



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, SB-18-CRM-0370

Plaintiff,

– versus –

For: Violation of section 3(e) of
Rep. Act No. 3019

TOMAS RICARDO
TANJUATCO, et al.,

Accused.

Present:

LAGOS, J., Chairperson,
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

July 13, 2018 jal

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RESOLUTION

LAGOS, J.:

This resolves the following: (1) Accused Yolanda Reyes's *Omnibus Motion To: A) Dismiss The Present Case For Violation of Accused's Right to Speedy Disposition of the Same Case; and B) Reduce Bail Ad Cautelam; With Prayer to Defer Issuance of Warrant of Arrest and Further Proceedings;*¹ and (2) Accused Tomas Ricardo Tanjuatco, Adorable A. Sunga, Godofredo Mariano, and Nenita Vines's *Motion to Quash.*²

The prosecution filed its *Consolidated Comment and/or Opposition*³ to the accused's motions.

¹ Dated 15 May 2018. Records, pp. 180-194.

² Dated 1 June 2018. Records, pp. 239-252.

³ Dated 21 June 2018. Records, pp. 280-294.

In her motion, accused Reyes moves for the dismissal of the case for violation of her right to speedy disposition of case. She claims there was inordinate delay in the fact-finding investigation and preliminary investigation by the Office of the Ombudsman. She stresses that this inordinate delay passes the balancing factors, as ruled in the cases of *Coscolluela v. Sandiganbayan*⁴ and *People v. Sandiganbayan and Acot*.⁵ In support of her motions, she discusses the four factors of the balancing test.

She provides a timeline of the case with the Office of the Ombudsman. Her claimed delay is a period of about twelve (12) years and one (1) month, counted from the creation of Task Force Abono to the filing of the information with this Court. She relies on *People v. Sandiganbayan and Perez*⁶ and *Torres v. Sandiganbayan*⁷ to support her claim that the period for fact-finding investigation should be included in the computation of delay.

The following is a summary of the timeline she presented:

Incident/Detail	Date
Creation of Task Force Abono	February 2006
Creation of Special Panel to Handle Preliminary Investigation	October 2008
Filing of FIO complaint-affidavit	May 31, 2011
Receipt of order dated 9 January 2012 requiring respondents to submit counter-affidavits	August 3, 2012
Filing of counter-affidavit	August 28, 2012
Date of DO Mosquera's signing of resolution dated December 2, 2016	March 2, 2017
Approval of Ombudsman Carpio-Morales of such resolution	April 24, 2017
Receipt of a copy of the resolution	May 30, 2017
Filing of motion for reconsideration of the resolution	June 5, 2017
Date of joint order denying the motion for reconsideration	September 26, 2017
Approval by Ombudsman Carpio-Morales of the joint order	November 17, 2017
Receipt of the joint order	January 16, 2018
Filing of Information	May 4, 2018

She submits that there is no valid and plausible explanation to justify the Office of the Ombudsman's delay. From the time she received the order to file her counter-affidavit, she only took twenty-five (25) days to file such counter-affidavit. Pre-empting the prosecution,

⁴ G.R. No. 191411 & 191871, 15 July 2013.

⁵ G.R. No. 199151-56, 25 July 2016.

⁶ G.R. No. 188165 & 189063, 11 December 2013.

⁷ G.R. Nos. 221562-69, 5 October 2016.

she cites *Coscolluela v. Sandiganbayan*⁸ to reject thorough and careful review as a justification for the delay.

With regard to the assertion of the right, she opines that she is entitled to such right whether or not she asserted it. She points out that she has not caused the delay and that her constitutional right prevails over the State's right to prosecute. Citing the *People v. Sandiganbayan and Acof*⁹ case and *Almeda v. Ombudsman*,¹⁰ she says that the Office of the Ombudsman is mandated to act promptly even without any reminder from her and she does not need to assert her right or follow-up on her case.

She claims that she is continuously suffering prejudice which has been determined and recognized in settled cases. She suffered damage and prejudice as a result of the delay, including impairment of her defense, living under a cloud of anxiety, curtailment of her association, and public obloquy.

She ends by concluding that the case must be dismissed because of this violation of her constitutional right to speedy disposition of her case.

In the alternative, she prays for a reduction of her bail in half, from P30,000 to P15,000, due to financial constraints. She claims that she is not a flight risk.

She likewise prays for the deferment of further proceedings until the resolution of her motion.

In their motion, accused Tanjuatco, Sunga, Mariano, and Vines pray for quashal and dismissal of the case based on two grounds: (i) that the violation of their constitutional rights to due process and speedy disposition of cases has resulted in the Office of the Ombudsman losing its authority to file the case and, consequently, this Court has no jurisdiction over the crime charged; and (ii) the facts charged in the Information do not constitute an offense.

The timeline they present mirrors the one presented by accused Reyes in her motion. They include the period of the fact-finding investigation and end with the filing of the Information with this Court. Their presented timeline is similar to the one presented by accused-movant Reyes, with the following differences: (i) they filed their counter-affidavits on 12 September 2012, and (ii) they did not move to reconsider the resolution finding probable cause.

⁸ Supra.

⁹ Supra.

¹⁰ G.R. No. 204267, 25 July 2016.

They continue that the delay was not explained by the Office of the Ombudsman. They claim that it failed to discharge its constitutionally-mandated duty to act promptly. It failed to tender a justifiable reason for the delay of more than twelve (12) years.

They also claim that they have been prejudiced by the delay. They cite the concept of prejudice as explained in *Corpuz v. Sandiganbayan*.¹¹ They aver that they are no longer young and the passage of time diminished their ability to adequately prepare their defense. It affects their and their witness's recollection of events which transpired more than a decade ago. This may also have affected the physical integrity of the documents related to this case. The delay they claim has also affected their financial and physical well-being.

Their motion also assails the Information in this case. They claim that the facts charged do not constitute an offense. This is based on their view that the allegations in the Information do not show the individual participation of the accused in the alleged conspiracy.

In its comment/opposition, the prosecution opposes the motions and argues principally that the delay, if there is any, was not vexatious, capricious and, oppressive. It provides the legal meanings of the terms vexatious, capricious, and oppressive. It claims that the circumstances of the case justifies the reasonable delay. It proceeds to discuss the four factors of the balancing test in support of its position.

On the first factor, the prosecution devotes a substantial portion of its opposition to argue that the period of the fact-finding investigation should not be included in determining the length of the delay. It cites internal regulations¹² showing that the fact-finding investigation is separate from and treated differently from the preliminary investigation proper. It cites the ruling in *Ombudsman v. Jurado*,¹³ where the Supreme Court did not include the fact-finding investigation period into the total delay. They presented their timeline for this case, as follows:

Incident/Detail	Date
Task Force Abono (FIO) filed its complaint-affidavit	28 November 2011
Issuance of order requiring respondents to submit counter-affidavits	9 January 2012
Filing of counter-affidavit by Tanjuatco, Sunga, Mariano, Vines and Reyes	13 September 2012
Re-issuance of order to file counter-affidavit to other respondents in the complaint	14 March 2013

¹¹ G.R. No. 162214, 11 November 2004.

¹² Administrative Order No. 07, Rule II, section 2 and Memorandum Circular 11, s. 1995.

¹³ G.R. No. 154155, 6 August 2008.

Constitution of a new special panel to handle the disposition of criminal and administrative cases related to the fertilizer fund scam (per Ombudsman Office Order No. 368, s. 2016)	13 May 2016
The special panel issues a resolution finding probable cause	2 March 2017
Ombudsman Carpio-Morales approves the resolution finding probable cause	24 April 2017
Accused Reyes filed her motion for reconsideration of the resolution finding probable cause	5 June 2017
Ombudsman Carpio-Morales approved a joint order dated 26 September 2017 denying the motion for reconsideration filed by accused Reyes.	17 November 2018
Ombudsman Carpio-Morales approved the Information dated 24 January 2018	2 February 2018
Filing of Information	4 May 2018

The prosecution claims that the delay was only about six (6) years and four (4) months. It then argues that even if the period for the fact-finding investigation is included, the delay would still not be vexatious, capricious, and oppressive.

As regards the reason for the delay, the prosecution claims that the fertilizer fund scam presented a novel *modus operandi*. At its inception, it involved an elaborate and well-thought design consisting of complex and intricate webs of transactions. The investigators then were struggling to understand this.

Due to its complexity, an investigation panel was created (Task Force Abono) instead of the case being assigned to just a single investigator. The investigators at the fact-finding investigation were not lawyers. They were under the supervision of the panel chairman and co-chairmen who were lawyers.

An intensive nationwide investigation required substantial human, financial and technical resources. It involved not only local government officials but also high-ranking national officials (in the Department of Budget and Management and the Department of Agriculture).

The prosecution avers that upon the inception of the panel, investigative activities were immediately carried out, as shown by the issuance of subpoenas as early as 24 March 2006. The panel followed leads to understand the scheme. But they were constrained by limitations on personnel and finances, which were necessary for activities such as tracking down individual beneficiaries.

Within the conduct of the preliminary investigation proper, the prosecution admits the existence of an appreciable gap, particularly

from 2013 to 2017. It explains though that, similar to the fact-finding investigation, there was a special panel constituted to conduct the preliminary investigation. The case was technical and had to be handled by lawyers who had the competency and training for such. This limited the membership of the panel to a few. Eventually, additional teams were created to assist in the resolution of cases. It also claims that during this time, some panel members resigned or transferred to other government offices.

It notes that from the approval of the resolution finding probable cause to the filing of the Information, there was a time gap that is reasonable after taking into consideration the day to day operations in an office which has adjudicatory functions. They cite *Castillo v. Sandiganbayan*¹⁴ to show that this heavy caseload has been recognized judicially.

In its opinion, these reasons show that the delay, if any, was justified. There was no deliberate attempt to prolong the investigation or delay the filing of the Information.

The prosecution then contends that the claimed prejudice is insufficient, which prejudice needs factual basis.

It invokes the ruling in *Remulla v. Sandiganbayan*,¹⁵ where the Supreme Court said that the factors of the test must be weighed according to the facts and circumstances of each case. It also argues that the accused-movants' cited cases, *Angchangco v. Ombudsman*¹⁶ case and *Coscolluela v. Sandiganbayan*,¹⁷ are not applicable in this present case.

It closes by saying that the case should not be dismissed. Following its assessment of the four factors of the balancing test, it opines that the Office of the Ombudsman had faced certain constraints and the delay, if any, was reasonable.

With regard to the Tanjuatco motion's second ground, the prosecution argues that the Information sufficiently alleges the required details and acts and omissions complained of. It contends that the Information, which only needs to allege ultimate facts, alleges the elements of the offense charged.

¹⁴ G.R. No. 109271, 14 March 2000.

¹⁵ G.R. No. 218040, 17 April 2017.

¹⁶ G.R. No. 122728, 13 February 1997.

¹⁷ Supra.

DISCUSSION and RULING

As a preliminary matter, the Court observes that while the two motions being considered here essentially invoke the same argument – that there was inordinate delay which violated the accused's right to speedy disposition of case – they are presented in differing remedies. Accused Reyes filed a motion to dismiss, while accused Tanjuatco, et al. filed a motion to quash.

A motion to quash is a specific remedy in criminal cases to attack the validity of an information. Generally, it does not result in the final dismissal of the case, unless the defect is based on a ground barring further prosecution.¹⁸ When a violation of the right to speedy disposition is invoked, it is not simply the information which is being assailed. The entire proceedings wherein there was inordinate delay is assailed.

The principal relief in a remedy invoking the violation of the right to speedy disposition of cases is the dismissal of the pending case.¹⁹

In the motion of Tanjuatco, Sunga, Mariano, and Vines, the argument of inordinate delay is subsumed within the ground that the prosecutor who filed the case has lost the authority to do so. But a reading of the argument does not show any discussion on how the violation of the right to speedy disposition of cases strips the Office of the Ombudsman of its authority to file the instant case.

The Court clarifies that the authority of an official or office to file a criminal case is determined by the applicable law and rules.²⁰ Similarly, the jurisdiction of a court is conferred by law.²¹ These are matters that are not solely determined by examining the circumstances of a case but by referencing the governing law and/or rules. Hence, authority and jurisdiction are not generally affected by the changing circumstances of cases.

Nevertheless, under cases decided by the Supreme Court, motions to dismiss and motions to quash have both been found to be available to one who invokes the violation of the constitutional right. The principal relief for a violation of the constitutional right is the dismissal of the case, which relief is prayed for in the motions of accused-movants. A violation of a constitutional right is a grave violation that cannot simply be brushed aside. Considering also that

¹⁸ Rule 117, section 6.

¹⁹ Tatad v. Sandiganbayan, G.R. No. 72335-39, 21 March 1988.

²⁰ People v. Garfin, G.R. No. 153176, 29 March 2004.

²¹ Magno v. People, G.R. No. 171542, 6 April 2011.

the effect of violation of the constitutional right to speedy disposition of cases is akin to the effect of some of the grounds in a motion to quash, the motion to quash must be entertained.

The Court shall proceed to consider the accused-movants' claim of inordinate delay resulting to the violation of their right to speedy disposition, regardless of the remedy in which they were raised.

The right to a speedy disposition of a case, like the right to a speedy trial, is deemed violated only when the proceedings is attended by vexatious, capricious, and oppressive delays.²² In determining whether a person's right to speedy disposition of cases has been violated, the Supreme Court has adopted for this jurisdiction a balancing test.²³ It was originally a balancing test to determine violations of the right to speedy trial, but the test was applied to determine violation of the right to speedy disposition of cases.²⁴ It examines the right of the State to prosecute crimes against a person's right to speedy disposition of cases.²⁵

The balancing test requires the examination of four factors: (i) the length of delay, (ii) the reasons for the delay, (iii) the assertion or non-assertion of the right, and (iv) the prejudice caused by the delay. These factors are correlated and assessed together.²⁶

In *Remulla v. Sandiganbayan*,²⁷ the Supreme Court explained and gave a short summary and history of the balancing test, viz.:

"The right to a speedy disposition of a case, like the right to a speedy trial, is deemed violated only when the proceeding is 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 period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed.

More than a decade after the 1972 leading U.S. case of *Barker v. Wingo* was promulgated, this Court, in *Martin v. Ver*, began adopting the "balancing test" to determine whether a defendant's right to a speedy trial and a speedy disposition of cases has been violated. As this test necessarily compels the courts to approach such cases on an *ad hoc* basis, the conduct of both the prosecution

²² Dansal v. Fernandez, G.R. No. 126814, 2 March 2000.

²³ Coscolluela v. Sandiganbayan, supra.

²⁴ Ombudsman v. Jurado, supra.

²⁵ Dansal v. Fernandez, supra.

²⁶ Coscolluela v. Sandiganbayan, supra.

²⁷ Supra.

and defendant are weighed *apropos* the four-fold factors, to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. None of these elements, however, is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process."²⁸

The first factor – the length of the delay

The accused-movants all invoke Supreme Court rulings saying that the period for the fact-finding investigation should be included in the computation of the period of total delay.

To exclude the fact-finding investigation time period, the prosecution explains the difference between a fact-finding investigation and the preliminary investigation proper. It cites internal rules of the Office of the Ombudsman and decided cases showing such difference. It argues that this difference merits the separation of the fact-finding period from the total delay incurred.

The prosecution's argument cannot be accepted.

Its reliance on *Ombudsman v. Jurado*²⁹ is misplaced. In that case, there were no vexatious, capricious, and oppressive delays because there was no investigation that took place and the respondent did not undergo any investigative proceeding.

In *People v. Sandiganbayan and Perez*,³⁰ the ruling and the *ratio* therefor are clear:

"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 of the period devoted to the preliminary investigation.

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

²⁸ Citations omitted.

²⁹ *Supra*.

³⁰ *Supra*.

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."

This was unequivocally echoed in *Torres v. Sandiganbayan*:³¹

"We find it necessary to emphasize that the speedy disposition of cases covers not only the period within which the preliminary investigation was conducted, but also all stages to which the accused is subjected, even including fact-finding investigations conducted prior to the preliminary investigation proper. xxx"

It would not be amiss to point out that when the Supreme Court ruled that the fact-finding investigation period should be tacked to the total delay, it did not discuss such investigation as an abstract or hypothetical concept; the Supreme Court specifically considered and dealt with the fact-finding investigation as conducted by the Office of the Ombudsman. As a matter of law, therefore, the fact-finding investigation presently considered in this case has already been examined and considered by the Supreme Court. The prosecution is given an opportunity to explain the delay, including that in the fact-finding investigation.

The law provides that judicial decisions applying or interpreting the laws or the Constitution shall form a part of our legal system.³² This is a codification of the doctrine of *stare decisis et non quieta movere*,³³ In particular, a lower court's application of cases decided by the Supreme Court is termed vertical *stare decisis*.³⁴ It is mandatory as lower courts are required to follow rules established in a decision of the Supreme Court.³⁵

This Court cannot therefore ignore the categorical ruling of the Supreme Court with regard to the inclusion of the period for fact-finding investigation in the computation of total length of delay. Ignoring the period for the fact-finding investigation in this case would mean disregarding the Supreme Court's decisions.

Having settled this issue, the Court proceeds to determine the total length of the delay in this case.

While it argued that the fact-finding investigation should not be considered, the prosecution nevertheless admits that such fact-finding investigation was conducted by a special task force, Task Force

³¹ Supra.

³² Civill Code, Art. 8.

³³ Lazatin v. Desierto, G.R. No. 147097, 5 June 2009.

³⁴ Ting v. Velez-Ting, G.R. No. 166562, 31 March 2009.

³⁵ Lazatin v. Desierto, supra, citing Fermin v. People, G.R. No. 157643, 28 March 2008.

Abono, constituted on 6 February 2006.³⁶ Considering, too, the prosecution's concession that the case of the accused was part of the larger investigation by the task force into the fertilizer fund scam, the Court deems the constitution date of the task force as the start of the fact-finding investigation of this case.

Following this, and after considering the parties' submissions and the records of the case, the following timeline is considered relevant and established:

Incident/Detail	Date
Creation of Task Force Abono	6 February 2006
Date of Task Force Abono's (FIO) complaint-affidavit	May 31, 2011
Filing of the complaint-affidavit	28 November 2011
Date of order requiring the respondents to submit counter-affidavits	9 January 2012
Filing of counter-affidavit by Reyes	28 August 2012
Filing of counter-affidavit by Tanjuatco, Sunga, Mariano and Vines	13 September 2012
Date of the resolution finding probable cause	2 December 2016
Approval of Ombudsman Carpio-Morales of such resolution	April 24, 2017
Accused Reyes's filing of motion for reconsideration of the resolution finding probable cause	5 June 2017
Date of joint order denying the motion for reconsideration	26 September 2017
Approval by Ombudsman Carpio-Morales of the joint order	17 November 2017
Filing of Information in this case	4 May 2018

From the foregoing, the Court computes the total length of delay at about eleven (11) years and five (5) months.

This is computed from the following: twelve (12) years and three (3) months, from the constitution of Task Force Abono to the filing of the information with this Court and deducting from this a period of about ten (10) months which is not attributable to the Office of the Ombudsman. This excluded ten (10) month period is a rough sum of: (i) a little over eight (8) months, which is the period from the issuance of the order to file counter-affidavit up to the filing of such counter-affidavits;³⁷ and (ii) about one and half (1 ½) months, which is the period from the date of the approval of the resolution finding probable cause up to accused Reyes's filing of her motion for reconsideration.

³⁶ Prosecution/s Consolidated Comment and/or Opposition, p. 2 (in par. 11). Records, p. 282.

³⁷ Accused Reyes filed her counter-affidavit earlier, on 28 August 2012. The other accused-movants filed their counter-affidavit on 13 September 2012. For uniformity and considering that the later date of filing was the time when the case was ripe for resolution, the date of the filing of the counter-affidavits is pegged at the such later date.

The prosecution itself admits that the resulting length of delay without factoring in the fact-finding period, is approximately six (6) years and four (4) months.³⁸ This period, to the Court's mind, is also by itself inordinate.

*The second factor –
reasons for the delay*

The prosecution considers the delay in this case to be reasonable. Its main consideration for this is that the fertilizer fund scam was a complicated case which needed a thorough handling and review.

It offers as reason additionally the following: staff movement in the Office of the Ombudsman; some of its investigators are not lawyers thus the need to review their findings; constitution of a special task force to handle the case.

These reasons are unpersuasive.

While the Court acknowledges that the fertilizer fund scam may be a complicated case, such complication does not justify the length of delay in this case. The magnitude or scope of the investigation does not justify the length of time it took to resolve the case.

That this is not an ordinary case was appreciated early on by the Office of the Ombudsman when it constituted a special task force to conduct fact-finding investigation. This was manifested again when a special panel was constituted to resolve the complaints filed by the task force.

Raising the fact of specialized groups to resolve the case is a double-edged sword, which in this case operates to the disadvantage of the prosecution. The creation of such special groups should result into reasonably speedier resolution of cases. This is not the case with the Task Force Abono and the special panel for fertilizer fund cases.

The Task Force Abono took over five (5) years and three (3) months to draft its complaint.³⁹ It took another period of over five (5) months to file such complaint for the conduct of a preliminary investigation proper.

Pointing to voluminous documents does not justify the period of over five (5) years and nine (9) months to conduct and terminate a fact-

³⁸ See p. 282, Records, Vol. I.

³⁹ Its complaint is dated May 31, 2011.

finding investigation. That the personnel who conducted the investigation were not lawyers is also beside the point.

It should be stressed that this is a specialized task force within a specialized government office. It has not shown that it encountered extraordinary difficulty in retrieving documents or finding out the scheme in which the scam was carried out. If there were any such difficulty, the office should have addressed it while its personnel were encountering such difficulty to ease the burden.

In the preliminary investigation proper, the situation did not improve. After the filing of the counter-affidavits, the resolution of the complaint took nearly five (5) years. The resolution finding probable cause was dated 2 December 2016. It took about four and a half (4 ½) months to review and finalize the same as of 24 April 2017.

This is not justified delay. The case was not too complex so as to justify the delay incurred. Again, the case was resolved by a specialized panel within a specialized government office. The time it took the special panel to assess the complaint-affidavit and the counter-affidavits was too long. The arguments raised in the parties' submissions are not too complex to justify the delay incurred.

It does not help the prosecution's case that the documents reviewed and the arguments presented for the eventual indictment of the herein accused were readily available in the complaint filed by the FIO. The time period it took the panel to sift through the complaint and the counter-affidavits and prepare the resolution was clearly not reasonable.

The prosecution included in its timeline the fact that it re-issued an order for other respondents to file their counter-affidavits. But this does not justify the delay in acting upon the complaint and the submitted counter-affidavits. Even under the Office of the Ombudsman's own rules, the non-submission of counter-affidavits by respondents or failure to serve orders for them to file such counter-affidavits does not bar it from resolving a complaint before it.⁴⁰

And when the Ombudsman finally approved the order denying the motions for reconsideration, the Office of the Ombudsman still took another period of about five and a half (5 ½) months just to file the corresponding Information with this Court.

The prosecution cites the staff movement as one of the reasons for the delay. Persons constituting the special panel have been

⁴⁰ See Administrative Order No. 07, s. 1990, as amended, Rule II, section 4 (c) and (e).

replaced due to some personnel departure. This is not a justifying reason. Staff movement within the Office of the Ombudsman is an internal concern. It should not affect its responsibility towards the public and its mandate to resolve cases speedily. Certainly, it cannot be used to justify a violation of a respondent's constitutional right.

Internal problems of the Office of the Ombudsman, such as alleged lack of "competent or qualified personnel," are not reasons for it to unjustifiably prolong the preliminary investigation. They could remedy the situation by lobbying for institutional support through executive and legislative actions. But the rights of the parties before it cannot be sacrificed.

All told, the prosecution has not shown any reason to justify the delay in the fact-finding and preliminary investigation of this case.

*The third factor –
assertion or non-
assertion of the right*

In the *Coscolluela v. Sandiganbayan*,⁴¹ the Supreme Court described the expected conduct of a respondent in a preliminary investigation in this wise:

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

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

This was related to the Office of the Ombudsman's duty and mandate to act on complaints promptly. Thus, it should act on complaints even without reminders for it to do so. In *Almeda v. Office of the Ombudsman*,⁴² the Supreme Court ruled that in preliminary investigations, no waiver or acquiescence may be attached to what may seem to be delayed assertion or even non-assertion of the right. It said:

"Third, petitioner had no hand in the delay. As a matter of fact, she sent a letter and filed written manifestations seeking the immediate resolution of her case. While they were filed only in 2010

⁴¹ Supra.

⁴² Supra.

and 2011, petitioner's letter and manifestations cannot be considered late, and no waiver or acquiescence may be attached to the same, as she was not required as a rule to follow up on her case; instead, it is the State's duty to expedite the same."

In *People v. Sandiganbayan and Acot*,⁴³ the Supreme Court said:

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

In this case, the issue of inordinate delay was raised by some respondents in the preliminary investigation, albeit none of the present accused.⁴⁴ This issue, however, was not addressed in the resolution finding probable cause. Its importance, although not raised by the herein accused, is that the Office of the Ombudsman had been apprised of the possible existence of the inordinate delay.

In her motion to reconsider the resolution finding probable cause, accused Reyes raised the violation of her right to speedy disposition of her cases. This argument was not accepted, as the motion for reconsideration was denied in the Office of the Ombudsman's joint order.

From the records, it is clear that the herein accused-movants timely filed their counter-affidavits. Based on the quoted ruling in the *Coscolluela v. Sandiganbayan*,⁴⁵ the accused, as respondents, could not have been expected to follow-up on their cases. Their conduct when this case was filed also shows that they had not abandoned or waived their right to speedy disposition of cases or the effects of such right being violated.

Relatedly, the Office of the Ombudsman was clearly aware of the delays in the cases which should have prompted it act with dispatch. They were fully aware that the subject transactions happened in 2004, and that the fact-finding investigation had taken over five (5) years.

Considering that there was already a long unjustified delay, accused Reyes's assertion of her right in her motion for reconsideration, and the lack of such definite assertion by accused

⁴³ Supra.

⁴⁴ Office of the Ombudsman Resolution dated 2 December 2016, pp. 13 & 16 (summary of arguments of respondents Dennis B. Araullo and Lucille E. Odejar). Records, pp.19 & 22.

⁴⁵ Supra.

Tanjuatco, Sunga, Mariano, and Vines of their right during the preliminary investigation, cannot be considered against them or in favor of the prosecution. The facts clearly show that the herein accused did not act in a way that may be considered as a waiver of their rights.

On the other hand, the Office of the Ombudsman's mandate is clearly spelled out not only under the law⁴⁶ but the Constitution as well:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall 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, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.⁴⁷

The fourth factor – the prejudice caused by the delay

The prosecution's main argument to consider this factor against the accused is that the claimed prejudice lack factual basis.

The Court does not agree.

In *Corpuz v. Sandiganbayan*,⁴⁸ prejudice was explained as follows:

“xxx. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.”⁴⁹

The Court finds that the accused-movants' claimed prejudice are duly established. The hallmarks of prejudice as found by the Supreme Court are extant in this case.

⁴⁶ Rep. Act No. 6770, section 13.

⁴⁷ CONST., art. XI, sec. 12.

⁴⁸ Supra.

⁴⁹ Citations omitted.

In *Torres v. Sandiganbayan*,⁵⁰ the Supreme Court found that the accused therein was prejudiced as he was deprived of the ability to adequately prepare his case considering that he may no longer have access to records or contact with any witness. The Supreme Court continued that even if the accused was never imprisoned and subjected to trial, he lived under a cloud of anxiety by virtue of the delay in the resolution of his case.

In *Almeda v. Office of the Ombudsman*,⁵¹ the High Court appreciated the existence of prejudice on the petitioner as follows:

“Fourth, the pendency of OMB-MIN-01-0183 undoubtedly prejudiced petitioner. The case hung like a hangman's cord above her all these years, causing distress, anxiety, and embarrassment. As was held in the *Corpuz* case, the passage of time affects the parties' and their witnesses' ability to prepare a cogent case or defense; secure witnesses; and preserve honor and reputation, financial resources, memory, and evidence.”

In *Remulla v. Sandiganbayan*,⁵² the Supreme Court found prejudicial to the accused the cloud of anxiety, suspicion, and hostility under to which the accused was exposed.

In defending their position, the prosecution readily admits that the case involves voluminous documents and numerous personalities. It even says that it encountered substantial difficulty in obtaining copies of documents and tracking persons involved in the case.

Surely, an accused individual cannot do better and would face much more difficulty than a dedicated government office, especially considering the fact that the subject transactions happened about fourteen (14) years ago. The passage of time's effect on the persons of the accused and the viability of their defenses cannot be disregarded. The Court cannot ignore this reality.

In this case, the accused-movants became aware of the pendency of cases against them since around August 2012, when they received notice that they were directed to file counter-affidavits. This was already about eight (8) years after the subject transactions took place. And even after they had filed their counter-affidavits, they were left in the dark for more close to five (5) years, as regards the status of their cases. This cannot simply be disregarded. They were actually held under a cloud of uncertainty and anxiety. This situation was found by the Supreme Court as prejudicial. There is no reason to depart or differ from the Supreme Court's view.

⁵⁰ Supra.

⁵¹ Supra.

⁵² Supra.

