

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. SANDIGANBAYAN (SECOND DIVISION) AND RICO REY S. HOLGANZA, RESPONDENTS.

G.R. No. 232737. October 02, 2019

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

Through this Petition for Certiorari[1] under Rule 65 of the Rules of Court, petitioner People of the Philippines, represented by the Office of the Special Prosecutor (prosecution), seeks to annul the Resolutions dated December 14, 2016[2] and May 25, 2017[3] of the Sandiganbayan Second Division (Sandiganbayan) which dismissed the criminal case against respondent Rico Rey S. Holganza (Holganza) on the ground of violation of the right to speedy disposition of his case. The Sandiganbayan dismissed the criminal case after finding that it took the Office of the Ombudsman Visayas (Ombudsman-Visayas) a period of 12 years and 10 months to conclude its preliminary investigation and file the corresponding information in court.

The Facts

For the benefit of its homeless and underprivileged constituents, the City of Cebu implemented a medium-rise, low-cost condominium project. Local newspapers, however, reported that this condominium project was allegedly attended by irregularities such as the lack of approval from the Commission on Audit (COA) for the City's negotiation of a deed of exchange with the lot owners where the condominium project was built, the absence of a duly-licensed condominium corporation, the late issuance of certificates of occupancy and the disqualification of the actual occupants as entitled beneficiaries.[4]

On November 25, 1998, and upon the request of the Ombudsman-Visayas, COA Regional Office No. VII directed the Cebu City Auditor to conduct a fact-finding inquiry on the condominium project.[5]

On April 19, 2000, the COA Regional Office No. VII submitted its verified fact-finding report and a value for money audit report to the Ombudsman-Visayas.[6] The fact-finding inquiry was thereafter upgraded and docketed as criminal and administrative cases[7] against several respondents including City Mayor Alvin Garcia (Mayor Garcia) and the members of the Prequalification Bids and Awards Committee (PBAC), which included Holganza.[8]

On July 4, 2000, the Ombudsman-Visayas ordered respondents to file their counter-affidavits.[9] Some of the respondents[10] moved that they be furnished with the verified complaint filed by the COA as what was furnished them was only a copy of the COA fact-finding report.[11] In its Order dated October 6, 2000, the Ombudsman-Visayas treated the verified COA fact-finding report as the complaint and, thus, reiterated its order for respondents to file their counter-affidavits.[12]

Through a Resolution dated March 20, 2002, the Graft Investigation Officer recommended the filing of information against Mayor Garcia, the members of the PBAC and the head of the City's Division for the Welfare of the Urban Poor.[13]

Pertinent to the members of the PBAC, probable cause for violation of Section 3(e) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act was found against them for granting the contract to build the condominium project to OCTA Builders, Inc., despite the latter not being accredited to undertake construction projects exceeding P3,000,000.00 which may have led to its failure to provide for a structurally sound building thus causing damage to the City. The Resolution was approved by the Deputy Ombudsman for Visayas on August 14, 2002.[14]

The dispositive portion of the Resolution dated March 20, 2002 reads:

WHEREFORE, premises considered, there being probable cause to engender a well-founded belief that a violation of Sec. 3(e) of the Anti-Graft Law may have been committed, and that respondents Alvin B. Garcia, Laurito M. Malinao, Rodolfo Cabrera, Rico Rey F. Holganza, Eustaquio B. Cesa, and Pura Cimafranca, being members of the PBAC, as well as Mr. Noel B. Artes, Head of the DWUP, are probably guilty thereof, let the corresponding information be filed in the Sandiganbayan. Likewise, there being probable cause to engender a well-founded belief that a violation of Sec. 3(f) of RA 3019 had been committed and that respondent Alvin Garcia is probably guilty thereof, let the corresponding information be filed in the Sandiganbayan.

As to the other respondents, the case against them is hereby dismissed for lack of probable cause.

SO RESOLVED.[15]

On June 20, 2005, then Ombudsman Simeon V. Marcelo approved the Resolution with a handwritten notation "as modified by OLA Memo dated 8 Oct. xxx [illegible]."[16] This notation pertained to the Ombudsman's Office of Legal Affairs (OLA) Memorandum dated October 8, 2004 recommending that insofar as the violation of Section 3(f) is concerned against Mayor Garcia, the same should be modified to Section 3(g) of R.A. No. 3019.[17]

Nevertheless, the filing of information did not come to pass as then Ombudsman Marcelo, in the meantime, resigned without the Resolution having been finalized. When then Ombudsman Merceditas Gutierrez (Ombudsman Gutierrez) assumed post, the Resolution allegedly underwent another hierarchy of review. When Ombudsman Gutierrez resigned in 2011 and then Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales) took her place, the Resolution supposedly underwent another review.[18]

On October 16, 2012, Graft Investigation and Prosecution Officer issued a Review recommending the filing of the information against the respondents, as follows:[19]

WHEREFORE, premises considered, it is respectfully recommended that [Information] be immediately FILED (1) against respondents Mayor Alvin B. Garcia, Laurito M. Malinao, Rodolfo Cabrera, Rico Rey F. Holganza, Eustaquio B. Cesa and Pura Cimafranca for violation of Sec. 3(e) of R[A] 3019; (2) against respondent Noel B. Artes for violation of Sec. 3(e) of R[A] 3019; and (3) against respondent Mayor Alvin B. Garcia for violation of Sec. 3(g) of RA 3019).[20]

Finally, on May 31, 2013, Ombudsman Carpio Morales approved the information which were filed before the Sandiganbayan on June 24, 2013.

The accusatory portion of the Information for violation of Section 3(e) of R.A. No. 3019, docketed as SB-13-CRM-0737, is as follows:

SB-13-CRM-0737

That on or about the 23[rd] day of January 1997, or sometime prior or subsequent thereto, in Cebu City, Philippines, and within the jurisdiction of this Honorable [C]ourt, above-named accused ALVIN B. GARCIA, being then the City Mayor of Cebu City, LAURITO M. MALINAO, RODOLFO V. CABRERA, RICO REY F. HOLGANZA being then the City Councilors of Cebu City and EUSTAQUIO B. CESA, being then the City

Treasurer of Cebu City, all high ranking public officials, and PURA CIMA FRANCA, a private individual, being an NGO Representative, who are all members of the Pre-qualification, Bids and Awards Committee (PBAC), in such capacities and committing the offense while in the performance of their official functions, confederating together and mutually helping and conniving with each other, with evident bad faith and manifest partiality, did then and there [willfully], unlawfully and criminally cause undue injury to the Government and gave unwarranted preference, benefit and advantage to Octa Builders, Inc., by awarding the contract for the construction of the condominium project of Cebu City costing TWENTY SIX MILLION SIX HUNDRED FORTY THOUSAND PESOS (Php 26,640,000.00), in favor of Octa Builders, Inc., despite the fact that: (1) the contracted amount was determined unilaterally by the proponent Octa Builders, Inc., (2) the contracted amount was pegged without an Approved Agency Estimate (AAE); (3) the award of the said infrastructure project was made without conducting a competitive public bidding; (4) the said contract was awarded without prior approval of the Cebu City Development Council; (5) the award was made without publication; (6) the aforesaid contract price was 49.5% more than the Cost Estimate of SEVENTEEN MILLION EIGHT HUNDRED FOURTEEN THOUSAND SIX HUNDRED SEVENTY[-] ONE PESOS and FORTY-FIVE CENTAVOS (Php 17,814,671.45) of the Commission on Audit (COA); (7) the contractor, Octa Builders, Inc. was not qualified as it lacked the requisite capital, experience and license to undertake said construction, it having been incorporated on November 15, 1996, barely two (2) years from its existence as a contractor with an authorized capital stock of Php 10,000,000.00, with only Php 2,500,000.00 thereof as subscribed and only Php 625,000.00 as actually paid up; and (8) the same firm did not comply with the other mandatory legal requirement of performance bond, to the damage and prejudice of the Government.

CONTRARY TO LAW.[21]

Holganza then filed an Omnibus Motion on July 2, 2013 for the remand of the case to the Ombudsman for preliminary investigation and to hold in abeyance the proceedings before the Sandiganbayan as regards him until the outcome of the new preliminary investigation.[22] Holganza averred that when the Ombudsman-Visayas directed the filing of counter-affidavits on the COA complaint in 2000, he was no longer a member of the Sangguniang Panlungsod as he was deemed resigned when he ran, but lost, in the May 1998 elections.[23] As such, Holganza alleged that he did not receive a copy of the COA fact-finding report nor was he given the opportunity to submit his counter-affidavit.[24] He claimed that he never knew that there was a complaint against him until he read in the newspaper that the information had actually been filed.

The Sandiganbayan granted Holganza's Omnibus Motion in its Resolution dated August 6, 2013, and accordingly, the criminal case against Holganza was remanded to the Ombudsman for preliminary investigation.[25]

Accordingly, the Office of the Special Prosecutor, on July 2, 2014, directed Holganza to submit his counter-affidavit and furnished him a copy of the COA fact-finding report. On July 18, 2014, Holganza assailed the Special Prosecutor's authority to conduct the preliminary investigation. This issue was subsequently clarified on August 4, 2014, and Holganza was directed anew to submit his counter-affidavit which he did on August 19, 2014.[26]

On September 29, 2014, Holganza filed his supplemental counter-affidavit invoking his right to speedy disposition of cases and reckoned the delay from the time the Ombudsman-Visayas commenced the preliminary investigation in 2000.[27]

Two years after, or on September 29, 2016, Holganza moved before the Sandiganbayan for the dismissal of the criminal case against him on the ground of inordinate delay.[28] Holganza pointed out that it took the Ombudsman-Visayas a period of 12 years and 10 months, reckoned from August 7, 2000, when respondents were required to file their counter-affidavits, to June 24, 2013, when the information was filed with the Sandiganbayan, to conclude the preliminary investigation. He further emphasized that it has so far taken the Office of the Special

Prosecutor another two years and yet, has not resolved the preliminary investigation as to him.[29]

The Sandiganbayan's Resolutions

On December 14, 2016, the Sandiganbayan issued its presently assailed Resolution granting Holganza's motion to dismiss.

The Sandiganbayan held that the length of delay should be reckoned from the time of the filing of the initiatory complaint which, in this case, was on August 7, 2000 or the date when Holganza and his co-respondents were ordered to submit their counter-affidavits.

At any rate, the Sandiganbayan held that there would still be inordinate delay even if the period were to be reckoned from the filing of Holganza of his counter-affidavit on August 19, 2014 for purposes of reinvestigation. The Sandiganbayan disregarded the prosecution's claim that the voluminous records that originated from the Ombudsman-Visayas and the physical transfer of the Special Prosecutor's office contributed to the delay. Instead, it observed that Holganza's main defense was similar to the defense raised by his co-respondents which had already been passed upon by the Ombudsman-Visayas. The Sandiganbayan, thus, concluded that the two-year period it has so far taken the Office of the Special Prosecutor for the reinvestigation already constitutes inordinate delay.

In disposal, the Sandiganbayan ruled:

WHEREFORE, the motion is GRANTED.

Accordingly, Criminal Case No. SB-13-CRM-0737 with respect to accused [Holganza] for violation of Section 3(e) of R.A. No. 3019, as amended, is hereby DISMISSED. Let the bail bond posted by the accused for his provisional liberty be ordered cancelled and returned to him subject to the usual accounting and auditing rules and procedures. The hold-departure order against the accused is also hereby ordered LIFTED. Accordingly, let a copy of this resolution be furnished the Bureau of Immigration.

SO ORDERED.[30]

The prosecution's motion for reconsideration met similar denial from the Sandiganbayan through its Resolution dated May 25, 2017.[31]

Thus, the present certiorari petition.

The Issue

Review is urged on the ground that the Sandiganbayan gravely abused its discretion when it dismissed the criminal case against Holganza for inordinate delay when such conclusion was allegedly reached by mere mathematical computation of the period of delay without considering the facts and circumstances of the case. The prosecution points out that Holganza admitted that he became aware of the case against him only after the filing of the information and that as to him, there was as yet no case filed in 2000 as he was never furnished a copy of the COA fact-finding report which served as the complaint nor was he directed to submit his counter-affidavit.[32] He was also deemed to have waived the invocation of the right to speedy disposition of his case when he himself moved for the remand of the case for the conduct of a preliminary investigation.[33]

Grave abuse of discretion is further attributed against the Sandiganbayan in holding that the two-year period it has since taken the Office of the Special Prosecutor to conduct the reinvestigation was unjustified, reasoning that the case involved voluminous records that originated from the Ombudsman-Visayas.

Plainly, the issue to be resolved is whether the Sandiganbayan gravely abused its discretion when it dismissed the

criminal case against Holganza for violation of his right to speedy disposition of his case.

The Ruling of the Court

We dismiss the petition.

The prosecution principally bewails the inclusion of the period of the preliminary investigation that was commenced on August 7, 2000 in determining inordinate delay. For the prosecution, the delay, if at all, should have been reckoned from the time the case was remanded to the Ombudsman for reinvestigation on August 19, 2014.

The prosecution also argues that Holganza was not prejudiced by the delay as he never actually knew of the preliminary investigation in 2000 and that he waived his right to speedy disposition of his case when he sought reinvestigation.

Far from being novel, these same objections had been raised and resolved by the Court in *Torres v. Sandiganbayan*.^[34]

It is useful to recall that the factual antecedents in *Torres* involved a preliminary investigation for violation of R.A. No. 3019 in connection with the purchase of drugs and medicine in the Philippine Navy which was commenced against then Commodore Lamberto Torres in 1996. The cases were dismissed against Torres for lack of probable cause.

In 2006, a new preliminary investigation relative to the other transactions in other units and offices of the Philippine Navy was conducted. A new affidavit complaint was filed against Torres for violation of R.A. No. 3019. Torres, however, was not informed of this new preliminary investigation because notices were sent to his old address. The information was subsequently filed in 2011 as a result of this new preliminary investigation.

Still, Torres did not know of his pending cases until a hold departure order was issued against him by the Sandiganbayan. Prompted by this discovery, Torres moved for reinvestigation. Accordingly, the Sandiganbayan deferred the proceedings and ordered a new preliminary investigation as to him.

At the reinvestigation, Torres filed his counter-affidavit and moved that the case against him be dismissed for violating his right to due process and speedy trial due to inordinate delay. When the Ombudsman denied his motion, he moved to quash the information based on the same grounds before the Sandiganbayan. Torres' motion to quash was, however, denied by the Sandiganbayan.

When the denial of his motion to quash reached the Court on certiorari, the prosecution raised the following arguments:

In its Comment, respondent People of the Philippines prays for the dismissal of the petition, arguing that [Torres] 's constitutional rights to speedy disposition of cases and to due process were not violated. Respondent stresses that, prior to 2006, [Torres] had no case to speak of since it was only in 2007 when the Ombudsman recommended his indictment. It differentiated COA's audit investigation from 1993 to 1996 as administrative in nature, from the preliminary investigation from 1996 to 2006 for the cases which were dismissed in favor of [Torres], and from the preliminary investigation conducted from 2006 to 2011 where [Torres] 's involvement was established.^[35]

In determining the length of delay, the Court included not only the period that transpired during the reinvestigation and the preliminary investigation held in 2006, but further included the first preliminary investigation in 1996, considering that both sets of investigations emanated from the same COA audit report that the Ombudsman had more than ample time to review, thus:

While it may be argued that there was a distinction between the two sets of investigations conducted in 1996 and 2006, such that they pertain to distinct acts of different personalities, it cannot be denied that the basis for both sets of investigations emanated from the same COA Special Audit Report No. 92-128, which was issued as early as June 18, 1993. Thus, the Ombudsman had more than enough time to review the same and conduct the necessary investigation while the individuals implicated therein, such as herein petitioner, were still in active service.

Even assuming that the COA Special Audit Report No. 92-128 was only turned over to the Ombudsman on December 11, 1996 upon the filing of the Affidavit of the COA Auditors, still, it had been in the Ombudsman's possession and had been the subject of their review and scrutiny for at least eight (8) years before Tanodbayan Marcelo ordered the conduct of a preliminary investigation, and at least sixteen (16) years before the Ombudsman found probable cause on February 25, 2010.[36]

The Court, in *Torres*, citing *Coscolluela v. Sandiganbayan*,[37] likewise dismissed the prosecution's claim that *Torres* suffered no prejudice because he was actually never informed of the proceedings in this wise:

As for the prejudice caused by the delay, respondents claim that no prejudice was caused to [*Torres*] from the delay in the second set of investigations because he never participated therein and was actually never even informed of the proceedings anyway. We cannot agree with this position. A similar assertion was struck down by this court in *Coscolluela*, to wit:

Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual. In the context of the right to a speedy trial, the Court in *Corpuz v. Sandiganbayan* x x x illumined:

A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an ad hoc basis.

xxx Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

x x x x

Adopting respondents' position would defeat the very purpose of the right against speedy disposition of cases. Upholding the same would allow a scenario where the prosecution may deliberately exclude certain individuals from the investigation only to file the necessary cases at another, more convenient time, to the prejudice of the accused. Clearly, respondents' assertion is subject to abuse and cannot be countenanced.

In the present case, [*Torres*] has undoubtedly been prejudiced by virtue of the delay in the resolution of the cases filed against him. Even though he was not initially included as a respondent in the investigation conducted from 1996 to 2006 pertaining to the "overpricing of medicines" procured through emergency purchase, he has already been deprived of the ability to adequately prepare his case considering that he may no longer have any access to

records or contact with any witness in support of his defense. This is even aggravated by the fact that [Torres] had been retired for fifteen (15) years. Even if he was never imprisoned and subjected to trial, it cannot be denied that he has lived under a cloud of anxiety by virtue of the delay in the resolution of his case.[38] (Citations omitted; emphases and underscoring in the original; italics supplied)

Anent the argument that Torres waived his right to a speedy disposition of cases, the Court took note of the fact that Torres timely invoked this right when he filed his counter-affidavit during the reinvestigation in 2014, and consequently ruled:

There is no question that [Torres] asserted his right to a speedy disposition of cases at the earliest possible time. In his Counter-Affidavit filed before the Ombudsman during the reinvestigation of the case in 2014, petitioner had already argued that dismissal of the case is proper because the long delayed proceedings violated his constitutional right to a speedy disposition of cases. This shows that petitioner wasted no time to assert his right to have the cases against him dismissed.[39]

We find no cause to depart from the foregoing pronouncements for the following reasons:

First, the Sandiganbayan did not commit grave abuse of discretion when, in determining whether or not the delay was inordinate, it considered the period it had taken the Ombudsman to commence (i.e., August 7, 2000) and terminate the first preliminary investigation and to file the information (i.e., June 24, 2013), which period already spanned the length of 12 years and 10 months.

There is no merit in the prosecution's contention that the period of delay should be reckoned merely from the reinvestigation in 2014. The purpose of the reinvestigation is to complete the preliminary investigation as to Holganza in conformity with the dictates of due process being that the right to preliminary investigation is a substantive and not merely a procedural right.[40] Reinvestigation is permitted under the Ombudsman Rules of Procedure,[41] as follows:

RULE II
PROCEDURE IN CRIMINAL CASES

x x x x

Section 7. Motion for reconsideration -

a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where information has already been filed in court; [and]

b) The filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion, x x x

As such, a reinvestigation does not operate to obliterate the proceedings already had by the Ombudsman and does not bar the filing of information or disturb the information already filed. In this case, the reinvestigation merely gave Holganza the opportunity to be heard which he claimed have been denied him. Meantime, the information which was already filed against him as a result of the finding of a probable cause in the resolution subject of his motion for reinvestigation remained unaffected by the Sandiganbayan's grant of reinvestigation, only that the proceedings are, in the meantime, held in abeyance pending the result of such reinvestigation.

Further, similar to Torres, the basis of the preliminary investigation conducted in 2000, that is, the COA Audit Report, was the same basis of the reinvestigation in 2014 as regards Holganza. Thus, there is no reason to separate

the former from the latter.

Second, the Sandiganbayan did not commit grave abuse of discretion in holding that the case against Holganza should be dismissed due to inordinate delay in violation of his right to a speedy disposition of his case.

The speedy disposition of cases before all judicial, quasi-judicial, or administrative bodies is a right Constitutionally-guaranteed to all persons.[42] Juxtaposed with the right to speedy trial, the right to a speedy disposition of cases is a right commonly invoked in fact-finding investigations and preliminary investigations conducted by the Ombudsman because while these proceedings do not form part of the criminal prosecution proper[43] the respondent may already be prejudiced by such proceedings,[44] and equally because the Ombudsman itself is Constitutionally committed to act promptly on complaints filed before it.[45]

In the recent case of *Cagang v. Sandiganbayan*,[46] the Court laid down certain guidelines in resolving issues concerning inordinate delay, summed as follows:

(1) The right to speedy disposition of cases is different from the right to speedy trial.

The former may only be invoked in criminal prosecutions against courts of law while the latter may be invoked before any tribunal as long as the respondent may already be prejudiced by the proceeding.

(2) For purposes of determining inordinate delay, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation.

(3) Courts must determine which party carries the burden of proof.

If it has been alleged that there was delay within the time periods (i.e., according to the time periods that will be issued by the Ombudsman), the burden is on the defense to show that there has been violation of their rights to speedy disposition of case or to speedy trial. The defense must prove: (a) that the case took much longer than was reasonably necessary to resolve; and (b) that efforts were exerted to protect their constitutional rights.

If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay. The prosecution must prove: (a) that it followed the prescribed procedure in the conduct of preliminary investigation and case prosecution; (b) the delay was inevitable due to the complexity of the issues and volume of evidence; and (c) accused was not prejudiced by the delay.

(4) Determination of the length of delay is never mechanical.

Courts must consider the entire context of the case, the amount of evidence and the complexity of issues involved. An examination of the delay is no longer necessary to justify the dismissal of the case if the prosecution of the case was solely motivated by malice.

(5) The right to speedy disposition of cases (or the right to speedy trial) must be timely raised.

The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods, otherwise, they are deemed to have waived their right.

In the case at bar, the complaint was filed, and Holganza was required to submit his counter-affidavit thereon on July 4, 2000. The information was filed on June 24, 2013 and a reinvestigation was further granted by the Sandiganbayan on August 6, 2013. In an Order dated July 7, 2014, Holganza was required to file his counter-affidavit, which he did on August 19, 2014. Despite this, the reinvestigation remained pending.

There being no fixed period for the conduct and termination of preliminary investigation in the Office of the Ombudsman, the gauge of whether the time taken for preliminary investigation was reasonable under the

circumstances should be used.

"Reasonable time" to resolve a proceeding is not determined by mere mathematical computation, but must be "appraised from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case." [47] A number of factors must also be taken into account, such as: (1) the time required to investigate the complaint and to file the information; (2) the happening of unforeseen circumstances, such as unavoidable postponements or force majeure; (3) the complexity of the issues involved; and (4) the conduct of the lawyers. [48]

In the instant case, the issue before the Ombudsman is fairly straightforward, i.e., whether or not respondents are probably guilty of violating R.A. No. 3019 for giving unwarranted benefit to Octa Builders, Inc., in awarding the contract for the construction of the condominium projects despite certain perceived irregularities. Neither does it appear that the investigation involved voluminous documents nor that any unforeseen circumstance transpired as to warrant a protracted resolution of the case. Thus, reckoned from August 7, 2000 until the filing of Holganza's motion to dismiss, the length of time which spanned a period of approximately 14 years and 10 months, hardly qualifies as reasonable under the obtaining circumstances.

Considering that the period taken to conduct the preliminary investigation was excessive, the prosecution bears the burden of proving that the delay was justified.

To justify the delay, the prosecution averred that the case records had to be transferred from the Ombudsman-Visayas and that, in addition, the Office of the Special Prosecutor was physically transferred from the Sandiganbayan building to the central office of the Ombudsman in Agham Road, Quezon City.

These justifications, however, are rather flimsy to be convincing. It bears stressing that the unnecessary delay transpired not only during the period of reinvestigation, but during the preliminary investigation because of the supposed "hierarchy of review" that the proposed resolution had to repeatedly undergo under several Ombudsmen. Quite glaringly, the prosecution did not bother to elaborate; on what necessitated or constituted this repeated "hierarchy of review." Upon the other hand, the physical transfer of offices is not a valid justification it being a "lame excuse not to have resolved the matter at the earliest opportunity." [49]

The absence of prejudice was neither successfully proven by the prosecution. As held in *Torres*, the mere fact that the respondent was unaware of the proceedings against him does not mean he or she was not prejudiced thereby. To rule otherwise would invite abuse as when the prosecution may deliberately exclude certain individuals only to file the cases at another time.

There is likewise no waiver on the part of Holganza in asserting his right to a speedy disposition of his case. Having learned of the case against him only in 2014, Holganza could not be reasonably expected to move for its dismissal at an earlier time. The Court finds that Holganza timely invoked his right when he submitted his supplemental counter-affidavit.

In sum, the delay in the preliminary investigation, reckoned from the filing of the complaint on August 7, 2000, was beyond the reasonable period for the determination of probable cause. In the absence of a sufficient justification for the delay and in view of the timely invocation of the right to speedy disposition of a case, the dismissal of the criminal case against Holganza for inordinate delay should be upheld.

WHEREFORE, the petition is DISMISSED. The Resolutions dated December 14, 2016 and May 25, 2017 of the Sandiganbayan Second Division which dismissed Crim. Case No. SB-13-CRM-0737 with respect to Rico Rey S. Holganza are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

[*] Also referred to as "Rico Rey Francis S. Holganza" in some parts of the rollo.

[1] Rollo, pp. 3-27.

[2] Penned by then Associate Justice Samuel R. Martires (now the Ombudsman), with Associate Justices Michael Frederick L. Musngi and Geraldine Faith A. Econg, concurring; rollo, pp. 30-38.

[3] Penned by Associate Justice Oscar C. Herrera, Jr., with Associate Justices Michael Frederick L. Musngi and Lorifel L. Pahimna, concurring; id. at 40-43.

[4] Id. at 138-139.

[5] Id. at 69.

[6] Id. at 7.

[7] Id. at 134.

[8] Id.

[9] Id. at 132-133.

[10] Namely, Alvin Garcia, Renato V. Osmeña, Rogelio V. Osmefia, Laurito M. Malinao, Antonio B. Sanchez, Noel B. Artes and Leo M. Alviola (id. at 134.)

[11] Id.

[12] Id. at 134-135.

[13] Resolution dated March 20, 2002; id. at 137-166.

[14] Id.

[15] Id. at 166.

[16] Id.

[17] Id. at 104.

[18] Id. at 8.

[19] Id. at 70.

[20] Id. at 105.

[21] Id. at 9.

[22] Id. at 68-75

[23] Id. at 70.

[24] Id. at 71.

[25] Id. at 76.

[26] Id. at 10.

[27] Id.

[28] Id. at 44-63

[29] Id. at 50.

[30] Id. at 38.

[31] Supra note 2.

[32] Id. at 14.

[33] Id. at 15.

[34] 796 Phil. 856 (2016).

[35] Id. at 862-863.

[36] Id. at 867-868.

[37] 714 Phil. 55, 65 (2013).

[38] Supra note 34, at 870-872.

[39] Id. at 870.

[40] *Aguinaldo v. Ventus*, 755 Phil. 536, 549 (2015).

[41] Administrative Order No. 07 dated April 10, 1990 as amended by Administrative Order No. 15, dated February 16, 2000 < https://www.ombudsman.gov.ph/docs/adminorders/Administrative_Order_No_07.pdf >

[42] CONSTITUTION, Art. III, Sec. 16. This section provides:

"All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies."

[43] *Cagang v. Sandiganbayan*, G.R. No. 206438, July 31, 2018.

[44] Id.

[45] CONSTITUTION, Art. XI, Sec. 12. This section provides:

"The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against 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."

[46] Supra note 43.

[47] Supra note 43.

[48] Id.

[49] *People v. Sandiganbayan*, 791 Phil. 37, 58 (2016).

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