



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, SB-15-CRM-0092
Plaintiff, For: Violation of Sec. 3(e)
R.A. No. 3019

SB-15-CRM-0093
For: Falsification of Public/Official
Document

Present

- versus -

**MARIANO M. MALONES,
ET AL.,**

Accused.

CABOTAJE-TANG, P.J.,
Chairperson
MARTIRES, J. and
FERNANDEZ, J.

Promulgated:

JUNE 7, 2016

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RESOLUTION

FERNANDEZ, J.

This resolves the prosecution's *Motion for the Suspension Pendente Lite of Accused Malones*¹ pursuant to Sec. 13 of Republic Act No. 3019 (R.A. No. 3019), which provides:

Sec. 13. *Suspension and loss of benefits.* – Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted,

¹ Dated January 20, 2016, pp. 221-224, Record

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he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to retribute the same to the Government.

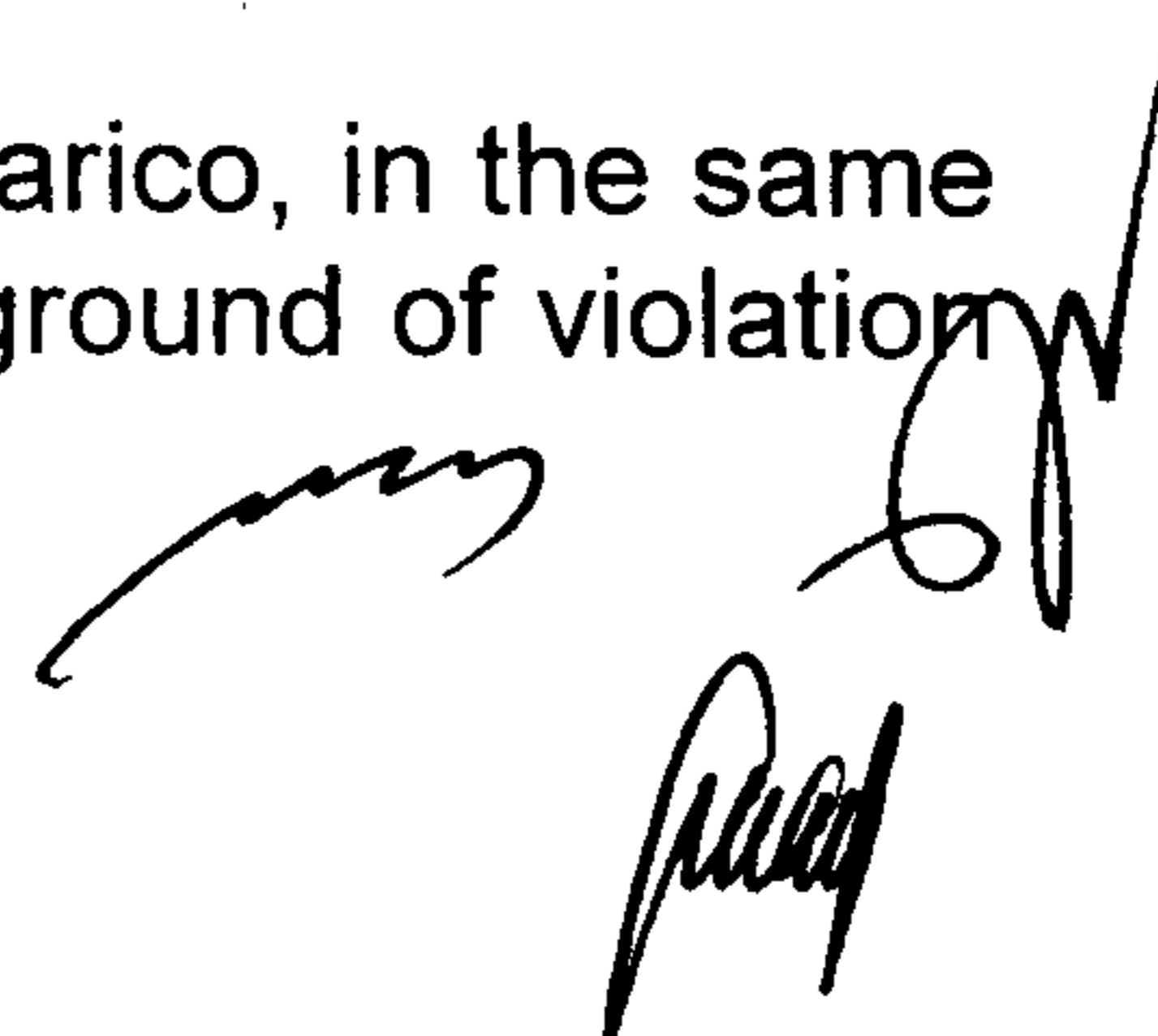
According to the prosecution, all the requisites for suspension *pendente lite* are present. Accused Mariano M. Malones, the incumbent Municipal Mayor of the Municipality of Maasin, Province of Iloilo, is charged under a valid Information with violation of Sec. 3(e) of R.A. No. 3019. Moreover, no prior approval from the Commission on Elections (COMELEC) is necessary because suspension of elective local officials pursuant to R.A. No. 3019 is expressly excluded from the prohibited act under Sec. 261 (x) of the Omnibus Election Code. Hence, accused Malones should be suspended *pendente lite*.

In his *Opposition to Motion for the Suspension Pendente Lite of Accused Malones And Motion to Dismiss*,² accused Malones counters:

- a. Suspending him is contrary to the presumption of innocence guaranteed by the Constitution. It is tantamount to punishment even before the commencement of the trial. When there is a conflict between a provision of law and a provision of the Constitution, the latter prevails.
- b. Excluding suspension pursuant to R.A. No. 3019 from those that require prior approval from the COMELEC is contrary to the constitutional guarantee of equal protection of the laws.
- c. Suspending him will not only violate his constitutional rights but also deprive his constituents of the services for which he was elected.

Accused Malones and accused Edna M. Madarico, in the same motion, pray for the dismissal of the cases on the ground of violation

² Dated February 2, 2016; pp. 342-353, Record



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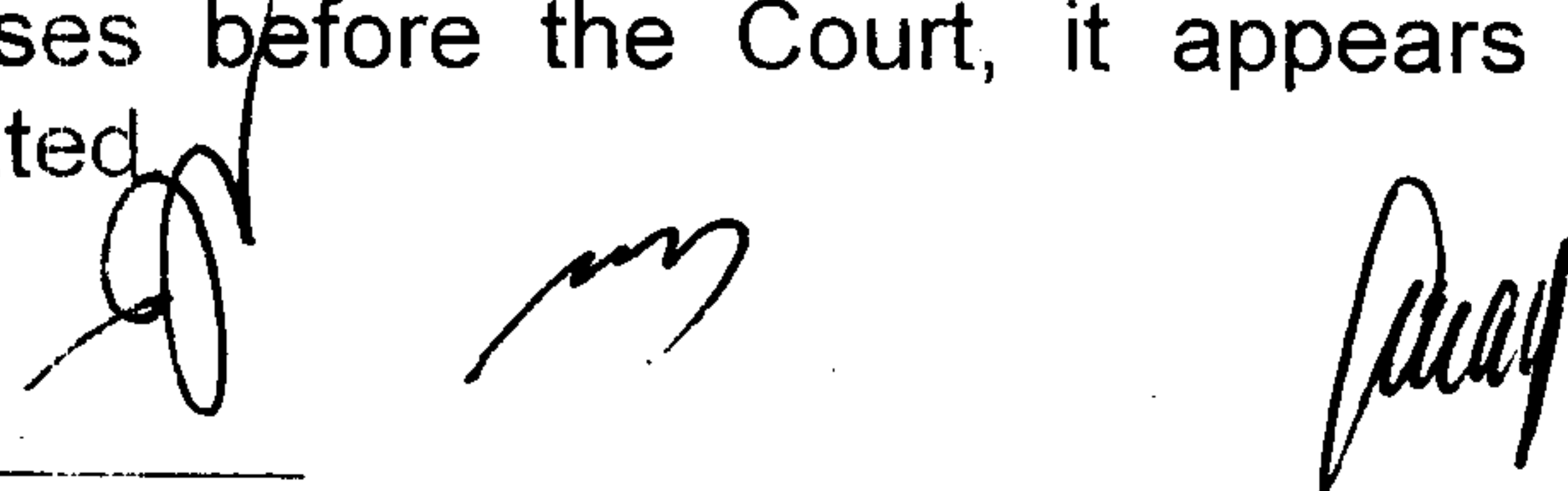
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of their constitutional right to speedy disposition of cases. They argue:

- a. The complainant filed the initiatory complaint in 2002. They were ordered to answer the same only after a period of ten (10) years. Because of the lapse of time, witnesses and documents are more difficult to obtain.
- b. Under Sec. 4, Rule II of Administrative Order No. 7, in connection with Sec. 3, Rule 112 of the Rules of Court, the investigating officer must take action on the complaint within ten (10) days from the filing thereof. In the present cases, the investigating body took action only after 10 years from the filing of the complaint.

The prosecution, in its *Comment/Opposition (to the Opposition to Motion for the Suspension Pendente Lite of accused Malones and Motion to Dismiss)*,³ avers that the imposition of preventive suspension will not run counter to the constitutionally guaranteed right of an accused to be presumed innocent because it is not a penalty. On the other hand, relative to the motion to dismiss of accused Malones and Madarico, the matter of delay in the preliminary investigation had already been addressed by the Court in its *Resolution* dated September 2, 2015.⁴

In their *Reply to Prosecution's Comment/Opposition to Accused's 1. Opposition to Motion for the Suspension Pendente Lite of Accused Malones and 2. Motion to Dismiss*,⁵ aside from reiterating their arguments in their motion, they posit that it is not incumbent upon them to show that the delay in the preliminary investigation was "unreasonable, arbitrary and oppressive." Rather, it is the burden of the prosecution to explain the delay in the disposition of the case. Because of the delay, witnesses and documents in support of their defense are gone or difficult to obtain. Moreover, from the timing of the reactivation of the cases in the Office of the Ombudsman and the filing of the cases before the Court, it appears that the filing is politically motivated.



³ Dated February 22, 2016; pp. 360-362, Record

⁴ pp. 188-189, Record (pp. 3-4, *Resolution* dated September 2, 2015)

⁵ Dated March 7, 2016; pp. 369-381, Record

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THE COURT'S RULING

Motion to suspend *pendente lite*

The Court resolves to grant the prosecution's motion.

It is settled that once a court determines that the information charging a public officer with an offense under R.A. No. 3019 or Title 7, Book II of the Revised Penal Code, or any other offense involving fraud upon government or public funds or property is valid, it is bound to issue an order of preventive suspension of the accused public officer as a matter of course.⁶

Accused Malones is charged with violation of Sec. 3(e) of R.A. No. 3019 and entered a plea of Not Guilty on January 11, 2016.⁷ Thus, all requisites being present, it is the Court's duty to suspend accused Malones.

Accused Malones' arguments are not new. His contention that suspension *pendente lite* is contrary to the accused' right to be presumed innocent because it is tantamount to a penalty deserves scant consideration. The Supreme Court had already ruled on the matter in *Villaseñor v. Sandiganbayan*.⁸ viz.:

Preventive suspension is not a penalty

Imposed during the pendency of proceedings, preventive suspension is not a penalty in itself. It is merely a measure of precaution so that the employee who is charged may be separated, for obvious reasons, from office. Thus, preventive suspension is distinct from the penalty. While the former may be imposed on a respondent during the investigation of the charges against him, the latter may be meted out to him at the final disposition of the case.

The Court's discussion in *Quimbo v. Gervacio* is enlightening:

Jurisprudential law establishes a clear-cut distinction between suspension as *preventive measure* and suspension as *penalty*. The distinction, by considering the purpose aspect of the suspensions, is readily cognizable as they have different ends sought to be achieved

⁶ *Flores v. Layosa*, G.R. No. 154714, August 12, 2004

⁷ p. 218, Record

⁸ G.R. No. 180700, March 4, 2008



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Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation. The purpose of the suspension order is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him. If after such investigation, the charge is established and the person investigated is found guilty of acts warranting suspension or removal, then he is suspended removed or dismissed. This is the penalty.

That preventive suspension is not a penalty is in fact explicitly provided by Section 24 of Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292) and other Pertinent Civil Service Laws.

Sec. 24. Preventive suspension is **not a punishment or penalty** for misconduct in office but is considered to be a preventive measure.

The accused public officers whose culpability remains to be proven are entitled to the constitutional presumption of innocence. The law itself provides for the reinstatement of the public officer concerned and payment to him of the salaries and benefits for the duration of the suspension in the event of an acquittal:

x x x

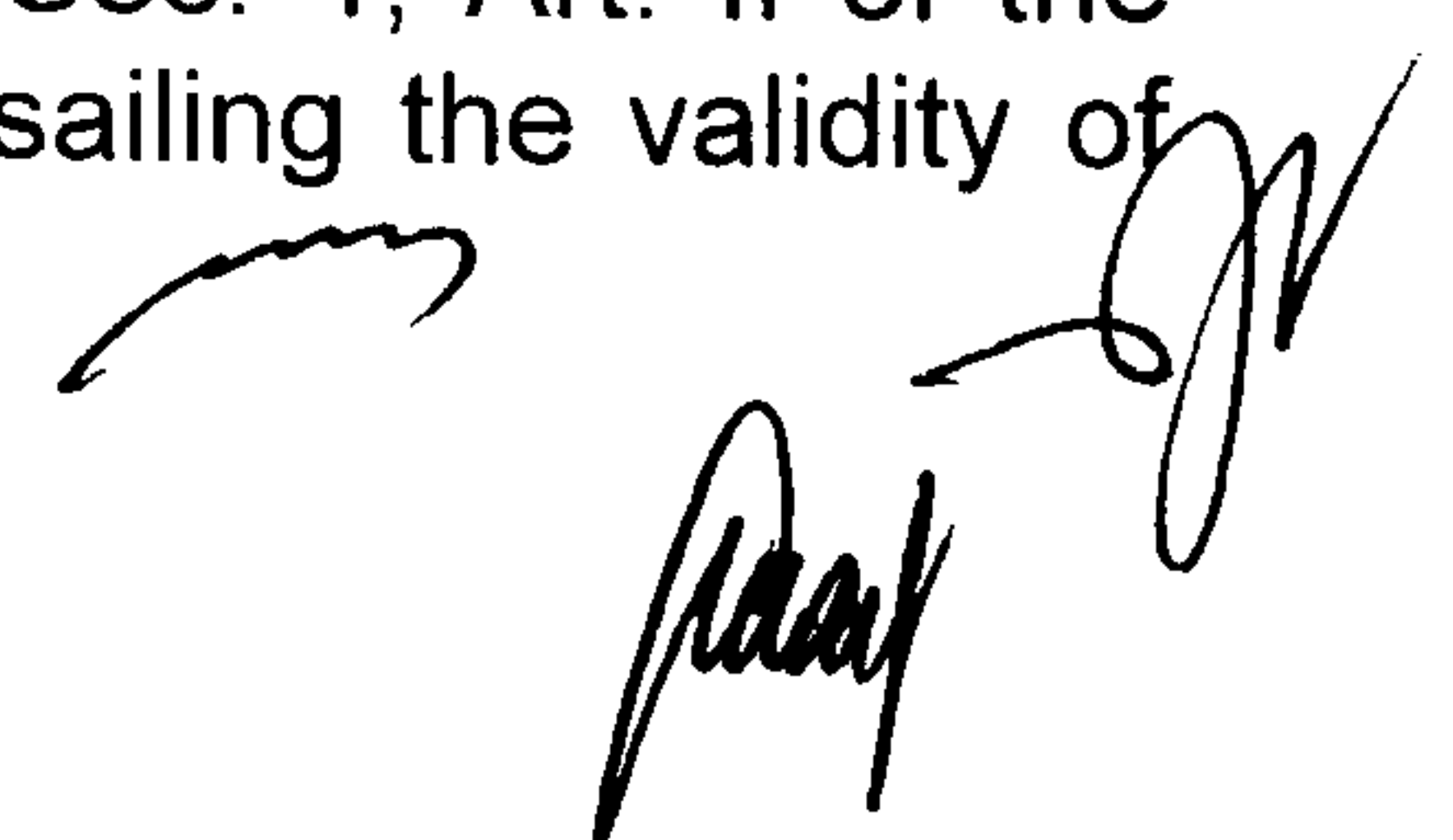
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His contention that he should not be suspended because his constituents would be deprived of his services is likewise bereft of merit. In *Bolastig v. Sandiganbayan*,⁹ it was held:

Finally, the fact that petitioner's preventive suspension may deprive the people of Samar of the services of an official elected by them, at least temporarily, is not a sufficient basis for reducing what is otherwise a mandatory period prescribed by law. The vice governor, who has likewise been elected by them, will act as governor. Indeed, even the Constitution authorizes the suspension for not more than sixty days of members of Congress found guilty of disorderly behavior, thus rejecting the view expressed in one case that members of the legislature could not be suspended because in the case of suspension, unlike in the case of removal, the seat remains filled but the constituents are deprived of representation.

Lastly, accused Malones does not dispute that under Art. 261 (x) of the Omnibus Election Code, the Court can impose suspension *pendente lite* without prior approval from the COMELEC. However, he claims that the said provision is contrary to Sec. 1, Art. II of the Constitution. Accused Malones is, in effect, assailing the validity of

⁹ G.R. No. 110503, August 4, 1994



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Art. 261 (x) of the Omnibus Election Code. This cannot be done. In *Dasmariñas Water District v. Monterey Foods Corporation*,¹⁰ it was held:

Finally, respondent challenged the constitutionality of Sec. 39 of PD 198 in its memorandum. It contended that said provision was an undue delegation of legislative power. A collateral attack on a presumably valid law is not allowed.

“We have ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.”¹¹

The issue of validity of Sec. 261 (x) of the Omnibus Election Code is not relevant to the main issue of whether or not accused Malones should be suspended *pendente lite*. Hence, the Court will not rule on the same.

Violation of right to speedy disposition of cases

The Court resolves to deny the motion of accused Malones and Madarico.

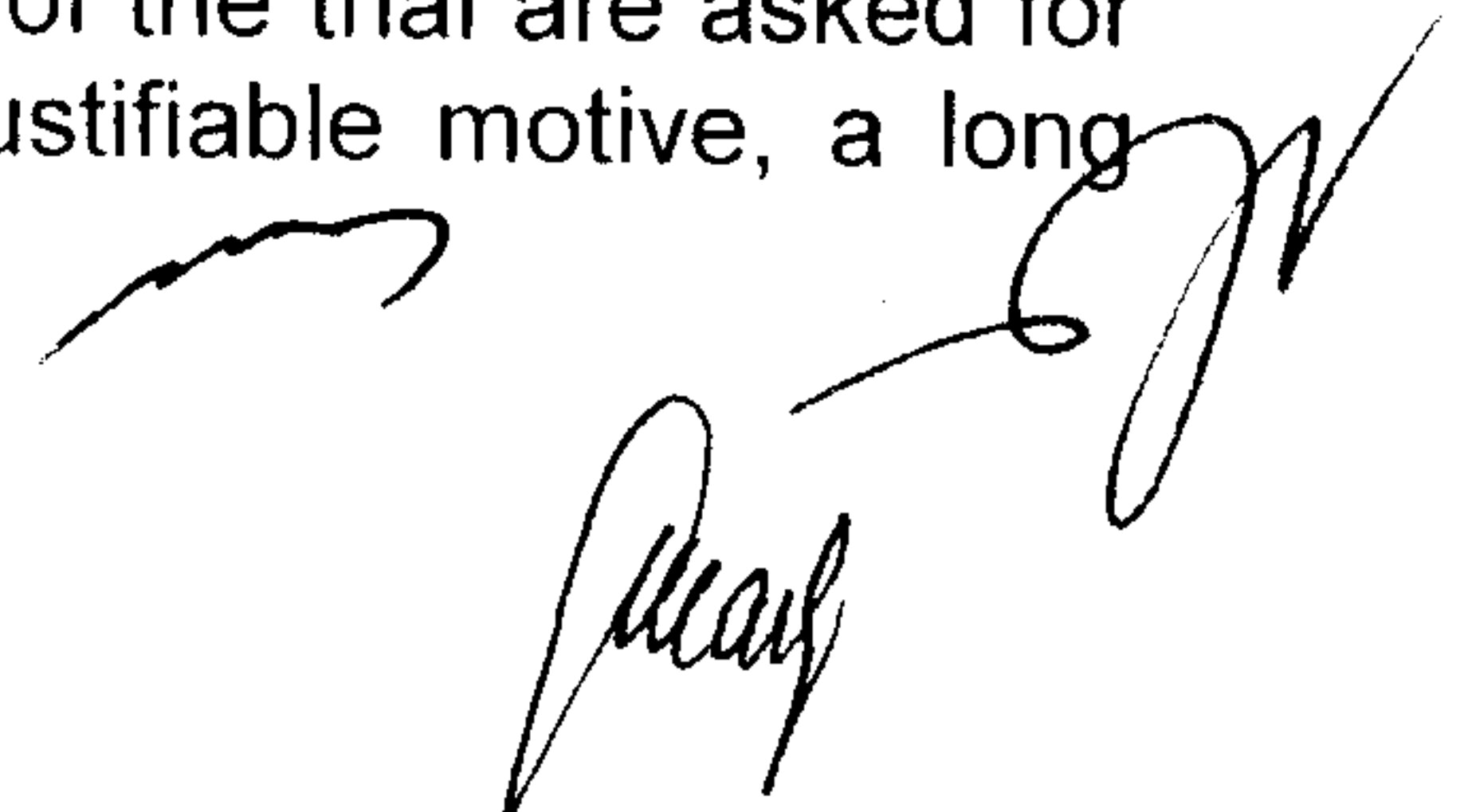
In *Ombudsman v. Jurado*,¹² the Supreme Court held that the right to speedy disposition of cases is a flexible concept, and that the facts and circumstances surrounding each case should be considered. It must be clearly shown that the proceedings were attended by unreasonable, arbitrary and oppressive delays. To wit:

It bears stressing that although the Constitution guarantees the right to the speedy disposition of cases, it is a flexible concept. Due regard must be given to the facts and circumstances surrounding each case. The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long

¹⁰ G.R. No. 175550, September 17, 2008, 565 SCRA 624

¹¹ *Ibid.*, pp. 636-637

¹² G.R. No. 154155, August 5, 2008



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period of time is allowed to elapse without the party having his case tried. Just like the constitutional guarantee of “speedy trial,” “speedy disposition of cases” is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.

(underscoring supplied)

In *Mendoza-Ong v. Sandiganbayan*,¹³ the Supreme Court held that the radical relief of the dismissal of the case cannot be granted unless it is clearly shown that the delays were manifestly oppressive. To wit:

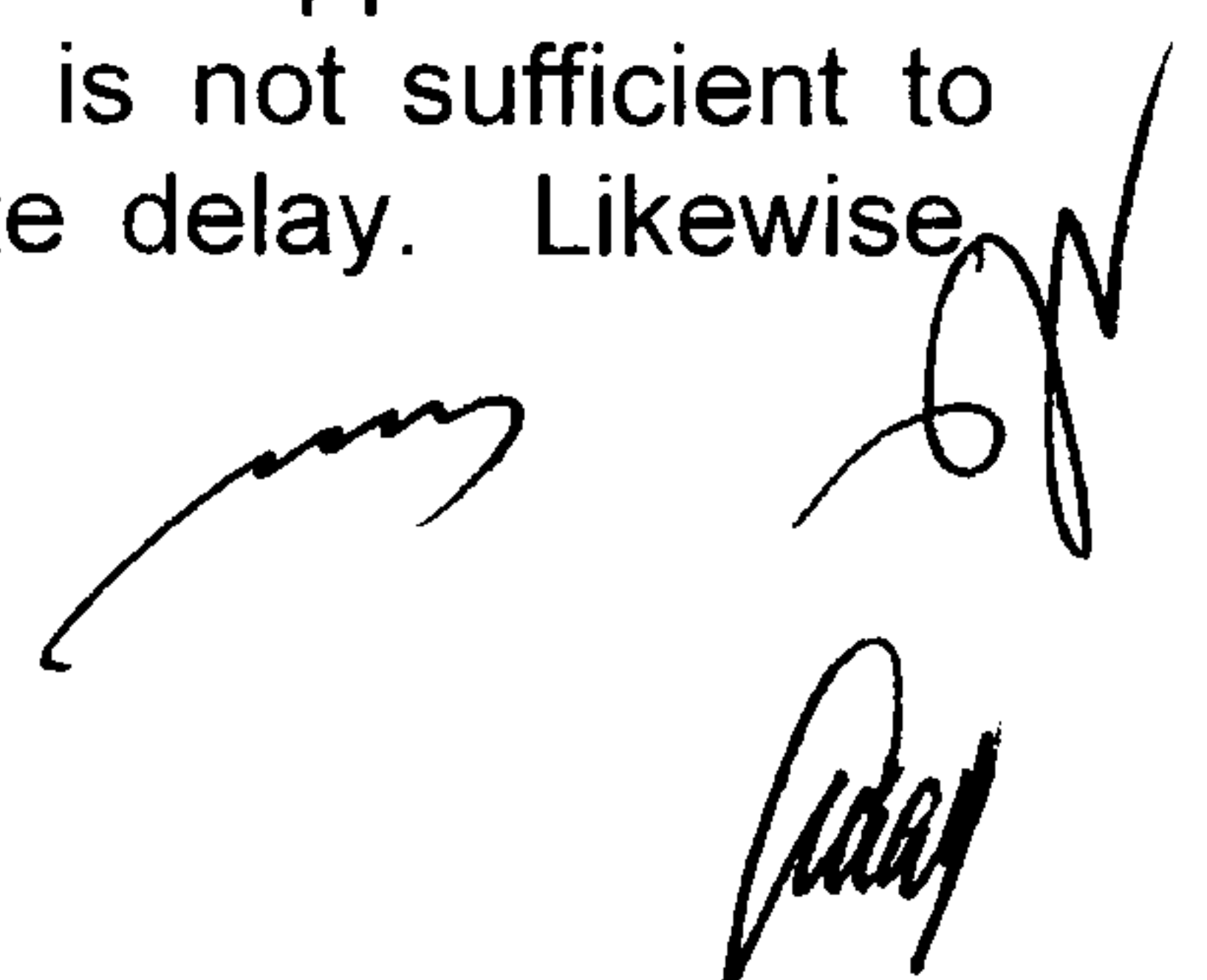
Unlike in the *Tatad*, *Duterte*, and *Angchangco, Jr.*, cases where the delays were manifestly oppressive, the facts of this case do not evince vexatious, capricious and oppressive delay in the conduct of the preliminary investigation. There appears, therefore, no persuasive much less compelling reason to grant in this case the same radical relief granted in those three cases that petitioner cited.

It must be emphasized that in *Tatad v. Sandiganbayan*,¹⁴ —one of the cases cited by accused Malones and Madarico—the Supreme Court’s conclusion that there was violation of the right to speedy disposition of cases was not solely based on the fact that there was a delay of close to three (3) years. It found that there was a “blatant departure from established procedure” which supported the suspicion that the prosecution was politically motivated. The fact that there was a delay of close to three years *per se* was not sufficient to support the conclusion that there was a violation of the right to speedy disposition of cases.

In the present cases, accused Malones and Madarico merely point out that the Office of the Ombudsman took action on the case only ten (10) years after the filing of the initiatory complaint, without showing other circumstances that clearly demonstrate how the delay can be characterized as vexatious, capricious and oppressive. It bears repeating that the lapse of time, by itself, is not sufficient to arrive at the conclusion that there was inordinate delay. Likewise,

¹³ G.R. Nos. 146368-69, October 18, 2004

¹⁴ G.R. Nos. 72335-39, March 21, 1988



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their bare allegation that the filing of the present cases was politically motivated deserves scant consideration.

Next, accused Malones and Madarico argue that the Office of the Ombudsman should have complied with Sec. 4, Rule II of the Rules of Procedure of the Ombudsman, which provides that the preliminary investigation shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court. Sec. 3(b), Rule 112 of the Rules of Court provides:

Sec. 3. Procedure. – The preliminary investigation shall be conducted in the following manner:

(a) x x x

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

x x x

Verily, the Rules provide that the investigating officer should act on the complaint within ten (10) days from the filing thereof. However, the Supreme Court, in *Mendoza-Ong v. Sandiganbayan*,¹⁵ recognized that by reason of stream of cases reaching the Ombudsman, disposition of the same will necessarily take time. To wit:

x x x. "Speedy disposition of cases" is consistent with reasonable delays. The Court takes judicial notice of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to lodge freely their complaints against alleged wrongdoing of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time.
xxx.

(underscoring supplied)

In light of the aforequoted ruling, it appears that the mere failure of the Office of the Ombudsman to comply with the ten-day period in Sec. 3(b), Rule 112 will not automatically result in violation of the right to speedy disposition of cases

¹⁵ *Supra*. Note 11

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Finally, accused Malones and Madarico's claim that they suffered prejudice because witnesses' recollections might no longer be accurate and evidence is now more difficult to obtain, does not persuade.

Without doubt, the mere lapse of time may cause evidence to be more difficult to obtain—the longer the time that has passed from the alleged date of the commission of the offense, the more difficult it will be to obtain evidence. The Supreme Court recognized this in *Corpuz v. Sandiganbayan*,¹⁶ viz.:

x x x. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect namely: to prevent oppressive pre-trial incarceration, to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. x x x

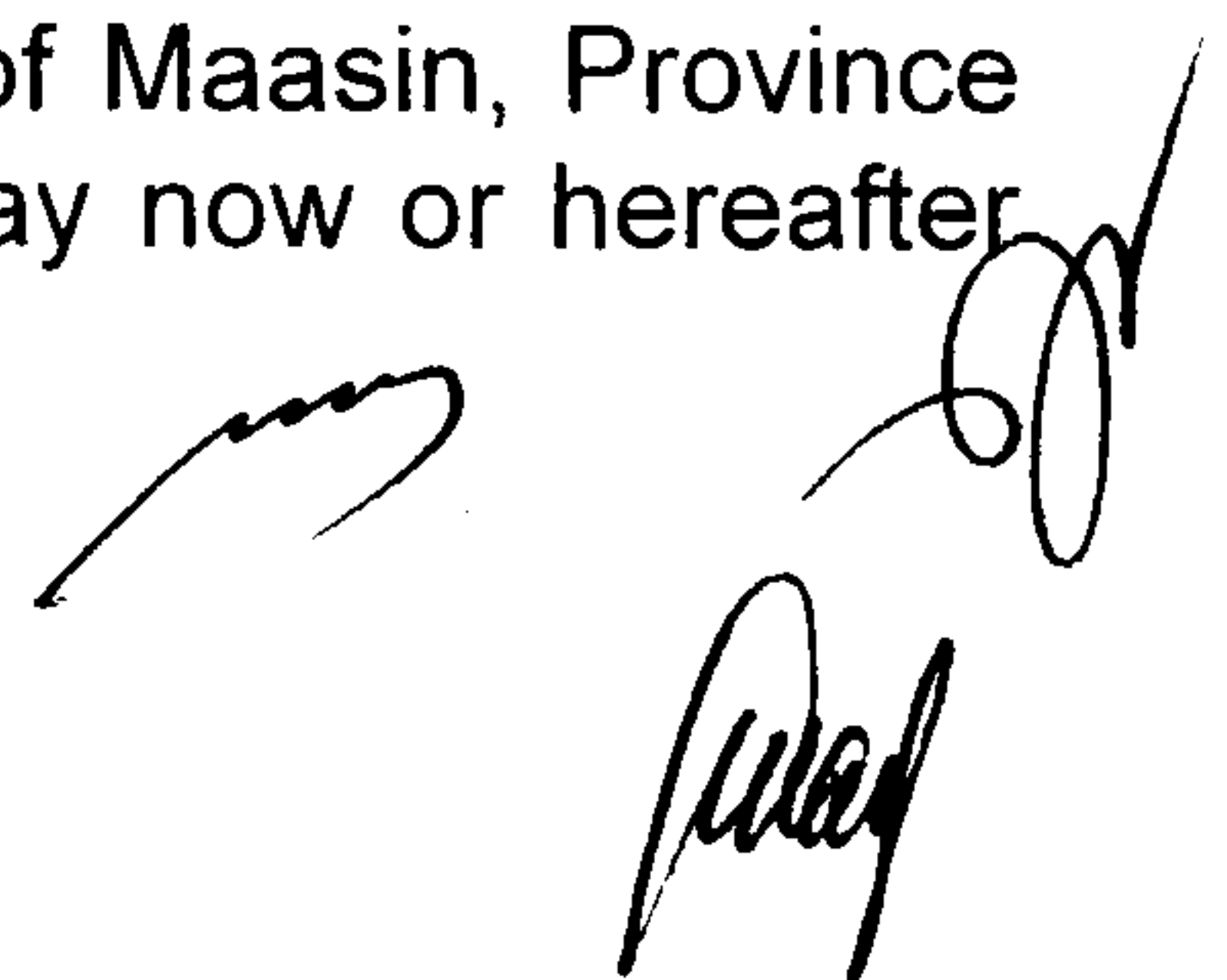
However, prejudice does not always follow the mere fact of passage of time. Assuming that the criminal action against them had commenced near the end of the prescriptive period of the offenses, the effect would be the same – evidence would still be more difficult to obtain due to the lapse of time, but they will not be able to claim that they suffered prejudice.

Other than their assertion of difficulty in obtaining evidence, they failed to clearly show how they were prejudiced by reason of the delay in the termination of the preliminary investigation.

In fine, dismissal of the present cases on the ground of violation of right to speedy disposition of cases is not warranted.

WHEREFORE, the prosecution's *Motion for the Suspension Pendente Lite of Accused Malones* is hereby GRANTED. The Court hereby orders the suspension *pendente lite* of accused Mariano M. Malones as Municipal Mayor of the Municipality of Maasin, Province of Iloilo, and from any other public position he may now or hereafter

¹⁶ G.R. No. 162214, November 11, 2004



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hold for a period of ninety (90) days from the implementation of this resolution.

Let a copy of this resolution be furnished the Secretary of the Department of Interior and Local Government (DILG) for the implementation of this order of suspension. The Secretary is requested to inform the Court of the action taken thereon within fifteen (15) days from receipt hereof.

The suspension of the accused shall automatically be lifted upon the expiration of the ninety-day period from the implementation of this resolution.

The motion to dismiss of accused Malones and Edna M. Madarico is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice

WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson


SAMUEL R. MARTIRES
Associate Justice