty of dismissal.

Sulit, who had not then been dismissed and who simply sought to restrain the disciplinary proceedings against her, solely questioned the jurisdiction of the OP to subject her to disciplinary proceedings. The Court affirmed the continuation of the proceedings against her after upholding the constitutionality of Section 8(2) of RA No. 6770.

The fallo of our assailed Decision reads:

WHEREFORE, in G.R. No. 196231, the decision of the Office of the President in OP Case No. 10-J-460 is REVERSED and SET ASIDE. Petitioner Emilio A. Gonzales III is ordered REINSTATED with payment of backwages corresponding to the period of suspension effective immediately, even as the Office of the Ombudsman is directed to proceed with the investigation in connection with the above case against petitioner. In G.R. No. 196232, We AFFIRM the continuation of OP-DC Case No. 11-B-003 against Special Prosecutor Wendell Barreras-Sulit for alleged acts and omissions tantamount to culpable violation of the Constitution and a betrayal of public trust, in accordance with Section 8(2) of the Ombudsman Act of 1989.^[3]

In view of the Court's ruling, the OP filed the present motion for reconsideration through the Office of the Solicitor General (OSG).

We briefly narrate the facts that preceded the filing of the petitions and the present motion for reconsideration.

I. ANTECEDENTS

A. Gonzales' petition (G.R. No. 196231)

a. Factual antecedents

On May 26, 2008, Christian Kalaw filed separate charges with the Philippine National Police Internal Affairs Service (PNP-IAS) and with the Manila City Prosecutor's Office against Manila Police District Senior Inspector

Rolando Mendoza and four others (Mendoza, et al.) for robbery, grave threat, robbery extortion and physical injury.[4]

On May 29, 2008, Police Senior Superintendent Atty. Clarence Guinto filed an administrative charge for grave misconduct with the National Police Commission (NAPOLCOM) PNP-NCRPO against Mendoza, et al. based on the same allegations made by Kalaw before the PNP-IAS.[5]

On July 2, 2008, Gonzales, Deputy Ombudsman for Military and Other Law Enforcement Officers (MOLEO), directed the NAPOLCOM to turn over the records of Mendoza's case to his office. The Office of the Regional Director of the NAPOLCOM duly complied on July 24, 2008.[6] Mendoza, et al. filed their position papers with Gonzales, in compliance with his Order. [7]

Pending Gonzales' action on Mendoza, et al.'s case (on August 26, 2008), the Office of the City Prosecutor of Manila City dismissed Kalaw's complaint against Mendoza, et al. for his failure to substantiate his allegations.[8] Similarly, on October 17, 2008, the PNP-IAS recommended the dismissal without prejudice of the administrative case against Mendoza, et al. for Kalaw's failure to prosecute.[9]

On February 16, 2009, after preparing a draft decision on Mendoza, et al.'s case, Gonzales forwarded the entire records to the Office of then Ombudsman Merceditas Gutierrez for her review.[10] In his draft decision, Gonzales found Mendoza, et al. guilty of grave misconduct and imposed on them the penalty of dismissal from the service.[11]

Mendoza, et al. received a copy of the Ombudsman's decision that approved Gonzales' recommendation on October 30, 2009. Mendoza, et al. filed a motion for reconsideration[12] on November 5, 2009, followed by a Supplement to the Motion for Reconsideration.[13]

On December 10, 2009, the MOLEO-Records Section forwarded Mendoza, et al.'s case records to the Criminal Investigation, Prosecution and Administrative Bureau-MOLEO. On December 14, 2009, the case was assigned to Graft Investigation and Prosecution Officer (GIPO) Dennis Garcia for review and recommendation.[14]

GIPO Garcia released a draft order[15] to his immediate superior, Director Eulogio S. Cecilio, for appropriate action on April 5, 2010. Dir. Cecilio signed and forwarded the draft order to Gonzales' office on April 27, 2010. Gonzales reviewed the draft and endorsed the order, together with the case records, on May 6, 2010 for the final approval by the Ombudsman.[16]

On August 23, 2010, pending final action by the Ombudsman on Mendoza, et al.'s case, Mendoza hijacked a tourist bus and held the 21 foreign tourists and the four Filipino tour assistants on board as hostages. While the government exerted earnest attempts to peacefully resolve the hostage-taking, it ended tragically, resulting in the deaths of Mendoza and several others on board the hijacked bus.

In the aftermath, President Benigno C. Aquino III directed the Department of Justice and the Department of Interior and Local Government to conduct a joint thorough investigation of the incident. The two departments issued Joint Department Order No. 01-2010, creating an Incident Investigation and Review Committee (IIRC).

In its September 16, 2010 First Report, the IIRC found the Ombudsman and Gonzales accountable for their "gross negligence and grave misconduct in handling the case against Mendoza." [17] The IIRC stated that the Ombudsman and Gonzales' failure to promptly resolve Mendoza's motion for reconsideration, "without justification and despite repeated pleas" xxx "precipitated the desperate resort to hostage-taking." [18] The IIRC recommended the referral of its findings to the OP for further determination of possible administrative offenses and for the initiation of the proper administrative proceedings.[19]

Accordingly, on October 15, 2010, Gonzales was formally charged before the OP for Gross Neglect of Duty and/or Inefficiency in the Performance of Official Duty and for Misconduct in Office.[20]

b. The OP ruling

On March 31, 2011, the OP found Gonzales guilty as charged and dismissed him from the service.[21] According to the OP, “the inordinate and unjustified delay in the resolution of [Mendoza’s] Motion for Reconsideration [‘that spanned for nine (9) long months’] xxx amounted to gross neglect of duty” and “constituted a flagrant disregard of the Office of the Ombudsman’s own Rules of Procedure.”[22]

c. The Petition

Gonzales posited in his petition that the OP has no administrative disciplinary jurisdiction over a Deputy Ombudsman. Under Section 21 of RA No. 6770, it is the Ombudsman who exercises administrative disciplinary jurisdiction over the Deputy Ombudsman.

On the merits, Gonzales argued that his office received the draft order from GIPO Garcia on April 27, 2010. On May 6, 2010, he completed his review of the draft, approved it, and transmitted it to the Office of the Ombudsman for final approval. Since the draft order on Mendoza’s motion for reconsideration had to undergo different levels of preparation, review and approval, the period it took to resolve the motion could not be unjustified, since he himself acted on the draft order only within nine (9) calendars days from his receipt of the order.[23]

B. Sulit’s petition (G.R. No. 196232)

In April 2005, the Office of the Ombudsman charged Major General Carlos F. Garcia and several others, before the Sandiganbayan, with plunder and money laundering. On May 7, 2007, Garcia filed an Urgent Petition for Bail which the prosecution opposed. The Sandiganbayan denied Garcia’s urgent petition for bail on January 7, 2010, in view of the strength of the prosecution’s evidence against Garcia.

On February 25, 2010, the Office of the Ombudsman, through Sulit and her prosecutorial staff, entered into a plea bargaining agreement (Agreement) with Garcia.[24] Garcia thereby agreed to: (i) withdraw his plea of not guilty to the charge of plunder and enter a plea of guilty to the lesser offense of indirect bribery; and (ii) withdraw his plea of not guilty to the charge of money laundering and enter a guilty plea to the lesser offense of facilitating money laundering. In exchange, he would convey to the government his ownership, rights and other interests over the real and personal properties enumerated in the Agreement and the bank deposits alleged in the information.[25]

The Sandiganbayan approved the Agreement on May 4, 2010[26] based on the parties’ submitted Joint Motion for Approval.[27]

The apparent one-sidedness of the Agreement drew public outrage and prompted the Committee on Justice of the House of Representatives to conduct an investigation. After public hearings, the Committee found that Sulit, her deputies and assistants committed culpable violations of the Constitution and betrayal of public trust – grounds for removal under Section 8(2) of RA No. 6770.[28] The Committee recommended to the President the dismissal from the service of Sulit and the filing of appropriate charges against her deputies and assistants before the appropriate government office.

Accordingly, the OP initiated an administrative disciplinary proceeding against Sulit.[29] On March 24, 2011, Sulit filed her Written Explanation, questioning the OP’s jurisdiction.[30] The question of jurisdiction notwithstanding, the OP set the case for preliminary investigation on April 15, 2011, prompting Sulit to seek relief from this Court.

II. COURT'S RULING

On motion for reconsideration and further reflection, the Court votes to grant Gonzales' petition and to declare Section 8(2) of RA No. 6770 unconstitutional with respect to the Office of the Ombudsman. (As the full explanation of the Court's vote describes below, this conclusion does not apply to Sulit as the grant of independence is solely with respect to the Office of the Ombudsman which does not include the Office of the Special Prosecutor under the Constitution. The prevailing ruling on this latter point is embodied in the Concurring and Dissenting Opinion of J. Marvic Mario Victor Leonen).

A. Preliminary considerations:

a. Absence of motion for reconsideration on the part of the petitioners

At the outset, the Court notes that Gonzales and Sulit did not file a motion for reconsideration of the Court's September 4, 2012 Decision; only the OP, through the OSG, moved for the reconsideration of our ruling reinstating Gonzales.

This omission, however, poses no obstacle for the Court's review of its ruling on the whole case since a serious constitutional question has been raised and is one of the underlying bases for the validity or invalidity of the presidential action. If the President does not have any constitutional authority to discipline a Deputy Ombudsman and/or a Special Prosecutor in the first place, then any ruling on the legal correctness of the OP's decision on the merits will be an empty one.

In other words, since the validity of the OP's decision on the merits of the dismissal is inextricably anchored on the final and correct ruling on the constitutional issue, the whole case – including the constitutional issue – remains alive for the Court's consideration on motion for reconsideration.

b. The justiciability of the constitutional issue raised in the petitions

We clarify, too, that the issue of whether a Deputy Ombudsman may be subjected to the administrative disciplinary jurisdiction of the President (concurrently with that of the Ombudsman) is a justiciable – not a political – question. A justiciable question is one which is inherently susceptible of being decided on grounds recognized by law,[31] as where the court finds that there are constitutionally-imposed limits on the exercise of the powers conferred on a political branch of the government.[32]

In resolving the petitions, we do not inquire into the wisdom of the Congress' choice to grant concurrent disciplinary authority to the President. Our inquiry is limited to whether such statutory grant violates the Constitution, particularly whether Section 8(2) of RA No. 6770 violates the core constitutional principle of the independence of the Office of the Ombudsman as expressed in Section 5, Art. XI of the Constitution.

To be sure, neither the Executive nor the Legislative can create the power that Section 8(2) of RA No. 6770 grants where the Constitution confers none. When exercised authority is drawn from a vacuum, more so when the authority runs counter to a core constitutional principle and constitutional intents, the Court is duty-bound to intervene under the powers and duties granted and imposed on it by Article VIII of the Constitution.

B. The Deputy Ombudsman: Constitutional Issue

a. The Philippine Ombudsman

Prior to the 1973 Constitution, past presidents established several Ombudsman-like agencies to serve as the

people's medium for airing grievances and for direct redress against abuses and misconduct in the government. Ultimately, however, these agencies failed to fully realize their objective for lack of the political independence necessary for the effective performance of their function as government critic.[33]

It was under the 1973 Constitution that the Office of the Ombudsman became a constitutionally-mandated office to give it political independence and adequate powers to enforce its mandate. Pursuant to the 1973 Constitution, President Ferdinand Marcos enacted Presidential Decree (PD) No. 1487, as amended by PD No. 1607 and PD No. 1630, creating the Office of the Ombudsman to be known as Tanodbayan. It was tasked principally to investigate, on complaint or *motu proprio*, any administrative act of any administrative agency, including any government-owned or controlled corporation. When the Office of the Tanodbayan was reorganized in 1979, the powers previously vested in the Special Prosecutor were transferred to the Tanodbayan himself. He was given the exclusive authority to conduct preliminary investigation of all cases cognizable by the Sandiganbayan, file the corresponding information, and control the prosecution of these cases.[34]

With the advent of the 1987 Constitution, a new Office of the Ombudsman was created by constitutional fiat. Unlike in the 1973 Constitution, its independence was expressly and constitutionally guaranteed. Its objectives are to enforce the state policy in Section 27, Article II[35] and the standard of accountability in public service under Section 1, Article XI of the 1987 Constitution. These provisions read:

Section 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

Section 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

Under Section 12, Article XI of the 1987 Constitution, the Office of the Ombudsman is envisioned to be the “protector of the people” against the inept, abusive, and corrupt in the Government, to function essentially as a complaints and action bureau.[36] This constitutional vision of a Philippine Ombudsman practically intends to make the Ombudsman an authority to directly check and guard against the ills, abuses and excesses of the bureaucracy. Pursuant to Section 13(8), Article XI of the 1987 Constitution, Congress enacted RA No. 6770 to enable it to further realize the vision of the Constitution. Section 21 of RA No. 6770 provides:

Section 21. Official Subject to Disciplinary Authority; Exceptions. — The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary. [emphasis ours, italics supplied]

As the Ombudsman is expected to be an “activist watchman,”[37] the Court has upheld its actions, although not squarely falling under the broad powers granted it by the Constitution and by RA No. 6770, if these actions are reasonably in line with its official function and consistent with the law and the Constitution.[38]

The Ombudsman’s broad investigative and disciplinary powers include all acts of malfeasance, misfeasance, and nonfeasance of all public officials, including Members of the Cabinet and key Executive officers, during their tenure. To support these broad powers, the Constitution saw it fit to insulate the Office of the Ombudsman from the pressures and influence of officialdom and partisan politics and from fear of external reprisal by making it an “independent” office. Section 5, Article XI of the Constitution expressed this intent, as follows:

Section 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. [emphasis ours]

Given the scope of its disciplinary authority, the Office of the Ombudsman is a very powerful government constitutional agency that is considered “a notch above other grievance-handling investigative bodies.”[39] It has powers, both constitutional and statutory, that are commensurate with its daunting task of enforcing accountability of public officers.[40]

b. “Independence” of constitutional bodies
vis-a-vis the Ombudsman’s independence

Under the Constitution, several constitutional bodies have been expressly labeled as “independent.”[41] The extent of the independence enjoyed by these constitutional bodies however varies and is to be interpreted with two significant considerations in mind: first, the functions performed or the powers involved in a given case; and second, consistency of any allowable interference to these powers and functions, with the principle of checks and balances.

Notably, the independence enjoyed by the Office of the Ombudsman and by the Constitutional Commissions shares certain characteristics – they do not owe their existence to any act of Congress, but are created by the Constitution itself; additionally, they all enjoy fiscal autonomy. In general terms, the framers of the Constitution intended that these “independent” bodies be insulated from political pressure to the extent that the absence of “independence” would result in the impairment of their core functions.

In *Bengzon v. Drilon*,[42] involving the fiscal autonomy of the Judiciary, we ruled against the interference that the President may bring and maintained that the independence and the flexibility of the Judiciary, the Constitutional Commissions and the Office of the Ombudsman are crucial to our legal system.

The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based.

The constitutional deliberations explain the Constitutional Commissions’ need for independence. In the deliberations of the 1973 Constitution, the delegates amended the 1935 Constitution by providing for a constitutionally-created Civil Service Commission, instead of one created by law, on the premise that the effectivity of this body is dependent on its freedom from the tentacles of politics.[43] In a similar manner, the deliberations of the 1987 Constitution on the Commission on Audit highlighted the developments in the past Constitutions geared towards insulating the Commission on Audit from political pressure.[44]

Notably, the Constitution also created an “independent” Commission on Human Rights, although it enjoys a lesser degree of independence since it is not granted fiscal autonomy in the manner fiscal autonomy is granted to the constitutional commissions. The lack of fiscal autonomy notwithstanding, the framers of the 1987 Constitution clearly expressed their desire to keep the Commission independent from the executive branch and other political leaders:

MR. MONSOD. We see the merits of the arguments of Commissioner Rodrigo. If we explain to him our concept, he can advise us on how to reconcile his position with ours. The position of the committee is that we need a body that would be able to work and cooperate with the executive because the Commissioner is right. Many of the services needed by this commission would need not only the cooperation of the executive branch of the government but also of the judicial branch of government. This is going to be a permanent constitutional

commission over time. We also want a commission to function even under the worst circumstance when the executive may not be very cooperative. However, the question in our mind is: Can it still function during that time? Hence, we are willing to accept suggestions from Commissioner Rodrigo on how to reconcile this. We realize the need for coordination and cooperation. We also would like to build in some safeguards that it will not be rendered useless by an uncooperative executive.

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MR. GARCIA. xxx Very often, when international commissions or organizations on human rights go to a country, the most credible organizations are independent human rights bodies. Very often these are private organizations, many of which are prosecuted, such as those we find in many countries in Latin America. In fact, what we are proposing is an independent body on human rights, which would provide governments with credibility precisely because it is independent of the present administration. Whatever it says on the human rights situation will be credible because it is not subject to pressure or control from the present political leadership.

Secondly, we all know how political fortunes come and go. Those who are in power yesterday are in opposition today and those who are in power today may be in the opposition tomorrow. Therefore, if we have a Commission on Human Rights that would investigate and make sure that the rights of each one is protected, then we shall have a body that could stand up to any power, to defend the rights of individuals against arrest, unfair trial, and so on.[45]

These deliberative considerations abundantly show that the independent constitutional commissions have been consistently intended by the framers to be independent from executive control or supervision or any form of political influence. At least insofar as these bodies are concerned, jurisprudence is not scarce on how the “independence” granted to these bodies prevents presidential interference.

In *Brillantes, Jr. v. Yorac*,^[46] we emphasized that the Constitutional Commissions, which have been characterized under the Constitution as “independent,” are not under the control of the President, even if they discharge functions that are executive in nature. The Court declared as unconstitutional the President’s act of temporarily appointing the respondent in that case as Acting Chairman of the Comelec “however well-meaning”^[47] it might have been.

In *Bautista v. Senator Salonga*,^[48] the Court categorically stated that the tenure of the commissioners of the independent Commission on Human Rights could not be placed under the discretionary power of the President:

Indeed, the Court finds it extremely difficult to conceptualize how an office conceived and created by the Constitution to be independent – as the Commission on Human Rights – and vested with the delicate and vital functions of investigating violations of human rights, pinpointing responsibility and recommending sanctions as well as remedial measures therefor, can truly function with independence and effectiveness, when the tenure in office of its Chairman and Members is made dependent on the pleasure of the President. Executive Order No. 163-A, being antithetical to the constitutional mandate of independence for the Commission on Human Rights has to be declared unconstitutional.

Again, in *Atty. Macalintal v. Comelec*,^[49] the Court considered even the mere review of the rules of the Commission on Elections by Congress a “trampling” of the constitutional mandate of independence of this body. Obviously, the mere review of rules places considerably less pressure on a constitutional body than the Executive’s power to discipline and remove key officials of the Office of the Ombudsman, yet the Court struck down the law as unconstitutional.

The kind of independence enjoyed by the Office of the Ombudsman certainly cannot be inferior – but is similar in degree and kind – to the independence similarly guaranteed by the Constitution to the Constitutional

Commissions since all these offices fill the political interstices of a republican democracy that are crucial to its existence and proper functioning.[50]

c. Section 8(2) of RA No. 6770 vesting disciplinary authority in the President over the Deputy Ombudsman violates the independence of the Office of the Ombudsman and is thus unconstitutional

Our discussions, particularly the Court's expressed caution against presidential interference with the constitutional commissions, on one hand, and those expressed by the framers of the 1987 Constitution, on the other, in protecting the independence of the Constitutional Commissions, speak for themselves as overwhelming reasons to invalidate Section 8(2) of RA No. 6770 for violating the independence of the Office of the Ombudsman.

In more concrete terms, we rule that subjecting the Deputy Ombudsman to discipline and removal by the President, whose own alter egos and officials in the Executive Department are subject to the Ombudsman's disciplinary authority, cannot but seriously place at risk the independence of the Office of the Ombudsman itself. The Office of the Ombudsman, by express constitutional mandate, includes its key officials, all of them tasked to support the Ombudsman in carrying out her mandate. Unfortunately, intrusion upon the constitutionally-granted independence is what Section 8(2) of RA No. 6770 exactly did. By so doing, the law directly collided not only with the independence that the Constitution guarantees to the Office of the Ombudsman, but inevitably with the principle of checks and balances that the creation of an Ombudsman office seeks to revitalize.

What is true for the Ombudsman must be equally and necessarily true for her Deputies who act as agents of the Ombudsman in the performance of their duties. The Ombudsman can hardly be expected to place her complete trust in her subordinate officials who are not as independent as she is, if only because they are subject to pressures and controls external to her Office. This need for complete trust is true in an ideal setting and truer still in a young democracy like the Philippines where graft and corruption is still a major problem for the government. For these reasons, Section 8(2) of RA No. 6770 (providing that the President may remove a Deputy Ombudsman) should be declared void.

The deliberations of the Constitutional Commission on the independence of the Ombudsman fully support this position. Commissioner Florenz Regalado of the Constitutional Commission expressed his apprehension that any form of presidential control over the Office of the Ombudsman would diminish its independence.[51] The following exchanges between Commissioners Blas Ople and Christian Monsod further reveal the constitutional intent to keep the Office of the Ombudsman independent from the President:

MR. OPLE. xxx

May I direct a question to the Committee? xxx [W]ill the Committee consider later an amendment xxx, by way of designating the office of the Ombudsman as a constitutional arm for good government, efficiency of the public service and the integrity of the President of the Philippines, instead of creating another agency in a kind of administrative limbo which would be accountable to no one on the pretext that it is a constitutional body?

MR. MONSOD. The Committee discussed that during our committee deliberations and when we prepared the report, it was the opinion of the Committee — and I believe it still is — that it may not contribute to the effectiveness of this office of the Ombudsman precisely because many of the culprits in inefficiency, injustice and impropriety are in the executive department. Therefore, as we saw the wrong implementation of the

Tanodbayan which was under the tremendous influence of the President, it was an ineffectual body and was reduced to the function of a special fiscal. The whole purpose of our proposal is precisely to separate those functions and to produce a vehicle that will give true meaning to the concept of Ombudsman. Therefore, we regret that we cannot accept the proposition.[52]

The statements made by Commissioner Monsod emphasized a very logical principle: the Executive power to remove and discipline key officials of the Office of the Ombudsman, or to exercise any power over them, would result in an absurd situation wherein the Office of the Ombudsman is given the duty to adjudicate on the integrity and competence of the very persons who can remove or suspend its members. Equally relevant is the impression that would be given to the public if the rule were otherwise. A complainant with a grievance against a high-ranking official of the Executive, who appears to enjoy the President's favor, would be discouraged from approaching the Ombudsman with his complaint; the complainant's impression (even if misplaced), that the Ombudsman would be susceptible to political pressure, cannot be avoided. To be sure, such an impression would erode the constitutional intent of creating an Office of the Ombudsman as champion of the people against corruption and bureaucracy.

d. The mutual-protection argument for crafting Section 8(2) of RA No. 6770

In crafting Section 8(2) of RA No. 6770, Congress apparently addressed the concern that a lack of an external check against the Deputy Ombudsman would result in mutual protection between the Ombudsman and her Deputies.

While the preceding discussion already suffices to address this concern, it should be added that this concern stands on shaky grounds since it ignores the existing checks and balances already in place. On the one hand, the Ombudsman's Deputies cannot protect the Ombudsman because she is subject to the impeachment power of Congress. On the other hand, the Ombudsman's attempt to cover up the misdeeds of her Deputies can be questioned before the Court on appeal or certiorari. The same attempt can likewise subject her to impeachment.

The judicial recourse available is only consistent with the nature of the Supreme Court as a non-political independent body mandated by the Constitution to settle judicial and quasi-judicial disputes, whose judges and employees are not subject to the disciplinary authority of the Ombudsman and whose neutrality would be less questionable. The Members of the Court themselves may be subjected to the impeachment power of Congress.

In these lights, the appeal, if any, of the mutual protection argument becomes distinctly implausible. At the same time, the Court remains consistent with its established rulings - that the independence granted to the Constitutional Commissions bars any undue interference from either the Executive or Congress - and is in full accord with constitutional intent.

e. Congress' power determines the manner and causes for the removal of non-impeachable officers is not a carte blanche authority

Under Section 2, Article XI of the 1987 Constitution,[53] Congress is empowered to determine the modes of removal from office of all public officers and employees except the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman, who are all impeachable officials.

The intent of the framers of the Constitution in providing that "[a]ll other public officers and employees may be

removed from office as provided by law, but not by impeachment” in the second sentence of Section 2, Article XI is to prevent Congress from extending the more stringent rule of “removal only by impeachment” to favored public officers.[54] Understandably so, impeachment is the most difficult and cumbersome mode of removing a public officer from office. It is, by its nature, a sui generis politico-legal process[55] that signals the need for a judicious and careful handling as shown by the process required to initiate the proceeding;[56] the one-year limitation or bar for its initiation;[57] the limited grounds for impeachment;[58] the defined instrumentality given the power to try impeachment cases;[59] and the number of votes required for a finding of guilt.[60] All these argue against the extension of this removal mechanism beyond those mentioned in the Constitution.

On the practical side, our nation has witnessed the complications and problems an impeachment proceeding entails, thus justifying its limited application only to the officials occupying the highest echelons of responsibility in our government. To name a few, some of the negative practical effects of impeachment are: it stalls legislative work; it is an expensive process in terms of the cost of prosecution alone; and, more importantly, it is inherently divisive of the nation.[61] Thus, in a cost-benefit analysis of adopting impeachment as a mechanism, limiting Congress’ power to otherwise legislate on the matter is far more advantageous to the country.

It is in these lights that the second sentence in Section 2, Article XI of the 1987 Constitution should be read. Contrary to the implied view of the minority, in no way can this provision be regarded as blanket authority for Congress to provide for any ground of removal it deems fit. While the manner and cause of removal are left to congressional determination, this must still be consistent with constitutional guarantees and principles, namely: the right to procedural and substantive due process; the constitutional guarantee of security of tenure; the principle of separation of powers; and the principle of checks and balances.[62]

In short, the authority granted by the Constitution to Congress to provide for the manner and cause of removal of all other public officers and employees does not mean that Congress can ignore the basic principles and precepts established by the Constitution.

In the same manner, the congressional determination of the identity of the disciplinary authority is not a blanket authority for Congress to repose it on whomsoever Congress chooses without running afoul of the independence enjoyed by the Office of the Ombudsman and without disrupting the delicate check and balance mechanism under the Constitution. Properly viewed from this perspective, the core constitutional principle of independence is observed and any possible absurdity resulting from a contrary interpretation is avoided. In other words, while the Constitution itself vested Congress with the power to determine the manner and cause of removal of all non-impeachable officials, this power must be interpreted consistent with the core constitutional principle of independence of the Office of the Ombudsman. Our observation in *Macalintal v. Comelec*[63] is apt:

The ambit of legislative power under Article VI of the Constitution is circumscribed by other constitutional provisions. One such provision is Section 1 of Article IX-A of the 1987 Constitution ordaining that constitutional commissions such as the COMELEC shall be “independent.”

While one may argue that the grounds for impeachment under Section 8(2) of RA No. 6770 is intended as a measure of protection for the Deputy Ombudsman and Special Prosecutor – since these grounds are not intended to cover all kinds of official wrongdoing and plain errors of judgment - this argument seriously overlooks the erosion of the independence of the Office of the Ombudsman that it creates. The mere fact that a statutorily-created sword of Damocles hangs over the Deputy Ombudsman’s head, by itself, opens up all the channels for external pressures and influence of officialdom and partisan politics. The fear of external reprisal from the very office he is to check for excesses and abuses defeats the very purpose of granting independence to the Office of the Ombudsman.

That a judicial remedy is available (to set aside dismissals that do not conform to the high standard required in determining whether a Deputy Ombudsman committed an impeachable offense) and that the President's power of removal is limited to specified grounds are dismally inadequate when balanced with the constitutional principle of independence. The mere filing of an administrative case against the Deputy Ombudsman and the Special Prosecutor before the OP can already result in their suspension and can interrupt the performance of their functions, in violation of Section 12, Article XI of the Constitution. With only one term allowed under Section 11, a Deputy Ombudsman or Special Prosecutor, if removable by the President, can be reduced to the very same ineffective Office of the Ombudsman that the framers had foreseen and carefully tried to avoid by making these offices independent constitutional bodies.

At any rate, even assuming that the OP has disciplinary authority over the Deputy Ombudsman, its decision finding Gonzales guilty of Gross Neglect of Duty and Grave Misconduct constituting betrayal of public trust is patently erroneous. The OP's decision perfectly illustrates why the requirement of impeachment-grounds in Section 8(2) of RA No. 6770 cannot be considered, even at a minimum, a measure of protection of the independence of the Office of the Ombudsman.

C. The Deputy Ombudsman: The Dismissal Issue

a. The Office of the President's finding of gross negligence has no legal and factual leg to stand on

The OP's decision found Gonzales guilty of Gross Neglect of Duty and of Grave Misconduct. The assailed Decision of the OP reads:

Upon consideration of the First Report, the evidence and allegations of respondent Deputy Ombudsman himself, and other documentary evidence gathered, this Office finds that the inordinate and unjustified delay in the resolution of Captain Mendoza's Motion for Reconsideration timely filed on 5 November 2009 xxx amounted to gross neglect of duty and/or inefficiency in the performance of official duty.[64]

b. No gross neglect of duty or inefficiency

Let us again briefly recall the facts.

- November 5, 2009 - Mendoza filed a Motion for Reconsideration of the decision of the Ombudsman,[65] which was followed by a Supplement to the Motion for Reconsideration;[66]
- December 14, 2009[67] - GIPO Garcia, who was assigned to review these motions and make his recommendation for the appropriate action, received the records of the case;
- April 5, 2010 – GIPO Garcia released a draft order to be reviewed by his immediate superior, Dir. Cecilio;[68]
- April 27, 2010 – Dir. Cecilio signed and forwarded to Gonzales this draft order;[69]
- May 6, 2010 (or nine days after the records were forwarded to Gonzales) – Gonzales endorsed the draft order for the final approval of the Ombudsman.[70]

Clearly, when Mendoza hijacked the tourist bus on August 23, 2010, the records of the case were already pending before Ombudsman Gutierrez.

Gross negligence refers to negligence characterized by the want of even the slightest care, acting or omitting to

act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. In the case of public officials, there is gross negligence when a breach of duty is flagrant and palpable.[71]

Gonzales cannot be guilty of gross neglect of duty and/or inefficiency since he acted on the case forwarded to him within nine days. In finding Gonzales guilty, the OP[72] relied on Section 8, Rule III of Administrative Order No. 7 (or the Rules of Procedure of the Office of the Ombudsman, series of 1990, as amended) in ruling that Gonzales should have acted on Mendoza's Motion for Reconsideration within five days:

Section 8. Motion for reconsideration or reinvestigation: Grounds – Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party on the basis of any of the following grounds:

- a) New evidence had been discovered which materially affects the order, directive or decision;
- b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant.

Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within five (5) days from the date of submission for resolution. [emphasis and underscore ours]

Even if we consider this provision to be mandatory, the period it requires cannot apply to Gonzales since he is a Deputy Ombudsman whose obligation is to review the case; he is not simply a Hearing Officer tasked with the initial resolution of the motion. In Section 6 of Administrative Order No. 7 on the resolution of the case and submission of the proposed decision, the period for resolving the case does not cover the period within which it should be reviewed:

Section 6. Rendition of decision. – Not later than thirty (30) days after the case is declared submitted for resolution, the Hearing Officer shall submit a proposed decision containing his findings and recommendation for the approval of the Ombudsman. Said proposed decision shall be reviewed by the Directors, Assistant Ombudsmen and Deputy Ombudsmen concerned. With respect to low ranking public officials, the Deputy Ombudsman concerned shall be the approving authority. Upon approval, copies thereof shall be served upon the parties and the head of the office or agency of which the respondent is an official or employee for his information and compliance with the appropriate directive contained therein. [italics and emphases supplied]

Thus, the OP's ruling that Gonzales had been grossly negligent for taking nine days, instead of five days, to review a case was totally baseless.

c. No actionable failure to supervise subordinates

The OP's claims that Gonzales could have supervised his subordinates to promptly act on Mendoza's motion and apprised the Tanodbayan of the urgency of resolving the same are similarly groundless.

The Office of the Ombudsman is not a corner office in our bureaucracy. It handles numerous cases that involve the potential loss of employment of many other public employees. We cannot conclusively state, as the OP appears to suggest, that Mendoza's case should have been prioritized over other similar cases. The Court has already taken judicial notice of the steady stream of cases reaching the Office of the Ombudsman.[73] This consideration certainly militates against the OSG's observation that there was "a grossly inordinate and inexcusable delay"[74] on the part of Gonzales.

Equally important, the constitutional guarantee of "speedy disposition of cases" before, among others, quasi-judicial bodies,[75] like the Office of the Ombudsman, is itself a relative concept.[76] Thus, the delay, if any, must be measured in this objective constitutional sense. Unfortunately, because of the very statutory grounds

relied upon by the OP in dismissing Gonzales, the political and, perhaps, “practical” considerations got the better of what is legal and constitutional.

The facts do not show that Gonzales’ subordinates had in any way been grossly negligent in their work. While GIPO Garcia reviewed the case and drafted the order for more than three months, it is noteworthy that he had not drafted the initial decision and, therefore, had to review the case for the first time.[77] Even the Ombudsman herself could not be faulted for acting on a case within four months, given the amount of cases that her office handles.

The point is that these are not inordinately long periods for the work involved: examination of the records, research on the pertinent laws and jurisprudence, and exercise of legal judgment and discretion. If this Court rules that these periods per se constitute gross neglect of duty, the Ombudsman’s constitutional mandate to prosecute all the erring officials of this country would be subjected to an unreasonable and overwhelming constraint. Similarly, if the Court rules that these periods per se constitute gross neglect of duty, then we must be prepared to reconcile this with the established concept of the right of speedy disposition of cases – something the Court may be hard put to justify.

d. No undue interest

The OP also found Gonzales guilty of showing undue interest in Mendoza’s case by having the case endorsed to the Office of the Ombudsman and by resolving it against Mendoza on the basis of the unverified complaint-affidavit of the alleged victim, Kalaw.

The fact that Gonzales had Mendoza’s case endorsed to his office lies within his mandate, even if it were based merely on the request of the alleged victim’s father. The Constitution empowers the Ombudsman and her Deputies to act promptly on complaints filed in any form or manner against any public official or employee of the government.[78] This provision is echoed by Section 13 of RA No. 6770,[79] and by Section 3, Rule III of Administrative Order No. 7, series of 1990, as amended.[80]

Moreover, Gonzales and his subordinates did not resolve the complaint only on the basis of the unverified affidavit of Kalaw. Based on the prosecution officer’s recommendations, the finding of guilt on the part of Mendoza, et al. was based on their admissions as well. Mendoza, et al. admitted that they had arrested Kalaw based on two traffic violations and allowed him to stay the whole night until the following morning in the police precinct. The next morning, Kalaw was allowed to leave the precinct despite his failure to show a valid license and based merely on his promise to return with the proper documents.[81] These admissions led Gonzales and his staff to conclude that Mendoza, et al. irregularly acted in apprehending Kalaw, since the proper procedure for the apprehension of traffic violators would be to give them a ticket and to file a case, when appropriate.[82]

Lastly, we cannot deduce undue interest simply because Gonzales’ decision differs from the decision of the PNP-IAS (which dismissed the complaint against Mendoza). To be sure, we cannot tie the hands of any judicial or quasi-judicial body by ruling that it should always concur with the decisions of other judicial or quasi-judicial bodies which may have also taken cognizance of the case. To do so in the case of a Deputy Ombudsman would be repugnant to the independence that our Constitution has specifically granted to this office and would nullify the very purpose for which it was created.

e. Penalty of dismissal totally
incommensurate with established
facts

Given the lack of factual basis for the charges against Gonzales, the penalty of removal imposed by the OP

necessarily suffers grave infirmity. Basic strictures of fair play dictate that we can only be held liable for our own misdeeds; we can be made to account only for lapses in our responsibilities. It is notable that of all the officers, it was Gonzales who took the least time — nine days — followed by Cecilio, who took 21 days; Garcia — the writer of the draft — took less than four months, and the Ombudsman, less than four months until the kidnapping incident rendered Mendoza's motion moot.

In these lights, the decision of the OP is clearly and patently wrong. This conclusion, however, does not preclude the Ombudsman from looking into any other possible administrative liability of Gonzales under existing Civil Service laws, rules and regulations.

D. The Special Prosecutor: The Constitutional Issue

The 1987 Constitution created a new, independent Office of the Ombudsman. The existing Tanodbayan at the time^[83] became the Office of the Special Prosecutor under the 1987 Constitution. While the composition of the independent Office of the Ombudsman under the 1987 Constitution does not textually include the Special Prosecutor, the weight of the foregoing discussions on the unconstitutionality of Section 8(2) of RA No. 6770 should equally apply to the Special Prosecutor on the basis of the legislative history of the Office of the Ombudsman as expounded in jurisprudence.

Under the 1973 Constitution,^[84] the legislature was mandated to create the Office of the Ombudsman, known as the Tanodbayan, with investigative and prosecutorial powers. Accordingly, on June 11, 1978, President Ferdinand Marcos enacted PD No. 1487.^[85]

Under PD No. 1486,^[86] however, the "Chief Special Prosecutor" (CSP) was given the "exclusive authority" to conduct preliminary investigation and to prosecute cases that are within the jurisdiction of the Sandiganbayan.^[87] PD No. 1486 expressly gave the Secretary of Justice the power of control and supervision over the Special Prosecutor.^[88] Consistent with this grant of power, the law also authorized the Secretary of Justice to appoint or detail to the Office of the CSP "any officer or employee of Department of Justice or any Bureau or Office under the executive supervision thereof" to assist the Office of the CSP.

In December 1978, PD No. 1607^[89] practically gave back to the Tanodbayan the powers taken away from it by the Office of the CSP. The law "created in the Office of the Tanodbayan an Office of the Chief Special Prosecutor" under the Tanodbayan's control,^[90] with the exclusive authority to conduct preliminary investigation and prosecute all cases cognizable by the Sandiganbayan. Unlike the earlier decree, the law also empowered the Tanodbayan to appoint Special Investigators and subordinate personnel and/or to detail to the Office of the CSP any public officer or employees who "shall be under the supervision and control of the Chief Special Prosecutor."^[91] In 1979, PD No. 1630 further amended the earlier decrees by transferring the powers previously vested in the Special Prosecutor directly to the Tanodbayan himself.^[92]

This was the state of the law at the time the 1987 Constitution was ratified. Under the 1987 Constitution, an "independent Office of the Ombudsman" is created.^[93] The existing Tanodbayan is made the Office of the Special Prosecutor, "who shall continue to function and exercise its powers as now^[94] or hereafter may be provided by law."^[95]

Other than the Ombudsman's Deputies, the Ombudsman shall appoint all other officials and employees of the Office of the Ombudsman.^[96] Section 13(8), Article XI of the 1987 Constitution provides that the Ombudsman may exercise "such other powers or perform such functions or duties as may be provided by law." Pursuant to this constitutional command, Congress enacted RA No. 6770 to provide for the functional and structural organization of the Office of the Ombudsman and the extent of its disciplinary authority.

In terms of composition, Section 3 of RA No. 6770 defines the composition of the Office of the Ombudsman, including in this Office not only the offices of the several Deputy Ombudsmen but the Office of the Special Prosecutor as well. In terms of appointment, the law gave the President the authority to appoint the Ombudsman, his Deputies and the Special Prosecutor, from a list of nominees prepared by the Judicial and Bar Council. In case of vacancy in these positions, the law requires that the vacancy be filled within three (3) months from occurrence.[97]

The law also imposes on the Special Prosecutor the same qualifications it imposes on the Ombudsman himself/herself and his/her deputies.[98] Their terms of office,[99] prohibitions and qualifications,[100] rank and salary are likewise the same.[101] The requirement on disclosure[102] is imposed on the Ombudsman, the Deputies and the Special Prosecutor as well. In case of vacancy in the Office of the Ombudsman, the Overall Deputy cannot assume the role of Acting Ombudsman; the President may designate any of the Deputies or the Special Prosecutor as Acting Ombudsman.[103] The power of the Ombudsman and his or her deputies to require other government agencies to render assistance to the Office of the Ombudsman is likewise enjoyed by the Special Prosecutor.[104]

Given this legislative history, the present overall legal structure of the Office of the Ombudsman, both under the 1987 Constitution and RA No. 6770, militates against an interpretation that would insulate the Deputy Ombudsman from the disciplinary authority of the OP and yet expose the Special Prosecutor to the same ills that a grant of independence to the Office of the Ombudsman was designed for.

Congress recognized the importance of the Special Prosecutor as a necessary adjunct of the Ombudsman, aside from his or her deputies, by making the Office of the Special Prosecutor an organic component of the Office of the Ombudsman and by granting the Ombudsman control and supervision over that office.[105] This power of control and supervision includes vesting the Office of the Ombudsman with the power to assign duties to the Special Prosecutor as he/she may deem fit. Thus, by constitutional design, the Special Prosecutor is by no means an ordinary subordinate but one who effectively and directly aids the Ombudsman in the exercise of his/her duties, which include investigation and prosecution of officials in the Executive Department.

Under Section 11(4) of RA No. 6770, the Special Prosecutor handles the prosecution of criminal cases within the jurisdiction of the Sandiganbayan and this prosecutorial authority includes high-ranking executive officials. For emphasis, subjecting the Special Prosecutor to disciplinary and removal powers of the President, whose own alter egos and officials in the Executive Department are subject to the prosecutorial authority of the Special Prosecutor, would seriously place the independence of the Office of the Ombudsman itself at risk.

Thus, even if the Office of the Special Prosecutor is not expressly made part of the composition of the Office of the Ombudsman, the role it performs as an organic component of that Office militates against a differential treatment between the Ombudsman's Deputies, on one hand, and the Special Prosecutor himself, on the other. What is true for the Ombudsman must be equally true, not only for her Deputies but, also for other lesser officials of that Office who act directly as agents of the Ombudsman herself in the performance of her duties.

In *Acop v. Office of the Ombudsman*,[106] the Court was confronted with an argument that, at bottom, the Office of the Special Prosecutor is not a subordinate agency of the Office of the Ombudsman and is, in fact, separate and distinct from the latter. In debunking that argument, the Court said:

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. xxx

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.[107]

Thus, under the present Constitution, there is every reason to treat the Special Prosecutor to be at par with the Ombudsman's deputies, at least insofar as an extraneous disciplinary authority is concerned, and must also enjoy the same grant of independence under the Constitution.

III. SUMMARY OF VOTING

In the voting held on January 28, 2014, by a vote of 8-7,[108] the Court resolved to reverse its September 4, 2012 Decision insofar as petitioner Gonzales is concerned (G.R. No. 196231). We declared Section 8(2) of RA No. 6770 unconstitutional by granting disciplinary jurisdiction to the President over a Deputy Ombudsman, in violation of the independence of the Office of the Ombudsman.

However, by another vote of 8-7,[109] the Court resolved to maintain the validity of Section 8(2) of RA No. 6770 insofar as Sulit is concerned. The Court did not consider the Office of the Special Prosecutor to be constitutionally within the Office of the Ombudsman and is, hence, not entitled to the independence the latter enjoys under the Constitution.

WHEREFORE, premises considered, the Court resolves to declare Section 8(2) UNCONSTITUTIONAL. This ruling renders any further ruling on the dismissal of Deputy Ombudsman Emilio Gonzales III unnecessary, but is without prejudice to the power of the Ombudsman to conduct an administrative investigation, if warranted, into the possible administrative liability of Deputy Ombudsman Emilio Gonzales III under pertinent Civil Service laws, rules and regulations.

SO ORDERED.

Velasco, Jr., Leonardo-De Castro, Bersamin, Abad, Perez, Mendoza, and Leonen, JJ., concur.

Sereno, C.J., Carpio, Peralta, JJ., joins J. Bernabe's opinion.

Del Castillo, Villarama, Jr., and Reyes, JJ., concur with J. Bernabe's opinion.

Perlas-Bernabe, J., pls. see concurring & dissenting opinion.

Leonen, J. see separate and dissenting opinion.

[1] Rollo (G.R. No. 196231), pp. 951-1000.

[2] The Ombudsman Act of 1989.

[3] Rollo (G.R. No. 196231), p. 998.

[4] Docketed as I.S. No. 08E-09512; id. at 113-116.

[5] Id. at 87.

[6] Id. at 231.

[7] Id. at 88.

[8] Id. at 233-235.

[9] Id. at 128.

[10] Id. at 91.

[11] Id. at 92-97.

[12] Id. at 137-152.

[13] Id. at 132-136.

[14] Id. at 15.

[15] Id. at 15, 244-248.

[16] Id. at 16.

[17] <http://www.gov.ph/2010/09/17/first-report-of-the-iirc-on-the-rizal-park-hostage-taking-incident/> (last accessed on February 2, 2014).

[18] Ibid.

[19] Ibid.

[20] Rollo (G.R. No. 196231), p. 322.

[21] Id. at 85.

[22] Id. at 80.

[23] Id. at 49-50.

[24] Rollo (G.R. No. 196232), pp. 27, 36-42.

[25] Id. at 37-41.

[26] Id. at 98.

[27] Id. at 34-35.

[28] Id. at 27-30.

[29] Id. at 364-365.

[30] Id. at 9, 367-375.

[31] Integrated Bar of the Philippines v. Zamora, 392 Phil. 618, 637 (2000).

[32] Separate Opinion of Justice Puno in Integrated Bar of the Philippines v. Zamora; id. at 661.

[33] Furthermore, their powers extended to no more than fact-finding and recommending. Uy v. Sandiganbayan, 407 Phil. 154, 167 (2001).

[34] Id. at 169-170.

[35] Office of the Ombudsman v. Samaniego, G.R. No. 175573, September 11, 2008, 564 SCRA 567, 573.

[36] Ledesma v. Court of Appeals, 503 Phil. 396, 408; and Office of the Ombudsman v. Samaniego, *id.*

[37] Office of the Ombudsman v. Lucero, G.R. No. 168718, 24 November 2006, 508 SCRA 106, 115.

[38] Office of the Ombudsman v. Samaniego, *supra* note 35.

[39] Department of Justice v. Liwag, G.R. No. 149311, February 11, 2005, 491 Phil. 270, 283.

[40] It is not only given an “active role” in the enforcement of laws on anti-graft and corrupt practices and related offenses (*Uy v. Sandiganbayan*, *supra* note 33), its recommendation to a concerned public officer of taking an appropriate action against an erring subordinate is not merely advisory but mandatory within the bounds of law (*Ledesma v. Office of the Ombudsman*, Section 13(3), Article XI of the 1987 Constitution, Section 15(3) of RA No. 6770).

[41] Referring to the Constitutional Commissions (Commission on Elections, Commission on Audit, and the Civil Service Commission), the Commission on Human Rights, a central monetary authority, and, to a certain extent, the National Economic Development Authority.

[42] G.R. No. 103524 and A.M. No. 91-8-225-CA, April 15, 1992, 208 SCRA 133, 150; emphasis and underscore ours.

[43] Speech, Session of February 18, 1972, as cited in “The 1987 Constitution of the Republic of the Philippines: A Commentary” by Joaquin Bernas, 2003 ed., p. 1009.

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[b] because we believe that the Civil Service created by law has not been able to eradicate the ills and evils envisioned by the framers of the 1935 Constitution; because we believe that the Civil Service created by law is beholden to the creators of that law and is therefore not politics-free, not graft-free and not corruption-free; because we believe that as long as the law is the reflection of the will of the ruling class, the Civil Service that will be created and recreated by law will not serve the interest of the people but only the personal interest of the few and the enhancement of family power, advancement and prestige.

[44] Record of the Constitutional Commission, Vol. 1, July 15, 1986, pp. 532-533.

MR. JAMIR. xxx When the 1935 Constitution was enacted, the auditing office was constitutionalized because of the increasing necessity of empowering the auditing office to withstand political pressure. Finding a single Auditor to be quite insufficient to withstand political pressure, the 1973 Constitution established the Commission consisting of three members — a chairman and two commissioners.

[45] Records of the Constitutional Commission, Vol. 3, August 27, 1986, pp. 748-749; emphases ours.

[46] G.R. No. 93867, December 18, 1990, 192 SCRA 358.

[47] *Id.* at 361.

[48] 254 Phil. 156, 179 (1989); emphases and underscores supplied.

[49] 453 Phil. 586, 658-659 (2003).

[50] Accordingly, there is no point discussing, even for purposes of comparing and contrasting, the “independence” of the National Economic Development Authority and the central monetary authority, whose major concern is primarily the direction of the country’s economy, both in its micro and macro aspects.

[51] Record of the Constitutional Commission, Vol. 2, July 26, 1986, p. 294.

In other words, Madam President, what actually spawned or caused the failure of the justices of the Tanodbayan insofar as monitoring and fiscalizing the government offices are concerned was due to two reasons: First, almost all their time was taken up by criminal cases; and second, since they were under the Office of the President, their funds came from that office. I have a sneaking suspicion that they were prevented from making administrative monitoring because of the sensitivity of the then head of that office, because if the Tanodbayan would make the corresponding reports about failures, malfunctions or omissions of the different ministries, then that would reflect upon the President who wanted to claim the alleged confidence of the people.

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It is said here that the Tanodbayan or the Ombudsman would be a toothless or a paper tiger. That is not necessarily so. If he is toothless, then let us give him a little more teeth by making him independent of the Office of the President because it is now a constitutional creation, so that the insidious tentacles of politics, as has always been our problem, even with PARGO, PCAPE and so forth, will not deprive him of the opportunity to render service to Juan de la Cruz. xxx. There is supposed to be created a constitutional office — constitutionalized to free it from those tentacles of politics — and we give it more teeth and have the corresponding legislative provisions for its budget, not a budget under the Office of the President.

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xxx. For that reason, Madam President, I support this committee report on a constitutionally created Ombudsman and I further ask that to avoid having a toothless tiger, there should be further provisions for statistical and logistical support. (Emphases ours.)

[52] Id. at 294.

[53] This provision reads:

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

[54] The Framers' concern in inserting the second sentence of Section 2, Article XI is fully supported by the intent expressed in the constitutional debates.

[55] Dennis Funa, Law on Administrative Accountability of Public Officers, p. 720. Fundamentals of Impeachment, Antonio R. Tupaz and Edsel C.F. Tupaz, p. 7; See Opinion of Justice Vitug in Francisco, Jr. v. House of Representatives, 460 Phil. 830, 957 (2003).

[56] CONSTITUTION, Art. XI, Section 3(1).

[57] CONSTITUTION, Art. XI, Section 3(5).

[58] CONSTITUTION, Art. XI, Section 2.

[59] CONSTITUTION, Art. XI, Section 3(6).

[60] Ibid.

[61] Thus, impeachment is characterized as essentially raising political questions or questions of policies created

by large historical forces. Alexander Hamilton observed:

A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself. The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt. (The Federalist No. 65 [www.constitution.org/fed/federa65, accessed on February 3, 2014].)

[62] Even the second restriction (on due process) on the President's exercise of his power of removal of the Deputy Ombudsman does not emanate from Congress but from the Constitution itself. The fact that the Office of the Ombudsman is a constitutional office that enjoys independence from the three branches of government argues against any suggestion that the President can remove a Deputy Ombudsman at will without the requirement of observance of due process under Section 8(2) of RA No. 6770.

[63] *Supra* note 49, at 658.

[64] *Rollo* (G.R. No. 196231), p. 80.

[65] *Id.* at 137-152.

[66] *Id.* at 132-136.

[67] *Id.* at 15, 240.

[68] *Id.* at 241.

[69] *Id.* at 242.

[70] *Id.* at 236 and 343. The case was endorsed to the Ombudsman on May 5, 2010; the period within which Gonzales finished his work would only be eight days. However, Gonzales stated in his pleading that it took him nine days to review the Resolution of the Motion for Reconsideration, and the OP does not dispute this. The records of the case were forwarded to the Records Section on May 7, 2010.

[71] *Brucal v. Desierto*, 501 Phil. 453, 465-466 (2005).

[72] *Rollo* (G.R. No. 196231), pp. 578-579.

[73] In *Dansal v. Judge Fernandez, Sr.*, 383 Phil. 897, 908-910 (2000), the Court said: "Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman."

[74] Motion for Reconsideration, p. 10.

[75] CONSTITUTION, Art. III, Section 16.

[76] *Caballero v. Alfonso*, 237 Phil. 154 (1987); *Roquero v. The Chancellor of U.P. Manila*, G.R. No. 181851, March 9, 2010, 614 SCRA 723, 732-733. In fact, in *Mendoza-Ong v. Sandiganbayan* (483 Phil. 451, 454-455 [2004]), the Court had this to say:

In this case, the Graft Investigation Officer released his resolution finding probable cause against petitioner on August 16, 1995, less than six months from the time petitioner and her co-accused submitted their counter-affidavits. On October 30, 1995, only two and a half months later, Ombudsman Aniano Desierto had reviewed the case and had approved the resolution. Contrary to petitioner's contention, the lapse of only ten months from the filing of the complaint on December 13, 1994, to the approval of the resolution on October 30, 1995, is by no means oppressive. "Speedy disposition of cases" is consistent with reasonable delays.

[77] Rollo (G.R. No. 196231), p. 96. The decision was drafted by Graft Investigation and Prosecution Officer Rebecca A. Guillen-Ubaña.

[78] Section 12, Article XI of the 1987 Constitution reads:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof. [emphasis ours]

[79] Section 13 of RA No. 6770 reads:

Section 13. Mandate. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people. (emphasis ours)

[80] This provision reads:

Section 3. How initiated. — An administrative case may be initiated by a written complaint under oath accompanied by affidavits of witnesses and other evidence in support of the charge. Such complaint shall be accompanied by a Certificate of Non-Forum Shopping duly subscribed and sworn to by the complainant or his counsel. An administrative proceeding may also be ordered by the Ombudsman or the respective Deputy Ombudsman on his initiative or on the basis of a complaint originally filed as a criminal action or a grievance complaint or request for assistance. (emphasis ours)

[81] Rollo (G.R. No. 196231), pp. 94-95.

[82] Id. at 95. The pertinent part of the decision reads:

Moreover, we find the defenses of respondents highly unbelievable. The accommodation afforded to Christian by respondents casts doubt on their purpose of keeping him inside the station. It is not plausible that policemen who catch a traffic violator require him to return and show documents to absolve him from liability.

[83] Under Section 6, Article XIII of the 1973 Constitution, Congress was mandated to create an Office of the Ombudsman to be known as the Tanodbayan.

[84] 1973 CONSTITUTION, Article XIII, Section 6.

[85] Known as the Tanodbayan Decree of 1977 (June 11, 1978). Section 17 of PD No. 1487 gave the Tanodbayan prosecutorial functions.

[86] Creating a Special Court to be known as "Sandiganbayan" and for Other Purposes; likewise enacted on June 11, 1978.

[87] PD No. 1486, Section 4.

[88] PD No. 1486, Section 14.

[89] Known as the Tanodbayan Decree, Revising PD No. 1487.

[90] The last paragraph of Section 17 of PD 1607 reads:

The Chief Special Prosecutor, Assistant State Prosecutor, Special Prosecutor and those designated to assist them as herein provided for shall be under the control and supervision of the Tanodbayan and their resolutions and actions shall not be subject to review by any administrative agency.

However, the law also allowed the President “to designate the Chief State Prosecutor of the Ministry of Justice or any other ranking official in the prosecutory arm of the government as Ex-Officio Chief Special Prosecutor and/or Assistant Chief Special Prosecutor” (Section 17, PD No. 1607).

[91] PD No. 1607, Section 18.

[92] PD No. 1630, Sections 10 and 17.

[93] CONSTITUTION, Article XI, Section 5.

[94] PD No. 1630.

[95] CONSTITUTION, Article XI, Section 7.

[96] Under RA No. 6770, however, it is the President himself which appoints the Special Prosecutor. This may even be an argument of the legislative intent to treat the Special Prosecutor, in much the same way, as the Ombudsman’s Deputies themselves that justify the same recognition of freedom from the disciplinary authority of the President on the same ground of independence of the Office of the Ombudsman.

[97] RA No. 6770, Section 4.

[98] RA No. 6770, Section 5.

[99] RA No. 6770, Section 7.

[100] RA No. 6770, Section 9.

[101] RA No. 6770, Section 6.

[102] RA No. 6770, Section 10.

[103] RA No. 6770, Section 8(3).

[104] RA No. 6770, Section 33.

[105] RA No. 6770, Section 11(3) and (4).

[106] G.R. No. 120422, September 27, 1995, 248 SCRA 568.

[107] Id. at 580-581.

[108] The eight (8) Justices in the majority are: Presbitero J. Velasco, Jr., Teresita J. Leonardo-De Castro, Arturo D. Brion, Lucas P. Bersamin, Roberto A. Abad, Jose Portugal Perez, Jose Catral Mendoza, and Marvic Mario Victor F. Leonen. The seven (7) dissenting Justices are: Chief Justice Maria Lourdes P. A. Sereno, Antonio T. Carpio, Diosdado M. Peralta, Mariano C. del Castillo, Martin S. Villarama, Jr., Bienvenido L. Reyes, and Estela M. Perlas-Bernabe.

[109] The eight (8) Justices in the majority are: Chief Justice Maria Lourdes P. A. Sereno, Antonio T. Carpio, Diosdado M. Peralta, Mariano C. del Castillo, Martin S. Villarama, Jr., Bienvenido L. Reyes, Estela M. Perlas-Bernabe and Marvic Mario Victor F. Leonen. The seven (7) dissenting Justices are: Presbitero J. Velasco, Jr., Teresita J. Leonardo-De Castro, Arturo D. Brion, Lucas P. Bersamin, Roberto A. Abad, Jose Portugal Perez, and Jose Catral Mendoza.

CONCURRING AND DISSENTING OPINION

PERLAS-BERNABE, J.:

I concur with the ponencia in finding the Decision dated March 31, 2011 of the Office of the President of the Philippines (OP) to be patently erroneous considering that the acts therein attributed to petitioner Emilio A. Gonzales III (Gonzales), in his capacity as Deputy Ombudsman, do not constitute betrayal of public trust. In the Court's Decision dated September 4, 2012 in the main,[1] it was explained that the phrase "betrayal of public trust" refers to acts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers. In other words, acts that should constitute betrayal of public trust as to warrant removal from office may be less than criminal but must be attended by bad faith and of such gravity and seriousness as the other grounds for impeachment.[2] The OP, however, dismissed Gonzales based on acts which, as thoroughly detailed and discussed in the ponencia, do not fit the foregoing legal description. Accordingly, its (OP) decision was tainted with patent error.

Nevertheless, since the majority voted to declare the jurisdictional basis for the OP's authority to discipline the Deputy Ombudsmen under Section 8(2)[3] of Republic Act No. (RA) 6770[4] as unconstitutional, the fallo of the ponencia states that any further ruling on the dismissal of Gonzales is rendered unnecessary, viz.: [5]

WHEREFORE, premises considered, the Court resolves to declare Section 8(2) UNCONSTITUTIONAL. This ruling renders any further ruling on the dismissal of Deputy Ombudsman Emilio Gonzales III unnecessary, but is without prejudice to the power of the Ombudsman to conduct an administrative investigation, if warranted, into the possible administrative liability of Deputy Ombudsman Emilio Gonzales III under pertinent Civil Service laws, rules and regulations.

SO ORDERED.

I dissent.

To my mind, Section 8(2) of RA 6770, which confers the OP with jurisdiction to discipline not only the Special Prosecutor but also the Deputy Ombudsmen, is wholly constitutional. To this end, I join the majority in upholding the provision's constitutionality insofar as the Special Prosecutor is concerned, but register my dissent against declaring the provision unconstitutional insofar as the Deputy Ombudsmen are concerned.[6] The reasons therefor are explained in the ensuing discussion.

In dealing with constitutional challenges, one must be cognizant of the rule that every law is presumed constitutional and therefore should not be stricken down unless its provisions clearly and unequivocally, and not merely doubtfully, breach the Constitution.[7] It is well-established that this presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.[8]

In *Victoriano v. Elizalde Rope Workers' Union*,^[9] the judicious instruction is that the “challenger must negate all possible bases” and the adjudicating tribunal must not concern itself with the “wisdom, justice, policy, or expediency of a statute”; “if any reasonable basis may be conceived which supports the statute, it will be upheld”:^[10]

All presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt, that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted. (Emphasis supplied)

Similarly, as held in *Salvador v. Mapa*,^[11] it was held that an “arguable implication” is not enough to strike down the statute subject of constitutional scrutiny; thus, the guiding notion is that “to doubt is to sustain”:^[12]

The constitutionality of laws is presumed. To justify nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful or arguable implication; a law shall not be declared invalid unless the conflict with the Constitution is clear beyond reasonable doubt. The presumption is always in favor of constitutionality. To doubt is to sustain. x x x. (Emphases supplied)

Applying this framework, Section 8(2) of RA 6770, both with respect to the OP’s disciplinary authority over the Special Prosecutor and the Deputy Ombudsmen, should be upheld in its entirety since it has not been shown that said provision “clearly and unequivocally” offends any constitutional principle. By constitutional design, disciplinary authority over non-impeachable officers, such as the Special Prosecutor and Deputy Ombudsmen, was left to be determined by future legislation. This much is clear from the text of the Constitution. Section 2, Article XI of the 1987 Constitution explicitly provides that non-impeachable officers may be removed from office as may be provided by law:

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment. (Emphasis and underscoring supplied)

While Section 5, Article XI of the 1987 Constitution “created the independent Office of the Ombudsman” – the provision which is the legal anchor of the majority’s position on this matter – the Constitution neither defines what this principle of Ombudsman independence means nor prohibits the office’s subjection to an external disciplining authority. Meanwhile, what is discoverable from the deliberations of the Constitutional Commission on Article XI, particularly those which are quoted in the ponencia,^[13] is that the Office of the Ombudsman was merely intended to be a separate office from the Executive. This idea of organizational separation was meant to obviate the Executive Department from exercising the encompassing powers of control and supervision over the Office of the Ombudsman. It is only in this regard that the Office of the Ombudsman was deemed by the Framers as independent.

To be sure, the power of control is the power of an officer to alter or modify 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. An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself. On the other hand, the power of supervision means “overseeing or the authority of an officer to see to it that the subordinate officers perform their duties.” If the subordinate officers fail or neglect to fulfill their duties, the official may take such

action or step as prescribed by law to make them perform their duties. Essentially, the power of supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law. The supervisor or superintendent merely sees to it that the rules are followed, but he does not lay down the rules, nor does he have discretion to modify or replace them.[14] By virtue of these definitions, it is easy to envision how the Office of the Ombudsman's functions would be unduly hampered if it was to be subjected to executive control and supervision: with control, the Office of the Ombudsman's actions could be altered, modified or substituted by that of the President, and with supervision, the office would operate under constant scrutiny of a separate but superior authority. With this in mind, the Office of the Ombudsman's independence should only be construed in the context of organizational separation which does not, as it should not, obviate the possibility of having an external disciplining authority over some of its officials pursuant to the checks and balances principle.

Verily, the principle of checks and balances is not a general apothegm for total insulation but rather of functional interrelation. It is clear that no one office of government works in absolute autonomy. To determine the gradations and contours of institutional independence, one must look into the blueprint of the Constitution which embodies the will and wisdom of the people. This is precisely what Section 2, Article XI of the 1987 Constitution states: non-impeachable officers, such as the Special Prosecutor and the Deputy Ombudsmen, may be removed from office as may be provided by law. Indeed, this provision coupled with the Framers' silence on the meaning of Ombudsman independence should carve out space for Congress to define, by its plenary legislative power acting as representatives of the people, the parameters of discipline over these so-called non-impeachable officers, including, among others, the Special Prosecutor and the Deputy Ombudsmen.

In any event, without a prohibition that may be clearly and unequivocally ascertained from the text and deliberations of the Constitution against the disciplinary authority provided under Section 8(2) of RA 6770, the overriding approach should operate – to doubt is to sustain; all doubts are to be construed in favor of constitutionality.

Accordingly, I vote to uphold the constitutionality of Section 8(2) of RA 6770 in its entirety.

[1] *Gonzales III v. OP*, G.R. Nos. 196231 and 196232, September 4, 2012, 679 SCRA 614.

[2] *Id.* at 664-665.

[3] Section 8(2) of RA 6770, otherwise known as the "Ombudsman Act," reads:

Sec. 8. Removal; Filling of Vacancy. –

x x x x

(2) A Deputy, or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

[4] "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN AND FOR OTHER PURPOSES."

[5] *Gonzales III v. OP*, G.R. Nos. 196231 and 196232, January 28, 2014, p. 27.

[6] *Id.* The Summary of Voting section of the ponencia reads as follows:

In the voting held on January 28, 2014, by a vote of 8-7, the Court resolved to reverse its September 4, 2014 Decision insofar as petitioner *Gonzales* is concerned (G.R. No. 196231). We declared Section 8(2) of RA No.

6770 unconstitutional by granting disciplinary jurisdiction to the President over a Deputy Ombudsman, in violation of the independence of the Office of the Ombudsman.

However, by another vote of 8-7, the Court resolved to maintain the validity of Section 8(2) of RA No. 6770 insofar as Sulit is concerned. The Court did not consider the Office of the Special Prosecutor to be constitutionally within the Office of the Ombudsman and is, hence, not entitled to the independence the latter enjoys under the Constitution. (Emphases in the original; citations omitted)

[7] “To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because ‘to invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.’” (Lawyers Against Monopoly and Poverty [LAMP] v. Secretary of Budget and Management, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 386-387, citing ABAKADA GURO Party List v. Purisima, 584 Phil. 246, 268 [2008]; emphasis supplied.)

[8] Drilon v. Lim, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140.

[9] 158 Phil. 60 (1974).

[10] Id. at 74.

[11] 564 Phil. 31 (2007).

[12] Id. at 44.

[13] The Record of the Constitutional Commission, Vol. 2, July 26, 1986, p. 294, as cited in page 14 of the ponencia reads:

MR. OPLE. xxx

May I direct a question to the Committee? xxx [W]ill the Committee consider later an amendment xxx, by way of designating the office of the Ombudsman as a constitutional arm for good government, efficiency of the public service and the integrity of the President of the Philippines, instead of creating another agency in a kind of administrative limbo which would be accountable to no one on the pretext that it is a constitutional body?

MR. MONSOD. The Committee discussed that during our committee deliberations and when we prepared the report, it was the opinion of the Committee – and I believe it still is – that it may not contribute to the effectiveness of this office of the Ombudsman precisely because many of the culprits in inefficiency, injustice and impropriety are in the executive department. Therefore, as we saw the wrong implementation of the Tanodbayan which was under the tremendous influence of the President, it was an ineffectual body and was reduced to the function of a special fiscal. The whole purpose of our proposal is precisely to separate those functions and to produce a vehicle that will give true meaning to the concept of Ombudsman. Therefore, we regret that we cannot accept the proposition. (Emphases supplied)

The Record of the Constitutional Commission, Vol. 2, July 26, 1986, p. 294, as cited in footnote 50, page 14 of the ponencia reads:

In other words, Madam President, what actually spawned or cause the failure of the justices of the Tanodbayan insofar as monitoring and fiscalizing the government offices are concerned was due to two reasons: First, almost all their time was taken up by criminal cases; and second, since they were under the Offices of the President, their funds came from that office. I have a sneaking suspicion that they were prevented from making administrative monitoring because of the sensitivity of the then head of that office, because if the Tanodbayan would make the corresponding reports about failures, malfunctions or omissions of the different ministries,

then that would reflect upon the President who wanted to claim the alleged confidence of the people.

xxxx

It is said here that the Tanodbayan or the Ombudsman would be a toothless or a paper tiger. That is not necessarily so. If he is toothless, then let us give him a little more teeth by making him independent of the Office of the President because it is now a constitutional creation, so that the insidious tentacles of politics, as has always been our problem, even with PARGO, PCAPE and so forth, will not deprive him of the opportunity to render service to Juan de la Cruz. xxx. There is supposed to be created a constitutional office – constitutionalized to free it from those tentacles of politics – and we give it more teeth and have the corresponding legislative provisions for its budget, not a budget under the Office of the President.

xxxx

xxx. For that reason, Madam President, I support this committee report on a constitutionally created Ombudsman and I further ask that to avoid having a toothless tiger, there should be further provisions for statistical and logistical support. (Emphases in the original retained with additional emphases supplied)

(Gonzales III v. OP, supra note 5, pp. 14-15.)

[14] Ambil, Jr. v. Sandiganbayan, G.R. Nos. 175457 and 175482, July 6, 2011, 653 SCRA 576, 596.

CONCURRING AND DISSENTING OPINION

LEONEN, J.:

I vote to dismiss the motion for partial reconsideration.[1] However, the constitutional challenge to Section 8, Paragraph (2) of Republic Act No. 6770[2] or the Ombudsman Act insofar as the Deputy Ombudsman is concerned should succeed.

On August 23, 2010, dismissed Manila Police District Police Senior Inspector (Captain) Rolando del Rosario Mendoza took hostage a Hong Kong tour group with three families, two couples, a mother and daughter, and a tour leader at the Quirino Grandstand.[3] Apparently, he was driven to despondency by many causes. This included his frustration with a case[4] pending against him at the Office of the Ombudsman. In a decision[5] dated February 16, 2009, the Office of the Ombudsman found Mendoza and four others liable for grave misconduct. This led to Mendoza's dismissal from the Philippine National Police as well as the forfeiture of his retirement benefits.

The Ombudsman exercised jurisdiction over this case by virtue of a letter which was issued *motu proprio* by petitioner, Emilio Gonzales III, to endorse the pending case to his office for administrative adjudication.[6] This was despite the fact that the same case against Rolando Mendoza was already "dismissed by the Manila City Prosecutors Office for lack of probable cause and by the [Philippine National Police–National Capital Region] Internal Affairs Service for failure of the complainant to submit evidence and prosecute the case." [7]

According to the Office of the President, petitioner Gonzales did not state a reason for the endorsement of the case to the Office of the Ombudsman.[8] The Office of the President also found that the Office of the Deputy Ombudsman made Atty. Clarence V. Guinto of the Philippine National Police-Criminal Investigation and Detection Group-National Capital Region serve as the nominal complainant in the case against Mendoza.[9] Atty. Guinto did not even summon or compel Christian Kalaw, the original complainant in the case against Mendoza, to affirm his complaint-affidavit[10] before the Ombudsman or require Kalaw to "submit any position paper as required." [11]

At one point during the hostage-taking incident, Manila City Vice Mayor Francisco “Isko” Moreno interceded. He was already at the Office of the Ombudsman when he asked Mendoza if there was someone there that he wanted to talk to. Mendoza was very thankful to Vice Mayor Moreno and requested if he could talk to a certain Director Gonzales of the Office of the Ombudsman.

Mendoza spoke to Deputy Ombudsman Gonzales. After some time, Mendoza was heard shouting and uttering invectives: “Putang ina mo, humihingi ka pa ng P150,000 para sa kaso ko, kung may mamamatay dito kasalanan mo lahat! (You son of a bitch, you are asking for P150,000 for my case, if anyone dies here it’s all your fault!).”[12]

Moreno overheard Gonzales say, “O wala akong alam diyan (I don’t know anything about that).”[13]

Emilio Gonzales III could have betrayed the public trust.

The Office of the President acted on what it saw as substantial evidence that Deputy Ombudsman Gonzales delayed acting on the motion for reconsideration[14] of the late Rolando Mendoza and that Gonzales asked for ₱150,000.00 to decide on the case. This was also the finding of the Incident Investigation and Review Committee[15] created after the hostage-taking incident.

The duties of the Ombudsman and Deputy Ombudsman are provided for in Article XI, Section 13 of the 1987 Constitution.[16] These include the duty to direct any public official or employee of the government to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.[17] Certainly, it would be betrayal of public trust in the highest order when a Deputy Ombudsman himself committed actions that he is constitutionally mandated to curtail.

This case came to this court through a petition for certiorari[18] filed by Emilio Gonzales III (docketed as G.R. No. 196231) alleging grave abuse of discretion on the part of the Office of the President for its decision[19] dated March 31, 2011. This was consolidated with G.R. No. 196232, a petition for certiorari and prohibition[20] filed by Wendell Barreras-Sulit against the order[21] of the Office of the Executive Secretary.

The other case consolidated with the case of Emilio Gonzalez III involves an order issued by the Office of the Executive Secretary to petitioner Special Prosecutor Wendell Barreras-Sulit. The order required her to submit a written explanation why no disciplinary action should be taken against her, based on her role in securing a plea bargaining agreement in favor of Major Carlos P. Garcia.

Major Carlos P. Garcia was accused of embezzling millions of pesos and dollars as well as amassing properties in violation of the Plunder Law. The Committee on Justice of the House of Representatives found that petitioner Barreras-Sulit committed acts that were tantamount to culpable violation of the Constitution and betrayal of public trust. Hence, a case docketed as OP-DC-Case No. 11-B-003 was filed by the Office of the President against petitioner Barreras-Sulit and was set for preliminary investigation.

Both cases were consolidated because they raised the issue of the constitutionality of Section 8, Paragraph (2) of Republic Act No. 6770 or the Ombudsman Act. Petitioners questioned the constitutionality of this provision, which states that the Office of the President may remove the Deputy Ombudsman and Special Prosecutor from office on the grounds of removal of the Ombudsman and after due process.

The initial voting of this court on whether Gonzales could be found liable for betrayal of the public trust was 14-0. All the Justices then agreed that there was no substantial basis to support the finding of the Office of the President. On the constitutionality of Section 8, Paragraph (2) of the Ombudsman Act, the vote was evenly split. Seven voted to declare the provision unconstitutional. The other seven voted to uphold. Thus, in its September 4,

2012 decision,[22] this court denied the challenge to the constitutionality of Section 8, Paragraph (2) of the Ombudsman Act and ordered the reinstatement of Gonzales and the continuation of the proceedings against Barreras-Sulit.[23] This court then granted Gonzales' petition for certiorari,[24] insofar as it reversed the public respondent Office of the President's decision in OP Case No. 10-J-460.

The Office of the Solicitor General then filed a motion for partial reconsideration[25] dated October 10, 2012 of the September 4, 2012 decision of this court. As its sole ground for allowance, the motion for partial reconsideration raised that the Office of the President did not gravely abuse its discretion when it found "petitioner Gonzales guilty of betrayal of public trust and imposed upon him the penalty of dismissal from office." [26]

In my view, the motion for partial reconsideration raises three issues that require discussion.

The first issue is whether the constitutionality of Section 8, Paragraph (2) of the Ombudsman Act was reopened even if this was not raised in the actual motion for partial reconsideration of the Office of the Solicitor General.

The second issue is whether Section 8, Paragraph (2) of the Ombudsman Act is constitutional.

The third issue is whether the actions of petitioner Emilio Gonzales III constitute betrayal of public trust and warrant his dismissal from his position, assuming that Section 8, Paragraph (2) of the Ombudsman Act is constitutional.

I

The motion for partial reconsideration reopens the entire case. These cases cannot be fully resolved unless the question of the constitutionality of Section 8, Paragraph (2) of the Ombudsman Act is again decided by this court. The question whether petitioner Gonzales is guilty of betrayal of public trust also involves the matter as to whether that ground exists at all. This means that we are constrained to address the constitutional issue as to whether it is the Office of the President that can constitutionally exercise disciplinary powers over the Deputy Ombudsman.

This court is a court of general jurisdiction. It has the ability to determine the scope of the issues it can decide on in order to fulfill its constitutional duty to exercise its judicial power. This power must be fully exercised to achieve the ends of justice.

Judicial power includes determining the constitutionality of the actions of a branch of government. In *Luz Farms v. Secretary of the Department of Agrarian Reform*, [27] this court held:

It has been established that this Court will assume jurisdiction over a constitutional question only if it is shown that the essential requisites of a judicial inquiry into such a question are first satisfied. Thus, there must be an actual case or controversy involving a conflict of legal rights susceptible of judicial determination, the constitutional question must have been opportunely raised by the proper party, and the resolution of the question is unavoidably necessary to the decision of the case itself x x x.

However, despite the inhibitions pressing upon the Court when confronted with constitutional issues, it will not hesitate to declare a law or act invalid when it is convinced that this must be done. x x x Blandishment is as ineffectual as intimidation, for all the awesome power of the Congress and Executive, the Court will not hesitate "to make the hammer fall heavily," where the acts of these departments, or of any official, betray the people's will as expressed in the Constitution x x x.

Thus, where the legislature or the executive acts beyond the scope of its constitutional powers, it becomes the duty of the judiciary to declare what the other branches of the government had assumed to do, as void. This is

the essence of judicial power conferred by the Constitution "(I)n one Supreme Court and in such lower courts as may be established by law" (Art. VIII, Section 1 of the 1935 Constitution; Article X, Section I of the 1973 Constitution and which was adopted as part of the Freedom Constitution, and Article VIII, Section 1 of the 1987 Constitution) and which power this Court has exercised in many instances. (Citations omitted)[28]

The constitutional challenge must be squarely addressed and threshed out in its entirety because the constitutionality of the law itself is the very *lis mota* of the case. In *People v. Vera*,[29] this court first presented the idea of *lis mota*:

It is a well-settled rule that the constitutionality of an act of the legislature will not be determined by the courts unless that question is properly raised and presented in appropriate cases and is necessary to a determination of the case; i.e., the issue of constitutionality must be the very *lis mota* presented. (*McGirr vs. Hamilton and Abreu* [1915], 30 Phil., 563, 568; 6 R. C. L., pp. 76, 77; 12 C. J., pp. 780-782, 783.)[30]

In line with the doctrine of *Vera*, this court's disposition of the case depends on a final determination of the constitutionality of Section 8, Paragraph (2) of Republic Act No. 6770 or the Ombudsman Act.

While it appears that the constitutionality of the Ombudsman Act was not raised in the motion for partial reconsideration, no final determination can be made without addressing the constitutional point.

Any determination of petitioner Gonzales' liability by this court is contingent on the constitutionality of Section 8, Paragraph (2) of the Ombudsman Act. This is the basis of the putative disciplinary authority vested in the Office of the President over the Deputy Ombudsman and the Office of the Special Prosecutor. If this provision is unconstitutional, then no valid action on this case can emanate from the Office of the President.

We cannot be made to issue an incomplete ruling simply because the motion for reconsideration was partial. We are a full court with full powers with a whole duty to determine when the Constitution is violated.

In *Juco v. Heirs of Tomas Siy Chung Fu*,[31] this court elaborated on the effect of a motion for reconsideration:

A motion for reconsideration has the effect of suspending the statutory period after which an order, decision, or judgment, in connection with which said motion was filed, becomes final. In effect, such motion for reconsideration has prevented the decision from attaining finality.[32]

This case can be adjudicated in its entirety because the September 4, 2012 decision of this court has not yet achieved finality.

II

When the Judiciary is asked to ascertain constitutional limitations or invalidate the acts of a co-equal body such as the Executive, what it puts forward is the supremacy of the Constitution. Since its inception, the Philippine Constitution has always provided for a structured and evolving system of separation of powers and checks and balances. The landmark case of *Angara v. Electoral Commission*[33] served as the jurisprudential benchmark for this system:

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.[34]

The principle of checks and balances and the principle of the separation of powers are not limited to the interaction of the powers of the Executive, Legislative, and the Judiciary. The principle of checks and balances, as well as separation of powers, also applies to the interaction of the three branches of government with the other constitutional organs, particularly the Constitutional Commissions as well as the Office of the Ombudsman. Angara itself was an elaborate examination of the relationship of the three branches with the Electoral Commission, which this court in Angara ruled was, indeed, an independent constitutional organ.

The principle of checks and balances allows constitutionally enshrined bodies or organs and governmental departments to correct mistakes and prevent excesses done by other branches. It also ensures a degree of cooperation while being clear as to what acts may constitute undue encroachments upon another branch's or organ's constitutional duties.

Section 8, Paragraph (2) of Republic Act No. 6770 provides:

Section 8. Removal; Filling of Vacancy. —

x x x x

(2) A Deputy, or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

In order to determine whether it can pass a constitutional challenge in view of the facts arising from these consolidated cases, we should start first with textual reference. That is, we should check all the relevant and applicable provisions of the Constitution.

Article XI, Section 5 of the 1987 Constitution reads:

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. (Emphasis supplied)

In relation to this provision, the Ombudsman is among the officials enumerated in Article XI, Section 2 as those who can be removed from office only through impeachment.

The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment. (Emphasis supplied)

The phrase “as provided by law” is the apparent basis for the enactment of Section 8, Paragraph (2) of Republic Act No. 6770 or the Ombudsman Act. In my view, this provision cannot be taken in isolation. Any interpretation of this phrase should not deny the “independent” nature of the Office of the Ombudsman as provided in Article XI, Section 5 of the Constitution. The Constitution should be read as a whole document in a manner that will give effect to all its parts.[35]

I agree with the positions of Justice Brion and Justice Abad in their dissenting opinions on the September 4, 2012 decision that the independence of the Office of the Ombudsman is of such a fundamental and unequivocal nature. This independence is essential to carry out the functions and duties of the Office of the Ombudsman. I agree with their position that since those in the executive branch are also subject to the disciplinary authority of the Office of the Ombudsman, providing the Office of the President with the power to remove would be an impediment to the fundamental independence of the Ombudsman.

We cannot allow a circumvention of the separation of powers by construing Article XI, Section 2 of the Constitution as delegating plenary and unbounded power to Congress. The exclusive power of the Ombudsman to discipline her own ranks is fundamental to the independence of her office.

The Constitution's intention to make the independence of the Office of the Ombudsman greater than any other office can also be inferred from the authority and the process of appointment of the officers constituting that office. Hence, Article XI, Section 9 of the Constitution provides:

Section 9. The Ombudsman and his Deputies shall be appointed by the President from a list of at least six nominees prepared by the Judicial and Bar Council, and from a list of three nominees for every vacancy thereafter. Such appointments shall require no confirmation. All vacancies shall be filled within three months after they occur.[36]

The President is granted the power to appoint but only from a list of nominees vetted by the Judicial and Bar Council. Furthermore, the President needs to exercise that power to appoint within three months from the vacancy of either the Ombudsman or any of her Deputies.

Furthermore, the Constitution provides in Section 6 of the same Article:

Section 6. The officials and employees of the Office of the Ombudsman, other than the Deputies, shall be appointed by the Ombudsman, according to the Civil Service Law.[37]

This is similar to the provisions for Constitutional Commissions. Article IX, Section 4 of the Constitution provides:

Section 4. The Constitutional Commissions shall appoint their officials and employees in accordance with law.[38]

It is clear that there is a different treatment of the Deputies of the Ombudsman from all the other staff of the Office of the Ombudsman.

The Ombudsman is assisted by the Deputy Ombudsman. There are several deputies for Luzon, Visayas, Mindanao, and the military. All these deputies take their direction from the Ombudsman. By constitutional fiat, they cannot take direction from any other constitutional officer. It is difficult to imagine how the independence of the Ombudsman can be preserved when the President has concurring powers to remove her deputies.

Furthermore, it is not difficult to imagine that the President and Congress can negate the elaborate process of appointing a Deputy Ombudsman simply by using their alleged power of removal. While this may not have been the situation in this case, the possibility exists especially when we consider that the Ombudsman does have jurisdiction also to investigate both the executive and legislative branches. The real fear of the deputies can hobble the Office of the Ombudsman.

During the deliberations of this case, a question was raised as to whether the President can have the authority to discipline non-impeachable officers and employees of Constitutional Commissions and the Office of the Ombudsman when the law so provides. This court's construction of constitutional provisions should be framed only by the actual controversies presented by the facts of the case at bar. The issue in this case is only about the power of the President to remove the Deputy Ombudsman and the Special Prosecutor for causes provided by law. It does not involve the power of the President to remove any other civil servant appointed by the Ombudsman.

In its September 4, 2012 decision, this court cited *Hagad v. Hon. Gozodadole*[39] and *Office of the Ombudsman v. Delijero, Jr.*[40] to show that the Office of the President has concurrent disciplinary jurisdiction with the Office of the Ombudsman. These cases, however, are not applicable. *Hagad* involved prosecution

and discipline of the Mayor and Vice Mayor as well as a member of the Sangguniang Panlungsod of Mandaue City. The Constitution puts local governments within the general supervision of the President.[41] They are, therefore, also within the authority of the Office of the President to discipline.

In *Office of the Ombudsman v. Delijero, Jr.*, there was a law, namely, Republic Act No. 4670, which provided a separate set of procedural requirements for administrative proceedings involving public school teachers. Thus, this court held that it would have been more prudent for the Office of the Ombudsman to refer the case to the Department of Education. Public school teachers do not enjoy the constitutional independence similar to that of the Office of the Ombudsman.

In his concurring opinion on the September 4, 2012 decision, Justice Carpio presents the view that the independence of the Office of the Ombudsman does not mean that it is insulated from all governmental scrutiny. According to Justice Carpio, Congress has the power to legislate the officials that may be subject to dismissal and disciplinary action, if the Constitution allows. He cites the records of the Constitutional Commissions, particularly that of Commissioner Regalado, who sought the amendment to include the sentence, “ALL OTHER PUBLIC OFFICERS AND EMPLOYEES MAY BE REMOVED FROM OFFICE AS PROVIDED BY LAW BUT NOT BY IMPEACHMENT,” under Article XI, Section 2. Thus, Congress has the plenary power to provide for the officials that may be removed and the manner by which they are to be removed as well.

I agree with Justice Carpio that the Office of the Ombudsman is also constitutionally accountable. I cannot agree, however, that this accountability can be extracted by allowing her deputies to be answerable to two principals: the Ombudsman and the President, even if this dual accountability is provided by law.

Reliance on the debates of the framers of the 1987 Constitution is not the only source for determining the meaning of the text of the Constitution.[42] Resorting to the debates and proceedings of the constitutional convention shows us the views and standpoints of individual members of the convention.[43] It does not show how the sovereign people read the Constitution at the time of ratification. The discussion of those that drafted the present Constitution is advisory.[44] The text of the Constitution should be read by one guided by, but not limited to, the debates that happened when it was drafted and ratified. It should also be read in the light of the needs of present times while being sensitive and addressing precedents existing in our jurisprudence.

The mention in the records of the Constitutional Commission of the phrase “as provided by law” cannot serve as the sole yardstick by which a definitive interpretation of the constitutional provision or its effects is to be determined. “As provided by law” with respect to the Deputy Ombudsman may, at best, only provide for the standards under which the Ombudsman may exercise her power of removal. Unless the Constitution does not intend true operational independence, the clause cannot be interpreted to mean that Congress has plenary authority to lodge disciplinary power on any other organ other than the Ombudsman.

I also agree with the concurring opinion of Justice Carpio on the September 4, 2012 decision of this court that there are different degrees of independence among the offices enumerated by the Constitution. Congress is empowered to determine through subsequent legislation the standards and legislative parameters of the independence of certain constitutional offices.

The 1987 Constitution provides two distinct types of independence as defined in its provisions. The first type of independence is constitutionally enshrined. This means that it can neither be subject to any interference by other branches of government nor can Congress pass laws that abridge or impair its fundamental independence. This independence is of such a degree and nature that the very essence of the constitutional body provides for a definitive barrier against legislative or executive intervention. This is the type of independence enjoyed by the Constitutional Commissions,[45] the Office of the Ombudsman,[46] and – to a certain extent – the Commission

on Human Rights.[47]

The second type of independence refers to the Constitution itself allowing Congress to define the functions that will ensure the independence of specific government offices or agencies. For instance, unlike the provisions with respect to the Ombudsman, the Constitution provides that the National Economic Development Authority[48] and the Central Bank[49] will be created and further defined by law.

III

The treatment of the Office of the Special Prosecutor is, however, different. In my view, the Office of the Special Prosecutor may by law be removed by the President. This is what Section 8, Paragraph (2) of the Ombudsman Act provides.

This conclusion can be seen simply by examining the provisions of Article XI of the Constitution. There are two constitutional organs created: the Office of the Ombudsman and the Tanodbayan, which is the current Office of the Special Prosecutor:

Section 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.

Section 6. The officials and employees of the Office of the Ombudsman, other than the Deputies, shall be appointed by the Ombudsman, according to the Civil Service Law.

Section 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. (Emphasis provided)

Section 5 of Article XI provides that the composition of the Office of the Ombudsman includes the Office of the Ombudsman, the overall Deputy Ombudsman for Luzon, Visayas, and Mindanao as well as a separate Deputy for the military establishment. Section 6 of Article XI states that the other officials and employees of the Office of the Ombudsman, outside of the Deputies, shall be appointed by the Ombudsman in accordance with the Civil Service Law. Section 7 of Article XI provides that what was then known as the Tanodbayan shall now be known as the Office of the Special Prosecutor. It is allowed to exercise its powers as provided by law except those explicitly provided for in the 1987 Constitution.

Section 7 even distinguishes between all the other officials and employees of the Ombudsman and that of the Office of the Special Prosecutor.

The Office of the Ombudsman's powers are more proactive than the prosecutorial powers of the Office of the Special Prosecutor. This can be seen in the enumeration of her powers in the Constitution. Thus, in Article XI, Section 13:

Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) 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.

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

- (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
- (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts and transactions entered into by this office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
- (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
- (6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
- (7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
- (8) Promulgate its rules and procedure and exercise such other powers or perform such functions or duties as may be provided by law.

By clear constitutional design, the Tanodbayan or the Office of the Special Prosecutor is separate from the Office of the Ombudsman. Section 7 is explicit on this point, in that the Office of the Special Prosecutor is allowed to exercise its powers, except for those conferred on the Office of the Ombudsman. While the Office of the Special Prosecutor is not automatically a part of the Office of the Ombudsman, there is, however, no reason that Congress and the President may, by law and in their political wisdom, attach the Office of the Special Prosecutor with the Office of the Ombudsman. There is also no constitutional prohibition for the Office of the Special Prosecutor to be functionally separate from the Office of the Ombudsman. This is a matter to be addressed by the political departments. This may also be viewed as a check of both Congress and the President on the powers of the Ombudsman.

By clear provision of the Constitution, it is only the Office of the Ombudsman, which includes her Deputies, that is endowed with constitutional independence. The inclusion of the Office of the Special Prosecutor with the Office of the Ombudsman in Section 3 of Republic Act No. 6770 does not ipso facto mean that the Office of the Special Prosecutor must be afforded the same levels of constitutional independence as that of the Ombudsman and the Deputy Ombudsman. The law simply defines how the Office of the Special Prosecutor is attached and, therefore, coordinated with the Office of the Ombudsman.

Thus, the provision of Section 8, Paragraph (2) of Republic Act No. 6770 which provides for the power of the President to remove the Special Prosecutor is valid and constitutional.

IV

This opinion should not be seen as a sweeping dismissal or acquittal of the liability of petitioner Gonzales due to the unconstitutionality of Section 8, Paragraph (2) of the Ombudsman Act as far as the Office of the Deputy Ombudsman is concerned. Petitioner Gonzales must still be held accountable for his actions. His actions as described in the report and in the decision of the Office of the President are troubling. There is need to continue the investigation so that the public may finally find closure concerning these incidents.

Understandably, the Office of the President wanted to act with due and deliberate dispatch on this case based on a provision of law which it interpreted to be valid and constitutional. It acted with the best of motives. But grand intentions cannot replace constitutional design. Even “daang matuwid” requires that the right course of action must be effectively and efficiently done in the right way.

I vote to declare that Section 8, Paragraph (2) of the Ombudsman Act, insofar as the Deputy Ombudsman is subjected to the disciplinary power of the Office of the President, is unconstitutional. Petitioner Gonzales may, however, still be subject to investigation and discipline by the Ombudsman herself. I also vote that, given the facts, there was substantial evidence of betrayal of public trust on the part of petitioner Gonzales.

ACCORDINGLY, the motion for partial reconsideration should be denied.

[1] Rollo, pp. 514-535 (G.R. No. 196231).

[2] Rep. Act No. 6770 (1989), sec. 8, par. (2):

Section 8. Removal; Filling of Vacancy. —

x x x x

(2) A Deputy, or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

[3] Rollo, p. 272 (G.R. No. 196231), First Report of the Incident Investigation and Review Committee on the August 23, 2010 Rizal Park Hostage-taking Incident: Sequence of Events, Evaluation and Recommendations, September 16, 2010.

[4] OMB-P-A-08-0670-H for: Grave Misconduct

[5] Rollo, pp. 92-97 (G.R. No. 196231), decision, Office of the Ombudsman, Annex D-2.

[6] Id. at 73-74, decision in OP Case No. 10-J-460, Office of the President.

[7] Id. at 73.

[8] Id. at 74.

[9] Id.

[10] Id. at 87.

[11] Id. at 74.

[12] Rollo, p. 300, First Report of the Incident Investigation and Review Committee on the August 23, 2010 Rizal Park Hostage-taking Incident: Sequence of Events, Evaluation and Recommendations, September 16, 2010.

[13] Id.

[14] Id. at 137-202.

[15] Id. at 80-85, decision, Office of the President; See also rollo, p. 300 (G.R. No. 196231), First Report of the Incident Investigation and Review Committee on the August 23, 2010 Rizal Park Hostage-taking Incident: Sequence of Events, Evaluation and Recommendations, September 16, 2010.

[16] Consti., art. XI, sec. 13:

The Office of the Ombudsman shall have the following powers, functions, and duties:

1. 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.

2. Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

3. Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

x x x x

7. Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

[17] Consti., art. XI, sec. 13, par. (2).

[18] Rollo, pp. 6-71 (G.R. No. 196231).

[19] Id. at 72-86, decision, Office of the President, Annex "A."

[20] Rollo, pp 3-25 (G.R. No. 196232).

[21] Id. at 26, order docketed as OP-DC-Case No. 11-B-003, Annex "A."

[22] Gonzales III v. Office of the President of the Philippines, et al. and Barreras-Sulit v. Ochoa, G.R. No. 196231 and G.R. No. 196232, September 4, 2012, 679 SCRA 614. The voting in this decision was the following: Eight (8) voted in favor of the constitutionality of Sec. 8, Par. (2) of Republic Act No. 6770, and six (6) voted against it. Seven (7) Justices concurred in the ponencia of Justice Perlas-Bernabe. The concurring Justices included Chief Justice Sereno, as well as Justices Carpio, Peralta, Del Castillo, Villarama, Jr., Mendoza, and Reyes. Six (6) Justices dissented: These were Justices Velasco, Jr., Leonardo-De Castro, Brion, Bersamin, Abad, and Perez.

[23] Consti., art. VIII, sec. 4 (2):

All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

[24] Rollo, pp. 6-71 (G.R. No. 196231).

[25] Id. at 514-535.

[26] Id. at 515.

[27] G.R. No. 86889, December 4, 1990, 192 SCRA 51.

[28] Id. at 58-59.

[29] 65 Phil. 56 (1937).

[30] Id. at 82.

[31] 491 Phil. 641 (2005).

[32] Id. at 651.

[33] 63 Phil. 139 (1936) (Per J. Laurel, En Banc).

[34] Id. at 156.

[35] Francisco, Jr. v. The House of Representatives, 460 Phil. 830, 892 (2003) citing Civil Liberties Union v. Executive Secretary, G.R. No. 83896, February 22, 1991, 194 SCRA 317; Peralta v. Commission on Elections, 172 Phil. 31 (1978); Ang-Angco v. Castillo, 118 Phil. 1468 (1963).

[36] Consti., art. XI, sec. 9.

[37] Consti., art. XI, sec. 6.

[38] Consti., art. IX-A, sec. 4.

[39] 321 Phil. 604 (1995).

[40] G.R. No. 172635, October 20, 2010, 634 SCRA 135.

[41] Consti., art. X, sec. 4.

[42] Refer to my dissenting opinion in Chavez v. Judicial and Bar Council, G.R. No. 202242, April 16, 2013, 696 SCRA 469 citing Civil Liberties Union v. Executive Secretary, G.R. No. 83896, February 22, 1991, 194 SCRA 317 and C. CURTIS, LIONS UNDER THE THRONE 2 (1947).

[43] Civil Liberties Union v. Executive Secretary, G.R. No. 83896, February 22, 1991, 194 SCRA 317.

[44] C. CURTIS, LIONS UNDER THE THRONE 2 (1947).

[45] Consti., art. IX-A, sec. 1: The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

[46] Consti., art. XI, 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.

[47] Consti., art. XIII, sec. 17: 1. There is hereby created an independent office called the Commission on Human Rights.

[48] Consti., art. XII, sec. 9: The Congress may establish an independent economic and planning agency headed by the President, which shall, after consultations with the appropriate public agencies, various private sectors, and local government units, recommend to Congress, and implement continuing integrated and coordinated programs and policies for national development.

Until the Congress provides otherwise, the National Economic and Development Authority shall function as the independent planning agency of the government.

[49] Consti., art. XII, sec. 20: The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

Until the Congress otherwise provides, the Central Bank of the Philippines operating under existing laws, shall function as the central monetary authority.

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