

## **SPECIAL THIRD DIVISION**

**[ G.R. No. 170146, June 08, 2011 ]**

**HON. WALDO Q. FLORES, IN HIS CAPACITY AS SENIOR DEPUTY  
EXECUTIVE SECRETARY IN THE OFFICE OF THE PRESIDENT,  
HON. ARTHUR P. AUTEA, IN HIS CAPACITY AS DEPUTY  
EXECUTIVE SECRETARY IN THE OFFICE OF THE PRESIDENT, AND  
THE PRESIDENTIAL ANTI-GRAFT COMMISSION (PAGC),  
PETITIONERS, VS. ATTY. ANTONIO F. MONTEMAYOR,  
RESPONDENT.**

### **R E S O L U T I O N**

**VILLARAMA, JR., J.:**

This resolves the motion for reconsideration of our Decision dated August 25, 2010 setting aside the October 19, 2005 Decision of the Court of Appeals and reinstating the Decision dated March 23, 2004 of the Office of the President in O.P. Case No. 03-1-581, which found the respondent administratively liable for failure to declare in his 2001 and 2002 Sworn Statement of Assets and Liabilities (SSAL) two expensive cars registered in his name, in violation of Section 7, Republic Act (R.A.) No. 3019 in relation to Section 8 (A) of R.A. No. 6713. The OP adopted the findings and recommendations of the Presidential Anti-Graft Commission (PAGC), including the imposition of the penalty of dismissal from service on respondent, with all accessory penalties.

The motion is anchored on the following grounds:

1. Respondent was subjected to two (2) administrative/criminal Investigations equivalently resulting in violation of his constitutional right against "double jeopardy".
2. Who to follow between conflicting decisions of two (2) government agencies involving the same facts and issues affecting the rights of the Respondent.
3. Respondent's constitutional right to due process was violated.
4. Penalties prescribed by the Honorable Court is too harsh and severe on the alleged offense committed/omitted.<sup>[1]</sup>

On the first ground, the Court finds it bereft of merit. Respondent asserts that since the PAGC charge involving non-declaration in his 2001 and 2002 SSAL was already the subject of investigation by the Ombudsman in OMB-C-C-04-0568-LSC, along with the criminal complaint for unexplained wealth, the former can no longer be pursued without violating the rule on double jeopardy.

Double jeopardy attaches only (1) upon a valid indictment, (2) before a competent court, (3) after arraignment, (4) when a valid plea has been entered, and (5) when the defendant was convicted or acquitted, or the case was dismissed or otherwise terminated without the express consent of the accused.<sup>[2]</sup> We have held that none of these requisites applies where the Ombudsman only conducted a preliminary investigation of the same criminal offense against the respondent public officer.<sup>[3]</sup> The dismissal of a case during preliminary investigation does not constitute double jeopardy, preliminary investigation not being part of the trial.<sup>[4]</sup>

With respect to the second ground, respondent underscores the dismissal by the Ombudsman of the criminal and administrative complaints against him, including the charge subject of the proceedings before the PAGC and OP. It is argued that the Office of the Ombudsman as a constitutional body, pursuant to its mandate under R.A. No. 6770, has primary jurisdiction over cases cognizable by the Sandiganbayan, as against the PAGC which is not a constitutional body but a mere creation of the OP. Under said law, it is the Ombudsman who has disciplinary authority over all elective and appointive officials of the government, such as herein respondent.

The argument is untenable.

The same wrongful act committed by the public officer can subject him to civil, administrative and criminal liabilities. We held in *Tecson v. Sandiganbayan*<sup>[5]</sup>:

[I]t is a basic principle of the law on public officers that a public official or employee is under a three-fold responsibility for violation of duty or for a wrongful act or omission. This simply means that a public officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held *civilly* liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may be punished *criminally*. Finally, such violation may also lead to suspension, removal from office, or other *administrative* sanctions. This administrative liability is separate and distinct from the penal and civil liabilities. (Italics in the original.)

Dismissal of a criminal action does not foreclose institution of an administrative proceeding against the same respondent, nor carry with it the relief from administrative liability.<sup>[6]</sup> *Res judicata* did not set in because there is no identity of causes of action. Moreover, the decision of the Ombudsman dismissing the criminal complaint cannot be considered a valid and final judgment. On the criminal complaint, the Ombudsman only had the power to investigate and file the appropriate case before the Sandiganbayan.<sup>[7]</sup>

In the analogous case of *Montemayor v. Bundalian*,<sup>[8]</sup> this Court ruled:

Lastly, **we cannot sustain petitioner's stance that the dismissal of similar charges against him before the Ombudsman rendered the administrative case against him before the PCAGC moot and academic. To be sure, the decision of the Ombudsman does not operate as *res judicata* in the PCAGC case subject of this review.**

The doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, not to the exercise of administrative powers. Petitioner was investigated by the Ombudsman for his possible criminal liability for the acquisition of the Burbank property in violation of the Anti-Graft and Corrupt Practices Act and the Revised Penal Code. For the same alleged misconduct, petitioner, as a presidential appointee, was investigated by the PCAGC by virtue of the administrative power and control of the President over him. As the PCAGC's investigation of petitioner was administrative in nature, the doctrine of *res judicata* finds no application in the case at bar. (Emphasis supplied.)

Respondent argues that it is the Ombudsman who has primary jurisdiction over the administrative complaint filed against him. Notwithstanding the consolidation of the administrative offense (non-declaration in the SSAL) with the criminal complaints for unexplained wealth (Section 8 of R.A. No. 3019) and also for perjury (Article 183, Revised Penal Code, as amended) before the Office of the Ombudsman, respondent's objection on jurisdictional grounds cannot be sustained.

Section 12 of Article XI of the 1987 Constitution mandated the Ombudsman to act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, instrumentality thereof, including government-owned or controlled corporations. Under Section 13, Article XI, the Ombudsman is empowered to conduct investigations on his own or upon complaint by any person when such act appears to be illegal, unjust, improper, or inefficient. He is also given broad powers to take the appropriate disciplinary actions against erring public officials and employees.

The investigative authority of the Ombudsman is defined in Section 15 of R.A. No. 6770:

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 x (Emphasis supplied.)

Such jurisdiction over public officers and employees, however, is not exclusive.

**This power of investigation granted to the Ombudsman by the 1987 Constitution and The Ombudsman Act is not exclusive but is shared with other similarly authorized government agencies,** such as the PCGG and judges of municipal trial courts and municipal circuit trial courts. The power to conduct preliminary investigation on charges against public employees and officials is likewise concurrently shared with the Department of Justice. Despite the passage of the Local Government Code in 1991, the Ombudsman retains concurrent jurisdiction with the Office of the President and the local *Sanggunians* to investigate complaints against local elective officials.<sup>[9]</sup> (Emphasis supplied.)

Respondent who is a presidential appointee is under the *disciplinary* authority of the OP. Executive Order No. 12 dated April 16, 2001 created the PAGC which was granted the authority to *investigate* presidential and also non-presidential employees "who may have acted in conspiracy or may have been involved with a presidential appointee or ranking officer mentioned x x x."<sup>[10]</sup> On this score, we do not agree with respondent that the PAGC should have deferred to the Ombudsman instead of proceeding with the administrative complaint in view of the pendency of his petition for certiorari with the CA challenging the PAGC's jurisdiction. Jurisdiction is a matter of law. Jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated.<sup>[11]</sup>

It may be recalled that at the time respondent was directed to submit his counter-affidavit under the Ombudsman's Order dated March 19, 2004, the PAGC investigation had long commenced and in fact, the PAGC issued an order directing respondent to file his counter-affidavit/verified answer as early as May 19, 2003. The rule is that initial acquisition of jurisdiction by a court of concurrent jurisdiction divests another of its own jurisdiction.<sup>[12]</sup> Having already taken cognizance of the complaint against the respondent involving non-declaration in his 2001 and 2002 SSAL, the PAGC thus retained jurisdiction over respondent's administrative case notwithstanding the subsequent filing of a supplemental complaint before the Ombudsman charging him with the same violation.

As to the third ground raised by respondent, we find no merit in his reiteration of the alleged gross violation of his right to due process. Records bear out that he was given several opportunities to answer the charge against him and present evidence on his defense, which he stubbornly ignored despite repeated warnings that his failure to submit the required answer/counter-affidavit and position paper with supporting evidence shall be construed as waiver on his part of the right to do so.

The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.<sup>[13]</sup> What is offensive to due process is the denial of the opportunity to be heard.<sup>[14]</sup> This Court has repeatedly stressed that parties who choose not to avail themselves of the opportunity to answer charges against them cannot complain of a denial of due process.<sup>[15]</sup> Having persisted in his refusal to file his pleadings and evidence before the PAGC, respondent cannot validly claim that his right to due process was violated.

In his dissenting opinion, my esteemed colleague, Justice Lucas P. Bersamin, concurred with the CA's finding that respondent's right to due process was violated by the "unilateral investigation" conducted by the PAGC which did not furnish the respondent with a copy of the "prejudicial PAGC resolution." The dissent also agreed with the CA's observation that there was a "rush" on the part of the PAGC to find the respondent guilty of the charge. This was supposedly manifested in the issuance by the PAGC of its resolution even without taking into consideration any explanation and refutation of the charges that he might make, and even before the CA could finally resolve his suit to challenge the PAGC's jurisdiction to investigate him. On the other hand, the dissent proposed that the non-submission by respondent of his counter-affidavit or verified answer as directed by the PAGC should not be taken against him. Respondent's refusal was "not motivated by bad faith, considering his firm belief that PAGC did not have jurisdiction to administratively or disciplinarily investigate him."

We do not share this view adopted by the dissent.

Records reveal that on August 26, 2003, the CA already rendered a decision in CA-G.R. SP No. 77285 dismissing respondent's petition challenging the jurisdiction of the PAGC. Respondent's motion for reconsideration was likewise denied by the CA. Upon elevation to this Court via a petition for review on certiorari (G.R. No. 160443), the petition suffered the same fate. Under the First Division's Resolution dated January 26, 2004, the petition was denied for failure of the petitioner (respondent) to show that the CA committed any reversible error in the assailed decision and resolution. Said resolution became final and executory on April 27, 2004. Thus, at the time respondent submitted his counter-affidavit before the Ombudsman on May 21, 2004, there was already a final resolution of his petition challenging the PAGC's investigative authority.

On the other hand, the PAGC submitted to the OP its September 1, 2003 resolution finding respondent guilty as charged and recommending that he be dismissed from the service, after the expiration of the 60-day temporary restraining order issued on June 23, 2003 by the CA in CA-G.R. SP No. 77285. The OP rendered its Decision adopting the PAGC's findings and recommendation on March 23, 2004. As thus shown, a period of ten (10) months had elapsed from the time respondent was directed to file his counter-affidavit or verified answer to the administrative complaint filed against him, up to the rendition of the OP's decision. It cannot therefore be said that the PAGC and OP proceeded with undue haste in determining respondent's administrative guilt.

Still on respondent's repeated claim that he was denied due process, it must be noted that when respondent received a copy of the OP Decision dated March 23, 2004, his petition for review filed in this Court assailing the CA's dismissal of CA-G.R. SP No. 77285 was already denied under Resolution dated January 26, 2004. However, despite the denial of his petition, respondent still refused to recognize PAGC's jurisdiction and continued to assail the same before the CA in CA-G.R. SP No. 84254, a petition for review under Rule 43 from the OP's March 23, 2004 Decision and May 13, 2004 Resolution.<sup>[16]</sup> In any event, respondent was served with a copy of the OP Decision, was able to seek reconsideration of the said decision, and appeal the same to the CA.