

## THIRD DIVISION

[ G.R. No. 147097, June 05, 2009 ]

**CARMELO F. LAZATIN, MARINO A. MORALES, TEODORO L. DAVID  
AND ANGELITO A. PELAYO, PETITIONER, VS. HON. ANIANO A.  
DESIERTO AS OMBUDSMAN, AND SANDIGANBAYAN, THIRD  
DIVISION, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

This resolves the petition for *certiorari* under Rule 65 of the Rules of Court, praying that the Ombudsman's disapproval of the Office of the Special Prosecutor's (OSP) Resolution<sup>[1]</sup> dated September 18, 2000, recommending dismissal of the criminal cases filed against herein petitioners, be reversed and set aside.

The antecedent facts are as follows.

On July 22, 1998, the Fact-Finding and Intelligence Bureau of the Office of the Ombudsman filed a Complaint-Affidavit docketed as OMB-0-98-1500, charging herein petitioners with Illegal Use of Public Funds as defined and penalized under Article 220 of the Revised Penal Code and violation of Section 3, paragraphs (a) and (e) of Republic Act (R.A.) No. 3019, as amended.

The complaint alleged that there were irregularities in the use by then Congressman Carmello F. Lazatin of his Countrywide Development Fund (CDF) for the calendar year 1996, *i.e.*, he was both proponent and implementer of the projects funded from his CDF; he signed vouchers and supporting papers pertinent to the disbursement as Disbursing Officer; and he received, as claimant, eighteen (18) checks amounting to P4,868,277.08. Thus, petitioner Lazatin, with the help of petitioners Marino A. Morales, Angelito A. Pelayo and Teodoro L. David, was allegedly able to convert his CDF into cash.

A preliminary investigation was conducted and, thereafter, the Evaluation and Preliminary Investigation Bureau (EPIB) issued a Resolution<sup>[2]</sup> dated May 29, 2000 recommending the filing against herein petitioners of fourteen (14) counts each of Malversation of Public Funds and violation of Section 3 (e) of R.A. No. 3019. Said Resolution was approved by the Ombudsman; hence, twenty-eight (28) Informations docketed as Criminal Case Nos. 26087 to 26114 were filed against herein petitioners before the Sandiganbayan.

Petitioner Lazatin and his co-petitioners then filed their *respective* Motions for Reconsideration/Reinvestigation, which *motions* were granted by the Sandiganbayan (Third Division). The Sandiganbayan also ordered the prosecution to re-evaluate the cases against petitioners.

Subsequently, the OSP submitted to the Ombudsman its Resolution<sup>[3]</sup> dated September 18, 2000. It recommended the dismissal of the cases against petitioners for lack or insufficiency of evidence.

The Ombudsman, however, ordered the Office of the Legal Affairs (OLA) to review the OSP Resolution. In a Memorandum<sup>[4]</sup> dated October 24, 2000, the OLA recommended that the OSP Resolution be disapproved and the OSP be directed to proceed with the trial of the cases against petitioners. On October 27, 2000, the Ombudsman adopted the OLA Memorandum, thereby disapproving the OSP Resolution dated September 18, 2000 and ordering the aggressive prosecution of the subject cases. The cases were then returned to the Sandiganbayan for continuation of criminal proceedings.

Thus, petitioners filed the instant petition.

Petitioners allege that:

I.

THE OMBUDSMAN ACTED WITH GRAVE ABUSE OF DISCRETION OR ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION.

II.

THE QUESTIONED RESOLUTION WAS BASED ON MISAPPREHENSION OF FACTS, SPECULATIONS, SURMISES AND CONJECTURES.<sup>[5]</sup>

Amplifying their arguments, petitioners asseverate that the Ombudsman had no authority to overturn the OSP's Resolution dismissing the cases against petitioners because, under Section 13, Article XI of the 1987 Constitution, the Ombudsman is clothed only with the power to watch, investigate and recommend the filing of proper cases against erring officials, but it was not granted the power to prosecute. They point out that under the Constitution, the power to prosecute belongs to the OSP (formerly the Tanodbayan), which was intended by the framers to be a separate and distinct entity from the Office of the Ombudsman. Petitioners conclude that, as provided by the Constitution, the OSP being a separate and distinct entity, the Ombudsman should have no power and authority over the OSP. Thus, petitioners maintain that R.A. No. 6770 (The Ombudsman Act of 1989), which made the OSP an organic component of the Office of the Ombudsman, should be struck down for being unconstitutional.

Next, petitioners insist that they should be absolved from any liability because the checks were issued to petitioner Lazatin allegedly as reimbursement for the advances he made from his personal funds for expenses incurred to ensure the immediate implementation of projects that are badly needed by the Pinatubo victims.

The Court finds the petition unmeritorious.

Petitioners' attack against the constitutionality of R.A. No. 6770 is stale. It has long been settled that the provisions of R.A. No. 6770 granting the Office of the Ombudsman prosecutorial powers and placing the OSP under said office have no

constitutional infirmity. The issue of whether said provisions of R.A. No. 6770 violated the Constitution had been fully dissected as far back as 1995 in *Acop v. Office of the Ombudsman*.<sup>[6]</sup>

Therein, the Court held that giving prosecutorial powers to the Ombudsman is in accordance with the Constitution as paragraph 8, Section 13, Article XI provides that the Ombudsman shall "exercise such other functions or duties as may be provided by law." Elucidating on this matter, the Court stated:

x x x While the intention to withhold prosecutorial powers from the Ombudsman was indeed present, the Commission [referring to the Constitutional Commission of 1986] did not hesitate to recommend that the Legislature could, through statute, prescribe such other powers, functions, and duties to the Ombudsman. x x x As finally approved by the Commission after several amendments, this is now embodied in paragraph 8, Section 13, Article XI (Accountability of Public Officers) of the Constitution, which provides:

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

x x x x

Promulgate its rules and procedure and exercise such other functions or duties as may be provided by law.

Expounding on this power of Congress to prescribe other powers, functions, and duties to the Ombudsman, we quote Commissioners Colayco and Monsod during interpellation by Commissioner Rodrigo:

x x x x

MR. RODRIGO:

Precisely, I am coming to that. The last of the enumerated functions of the Ombudsman is: "to exercise such powers or perform such functions or duties as may be provided by law." So, the legislature may vest him with powers taken away from the Tanodbayan, may it not?

MR. COLAYCO:

Yes.

MR. MONSOD:

Yes.

x x x x

MR. RODRIGO:

Madam President. Section 5 reads: "The Tanodbayan shall continue to function and exercise its powers as provided by law."

MR. COLAYCO:

That is correct, because it is under P.D. No. 1630.

MR. RODRIGO:

So, if it is provided by law, it can be taken away by law, I suppose.

MR. COLAYCO:

That is correct.

MR. RODRIGO:

And precisely, Section 12(6) says that among the functions that can be performed by the Ombudsman are "such functions or duties as may be provided by law." The sponsors admitted that the legislature later on might remove some powers from the Tanodbayan and transfer these to the Ombudsman.

MR. COLAYCO:

Madam President, that is correct.

x x x x

MR. RODRIGO:

Madam President, what I am worried about is, if we create a constitutional body which has neither punitive nor prosecutory powers but only persuasive powers, we might be raising the hopes of our people too much and then disappoint them.

MR. MONSOD:

I agree with the Commissioner.

MR. RODRIGO:

Anyway, since we state that the powers of the Ombudsman can later on be implemented by the legislature, why not leave this to the legislature?

x x x x

MR. MONSOD: (reacting to statements of Commissioner Blas Ople):

x x x x

With respect to the argument that he is a toothless animal, we would like to say that we are promoting the concept in its form at the present, but we are also saying that he can exercise such powers and functions as may be provided by law in accordance with the direction of the thinking of Commissioner Rodrigo. We do not think that at this time we should prescribe this, but we leave it up to Congress at some future time if it feels that it may need to designate what powers the Ombudsman need in order that he be more effective. This is not foreclosed.

So, this is a reversible disability, unlike that of a eunuch; it is not an irreversible disability.<sup>[7]</sup>

The constitutionality of Section 3 of R.A. No. 6770, which subsumed the OSP under the Office of the Ombudsman, was likewise upheld by the Court in *Acop*. It was explained, thus:

x x x the petitioners conclude that the inclusion of the Office of the Special Prosecutor as among the offices under the Office of the Ombudsman in Section 3 of R.A. No. 6770 ("An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman and for Other Purposes") is unconstitutional and void.

The contention is not impressed with merit. x x x

x x x x

x x x Section 7 of Article XI expressly provides that the then existing Tanodbayan, to be henceforth known as the Office of the Special Prosecutor, "shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution." The underscored phrase evidently refers to the Tanodbayan's powers under P.D. No. 1630 or subsequent amendatory legislation. It follows then that Congress may remove any of the Tanodbayan's/Special Prosecutor's powers under P.D. No. 1630 or grant it other powers, except those powers conferred by the Constitution on the Office of the Ombudsman.

Pursuing the present line of reasoning, when one considers that by express mandate of paragraph 8, Section 13, Article XI of the Constitution, the Ombudsman may "exercise such other powers or perform functions or duties as may be provided by law," it is indubitable then that Congress has the power to place the Office of the Special Prosecutor under the Office of the Ombudsman. In the same vein, Congress may remove some of the powers granted to the Tanodbayan by P.D. No. 1630 and transfer them to the Ombudsman; or grant the Office of the Special Prosecutor such other powers and functions and duties as Congress may deem fit and wise. This Congress did through the passage of R.A. No. 6770.<sup>[8]</sup>

The foregoing ruling of the Court has been reiterated in *Camanag v. Guerrero*.<sup>[9]</sup> More recently, in *Office of the Ombudsman v. Valera*,<sup>[10]</sup> the Court, basing its *ratio decidendi* on its ruling in *Acop* and *Camanag*, declared that the OSP 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" and ruled that under R.A. No. 6770, the power to preventively suspend is lodged only with the Ombudsman and Deputy Ombudsman.<sup>[11]</sup> The Court's ruling in *Acop* that the authority of the Ombudsman to prosecute based on R.A. No. 6770 was authorized by the Constitution was also made the foundation for the decision in *Perez v. Sandiganbayan*,<sup>[12]</sup> where it was held that the power to prosecute carries with it