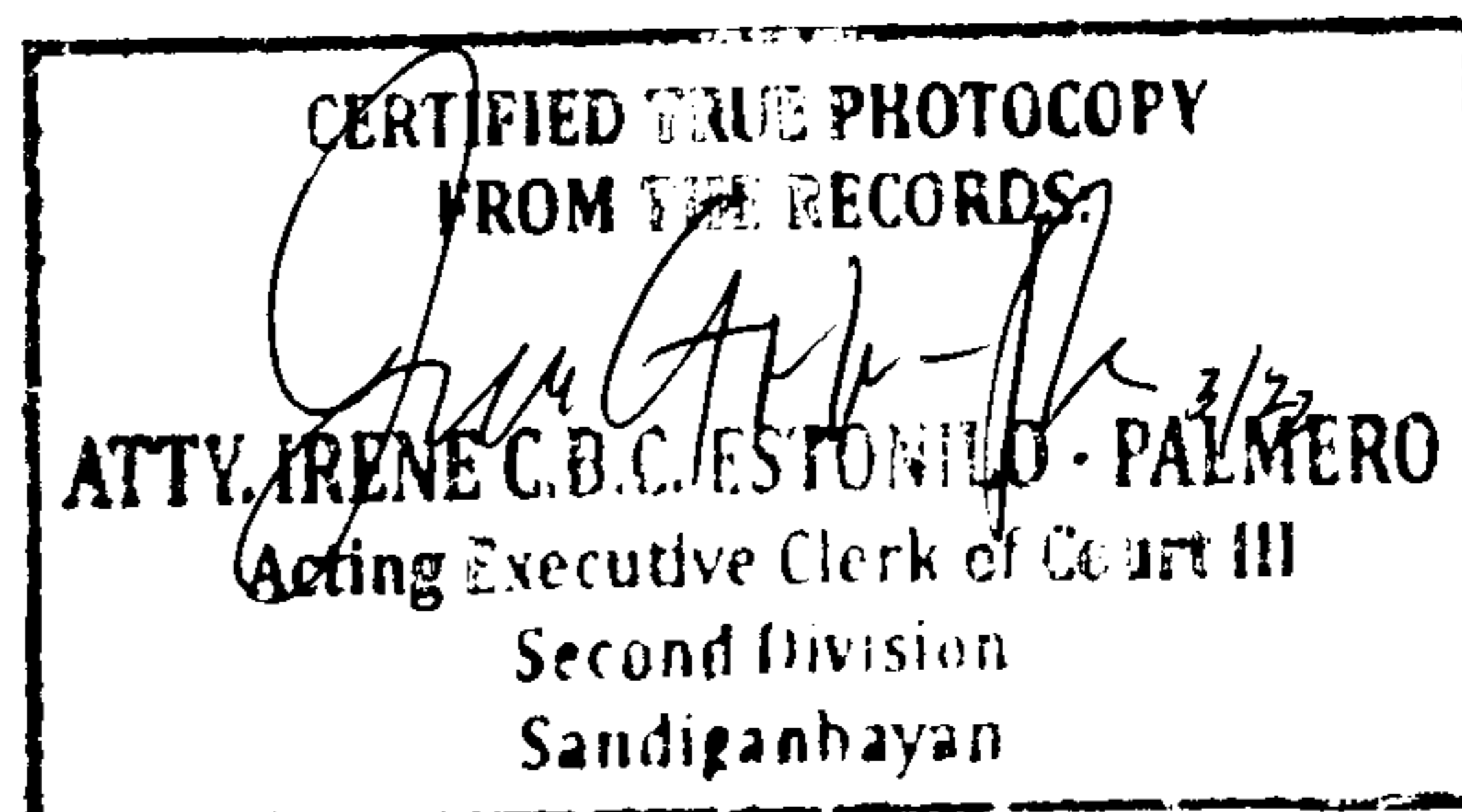


Republic of the Philippines

**SANDIGANBAYAN**

Quezon City

**SECOND DIVISION**



**PEOPLE OF THE PHILIPPINES,**  
Plaintiff,

**CRIM. CASE NO. SB-15-CRM-0292**  
For: Violation of Section 3 (e) of  
R.A. No. 3019, as amended

- versus -

Present:

**WINSTON FIEL GARCIA,**  
**ET AL.,**

Accused.

**DIAZ-BALDOS, J.** Chairperson  
**INOTURAN, J.**  
**MUSNGI, J.**

Promulgated on:

March 17, 2016

X-----X

## **RESOLUTION**

### ***DIAZ-BALDOS, J:***

For having allegedly granted unwarranted benefits, advantage or preference to Union Bank by awarding the GSIS eCard Project to it without complying with Section 49 of the Implementing Rules and Regulations of R.A. No. 9184, the high-ranking officers of the Government Service Insurance System (GSIS), led by Winston Fiel Garcia, its President, and the Chairman and Members of the Board of Trustees, were charged with Violation of Section 3 (e) of R.A. No. 3019, as amended, in an Information the accusatory portion of which reads:

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*That in May 2004, or sometime prior or subsequent thereto, in the City of Pasay, and within the jurisdiction of this Honorable Court, accused Winston Fiel Garcia, President (SG 30); Enriqueta Palma Disuanceo, Executive Vice-President (SG 28); Benjamin Tolentino Vivas, Jr., Senior Vice-President (SG 27); Hermogenes Diaz Concepcion, Jr., Chairman of the Board of Trustees; Elmer Topacio Bautista, Member, Board of Trustees; Fulgencio S. Factoran, Member, Board of Trustees; Floriño Olano Ibañez, Member, Board of Trustees; Aida De Castro Nocete, Member, Board of Trustees; Reynaldo Pastorfide Palmiery, Member, Board of Trustees; Ellenita D. Tumala-Martinez, Member, Board of Trustees; and Leonora Vasquez-De Jesus, Member, Board of Trustees; all high-ranking public officers of the Government Service Insurance System (GSIS), while in the performance of their official functions, committing the offense in relation to their offices, taking advantage of their official positions through manifest partiality or evident bad faith or gross inexcusable negligence and in conspiracy with one another, did then and there willfully, unlawfully and criminally give unwarranted benefits, advantage or preference to Union Bank of the Philippines (UBP) by awarding the GSIS eCard project to said bank, without complying with the requirements/procedures set forth under Section 49 of the Implementing Rules and Regulations of Republic Act No. 9184, and despite the fact that the closing date for submission of bid proposals has not been closed and prior to the recommendation of the Committee tasked to evaluate the proposals, to the damage and prejudice of the government and the public interest.*

Before the Court now are the following pleadings, namely:

A handwritten signature in black ink, appearing to be 'Garcia', located at the bottom right of the page.

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1. ***Urgent Motion for Judicial Determination of Probable Cause (With Prayer to Defer Issuance of Warrants of Arrest)***<sup>1</sup> filed by accused Winston F. Garcia, Reynaldo P. Palmiery and Enriqueta P. Disuanco;
2. ***Urgent Motion for Judicial Determination of Probable Cause (With Prayer to Defer Issuance of Warrants of Arrest)***<sup>2</sup> filed by accused Floriño O. Ibañez, Elmer T. Bautista, Fulgencio S. Factoran, Jr., Ellenita Martinez, and Leonora V. De Jesus;
3. ***Motion for Judicial Determination of Probable Cause***<sup>3</sup> filed by accused Winston F. Garcia;
4. ***Consolidated Opposition***<sup>4</sup> to the three above-enumerated motions filed by the prosecution;
5. ***Motion to Dismiss***<sup>5</sup> filed by accused Hermogenes D. Concepcion, Jr.; and
6. ***Opposition***<sup>6</sup> to the Motion to Dismiss filed by the prosecution.

The accused-movants anchor their instant motions on the following collated arguments:

**1. The Information and the evidence on record fail to show probable cause for Violation of Section 3 (e) of R.A. No. 3019.**

The procurement of a GSIS eCard partner bank was administered by the GSIS Management independent of the GSIS Board of Trustees.

The award and implementation of the eCard Project was not attended by manifest partiality, evident bad faith or gross inexcusable negligence, as shown by the selection process; and neither did it cause undue injury to any party including the

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<sup>1</sup> Record, page 52

<sup>2</sup> Ibid, page 103

<sup>3</sup> Ibid, page 161

<sup>4</sup> Ibid, page 343

<sup>5</sup> Record, Volume 2, page 5

<sup>6</sup> Ibid, page 358

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Government nor gave unwarranted benefits to Union Bank.

More than ten years have lapsed from the issuance of the COA Audit Observation Memorandum in 2005 (COA AOM 2005-01), without any Notice of Disallowance being issued to signify that the project or government expenditure was illegal, irregular, unnecessary, excessive, extravagant or unconscionable.

**2. The GSIS did not afford unwarranted benefit to Union Bank by its appointment as GSIS eCard partner bank.**

There is no evidence that there was any other proposal for the eCard project better than that of Union Bank. In fact, the technical evaluation conducted by the Information and Technology Services Group of the GSIS showed Union Bank's proposal as the best complying on the technical aspect and met the desired features of the eCard.

**3. The accused were not manifestly partial to Union Bank by its appointment as GSIS depository bank.**

The appointment of Union Bank as depository bank was sanctioned under the GSIS Charter, which empowers the GSIS to invest its funds in interest-bearing deposits or securities in any domestic bank doing business in the Philippines, and under BSP Circular No. 110, Series of 1996, which provides that the authority of a bank to accept Government deposits does not obligate the Government, its subdivisions and instrumentalities and Government-owned or controlled corporations to deposit with that bank.



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The appointment of Union Bank as eCard partner bank is an act entirely separate from the appointment of Union Bank as depository bank, although the two were done in close proximity. In fact, if Union Bank's eCard proposal was not the best qualifying, another bank could have operated the GSIS eCard partner bank while Union Bank was the GSIS depository bank.

**4. No evident bad faith can be imputed against the accused for the failure of GSIS to comply with R.A. No. 9184 in the implementation of the eCard project.**

The appointment of the eCard partner bank of the GSIS is not covered by R.A. No. 9184 since it is not an "infrastructure", "good", or "consulting service" within the contemplation of R.A. No. 9184, and hence, non-compliance with the requirements thereunder is not *mala prohibita* and will not automatically result in criminal liability.

The GSIS eCard Project is simply a bank facility that allows the disbursement of GSIS funds to its members faster, more securely and efficiently than its old, unreliable and costly checking system. The facility for disbursement of deposits, just like the checking system, is only ancillary to the opening and maintenance of a bank account which does not require public bidding given the exigencies of government service.

**5. The Information does not implead Union Bank and the incumbent GSIS officers.**

Union Bank, which the OMB found to have received unwarranted benefits from the implementation of the eCard Project, as well as the incumbent officers Members of the GSIS Board of Trustees, its President and General Manager, and



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other key officers who, being aware of the COA audit findings but did not stop the implementation of the project should be impleaded under the "Equal protection of laws" clause of the Constitution.

**6. The Resolution of the Ombudsman fails to show conspiracy based on evidence.**

The complainant has the burden of establishing the existence of conspiracy as clearly and conclusively as the crime itself. No evidence of conspiracy appears from the records. Accused Garcia was authorized by the Board to award the eCard contract, and in doing so, he relied on the recommendations and Technical Evaluation Report of the Technical Committee that evaluated all the proposals based on the objective assessment and recommendations of the other concerned units of the GSIS. Accused Palmiery, Vivas and Disuanco were part of the Technical Committee.

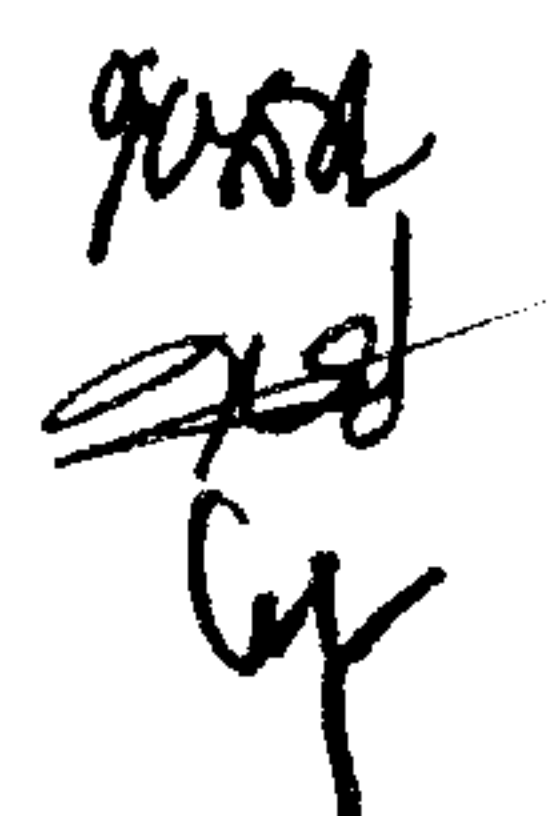
**7. The filing of the Information more than ten years after the initial complaint was filed by COA violates the constitutional right of the accused to speedy disposition of cases.**

The Office of the Ombudsman incurred a delay of ten (10) years in resolving a complaint that was filed on April 1, 2005 and in finally filing the Information only on September 2, 2015.

In its **Consolidated Opposition**<sup>7</sup> to the separate motions of **A. accused Garcia; B. Ibañez, Bautista, Factoran, Jr., Martinez and De Jesus; and C. Garcia, Palmiery and Disuanco**, the prosecution argues that the determination of the existence of probable cause and against whom charges

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<sup>7</sup> Record, Volume 1, page 343



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should be filed lies within the full discretion of the Office of the Ombudsman, and in claiming that this Court cannot possibly re-evaluate the OMB finding on probable cause, cites that "the judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause; rather, the judge makes a determination of probable cause independent of the prosecutor's finding."

The prosecution further asserts that a preliminary investigation is not the occasion for the full and exhaustive display of the parties' respective sets of evidence, and that it is enough that sufficient evidence is established that the act or omission complained of is believed to constitute the offense charged.

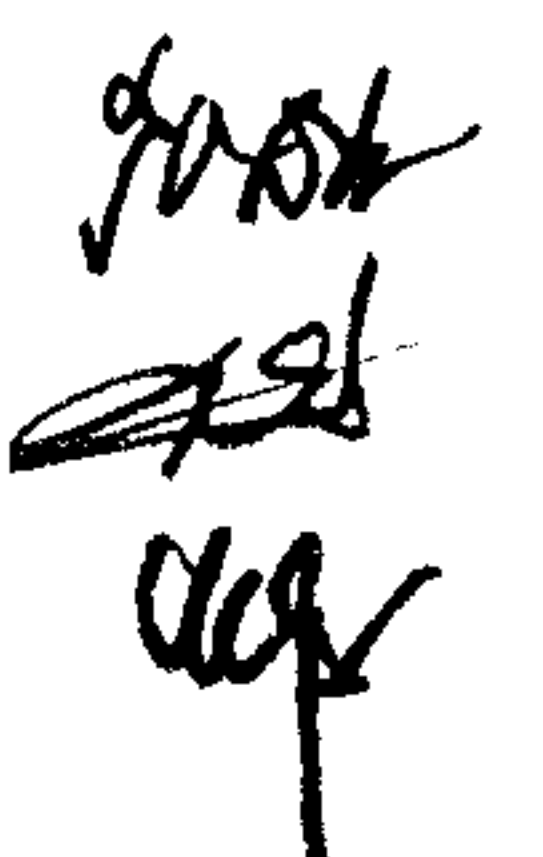
Regarding the alleged violation of the right to speedy disposition of this case, the prosecution maintains that the concept of speedy disposition of cases is a relative term and a flexible concept, for which the balancing test must be used to determine if the right of the accused to speedy disposition of his case has been violated. Factors such as length of delay, reasons for the delay, the failure of the accused to assert that right, and the prejudice caused by the delay must be weighed. The prosecution explains that the numerous respondents and their motions for extension of time to file their Counter-Affidavits, or motions to dismiss are responsible for the delay.

The prosecution likewise cites that the delay at the Field Investigation Office was occasioned by the fact that this case was also simultaneously investigated by the Committee on Good Government and Committee on Government Enterprises & Privatization of the House of Representatives, and that since it involves complex legal, factual and banking issues, considerable time was needed to resolve the matter.

Rebutting the above-cited arguments of the prosecution, the accused-movants separately filed their **Reply to the Consolidated Opposition Dated 21 December 2015**<sup>8</sup> in the case of accused Winston Garcia, and **Reply to the**

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<sup>8</sup> Ibid, page 362



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**Consolidated Opposition**<sup>9</sup> in the case of accused Winston Garcia, Reynaldo Palmiery and Enriqueta Disuanco, wherein they commonly contend the following:

1. There is no law or jurisprudence that prohibits this Court from determining the issue of probable and to dismiss the criminal case for lack of probable cause, as courts are in fact mandated by the Constitution to review the records of criminal cases to support the issuance of warrant of arrest against the accused.
2. The prosecution failed to answer questions on the existence of probable cause, as the evidence on record during the preliminary investigation is insufficient to establish probable cause showing that there was evident bad faith or manifest partiality, or that unwarranted benefits were given to Union Bank.
3. The prosecution failed to show any evidence of conspiracy.
4. The prosecution's failure to explain the more than ten-year delay reinforces the assertion of the accused that it was inordinate and unreasonable and constitutes a blatant violation of the constitutionally guaranteed right of the accused to speedy disposition of their case.

**THE COURT'S RULING**

Various arguments have been propounded in support of and in opposition to the motions under consideration. One outstanding argument that easily serves as basis for a favorable resolution of those motions is the alleged violation of the right of the accused to speedy disposition of their case.

Along this line, the Court finds that the instant case, which originated from the complaint filed with the Office of the Ombudsman on April 1, 2005, remained pending with the said Office for more than ten years up to the filing of the corresponding Information on September 2, 2015. Against

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<sup>9</sup> Ibid, page 378





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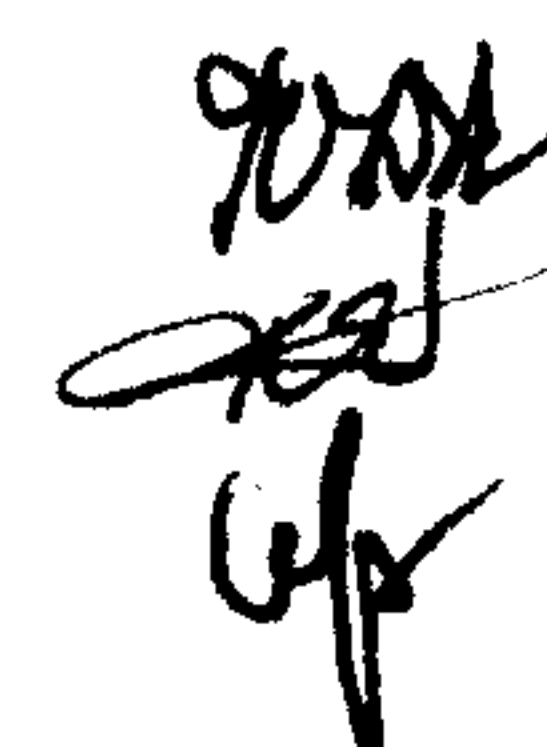
this glaring delay comes the prosecution's contention that this should not be a ground for dismissal and that several factors should be taken into account for the delay, like the number of respondents and the various motions filed by them.

To grapple with this contention, it thus becomes necessary to consider the relevant dates. It appears from the Consolidated Opposition filed by the prosecution to the Motions of Garcia, et al. and the Timeline of Proceedings provided by it in its Opposition to Concepcion's Motion to Dismiss, that the complaint which was filed on April 1, 2005 was initially endorsed for fact-finding investigation and was docketed as a regular case only on September 12, 2011, and that the accused were directed to submit their Counter-Affidavits and controverting evidence on September 28, 2011.

It further appears that after the submission of Counter-Affidavits (with Motions for Extension of Time to File Counter-Affidavit allegedly filed by Palmiery, Disuanco, Ibañez, Bautista, Factoran, Jr., Martinez and De Jesus), the case was resolved on November 7, 2014. Thereafter, the accused filed a Motion for Reconsideration as well as an Urgent Motion to Dismiss or in the Alternative Suspend Proceeding Due to Prejudicial Question on July 13, 2015. It is on the basis of the filing of these latter pleadings that the prosecution cites that the accused have not come to court with clean hands.

The above circumstances incontrovertibly show that it took the OMB four years, or from September 12, 2011 when the complaint was docketed as a regular case, until September 2, 2015 when the corresponding Information was filed, to complete its investigation. In explaining the preceding six years that the case remained pending at the Field Investigation Office, the prosecution ratiocinates that this case was likewise the subject of a simultaneous or parallel investigation conducted by the Committee on Good Government jointly with the Committee on Government Enterprises & Privatization of the House of Representatives.

The Court takes no issue about any investigation conducted by the House of Representatives. The crux of the



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matter is whether or not that is enough justification for the Field Investigation Office to slumber through those six years, without hinting as to what transpired thereat and seemingly merely waiting for the outcome of the investigation by the committees of the House of Representatives. At least, that is what appears from the Timeline of Proceedings given, which shows that all the proceedings itemized therein that transpired from February 16, 2005 to August 23, 2011 (when the FIO complaint was indorsed) were for the most part at the House of Representatives.

If any investigation was at all done at the Field Investigation Office, the proceedings relative thereto would have been detailed in the same manner as those taken at the House of Representatives or during the preliminary investigation. Since they were not accorded importance through a mere mention thereof, the gratuitous assumption is that no significant action was taken by the Field Investigation Office within those six years.

Moreover, there is nothing to show that the two investigations were a joint undertaking with the OMB. In fact, as may easily be observed from the Timeline of Proceedings, the two committees of the House of Representatives already started with its work as early as February 23, 2005, or months before the COA filed its complaint with the OMB. This logically shows that there was no connection whatsoever between the investigations of the House of Representatives and that purportedly conducted by the Field Investigation Office.

In this regard, the explanation provided by the prosecution for the six years that the case remained pending at the Field Investigation Office is emaciated and fails to impress. On that score alone, it cannot be gainsaid that the lapse of six years, bereft of any reasonable explanation, categorizes the delay as capricious and vexatious, and prejudicial to the accused.

Attempting to evade the issue of unexplained delay, the prosecution asserts that the reckoning of the period of delay should commence only from the start of the preliminary



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investigation on September 12, 2011, or only four years. The Court finds this assertion to be lame, because as held in *People vs. Sandiganbayan, Hernando Perez, et al.*,<sup>10</sup> the guarantee of speedy disposition under Section 16, Article III of the Constitution applies to **all** cases pending before **all** judicial, quasi-judicial or administrative bodies.

As further expressed in the aforecited case, the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of any case. The guarantee would be defeated or rendered inutile if the hair-splitting decision by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated.

With reference to all cases wherein the accused is entitled to speedy disposition of cases, the said case further expresses that it is in criminal cases where the need for a speedy disposition of their cases is more pronounced. It is so, because in criminal cases, it is not only the honor and reputation but even the liberty of the accused that is at stake.

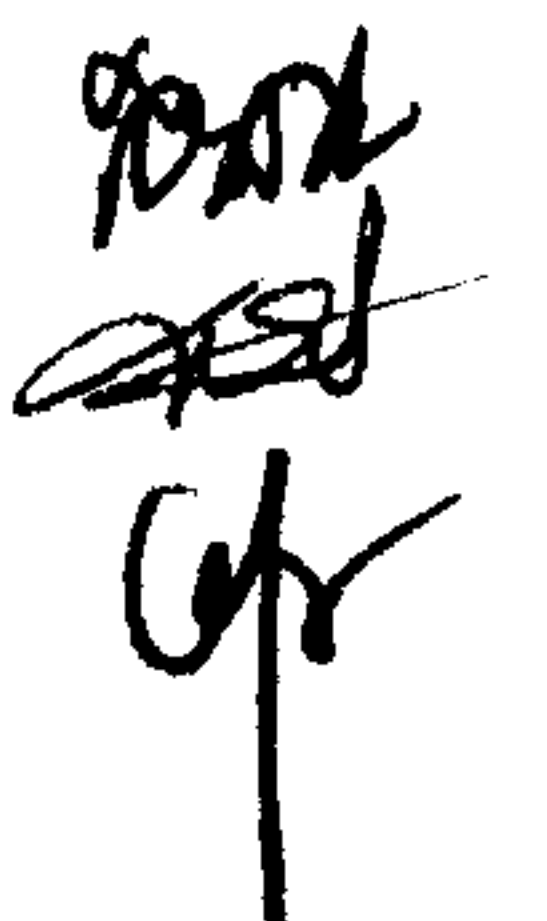
While the contention of the prosecution that the concept of speedy disposition of a case is a flexible concept and that due regard must be given to certain factors, it has been held that the right to speedy disposition of a case is deemed violated when the proceedings are attended by vexatious, capricious, and oppressive delays, or when a long period of time is allowed to elapse without the parties having their case tried.<sup>11</sup>

In further contending that this case should not be dismissed on the ground of speedy disposition of the case, the

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<sup>10</sup> G.R. No. 189063, December 11, 2013

<sup>11</sup> As held in *Ombudsman vs. Jurado*, G.R. No. 154155. August 6, 2008, citing *Yulo v. People*, G.R. No. 142762, March 4, 2005, and *Caballero v. Alfonso, Jr.*, G.R. No. L-45647.



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prosecution shifts the blame on the accused who allegedly still filed a Motion for Reconsideration and an Urgent Motion to Dismiss or in the Alternative Suspend Proceeding Due to Prejudicial Question. In this regard, it would not be superfluous to remind the prosecution that the filing of the Motion for Reconsideration by the accused, especially when it was done within the reglementary period, is part of due process, in much the same way as a Motion to Dismiss is not a prohibited pleading.

As emphasized in *Coscolluela vs. Sandiganbayan*,<sup>12</sup> 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.” This great responsibility cannot be simply brushed aside by ineptitude. Precisely, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of a 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 dispensation.<sup>13</sup>

When the Constitution enjoins the Ombudsman to “act promptly” on any complaint against any public officer or employee, it has the concomitant duty to speedily resolve the same.<sup>14</sup> It is unfortunate that the office tasked to protect the people is the first to contribute to its hardship and suffering. Excessive delay in the disposition of cases renders the rights of people guaranteed by various legislations inutile.<sup>15</sup> Therefore, people’s respect and confidence in the Office of the Ombudsman are measured not only by its impartiality,

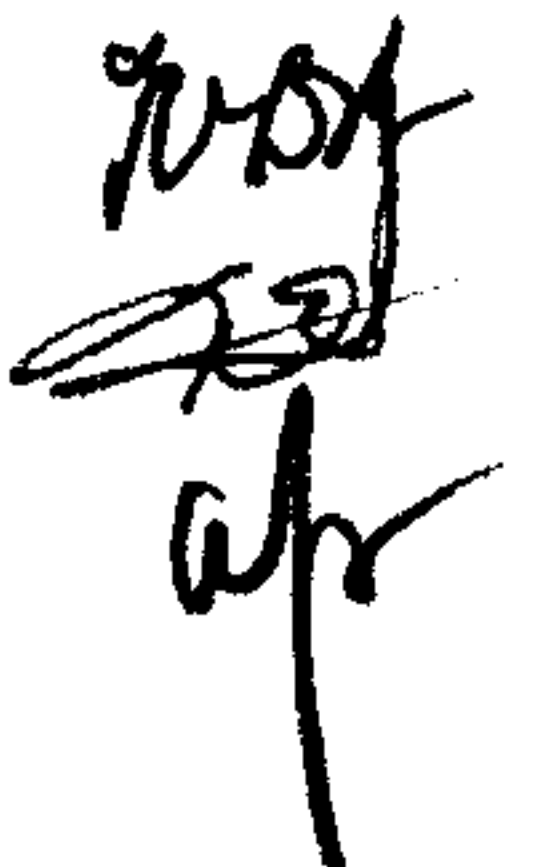
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<sup>12</sup> G.R. No. 191411, July 15, 2013.

<sup>13</sup> Ibid

<sup>14</sup> Enriquez, et al. vs. Office of the Ombudsman, G.R. Nos. 174902-06, February 15, 2008.

<sup>15</sup> Matias vs. Plan, 293 SCRA 539.



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fairness, and correctness of its acts, but also by its capacity to resolve cases speedily.<sup>16</sup>

By way of peroration, the Court rules that on the ground alone of violation of speedy disposition of the case, this case ought to be dismissed outright.

Considering that this case already merits a dismissal based on the violation of the Constitutional precept of speedy disposition of the case, further lengthy and elaborate discussion on the other arguments raised in the motions would not fulfill any purpose.

Suffice it to state that the allegation in the Information, delimited to alleged violation of Section 49 of the Implementing Rules and Regulations of R.A. No. 9184 on Limited Source Bidding, pales in the light of the explanations offered by the accused-movants and the significant facts spelled out by them, from which it appears that its salient provisions have been complied with and adhered to as far as practicable.

It is imperative to state in this connection, therefore, that since the "eCard Project," which was designed to replace the method of disbursing funds to its members from a checking account disbursement facility to an ATM Card network of a bank, was a novel concept as described by the accused-movants, compliance with the requirements of the said provision was approximated when the GSIS sent invitations to submit proposals to the existing depository banks of GSIS, namely, Land Bank of the Philippines (LBP), Philippine National Bank (PNB), and Development Bank of the Philippines (DBP).

Since only PNB and DBP submitted amended proposals after the first proposals submitted were found not to be complete and concrete, GSIS expanded the search to include private banks, and thus sent invitations to the Bank of the Philippine Islands (BPI) and then Equitable PCI Bank (EPCIB). Only BPI expressed interest and submitted a proposal. Union

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<sup>16</sup> See Note 13.

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Bank of the Philippines (Union Bank), which was then negotiating with the GSIS to be designated as one of its depository banks, joined the search and submitted its proposal too. The Technical Committee evaluated the proposals, particularly their financial aspect, and thereafter recommended the proposal of Union Bank, whose Cost Benefit Analysis proved to be the most advantageous to the GSIS.

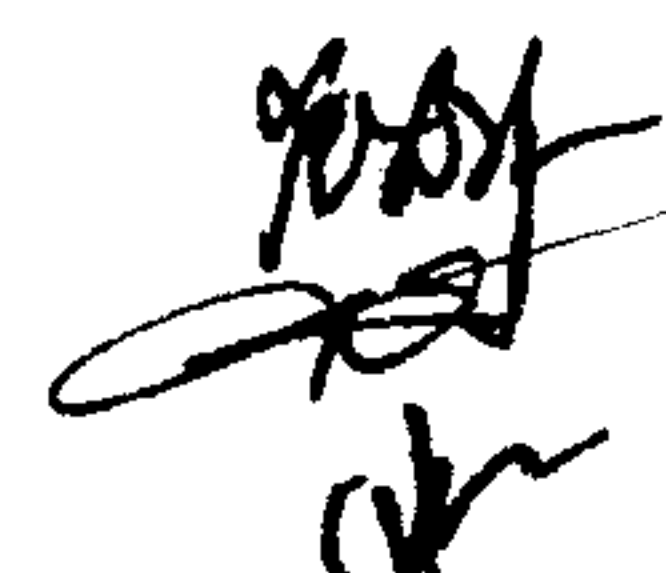
The results of the technical and financial evaluation of the proposals were presented to the Board of Trustees on May 26, 2004, and the Board, through its Resolution No. 117, delegated to the President and General Manager the authority to choose from among the DBP, BPI and Union Bank the proposal that best complied with the requirements for the GSIS eCard. On May 28, 2004, accused Garcia, as President and General Manager, designated Union Bank as eCard partner bank of GSIS.

Based on the above presentation, any imputation of Violation of Section 3 (e) of R.A. No. 3019 in the procurement of Union Bank as "eCard partner" of GSIS would be more speculative than real, considering that the project continued to be implemented by the succeeding officials of GSIS and no affected party, including the banks that submitted proposals, raised a whimper about it. Significantly too, no Notice of Disallowance has been issued by the Commission on Audit to date.

One final word. Section 6 (a) of Rule 112 of the Rules of Court provides, among others, that the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence within (10) days from the filing of the complaint or information. **He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.**

**WHEREFORE**, in the light of all the foregoing, the Court hereby:

1. Finds merit in the **Urgent Motions for Judicial Determination of Probable Cause** filed by



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accused Winston F. Garcia, Reynaldo P. Palmiery, Enriqueta P. Disuanco, Florino O. Ibañez, Elmer T. Bautista, Fulgencio S. Factoran, Jr., Elenita Martinez, and Leonora V. De Jesus; and the **Motion to Dismiss** filed by accused Hermogenes D. Concepcion, Jr.; and

2. Accordingly **DISMISSES** this case for violation of the Constitutional precept on speedy disposition of cases and for want of probable cause.

**SO ORDERED.**

Quezon City, Philippines.

  
**TERESITA V. DIAZ-BALDOS**  
Chairperson

WE CONCUR:

  
**NAPOLEON E. INOTURAN**  
Associate Justice

  
**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice