Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Petitioner,

G.R. No. 199151-56

- *versus* -

THE SANDIGANBAYAN, FIFTH DIVISION, LT. GEN. LEOPOLDO S. ACOT, B/GEN. ILDEFONSO N. DULINAYAN, LT. COL. SANTIAGO B. RAMIREZ, LT. COL. CESAR M. CARINO, MAJ. PROCESO T. SABADO, MAJ. PACQUITO L. CUENCA, 1LT. MARCELINO M. MORALES, M/SGT. ATULFO D. TAMPOLINO, REMEDIOS "REMY" DIAZ, JOSE GADIN, JR., GLENN ORQUIOLA, HERMINIGILDA LLAVE, GLORIA BAYONA and RAMON BAYONA JR.,
Respondents.

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:
July 25, 2016

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DECISION

PERALTA, *J.*:

Before us is a special civil action for *certiorari*[1] under Rule 65 of the Rules of Court which seeks to annul and set aside the Resolutions dated September 16, 2011 and October 15, 2010 by public respondent Sandiganbayan for allegedly having been issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and to reinstate the six (6) Informations for Violation of Section

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[1] *Rollo*, p. 2.

3 (e) of Republic Act (*R.A.*) No. 3019 otherwise known as the "Anti-Graft and Corrupt Practices Act" filed against all private respondents.

The assailed Resolution dated October 15, 2010 granted the motions to quash or dismiss filed by private respondents Lt. Gen. Leopoldo S. Acot (*Acot*), B/Gen. Ildefenso N. Dulinayan (*Dulinayan*), Lt. Col. Santiago B. Ramirez (*Ramirez*), Lt. Col. Cesar M. Cariño (*Cariño*), Maj. Proceso T. Sabado (*Sabado*), Maj. Pacquito L. Cuenca (*Cuenca*), 1Lt. Marcelino M. Morales (*Morales*), M/Sgt. Atulfo D. Tampolino (*Tampolino*) and Remedios Diaz (*Diaz*). The assailed Resolution dated September 16, 2011 denied petitioner's Motion for Reconsideration of the October 15, 2010 Resolution and granted the motions to quash filed by respondents Jose Gadin, Jr. (*Gadin*), Glenn Orquiola (*Orquiola*), Herminigilda Llave (*Llave*), Gloria Bayona and Ramon Bayona, Jr.[2]

The motions to quash or dismiss filed by private respondents were premised on the ground of inordinate delay in the conduct of the preliminary investigation amounting to a violation of their constitutional rights to due process of law and to a speedy disposition of the cases.

The facts of the case, as culled from the records, are as follows:

Sometime on December 28, 1994, a letter-complaint was filed by one Carmelita U. Ramirez before the Office of the Ombudsman for the Military and other Law Enforcement Officers (*MOLEO*) alleging, among others, that private respondents conspired and defrauded the government in the amount of Eighty-Nine Million Pesos (₱89M) through ghost deliveries.[3] The complaint prompted the MOLEO to immediately conduct a fact-finding investigation. It discovered that a similar fact-finding body within the Philippine Air Force, more particularly the Office of the Inspector General (*OTIG*), found that based on the audit of the AFP's Program and Evaluation and Management Analysis Division (*PEMRAD*), Office of the Deputy Chief of Staff for Comptrollership OJ6, there were ghost deliveries of assorted supplies and materials at the 5th Fighter Wing Basa Air Base amounting to ₱24,430,029.00 and unaccounted supplies and materials worth ₱42,592,257.61.[4]

On February 22, 1995, the records and report of the OTIG were subsequently forwarded to the MOLEO, after which, MOLEO commenced

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2 *Rollo*, p. 64.

3 Petition, *rollo*, p. 7; Comment to Petition, *rollo*, p. 75; Resolution, *rollo*, p. 55.

4 Petition, *rollo*, pp.7-8; Comment to Petition, *rollo*, p. 75.

conducting the preliminary investigation against private respondents.[5] The last counter-affidavit was filed on March 11, 1996.[6]

On April 12, 1996, MOLEO Investigator Rudiger G. Falcis prepared a Resolution recommending that all private respondents be indicted for six counts of Violation of Section 3(e) of R.A. 3019 and six counts of the crime of Malversation of Public Funds through Falsification of Public Documents (Article 217, in relation to Articles 171 and 172, of the Revised Penal Code).[7] Then Director Orlando C. Casimiro of the Criminal and Administrative Investigation Bureau concurred in the findings, and the same was recommended for approval by B/Gen Manuel B. Casaclang (Ret), Deputy Ombudsman for the Military.[8]

On July 10, 1996, Special Prosecution Officer III Reynaldo Mendoza issued a Memorandum recommending the filing of violation of Section 3 (e) of R.A. 3019 and the dismissal of the charges for Malversation of Public Funds.[9] This Memorandum was approved by Deputy Ombudsman Orlando Casimiro.[10]

On January 12, 1998, Special Prosecutor Leonardo Tamayo issued a Memorandum recommending the dropping of charges against private respondents Acot and Dulinayan on the ground that the supplies involved were among those that had undergone the regular and proper procedure. This recommendation was approved by then Ombudsman Aniano Desierto on March 2, 1998.[11] On even date, Ombudsman Aniano Desierto also approved the Resolution dated April 12, 1996 with the following note - *"with the modifications as to the respondents as recommended by SP Tamayo and as to the scope as recommended by the OSP."*[12]

On January 12, 1999, the case was subjected to another re-evaluation by the MOLEO.[13]

In 2003, upon the assumption of then Ombudsman Simeon V. Marcelo, the case underwent another thorough review upon the recommendation of the MOLEO.[14]

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5 *Ibid;* Resolution, *rollo*, p. 55.
6 Comment to Petition, *rollo*, p. 75; Resolution, *rollo,* p. 55.
7 *Rollo,* p. 8; Comment to Petition, *rollo*, p. 76; Resolution, *rollo*, p. 55.
8 Petition, *rollo*, p. 8; Comment to Petition, *rollo*, p. 76.
9 *Rollo,* pp. 8 and 76, respectively; Resolution, *rollo*, p. 56.
10 Resolution, *rollo*, p. 56.
11 *Rollo,* pp. 8 and 56; approved January 16, 1998 according to Dulinayan, *rollo,* p.76- 77.
12 *Rollo*, p. 56 and 77.
13 *Id.* at 9.
14 *Id.*

On April 27, 2005, MOLEO, received the records of the case for the preparation of the Informations to be filed with the court.[15]

On July 7, 2005, MOLEO, through its investigation team, issued a Memorandum recommending for another thorough review of the case arguing against the dismissal of the charges against private respondents Acot and Dulinayan.[16] The Memorandum was recommended for approval by then Deputy Ombudsman Orlando Casimiro.[17]

On September 19, 2005, then Ombudsman Simeon V. Marcelo referred the case to the Office of the Legal Affairs (*OLA*) for a thorough review of the case.[18]

On June 25, 2007, a Review Memorandum was prepared by Assistant Special Prosecutor Terence S. Fernando and was recommended for approval by Assistant Ombudsman Dina Joy Tenala containing the opinion of the OLA that "the April 12, 1996 Resolution did not become final and executory and that the doctrine relied upon for the dismissal of the case against Acot and Dulinayan is not applicable and that probable cause exists based on evidence."[19]

On October 23, 2008, then Over-all Deputy Ombudsman Orlando C. Casimiro approved the said Review Memorandum.[20]

On October 6, 2009, six Informations were filed before the Sandiganbayan docketed as SB-09-CRM-0184 to 189 charging private respondents for violation of Section 3(e) of R.A. 3019.

The arraignment was set on November 20, 2009. On November 9, 2009, respondent Dulinayan filed a Motion to Quash/Dismiss and Motion to Defer Arraignment. On December 1, 2009, respondent Acot filed an Omnibus Motion to Quash and Defer Arraignment. On February 8, 2010, a Motion to Quash/Dismiss and for Deferment of Arraignment was filed by respondents Ramirez, Cariño, Sabado, Cuenca and Morales wherein they adopted the motions of respondents Dulinayan and Acot.[21] On February 19, 2010, a Motion to Quash was filed by respondent Tampolino.[22]

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15 *Id.*
16 *Rollo,* p. 56
17 Comment to Petition, *rollo,* p. 77.
18 *Rollo,* p. 9.
19 Resolution, *rollo*, p. 56.
20 *Id.*
21 *Rollo,* p. 48.
22 *Id.* at 42.

In their separate motions to quash, respondents Dulinayan, Acot, Ramirez, Cariño, Sabado, Cuenca and Morales argued, among others, that their right to speedy disposition of cases was violated when it took the Office of the Ombudsman almost fifteen (15) years to file their case before the court.

In the Comment or Opposition filed by the petitioner, it stated that the respondents failed to invoke their right which must also be weighed with the right of the State to prosecute citing the case of *Corpuz v. Sandiganbayan.*[23] It further stated that the State should not be bound by the negligent act of its officers, and the laxity in the filing of the case is prejudicial to the State because it stands to lose Eighty-Nine Million Pesos (₱89M).

In his Reply, respondent Dulinayan countered that the cited cases of *Corpuz and Valencia*[24] have different factual antecedents. In the said cases, the delay was only one year and there was contributory negligence on the part of the accused. He reiterated that it took more than seven (7) years before the MOLEO requested a review of the Resolution of the Ombudsman and another four (4) years before the Informations were filed. He did not have the opportunity to invoke his right before the Ombudsman because he was not informed of the existence of the cases considering that he was able to secure clearance therefrom. His constitutional rights as embodied in the Bill of Rights take precedence over the rights of the State.

In his Reply, respondent Acot asserted that there was a power play within the Office of the Ombudsman considering that despite prior dismissal of the case against him, it was still subjected to review seven years later and a contrary recommendation was issued after four (4) more years. He claimed that the internal politics in the instant case was akin to the case of *People v. Tatad.*[25]

In its Supplemental Comment/Opposition, the petitioner averred that considering the huge amount involved in the case, it had to be reviewed meticulously and scrupulously such that the resolution underwent a hierarchy of review which called for a painstaking and fastidious study of the records of the case.

On October 15, 2010, public respondent Sandiganbayan issued a Resolution granting the motions to quash on the ground that the aforesaid private respondents' right to speedy disposition of their cases was unduly violated, thus:

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23 484 Phil. 899 (2004).
24 510 Phil. 70 (2005).
25 *Rollo,* pp. 8-9.

A careful reading of the April 12, 1996 Resolution of the Ombudsman and the Memoranda issued reveals that this initial Resolution was the one which resulted from [the] painstaking study of the documents gathered *vis-a-vis* the counter-affidavits of the respondents. Noteworthy is the fact that the prosecution did not offer any other explanation as to the delay of the review of the Resolution except that the case had to be reviewed meticulously and scrupulously, that the Resolution underwent a hierarchy of review and calls for painstaking and fastidious study of the records of the case. Upon review by OLA, no new documents were studied but there was merely a revisit of the cited case. Such would not require a "painstaking study or grueling review" as claimed by the Prosecution. Thus, the length of time it took to conduct its review is undoubtedly more than what was called for.

Though the Prosecution points out that accused failed to seasonably assert their right, it must be emphasized that the prosecution has not espoused a justifiable reason for the delay in the review of the April 12, 1996 Resolution. We reiterate that the review of the said Resolution did not involve any new computations nor any other ocular inspections. It was merely a revisit and an evaluation of records already at hand and of the cited Arias case and the reasons espoused for the dismissal of the cases against Dulinayan and Acot. Neither new findings nor major changes were reflected in the said Resolution.

Thus, the length of seven (7) years of review is obviously vexatious and oppressive. Likewise, the length of fifteen (15) years to hold the Preliminary Investigation is too long a time to conduct it, considering the circumstances of the case. As to the claim of the Prosecution that the accused failed to assert its rights, we quote the ruling of the Supreme Court in the case of *Cervantes*:

> The Special Prosecutor also cited *Alvizo v. Sandiganbayan* (220 SCRA 55, 64) alleging that as in *Alvizo* the petitioner herein was "insensitive to the implications and contingencies thereof by not taking any step whatsoever to accelerate the disposition of the matter."
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> We cannot accept the Special Prosecutor's ratiocination. It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him.

We must highlight the fact that there is no contributory act on the part of the accused that resulted in the delay of the Preliminary Investigation.

Based on the facts and circumstances discussed above, and after considering that the right of the accused-movants to the speedy disposition of their cases and the right of the State to punish people who violated its penal laws should be balanced, this Court resolves to grant the Motions of accused. The prosecution has utterly failed to justify the inordinate delay in the preliminary investigation of these cases.[26]

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26 *Id.* at 59-60.

On October 15, 2010, respondent Gadin filed a Motion to Quash Information and Defer Arraignment.[27] On October 28, 2010, respondents Orquiola and Llave filed a Motion to Dismiss on the same grounds raised by the other respondents.[28] On November 7, 2010, respondents Gloria Bayona and Ramon Bayona, Jr. jointly filed a Motion for Reconsideration with Motion to Dismiss.[29]

Respondents Gadin, Orquiola, Llave, Gloria Bayona and Ramon Bayona, Jr. contended, among others, that their right to speedy disposition of cases was violated due to the inordinate delay in the preliminary investigation of the case. Respondent Gadin argued that the delay deprived him from adequately defending himself since the witnesses who could testify in the processes and procedures in the Finance Department of the Philippine Air Force are no longer available and some of the documents he could have used for his defense could not anymore be found.

On November 2, 2010, petitioner filed a Motion for Reconsideration of the Sandiganbayan's Resolution dated October 15, 2010. On September 9, 2011, the Sandiganbayan denied petitioner's Motion for Reconsideration and granted the motions to quash filed by respondents Gadin, Orquiola, Llave, Bayona and Bayona, Jr.

Hence, this petition wherein petitioners impute to public respondent Sandiganbayan grave abuse of discretion amounting to lack or excess of jurisdiction when it granted all of private respondents' motion to quash and denied petitioner's motion for reconsideration.

On January 12, 2012, the Court resolved to require private respondents to comment on the instant petition.[30]

We first tackle the propriety of the petition for *certiorari* under Rule 65 of the Rules of Court. In the Comment filed by respondents Tampolino, Ramirez, Cariño, Sabado, Cuenca, Morales, Orquiola and Llave, they stated that the remedy of the petitioner should have been appeal by *certiorari* under Rule 45 because the issue is allegedly purely legal citing the case of *People v. Sandiganbayan, et al.*[31] According to the aforesaid respondents, the Resolution of the public respondent Sandiganbayan which quashed the Informations was a final order that finally disposed of the case such that the proper remedy is a petition for review under Rule 45. And that, the petition was filed beyond the fifteen-day reglementary period within which to file an appeal.

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27 *Id.* at 33.
28 *Id.* at 12.
29 *Id.* at 12 and 34.
30 *Id.* at 62.
31 490 Phil. 105 (2005).

We do not agree.

A petition for review on *certiorari* under Rule 45 of the Rules of Court and a petition for *certiorari* under Rule 65 of the Rules of Court are two and separate remedies. A petition under Rule 45 brings up for review errors of judgment, while a petition for *certiorari* under Rule 65 covers errors of jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion is not an allowable ground under Rule 45. A petition for review under Rule 45 of the Rules of Court is a mode of appeal:[32]

> *Section 1. Filing of petition with Supreme Court.* - A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court, or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari.* The petition shall raise only questions of law which must be distinctly set forth.

However, the provision must be read in relation to Section 1, Rule 122 of the Revised Rules of Court, which provides that any party may appeal from a judgment or final order "unless the accused will thereby be placed in double jeopardy." Therefore, the judgment that may be appealed by the aggrieved party envisaged in Rule 45 is a judgment convicting the accused, and not a judgment of acquittal. The State is barred from appealing such judgment of acquittal by a petition for review.[33]

Instead, a judgment of acquittal may be assailed by the People in a petition for *certiorari* under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the People is burdened to establish that the court *a quo,* in this case, the Sandiganbayan, acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction or a denial of due process.[34]

In the case of *People v. Asis,*[35] it was held that:

> A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. The rule, however, is not without exception. In several cases, the Court has entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissals of, criminal cases. x x x

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32 *Villareal v. Aliga,* 724 Phil. 47, 60 (2014), citing *People v. Sandiganbayan* (First Division), 524 Phil. 496, 522 (2006).

33 *Id.*

34 *People v. Judge Laguio,* 547 Phil. 296, 311 (2007); *People v. Uy,* 508 Phil. 637, 649 (2005).

35 643 Phil. 462, 469 (2010). (Citations omitted)

Thus, the instant petition for *certiorari* is the correct remedy in seeking to annul the Resolutions of public respondent Sandiganbayan for allegedly having been issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction which granted the motions to quash or dismiss filed by private respondents which were premised on the ground of inordinate delay in the conduct of the preliminary investigation amounting to a violation of their rights to speedy disposition of their cases.

We go now to the issue of whether there was a violation of the right of the private respondents to speedy disposition of their cases. This right is enshrined in Article III of the Constitution, which declares:

> *Section 16.* All persons shall have the right to a speedy disposition of their cases before all judicial, *quasi*-judicial or administrative bodies.

The constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial.[36] In this accord, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.[37] This right, however, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays.[38]

The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.[39] Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[40]

In the case at bar, the investigatory process was set in motion on December 28, 1994 when the complaint was filed with the Office of the Ombudsman, and the last Counter-Affidavit was filed on March 11, 1996. The Graft Investigation Officer came up with a Resolution on April 12, 1996, or after one (1) year, three (3) months and fifteen (15) days from the start of the investigation proceedings.

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36 *Cadalin v. POEA's Administrator*, G.R. No. 105029-32, December 5, 1994, 238 SCRA 722, 765.

37 *Capt. Roquero v. The Chancellor of UP-Manila, et al.*, 628 Phil. 628, 639 (2010).

38 *Dela Pena v. Sandiganbayan* June 29, 2001, 412 Phil. 921, 929 (2001), citing *Cojuangco v. Sandiganbayan*, 360 Phil. 559, 587 (1998); *Blanco v. Sandiganbayan*, 399 Phil. 674, 682 (2000).

39 *Binay v. Sandiganbayan*, 374 Phil. 413, 447 (1999); *Castillo v. Sandiganbayan*, 304 Phil. 604, 613 (2000).

40 *Alvizo v. Sandiganbayan*, G.R. No.101689, March 17, 1993, 220 SCRA 55, 63; *Dansal v. Fernandez*, 383 Phil. 897, 906 (2000); *Blanco v. Sandiganbayan, supra* note 38.

The Resolution dated April 12, 1996 recommended the filing of charges against the private respondents of violation of Section 3(e), RA 3019 and Article 217, in relation to Articles 171 and 172 of the Revised Penal Code.

According to the petitioner, the Resolution was not immediately approved by the higher authorities of the Office of the Ombudsman because it was allegedly subjected to "painstaking scrutiny and review."[41] And that, as a result of this "painstaking scrutiny and review," two Memoranda were issued dated July 10, 1996 and January 12, 1998.

The Memorandum dated July 10, 1996 of Special Prosecution Officer Reynaldo Mendoza, which was approved by Deputy Ombudsman Casimiro, contained a recommendation that only cases for Violation of Section 3(e) of RA 3019 should be filed. The Memorandum dated January 12, 1998, which was issued by Special Prosecutor Leonardo P. Tamayo, recommended the dismissal of the cases against Acot and Dulinayan. The recommendation was approved by Ombudsman Aniano Desierto on March 2, 1998. On the same date, Ombudsman Aniano Desierto approved the Resolution dated April 12, 1996 with the following note - *"with the modifications as to the respondents as recommended by SP Tamayo and as to the scope as recommended by the OSP."* Otherwise stated, the Resolution dated April 12, 1996 was finally approved by Ombudsman Aniano Desierto on March 2, 1998, but with modification so as to incorporate the recommendation of Special Prosecutor Leonardo Tamayo that the charges against respondents Acot and Dulinayan be dropped.

The aforesaid approval of the Ombudsman should have resulted in the filing of information with the court, but no action was taken thereon.

Instead, on January 12, 1999, the case was subjected to another "re-evaluation" by the MOLEO. According to the petitioner, the "thorough re-evaluation" by the MOLEO was conducted since allegedly the senior officials of the office could not agree with the recommendation to drop respondents Acot and Dulinayan believing that both appear to have instigated the crime charged.[42]

In 2003, or after four (4) years of "thoroughly" evaluating the case, and upon the assumption of Ombudsman Simeon V. Marcelo, the case underwent another "thorough review," again, upon the recommendation of

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41 Petition, *rollo*, p. 8.

42 *Id.* at 9.

the MOLEO as alleged by the petitioner.[43] By that time, nine (9) years had already passed since the filing of the complaint.

After two (2) more years, the MOLEO recommended another "thorough review" as stated in its Memorandum dated July 7, 2005 arguing against the dismissal of the case against Acot and Dulinayan. Thus, the case was referred to the Office of Legal Affairs (*OLA*).

On June 25, 2007, a Memorandum was issued containing the opinion of the OLA that probable cause exists in the commission of the crime as against respondents Acot and Dulinayan. The OLA opinion was concurred in by Over-all Deputy Ombudsman Casimiro when he approved the Review Memorandum dated October 23, 2008. Then, it took one more year for the Office of the Ombudsman to file the Informations.

From the foregoing, it is clear that from the time the first Resolution was issued by the Office of the Ombudsman on April 12, 1996, it took more than thirteen (13) years to review and file the Informations on October 6, 2009. Otherwise stated, from the time the complaint was filed on December 28, 1994, it took petitioner almost fifteen (15) years to file the Informations.

According to *Angchangco, Jr. v. Ombudsman,*[44] inordinate delay in resolving a criminal complaint, being violative of the constitutionally guaranteed right to due process and to the speedy disposition of cases, warrants the dismissal of the criminal case.

The question therefore is – was the delay on the part of the Office of the Ombudsman vexatious, capricious, and oppressive? We answer in the affirmative.

In *Tatad v. Sandiganbayan*,[45] there was a delay of almost three (3) years in the conduct of the preliminary investigation by the Tanodbayan. In ruling that such delay constituted a violation of the constitutional rights of the accused to due process and to a speedy disposition of cases, this Court took into account the following circumstances: (1) the complaint was resurrected only after Tatad had a falling out with the former President Marcos, and hence, political motivations played a vital role in activating and propelling the prosecutorial process; (2) the Tanodbayan blatantly departed from the established procedure prescribed by law for the conduct of preliminary investigation; and (3) the simple factual and legal issues involved did not justify the delay.

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43 *Id.*

44 335 Phil. 766, 770 (1997).

45 242 Phil. 563 (1988).

Likewise, in *Angchangco, Jr. v. Ombudsman*[46] and *Roque v. Office of the Ombudsman,*[47] this Court held that the delay of almost or more than six (6) years in resolving the criminal charges against the petitioners therein amounted to a violation of their constitutional rights to due process and to a speedy disposition of the cases against them, as well as the Ombudsman's own constitutional duty to act promptly on complaints filed before him.

In the present case, it took more than a decade for the Office of the Ombudsman to "re-evaluate" and "thoroughly review" the proper charges to file with the court and whether or not respondents Acot and Dulinayan should be charged. It must be stressed that the petitioner explicitly admitted in its reply to the comments of the private respondents that "the matter of the complexity of the legal issues involved was never raised by the prosecution as a reason for the delay." Instead, it tried to explain that the determination of probable cause in the instant case entails both factual and legal summations where allegedly more time was devoted to the "gathering, authentication, and validation of factual and verifiable assertions."[48]

Specifically, the petition alleges that the belated filing of the case was caused by the following events: (a) the initial resolution issued by the MOLEO, dated April 12, 1996, took time because of the need to conduct clarificatory hearing and on account of the various motions filed by private respondents; (b) the MOLEO Resolution dated April 12, 1996 was subjected to numerous conflicting reviews by the senior officials/higher authority in the Office of the Ombudsman; (c) considering the conflict between the findings of the MOLEO investigators and the recommendation of the senior officials *vis-a-vis* the amount of money involved and the positions held by respondents Acot and Dulinayan, the case was re-opened in 2003 for another review; (d) the Office of the Ombudsman was in the midst of transferring to its new building in Agham Road, Quezon City in 2001; and (e) from 1998 to 2009, there were three (3) Ombudsmen who handled the case which affected the immediate resolution thereof in terms of the added layer of review and study before these cases were filed in court.

We are not persuaded by the reasons for the delay advanced by the petitioner. Anent the first reason, the unnecessary delay was not in the issuance of the initial Resolution on April 12, 1996 because the motions were filed before the Resolution was issued on April 12, 1996.[49] The delay came after April 12, 1996, that is, in the evaluation, re-evaluation and "thorough review" of the initial Resolution.

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46 *Supra* note 44.
47 366 Phil. 568, 576-577 (1999).
48 Consolidated Reply, p. 8.
49 Comment of Jose R. Gadin, Jr., *id.* at 67.

As to the second and third reasons, the Court cannot agree with the petitioner that the delay in the proceedings could be excused by the fact that the case had to undergo careful review and revision through the different levels in the Office of the Ombudsman before it is finally approved, in addition to the steady stream of cases which it had to resolve.[50] Verily, the Office of the Ombudsman was created under the mantle of the Constitution, mandated to be the "protector of the people" and, as such, required to "act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service."[51] Precisely, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of the case but also to resolve the same within the proper length of time. Its dutiful performance should not only be gauged by the quality of the assessment, but also by the reasonable promptness of its dispensation. Thus, barring any extraordinary complication, such as the degree of difficulty of the questions involved in the case or any event external thereto that effectively stymied its normal work activity – any of which have not been adequately proven by the petitioner in the case at bar – there appears to be no justifiable basis as to why the Office of the Ombudsman could not have earlier resolved the preliminary investigation proceedings against the private respondents.[52]

Neither are the last alleged causes of delay tolerable. Reasoning that the Office of the Ombudsman was in the midst of transferring to a new building is a lame excuse not to have resolved the matter at the earliest opportunity. In addition, the prolonged investigation of the case from 1998 to 2009 by three Ombudsmen with divergent views as to what charges should be filed and the persons to be indicted cannot be sufficient justification for the unreasonable length of time it took to resolve the controversy.

We need to emphasize, however, that the initial Resolution dated April 12, 1996 which was allegedly subjected to "painstaking scrutiny and review" (such that two conflicting findings were embodied in two Memoranda issued on July 10, 1996 and January 12, 1998) was finally approved by then Ombudsman Aniano Desierto on March 2, 1998. The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance, or he may proceed with the investigation, if in his view, the complaint is due in proper form or substance.[53] But this Resolution dated April 12, 1996 despite its final approval was again subjected to a re-evaluation and "thorough review" by the MOLEO which is but a unit of the

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50 *Coscolluela v. Sandiganbayan, et al.*, 714 Phil. 55, 62-63 (2013).

51 *Enriquez, et al. v. Office of the Ombudsman*, 569 Phil. 309, 316 (2008).

52 *Coscolluela, v. Sandiganbayan et al., supra* note 50, at 63.

53 *PCGG, et al. v. Disierto*, 563 Phil. 517, 525 (2007).

Ombudsman such that it could not reverse the findings of the Ombudsman.[54] This was the cause of the delay which dragged on for seven (7) years, from 1998 to 2005, and another two (2) years when the case was referred to the Office of Legal Affairs of the Ombudsman.

In view of the unjustified length of time miring the Office of the Ombudsman's resolution of the case, as well as the concomitant prejudice that the delay in this case has caused, it is undeniable that respondent's constitutional right to due process and speedy disposition of cases had been violated. As the institutional vanguard against corruption and bureaucracy, the Office of the Ombudsman should create a system of accountability in order to ensure that cases before it are resolved with reasonable dispatch and to equally expose those who are responsible for its delays, as it ought to determine in this case.[55]

As to the reason advanced by the petitioner that in the year 2001 the Office of the Ombudsman was in the midst of transferring to its new building in Agham Road, Quezon City, it must be noted that the first Resolution was approved by then Ombudsman Desierto in 1998, while transfer of office occurred in 2001. A period of three (3) years, from 1998 to 2001, is ample time to review the case which started way back in 1994.

Petitioner also avers in its petition that there was the "inexplicable loss of the main folder" which deterred the prosecution of the cases as mentioned in the MOLEO Memorandum dated July 7, 2005 recommending "thorough review and re-evaluation of the case."[56] It must be noted that as early as January 12, 1999, the records were subjected to a re-evaluation by the MOLEO.[57] Yet, there was no showing or any statement that efforts were exerted to locate the alleged lost folder.[58]

Petitioner likewise partly puts the blame on the respondents that they did not take any steps whatsoever to accelerate the disposition of the matter. In the case of *Cervantes v. Sandiganbayan,*[59] wherein it was held that there was a delay of six (6) years, this Court stated that it is the duty of the prosecutor to expedite the prosecution of the case regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided it was not due to causes attributable to him. This was explained in *Coscolluela v. Sandiganbayan,*[60] to wit:

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54 *Rollo,* p. 81.
55 *Coscolluela v. Sandiganbayan, et al., supra* note 50, at 67.
56 *Rollo,* p. 17.
57 *Id.* at 67.
58 *Id.* at 36.
59 366 Phil. 602, 609 (1999).
60 *Supra* note 50.

Records show that they could not have urged the speedy resolution of their case because they were unaware that the investigation against them was still on-going. They were only informed of the March 27, 2003 Resolution and Information against them only after the lapse of six (6) long years, or when they received a copy of the latter after its filing with the SB on June 19, 2009. In this regard, they could have reasonably assumed that the proceedings against them have already been terminated. This serves as a plausible reason as to why petitioners never followed-up on the case altogether. Instructive on this point is the Court's observation in *Duterte v. Sandiganbayan*:

> **Petitioners in this case, however, could not have urged the speedy resolution of their case because they were completely unaware that the investigation against them was still on-going.** Peculiar to this case, we reiterate, is the fact that petitioners were merely asked to comment, and not file counter-affidavits which is the proper procedure to follow in a preliminary investigation. **After giving their explanation and after four long years of being in the dark, petitioners, naturally, had reason to assume that the charges against them had already been dismissed.**
>
> On the other hand, the Office of the Ombudsman failed to present any plausible, special or even novel reason which could justify the four-year delay in terminating its investigation. Its excuse for the delay — **the many layers of review that the case had to undergo and the meticulous scrutiny it had to entail — has lost its novelty and is no longer appealing, as was the invocation in the Tatad case. The incident before us does not involve complicated factual and legal issues,** specially (*sic*) in view of the fact that the subject computerization contract had been mutually cancelled by the parties thereto even before the Anti-Graft League filed its complaint. *(Emphasis and underscoring supplied)*

Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*.

> A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.[61]

Furthermore, the Court recognizes the prejudice caused to the private respondents caused by the lengthy delay in the proceedings against them. We

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61 *Coscolluela v. Sandiganbayan, et al., supra* note 50, at 63-64. (Citations omitted)

do not agree with the petitioner that respondents did not suffer any damage because respondents Acot and Dulinayan were able to get their clearances. 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.[62] 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.[63] 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*[64] stated:

> 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.
>
> x x x 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.
>
> Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States,* for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.
>
> Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the

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62 *Corpuz v. Sandiganbayan, supra* note 23, at 917.
63 *Mari v. Gonzales*, 673 Phil. 46, 55 (2011).
64 *Id.* at 917-919. (Citations omitted)

> defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. x x x

As pointed out by respondent Gadin in his Comment, the delay of fifteen (15) years in the filing of the Informations impair his ability to adequately defend himself for the reason that the witnesses who could testify on the processes and procedures in the PAF Finance Service Units at the time the alleged offenses were committed may no longer be found or available.

Lastly, the contention is that the State cannot be bound by the mistakes committed by the public officers involved in the review of the case and that the right of the State to prosecute erring officers involved in this ₱89 Million-Peso Fiasco cannot be prejudiced. We should take note that equally true is the constitutional right of the respondents to the speedy disposition of cases and the constitutional mandate for the Ombudsman to act promptly on complaints. [65] The Constitutional guarantee against unreasonable delay in the disposition of cases was intended to stem the tide of disenchantment among the people in the administration of justice by our judicial and quasi-judicial tribunals.[66] The adjudication of cases must not only be done in an orderly manner that is in accord with the established rules of procedure but must also be promptly decided to better serve the ends of justice. Excessive delay in the disposition of cases renders the rights of the people guaranteed by the Constitution and by various legislations inutile.[67]

All told, the criminal complaints were correctly dismissed on the ground of inordinate delay of fifteen (15) years amounting to a transgression of the right to a speedy disposition of cases and therefore, the Sandiganbayan did not gravely abuse its discretion.

WHEREFORE, the petition is **DISMISSED** for lack of merit.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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65 1987 Constitution, Art. XI, Sec. 12.

66 *Capt. Roquero v. The Chancellor of UP-Manila, et al., supra* note 37, at 640, citing Cruz, *Constitutional Law*, 2007 Ed., p. 295.

67 *Matias v. Judge Plan, Jr.*, 355 Phil. 274, 282 (1998).

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

AUG 23 2016