

GEORGE UY, PETITIONER, VS. THE HON. SANDIGANBAYAN, THE HON. OMBUDSMAN AND THE HON. ROGER C. BERBANO, SR., SPECIAL PROSECUTION OFFICER III, OFFICE OF THE SPECIAL PROSECUTOR, RESP...

G.R. Nos. 105965-70. March 20, 2001

Ponente: PUNO, J.

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PUNO, J.:

Before the Court is the Motion for Further Clarification filed by Ombudsman Aniano A. Desierto of the Court's ruling in its decision dated August 9, 1999 and resolution dated February 22, 2000 that the prosecutory power of the Ombudsman extends only to cases cognizable by the Sandiganbayan and that the Ombudsman has no authority to prosecute cases falling within the jurisdiction of regular courts.

The Court stated in its decision dated August 9, 1999:

"In this connection, it is the prosecutor, not the Ombudsman, who has the authority to file the corresponding information/s against petitioner in the regional trial court. The Ombudsman exercises prosecutorial powers only in cases cognizable by the Sandiganbayan."

It explained in the resolution of February 22, 2000 that:

"(t)he clear import of such pronouncement is to recognize the authority of the State and regular provincial and city prosecutors under the Department of Justice to have control over prosecution of cases falling within the jurisdiction of the regular courts. The investigation and prosecutorial powers of the Ombudsman relate to cases rightfully falling within the jurisdiction of the Sandiganbayan under Section 15 (1) of R.A. 6770 ("An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for other purposes") which vests upon the Ombudsman "primary jurisdiction over cases cognizable by the Sandiganbayan..." And this is further buttressed by Section 11 (4a) of R.A. 6770 which emphasizes that the Office of the Special Prosecutor shall have the power to "conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan." Thus, repeated references to the Sandiganbayan's jurisdiction clearly serve to limit the Ombudsman's and Special Prosecutor's authority to cases cognizable by the Sandiganbayan."

Seeking clarification of the foregoing ruling, respondent Ombudsman raises the following points:

(1)

"The jurisdiction of the Honorable Sandiganbayan is not parallel to or equated with the broader jurisdiction of the Office of the Ombudsman;

(2)

The phrase "primary jurisdiction of the Office of the Ombudsman over cases cognizable by the Sandiganbayan" is not a delimitation of its jurisdiction solely to Sandiganbayan cases; and

(3)

The authority of the Office of the Special Prosecutor to prosecute cases before the Sandiganbayan cannot be confused with the broader investigatory and prosecutorial powers of the Office of the Ombudsman."

Thus, the matter that needs to be discussed herein is the scope of the power of the Ombudsman to conduct preliminary investigation and the subsequent prosecution of criminal offenses in the light of the provisions of the Ombudsman Act of 1989 (Republic Act [RA] 6770).

We held that the Ombudsman is clothed with authority to conduct preliminary investigation and to prosecute all criminal cases involving public officers and employees, not only those within the jurisdiction of the Sandiganbayan, but those within the jurisdiction of the regular courts as well.

The authority of the Ombudsman to investigate and prosecute offenses committed by public officers and employees is founded in Section 15 and Section 11 of RA 6770. Section 15 vests the Ombudsman with the power to investigate and prosecute any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient, thus:

"Sec. 15. Powers, Functions and Duties.--The Office of the Ombudsman shall have the following powers, functions and duties:

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

x x x"

Section 11 grants the Office of the Special Prosecutor, an organic component of the Office of the Ombudsman under the latter's supervision and control, the power to conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan. It states:

"Sec. 11. Structural Organization.-- x x x

x x x

(3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his prosecution staff. The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman.

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

(a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;

(b) To enter into plea bargaining agreements; and

(c) To perform such other duties assigned to it by the Ombudsman."

The power to investigate and to prosecute granted by law to the Ombudsman is plenary and unqualified. It pertains to any act or omission of any public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. The law does not make a distinction between cases cognizable by the Sandiganbayan and those cognizable by regular courts. It has been held that the clause "any illegal act or omission of any public official" is broad enough to embrace any crime committed by a public officer or employee.[1]

The reference made by RA 6770 to cases cognizable by the Sandiganbayan, particularly in Section 15 (1) giving the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan, and Section 11 (4) granting the Special Prosecutor the power to conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan, should not be construed as confining the scope of the investigatory and prosecutory power of the Ombudsman to such cases.

Section 15 of RA 6770 gives the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan. The law defines such primary jurisdiction as authorizing the Ombudsman "to take over, at any stage, from any investigatory agency of the government, the investigation of such cases." The grant of this authority does not necessarily imply the exclusion from its jurisdiction of cases involving public officers and employees cognizable by other courts. The exercise by the Ombudsman of his primary jurisdiction over cases cognizable by the Sandiganbayan is not incompatible with the discharge of his duty to investigate and prosecute other offenses committed by public officers and employees. Indeed, it must be stressed that the powers granted by the legislature to the Ombudsman are very broad and encompass all kinds of malfeasance, misfeasance and non-feasance committed by public officers and employees during their tenure of office.[2]

Moreover, the jurisdiction of the Office of the Ombudsman should not be equated with the limited authority of the Special Prosecutor under Section 11 of RA 6770. The Office of the Special Prosecutor is merely a component of the Office of the Ombudsman and may only act under the supervision and control and upon authority of the Ombudsman.[3] Its power to conduct preliminary investigation and to prosecute is limited to criminal cases within the jurisdiction of the Sandiganbayan. Certainly, the lawmakers did not intend to confine the investigatory and prosecutory power of the Ombudsman to these types of cases. The Ombudsman is mandated by law to act on all complaints against officers and employees of the government and to enforce their administrative, civil and criminal liability in every case where the evidence warrants.[4] To carry out this duty, the law allows him to utilize the personnel of his office and/or designate any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him work under his supervision and control.[5] The law likewise allows him to direct the Special Prosecutor to prosecute cases outside the Sandiganbayan's jurisdiction in accordance with Section 11 (4c) of RA 6770.

The prosecution of offenses committed by public officers and employees is one of the most important functions of the Ombudsman. In passing RA 6770, the Congress deliberately endowed the Ombudsman with such power to make him a more active and effective agent of the people in ensuring accountability in public office.[6] A review of the development of our Ombudsman laws reveals this intent.

The concept of Ombudsman originated in Sweden in the early 19th century, referring to an officer appointed by the legislature to handle the people's grievances against administrative and judicial actions. He was primarily tasked with receiving complaints from persons aggrieved by administrative action or inaction, conducting investigation thereon, and making recommendations to the appropriate administrative agency based on his findings. He relied mainly on the power of persuasion and the high prestige of the office to effect his recommendations.[7]

In this jurisdiction, several Ombudsman-like agencies were established by past Presidents to serve as the people's medium for airing grievances and seeking redress against abuses and misconduct in the government. These offices were conceived with the view of raising the standard in public service and ensuring integrity and efficiency in the government. In May 1950, President Elpidio Quirino created the Integrity Board charged with receiving complaints against public officials for acts of corruption, dereliction of duty and irregularity in office, and conducting a thorough investigation of these complaints. The Integrity Board was succeeded by several other

agencies which performed basically the same functions of complaints-handling and investigation. These were the Presidential Complaints and Action Commission under President Ramon Magsaysay, the Presidential Committee on Administration Performance Efficiency under President Carlos Garcia, the Presidential Anti-Graft Committee under President Diosdado Macapagal, and the Presidential Agency on Reform and Government Operations and the Office of the Citizens Counselor, both under President Ferdinand Marcos. It was observed, however, that these agencies failed to realize their objective for they did not enjoy the political independence necessary for the effective performance of their function as government critic. Furthermore, their powers extended to no more than fact-finding and recommending.[8]

Thus, in the advent of the 1973 Constitution, the members of the Constitutional Convention saw the need to constitutionalize the office of an Ombudsman, to give it political independence and adequate powers to enforce its recommendations.[9] The 1973 Constitution mandated the legislature to create an office of the Ombudsman to be known as Tanodbayan. Its powers shall not be limited to receiving complaints and making recommendations, but shall also include the filing and prosecution of criminal, civil or administrative case before the appropriate body in case of failure of justice. Section 6, Article XIII of the 1973 Constitution read:

"Sec. 6. The Batasang Pambansa shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil or administrative case before the proper court or body."

Implementing this constitutional provision, President Marcos, on June 11, 1978, exercising his power under Proclamation 1081, enacted Presidential Decree (PD) 1487 creating the Office of the Ombudsman to be known as Tanodbayan. Its principal task was to "investigate, on complaint, any administrative act[10] of any administrative agency[11] including any government-owned or controlled corporation." [12] The Tanodbayan also had the duty to file and prosecute the corresponding criminal, civil, or administrative case before the Sandiganbayan or the proper court or body if he has reason to believe that any public official, employee, or other person has acted in a manner resulting in a failure of justice.[13] It should be noted, however, that the prosecution of cases falling within the jurisdiction of the Sandiganbayan was to be done by the Tanodbayan through the Special Prosecutor who, according to PD 1486,[14] had the exclusive authority to conduct preliminary investigation, file information for and prosecute cases within the jurisdiction of said court. The Special Prosecutor was then under the control and supervision of the Secretary of Justice.[15]

Shortly after its enactment, PD 1487 was amended by PD 1607 which took effect on December 10, 1978. The amendatory law broadened the authority of the Tanodbayan to investigate administrative acts of administrative agencies by authorizing it to conduct an investigation on its own motion or initiative, even without a complaint from any person.[16] The new law also expanded the prosecutory function of the Tanodbayan by creating the Office of the Chief Special Prosecutor in the Office of the Tanodbayan and placing under his direction and control the Special Prosecutor who had the "exclusive authority to conduct preliminary investigation of all cases cognizable by the Sandiganbayan; to file informations therefor and to direct and control the prosecution of said cases therein." [17] Thus, the law provided that if the Tanodbayan has reason to believe that any public official, employee, or other person has acted in a manner warranting criminal or disciplinary action or proceedings, he shall cause him to be investigated by the Office of the Chief Special Prosecutor who shall file and prosecute the corresponding criminal or administrative case before the Sandiganbayan or the proper court or before the proper administrative agency.[18]

On July 18, 1979, PD 1630 was enacted further amending PD 1487 and PD 1607. PD 1630 reorganized the Office of the Tanodbayan and transferred the powers previously vested in the Special Prosecutor to the Tanodbayan

himself. Thus, the Tanodbayan was empowered to directly conduct preliminary investigation, file information and prosecute cases within the jurisdiction of the Sandiganbayan and other courts. The amendment gave the Tanodbayan the exclusive authority to conduct preliminary investigation of all cases cognizable by the Sandiganbayan; to file information therefor and to direct and control the prosecution of said cases.[19] Section 10 of PD 1630 provided:

"Sec. 10. Powers.--The Tanodbayan shall have the following powers:

(a)

He may investigate, on complaint by any person or on his own motion or initiative, any administrative act whether amounting to any criminal offense or not of any administrative agency including any government-owned or controlled corporation;

x x x

(e)

If after preliminary investigation he finds a prima facie case, he may file the necessary information or complaint with the Sandiganbayan or any proper court or administrative agency and prosecute the same."

Section 18 further stated:

"Sec. 18. Prosecution of Public Personnel or Other Person.--If the Tanodbayan has reason to believe that any public official, employee or other person has acted in a manner warranting criminal or disciplinary action or proceedings, he shall conduct the necessary investigation and shall file and prosecute the corresponding criminal or administrative case before the Sandiganbayan or the proper court or before the proper administrative agency."

With the ratification of the 1987 Constitution, a new Office of the Ombudsman was created. The present Ombudsman, as protector of the people, is mandated to 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 to notify the complainants of the action taken and the result thereof.[20] He possesses 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 or transactions entered into by his 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 of procedure and exercise such other powers or perform such functions or duties as may be provided by law."^[21]

As a new Office of the Ombudsman was established, the then existing Tanodbayan became the Office of the Special Prosecutor which continued to function and exercise its powers as provided by law, except those conferred on the Office of the Ombudsman created under the 1987 Constitution.^[22]

The frameworks for the Office of the Ombudsman and the Office of the Special Prosecutor were laid down by President Corazon Aquino in Executive Order (EO) 243 and EO 244, both passed on July 24, 1987.

In September 1989, Congress passed RA 6770 providing for the functional and structural organization of the Office of the Ombudsman. As in the previous laws on the Ombudsman, RA 6770 gave the present Ombudsman not only the duty to receive and relay the people's grievances, but also the duty to investigate and prosecute for and in their behalf, civil, criminal and administrative offenses committed by government officers and employees as embodied in Sections 15 and 11 of the law.

Clearly, the Philippine Ombudsman departs from the classical Ombudsman model whose function is merely to receive and process the people's complaints against corrupt and abusive government personnel. The Philippine Ombudsman, as protector of the people, is armed with the power to prosecute erring public officers and employees, giving him an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees. The legislature has vested him with broad powers to enable him to implement his own actions. Recognizing the importance of this power, the Court cannot derogate the same by limiting it only to cases cognizable by the Sandiganbayan. It is apparent from the history and the language of the present law that the legislature intended such power to apply not only to cases within the jurisdiction of the Sandiganbayan but also those within the jurisdiction of regular courts. The Court observed in the case of *Republic vs. Sandiganbayan*:^[23]

"A perusal of the law originally creating the Office of the Ombudsman then (to be known as the Tanodbayan), and the amendatory laws issued subsequent thereto will show that, at its inception, the Office of the Ombudsman was already vested with the power to investigate and prosecute civil and criminal cases before the Sandiganbayan and even the regular courts.

x x x

Presidential Decree No. 1630 was the existing law governing the then Tanodbayan when Republic Act No.

6770 was enacted providing for the functional and structural organization of the present Office of the Ombudsman. This later law retained in the Ombudsman the power of the former Tanodbayan to investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. x x x."

Finally, it must be clarified that the authority of the Ombudsman to prosecute cases involving public officers and employees before the regular courts does not conflict with the power of the regular prosecutors under the Department of Justice to control and direct the prosecution of all criminal actions under Rule 110 of the Revised Rules of Criminal Procedure. The Rules of Court must be read in conjunction with RA 6770 which charged the Ombudsman with the duty to investigate and prosecute all illegal acts and omissions of public officers and employees. The Court held in the case of *Sanchez vs. Demetriou*[24] that the power of the Ombudsman under Section 15 (1) of RA 6770 is not an exclusive authority but rather a shared or concurrent authority in respect of the offense charged. Thus, Administrative Order No. 8 issued by the Office of the Ombudsman provides:

"The prosecution of case cognizable by the Sandiganbayan shall be under the direct exclusive control and supervision of the Office of the Ombudsman. In cases cognizable by regular Courts, the control and supervision by the Office of the Ombudsman is only in Ombudsman cases in the sense defined (therein).[25] The law recognizes a concurrence of jurisdiction between the Office of the Ombudsman and other investigative agencies of government in the prosecution of cases cognizable by regular courts."

IN VIEW WHEREOF, the Court's ruling in its decision dated August 9, 1999 and its resolution dated February 20, 2000 that the Ombudsman exercises prosecutorial powers only in cases cognizable by the Sandiganbayan is SET ASIDE.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Mendoza, Panganiban, Buena, Gonzaga-Reyes, Ynares-Santiago, and Sandoval-Gutierrez, JJ., concur.

Kapunan, J., I concur in the result.

Quisumbing, J., on leave.

Pardo, J., I dissent. See attached.

De Leon, Jr., J., I join the dissenting opinion of Justice B. P. Pardo.

[1] *Deloso vs. Domingo*, 191 SCRA 545 (1990).

[2] Section 16, RA 6770.

[3] *Zaldivar vs. Sandiganbayan*, 160 SCRA 843 (1988); *Acop vs. Office of the Ombudsman*, 248 SCRA 566 (1995).

[4] Section 13, RA 6770.

[5] Section 31, RA 6770; *Lastimosa vs. Vasquez*, 243 SCRA 497 (1995).

[6] Sponsorship Speech of Senator Edgardo Angara, Senate Bill 543, June 8, 1988.

[7] Rowat, *The Ombudsman Plan. Essays on the Worldwide Spread of an Idea* (1973).

[8] Cortes, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, *Philippine Law Journal*, vol. 57, March 1982, pp. 1-24.

[9] Tuason, *A Commitment to Official Integrity (Background, Rationale and Explanation of Article XIII,*

Sandiganbayan and Tanodbayan), Philippine Law Journal, vol. 48, nos. 4 & 5, September and December 1973, pp. 548-626.

[10] The law defined "administrative act" as "any action including decisions, omissions, recommendations, practices, or procedures of an administrative agency." (Section 9[b], PD 1487).

[11] The law defined "administrative agency" as "any department or other governmental unit including any government-owned or controlled corporation, any official, or any employee acting or purporting to act by reason of connection with the government but it does not include (1) any court or judge, or appurtenant judicial staff, (2) the members, committees, or staffs of the National Assembly, or (3) the President or his personal staff, or (4) the members of the Constitutional Commissions and their personal staffs." (Section 9[a], PD 1487).

[12] Section 10 (a), PD 1487.

[13] Section 17, id.

[14] Creating a Special Court to be known as "Sandiganbayan" and for other Purposes.

[15] Section 12, PD 1486.

[16] Section 10 (a), PD 1607.

[17] Section 17, id.

[18] Section 19, id.

[19] Section 17, PD 1630.

[20] Section 12, Article XI, 1987 Constitution.

[21] Section 13, id.

[22] Section 7, id.

[23] 200 SCRA 667 (1991).

[24] 227 SCRA 627 (1993).

[25] A complaint filed or taken cognizance of by the Office of the Ombudsman charging any public officer or employee including those in government owned or controlled corporations with an act or omission alleged to be illegal, unjust, improper, or inefficient is an Ombudsman case.

DISSENTING OPINION

PARDO, J.:

I am constrained to dissent. Our submission is that the Ombudsman exercises investigatory and prosecutorial powers only in cases cognizable by the Sandiganbayan in its original jurisdiction. The Constitution and the law did not create the office of Ombudsman to be a super prosecutor or fiscal of offenses committed by public officers and employees. That is not the concept of an Ombudsman. His powers are only those expressly granted by the Constitution or the law, nothing more. We explain why.

"The constitution as well as RA 6770,[1] has endowed the Ombudsman with a wide latitude of investigatory and

prosecutory powers virtually free from legislative, executive or judicial intervention" of offenses committed by public officers.[2] Thus, the Ombudsman "has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases." [3]

"The powers, functions and duties of the Office of the Ombudsman are clearly provided in section 13, Article XI of the 1987 Constitution, as follows:

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

`(2) [to] 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.

"xxx xxx xxx

"In line with the aforestated constitutional provisions, then President Corazon C. Aquino signed Executive Order No. 244 limiting the Special Prosecutor's authority, thus:

"Section 2 - The Office of the Special Prosecutor shall exercise powers presently exercised by the Tanodbayan except those conferred on the Office of the Ombudsman under the Constitution.

"Then, too, Section 17 of P.D. No. 1630 provides that:

"The Office of Tanodbayan (now, Office of the Special Prosecutor) shall have the exclusive authority to conduct preliminary investigation of all cases cognizable by the Sandiganbayan...;

"Section 11, subparagraph 4 (c) of R.A. No. 6770, states that:

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

(a) to conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan." [4]

"It is confuted by relevant provisions of the Ombudsman Act of 1989 (RA 6770) which inter alia (1) confers on the Office of the Special Prosecutor- "an organic component of the Office of the Ombudsman under the supervision and control of the Ombudsman"- the power to "conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan" (Sec. 11), and (2) recognizes the primary jurisdiction of the Office of the Ombudsman "over cases cognizable by the Sandiganbayan and (its power) in the exercise of this primary jurisdiction, to take over, at any stage, from any investigatory agency of Government, the investigation of such cases" (Sec. 15). Moreover, pursuant to Department Circular No. 50, dated November 6, 1991, jointly promulgated by Ombudsman Conrado M. Vasquez and Acting Secretary Silvestre Bello III of the Department of Justice, it is the Ombudsman's responsibility and prerogative to approve the resolution of the investigating prosecutor who conducts the preliminary investigation of a crime cognizable by the Sandiganbayan, and to file the corresponding information with said court.

"Also germane is Administrative Order No. 8 of the Ombudsman, dated November 8, 1990, viz:

"For purposes of investigation and prosecution, Ombudsman cases involving criminal offenses may be subdivided into two classes, to wit: (1) those cognizable by the Sandiganbayan, and (2) those falling under the jurisdiction of

the regular courts, the difference between the two, aside, from the category of the courts wherein they are filed is on the authority to prosecute, such cases.

"The power to investigate or conduct a preliminary investigation in any Ombudsman case may be exercised by an investigator or prosecutor of the Office of the Ombudsman, or by any Provincial or city Prosecutor or their assistants, either in their regular capacities or as deputized Ombudsman prosecutors.

"The prosecution of cases cognizable by the Sandiganbayan shall be under the direct exclusive control and supervision of the Office of the Ombudsman. In cases cognizable by the regular courts, the control and supervision by the Office of the Ombudsman is only in Ombudsman cases in the sense defined above. The law recognizes a concurrence of jurisdiction between the Office of the Ombudsman and other investigation agencies of the government in the prosecution of the cases of the government in the prosecution of cases cognizable by regular courts." [5]

(1)

The Ombudsman has exclusive power to conduct preliminary investigations, file and prosecute criminal cases falling within the original jurisdiction of the Sandiganbayan.

"The Office of the Ombudsman has the sole power to `investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.'" [6] The Special Prosecutor, "an organic component of the office of the Ombudsman ** under the supervision and control of the Ombudsman, [7] has the power to conduct preliminary investigation, file and prosecute cases within the jurisdiction of the Sandiganbayan. [8]

In *Zaldivar v. Sandiganbayan*, [9] the Court held that it is the Ombudsman and no other who has the right to conduct preliminary investigations and direct the filing of criminal cases with the Sandiganbayan. The prosecution may be undertaken by the Office of the Special Prosecutor, under the supervision and control of the Ombudsman.

Under the Revised Rules of Criminal Procedure, [10] the Ombudsman has authority to conduct preliminary investigation of all cases and approve the filing of complaint or information cognizable by the Sandiganbayan in the exercise of its original jurisdiction. [11]

(2)

The power of the Ombudsman to investigate cases cognizable by the regular courts is shared with public prosecutors.

The Ombudsman may investigate criminal cases involving public officials regardless of whether the cases fall within jurisdiction of the Sandiganbayan or the regular courts. He may, however, not directly file informations with the regular courts. He must refer the result of his preliminary investigation to the proper city or provincial prosecutor or chief state prosecutor for the filing of the proper information with the regular courts. [12]

(3)

The Ombudsman's power to prosecute is limited to all cases cognizable by the Sandiganbayan. In cases filed with or cognizable by the regular courts, even so called "Ombudsman cases", [13] only public prosecutors have the express power to prosecute such cases.

Generalia specialibus non derogant.- Where there is a particular or special provision in the statute and also a general one, the special provision prevails in the sense that the general provisions cannot derogate from the special. [14] Thus, we construe R.A. 6770, the Ombudsman law. The Ombudsman shall investigate and prosecute

on its own or on complaint by any person, any illegal, unjust, improper or inefficient act or omission of any public officer or employee, office or agency over cases within the original jurisdiction of the Sandiganbayan.

This way, every word contained in Sec. 15, R.A. 6770, is given effect. It is a "well - established rule in legal hermeneutics that in interpreting a statute, care should be taken that every part or word thereof be given effect since the lawmaking body is presumed to know the meaning of the words employed in the statute and to have used them advisedly." [15] The meaning of any law is not to be extracted from any single part or from an isolated clause or sentence. There must be a general consideration of the act as a whole. Every part of the statute must be considered together and kept subservient to the general intent of the enactment, not separately and independently. [16] The cardinal rule in statutory construction is "that the particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible." [17]

Under the Article XI, Section 13 of the Constitution, the powers of the Office of the Ombudsman can be categorized as investigatory, directory and recommendatory. The power to investigate includes only the power to conduct "an inquiry, judicial or otherwise, for the discovery and collection of facts concerning the matter or matters involved." [18] The power to direct involves the power to "guide, order, command or instruct." [19] The power to recommend includes the power to give "advice, exhortation or indorsement, which is essentially persuasive in character, not binding upon the party to whom it is made." [20] this grant of powers by the Constitution is consistent with the function of an "Ombudsman," to wit: "It is an independent, high level officer, who receives complaints, who pursues inquiries into the matters involved and who makes recommendations for suitable action. He makes periodic reports. His remedial weapons are persuasion, criticism and publicity." [21] "[B]eholden to no one, [he] acts as the champion of the people and the preserver of the integrity of public service." [22]

However, the grant of power outside the essential powers prescribed in the Constitution (i.e. investigatory, directory and recommendatory) must be express and strictly construed. [23] Thus, the power to prosecute cases cognizable by regular courts can not be implied. When a power is not essential to the accomplishment of the principal purposes for which that power was created, it cannot be granted by implication. [24]

We note that the while the Ombudsman law [25] grants the Ombudsman the power to prosecute criminal cases within the original jurisdiction of the Sandiganbayan, it is silent as to whether the Ombudsman can prosecute cases within the jurisdiction of the regular courts. The Ombudsman law expressly identifies the Sandiganbayan as the venue where it can exercise prosecutorial powers of cases involving public officers within its original jurisdiction.

Clearly then, the Ombudsman does not have the power to prosecute criminal cases within the original jurisdiction of the regular courts. In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986. [26]

IN VIEW WHEREOF, I vote to DENY the Ombudsman's "Motion For Leave to Admit Motion for Further Clarification."

[1] An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman.

[2] *Espinosa v. Ombudsman*, G.R. No. 135775, October 19, 2000.

- [3] R.A. 6770, Section 15.
- [4] Velasco v. Hon. Casclang, 355 Phil. 815, 828-829 [1998].
- [5] Quiñon v. Sandiganbayan, 338 Phil. 290, 303-304 [1997].
- [6] Espinosa v. Ombudsman, supra, Note 2.
- [7] Quiñon v. Sandiganbayan, supra, Note 5, p. 303.
- [8] R.A. 6770, Section 11 (4) (a); Quiñon v. Sandiganbayan, supra, Note 5.

[9] 160 SCRA 843 [1988].

- [10] Effective December 1, 2000.
- [11] Rule 112, Sec 4, Revised Rules of Criminal Procedure.
- [12] R.A. No. 6770, Sec. 15 (3).
- [13] "Ombudsman cases" are those cases cognizable by the regular courts, not falling under the jurisdiction of the Sandiganbayan but which involves "any act or omission of any public official, employees, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient." (R.A. 6770, Sec. 15[1]) Under Administrative Order No. 8, dated November 8, 1990 of the Office of the Ombudsman, "for purposes of investigation and prosecution, Ombudsman cases involving criminal offenses may be subdivided into two classes, to wit: those cognizable by the Sandiganbayan, and (2) those falling under the jurisdiction of the regular courts." (Gozos v. Tac-an, 300 SCRA 265, 275 [1998]).
- [14] Lichauco v. Apostol, 44 Phil. 138 [1922]; Manila Railroad Co. v. Collector of Customs, 52 Phil. 950 [1929].
- [15] Marsaman Manning Agency, Inc. v. National Labor Relations Commission, 313 SCRA 88, 90 [1999], citing Aparri v. court of Appeals, 127 SCRA 231, 241 [1984].
- [16] Tamayo v. Gsell, 35 Phil. 953 [1916].
- [17] National Tobacco Administration v. Commission on Audit, 311 SCRA 755, 769 [1999].
- [18] Anti-Graft League of the Philippines, Inc. v. Oreta, 99 SCRA 648 [1980].
- [19] Black's Law Dictionary, Fourth Edition, p. 546.
- [20] Cuyegkeng v. Cruz, 108 Phil. 1155 [1960].
- [21] Ruperto G. Martin quoting "The Ombudsman, by Delegate Rodolfo P. Robles of the 1987 Constitutional Convention, p. 1", Law and Jurisprudence on the Freedom Constitution of the Philippines, 1986, Manila, p. 706."
- [22] Espinosa v. Ombudsman, supra, Note 2.
- [23] Hector S. de Leon, The Law on Public Officers and Election Law, Third Edition, 1997, Rex Book Store, Manila, p. 125.
- [24] Lo Cham v. Ocampo, 77 Phil. 635 [1946].
- [25] R.A. No. 6770.
- [26] R.A. No. 8249, Sec. 4.

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