REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

SPECIAL THIRD DIVISION

REPUBLIC OF THE PHILIPPINES, **Petitioner,** **-versus –** **HERNANDO B. PEREZ, *et. al.*,** **Respondents.**	**SB-14-CVL-0002** For: Forfeiture of Properties Under R. A. No. 1379 *Present:* **CABOTAJE-TANG, *PJ*** **QUIROZ,**[1] ***J.*** **CORNEJO,**[2] ***J.*** **ESTOESTA,**[3] ***J.*** and **ECONG,**[4] ***J.*** *Promulgated* APRIL 18, 2016

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R E S O L U T I O N

CABOTAJE-TANG, P.J.:

For resolution are the following:

1. Respondents Hernando B. Perez, Rosario S. Perez and Ramon Antonio C. Arceo's *Motion for Reconsideration* dated July 20, 2015;[5]

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[1] Signatory to the *Resolution* promulgated on July 8, 2015 per Administrative Order No. 099-2015 dated March 18, 2015

[2] Signatory to the *Resolution* promulgated on July 8, 2015 per Administrative Order No. 098-2015 dated March 18, 2015

[3] Designated as Special Member of a Special Division of Five Justices in the Third Division pursuant to Administrative Order No. 4-C-2016 dated March 7, 2016

[4] Designated as Special Member of a Special Division of Five Justices in the Third Division pursuant to Administrative Order No. 4-C-2016 dated March 7, 2016

[5] p. 27, Vol. II, Record

2. Petitioner Republic of the Philippines' *Motion for Reconsideration (To the Resolution dated 08 July 2015)* dated July 21, 2015;[6] and

3. Respondent Ernest De Leon Escaler's *Motion for Reconsideration (of this Honorable Court's 08 July 2015 Resolution)* dated July 24, 2015.[7]

The aforesaid motions seek the reversal of the Court's *Resolution* promulgated on July 8, 2015,[8] the dispositive portion of which reads:

> ***WHEREFORE***, premises considered, this case is ***REMANDED*** to the Office of the Ombudsman for the conduct of the necessary proceedings conformably with the directive of then Ombudsman Ma. Merceditas N. Gutierrez in the *Joint Resolution* dated November 6, 2006. The said office is given a ***NON-EXTENDIBLE*** period of sixty (60) days within which to finish the said proceedings. The Office of the Ombudsman is likewise directed to immediately report the result of the said proceeding to the Court within five (5) days from its termination.
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> ***SO ORDERED.***[9]

4. Respondent Ernest DL. Escaler's *Motion to Dismiss with Opposition to the Application for Issuance of a Writ of Preliminary Attachment* dated February 5, 2015,[10] which was adopted by respondent Hernando B. Perez, *et al.* as their own in their *Manifestation* dated March 27, 2015.

THE ANTECEDENT PROCEEDINGS

The Court ordered the remand of this case to the Office of the Ombudsman after noting that the record of this case is bereft of any showing that the directive of then Ombudsman

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[6] p. 40, *id*
[7] p. 60, *id*
[8] p. 22, *id*
[9] p. 25, *id*; emphasis in the original
[10] p. 624, Vol. I, Record

Ma. Merceditas N. Gutierrez in her marginal note in the *Joint Resolution* dated November 6, 2006, was complied with.[11] The remand of this case to the Office of the Ombudsman was made conformably with the teachings of the Supreme Court in ***Perez vs. Sandiganbayan***.[12]

THE PARTIES' MOTIONS FOR RECONSIDERATION

Respondents Perez, *et al.* argue that the remand of this case to the Office of the Ombudsman pursuant to the aforesaid resolution of the Court violates their right to due process and their right under Section 16, Article III of the 1987 Constitution. They likewise argue that the remand of this case to the Ombudsman is barred by the law of the case.[13]

Respondent Escaler, on the other hand, argues that the Court should reconsider its assailed *Resolution* because: (1) it failed to address and resolve the grounds he raised in his motion to dismiss, (2) the Court erred in not dismissing the petition notwithstanding its finding that the Office of the Ombudsman did not comply with the directive of then Ombudsman Gutierrez to constitute a panel to study the propriety of filing a petition for forfeiture against them, (3) remand of the case to the Office of the Ombudsman is an exercise in futility and will not serve any useful purpose since it could not remedy the fatal defect that the petitioner failed to comply with the conditions precedent prior to the filing of the petition, and (4) remand of the case to the Office of the Ombudsman would only compound and prolong respondent's suffering allegedly caused by the inordinate, vexatious, capricious and oppressive delay that attended the filing of the petition.[14]

The prosecution moves for a reconsideration of the Court's assailed *Resolution* on the ground that the Office

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[11] p. 65, *Joint Resolution*; p. 358, Vol. I, Record
[12] 503 SCRA 252 (2006)
[13] p. 1, Respondents Perez, *et al.*'s *Motion for Reconsideration*; p. 27, Vol. II, Record
[14] pp. 1-2, Respondent Escaler's *Motion for Reconsideration*; pp. 60-61, *id*

of the Ombudsman already *complied* with the directive of then Ombudsman Gutierrez to refer the initiation of the forfeiture proceedings to another panel for further study. In support of the said manifestation, petitioner attached to their said motion copies of: (1) *Office Order No. 177, series of 2012*, dated May 3, 2012, issued by Ombudsman Conchita Carpio Morales constituting a Special Panel of Reviewers "*to review the 66-page Joint Resolution in OMB-C-C-02-0857-L, OMB-C-C-05-0633-K, OMB-C-C-05-0634-K, OMB-C-C-05-0635-K-(F)...*,"[15] and (2) *Memorandum* dated January 28, 2013, prepared by the Special Panel of Reviewers addressed to Ombudsman Morales, recommending the institution of the forfeiture proceedings against the herein respondents.[16]

Evidently, the issue of whether the Office of the Ombudsman complied with the directive of then Ombudsman Gutierrez in her marginal note in the *Joint Resolution* dated November 6, 2006, issued by the Special Panel of Investigators, would not have surfaced had the aforesaid documents been incipiently attached to the present petition upon the filing thereof with the Court. This presents an opportune time to remind the counsel of the petitioner to be more diligent in the performance of their duties to prevent, if not avoid, any unnecessary delay in the resolution of the incidents pending before the Court.

At any rate, the Court resolves to admit, as it hereby admits, the said documents in the higher interest of justice. Accordingly, the Court reconsiders its *Resolution* promulgated on July 5, 2015, remanding this case to the Office of the Ombudsman, considering that the petitioner has presented proof of its compliance with the directive of then Ombudsman Gutierrez.

Thus, the Court shall now resolve the motion to dismiss filed in this case.

Respondent Escaler filed a *Motion to Dismiss with Opposition to the Application for Issuance of a Writ of Preliminary Attachment* dated February 5, 2015.[17] This

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[15] p. 45, *id*
[16] p. 46, *id*
[17] p. 624, Vol. I, Record

was adopted by respondent Perez, *et al.* as their own in their *Manifestation* dated March 27, 2015.[18]

RESPONDENT ESCALER'S GROUNDS FOR DISMISSAL

In his bid to dismiss this case, respondent Escaler relies on the following grounds:

> (1) The petition states no cause of action against him;
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> (2) Conditions precedent to the filing of the petition have not been complied with;
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> (3) The cause of action is barred by a prior judgment; and
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> (4) The inordinate delay in the filing of the petition, being violative of respondent Escaler's constitutionally-guaranteed right to due process and to speedy disposition of cases, warrants the dismissal of the petition.[19]

THE COURT'S RULING

I. Re: Alleged Violation of the Respondents' Rights to Speedy Disposition of Cases

For orderly procedure, the Court shall first resolve whether there was a violation of the herein respondents' constitutional right to a speedy disposition of their case. For should the Court find that there was indeed such a violation,

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[18] p. 865, *id*
[19] pp. 1-2, Respondent Escaler's *Motion to Dismiss*; pp. 624-625, *id*

there would be no more practical need to discuss the other issues raised by them.

Respondent Escaler alleges that his right to a speedy disposition of his case was violated in the proceedings before the Office of the Ombudsman. In support thereof, he invokes the *Decision* of the Supreme Court in ***People vs. Sandiganbayan***.[20] The said case involved, among other matters, the dismissal by the Second Division of this Court of Criminal Case No. SB-08-CRM-0266, entitled "*People of the Philippine v. Hernando Benito Perez, Rosario S. Perez, Ernest Escaler, and Ramon A. Arceo,*" for robbery under Article 293, in relation to Article 294, of the Revised Penal Code. In ordering the dismissal of the said criminal case, the Second Division found that there was inordinate delay in the resolution by the Office of the Ombudsman of the complaint filed by then Congressman Mark Jimenez against the therein accused. The dismissal of the aforesaid criminal case was questioned by the Office of the Ombudsman before the Supreme Court *via* a petition for certiorari. The Supreme Court upheld the dismissal of the said criminal case in this wise:

> The acts of the respondents that the Office of the Ombudsman investigated had supposedly occurred in the period from February 13, 2001 to February 23, 2001. Yet, the criminal complaint came to be initiated only on November 25, 2002 when Ombudsman Marcelo requested PAGC to provide his office with the documents relevant to the exposé of Cong. Villarama. Subsequently, on December 23, 2002, Cong. Jimenez submitted his complaint-affidavit to the Office of the Ombudsman. It was only on November 6, 2006, however, when the Special Panel created to investigate Cong. Jimenez's criminal complaint issued the Joint Resolution recommending that the criminal informations be filed against the respondents. Ombudsman Gutierrez approved the Joint Resolution only on January 5, 2007. The Special Panel issued the second Joint Resolution denying the respondents' motion for reconsideration on January 25, 2008, and Ombudsman Gutierrez approved this resolution only on April 15, 2008. Ultimately, the informations charging the respondents with four different crimes based on the complaint of Cong. Jimenez were all filed on April 15, 2008, thereby leading to the commencement of Criminal Case No. SB-08-CRM-0265 and Criminal Case No. SB-08-CRM-0266. In sum, the fact-finding investigation and preliminary

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[20] 712 SCRA 359 (2013)

investigation by the Office of the Ombudsman lasted nearly five years and five months.

It is clear from the foregoing that the Office of the Ombudsman had taken an unusually long period of time just to investigate the criminal complaint and to determine whether to criminally charge the respondents in the Sandiganbayan. Such long delay was inordinate and oppressive, and constituted under the peculiar circumstances of the case an outright violation of the respondents' right under the Constitution to the speedy disposition of their cases. If, in Tatad v. Sandiganbayan, the Court ruled that a delay of almost three years in the conduct of the preliminary investigation constituted a violation of the constitutional rights of the accused to due process and to the speedy disposition of his case, taking into account the following, namely: (a) the complaint had been resurrected only after the accused had a falling out with former President Marcos, indicating that political motivations had played a vital role in activating and propelling the prosecutorial process; (b) the Tanodbayan had blatantly departed from the established procedure prescribed by law for the conduct of preliminary investigation; and (c) the simple factual and legal issues involved did not justify the delay, there is a greater reason for us to hold so in the respondents' case.

Since the present petition for forfeiture of illegally-acquired property is likewise an off-shoot of the said proceedings, respondent Escaler claims that the aforesaid decision of the Supreme Court justifies the dismissal of this case based on speedy disposition of cases ground. He hastens to add that, the "*delay in the filing of the instant petition is even worse; for while the Information in criminal case were filed on April 15, 2008, or five years and five months after the preliminary investigation, this Petition was filed only on November 14, 2014, or six (6) long years after the Informations in the criminal cases were filed, or twelve (12) very long years after the initiation of the criminal complaint on November 25, 2002 based on acts complained of that were allegedly committed on February 13, 2001.*"[21]

The Court finds the invocation by respondent Escaler of the pronouncement of the Supreme Court in ***People vs. Sandiganbayan***[22] highly misplaced.

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[21] p. 21, Respondent Escaler's *Motion to Dismiss*; p. 644, Record
[22] *supra*

First. This case involves a petition for forfeiture of alleged ill-gotten wealth and/or unexplained wealth of the herein respondents. Section 15, Article XI of the 1987 Constitution explicitly provides that the right of the State to recover unlawfully acquired properties is imprescriptible, to wit:

> Section 15. The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.

To sustain therefore the respondents' claim of a violation of their right to a speedy disposition of their case would negate and render nugatory the constitutionally-ordained imprescriptibility of the State's right to institute an action to recover ill-gotten wealth. Indeed, the State could initiate an action for the recovery of ill-gotten wealth at *any time* and without regard to the rule on prescription, laches or estoppel because "*xxx to bar the Government from recovering ill-gotten wealth would result in the validation or legitimization of the unlawful acquisition...*"[23]

Second. In ***Marcos, Jr. vs. Republic***,[24] the Supreme Court categorically declared that a forfeiture proceeding under R.A. No. 1379 is civil in nature. In fact, respondent Escaler himself admits that the present petition for forfeiture is civil in nature.[25] Accordingly, the provisions of the Rules of Court on institution of actions should apply to this case.

Section 5, Rule I of the Rules of Court provides that, "*[A] civil action is commenced by the filing of the original complaint in court.*" Plainly, the commencement of a civil action is reckoned from the time of filing of the original complaint in court; hence, it is only at this time may it be correctly argued that a civil case has been **instituted** before a court.

The present petition for forfeiture was **filed** with the Court on **November 14, 2014**. Thus, this civil action was

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[23] ***Republic vs. Migrino***, 198 SCRA 289 (1990)
[24] 671 SCRA 280 (2012)
[25] p. 4, Respondent Escaler's *Motion to Dismiss*; p. 627, Vol. I, Record

deemed instituted only on the said date pursuant to the aforesaid rule.

Certainly, the ***preliminary inquiry*** conducted by the Office of the Ombudsman before November 14, 2014 cannot be considered the initiation of the petition for forfeiture against the respondents thereby negating a proper invocation of their right to a speedy disposition of cases with respect thereto. Perforce, the operative effect of the delay in the termination of the preliminary investigation of the related criminal cases cannot be brought to bear on the preliminary inquiry conducted by the Office of the Ombudsman leading to the institution of the present petition. To do so would amount to a fusion of the said criminal cases with this civil case for forfeiture which are entirely separate and distinct from each other and governed by different rules, both substantive and procedural. The most notable substantive difference is that crimes prescribe while, as hereinbefore indicated, the right of the State to recover properties unlawfully acquired by public officials or employees from them or from their nominees or transferees is constitutionally-declared imprescriptible. In the words of the constitution itself, such right of the State "shall not be barred by prescription, laches, or estoppel."[26]

Third. Assuming that respondents may validly invoke their right to speedy disposition of cases during the ***preliminary inquiry*** before the Office of the Ombudsman, the Court finds that there was no violation of their right to speedy disposition of their case.

In ***Corpuz vs. Sandiganbayan***,[27] the Supreme Court instructs the courts to approach speedy trial cases on an *ad hoc* basis. Guided by this teaching, the Court shall now assess the established facts in this case.

The record of this case discloses that on **November 14, 2005**, the Field Investigation Office (FIO) of the Office of the Ombudsman "filed" a *Complaint* dated November 11, 2005, against the herein respondents for violation of R.A. No. 1379 with the Preliminary Investigation, Administrative Adjudication and Monitoring Office (PAMO) of the Office of the

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[26] Section 15, Article XI

[27] 442 SCRA 294 (2004)

Ombudsman.[28] It is worthy to note, however, that the factual backdrop of this case had its genesis from the *Complaint-Affidavit* dated **December 23, 2002**, which was filed by then Congressman Mario "Mark (MJ) Jimenez" B. Crespo, against the herein respondents before the Office of the Ombudsman.[29]

Thereafter, or on **December 13, 2005**, respondents Perez, *et al.* filed their *Consolidated Joint Counter-Affidavit* dated December 12, 2005.[30] Instead of filing of his counter-affidavit, respondent Escaler filed a *Motion to Disqualify/Inhibit the Office of the Ombudsman from Conducting the Preliminary Investigation and to Turn Over the Conduct of the Proceedings to the Department of Justice and Ad Cautelam Suspension of the Period to File Counter-Affidavit and/or Deferment of Proceedings.*[31]

After the necessary proceedings were conducted, the Special Panel constituted by the Ombudsman to investigate the complaints against the herein respondents issued a *Joint Resolution* dated **November 6, 2006**,[32] which recommended, among other matters, the institution of a forfeiture proceedings against the herein respondents after the conduct of the May 2007 general elections pursuant to Section 2 of R.A. No. 1379.[33]

In her marginal note appearing on the said *Joint Resolution*, however, then Ombudsman Gutierrez directed that the aforesaid recommendation be referred to another panel for further study.[34]

On **May 3, 2012**, Ombudsman Morales issued *Office Order No. 177, series of 2012*, constituting a Special Panel of Reviewers which was tasked to review the matter of initiation of forfeiture proceedings pursuant to the said directive of then Ombudsman Gutierrez.[35]

Conformably with the said directive, on **January 28, 2013**, the Special Panel of Reviewers submitted their *Memorandum* of even date to Ombudsman Morales. The said special panel recommended the filing of the petition for

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[28] p. 378, Vol. I, Record
[29] p. 22, *id*
[30] p. 475, *id*
[31] Please refer to Respondent Escaler's *Reply* dated March 7, 2006, p. 564, *id.*
[32] p. 300, Record
[33] pp.62-63, *Joint Resolution;* pp. 355-356, Vol. I, Record; emphasis supplied
[34] p. 65, *id;* p 358, *id*
[35] p. 45, Vol. II, Record

forfeiture after the May 13, 2013 elections.[36] Said recommendation was approved by Ombudsman Morales on **January 30, 2013**.[37]

Thus, on **November 14, 2014**, the present petition for forfeiture was filed with the Court, or after **nine (9) years** from the "filing" of the complaint for forfeiture by the FIO on November 14, 2005, before the Office of the Ombudsman. Between December 13, 2005 and November 14, 2014, the respondents did not file any motion with the Office of the Ombudsman to resolve and/or terminate the preliminary inquiry before it.

Thus, the decisive question is whether this length of time it took the Office of the Ombudsman to terminate the preliminary inquiry violated the herein respondents' right to a speedy disposition of their case.

Based on the above recorded events, the Court rules in the negative.

It needs to be underscored that speedy disposition is a relative and flexible concept. **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. In determining whether or not the right to the speedy disposition of cases has been violated, the Supreme Court has laid down the following guidelines: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[38]

Here, although the ***preliminary inquiry*** pended before the Office of the Ombudsman for nine (9) years, there is no showing that such delay was deliberately employed by the said office in order to hamper or prejudice the defense of the herein respondents and/or to gain some tactical advantage over them. Thus, the delay should be weighed less heavily against the State as held in ***Corpuz vs. Sandiganbayan***:[39]

> Closely related to the length of delay is the reason or justification of the State for such delay. Different weights

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[36] p. 46, *id*
[37] p. 52, *id*
[38] ***Garcia vs. Executive Secretary***, 677 SCRA 750 (2012)
[39] *Supra*

> 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 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.** Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.[40]

Moreover, respondents Escaler and Perez, *et al.* never took any positive action to assert their right to a speedy disposition of the ***preliminary inquiry*** then being conducted by the Office of the Ombudsman. Their inaction may thus be considered a waiver of their right to a speedy disposition of the said ***preliminary inquiry*** conformably with the teachings of the Supreme Court in ***Garcia vs. Executive Secretary***,[41] to wit:

> In this case, there was no allegation, whatsoever of any delay during the trial. What is being questioned by petitioner is the delay in the confirmation of sentence by the President. Basically, the case has already been decided by the General Court Martial and has also been reviewed by the proper reviewing authorities without any delay. The only thing missing then was the confirmation of sentence by the President. **The records do not show that, in those six (6) years from the time the decision of the General Court Martial was promulgated until the sentence was finally confirmed by the President, petitioner took any positive action to assert his right to a speedy disposition of his case.** This is akin to what happened in *Guerrero v. Court of Appeals*, where, in spite of the lapse of more than ten years of delay, **the Court still held that the petitioner could not rightfully complain of delay violative of his right to speedy trial or disposition of his case, since he was part of the reason for the failure of his case to move on towards its ultimate resolution**. The Court held, inter alia:
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> > In the case before us, the petitioner merely sat and waited after the case was submitted for resolution in 1979. It was only in 1989 when the case below was reraffled from the RTC of

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[40] Emphasis supplied
[41] *supra*

> Caloocan City to the RTC of Navotas-Malabon and only after respondent trial judge of the latter court ordered on March 14, 1990 the parties to follow-up and complete the transcript of stenographic notes that matters started to get moving towards a resolution of the case. More importantly, it was only after the new trial judge reset the retaking of the testimonies to November 9, 1990 because of petitioner's absence during the original setting on October 24, 1990 that the accused suddenly became zealous of safeguarding his right to speedy trial and disposition.
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> xxx xxx xxx
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> In the present case, there is no question that petitioner raised the violation against his own right to speedy disposition only when the respondent trial judge reset the case for rehearing. It is fair to assume that he would have just continued to sleep on his right — a situation amounting to laches — had the respondent judge not taken the initiative of determining the non-completion of the records and of ordering the remedy precisely so he could dispose of the case. The matter could have taken a different dimension if during all those ten years between 1979 when accused filed his memorandum and 1989 when the case was reraffled, the accused showed signs of asserting his right which was granted him in 1987 when the new constitution took effect, or at least made some overt act (like a motion for early disposition or a motion to compel the stenographer to transcribe stenographic notes) that he was not waiving it. As it is, his silence would have to be interpreted as a waiver of such right.
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> While this Court recognizes the right to speedy disposition quite distinctly from the right to a speedy trial, and although this Court has always zealously espoused protection from oppressive and vexatious delays not attributable to the party involved, at the same time, **we hold that a party's individual rights should not work against and preclude the people's equally important right to public justice**. In the instant case, three people died as a result of the crash of the airplane that the accused was flying. It appears to us that the delay in the disposition of the case prejudiced not just the

> accused but the people as well. Since the accused has completely failed to assert his right seasonably and inasmuch as the respondent judge was not in a position to dispose of the case on the merits due to the absence of factual basis, we hold it proper and equitable to give the parties fair opportunity to obtain (and the court to dispense) substantial justice in the premises.
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> Time runs against the slothful and those who neglect their rights. **In fact, the delay in the confirmation of his sentence was to his own advantage, because without the confirmation from the President, his sentence cannot be served.**[42]

Just like in ***Garcia***, the herein respondents raised nary a whimper during the pendency of the ***preliminary inquiry*** before the Office of the Ombudsman although they were very much aware of such fact. They did not assert their right to a speedy disposition of the ***preliminary inquiry*** after then Ombudsman Gutierrez directed a further study of the recommendation of the Special Panel to file a petition for forfeiture against their properties. Based on the allegations in the petition and its annexes, it appears that respondent Perez, as then Secretary of the Department of Justice, extorted money from then Congressman Jimenez in the amount of $2 Million. Also, based on the document appended to the petition, the said money was transferred to the bank account of respondent Escaler in Hong Kong. From the said bank account, the money was deposited to the bank accounts of respondents Rosario S. Perez, Ramon Antonio Castillo Arceo, Jr. and Escaler. In other words, the petition and its annexes allege that public office was used to commit a crime and to amass and conceal ill-gotten wealth.

More importantly, respondents have not asserted any actual or threatened prejudice occasioned them by reason of the delay in the termination of the ***preliminary inquiry***. In fact, such delay actually worked to their advantage because they hold to this very day the alleged ill-gotten wealth as no action was filed by the government to recover it during the said interregnum.

Thus, balancing the private constitutional right of the respondents to a speedy disposition of their case and the

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[42] Emphasis supplied

imprescriptible right of the State to institute an action to recover ill-gotten wealth, the balance should be tilted in favor of the State's right to public justice. Indeed, the State must be given a fair chance to prove its case.

II. The present petition for forfeiture states a cause of action against the respondents.

Having settled that there was no violation of the herein respondents' right to a speedy disposition of their case, the Court shall now proceed to address the other issues raised by respondent Escaler in his motion to dismiss.

Respondent Escaler argues that the present petition should be dismissed because it allegedly fails to state a cause of action against him. He claims that a petition for forfeiture under Section 2 of R.A. No. 1379 covers and applies only to public officers and employees. According to respondent Escaler, he has never been a public officer or employee and that there is no allegation in the petition that he acquired an amount of property which is manifestly out of proportion to his salary as such public officer or employee. He thus concludes that the "*Petitioner has no right to recover from [him], a private individual, any alleged unlawfully acquired property. The right to so recover applies only if the person from whom it is to be recovered is a public officer or employee.*"[43]

The Court finds the said argument devoid of merit.

Section 2, Rule II of the Rules of Court provides:

> SEC. 2. *Cause of action, defined.* A cause of action is the act or omission by which a party violates a right of another.

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[43] p. 5, Respondent Escaler's *Motion to Dismiss*; p. 628, Vol. I, Record

The essential elements of a cause of action are as follows: (1) **a right in favor of the plaintiff by whatever means** and **under whatever law it arises or is created**; (2) an obligation on the part of the defendant not to violate such right; and (3) **An act or omission on the part of the defendant in violation of the right of the plaintiff** or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other relief.[44]

In this case, there is no question that respondent Escaler was never appointed or elected to any government position. This, however, has no enervating impact in determining whether the petitioner has a cause of action against him.

In ***Fluor Daniel, Incorporated-Philippines vs. E.B. Villarosa & Partners, Co. Limited***,[45] the Supreme Court laid down the following test to determine whether a petition or complaint states a cause of action, to wit:

> It is, thus, only upon the occurrence of the last element that a cause of action arises, giving the plaintiff a right to file an action in court for recovery of damages or other relief. **The test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of the complaint**. That in determining sufficiency of cause of action, **the court takes into account only the material allegations of the complaint and no other, is not a hard and fast rule. In some cases, the court considers the documents attached to the complaint to truly determine sufficiency of cause of action**.
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> We have ruled that a complaint should not be dismissed for insufficiency of cause of action if it appears clearly from the complaint and its attachments that the plaintiff is entitled to relief. The converse is also true. The complaint may be dismissed for lack of cause of action if it is obvious from the complaint and its annexes that the plaintiff is not entitled to any relief.[46]

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[44] ***Swagman Hotels and Travel, Inc. v. Court of Appeals***, 455 SCRA 175 (2005)
[45] 528 SCRA 321 (2007)
[46] Emphasis supplied; citations omitted

Applying the aforesaid jurisprudential precepts to this case and the pertinent provisions of R.A. No. 1379 *vis a vis* the allegations in the subject petition for forfeiture, it is readily clear that the Republic has sufficiently stated its cause of action against respondent Escaler and his co-respondents.

The right of the Republic to recover a public officer or employee's unlawfully acquired properties is based on R.A. No. 1379. Section 1 thereof reads:

> **Section 1.** *Definitions.* (a) For the purposes of this Act, a "**public officer or employee**" means any person holding any public office or employment by virtue of an appointment, election or contract, and any person holding any office or employment, by appointment or contract, in any State owned or controlled corporation or enterprise.
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> (b) "**Other legitimately acquired property**" means any real or personal property, money or securities which the respondent has at any time acquired by inheritance and the income thereof, or by gift *inter vivos* before his becoming a public officer or employee, or any property (or income thereof) already pertaining to him when he qualified for public office or employment, or the fruits and income of the exclusive property of the respondent's spouse. **It shall *not* include**:
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> 1. **Property unlawfully acquired by the respondent, but its ownership is concealed by its being recorded in the name of, or held by, the respondent's spouse, ascendants, descendants, relatives, or any other person.**
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> 2. Property unlawfully acquired by the respondent, but transferred by him to another person or persons on or after the effectivity of this Act.
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> 3. **Property donated to the respondent during his incumbency, unless he can prove to the satisfaction of the court that the donation is lawful.**[47]

The first sentence of Section 2 of R.A. No. 1379 states that: "*Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired...*"

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[47] Emphasis and underscoring supplied

Plainly, R.A. No. 1379 empowers the Republic to forfeit a public officer or employee's properties which are manifestly out of proportion to his/her salary as such public officer or employee and to his/her other lawful income and the income from legitimately acquired property. The law provides a *prima facie* presumption that these properties have been unlawfully acquired by the said public officer or employee. Also, these unlawfully acquired properties must be owned by the public officer or employee before the Republic could forfeit the same.

Notably, Section 1 of R.A. No. 1379 distinguishes between "*other legitimately acquired properties*" and "*property unlawfully acquired*" by the respondent public official or employee.

"*Other legitimately acquired properties*" pertain to any real or personal property, money or securities which the respondent public official or employee has at any time acquired by inheritance and the income thereof, or by gift *inter vivos* before his becoming a public officer or employee, or any property (or income thereof) already pertaining to him/her when he/she qualified for public office or employment, or the fruits and income of the exclusive property of the respondent's spouse.

This shall not include: (1) property unlawfully acquired by the public officer or employee, but its ownership is *concealed* by its being recorded in the name of, or held by, the respondent's spouse, ascendants, descendants, relatives, or any other person, (2) property unlawfully acquired by the respondent, but transferred by him to another person or persons on or after the effectivity of R.A. No. 1379, and (3) property donated to the respondent public official during his incumbency, unless he can prove to the satisfaction of the court that the donation is lawful.

Evidently, R.A. No. 1379 contemplates situations where the public officer or employee would conceal ownership of the properties he/she unlawfully acquired. As stated above, the public officer or employee may conceal or transfer the ownership of his/her unlawfully acquired properties in the name of his spouse, relatives or any other person. When the public officer or employee conceals or transfers the ownership of his/her unlawfully acquired properties to his spouse, relatives or any other person, is the Republic left without any remedy under the R.A. No. 1379 considering that the

proceedings stated therein is especially for the forfeiture of the unlawfully acquired property of a public official or employee?

The answer is a resounding **NO**.

In case a public officer or employee conceals and/or transfers the ownership of his/her unlawfully acquired property to his/her spouse, relatives or any other person, the Republic could still validly forfeit the same since the ownership of the said property is still traceable to the public officer or employee. In order, however, for the Republic to forfeit the said property, the public officer or employee's spouse, relatives or any other person, to whom the ownership of the said property was concealed or transferred, must be impleaded by the Republic in the forfeiture case that it would file. By impleading the said spouse, relatives or any other person in the forfeiture case, the Republic would have a complete settlement of its case against the erring public officer or employee. In the same vein, it would give the spouse, relative or any other person to whom the property was transferred or concealed the opportunity to prove his/her legitimate ownership of the subject property. Thus, it is not only proper but indispensable to implead the said spouse, relative or any other person in the forfeiture proceedings notwithstanding the fact that the said person/s is/are private individual/s.

Further, it is jurisprudentially settled that in filing a motion to dismiss, a defendant hypothetically admits the truth of the material allegations of the ultimate facts contained in the plaintiff's complaint.[48] In this case, the pertinent allegations in the subject petition for forfeiture read:

> 10. Due to pressures, threats and intimidation exerted by respondents Hernando B. Perez and Ernest DL. Escaler upon the person of MARIO "MARK (MJ) JIMENEZ" B. CRESPO (Jimenez), Jimenez was forced to give in to the demand of respondents Hernando B. Perez and Ernest DL. Escaler to pay the sum of Two Million ($2,000,000.00) Dollars in exchange for the cessation of such threats and intimidation upon the person of Jimenez; (Photocopy of Jimenez's Affidavit and its annexes, and Supplemental Affidavit, are hereto attached as Annexes "D" and "E", respectively, as integral parts of this Petition)

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[48] ***Vitangcol v. New Vista Properties, Inc.***, 600 SCRA 82 (2009)

11. Respondent Escaler suggested how the money would be transferred to a bank account in Hong Kong, and would fax the transaction details to Jimenez for immediate implementation. On February 14, 2001, respondent Escaler faxed a copy of the instruction to Jimenez for the transfer of the US$2.0 Million (Photocopy of the facsimile message is hereto attached as Annex "F" to form as integral part of this Petition);

xxx

13. Consistent with respondent Escaler's instructions, on February 23, 2001, Trade and Commerce Bank, Cayman Islands issued a confirmation receipt of the amount of US$1,999,965.00 by Coutts Bank, Hong Kong, in favor of the beneficiary, Account No. H013706 (Annex "G");

14. On 06 March 2001, the amount of US$1.0 Million was transferred to EFG Private Bank Branch, Singapore;

15. On May 16, 2001, the amount of US$1,495,000.00 was remitted to respondent Escaler's Coutts Bank, Hong Kong Account No. H013706 from Golden Profits, Ltd. Via the Standard Chartered Bank, New York; and on 23 May 2001, the following three (3) fund transactions from Escaler's Coutts Bank Hong Kong Account No. H013706 were made:

(i) US$250,000.00 in bank draft was issued to Respondent Ramon C. Arceo, brother-in-law of respondent former Secretary Perez;

(ii) US$200,000.00 were transferred to respondent Escaler's Citibank Manila Dollar Savings Account No. 243-69772; and

(iii) US$700,000.00 were transferred to EFG Private Bank Branch, Singapore.

xxx

That the instruction indeed came from respondent Escaler was amply shown by his use of specific fax number "632-892-85-19", which number is traced to him, in giving out the instruction to Jimenez (Annex "D-2") as well as in sending to and receiving communications from Coutss Bank, Hong Kong (Annexes "H-63", "H-65", "H-69 to 70" and "H-72"). In addition, in the "Private Banking Application" form prepared by respondent ESCALER in opening Account No. H013706, he indicated the same fax number – "632-892-85-19 as his Office Fax number (Annex H-15).

20. Account No. H013706 is the actual recipient of US$1,999,965 bank transfer from the Trade and Commerce Bank, Cayman Islands;

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22. Respondent Escaler is the owner of Account No. H013706 at Coutts Bank, Hong Kong. Based on the bank records and on the affirmation executed by MS. WENDY LEE WING TAK, Manager of Regulatory Risk of Coutts Bank von Ernst Ltd., Account No. H013706 was opened by respondent ERNEST L. ESCALER on 01 December 1998 and was closed on 18 July 2001 (Annexes "H" to "H-113");

xxx

24. Account No. H013706 transferred funds in the total amount of US$1.7 Million to Account Nos. 338 118 and/or 348 118 at EFG Private Bank AG; US$200,000.00 to Account 243-69772 at Citibank Manila; and Issued/funded US$250,000.00 Bank Draft in favor of respondent Ramon C. Arceo, Jr.:

> a. On March 06, 2001, the amount of US$1,000,000.00 was debited from Account No. H013706 and was transferred to Account 338 118. This transaction is supported by an instruction letter of respondent Ernest DL. Escaler ordering the bank transfer US$1,000,000.00 to Account No. 348 118 (Annexes "H-75" to "H-76").
>
> b. On 23 May 2001, the following transactions involving Account No. H013706 based on instructions of respondent Ernest DL. Escaler (Annexes "H-108" to "H-109") occurred:
>
> > b.1. US$250,000.00 were debited by the issuance of a bank draft in favor of Respondent Ramon C. Arceo, Jr. (Annexes "H-96" to "H-97" and "H-110" to "H-111");
> >
> > b.2. US$200,000.00 were debited and the same was transferred to Account No. 243-69772 maintained by respondent Ernest DL. Escaler at Citibank, Manila (Annex "H-95");
> >
> > b.3. US$700,000.00 were debited and transferred to Account No. 348 118 at EFG Private Bank Branch, Geneva, Switzerland (Annexes "H-93" to "H-94" and "H-113").

25. Respondents Hernando B. Perez, Rosario S. Perez and Ramon Antonio A. Arceo, Jr. are identified as the owners of Account Nos. 338 118 and/or 348 118, the recipient of a total amount of US$1.7 Million (Annexes "I" to "I-69") from respondent Ernest DL Escaler's Account No. H013706 in Coutts Bank, Hong Kong:

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27. Records will reveal that respondent Hernando B. Perez did not disclose in his 2001 and 2002 Statements of Assets, Liabilities and Net Worth (SALNs) his and/or his wife's financial interest of at least US$1,700,000.00, transferred to their accounts (338 118 and 348 118) by respondent Escaler in 2001. The declared total assets of respondent Hernando B. Perez in his SALN for CY 2001 and 2002 (Annexes "O" to "O-3" and Annexes "P" to "P-3") amounted only to PhP40,304,781.94 as of December 31, 2001, and PhP40,278,585.57 as of December 31, 2002. The total amount of assets declared by him obviously did not include the US$1.7 Million deposited to their bank accounts at EFG Private Bank AG.

28. Considering that respondent Hernando B. Perez, during his incumbency as public officer, unlawfully acquired monies/properties which are manifestly out of proportion to his salary as such public officer and to his other lawful income and the income from legitimately acquired property, such monies/properties amounting to more or less US$2,000,000.00 are subject of forfeiture in favor of the government.[49]

Based on the aforesaid allegations, which were hypothetically admitted by the respondents, respondent Hernando B. Perez, during his incumbency as Secretary of the Department of Justice, with the help of respondent Escaler, extorted $2 Million from then Congressman Jimenez who transferred the said amount to the bank account of respondent Escaler at the Coutts Bank in Hong Kong. When the amount of US$1,999,965.00 was received by respondent Escaler in his account at the Coutts Bank in Hong Kong, a total amount of $1.7 Million were transferred to the bank accounts of respondents Perez, *et al.* $200,000.00 were then debited to Account No. H013706 and the same were transferred to Account No. 243-69772 maintained by respondent Ernest DL. Escaler at Citibank, Manila.

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[49] pp. 4-11, *Petition for Forfeiture*; pp. 4-11, Vol. I, Record

The inclusion of respondent Escaler in this case is therefore imperative considering that, based on his hypothetical admission, a portion of the unlawfully acquired property of respondent Perez, in the amount of $200,000.00, ended up in his bank account. Respondent Escaler must continue to be impleaded and stand trial in this forfeiture case to have a complete determination and/or settlement of the claims of the Republic against respondent Perez, *et al.*

III. The petitioner has complied with the conditions precedent to the filing of the present petition.

Respondent Escaler next argues that this case should be dismissed for failure of the petitioner to comply with the following conditions precedent: (1) prior complaint by a taxpayer, (2) previous inquiry similar to a preliminary investigation, (3) absence of certification that there is a reasonable ground to believe that there was a violation of R.A. No. 1379 and that respondent Escaler is probably guilty thereof, and (4) period to file the petition for forfeiture has already expired.

The Court shall address the said arguments *in seriatim*.

1. The FIO of the Office of the Ombudsman has authority to initiate complaints for forfeiture.

Respondent Escaler asserts that there was no prior complaint filed by a taxpayer before the Office of the Ombudsman pursuant Section 2 of R.A. No. 1379. According to him, the complaint-affidavit of then Congressman Jimenez did not charge him or the other respondents with a violation of

R.A. No. 1379. Respondent Escaler further claims the FIO of the Office of the Ombudsman is not a taxpayer that may initiate any complaint for forfeiture. "*The FIO is not even a juridical person, neither does it pay taxes to the Government. By no stretch of imagination can the FIO be considered a taxpayer.*"[50]

The Court finds the said argument unmeritorious.

To be sure, the authority of the Office of the Ombudsman to investigate and initiate a petition for forfeiture of unlawfully acquired property under R.A. No. 1379 is now firmly settled pursuant to the pronouncement of the Supreme Court in ***Garcia vs. Sandiganbayan***.[51] Thus:

> **Ostensibly, it is the Ombudsman who should file the petition for forfeiture under R.A. No. 1379**. However, **the Ombudsman's exercise of the correlative powers to investigate and initiate the proper action for recovery of ill-gotten and/or unexplained wealth is restricted only to cases for the recovery of ill-gotten and/or unexplained wealth amassed after 25 February 1986**. As regards such wealth accumulated on or before said date, the Ombudsman is without authority to commence before the Sandiganbayan such forfeiture action — since the authority to file forfeiture proceedings on or before 25 February 1986 belongs to the Solicitor General — although he has the authority to investigate such cases for forfeiture even before 25 February 1986, pursuant to the Ombudsman's general investigatory power under Sec. 15 (1) of R.A. No. 6770.
>
> **It is obvious then that respondent Office of the Ombudsman acted well within its authority in conducting the investigation of petitioner's illegally acquired assets and in filing the petition for forfeiture against him. The contention that the procedural requirements under Sec. 2 of R.A. No. 1379 were not complied with no longer deserve consideration in view of the foregoing discussion**.[52]

Here, the subject petition alleges that the unlawfully acquired property of respondent Hernando B. Perez was acquired sometime in 2001. Thus, pursuant to the aforesaid

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[50] p. 10, Respondent Escaler's *Motion to Dismiss*; p. 633, Vol. I, Record
[51] 460 SCRA 600 (2005)
[52] Emphasis supplied

teachings of ***Garcia***, the forfeiture proceedings may be validly initiated and conducted by the Office of the Ombudsman.

The fact that a taxpayer did not initiate this case before the Office of the Ombudsman is inconsequential since R.A. No. 3019 is already deemed amended by R.A. No. 6770, as amended, which empowers the Ombudsman to "*[I]nvestigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986.*"[53]

2. There was a previous inquiry similar to a preliminary investigation that was conducted prior to the commencement of this petition in court.

Respondent Escaler claims that this case should be dismissed for failure of the petitioner to show that a previous inquiry similar to a preliminary investigation was conducted prior to the filing of this case with Court. He points to the fact that based on the *Joint Resolution* dated November 6, 2006, the FIO filed its own complaint for violation of R.A. No. 1379.[54] He, however, claims that the recommendation in the said joint resolution for the institution of the forfeiture proceedings was exempted by then Ombudsman Gutierrez from her approval as shown by her marginal note. Respondent Escaler further asserts that the caption of the *Joint Resolution* dated November 6, 2006, relative to the forfeiture proceedings, merely mentions respondent Hernando B. Perez and Rosario S. Perez. He therefore concludes that it was "*obvious that [he] was not charged, was not included in, nor notified of, much less participated in, the previous inquiry required by the law in forfeiture case filed pursuant to R.A. No. 1379. Consequently, the impleading of Ernest De Leon Escaler as a respondent in this Petition is unfounded, oppressive and malicious.*"[55]

The Court finds the said argument devoid of merit.

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[53] Section 15 (11), R.A. No. 6770, as amended
[54] p. 10, Respondent Escaler's *Motion to Dismiss;* p. 633, Vol. I, Record
[55] p. 12, *id;* p. 635, *id*

Contrary to respondent Escaler's claims, the record of this case shows that that the Office of the Ombudsman actually conducted an inquiry similar to a preliminary investigation prior to the filing of this case before the Court.

First. The FIO of the Office of the Ombudsman filed a *Complaint* dated November 11, 2005 against the herein respondents for violation of R.A. No. 1373 on November 14, 2005.[56] Thus:

> The Field Investigation Office (FIO) of the Office of the Ombudsman, as nominal complainant, **hereby files this complaint before the Preliminary Investigation, Administrative Adjudication and Monitoring Office (PAMO) against the following respondents**, namely:
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> xxx
>
> C. Former Justice Secretary HERNANDO BENITO PEREZ; ROSARIO SALVADOR PEREZ; **ERNEST L. ESCALER**; RAMON ANTONIO C. ARCEO Jr.; and JOHN DOES, for violation of the provisions of R.A. No. 1379 (An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefore).[57]
>
> xxx

The aforesaid complaint thereafter narrates why the said respondents should be charged with a violation of R.A. No. 1379.

Second. Acting on the said complaint of the FIO (and that of then Congressman Jimenez), the PAMO directed the herein respondents to file their respective counter-affidavits.[58]

Pursuant to the said directive, respondents Perez, *et al.* filed their *Consolidated Joint Counter-Affidavit* dated December 12, 2005.[59] In the said joint counter-affidavit, respondents Perez, *et al.*, directly addressed the charges that they violated

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[56] p. 378, Vol. I, Record
[57] p. 1, FIO's *Complaint* dated November 11, 2005; *id*
[58] p. 18, *Joint Resolution* dated November 6, 2006; p. 314, Vol. I, Record
[59] p. 475, *id*

R.A. No. 1379.[60] In fine, they denied receiving money from then Congressman Jimenez and claimed that the amount of US$1.7 Million "*was the amount which was escrowed by EE (Ernest Escaler) to pay the shareholdings owned by HBP (Hernando B. Perez), his business associates, and his family corporation in Malvarosa Ventures, which, however, did not materialize, hence the said amount reverted to EE. In other words, the said amount never came into the possession of HBP and did not in any way benefit him or RSP (Rosario S. Perez) and RAA (Ramon Antonio C. Arceo, Jr.).*"[61]

Respondent Escaler, on the other hand, did not file any counter-affidavit. Instead, he filed a motion seeking to disqualify the Office of the Ombudsman from conducting the preliminary investigation and turn over the said case to the Department of Justice on the ground of prejudgment and the use of evidence allegedly improperly obtained.[62] Said motion was denied by the Office of the Ombudsman. Despite repeated opportunity given him to submit his counter-affidavit, he chose not to do so. Thus, the Office of the Ombudsman deemed respondent Escaler's failure to submit his counter-affidavit a waiver and, consequently, submitted the case for resolution based on the pleadings available in the record.[63]

Third. In its *Joint Resolution* dated November 6, 2006, the Special Panel of Investigators recommended the institution of the forfeiture proceedings against the herein respondents after the May 2007 elections. This recommendation was not immediately implemented because then Ombudsman Gutierrez ordered that a new panel be constituted to study the said recommendation.

Fourth. Thereafter, Ombudsman Morales issued *Office Order No. 177,* dated May 3, 2012, series of 2012, constituting a Special Panel of Reviewers which was tasked to review the matter of initiation of forfeiture proceedings pursuant to the said directive of then Ombudsman Gutierrez.[64] On **January 28, 2013**, the Special Panel of Reviewers submitted their *Memorandum* of even date to Ombudsman Morales recommending the filing of a petition for forfeiture against the

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[60] Pars. 25-29, pp. 27-29, Respondents Perez, et al.'s *Consolidated Joint Counter-Affidavit*; pp. 501-503, *id*
[61] Par. 27, p. 29, *id*; p. 503, *id*
[62] p. 24, *Joint Resolution* dated November 6, 2006; p. 320, *id*
[63] pp. 28-29, *id*; pp. 324-325, *id*
[64] p. 45, Vol. II, Record

herein respondents after the May 13, 2013 elections.[65] Said recommendation was approved by Ombudsman Morales on **January 30, 2013**.[66]

Under the obtaining facts, it is indisputable that an inquiry similar to a preliminary investigation was conducted prior to the filing of the petition for forfeiture, subject of this case. Contrary to the assertion of respondent Escaler, he was notified of the said proceedings. In fact, he even filed a motion to disqualify and to inhibit the Office of the Ombudsman from hearing the complaints against them. Respondent Escaler cannot therefore claim that "*[he] was not charged, was not included in, nor notified of, much less participated in, the previous inquiry required by the law in forfeiture case filed pursuant to R.A. No. 1379.*"

Moreover, respondent Escaler cannot validly claim that since his name is not included in the caption of the *Joint Resolution* as one of the respondents in the complaint for forfeiture, it necessarily follows that he was not included in the said charge. The caption of the *Joint Resolution* is immaterial and irrelevant in determining whether respondent Escaler should be charged with a violation of R.A. No. 1379.

It is a settled rule that what determines the nature of the action as well as the court which has jurisdiction over the case are **the allegations in the complaint**. The cause of action in a complaint is not what the designation of the complaint states, **but what the allegations in the body of the complaint define or describe. The designation or caption is not controlling, more than the allegations in the complaint, for it is not even an indispensable part of the complaint**.[67]

Here, the petition for forfeiture specifically includes respondent Escaler as one (1) of the respondents.

3. There was a certification issued by the Office of the Ombudsman pursuant to Section 2 of R.A. No. 1379.

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[65] p. 46, *id*
[66] p. 52, *id*
[67] *Hernudd vs. Lofgren*, 534 SCRA 205 (2007)

Respondent Escaler further claims that the petitioner failed to submit a certification that there is a reasonable ground to believe that there was a violation of R.A. No. 1379 because the directive of then Ombudsman Gutierrez was not carried into effect.

The aforesaid argument of respondent Escaler is negated by the *Memorandum* dated January 28, 2013, of the Special Panel of Reviewers, submitted by the petitioner albeit belatedly. To repeat, this panel was constituted by Ombudsman Morales to study the recommendation in the *Joint Resolution* dated November 6, 2006 for the institution of forfeiture proceedings against the herein respondents. The pertinent portion of the said memorandum reads:

> RECOMMEDATIONS:
>
> On the basis of the foregoing, We submit and so hold that by virtue of the proceedings conducted by the Special Panel in the case docketed as OMB-C-C-05-0635-K(F), there appears to be a reasonable ground to believe that a violation of Republic Act No. 1379 has been committed by Respondents Hernando B. Perez, Ernest L. Escaler, Ramon Antonio C. Arceo, Jr. and Rosario S. Perez, and that they are probably guilty thereof. Thus, the referral of the matter to the Special Panel xxx which conducted the previous inquiry for the preparation and filing of the requisite Petition for Forfeiture under Republic Act No. 1379 appears to be warranted.[68]

The fact that the herein respondents were not notified of the said review has likewise no material bearing on this case. It is worthy to emphasize that the herein respondents were already given sufficient opportunity to address the complaints that were filed against them. In fact, respondents Perez, *et al.* submitted their consolidated joint counter-affidavit explaining why the complaint for violation of R.A. No. 1379 should not be given due course.

Moreover, the directive of then Ombudsman Gutierrez was merely for the referral of the findings of the Special Panel relative to the commencement of a forfeiture proceeding to another panel for further ***study***. It did not direct the conduct of a new inquiry since, as shown by the record of the case,

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[68] pp. 5-6, *Memorandum* dated January 28, 2013; pp. 92-93, Vol. II, Record

there was already a previous compliance with the said requirement.

4. The period to file a petition for forfeiture does not prescribe.

Respondent Escaler invokes the provision in Section 2 of R.A. No. 1379 which states that, "*the right to file such petition shall prescribe after four years from the date of the resignation, dismissal or separation or expiration of the term of the officers or employee concerned xxx,*" in claiming that the period within which to file this petition for forfeiture had already prescribed. He claims that "*in paragraph 9 of the Petition, the petitioner avers that respondent Secretary Perez resigned on January 02, 2003. We therefore respectfully submit that the non-compliance with the four-year period to file this petition warrants the immediate dismissal thereof.*"[69]

The Court finds the said argument devoid of merit.

In ***Republic vs. Migrino***,[70] the Supreme Court categorically declared that the provision in Section 2 of R.A. No. 1379 which states that, "*[t]he right to file such petition [for forfeiture of unlawfully acquired wealth] shall prescribe within four years from the date of resignation, dismissal or separation or expiration of the term of the officer or employee concerned,*" is already deemed **modified** or **repealed** by Section 15, Article XI of the 1987 Constitution which provides that "*The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.*"

Respondent Escaler further argues that this petition for forfeiture should be dismissed because petitioner's "*cause of action is barred by a prior judgment.*" He claims that the dismissal of the criminal cases filed against him, *i.e.*, SB-08-CRM-0265 and SB-08-CRM-0266, operates as a bar to the continuation of the proceedings herein.

The Court disagrees.

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[69] p. 14, Respondent Escaler's *Motion to Dismiss*; p. 637, Vol. II, Record
[70] 189 SCRA 289 (1990)

A case is barred by prior judgment or *res judicata* when the following elements are present:

> 1. The former judgment is final;
>
> 2. It is rendered by a court having jurisdiction over the subject matter and the parties;
>
> 3. It is a judgment or an order on the merits; and
>
> 4. There is between the first and the second action identity of parties, identity of subject matter, and identity of causes of action.[71]

Here, there is absolutely no identity of subject matter and causes of action between the criminal cases aforementioned and the present petition for forfeiture of illegally-acquired properties.

To be sure, the subject matter of the criminal cases was whether or not respondents committed a violation of Section 3 (b) of Republic Act No. 3019 (SB-08-CRM-0265) and robbery under Article 293, in relation to Article 294, of the Revised Penal Code (SB-08-CRM-0266).

On the other hand, the subject matter of this proceeding is whether the properties subject of the petition for forfeiture were illegally acquired within the contemplation of R.A. No. 1379. Thus, any disposition of the criminal cases involving the herein respondents has absolutely no bearing on this proceeding. Neither does the disposition of this case have any effect on the said criminal cases.

Finally, there is no identity of causes of action between the criminal cases and this petition for forfeiture because a forfeiture proceeding is entirely separate and distinct from the criminal cases involving the same act or omission. The teachings of the Supreme Court in ***Garcia vs. Sandiganbayan***[72] illumine:

> Petitioner's posture respecting Forfeitures I and II being absorbed by the plunder case, thus depriving the 4th

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[71] ***Luzon Development Bank v. Conquilla,*** 470 SCRA 533 (2005), citing ***Allied Banking Corporation v. Court of Appeals,*** 229 SCRA 252 (1994)
[72] 603 SCRA 348 (2009)

Division of the SB of jurisdiction over the civil cases, is flawed by the assumptions holding it together, the first assumption being that the forfeiture cases are the corresponding civil action for recovery of civil liability *ex delicto*. As correctly ruled by the SB 4th Division in its May 20, 2005 Resolution, **the civil liability for forfeiture cases does not arise from the commission of a criminal offense**, thus:

> Such liability is based on a statute that safeguards the right of the State to recover unlawfully acquired properties. The action of forfeiture arises when a "public officer or employee [acquires] during his incumbency an amount of property which is manifestly out of proportion of his salary . . . and to his other lawful income . . . ." 14 Such amount of property is then presumed prima facie to have been unlawfully acquired. 15 Thus "if the respondent [public official] is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State. . . .

Lest it be overlooked, Executive Order No. (EO) 14, Series of 1986, albeit defining only the jurisdiction over cases involving ill-gotten wealth of former President Marcos, his immediate family and business associates, authorizes under its Sec. 3 **the filing of forfeiture suits under RA 1379 which will proceed independently of any criminal proceedings**. The Court, in *Republic v. Sandiganbayan*, interpreted this provision as empowering the Presidential Commission on Good Government to file independent civil actions separate from the criminal actions.

Forfeiture Cases and the Plunder Case Have Separate Causes of Action; the Former Is Civil in Nature while the Latter Is Criminal

It bears stressing, as a second point, that **a forfeiture case under RA 1379 arises out of a cause of action separate and different from a plunder case, thus negating the notion that the crime of plunder charged in Crim. Case No. 28107 absorbs the forfeiture cases**. In a prosecution for plunder, what is sought to be established is the commission of the criminal acts in furtherance of the acquisition of ill-gotten wealth. In the language of Sec. 4 of RA 7080, for purposes of establishing the crime of plunder, it is "sufficient to establish beyond reasonable doubt a pattern

of overt or criminal acts indicative of the overall unlawful scheme or conspiracy [to amass, accumulate or acquire ill-gotten wealth]". On the other hand, all that the court needs to determine, by preponderance of evidence, under RA 1379 is the disproportion of respondent's properties to his legitimate income, it being unnecessary to prove how he acquired said properties. As correctly formulated by the Solicitor General, the forfeitable nature of the properties under the provisions of RA 1379 does not proceed from a determination of a specific overt act committed by the respondent public officer leading to the acquisition of the illegal wealth.[73]

WHEREFORE, the parties' respective motions for reconsideration are ***GRANTED***. Respondent Ernest DL. Escaler's *Motion to Dismiss with Opposition to the Application for Issuance of a Writ of Preliminary Attachment* dated February 5, 2015,[74] which was adopted by respondent Hernando B. Perez, *et al.* as their own in their *Manifestation* dated March 27, 2015, is ***DENIED*** for lack of merit.

SO ORDERED.

AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:

MARIA CRISTINA J. CORNEJO
Associate Justice

MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice

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[73] Emphasis supplied
[74] p. 624, Vol. I, Record

RESOLUTION
Republic vs. Perez, et al.
SB-14-CVL-0002
x----------x

WE DISSENT:

ALEX L. QUIROZ
Associate Justice

GERALDINE FAITH A. ECONG
Associate Justice

SB-14-CVL-002: **Republic of the Philippines, Petitioner, vs. Hernando Benito Perez, Rosario A. Perez, Ernest De Leon Escaler and Ramon Antonio Castillo Arceo, Jr., Respondents.**

X----------X

DISSENTING OPINION

Econg, J:

I join in the dissent of Honorable Alex L. Quiroz and subscribe to his discussion that inordinate delay, which is attendant in this case, violates Respondents' right to the speedy disposition of their case before the Office of the Ombudsman.

On the other hand, worthy of scrutiny is the second paragraph of Section 2 of R.A. No. 1379, which reads:

> *x x x That the right to file such petition shall prescribe after four years from the date of the resignation, dismissal or separation or expiration of the term of the office or employee concerned, except as to those who have ceased to hold office within ten years prior to the approval of this Act, in which case the proceedings shall prescribe after four years from the approval hereof.*

In the case of *Republic thru the PCGG v. Migrino*[1], the Supreme Court declared that:

> *Section 2 of Rep. Act No. 1379 should be deemed amended or repealed by Article XI, section 15 of the 1987 Constitution which provides that "[t]he right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel".*

Does this mean, therefore, that Respondents can no longer rely on their assertion that inordinate delay by the Office of the Ombudsman, which is violative of their right to the speedy disposition of this case, will cause the dismissal of this case because of Article XI Section 15 of the 1987 Constitution, which declares that the State's right to recover unlawfully acquired properties of government officials and employees cannot be barred by prescription, laches or estoppel?

The answer should be in the negative.

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[1] Republic of the Philippines thru: The Presidential Commission on Good Government (PCGG), AFP Anti-Graft Board, Col. Ernesto A. Punsalang and Peter T. Tabang v. Hon. Eutropio Migrino, and Troadio Tecson, G.R. No. 89483, August 30, 1990.

First, a person's right to the speedy disposition of a case against him or her is protected under Article III of the 1987 Constitution, which is known as the Bill of Rights. The Bill of Rights enumerates a person's (not just citizen's) rights that are self-enabling, inalienable, indubitable, and it serves as a limitation to the acts of the state. Generally, any governmental action in violation of the Bill of Rights is void. These provisions are also generally self-executing.[2]

Thus, the Supreme Court held:

> *The Bill of Rights is a set of prescriptions setting forth the fundamental civil and political rights of the individual, and imposing limitations on the powers of government as a means of securing the enjoyment of those rights. The Bill of Rights is designed to preserve the ideals of liberty, equality and security against the assault of opportunism, the expediency of the passing hour, the erosion of small encroachments, and the scorn and derision of those who have no patience with general principles.*[3]

Article XI, Section 12 of the 1987 Constitution mandates "The Ombudsman and his Deputies, as protectors of the people" to bear the duty to "act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations" as well as "notify the complainants of the action taken and the result thereof." Certainly, the duty of the Ombudsman to act promptly and expeditiously in the performance of its function is not just limited to preliminary investigations in criminal cases but also includes administrative investigations as well as preliminary inquiries under R.A. No. 1379, which is akin to preliminary investigation in criminal cases.

In *Coscolluela v. Sandiganbayan*[4], the Supreme Court explained that "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 x x x."

Moreover, the Supreme Court, through Mme Justice Angelina Sandoval-Gutierrez in *Enriquez v. Office of the Ombudsman*[5], held that the Ombudsman was:

> *x x x constitutionally created to be the "protector of the people," with the expressed mandate that it "shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil*

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[2] Nachura, *Outline Reviewer in Political law* (2009).

[3] PBM Employees Organization v. Philippine Blooming Mills, G.R. No. L-31195, June 5, 1973.

[4] G.R. Nos. 191411 and 191871, July 15, 2013.

[5] G.R. Nos. 174902-06, February 15, 2008, 569 Phil 309-323.

and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people."

To attain its mandate, Sections 15 and 16 of Republic Act No. 6770 (The Ombudsman Act of 1989) bestowed upon respondent broad and tremendous powers and functions generally categorized as follows: investigatory power, prosecutory power, disciplinary power, contempt power, public assistance functions, authority to inquire and obtain information, and function to adopt, institute and implement preventive measures, thus:

> *SEC. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:*
>
> *x x x*
>
> *(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein.*

These powers, functions and duties are aimed to enable respondent to be "a more active and effective agent of the people in ensuring accountability in public office." Unfortunately, respondent has transgressed its constitutional and statutory duties. When the Constitution enjoins respondent to "act promptly" on any complaint against any public officer or employee, it has the concomitant duty to speedily resolve the same. But respondent did not act promptly or resolve speedily petitioners' cases. The Rules of Procedure of the Office of the Ombudsman requires that the hearing officer is given a definite period of "not later than thirty (30) days" to resolve the case after the formal investigation shall have been concluded. Definitely, respondent did not observe this 30-day rule.

In the instant case, there was a long gap or a stall in the processing of this case from the time Ombudsman Merceditas Gutierrez wrote her disagreement to the recommendation of the Special Panel for the filing of the forfeiture case for violation of R.A. No. No. 1379 on November 6, 2006 to the time when Ombudsman Hon. Conchita Carpio-Morales ordered the creation of a Special Panel of Reviewers in Office Order No. 177, Series of 2012 tasked to review the matter of filing a petition for forfeiture under R.A. No. No. 1379 on May 3, 2012. It took the Office of the Ombudsman almost six (6) years to constitute a Special Panel so tasked to conduct a further study on the matter of filing a petition for forfeiture proceedings under R.A. No. No. 1379! And the state has not offered any rhyme or reason for such a long stall in the proceedings.

Second, the Supreme Court, in at least two cases for civil forfeiture under R.A. No. No. 1379, recognized the right of the Republic to the speedy disposition of its case. In the first case, It reasoned:

> *Petitioner Republic has the right to a speedy disposition of this case. It would readily be apparent to a reasonable mind that respondent Marcoses have been deliberately resorting to every procedural device to delay the resolution hereof. There is justice waiting to be done. The people and the State are entitled to favorable judgment, free from vexatious, capricious and oppressive delays, the salutary objective being to restore the ownership of the Swiss deposits to the rightful owner, the Republic of the Philippines, within the shortest possible time.*[6]

Also worth mentioning is the Court's reasoning in the Joint Resolution of the cases of *Marcos v. Republic*[7], and *Marcos v. Republic*[8]:

> *We reiterate our observations in the Swiss Deposits case: "Petitioner Republic has the right to a speedy disposition of this case. It would readily be apparent to a reasonable mind that respondent Marcoses have been deliberately resorting to every procedural device to delay the resolution hereof. . . The people and the State are entitled to favorable judgment, free from vexatious, capricious and oppressive delays . . ."*

In the above cases, the right of the Republic, a party in a civil forfeiture case, to the speedy disposition of its case was recognized by the Supreme Court; thus, the act of the Sandiganbayan in rendering a summary judgment is a clear manifestation of the court stepping in to uphold a party's right (in this case, the Republic's) to the speedy disposition of its case.

If the Republic, as a Petitioner in a civil case for forfeiture under R.A. No. 1379, has a right to the speedy disposition of its case, then conversely, it could validly be maintained that Respondents in the said case also have a right to the speedy disposition of the case against them.

So, how can Section 2 of R.A. No 1379, as amended by Article XI Section 15 of the 1987 Constitution then find application?

It is submitted that Section 2 of R.A. No. 1379 is applicable at the time the Republic files or institutes a petition for civil forfeiture. But, when the case is already pending before the Office of the Ombudsman or the courts, then the Republic's right to recover said properties is subject to the right of the Respondents to the speedy disposition of their case. Otherwise stated, while the Republic's right to investigate or make preliminary inquiries, file

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[6] Republic v. Sandiganbayan, G.R. No. 152154, November 18, 2003, 461 Phil 598-616 and G.R. No. 152154, November 18, 2003.
[7] G.R. No. 189434, March 12, 2014.
[8] G.R. No. 189505, March 12, 2014.

or inititate an action for the recovery of ill-gotten wealth cannot be bound or limited by prescription, estoppel or laches, once the case progresses at the preliminary stages or in the trial stages, the same should be limited by the basic right of an individual to the disposition of the cases against him.

This conclusion can be drawn from the phrases contained in Section 2 of R.A. No. 1379 and in Article XI Section 15 of the 1987 Constitution. The former refers to the State's (or Republic's) "right to file" while the latter starts with the phrase " the right to recover". These phrases connote an initiation of an action by the State against public officials and employees in order to recover unlawfully acquired properties.

Prescription is an effect of the lapse of time to the right of an entity to assert its right or claim. This concept is clearly related to the initiation of an action or claim against another person. And, in the case of civil forfeiture, the 1987 Constitution provides that the lapse of time does not bar the right of the State to commence an investigation or initiate an action to for recovery of unlawfully acquired properties.

Of course it can well be asserted that the Republic has every right to initiate the investigation or inquiry into the unlawfully acquired properties of respondents for it cannot barred by prescription. But once, the action is initiated, filed or pending, it is incumbent upon the Ombudsman, the representative of the Republic, to prosecute its case with adequate pace or speed so as not to trample on respondents' rights.

On the other hand, the principle of estoppel is *"the operation of the principle that an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."* [9] Simply stated, it means that a person can no longer claim otherwise, if he led another person to believe in a fact or certain set of facts by reason of his action, inaction when required to do something or through negligence.

Laches is defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier, it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. The defense of laches is an equitable one and does not concern itself with the character of the defendant's title, but only with whether or not by reason of plaintiff's long inaction or inexcusable neglect, he should be barred from asserting his claim at all, because to allow him to do so would be inequitable and unjust to defendant.[10]

There is no argument that the State is immune from the principle of estoppel and it could not be bound by any action, declaration, inaction or

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[9] Panay Electric Co., Inc. v. Court of Appeals, Manuel Loring, Jr., G.R. No. 81939, June29, 1989.
[10] Eduarte v. Court of Appeals, G.R. No. 121038, July 22, 1999.

unlawfully acquired properties by any of its officials or employees. However, this is not even relevant in the instant case as there are no allegations of estoppel or laches.

But, even if such were alleged, it should not be forgotten that the Ombudsman, as a duty bearer under the Constitution, should have acted promptly and disposed of the case against the respondents, in whatever manner it should see fit. The Human Rights-Based approach to development[11] which was adopted by the United Nations in 2003 and also known as the UN Common Understanding on a Human-Rights-Based Approach (HRBA) to Development Cooperation, defines duty bearers, such as the Office of the Ombudsman, are those actors who have a particular obligation or responsibility to respect, promote and realize human rights and to abstain from human rights violations. It is, therefore, the solemn duty of the said office to respect Respondents' right to the speedy disposition of this case.

Lastly, it would be absurd to assert that Respondents will lose their right to the speedy disposition of the instant case because of the primacy of the right of the State to recover ill-gotten or unlawfully acquired properties considering that the former is a right of every person so charged, whether criminally, civilly or administratively. At best, courts should find a way to harmonize the two constitutional provisions.

WHEREFORE, premises considered, I vote for the dismissal of the instant case for forfeiture under R.A. No. 1379 against herein Respondents.

Geraldine Faith Econg
GERALDINE FAITH A. ECONG
Associate Justice

[11] See more at http://www.unfpa.org/human-rights-based-approach#sthash.YvuGiZps.dpuf.

SB-14-CVL-0002 -- REPUBLIC OF THE PHILIPPINES, *Petitioner* **v. HERNANDO BENITO PEREZ, ROSARIO S. PEREZ, ERNEST DE LEON ESCALER and RAMON ANTONIO CASTILLO ARCEO, JR.,** *Respondents.*

Promulgated:

x- x

DISSENTING OPINION

QUIROZ, *J.*:

Before Us is a suit for civil forfeiture under Republic Act No. 1379, the dismissal of which is now being sought.

On one end are the respondents asserting their constitutional right to speedy disposition of cases under Section 16, Article III of the Philippine Constitution[1] and on the other is the Republic citing the imprescriptible right of the State to recover properties unlawfully acquired by public officials or employees as provided for under Section 15, Article XI of the Philippine Constitution[2].

This is not the first time that the respondents asked for the dismissal of a case against them using this particular ground. On the contrary, it was the sole basis of the quashal of the information against them for robbery (extortion) by the Second Division of the Sandiganbayan[3] and which was affirmed by no less than the highest court of the land.[4]

Now, will the same constitutional provision on speedy disposition of cases benefit the respondents and sustain the dismissal herein sought? In answering this question, the majority made a distinction between a criminal case and a civil case. **This is where We diverge.**

The guarantee provided for under Section 16, Article III of the Philippine Constitution is not selective in application. Thus, in *Cadalin vs. Philippine Overseas Employment Administration's Administrator*,[5] as reiterated in *People of the Philippines vs. Sandiganbayan*,[6] the Supreme Court made the following pronouncement, to wit:

> "xxx...the constitutional right to speedy disposition of cases is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Hence, under the Constitution, any party to a case may

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[1] *"All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or*

[2] *"The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel."*

[3] People of the Philippines vs. Hernando Benito Perez, Rosario S. Perez, Ernest Escaler, and Ramon A. Arceo, SB-08-CRM-0266, 20 November 2008.

[4] People of the Philippines vs. Hon. Sandiganbayan, Second Division, Hernando Benito Perez, Rosario S. Perez, Ernest Escaler, and Ramon A. Arceo, Jr., G.R. No. 188165, 11 December 2013, 712 SCRA 359.

[5] Bienvenido M. Cadalin, et.al. v. Philippine Overseaseas Employment Administrators, et.al., G.R. Nos. 105029-32, 5 December 1994, 238 SCRA 722.

[6] People vs. Sandiganbayan, *supra* note 4.

> demand expeditious action on all officials who are tasked with the administration of justice."[7]

Proceeding from the above, from the moment the Office of the Ombudsman commenced their investigation into the forfeiture case, due process immediately came into play and the right to speedy disposition of cases began to operate in favor of the respondents.

To understand the invocation of these constitutional guarantees, I am behooved to give a brief overview of the timeline of this case.

The slew of cases against herein respondents stemmed from the exposé made by Congressman Wilfrido B. Villarama during the latter part of 2002. The Supreme Court recounts –

> "On **November 12, 2002**, Congressman Wilfrido B. Villarama of Bulacan (Cong. Villarama) delivered a privilege speech in the House of Representatives denouncing acts of bribery allegedly committed by a high ranking government official whom he then called the '2 Million Dollar Man." In reaction, the Office of the President directed the Presidential Anti- Graft and Commission (PAGC) to conduct an inquiry on the exposé of Cong. Villarama. PAGC sent written communications to Cong. Villarama, Cong. Mark Jimenez, Senator Panfilo Lacson and respondent Secretary of Justice Hernando B. Perez inviting them to provide information and documents on the alleged bribery subject of the exposé. On **November 18, 2002**, Cong. Villarama responded by letter to PAGC's invitation by confirming that Secretary Perez was the government official who "ha[d] knowledge or connection with the bribery subject of his expose." In his own letter of November 18, 2002, however, Secretary Perez denied being the Million-Dollar Man referred to in Cong. Villarama's privilege speech. On **November 25, 2002**, Cong. Jimenez delivered a privilege speech in the House of Representatives confirming Cong. Villarama's exposé, and accusing Secretary Perez of extorting US$2 Million from him in February 2001."[8] (emphasis supplied)

On the same day when Congressman Mark Jimenez identified Secretary Perez as the "*2 Million Dollar Man*," the Office of the Ombudsman began to make its own inquiry. Thus –

> "On **November 25, 2002**, then Ombudsman Simeon Marcelo requested PAGC to submit documents relevant to the exposé. On **November 26, 2002**, Ombudsman Marcelo formally requested Cong. Jimenez to submit a sworn statement on his

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[7] Cadalin vs. POEA's Administrator, supra note 5 at 765.
[8] People vs. Sandiganbayan, *supra* note 4 at 364 – 465.

> exposé. Cong. Jimenez complied on **December 23, 2002** by submitting his complaint-affidavit to the Office of the Ombudsman. The complaint-affidavit was initially docketed as **CPL-C-02-1992**. On the same day, the Special Action Team of the Fact Finding and Intelligence Research Office (FIRO) of the Office of the Ombudsman referred Cong. Jimenez's complaint-affidavit to the Evaluation and Preliminary Investigation Bureau and to the Administrative Adjudication Board, both of the Office of the Ombudsman, for preliminary investigation and administrative adjudication, respectively.
>
> The complaint-affidavit of Jimenez was re-docketed as OMB-C-C-02- 0857L, for the criminal case in which the respondents were Secretary Perez, Ernest L. Escaler and Ramon C. Arceo, Jr.; and as OMB-C-A-02-0631L, for the administrative case involving only Secretary Perez as respondent."[9] (emphasis supplied)

An investigation by the Office of the Ombudsman ensued subsequent to the filing of the complaint-affidavit by Cong. Jimenez.

The investigation conducted may be categorized into two distinct phases – the fact-finding investigation and the preliminary investigation. This distinction, however, is merely for purposes of providing a bird's-eye view of how the investigation proceeded because the Supreme Court had already ruled that for purposes of determining whether there has been a violation of the respondents' right to the speedy disposition of their cases, distinguishing one from the other bears no materiality. Thus –

> "The State further argues that the fact-finding investigation should not be considered a part of the preliminary investigation because the former was only preparatory in relation to the latter; and that the period spent in the former should not be factored in the computation.
>
> The argument cannot pass fair scrutiny.
>
> The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial, or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction 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."[10]

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[9] *Id.*, at pp. 365 – 366.
[10] *Id.*, at p. 415.

The Fact-Finding Investigation

The fact-finding investigation commenced in 2003 when, on **2 January 2003**, the Office of the Ombudsman constituted a special panel to look into CPL-C-02-1992.[11] The panel immediately came out with its recommendation for the conduct of a full-blown fact-finding investigation by the Fact Finding and Intelligence Research Office (FIRO), which recommendation was approved by Ombudsman Marcelo on **15 January 2003**.[12] The Field Investigation Office (formerly FIRO) completed its fact-finding investigation on **11 November 2005**.[13] It filed a complaint as nominal complainant on **14 November 2005** against the respondents[14] and prayed that –

> "WHEREFORE, foregoing premises considered, it is respectfully prayed of this Honorable Office, that:
>
> a. After preliminary investigation, an Information be filed in court charging the respondents, namely: former Justice Secretary HERNANDO BENITO PEREZ; ROSARIO SALVADOR PEREZ; ERNEST L. ESCALER; RAMON ANTONIO C. ARCEO, Jr.; and JOHN DOES, for conspiring, confederating and helping one another in committing Graft and Corruption, as defined and penalized under Section 3(b) of RA No. 3019 (the Anti-Graft and Corrupt Practices Act, as amended) in demanding and/or extorting US$2.0 Million from Mr. Jimenez, out of which, they actually received US$1,999,965.00;
>
> b. After preliminary investigation, an Information be filed in court charging respondent former Justice Secretary HERNANDO BENITO PEREZ for violation of i) Section 8, in relation to Section 11 of RA No. 6713, ii) Article 183 (Perjury) of the Revised Penal Code, and iii) Article 171, paragraph 4 (Falsification), for not disclosing in his 2001 and 2002 SALNs the amount of US$1.7 Million which was found to have been deposited in their Bank Account Nos. 338 118 and 348 118 at EFG Private Bank AG.
>
> c. After an inquiry similar to a preliminary investigation, a Petition be filed in court for the forfeiture in favor of the government of the US$1,999,965.00 bank deposits of the respondents, or any property of equivalent value belonging to any or of all of the respondents, pursuant to the provisions of RA No. 1379;
>
> d. That this Complaint be consolidated, its records incorporated, and the same jointly investigated, with the complaint of Mr. Jimenez docketed as OMB-CC-02-0857-L and OMB-C-A-02-

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[11] *Id.*, at p. 366.
[12] *Id.*
[13] Records, Volume I, pp. 378-398.
[14] *Ibid.*

0631-L, together with the related Supplemental Complaint-Affidavit he filed on June 4, 2003;

e. Considering the participation of respondent ROSARIO S. PEREZ in the commission of the crimes as established by the evidence on records, she be impleaded as co-conspirator and/or co-principal in the charges filed by Mr. Jimenez; and

f. Other relief and remedies as are just and equitable under the premises are likewise prayed for.

IN WITNESS WHEREOF, I have hereunto signed this Complaint this 11th day of November 2005 at Quezon City, Philippines."[15] (underscoring supplied)

This terminated the fact-finding investigation of CPL-C-02-1992.

The Preliminary Investigation

After the FIO came out with its recommendation, it forwarded the complete records of the case to the Preliminary Investigation, Administrative Adjudication and Monitoring Office (PAMO) for appropriate action.[16]

The complaints were docketed as OMB-C-C-02-0857-L, OMB-C-C-05-0633-K, OMB-C-C-05-0634-K (criminal cases) and OMB-C-C-05-0635-K (forfeiture case).

On **23 November 2005**, the respondents were directed to submit their counter-affidavits.[17] Hence, on **13 December 2005**, they filed a Consolidated Joint Counter Affidavit[18] and answered the following charges:

1. C-C-05-0633-K, for violation of Section 8, in relation to Section of R.A. No, 6713, Article 183 (Perjury) of the Revised Penal Code, and Article 171, paragraph 4 (Falsificiation);[19]

2. C-C-05-0634-K for violation of Section 3(b) or R.A. No. 3019;[20] and

3. C-C-5-0635-K for violation of the Provision of R.A. 1379.[21]

On **6 November 2006**, the special panel issued its recommendation for the filing of criminal cases against the respondents as well as the institution of a forfeiture

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[15] *Id.*, at p. 396 – 397.
[16] Records, Volume I, p. 314.
[17] People vs. Sandiganbayan, *supra* note 4 at 367.
[18] Records, Volume I, pp. 475 – 506.
[19] Records, Volume I, pp. 484 – 493.
[20] Records, Volume I, pp. 494 – 501.
[21] Records, Volume I, pp. 501 – 503.

suit under Republic Act No. 1379.[22] Its recommendation reads as follows –

> "**WHEREFORE**, finding probable cause, let criminal Informations be filed against the following respondents:
>
> (1) Former Secretary Hernando Benito Perez; Rosario Salvador Perez, Ernest L. Escaler; Ramon Antonio C. Arceo, Jr. for Extortion (Robbery), defined and punishable under paragraph 5 of Article 294 in relation to Article 293 of the Revised Penal Code;
>
> (2) Former Secretary Hernando Benito Perez; Rosario Salvador Perez, Ernest L. Escaler; Ramon Antonio C. Arceo, Jr., for violation of Section 3(b) of Republic Act 3019 (Anti-Graft and Corrupt Practices Act, as amended);
>
> (3) Former Secretary Hernando Benito Perez for Falsification of Public Documents defined and penalized under paragraph (4), Article 171 of the Revised Penal Code;
>
> (4) Former Secretary Hernando Benito Perez for violation of Section 7 of Republic Act 3019 in relation to Section 8 of Republic Act 6713.
>
> Additionally, in consonance with Section 2 of Republic Act 1379, **let a Petition for Forfeiture of Unlawfully Acquired Property under Republic Act 1379 be filed against Former Secretary Hernando Benito Perez; Rosario Salvador Perez, Ernest L. Escaler and Ramon Antonio C. Arceo, Jr., after the conduct of the general elections in May 2007.**
>
> SO RESOLVED."[23] (emphasis supplied)

On **5 January 2007**, then Ombudsman Merceditas N. Gutierrez approved the recommendation, albeit partially. Her recommendation reads as follows –

> "Approved: Except the recommendation on the initiation of forfeiture proceedings which should be referred to another panel for further study."[24]

Henceforth, four criminal informations were filed against the respondents before the Sandiganbayan on 18 April 2008. The informations for violation of Section 3(b) of R.A. No. 3019 and Robbery were quashed on **13 November 2008**[25] and **20 November 2008**,[26] respectively. The motions for reconsideration by the State were

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[22] Records, Volume I, pp. 301 – 359.
[23] Records, Volume I, pp. 355 – 356.
[24] Records, Volume I, p. 358.
[25] People vs. Sandiganbayan, *supra* note 4 at 374 – 378.
[26] *Id.*, at pp. 386 – 390.

denied on **21 April 2009**[27] (violation of Section 3(b) of R.A. No. 3019) and on **19 June 2009**[28] (robbery); thus, the elevation by the State of the cases to the Supreme Court *via* petitions for *certiorari* on **22 June 2009**[29] (G.R. No. 188165, for the dismissal of Criminal Case No. SB-08-CRM-0265) and **24 August 2009**[30] (G.R. No. 189063, for the dismissal of Criminal Case No. SB-08-CRM-0266). The Supreme Court affirmed the dismissal of these criminal cases by the Sandiganbayan on **11 December 2013**.[31]

In the meantime that the criminal cases were moving forward, the review on the initiation of a forfeiture suit languished for more than 5 years – from January 2007 until May 2012. To this day, the gap remains unexplained. It was only on **3 May 2012** when the Office of the Ombudsman took up the recommendation of then Ombudsman Gutierrez and constituted a special panel to look into the initiation of forfeiture proceedings. The panel's recommendation was submitted on **28 January 2013** and, on **14 November 2014**, the present suit was filed before this Court.

At this juncture, I humbly reiterate my position that, contrary to the assertion by the Office of the Ombudsman, the imprescriptible right of the State in its pursuit to recover unlawfully acquired properties is not in question. The challenge posed is on the extremely alarming interpretation accorded to this right that is now being used as a cloak for the derogation of the rights guaranteed to citizens under the Bill of Rights.

Our law on civil forfeiture affords the respondents the right to a preliminary inquiry similar to a preliminary investigation[32] precisely because these respondents remain to be entitled to the guarantee of due process regardless of whatever classification their case falls into – may it be criminal, civil or administrative. It must be remembered that ours is "a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial."[33]

The right to due process goes hand-in-hand with the right to speedy disposition of cases. And while the right to speedy disposition of cases eludes mathematical reckoning, a delay of almost 12 years reckoned from the time the fact-finding investigation commenced on 2 January 2003, *or almost 10 years reckoned from*

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[27] *Id.*, at pp. 379 – 385.
[28] *Id.*, at. pp. 390 – 398.
[29] *Id.*, at p. 385.
[30] *Id.*, at. p. 398.
[31] People vs. Sandiganbayan, *supra* note 4.
[32] **Section 2 of Republic Act No. 1379**. "Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who **shall conduct a previous inquiry similar to preliminary investigations in criminal cases** and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: *Provided*, That no such petition shall be filed within one year before any general election or within three months before any special election." (emphasis supplied)
[33] Trustees of Dartmouth College v. Woodward, 4 Wheaton 518.

the time the respondents filed their counter-affidavit before the Office of the Ombudsman on 13 December 2005, which cannot be explained and must therefore hide behind the invocation of the imprescriptible right of the State to recover unlawfully-acquired properties is the height of arbitrariness and injustice.

This is not the first time that the right of the State to recover unlawfully acquired properties and the right of an individual under the Bill of Rights have been pitted against each other. The Constitutional Commission trod on the same path when it deliberated whether to delete or retain Section 8 of Proposed Resolution No. 540 (Article on Transitory Provisions) granting the PCGG the power to issue sequestration orders which, ordinary circumstances obtaining, constitute a violation of the guarantee to due process under the Bill of Rights. The stand that I take is akin to that taken by Fr. Joaquin Bernas. To demonstrate, I would like to quote passages from the deliberations of the Commission on 7 October 1986:

> "FR. BERNAS. I would ask for the deletion of Section 8 of the Transitory Provisions for these reasons: Either it is necessary or it is unnecessary, or if it is necessary, it is oppressive.
>
> We have listened to the arguments principally of Commissioner Romulo which tried to establish that what the PCGG has been doing are things which can be done even under normal processes. The thrust of the argument is, therefore, it would be unnecessary. This provision would be unnecessary except – as Commissioner Romulo has explained very well – as a safety measure, as a sanitary shield as it were. If however, it is necessary, it can only be necessary because as explained by the committee, it runs smack against the Bill of Rights. What I would like to avoid is precisely the situation where, as we enter into the normalization of constitutional processes, we aim a sword against the very heart of a Constitution which is the Bill of Rights. To my mind, that would not be a very good way to continue a revolution.
>
> If we delete this provision, what will happen? Executive Order Nos. 1, 2 and 14 will be there. They will be automatically erased by the silence of a Constitution. Their validity or invalidity can still be argued before the Supreme Court, which is the proper place for a decision on this matter.
>
> In other words, when I say delete, I am not necessarily saying that it will leave the PCGG on the lurch. But the Supreme Court should be given the opportunity to examine the PCGG in the concrete as it exists now under Executive Order Nos. 1, 2 and 14. Let us give the Supreme Court a chance to find out which of these are abhorrent to democratic processes.
>
> I would not grant that millions or billions of dollars are involved. That is a monetary value. But there are values in the Constitution which are beyond monetary estimation. And when we begin to disregard these values which have been there for a

long time and we begin to put a dollar value on them, then I think we are in a very bad situation. So for these reasons, and as an act of confidence in the renovated Supreme Court, I ask for the deletion of Section 8 and to leave the entire matter to judicial investigation."[34]

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"MR. OPLE. Madam President, yesterday when I participated in the debate, I indicated that I would like to keep an open mind on the issue of deletion. Since then, I have determined that it is my duty now to speak in favor of the Bernas amendment for deletion, if only to rescue the good father from the loneliness of his crusade. Of course, I have circulated three proposed amendments and I hope, in the event that the motion for deletion loses, I would be in a position to improve upon this proposed section, especially from the standpoint of the Bill of Rights so that later I can support an amended provision more compatible with the Bill of Rights and due process.

Madam President, all throughout these debates, I have noted a tendency to look at the Bill of Rights in a cavalier manner. For example, I was disappointed yesterday when my friend, Commissioner Romulo, in answer to one of my questions, said that if there is a clash between the Bill of Rights, particularly Section 3 and the writ of sequestration provision where an order is contested before a court, there would be a little margin of freedom for the courts to uphold the Bills of Rights precisely because of this provision. The Bill of Rights, Madam President, is by the protestations of all Commissioners, the heart of this Constitution. When we wrote the Bill of Rights, I do not think we made this reservation in our minds and hearts that any portion of it could be allowed to be vitiated, no matter how preponderant the pretext for it might be in terms of the moral grandeur of such an objective. Father Bernas is right. When one writes a Bill of Rights and in the same breath agrees to vitiate some of its provisions, one might be accused of a double standard. What will prevent equally urgent considerations such as national security from affecting the attitude of, let us say, those in charge of national security towards the Bill of Rights? There is a provision there that we amended – the liberty of abode and the right to travel – and we said this prohibits hamletting which is a forcible evacuation of families in certain villages, in a zone of actual or potential hostilities. And when we relax our standards and vigilance over Section 3 of the Bill of Rights, are we not sending a signal to some of these people in the military, that because national security is equally imperative as goal of this nation, that the provision on the liberty of abode can also be vitiated in the name of larger goals of the State?

I think, historically, we are forewarned that the question of ends

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[34] 5 RCC 538.

and means has nagged many societies and many governments before us. In the 15th century, Miguel de Torquemada established a record of sorts in Spain by causing the execution of 2,000 heretics and, of course, at that time, he was hailed and acclaimed for the majesty of that achievement. In the name of the purity of Catholic beliefs, 2,000 people suspected of heresy were systematically eliminated. And, of course, this dilemma of mankind as between ends and means has dominated the agenda of social and political thinkers for a long time.

It is said that political science begins with Machiavelli's book, "The Prince." According to this book, if you want to preserve yourself in the political world, it is essential that you falsify things. It is essential for your own political survival and for the maintenance of power, if you are already in power, to disregard the ethics and moral values that otherwise bind a community, and probably in some ways this is correct. You have to enter into many compromises in politics to be able to survive and yet there are those distinguished by a hard core belief in their own ethical values and even if they face defeat in an election, they refuse to compromise their own beliefs. Then that is the price that they willingly accept.

Madam President, I am not saying that there is a direct correspondence between what I have said and the issue of the recovery of ill-gotten wealth. I think no one dissents from the view that this country is entitled to the recovery of any stolen possessions. At the same time, do we have to see this within the frame of the rights that we have enshrined in this Constitution for the people or shall we elect – as the body historically charged with the task of writing down this new Constitution to allow situations where, in proportion to the nobility of objections, there is a mandate to relax our vigilance and standards with respect to the rights of the people that we ourselves have written into this Constitution and which will detract undoubtedly from the majesty and nobility of this Constitution that we are preparing for our people?

And so, Madam president, may I conclude by saying that in my heart, my awareness of the complex dilemma of ends and means, as it has worked throughout history, impels me now to defend the Bernas amendment for a deletion. This is without prejudice to my presenting amendments later, if the motion to delete loses so that more of us can support wholeheartedly this Section 8 of the Transitory Provisions.

Thank you.[35]

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[35] *Ibid.*, pp. 541-542.

The backdrop of this debate was that the country was under extraordinary times and faced with the extraordinary responsibility of re-building a nation from the ground. We are already three decades away from that deliberation and we have been provided a Constitution to uphold. It is therefore disheartening to be summoned now to rule on a similar issue.

The sentiment I advance is best re-echoed in the pronouncement of the Supreme Court in the 1994 case of *Allado vs. Diokno*[36] and with which I choose to punctuate my vote on this particular issue –

> "The facts of this case are fatefully distressing as they showcase the seeming immensity of government power which when unchecked becomes tyrannical and oppressive. Hence the Constitution, particularly the Bill of Rights, defines the limits beyond which lie unsanctioned state actions. But on occasion, for one reason or another, the State transcends this parameter. In consequence, individual liberty unnecessarily suffers. The case before us, if uncurbed, can be illustrative of a dismal trend. Needless injury of the sort inflicted by government agents is not reflective of responsible government. Judges and law enforcers are not, by reason of their high and prestigious office, relieved of the common obligation to avoid deliberately inflicting unnecessary injury.
>
> The sovereign power has the inherent right to protect itself and its people from vicious acts which endanger the proper administration of justice; hence, the State has every right to prosecute and punish violators of the law. This is essential for its self- preservation, nay, its very existence. But this does not confer a license for pointless assaults on its citizens. The right of the State to prosecute is not a *carte blanche* for government agents to defy and disregard the rights of its citizens under the Constitution."[37]

All told, I now humbly put forth a vote of dissent.

ALEX L. QUIROZ
Associate Justice

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[36] G.R. No. 113630, 5 May 1994. 232 SCRA 192.
[37] *Ibid.*, p. 209.