

OFFICE OF THE OMBUDSMAN, PETITIONER, V. COL. NOEL P. MISLANG, RESPONDENT.

G.R. No. 207926. October 15, 2018

Ponente: TIJAM, J.

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TIJAM, J.:

This Petition for Review on Certiorari[1] under Rule 45 assails the October 15, 2012 Decision[2] and June 7, 2013 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 120603, which reversed and set aside the Office of the Ombudsman's Joint Decision[4] dated May 9, 2011 in:

- OMB-L-A-05-0201-C (Cecilia S. Luna v. Vicente P. Valera and Col. Noel P. Mislang);
- OMB-L-A-05-0202-C (Eduardo Barcelona v. Vicente P. Valera, Col. Noel P. Mislang, Mauro Durwin and Florencio Baharin); and
- OMB-L-A-05-0309-D (Elena V Rosqueta v. Vicente P. Valera, Col. Noel P. Mislang, Mauro Durwin and Florencio Baharin), all for Grave Misconduct.

The Office of the Ombudsman (petitioner) had dismissed the charges against Vicente P. Valera (Valera). Petitioner, however, found Col. Noel P. Mislang (respondent), Mauro Durwin (Durwin) and Florencio Baharin (Baharin) guilty of Grave Misconduct and meted them the penalty of dismissal from the service.[5] When respondent appealed to the CA via Rule 43, the CA reversed and set aside the joint decision of the petitioner on the ground of *res judicata* via the presently assailed decision and resolution denying reconsideration thereof.[6] The CA found that respondent had been subjected to a General Court Martial at the Philippine Army Headquarters, whereby respondent was adjudged not guilty of the charges in an Order dated February 7, 2007, for the very same acts alleged in the complaints and on the same evidence.[7]

Antecedent Facts

Respondent Mislang who was the Commanding Officer of the 41st Infantry Battalion, Philippine Army (PA), along with Valera, the then Governor of the Province of Abra, and agents Durwin and Baharin of the Military Intelligence Group were all charged with Grave Misconduct before the Office of the Ombudsman for allegedly hatching a plot to kill the former Mayor of Lagayan, Abra, Cecilia S. Luna (Luna) and her family; and in relation to the shooting of complainants Corporal Eduardo Barcelona (Barcelona) and Corporal Antonio Rosqueta (Rosqueta) of the 41st Infantry Battalion, PA, where the latter was mortally wounded, for the following:

- complaint-affidavit dated March 8, 2005 of Luna;
- complaint-affidavit dated March 11, 2005 of Barcelona, 41st Infantry Battalion, PA; and
- complaint-affidavit dated April 13, 2005 of Elena V. Rosqueta.[8]

According to Barcelona, he and Rosqueta (now deceased) regularly reported to respondent for both official and

unofficial, as well as legal and illegal, instructions. Respondent allegedly gave each of them a .45 caliber pistol in April 2004, and directed them to tail and assassinate Mayor Luna. For the said purpose, they were also provided seed money by the respondent. Barcelona and Rosqueta also met with respondent's so-called assets, Durwin and Baharin.[9]

In June 2004, respondent allegedly ordered the inclusion of Mayor Luna's two sons, Ryan and Jendrick, in the assassination plot. In July 2004, respondent brought Barcelona and Rosqueta, and another supposed lackey of respondent, Corporal John Pablo to the place where the assassination was to be done. The murders were supposed to take place during a birthday party. The self-confessed hired gunmen also claimed to have conversed with Valera, who was allegedly privy to the scheme. The planned assassination was, however, not carried out because of the absence of Ryan and Jendrick at the event.[10]

The failed assassination plot allegedly enraged respondent. Barcelona and Rosqueta were placed on Absence Without Leave (AWOL) status in December 2004, as they began distancing themselves from the respondent. Subsequently, Respondent also allegedly ordered the assassination of Barcelona and Rosqueta, who in turn filed a complaint with the Intelligence Security Group in Fort Bonifacio against respondent on December 17, 2004.[11] Meanwhile, Durwin and Baharin contacted Barcelona and Rosqueta for a meeting. On their way to a party in Isabela Province, Durwin and Baharin shot Rosqueta to death and seriously wounded Barcelona who nonetheless survived.[12]

Meanwhile, on March 8, 2004, Barcelona and Rosqueta submitted their affidavits relative to respondent's part in the assassination plot.[13] Respondent did not submit a counter-affidavit to refute the charges against him.

While petitioner found insufficient evidence to hold Valera administratively liable[14], it nonetheless deemed the evidence substantial enough to conclude that respondent, together with agents Durwin and Baharin, were guilty of unlawful behavior in relation to their office.[15]

Consequently on May 9, 2011, the petitioner issued its Joint Decision, which disposed as follows:

WHEREFORE, premises considered:

1. The charges for Grave Misconduct against respondent VICENTE P. VALERA are hereby DISMISSED.
2. Respondents COLONEL NOEL MISLANG, Battalion Commander, 41st Infantry Battalion, Philippine Army, MAURO DURWIN, Agent, Military Intelligence Group, and FLORENCIO BAHARIN, Agent, Military Intelligence Group, are hereby found GUILTY of GRAVE MISCONDUCT and are accordingly METED OUT the penalty of DISMISSAL FROM THE SERVICE.

The Commanding General, Philippine Army, or his duly authorized representative is hereby directed to immediately implement this Decision.

SO ORDERED.[16]

On the same date, petitioner issued an Order[17] for the execution of respondent's dismissal from the service.

Aggrieved, respondent sought recourse before the CA without first moving for reconsideration the petitioner's Joint Decision.[18] Neither the petitioner nor the complainants filed a comment on the petition before the CA.[19]

Considering that no comment on the petition was filed before it, the CA considered respondent's assertion that neither copies of the complaint--affidavits, nor any order from the petitioner to file his counter-affidavits were received by him. The CA took notice of the manifestations and motions filed by the respondent before the petitioner, alternatively asking either to be furnished copies of the complaints or seeking the dismissal of the

administrative cases for violation of due process and his right to a speedy disposition of his cases. Respondent contended that he was not made a party to the proceedings.

On June 16, 2009, or four years after the complaints were filed before the petitioner, respondent's former counsel Atty. Leonardo P. Tamayo wrote a letter to Hon. Emilio A. Gonzales III, Deputy Ombudsman for Military and Other Law Enforcement Office (MOLEO), informing the latter that several complaints based on the same evidence supporting the complaints filed before the petitioner had also been filed against the respondent before the General Court Martial, PA; that while pending preliminary investigation before the petitioner, the General Court Martial took cognizance of the complaints, arraigned the respondent, heard the cases and rendered an Order on February 7, 2007 declaring respondent "Not Guilty".[20]

The records also disclosed a letter[21] dated November 11, 2010 of Director Wilbert Candelaria (Dir. Candelaria), Public Assistance and Corruption Prevention Office, Office of the Deputy Ombudsman for Luzon, informing respondent's counsel that OMB-L-A-05-0202-C and OMB-L-C-05-0276-C were already dismissed as of September 24, 2010; while OMB-L-A-05-0201-C, OMB-L-C-05-0275-C, OMB-L-A-05-0309-D, and OMB-L-C-05-0409-D were still undergoing preliminary investigation and administrative adjudication.

On October 15, 2012, the CA issued the presently assailed decision. Reasoning that the rule of "res inter alios acta alteri nocere non debet"[22] applies in this case, the CA observed that the evidence relied upon by the petitioner were the affidavits of Barcelona and Rosqueta, implicating the respondent in a supposed conspiracy through their admissions of illegal activities. In this regard, the CA found no independent or extraneous evidence to prove conspiracy.

The CA also found that the General Court Martial, PA, had jurisdiction over the complaints against the respondent, citing the Memorandum of Agreement[23] (MOA) dated January 28, 2004 between the Armed Forces of the Philippines (AFP) and the Office of the Ombudsman, delineating the lines of disciplinary authority between them. The appellate court thus ruled that the decision of the General Court Martial finding respondent "Not Guilty" became res judicata to the effect that the petitioner was precluded from further acting on the same complaints investigated, tried, and deliberated upon by the military court under the following charges:

CHARGE I: Violation of the 96th Article of War.

(Conduct Unbecoming of an Officer and a Gentleman)

Specification I: In that LTC NOEL P. MISLANG 0-9155 INF (GSC) PA during his incumbency as the Commanding Officer of the 41st Infantry Battalion, 5th Infantry Division, Philippine Army, a person subject to military law, did, sometime in April 2004 before the National and Local Election, at the province of Abra, wrongfully and unlawfully issued an order to Cpl Eduardo A Barcelona 805092 (Inf) PA and Pfc Antonio R Rosqueta 792505 (Inf) PA, intelligence operatives of 41st Infantry Battalion, 5th Infantry Division, Philippine Army, to assassinate Mayor Cecil Luna, and her family, of Lagayan, Abra. Contrary to law.

CHARGE II: Violation of the 97th Article of War.

(Neglects to the Prejudice of Good Order and Military Discipline)

Specification I: In that LTC NOEL P. MISLANG 0-9155 INF (GSC) PA, while being the Commanding Officer of the 41st Infantry Battalion, 5th Infantry Division, Philippine Army, a person subject to military law, did, for the period covering June 2004 to November 2004, fail to institute prompt disciplinary actions against his erring personnel namely: Cpl Eduardo A Barcelona 805092 (Inf) PA and Pfc Antonio R Rosqueta 792505 (Inf) PA, intelligence operatives of 41st Infantry Battalion, 5th Infantry Division, Philippine Army, knowing them to be involved in illegal activities. Contrary to law.[24]

The petitioner is now before this Court arguing that *res judicata* is inapplicable in this case, and insisting that the factual findings in its May 9, 2011 Joint Decision are supported by substantial evidence, and thus conclusive upon the reviewing authority.

Issue

Did the CA correctly set aside the Office of the Ombudsman's Joint Decision dated May 9, 2011?

Petitioner insists that the same was based on substantial evidence and points out that it may render its decision in administrative disciplinary cases based only on the affidavits and documents constituting the evidence on record, as it had done so in this case.[25]

Furthermore, petitioner argues that it has jurisdiction over the complaints against respondent notwithstanding the General Court Martial's exercise of its concurrent jurisdiction over the same acts subject of the complaints.[26]

Finally, petitioner now argues that respondent violated the principle of exhaustion of administrative remedies in filing his petition for review before the CA without prior resort to a motion for reconsideration before the Ombudsman. Petitioner also asserts that respondent failed to attach a copy of the assailed May 9, 2011 Joint Decision to respondent's petition that was filed before the CA, which allegedly should have been fatal to respondent's appeal.[27]

The Court's Ruling

Addressing the alleged procedural errors first, this Court finds no merit in petitioner's contention that respondent's Rule 43 petition before the CA should have been dismissed outright. The inference that the assailed Joint Decision was not attached to the petition lodged before the CA cannot be made simply from petitioner's bare assertion that the wrong document was attached to its copy of the petition furnished by the respondent. It does not necessarily follow that the CA was not furnished a correct copy of the appealed Joint Decision. A plain reading of the CA's decision would show that it apparently had a copy of the subject May 9, 2011 Joint Decision, as it even cited the same in its footnotes.[28] The CA then was not deprived the opportunity to fully review the appealed Joint Decision. Petitioner also could have manifested and resolved this matter before the appellate court. It is now too late in the day to make a fatal issue of it before this Court.

The argument that respondent failed to exhaust administrative remedies by not filing a motion for reconsideration prior to appealing his case before the CA also fails to persuade. The doctrine of exhaustion of administrative remedies is not absolute.[29] The exceptions include instances when there is a violation of due process, as well as when the issue involved is purely a legal question.[30] Recall that respondent alleged that he was not furnished copies of the complaints despite repeated manifestations and motions lodged before the petitioner, requesting that he be furnished so that he could file his counter-affidavits and position paper. Due process concerns had been put in issue before the CA. Also raised on appeal was the legal effect of respondent's "acquittal" before the General Court Martial on the pending complaints before the Ombudsman, undoubtedly a legal question. There was thus sufficient basis to dispense with a prior motion for reconsideration.

On the question of jurisdiction, it is beyond dispute that the Ombudsman[31] and the General Court Martial of the AFP have concurring or coordinate jurisdiction over administrative disciplinary cases involving erring military personnel, particularly over violations of the Articles of War that are service-connected.[32] We briefly revisit the nature of court-martial proceedings for context.

In discussing the suppletory application of the Revised Penal Code to court-martial proceedings insofar as those not provided in the Articles of War and the Manual for Courts-Martial, this Court had clarified that a court-martial

is a court, and the prosecution of an accused before it is a criminal and not an administrative case.[33] Nonetheless, in threshing out the court-martial's jurisdiction and the nature of offenses committed by military personnel under the Articles of War, this Court also emphasized its administrative disciplinary character, viz:

Article 96 of the Articles of War provides:

ART. 96. Conduct Unbecoming an Officer and Gentleman. - Any officer, member of the Nurse Corps, cadet, flying cadet, or probationary second lieutenant, who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

We hold that the offense for violation of Article 96 of the Articles of War is service-connected. This is expressly provided in Section 1 (second paragraph) of R.A. No. 7055. It bears stressing that the charge against the petitioners concerns the alleged violation of their solemn oath as officers to defend the Constitution and the duly-constituted authorities. Such violation allegedly caused dishonor and disrespect to the military profession. In short, the charge has a bearing on their professional conduct or behavior as military officers. Equally indicative of the "service-connected" nature of the offense is the penalty prescribed for the same—dismissal from the service—imposable only by the military court. Such penalty is purely disciplinary in character, evidently intended to cleanse the military profession of misfits and to preserve the stringent standard of military discipline.[34] (Emphasis in the original).

The peculiarity and import of court-martial proceedings was explained thus:

Military law is sui generis (Calley v. Callaway, 519 F.2d 184 [1975]), applicable only to military personnel because the military constitutes an armed organization requiring a system of discipline separate from that of civilians (see Orloff v. Willoughby, 345 U.S. 83 [1953]). Military personnel carry high-powered arms and other lethal weapons not allowed to civilians. History, experience, and the nature of a military organization dictate that military personnel must be subjected to a separate disciplinary system not applicable to unarmed civilians or unarmed government personnel.

A civilian government employee reassigned to another place by his superior may question his reassignment by asking a temporary restraining order or injunction from a civil court. However, a soldier cannot go to a civil court and ask for a restraining or injunction if his military commander reassigns him to another area of military operations. If this is allowed, military discipline will collapse.[35]

Being sui generis, court-martial proceedings contemplate both the penal and administrative disciplinary nature of military justice. In view of its administrative disciplinary aspect which court-martial proceedings share with the petitioner, both have the concurrent authority to dismiss respondent from the service. "In administrative cases involving the concurrent jurisdiction of two or more disciplining authorities, the body in which the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising concurrent jurisdiction".[36]

Having settled that point, this Court proceeds to debunk respondent's theory that by virtue of the MOA of January 28, 2004, the General Court Martial had exclusive jurisdiction over the instant case because it is non-graft and corruption related.

Both the CA and the respondent take the view that petitioner acted without authority in issuing its Joint Decision because the MOA of January 28, 2004 between petitioner and the AFP delineated their lines of disciplinary authority, such that non-graft and corruption cases against military personnel are to be endorsed by petitioner to the AFP. Petitioner, on the other hand, argues that the MOA does not set aside its disciplinary power as Ombudsman, arguing that adherence to the MOA is expected but not required. Petitioner insists that because the complaints were directly filed before it, its jurisdiction had already vested.

It bears stressing that the January 28, 2004 MOA was not, and could not have been, an abrogation of the Ombudsman's plenary jurisdiction over complaints against public officials or employees for illegal, unjust, improper or inefficient acts or omissions. "[T]he jurisdiction of a court over the subject matter of the action is a matter of law and may not be conferred by consent or agreement of the parties".[37]

A plain reading of the MOA would indicate that it was executed to avoid conflicting decisions and wastage of government resources through proper coordination. The MOA itself expressly recognizes petitioner's primary jurisdiction,[38] even as it foresaw the need for jointly conducting inquiries and/or fact-finding investigations between the petitioner and the AFP, assisted by the Commission on Audit if need be, with respect to graft and corruption cases.[39] It even reserved petitioner's authority to determine what law was violated in cases directly lodged before it, including the provisions of the Articles of War.[40] What it does provide is that, should a case be filed before it and it finds that it is non-graft or corruption-related, then it is to be endorsed to the AFP. The purpose of the proviso is coordination and avoidance of conflicting parallel investigations.

When the January 28, 2004 MOA provided that non-graft cases against military personnel shall be endorsed by petitioner to the disciplinary authority of the AFP[41], it had done so as a matter of efficiency and in recognition of the latter's concurrent jurisdiction over the same offenses and its vast resources for the conduct of investigations, including military intelligence. [C]oncurrence of jurisdiction does not allow concurrent exercise of jurisdiction. This is the reason why we have the rule that excludes any other concurrently authorized body from the body first exercising jurisdiction. This is the reason why forum shopping is malpractice of law.[42]

The records disclose that the AFP had first acquired jurisdiction and that petitioner should have taken notice of such fact after having been apprised of it on June 16, 2009.[43] This would not have been an abrogation of its jurisdiction, but adherence to the principle of concurrence of jurisdiction that was operationally recognized by the January 28, 2004 MOA.

The earliest complaint-affidavit filed before the petitioner was dated March 8, 2005[44], whereas the respective Sinumpaang Salaysay of Rosqueta and Barcelona were executed on December 17, 2004[45] at the Philippine Army Headquarters, clearly ahead of the former. While the AFP's specification of charges were proffered later or in May of 2005[46], it appears that as early as January 13, 2005[47], the respondent was already reassigned pending investigation preliminary to court-martial trial proper. The AFP fielded senior military officers to investigate the allegations against respondent and to secure the affidavits of enlisted personnel, officers, and others linked to the controversy.[48] As a result, Lt. Col. Remy R. Maglaya submitted his Investigation Report to the Army Inspector General on January 31, 2005.[49] The AFP having first acquired jurisdiction, petitioner should have refrained from further acting on the complaints.

We find that in this case, the AFP General Court Martial's exercise of jurisdiction is to the exclusion of the Ombudsman exercising concurrent jurisdiction. Necessarily, the present petition must be denied.

Even assuming that petitioner validly exercised its jurisdiction, this Court cannot agree that petitioner's Joint Decision was grounded on substantial evidence. We note that petitioner failed to accord respondent administrative due process. There is nothing on the record to show that respondent was furnished with, or had otherwise received a copy of the complaint-affidavits on which petitioner's Joint Decision was based. Thus, it cannot be said that respondent had a fair opportunity to squarely and intelligently answer the accusations therein or to offer any rebuttal evidence thereto.

In *Office of the Ombudsman v. Reyes*,[50] this Court has emphasized that "[a] judgment in an administrative case that imposes the extreme penalty of dismissal must not only be based on substantial evidence but also rendered with due regard to the rights of the parties to due process." Pertinently:

[D]ue process in administrative proceedings requires compliance with the following cardinal principles: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved.[51] (Emphasis in the original)

Petitioner's contention that it may decide cases based solely on the affidavits without need of formal hearing, is correct. However, there is nothing on the record that would refute respondent's assertion that he had not been able to submit counter-affidavit or a position paper to present his side because he was not furnished copies of the complaints despite repeated manifestations and motions. As the opportunity to consider and appreciate the respondent's counter-statement of facts was denied him, the Court agrees that the CA was hard-pressed to consider the evidence against the respondent as substantial.

In *Primo C. Miro v. Maarilyn Mendoza Vda. De Erederos, et al.*,[52] it is settled that:

[F]indings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence. Their factual findings are generally accorded with great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction.

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This rule on conclusiveness of factual findings, however, is not an absolute one. Despite the respect given to administrative findings of fact, the CA may resolve factual issues, review and re-evaluate the evidence on record and reverse the administrative agency's findings if not supported by substantial evidence. Thus, when the findings of fact by the administrative or quasi-judicial agencies (like the Office of the Ombudsman/Deputy Ombudsman) are not adequately supported by substantial evidence, they shall not be binding upon the courts.[53]

Keeping in mind that:

Under Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court a quo. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory.[54] (Emphasis in the original)

The question of whether or not substantial evidence exists to hold the respondent liable for the charge of grave misconduct is one of fact, but a review is warranted considering the conflicting findings of fact of the Deputy Ombudsman and of CA.

Applying the rule on *res inter alios acta alteri nocere non debet*, the CA noted that the petitioner relied solely on the allegations in the complaint-affidavits of the two self-confessed killers-for-hire to implicate respondent as a co-conspirator. This rule prescribes that the act or declaration of the conspirator relating to the conspiracy and during its existence may be given in evidence against co-conspirators provided that the conspiracy is shown by independent evidence aside from the extrajudicial confession.[55] In this case, the CA found no corroborative evidence of conspiracy, direct or circumstantial. Petitioner, on the other hand, argues that its administrative proceedings are not bound by technical rules of procedure and evidentiary rules.

Notably, petitioner's factual conclusions were indeed based solely on the allegations in the complaint-affidavits.

Compounding this observation with the fact that respondent was not furnished copies of the complaint-affidavits as would have afforded him the opportunity to present his side, the CA cannot be faulted for concluding that petitioner's Joint Decision was not supported by substantial evidence. Generally, "while administrative or quasi-judicial bodies, such as the Office of the Ombudsman, are not bound by the technical rules of procedure, this rule cannot be taken as a license to disregard fundamental evidentiary rules; the decision of the administrative agencies and the evidence it relies upon must, at the very least, be substantial." [56]

As the Court explained in *Miro v. Mendoza*:

The evidence presented must at least have a modicum of admissibility for it to have probative value. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. [57]

WHEREFORE, considering the foregoing discussion, the petition is hereby DENIED.

SO ORDERED.

Bersamin[*] (Acting Chairperson), Del Castillo, and J. Reyes, Jr., [**] JJ., concur.
Gesmundo, [***] J., on leave.

[*] Designated as Acting Chairperson of the First Division per Special Order No. 2606, dated October 10, 2018.

[**] Designated as Additional Member per Raffle dated September 24, 2018, vice Associate Justice Francis H. Jardeleza.

[***] Designated as Additional Member per Special Order No. 2607, dated October 10, 2018; on leave.

[1] Rollo, pp. 10-47.

[2] Penned by Associate Justice Stephen C. Cruz, and concurred in by Associate Justices Franchito N. Diamante and Myra V. Garcia-Fernandez. Id. at 53-66.

[3] Id. at 70-71.

[4] Id. at 73-84.

[5] Id. at 83.

[6] Id. at 66.

[7] Id. at 59-60.

[8] Id. at 74-75.

[9] Id. at 54 and 75.

[10] Id. at 54, 76-77,

[11] Id. at 112.

[12] Id. at 54-55.

[13] Id. at 79.

[14] Id. at 82.

[15] Id.

[16] Id. at 83.

[17] Id. at 54.

[18] Id. at 17, 40-42.

[19] Id. at 17 and 58.

[20] Id. at 108-109, 119.

[21] Id. at 58-59 and 106.

[22] Things done between strangers ought not to injure those who are not parties to them. (Black's Law Dictionary, 5[th] ed., 1178).

[23] Rollo, pp. 60-63.

[24] Id. at 59-60.

[25] Id. at 23 and 36.

[26] Id. at 31 and 37-38.

[27] Id. at 40 and 42-43.

[28] Id. at 53, 55 and 65.

[29] *Maglalang v. Philippine Amusement and Gaming Corp.*, 723 Phil. 546, 557 (2013).

[30] Id.

[31] R.A. No. 6770 (The Ombudsman Act of 1989).

[32] C.A. No. 408, in relation to R.A. No. 7055; *Lt. Gonzales v. Gen. Abaya*, 530 Phil. 189 (2006).

[33] *Maj. Gen. Garcia (ret.) v. Executive Secretary, et al.*, 692 Phil. 114, 138 (2012).

[34] *Lt. Gonzales v. Gen. Abaya*, *Supra* note 32, id. at 210-211.

[35] Id. at 214.

[36] *Office of the Ombudsman v. Rodriguez*, 639 Phil. 312, 321 (2010).

[37] *Metromedia Times Corp. v. Pastorin*, 503 Phil. 288, 301 (2005).

[38] 1. Treatment of Cases:

1.1 The OMB-MOLEO, having the primary jurisdiction to investigate and prosecute cases involving members of the Armed Forces of the Philippines, shall take cognizance of cases filed directly before its Office by any person, both natural and juridical, including those endorsed or forwarded to it by the OESPA and the Commission on Audit; (Emphasis supplied).

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[39] 1.3 The OMB-MOLEO and the OESPA (to be assisted by COA as the need arises), can individually or jointly initiate and/or conduct inquiry and/or fact-finding investigation on reports of alleged graft and corruption

activities committed by any officer or member of the Armed Forces of the Philippines;

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[40] 1.8 The OMB-MOLEO shall have the authority to determine what law was violated by respondent(s) officer and/or personnel of the Armed Forces of the Philippines, including provisions of the Articles of War;

[41] 1.9 The OMB-MOLEO shall hear and decide administrative complaints/cases related to graft and corruption. Non-graft and corruption-related complaints/cases shall be endorsed by the OMB-MOLEO to the Major Service Commander concerned/Area Commands/AFP Wide Support Service Units, and the OESPA. (Emphasis supplied).

[42] Separate Opinion of Justice Perez in *Biraogo v. The Phil. Truth Commission* of 2010, 651 Phil. 374, 608 (2010).

[43] Rollo, pp. 108-109, 119.

[44] *Id.* at 74.

[45] *Id.* at 112.

[46] *Id.* at 110.

[47] *Id.* at 114.

[48] *Id.*

[49] *Id.*

[50] 674 Phil. 416, 434 (2011).

[51] *Id.* at 432.

[52] 721 Phil. 772 (2013).

[53] *Id.* at 784.

[54] *Id.* at 787.

[55] *Tamargo v. Awingan, et al.*, 624 Phil. 312, 327 (2010).

[56] *Primo Miro v. Mendoza*, *Supra* note 52 at 796.

[57] *Id.* at 796, citing *Lepanto Consolidated Mining Co. v. Dumapis, et al.*, 584 Phil. 100, 111 (2008).

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