

EN BANC

[G. R. No. 135482, August 14, 2001]

**PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST
LOANS, REPRESENTED BY ORLANDO S. SALVADOR,
PETITIONERS, VS. OMBUDSMAN ANIANO A. DESIERTO, PANFILO
O. DOMINGO, FRANCISCO TEODORO AND LETICIA TEODORO,
RESPONDENTS.**

DECISION

PARDO, J.:

What is before the Court is a petition for review on certiorari to set aside the Ombudsman's resolution^[1] dismissing the complaint for violation of R.A. 3019, Section 3(e) and (g) against respondents Panfilo O. Domingo, Francisco Teodoro and Leticia Teodoro.

On October 8, 1992, President Fidel V. Ramos issued Administrative Order No. 13, creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans. The committee was composed of the Chairman of the PCGG as Chairman; the Solicitor General; a representative from the Office of the Executive Secretary; the Department of Finance; the Department of Justice; the DBP; the PNB; the Asset Privatization Trust; the Philippine Export and Foreign Loan Guarantee Corporation; and the Government Corporate Counsel, as members. The committee was tasked to inventory all behest loans, determine the parties involved and recommend appropriate action to be pursued.^[2]

On November 9, 1992, President Ramos issued Memorandum No. 61, which expanded the functions of the committee to include in its investigation the inventory and review of all non-performing loans whether behest or non-behest.^[3]

Thus, a Technical Working Group (TWG) undertook to examine all documents relative to loan accounts referred by the Asset Privatization Trust to the Committee for investigation, report and recommendation. The Committee classified each account, then rendered an executive summary report thereon and submitted the report to the Committee for review. Atty. Orlando Salvador, PCGG consultant, was a coordinator of the TWG.^[4]

One of the accounts referred to the TWG was that of Apparel World, Inc. (Apparel). On April 8, 1974, Apparel applied for an Import Letter of Credit with the Philippine National Bank (PNB) in the amount of DM15,000,000.00 (P40,660,114.86) for the importation of machinery, equipment and accessories for a garment factory. On May 5, 1974, PNB approved the loan applied for less than a month from the filing of the application and without collateral except the joint and solidary agreement of respondents Teodoro and chattel mortgage on the machinery. The credit agreement prohibited the debtors to convey, sell, lease, or dispose of all or substantially all its

properties or assets without the prior consent of PNB.^[5]

As of May 15, 1986, Apparel's unpaid loan with PNB had a deficiency amounting to P170,967,849.58.^[6]

The Committee classified Apparel's account with PNB as a BEHEST LOAN.^[7]

On January 26, 1998, Atty. Salvador filed with the Office of the Ombudsman a complaint for violation of Section 3(e) and (g), R. A. No. 3019 against Francisco Teodoro, Leticia Teodoro, Jose Tabora, and Panfilo O. Domingo.^[8]

On April 14, 1998, the Ombudsman dismissed the complaint for lack of evidence, prescription and for the reason that Memorandum Order No. 61 and Administrative Order No. 12 were considered as *ex post facto laws*.

Thus -

"In the case at bar, prescription begins to run from the time the loan was executed and approved, considering the same to be in a public document and therefore was a public record, and not when it was lately discovered by the PCGG as alleged behest loan per Administrative Order No. 13 and Memorandum Order No. 61, issued by President Ramos in 1992.

"When the loan was approved in 1974, there was no law classifying it as a behest or non-behest loan which has corresponding civil and criminal sanctions. Thus, the issuances of Administrative Order No. 13 and Memorandum No. 16 in 1992 by President Ramos, has the effect of an *ex post facto law*. The contract of loan was approved by the PNB officials who were performing their regular functions, while the borrowers are legitimate businessmen doing banking transactions with the government.

"WHEREFORE, premises considered, it is hereby recommended that this case be DISMISSED, as it is hereby dismissed.

"SO RESOLVED.

"Manila, Philippines, August 14, 1998.

"EVANGELINE GRAFIL
"Graft Investigation Officer I

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"Approved
"ANIANO A. DESIERTO

Hence, this petition.[10]

Verily, the lapse of twenty four (24) years since the time the loan was granted in 1974 was well beyond the fifteen-year prescriptive period prescribed in R. A. No. 3019.[11]

The law on prescription of offenses is found in Articles 90 and 91 of the Revised Penal Code for offenses punishable thereunder. For those penalized under special laws, Act No. 3326 applies.

Act No. 3326, Section 2 governs the commencement of prescription of any act in violation of R. A. No. 3019, to wit:

"Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

"The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy."

Recent jurisprudence tells us:

"x x x it was well-nigh impossible for the State, the aggrieved party, to have known the violations of R. A. No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the 'beneficiaries of the loans.' Thus, we agree with the COMMITTEE that the prescriptive period for the offenses with which the respondents in OMB-0-96-0968 were charged should be computed from the discovery of the commission thereof and not from the day of such commission.

"The assertion by the OMBUDSMAN that the phrase 'if the same be not known' in Section 2 of Act No. 3326 does not mean 'lack of knowledge' but that the crime 'is not reasonably knowable' is unacceptable, as it provides an interpretation that defeats or negates the intent of the law, which is written in a clear and unambiguous language and thus provides no room for interpretation but only application." [12]

Hence, prescription has not set in.

Under Republic Act No. 6770, [13] the Ombudsman has the power to investigate and prosecute any act or omission of a public officer or employee when such act or