

EN BANC

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

**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, RESPONDENTS.**

RESOLUTION

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