Republic of the Philippines
Supreme Court
Manila

EN BANC

CONCHITA CARPIO MORALES, in her capacity as the Ombudsman, Petitioner,	**G.R. Nos. 217126-27**
- versus -	Present:
COURT OF APPEALS (SIXTH DIVISION) and JEJOMAR ERWIN S. BINAY, JR., Respondents.	SERENO, *C.J.* CARPIO, VELASCO, JR.,* LEONARDO-DE CASTRO, BRION,** PERALTA,*** BERSAMIN, DEL CASTILLO, VILLARAMA, JR., PEREZ, MENDOZA,**** REYES, PERLAS-BERNABE, LEONEN, and JARDELEZA,***** *JJ.*
	Promulgated: November 10, 2015

x----------x

DECISION

PERLAS-BERNABE, *J.*:

"All government is a trust, every branch of government is a trust, and immemorially acknowledged so to be[.]"[1]

---

* No part.
** No part / On leave.
*** No part.
**** On leave.
***** No part.
1 *"The Works of Jeremy Bentham, published under the superintendence of his executor, John Bowring."* Vol. II, Chapter IV, p. 423, London (1843).

– Jeremy Bentham

The Case

Before the Court is a petition for *certiorari* and prohibition[2] filed on March 25, 2015 by petitioner Conchita Carpio Morales, in her capacity as the Ombudsman (Ombudsman), through the Office of the Solicitor General (OSG), assailing: (*a*) the Resolution[3] dated March 16, 2015 of public respondent the Court of Appeals (CA) in **CA-G.R. SP No. 139453**, which granted private respondent Jejomar Erwin S. Binay, Jr.'s (Binay, Jr.) prayer for the issuance of a temporary restraining order (TRO) against the implementation of the Joint Order[4] dated March 10, 2015 of the Ombudsman in OMB-C-A-15-0058 to 0063 (preventive suspension order) preventively suspending him and several other public officers and employees of the City Government of Makati, for six (6) months without pay; and (*b*) the Resolution[5] dated March 20, 2015 of the CA, ordering the Ombudsman to comment on Binay, Jr.'s petition for contempt[6] in **CA-G.R. SP No. 139504**.

Pursuant to the Resolution[7] dated April 6, 2015, the CA issued a writ of preliminary injunction[8] (WPI) in CA-G.R. SP No. 139453 which further enjoined the implementation of the preventive suspension order, prompting the Ombudsman to file a supplemental petition[9] on April 13, 2015.

The Facts

On July 22, 2014, a complaint/affidavit[10] was filed by Atty. Renato L. Bondal and Nicolas "Ching" Enciso VI before the Office of the Ombudsman against Binay, Jr. and other public officers and employees of the City Government of Makati (Binay, Jr., *et al.*), accusing them of Plunder[11] and violation of Republic Act No. (RA) 3019,[12] otherwise known as "The Anti-Graft and Corrupt Practices Act," in connection with the five (5) phases of the procurement and construction of the Makati City Hall Parking Building (Makati Parking Building).[13]

---

2 With urgent prayer for the issuance of a TRO and/or a WPI. *Rollo*, Vol. I, pp. 6-36.
3 Id. at 43-47. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. concurring.
4 Id. at 53-65. Issued by petitioner Ombudsman Conchita Carpio Morales.
5 Id. at 50-51.
6 Dated March 18, 2015. Id. at 362-373.
7 Id. at 613-627.
8 Id. at 629-630. Signed by Division Clerk of Court Miriam Alfonso Bautista.
9 For *certiorari* and prohibition with prayer for the issuance of a TRO and/or WPI. Id. at 606-611.
10 See *rollo*, Vol. II, pp. 749-757.
11 RA 7080, entitled "AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER" (approved on July 12, 1991).
12 Approved on August 17, 1960.
13 *Rollo*, Vol. II, pp. 647.

On September 9, 2014, the Ombudsman constituted a Special Panel of Investigators[14] to conduct a fact-finding investigation, submit an investigation report, and file the necessary complaint, if warranted (1st Special Panel).[15] Pursuant to the Ombudsman's directive, on March 5, 2015, the 1st Special Panel filed a complaint[16] (OMB Complaint) against Binay, Jr., *et al.*, charging them with six (6) administrative cases[17] for Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service, and six (6) criminal cases[18] for violation of Section 3 (e) of RA 3019, Malversation of Public Funds, and Falsification of Public Documents (OMB Cases).[19]

As to Binay, Jr., the OMB Complaint **alleged** that he was involved in anomalous activities attending the following procurement and construction phases of the Makati Parking Building project, committed during his previous and present terms as City Mayor of Makati:

Binay, Jr.'s First Term (2010 to 2013)[20]

> (*a*) On **September 21, 2010**, Binay, Jr. issued the Notice of Award[21] for **Phase III** of the Makati Parking Building project to Hilmarc's Construction Corporation (Hilmarc's), and consequently, executed the corresponding contract[22] on **September 28, 2010**,[23] without the required publication and the lack of architectural design,[24] and approved the release of funds therefor in the following amounts as follows: (1) □130,518,394.80 on **December 15, 2010**;[25] (2)

---

14 Id.

15 Through Ombudsman Office Order No. 546, which was later on amended through Officer Order No. 546-A dated November 18, 2014. Id. at 758-759.

16 Dated March 3, 2015. *Rollo*, Vol. I, pp. 66-100.

17 Docketed as OMB-C-A-15-0058, OMB-C-A-15-0059, OMB-C-A-15-0060, OMB-C-A-15-0061, OMB-C-A-15-0062, and OMB-C-A-15-0063. See id. at 53-58.

18 Docketed as OMB-C-C-15-0059, OMB-C-C-15-0060, OMB-C-C-15-0061, OMB-C-C-15-0062, OMB-C-C-15-0063, and OMB-C-C-15-0064. See id. at 66. See also *rollo,* Vol. II, p. 674.

19 As for Binay, Jr., only four (4) administrative cases and four (4) criminal cases were filed against him, particularly: (*a*) for administrative cases (1) *OMB-C-A-15-0058*, (2) *OMB-C-A-15-0061*, (3) *OMB-C-A-15-0062*, and (4) *OMB-C-A-15-0063*; and (*b*) for criminal cases (1) *OMB-C-C-15-0059*, for violation of Section 3 (e) of RA 3019 and Malversation of Public Funds involving the design, architectural, and engineering services of MANA Architecture & Interior Design Co. covering the Makati Parking Building project, (2) *OMB-C-C-15-0062*, for violation of Section 3 (e) of RA 3019 and two (2) counts of Falsification of Public Documents under Article 171 of the Revised Penal Code in connection with Phase III of the Makati Parking Building project involving Hilmarc's, (3) *OMB-C-C-15-0063*, for violation of Section 3 (e) of RA 3019 and two (2) counts of Falsification of Public Documents in connection with Phase IV of the Makati Parking Building project involving Hilmarc's, and (4) *OMB-C-C-15-0064*, for violation of Section 3 (e) of RA 3019 and two (2) counts of Falsification of Public Documents in connection with Phase V of the Makati Parking Building project involving Hilmarc's. (*Rollo*, Vol. I, p. 12; *rollo*, Vol. II, p. 647.)

20 Specific period covered by his first term is from Noon of June 30, 2010 to Noon of June 30, 2013.

21 *Rollo*, Vol. I, p. 247.

22 Id. at 248-250.

23 The original contract amount was □599,395,613.34. Due to a change order, this was later increased to □599,994,021.05. See Disbursement Voucher; id. at 284.

24 Id. at 86-87.

25 See Disbursement Voucher for 26% completion of Phase III; id. at 270.

□134,470,659.64 on **January 19, 2011**;[26] (3) □92,775,202.27 on **February 25, 2011**; [27] (4) □57,148,625.51 on **March 28, 2011**;[28] (5) □40,908,750.61 on **May 3, 2011**;[29] and (6) □106,672,761.90 on **July 7, 2011**;[30]

(*b*) On **August 11, 2011**, Binay, Jr. issued the Notice of Award[31] for **Phase IV** of the Makati Parking Building project to Hilmarc's, and consequently, executed the corresponding contract[32] on **August 18, 2011**,[33] without the required publication and the lack of architectural design,[34] and approved the release of funds therefor in the following amounts as follows: (1) □182,325,538.97 on **October 4, 2011**;[35] (2) □173,132,606.91 on **October 28, 2011**;[36] (3) □80,408,735.20 on **December 12, 2011**;[37] (4) □62,878,291.81 on **February 10, 2012**;[38] and (5) □59,639,167.90 on **October 1, 2012**;[39]

(*c*) On **September 6, 2012**, Binay, Jr. issued the Notice of Award[40] for **Phase V** of the Makati Parking Building project to Hilmarc's, and consequently, executed the corresponding contract[41] on **September 13, 2012**,[42] without the required publication and the lack of architectural design,[43] and approved the release of the funds therefor in the amounts of □32,398,220.05[44] and □30,582,629.30[45] on **December 20, 2012**; and

Binay, Jr.'s Second Term (2013 to 2016)[46]

(*d*) On **July 3, 2013** and **July 4, 2013**, Binay, Jr. approved the release of funds for the remaining balance of the September 13, 2012 contract with Hilmarc's for **Phase V** of the Makati

---

26 See Disbursement Voucher for 52.49% completion of Phase III; id. at 273.
27 See Disbursement Voucher for 69% completion of Phase III; id. at 276.
28 See Disbursement Voucher for 79.17% completion of Phase III; id. at 278.
29 See Disbursement Voucher for 86.45% completion of Phase III; id. at 281.
30 See Disbursement Voucher for 100% completion of Phase III; id. at 284.
31 Id. at 312.
32 Id. at 290-292.
33 The original contract amount was □649,275,681.73. This was later increased to □649,934,440.96. See Disbursement Voucher; id. at 320.
34 Id. at 88.
35 See Disbursement Voucher for 33.53% completion of Phase IV; id. at 315.
36 See Disbursement Voucher for 63.73% completion of Phase IV; id. at 316.
37 See Disbursement Voucher for 76.94% completion of Phase IV; id. at 317.
38 See Disbursement Voucher for 87.27% completion of Phase IV; id. at 318.
39 See Disbursement Voucher for 100% completion of Phase IV; id. at 320.
40 Id. at 334.
41 Id. at 323-325.
42 The original contract amount was □141,649,366.00. Due to a change order, this was later increased to □143,806,161.00. See Disbursement Voucher; id. at 349.
43 Id. at 91.
44 See Disbursement Voucher for 27.31% completion of Phase V; id. at 340. See also id. at 337-339.
45 See Disbursement Voucher for 52.76% completion of Phase V; id. at 344. See also id. at 341-343.
46 Specific period covered by his second term is from Noon of June 30, 2013 to Noon of June 30, 2016.

Parking Building project in the amount of ₱27,443,629.97;[47] and

(*e*) On **July 24, 2013**, Binay, Jr. approved the release of funds for the remaining balance of the contract[48] with MANA Architecture & Interior Design Co. (MANA) for the design and architectural services covering the Makati Parking Building project in the amount of ₱429,011.48.[49]

On March 6, 2015, the Ombudsman created another Special Panel of Investigators to conduct a preliminary investigation and administrative adjudication on the OMB Cases (2nd Special Panel).[50] Thereafter, on March 9, 2015, the 2nd Special Panel issued separate orders[51] for each of the OMB Cases, requiring Binay, Jr., *et al.* to file their respective counter-affidavits.[52]

Before Binay, Jr., *et al.*'s filing of their counter-affidavits, the Ombudsman, upon the recommendation of the 2nd Special Panel, issued on March 10, 2015, the subject preventive suspension order, placing Binay, Jr., *et al.* under preventive suspension for not more than six (6) months without pay, during the pendency of the OMB Cases.[53] The Ombudsman ruled that the requisites for the preventive suspension of a public officer are present,[54] finding that: (*a*) the evidence of Binay, Jr., *et al.*'s guilt was strong given that (1) the losing bidders and members of the Bids and Awards Committee of Makati City had attested to the irregularities attending the Makati Parking Building project; (2) the documents on record negated the publication of bids; and (3) the disbursement vouchers, checks, and official receipts showed the release of funds; and (*b*) (1) Binay, Jr., *et al.* were administratively charged with Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service; (2) said charges, if proven to be true, warrant removal from public service under the Revised Rules on Administrative Cases in the Civil Service (RRACCS), and (3) Binay, Jr., *et al.*'s respective positions give them access to public records and allow them to influence possible witnesses; hence, their continued stay in office may prejudice the investigation relative to the OMB Cases filed against them.[55] Consequently, the Ombudsman directed the Department of Interior and Local Government (DILG), through Secretary Manuel A. Roxas II (Secretary Roxas), to immediately implement the preventive suspension order against Binay, Jr., *et al.*, upon receipt of the same.[56]

---

47 See Disbursement Voucher for 100% completion of Phase V; *rollo*, p. 349. See also id. at 346-349.
48 For the contract amount of ₱11,974,900.00. Dated November 28, 2007. Id. at 108-113.
49 See Disbursement Voucher for 100% completion of the MANA contract; id. at 126.
50 Through Ombudsman Office Order No. 178, which was later on amended through Office Order No. 180 dated March 9, 2015. See *rollo*, Vol. II, pp. 647-648.
51 Not attached to the *rollos*.
52 *Rollo*, Vol. II, p. 648.
53 See *rollo,* Vol. I, pp. 62 and 480.
54 Id. at 61.
55 Id.
56 See id. at 63 and 480. See also Ombudsman's Indorsement letter dated March 11, 2015; id. at 351.

On March 11, 2015, a copy of the preventive suspension order was sent to the Office of the City Mayor, and received by Maricon Ausan, a member of Binay, Jr.'s staff.[57]

The Proceedings Before the CA

On even date,[58] Binay, Jr. filed a petition for *certiorari*[59] before the CA, docketed as **CA-G.R. SP No. 139453**, seeking the nullification of the preventive suspension order, and praying for the issuance of a TRO and/or WPI to enjoin its implementation.[60] **Primarily, Binay, Jr. argued that he could not be held administratively liable** for any anomalous activity attending any of the five (5) phases of the Makati Parking Building project since: (*a*) Phases I and II were undertaken before he was elected Mayor of Makati in 2010; and (*b*) Phases III to V transpired during his first term and that **his re-election as City Mayor of Makati for a second term effectively condoned his administrative liability therefor**, if any, thus rendering the administrative cases against him moot and academic.[61] **In any event, Binay, Jr. claimed that the Ombudsman's preventive suspension order failed to show that the evidence of guilt presented against him is strong**, maintaining that he did not participate in any of the purported irregularities.[62] In support of his prayer for injunctive relief, Binay, Jr. argued that he has a clear and unmistakable right to hold public office, having won by landslide vote in the 2010 and 2013 elections, and that, in view of the condonation doctrine, as well as the lack of evidence to sustain the charges against him, his suspension from office would undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office.[63]

On March 16, 2015, at around 8:24 a.m., Secretary Roxas caused the implementation of the preventive suspension order through the DILG National Capital Region - Regional Director, Renato L. Brion, CESO III (Director Brion), who posted a copy thereof on the wall of the Makati City Hall after failing to personally serve the same on Binay, Jr. as the points of entry to the Makati City Hall were closed. At around 9:47 a.m., Assistant City Prosecutor of Makati Billy C. Evangelista administered the oath of office on Makati City Vice Mayor Romulo V. Peña, Jr. (Peña, Jr.) who thereupon assumed office as Acting Mayor.[64]

---

57 See Personal Delivery Receipt; id. at 350. See also id. at 12.

58 See Binay, Jr.'s Comment/Opposition dated April 6, 2005; id. at 481. See also Binay, Jr.'s Memorandum dated May 21, 2015; *rollo*, Vol. II, p. 806. The Ombudsman, however, claims that the said petition was filed on March 12, 2015; see *rollo*, Vol. II, p. 648.

59 *Rollo*, Vol. I, pp. 403-427.

60 See id. at 425-426.

61 Id. at 404.

62 Id. at 404-405.

63 Id. at 424-425.

64 See id. at 12-13. See also Director Brion's Memorandum dated March 16, 2015; id. at 352-353.

At noon of the same day, the CA issued a **Resolution**[65] **(dated March 16, 2015)**, granting Binay, Jr.'s prayer for a TRO,[66] notwithstanding Peña, Jr.'s assumption of duties as Acting Mayor earlier that day.[67] Citing the case of *Governor Garcia, Jr. v. CA*,[68] the CA found that it was more prudent on its part to issue a TRO in view of the extreme urgency of the matter and seriousness of the issues raised, considering that if it were established that the acts subject of the administrative cases against Binay, Jr. were all committed during his prior term, then, applying the condonation doctrine, Binay, Jr.'s re-election meant that he can no longer be administratively charged.[69] The CA then directed the Ombudsman to comment on Binay, Jr.'s petition for *certiorari*.[70]

On March 17, 2015, the Ombudsman manifested[71] that the TRO did not state what act was being restrained and that since the preventive suspension order had already been served and implemented, there was no longer any act to restrain.[72]

On the same day, Binay, Jr. filed a petition for contempt,[73] docketed as **CA-G.R. SP No. 139504**, accusing Secretary Roxas, Director Brion, the officials of the Philippine National Police, and Peña, Jr. of deliberately refusing to obey the CA, thereby allegedly impeding, obstructing, or degrading the administration of justice.[74] The Ombudsman and Department of Justice Secretary Leila M. De Lima were subsequently impleaded as additional respondents upon Binay, Jr.'s filing of the amended and supplemental petition for contempt[75] (petition for contempt) on March 19, 2015.[76] Among others, Binay, Jr. accused the Ombudsman and other respondents therein for willfully and maliciously ignoring the TRO issued by the CA against the preventive suspension order.[77]

In a **Resolution**[78] **dated March 20, 2015**, the CA ordered the consolidation of CA-G.R. SP No. 139453 and CA-G.R. SP No. 139504, and, **without necessarily giving due course to Binay, Jr.'s petition for**

---

65 Id. at 43-47.
66 Id. at 47.
67 Id. at 13.
68 604 Phil. 677 (2009).
69 *Rollo*, Vol. I, p. 46.
70 Which directive the Ombudsman complied with on March 30, 2015 (*rollo*, Vol. II, p. 650). See also *rollo*, Vol. I, p. 47.
71 See Manifestation dated March 17, 2015; *rollo*, Vol. I, pp. 357-360.
72 Id. at 358.
73 Not attached to the *rollos*.
74 *Rollo*, Vol. I, p. 14; *rollo*, Vol. II, p. 649.
75 Dated March 18, 2015. *Rollo*, Vol. I, pp. 362-373.
76 Id.
77 See id. at 370.
78 Id. at 50-51.

contempt, directed the Ombudsman to file her comment thereto.[79] The cases were set for hearing of oral arguments on March 30 and 31, 2015.[80]

The Proceedings Before the Court

Prior to the hearing of the oral arguments before the CA, or on March 25, 2015, the Ombudsman filed the present petition before this Court, assailing the CA's March 16, 2015 Resolution, which granted Binay, Jr.'s prayer for TRO in CA-G.R. SP No. 139453, and the March 20, 2015 Resolution directing her to file a comment on Binay, Jr.'s petition for contempt in CA-G.R. SP No. 139504.[81] The Ombudsman claims that: (*a*) the CA had no jurisdiction to grant Binay, Jr.'s prayer for a TRO, citing Section 14 of RA 6770,[82] or "The Ombudsman Act of 1989," which states that no injunctive writ could be issued to delay the Ombudsman's investigation unless there is *prima facie* evidence that the subject matter thereof is outside the latter's jurisdiction;[83] and (*b*) the CA's directive for the Ombudsman to comment on Binay, Jr.'s petition for contempt is illegal and improper, considering that the Ombudsman is an impeachable officer, and therefore, cannot be subjected to contempt proceedings.[84]

In his comment[85] filed on April 6, 2015, Binay, Jr. argues that Section 1, Article VIII of the 1987 Constitution specifically grants the CA judicial power to review acts of any branch or instrumentality of government, including the Office of the Ombudsman, in case of grave abuse of discretion amounting to lack or excess of jurisdiction, which he asserts was committed in this case when said office issued the preventive suspension order against him.[86] Binay, Jr. posits that it was incumbent upon the Ombudsman to have been apprised of the condonation doctrine as this would have weighed heavily in determining whether there was strong evidence to warrant the issuance of the preventive suspension order.[87] In this relation, Binay, Jr. maintains that the CA correctly enjoined the implementation of the preventive suspension order given his clear and unmistakable right to public office, and that it is clear that he could not be held administratively liable for any of the charges against him since his subsequent re-election in 2013 operated as a condonation of any administrative offenses he may have committed during his previous term.[88] As regards the CA's order for the

---

79 Which the Ombudsman complied with on March 26, 2015 (*rollo*, Vol. II, p. 650). See also *rollo*, Vol. I, p. 50.

80 The CA heard oral arguments with respect to Binay, Jr.'s application for a WPI on March 30, 2015. On the other hand, the CA heard oral arguments with respect to Binay, Jr.'s petition for contempt on March 31, 2015 (see *rollo*, Vol. II, p. 650). See also *rollo*, Vol. I, p. 51.

81 *Rollo,* Vol. II, p. 650.

82 Entitled "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES," approved on November 17, 1989.

83 See *rollo*, Vol. I, pp. 17-21.

84 See id. at 21-24.

85 See Comment/Opposition dated April 6, 2015; id. at 477-522.

86 See id. at 478-479.

87 See id. at 492-493.

88 See id. at 497-505.

Ombudsman to comment on his petition for contempt, Binay, Jr. submits that while the Ombudsman is indeed an impeachable officer and, hence, cannot be removed from office except by way of impeachment, an action for contempt imposes the penalty of fine and imprisonment, without necessarily resulting in removal from office. Thus, the fact that the Ombudsman is an impeachable officer should not deprive the CA of its inherent power to punish contempt.[89]

Meanwhile, the CA issued a **Resolution**[90] **dated April 6, 2015**, after the oral arguments before it were held,[91] granting Binay, Jr.'s prayer for a WPI, which further enjoined the implementation of the preventive suspension order. In so ruling, the CA found that Binay, Jr. has an ostensible right to the final relief prayed for, namely, the nullification of the preventive suspension order, in view of the condonation doctrine, citing ***Aguinaldo v. Santos***.[92] Particularly, it found that the Ombudsman can hardly impose preventive suspension against Binay, Jr. given that his re-election in 2013 as City Mayor of Makati condoned any administrative liability arising from anomalous activities relative to the Makati Parking Building project from 2007 to 2013.[93] In this regard, the CA added that, although there were acts which were apparently committed by Binay, Jr. beyond his first term – namely, the alleged payments on July 3, July 4, and July 24, 2013,[94] corresponding to the services of Hillmarc's and MANA – still, Binay, Jr. cannot be held administratively liable therefor based on the cases of ***Salalima v. Guingona, Jr.***,[95] and ***Mayor Garcia v. Mojica***,[96] wherein the condonation doctrine was still applied by the Court although the payments were made after the official's re-election, reasoning that the payments were merely effected pursuant to contracts executed before said re-election.[97] To this, the CA added that there was no concrete evidence of Binay, Jr.'s participation for the alleged payments made on July 3, 4, and 24, 2013.[98]

In view of the CA's supervening issuance of a WPI pursuant to its April 6, 2015 Resolution, the Ombudsman filed a supplemental petition[99] before this Court, arguing that the condonation doctrine is irrelevant to the determination of whether the evidence of guilt is strong for purposes of issuing preventive suspension orders. The Ombudsman also maintained that a reliance on the condonation doctrine is a matter of defense, which should have been raised by Binay, Jr. before it during the administrative proceedings, and that, at any rate, there is no condonation because Binay, Jr.

---

89 Id. at 511.
90 Id. at 613-627.
91 Id. at 615.
92 G.R. No. 94115, August 21, 1992, 212 SCRA 768.
93 *Rollo*, Vol. I, p. 619.
94 All of which pertains to the payment of Phase V. See id. at 346-349. See also id. at 623.
95 326 Phil. 847 (1996).
96 372 Phil. 892 (1999).
97 See *rollo*, Vol. I, pp. 619-620.
98 See id. at 623.
99 Id. at 606-611.

committed acts subject of the OMB Complaint after his re-election in 2013.[100]

On April 14 and 21, 2015,[101] the Court conducted hearings for the oral arguments of the parties. Thereafter, they were required to file their respective memoranda.[102] In compliance thereto, the Ombudsman filed her Memorandum[103] on May 20, 2015, while Binay, Jr. submitted his Memorandum the following day.[104]

Pursuant to a Resolution[105] dated June 16, 2015, the Court directed the parties to comment on each other's memoranda, and the OSG to comment on the Ombudsman's Memorandum, all within ten (10) days from receipt of the notice.

On July 15, 2015, both parties filed their respective comments to each other's memoranda.[106] Meanwhile, on July 16, 2015, the OSG filed its Manifestation In Lieu of Comment,[107] simply stating that it was mutually agreed upon that the Office of the Ombudsman would file its Memorandum, consistent with its desire to state its "institutional position."[108] In her Memorandum and Comment to Binay, Jr.'s Memorandum, the Ombudsman pleaded, among others, that this Court abandon the condonation doctrine.[109] In view of the foregoing, the case was deemed submitted for resolution.

The Issues Before the Court

Based on the parties' respective pleadings, and as raised during the oral arguments conducted before this Court, the main issues to be resolved *in seriatim* are as follows:

I. Whether or not the present petition, and not motions for reconsideration of the assailed CA issuances in CA-G.R. SP No. 139453 and CA-G.R. SP No. 139504, is the Ombudsman's plain, speedy, and adequate remedy;

---

100 Id. at 609.
101 See Court Resolutions dated April 7, 2015 (id. at 524-525) and April 14, 2015 (id. at 634-638).
102 See Resolution dated April 21, 2015; id. at 639-640.
103 *Rollo*, Vol. II, pp. 646-745.
104 Dated May 21, 2015. Id. at 803-865.
105 Id. at 951-952.
106 See Ombudsman's Comment to Binay, Jr.'s Memorandum dated July 3, 2015; id. at 1109-1161. See also Binay, Jr.'s Comment (to Petitioners' Memorandum) dated July 3, 2015; id. at 2203-2240.
107 Id. at 959-960.
108 Id. at 959. See also Manifestation dated May 14, 2015; id. at 641.
109 See discussions on the condonation doctrine in the Ombudsman's Memorandum, *rollo*, Vol. II, pp. 708-733 and in the Ombudsman's Comment to Binay, Jr.'s Memorandum, *rollo*, Vol. II, pp. 1144-1149, 1153-1155, and 1158-1159.

II. Whether or not the CA has subject matter jurisdiction over the main petition for *certiorari* in CA-G.R. SP No. 139453;

III. Whether or not the CA has subject matter jurisdiction to issue a TRO and/or WPI enjoining the implementation of a preventive suspension order issued by the Ombudsman;

IV. Whether or not the CA gravely abused its discretion in issuing the TRO and eventually, the WPI in CA-G.R. SP No. 139453 enjoining the implementation of the preventive suspension order against Binay, Jr. based on the condonation doctrine; and

V. Whether or not the CA's directive for the Ombudsman to comment on Binay, Jr.'s petition for contempt in CA-G.R. SP No. 139504 is improper and illegal.

The Ruling of the Court

The petition is partly meritorious.

I.

A common requirement to both a petition for *certiorari* and a petition for prohibition taken under Rule 65 of the 1997 Rules of Civil Procedure is that the petitioner has no other plain, speedy, and adequate remedy in the ordinary course of law. Sections 1 and 2 thereof provide:

> Section 1. Petition for *certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, **nor any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> x x x x
>
> Section 2. Petition for prohibition. – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or **any other plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the

> respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.
>
> x x x x (Emphases supplied)

Hence, as a general rule, a motion for reconsideration must first be filed with the lower court prior to resorting to the extraordinary remedy of *certiorari* or prohibition since a motion for reconsideration may still be considered as a plain, speedy, and adequate remedy in the ordinary course of law. The rationale for the pre-requisite is to grant an opportunity for the lower court or agency to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.[110]

Jurisprudence states that "[i]t is [the] inadequacy, [and] not the mere absence of all other legal remedies and the danger of failure of justice without the writ, that must usually determine the propriety of *certiorari* [or prohibition]. A remedy is plain, speedy[,] and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment, order, or resolution of the lower court or agency. x x x."[111]

In this light, certain exceptions were crafted to the general rule requiring a prior motion for reconsideration before the filing of a petition for *certiorari*, which exceptions also apply to a petition for prohibition.[112] These are: (*a*) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (*b*) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (*c*) **where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government** or of the petitioner or the subject matter of the action is perishable; (*d*) where, under the circumstances, a motion for reconsideration would be useless; (*e*) where petitioner was deprived of due process and there is extreme urgency for relief; (*f*) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (*g*) where the proceedings in the lower court are a nullity for lack of due process; (*h*) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (*i*) **where the issue raised is one purely of law or where public interest is involved**.[113]

---

110 See *Republic v. Bayao*, G.R. No. 179492, June 5, 2013, 697 SCRA 313, 322-323.

111 See *Bordomeo v. CA*, G.R. No. 161596, February 20, 2013, 691 SCRA 269, 286, citing *Heirs of Spouses Reterta v. Spouses Mores*, 671 Phil. 346, 359 (2011).

112 See *AFP Mutual Benefit Association, Inc. v. Solid Homes, Inc.*, 658 Phil. 68, 19 (2011); citing *Diamond Builders Conglomeration v. Country Bankers Insurance Corporation*, 564 Phil. 756, 769-770 (2007).

113 *Republic v. Bayao*, supra note 110, at 323, citing *Siok Ping Tang v. Subic Bay Distribution, Inc.*, 653 Phil. 124, 136-137 (2010).

In this case, it is ineluctably clear that the above-highlighted exceptions attend since, for the first time, the question on the authority of the CA – and of this Court, for that matter – to enjoin the implementation of a preventive suspension order issued by the Office of the Ombudsman is put to the fore. This case tests the constitutional and statutory limits of the fundamental powers of key government institutions – namely, the Office of the Ombudsman, the Legislature, and the Judiciary – and hence, involves an issue of transcendental public importance that demands no less than a careful but expeditious resolution. Also raised is the equally important issue on the propriety of the continuous application of the condonation doctrine as invoked by a public officer who desires exculpation from administrative liability. As such, the Ombudsman's direct resort to *certiorari* and prohibition before this Court, notwithstanding her failure to move for the prior reconsideration of the assailed issuances in CA-G.R. SP No. 139453 and CA-G.R. SP No. 139504 before the CA, is justified.

II.

Albeit raised for the first time by the Ombudsman in her Memorandum,[114] it is nonetheless proper to resolve the issue on the CA's lack of subject matter jurisdiction over the main petition for *certiorari* in CA-G.R. SP No. 139453, in view of the well-established rule that a court's jurisdiction over the subject matter may be raised at any stage of the proceedings. The rationale is that subject matter jurisdiction is conferred by law, and the lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.[115] Hence, it should be preliminarily determined if the CA indeed had subject matter jurisdiction over the main CA-G.R. SP No. 139453 petition, as the same determines the validity of all subsequent proceedings relative thereto. It is noteworthy to point out that Binay, Jr. was given the opportunity by this Court to be heard on this issue,[116] as he, in fact, duly submitted his opposition through his comment to the Ombudsman's Memorandum.[117] That being said, the Court perceives no reasonable objection against ruling on this issue.

The Ombudsman's argument against the CA's lack of subject matter jurisdiction over the main petition, and her corollary prayer for its dismissal, is based on her interpretation of Section 14, RA 6770, or the Ombudsman Act,[118] which reads in full:

> Section 14. Restrictions. – No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a *prima facie* evidence that the subject

---

114 See Ombudsman's Memorandum dated May 14, 2015; *rollo*, Vol. II, pp. 661-669.
115 *Francel Realty Corporation v. Sycip*, 506 Phil. 407, 415 (2005).
116 See Court Resolution dated June 16, 2015; *rollo*, Vol. II, pp. 951-952.
117 Id. at 2203-2240.
118 See id. at 662-666 and 98.

> matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.
>
> No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

The subject provision may be dissected into two (2) parts.

The **first paragraph of Section 14, RA 6770** is a prohibition against any court (except the Supreme Court[119]) from issuing a writ of injunction to delay an investigation being conducted by the Office of the Ombudsman. Generally speaking, "[i]njunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action."[120] Considering the textual qualifier "to delay," which connotes a suspension of an action while the main case remains pending, the "writ of injunction" mentioned in this paragraph could only refer to injunctions of the provisional kind, consistent with the nature of a provisional injunctive relief.

The exception to the no injunction policy is when there is *prima facie* evidence that the subject matter of the investigation is outside the office's jurisdiction. The Office of the Ombudsman has disciplinary authority over all elective and appointive officials of the government and its subdivisions, instrumentalities, and agencies, with the exception only of impeachable officers, Members of Congress, and the Judiciary.[121] Nonetheless, the Ombudsman retains the power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted.[122] Note that the Ombudsman has concurrent jurisdiction over certain administrative cases which are within the jurisdiction of the regular courts or administrative

---

119 As the Ombudsman herself concedes; see Main Petition, *rollo*, Vol. I, pp. 17-18; See also Ombudsman's Memorandum, *rollo*, Vol. II, pp. 661-666.

120 *Bacolod City Water District v. Labayen*, 487 Phil. 335, 346 (2004).

121 Section 21, RA 6770 states:

> Section 21. Official Subject to Disciplinary Authority; Exceptions. — The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.

122 Section 22, RA 6770 states:

> Section 22. Investigatory Power. — The Office of the Ombudsman shall have the power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted.
>
> In all cases of conspiracy between an officer or employee of the government and a private person, the Ombudsman and his Deputies shall have jurisdiction to include such private person in the investigation and proceed against such private person as the evidence may warrant. The officer or employee and the private person shall be tried jointly and shall be subject to the same penalties and liabilities.

agencies, but has primary jurisdiction to investigate any act or omission of a public officer or employee who is under the jurisdiction of the Sandiganbayan.[123]

On the other hand, the **second paragraph of Section 14, RA 6770** provides that no appeal or application for remedy may be heard against the decision or findings of the Ombudsman, with the exception of the Supreme Court on pure questions of law. This paragraph, which the Ombudsman particularly relies on in arguing that the CA had no jurisdiction over the main CA-G.R. SP No. 139453 petition, as it is supposedly this Court which has the sole jurisdiction to conduct a judicial review of its decisions or findings, is vague for two (2) reasons: (**1**) it is unclear what the phrase "application for remedy" or the word "findings" refers to; and (**2**) it does not specify what procedural remedy is solely allowable to this Court, save that the same be taken only against a pure question of law. The task then, is to apply the relevant principles of statutory construction to resolve the ambiguity.

"The underlying principle of all construction is that the intent of the legislature should be sought in the words employed to express it, and that when found[,] it should be made to govern, x x x. If the words of the law seem to be of doubtful import, it may then perhaps become necessary to look beyond them in order to ascertain what was in the legislative mind at the time the law was enacted; what the circumstances were, under which the action was taken; what evil, if any, was meant to be redressed; x x x [a]nd where the law has contemporaneously been put into operation, and in doing so a construction has necessarily been put upon it, this construction, especially if followed for some considerable period, is entitled to great respect, as being very probably a true expression of the legislative purpose, and is not lightly to be overruled, although it is not conclusive."[124]

As an aid to construction, courts may avail themselves of the actual proceedings of the legislative body in interpreting a statute of doubtful meaning. In case of doubt as to what a provision of a statute means, the meaning put to the provision during the legislative deliberations may be adopted,[125] albeit not controlling in the interpretation of the law.[126]

---

123 See *Alejandro v. Office of the Ombudsman Fact-Finding and Intelligence Bureau*, G.R. No. 173121, April 3, 2013, 695 SCRA 35, 44-46.

124 *Molina v. Rafferty*, 38 Phil. 167, 169 (1918).

125 See *National Police Commission v. De Guzman, Jr.*, G.R. No. 106724, February 9, 1994, 229 SCRA, 801-807.

126 See *Espino v. Cleofe*, 152 Phil. 80, 87 (1973).

A. <u>The Senate deliberations cited by the Ombudsman do not pertain to the second paragraph of Section 14, RA 6770.</u>

The Ombudsman submits that the legislative intent behind Section 14, RA 6770, particularly on the matter of judicial review of her office's decisions or findings, is supposedly clear from the following Senate deliberations:[127]

> **Senator [Edgardo J.] Angara**. x x x. On page 15, Mr. President, line 14, after the phrase "petition for" delete the word "review" and in lieu thereof, insert the word *CERTIORARI*. So that, review or appeal from the decision of the Ombudsman would only be taken not on a petition for review, but on *certiorari*.
>
> **The President [Jovito R. Salonga].** ***What is the practical effect of that? Will it be more difficult to reverse the decision under review?***
>
> **Senator Angara.** It has two practical effect ways, Mr. President. ***First is that the findings of facts of the Ombudsman would be almost conclusive if supported by substantial evidence. Second, we would not unnecessarily clog the docket of the Supreme Court. So, it in effect will be a <u>very strict appeal procedure.</u>***
>
> x x x x
>
> **Senator [Teofisto T.] Guingona, [Jr.].** Does this mean that, for example, if there are exhaustive remedies available to a respondent, the respondent himself has the right to exhaust the administrative remedies available to him?
>
> **Senator Angara.** Yes, Mr. President, that is correct.
>
> **Senator Guingona.** And he himself may cut the proceeding short by ***<u>appealing to the Supreme Court only on certiorari?</u>***
>
> **Senator Angara.** ***<u>On question of law, yes.</u>***
>
> **Senator Guingona.** ***<u>And no other remedy is available to him</u>?***
>
> **Senator Angara.** ***<u>Going to the Supreme Court</u>, Mr. President?***
>
> **Senator Guingona.** Yes. What I mean to say is, at what stage, for example, if he is a presidential appointee who is the respondent, if there is no *certiorari* available, is the respondent given the right to exhaust his administrative remedies first before the Ombudsman can take the appropriate action?
>
> **Senator Angara.** Yes, Mr. President, because we do not intend to change the administrative law principle that before one can go to court, *he must exhaust all administrative remedies x x x available to him before he goes and seeks judicial review.*
>
> x x x x

---

[127] Records of the Senate, Vol. II, No. 6, August 2, 1998, pp. 174-187. As cited also in Ombudsman's Memorandum, *rollo*, Vol. II, p. 662.

Senator [Neptali A.] Gonzales. ***What is the purpose of the Committee in changing the method of appeal from one of a petition for review to a petition for certiorari?***

Senator Angara. ***To make it consistent, Mr. President, with the provision here in the bill to the effect that the finding of facts of the Ombudsman is conclusive if supported by substantial evidence.***

Senator Gonzales. A statement has been made by the Honorable Presiding Officer to which I concur, ***that in an appeal by certiorari, the appeal is more difficult. Because in certiorari it is a matter of discretion on the part of the court, whether to give due course to the petition or dismiss it outright.*** Is that not correct, Mr. President?

Senator Angara. ***That is absolutely correct, Mr. President.***

Senator Gonzales. ***And in a petition for certiorari, the issue is limited to whether or not the Ombudsman here has acted without jurisdiction and has committed a grave abuse of discretion amounting to lack of jurisdiction.*** *Is that not the consequence, Mr. President.*

Senator Angara. ***That is correct, Mr. President.***

Senator Gonzales. And it is, therefore, in this sense that **the intention of the Committee is to make it harder to have a judicial review,** but should be limited only to cases that I have enumerated.

Senator Angara. ***Yes, Mr. President.***

Senator Gonzales. I think, Mr. President, our Supreme Court has made a distinction between a petition for review and a petition for *certiorari*; because before, under the 1935 Constitution appeal from any order, ruling or decision of the COMELEC shall be by means of review. But under the Constitution it is now by *certiorari* and the Supreme Court said that by this change, the court exercising judicial review will not inquire into the facts, into the evidence, because we will not go deeply by way of review into the evidence on record but its authority will be limited to a determination of whether the administrative agency acted without, or in excess of, jurisdiction, or committed a grave abuse of discretion. So, I assume that that is the purpose of this amendment, Mr. President.

Senator Angara. The distinguished Gentleman has stated it so well.

Senator Gonzales. I just want to put that in the *Record.*

Senator Angara. It is very well stated, Mr. President.

x x x x

The President. ***It is evident that there must be some final authority to render decisions. Should it be the Ombudsman or should it be the Supreme Court?***

Senator Angara. As I understand it, under our scheme of government, Mr. President, **it is and has to be the Supreme Court to make the final determination.**

The President. ***Then if that is so, we have to modify Section 17.***

> **Senator Angara.** That is why, Mr. President, some of our Colleagues have made a reservation to introduce an appropriate change during the period of Individual Amendments.
>
> x x x x
>
> **The President.** All right. Is there any objection to the amendment inserting the word *CERTIORARI* instead of "review"? [*Silence*] Hearing none, the same is approved.[128]

Upon an assiduous scrutiny of these deliberations, the Court is, however, unconvinced that the provision debated on was Section 14, RA 6770, as the Ombudsman invokes. Note that the exchange begins with the suggestion of Senator Angara to delete the word "review" that comes after the phrase "petition for review" and, in its stead, insert the word "*certiorari*" so that the "review or appeal from the decision of the Ombudsman would not only be taken on a petition for review, but on *certiorari.*" The ensuing exchange between Senators Gonzales and Angara then dwells on the purpose of changing the method of review from one of a petition for review to a petition for *certiorari* – that is, to make "the appeal x x x more difficult." Ultimately, the amendment to the change in wording, from "petition for review" to "petition for *certiorari*" was approved.

Noticeably, these references to a "petition for review" and the proposed "petition for *certiorari*" are nowhere to be found in the text of Section 14, RA 6770. In fact, it was earlier mentioned that this provision, particularly its second paragraph, does not indicate what specific procedural remedy one should take in assailing a decision or finding of the Ombudsman; it only reveals that the remedy be taken to this Court based on pure questions of law. More so, it was even commented upon during the oral arguments of this case[129] that there was no debate or clarification made on the current formulation of the second paragraph of Section 14, RA 6770 per the available excerpts of the Senate deliberations. In any case, at least for the above-cited deliberations, the Court finds no adequate support to sustain the Ombudsman's entreaty that the CA had no subject matter jurisdiction over the main CA-G.R. SP No. 139453 petition.

On the contrary, it actually makes greater sense to posit that these deliberations refer to another Ombudsman Act provision, namely Section 27, RA 6770. This is because the latter textually reflects the approval of Senator Angara's suggested amendment, *i.e.*, that the Ombudsman's decision or finding may be assailed in a petition for *certiorari* to this Court (fourth paragraph), and further, his comment on the conclusive nature of the factual

---

[128] Records of the Senate, Vol. II, No. 10, August 9, 1988, pp. 282-286 (full names of the senators in brackets supplied). See also Ombudsman's Memorandum, *rollo*, Vol. II, pp. 662-665, emphases and underscoring in the original.

[129] See Associate Justice Francis H. Jardeleza's interpellation; TSN of the Oral Arguments, April 14, 2015, p. 7.

findings of the Ombudsman, if supported by substantial evidence (third paragraph):

> Section 27. *Effectivity and Finality of Decisions.* — (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory.
>
> A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:
>
> (1) New evidence has been discovered which materially affects the order, directive or decision;
>
> (2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: *Provided*, That only one motion for reconsideration shall be entertained.
>
> Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.
>
> **In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court**.
>
> The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require. (Emphasis and underscoring supplied)

At first blush, it appears that Section 27, RA 6770 is equally ambiguous in stating that a "petition for *certiorari*" should be taken in accordance with Rule 45 of the Rules of Court, as it is well-known that under the present 1997 Rules of Civil Procedure, petitions for *certiorari* are governed by Rule 65 of the said Rules. However, it should be discerned that the Ombudsman Act was passed way back in 1989[130] and, hence, before the advent of the 1997 Rules of Civil Procedure.[131] At that time, the governing **1964 Rules of Court**,[132] consistent with Section 27, RA 6770, referred to the appeal taken thereunder as a petition for *certiorari*, thus possibly explaining the remedy's textual denomination, at least in the provision's final approved version:

---

130 Approved on November 17, 1989.
131 Effective July 1, 1997.
132 Effective January 1, 1964.

RULE 45
Appeal from Court of Appeals to Supreme Court

> SECTION 1. *Filing of Petition with Supreme Court*. – A party may appeal by *certiorari*, from a judgment of the Court of Appeals, by filing with the Supreme Court a **petition for *certiorari***, within fifteen (15) days from notice of judgment or of the denial of his motion for reconsideration filed in due time, and paying at the same time, to the clerk of said court the corresponding docketing fee. The petition shall not be acted upon without proof of service of a copy thereof to the Court of Appeals. (Emphasis supplied)

B. Construing the second paragraph of Section 14, RA 6770.

The Senate deliberations' lack of discussion on the second paragraph of Section 14, RA 6770 notwithstanding, the other principles of statutory construction can apply to ascertain the meaning of the provision.

To recount, the second paragraph of Section 14, RA 6770 states that "**[n]o court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law**."

As a general rule, the second paragraph of Section 14, RA 6770 **bans the whole range of remedies against issuances of the Ombudsman**, by prohibiting: (***a***) an appeal against any decision or finding of the Ombudsman, **and** (***b***) "any application of remedy" (subject to the exception below) against the same. To clarify, the phrase "application for remedy," being a generally worded provision, and being separated from the term "appeal" by the disjunctive "or",[133] refers to any remedy (whether taken mainly or provisionally), except an appeal, following the maxim *generalia verba sunt generaliter intelligenda*: general words are to be understood in a general sense.[134] By the same principle, the word "findings," which is also separated from the word "decision" by the disjunctive "or", would therefore refer to any finding made by the Ombudsman (whether final or provisional), except a decision.

The subject provision, however, crafts an **exception** to the foregoing general rule. While the specific procedural vehicle is not explicit from its text, it is fairly deducible that the second paragraph of Section 14, RA 6770 excepts, as the only allowable remedy against "the decision or findings of

---

[133] "The word 'or' x x x is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word." (*Dayao v. Commission on Elections*, G.R. Nos. 193643 and 193704, January 29, 2013, 689 SCRA 412, 428-429.)

[134] Black's Law Dictionary, 8th Ed., p. 1720.

the Ombudsman," **a Rule 45 appeal, for the reason that it is the only remedy taken to the Supreme Court on "pure questions of law**," whether under the 1964 Rules of Court or the 1997 Rules of Civil Procedure:

Rule 45, 1964 Rules of Court

RULE 45
Appeal from Court of Appeals to Supreme Court

x x x x

Section 2. Contents of Petition. — The petition shall contain a concise statement of the matters involved, the assignment of errors made in the court below, and the reasons relied on for the allowance of the petition, and it should be accompanied with a true copy of the judgment sought to be reviewed, together with twelve (12) copies of the record on appeal, if any, and of the petitioner's brief as filed in the Court of Appeals. A verified statement of the date when notice of judgment and denial of the motion for reconsideration, if any, were received shall accompany the petition.

Only questions of law may be raised in the petition and must be distinctly set forth. If no record on appeal has been filed in the Court of Appeals, the clerk of the Supreme Court, upon admission of the petition, shall demand from the Court of Appeals the elevation of the whole record of the case. (Emphasis and underscoring supplied)

Rule 45, 1997 Rules of Civil Procedure

RULE 45
Appeal by *Certiorari* to the Supreme Court

Section 1. Filing of petition with Supreme Court. – A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth.** The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency. (Emphasis and underscoring supplied)

That the remedy excepted in the second paragraph of Section 14, RA 6770 could be a petition for *certiorari* under Rule 65 of the 1964 Rules of Court or the 1997 Rules of Procedure is a suggestion that defies traditional norms of procedure. It is basic procedural law that a Rule 65 petition is based on errors of jurisdiction, and not errors of judgment to which the classifications of (*a*) questions of fact, (*b*) questions of law, or (*c*) questions of mixed fact and law, relate to. In fact, there is no procedural rule, whether

in the old or new Rules, which grounds a Rule 65 petition on pure questions of law. Indeed, it is also a statutory construction principle that the lawmaking body cannot be said to have intended the establishment of conflicting and hostile systems on the same subject. Such a result would render legislation a useless and idle ceremony, and subject the laws to uncertainty and unintelligibility.[135] There should then be no confusion that the second paragraph of Section 14, RA 6770 refers to a Rule 45 appeal to this Court, and no other. In sum, the appropriate construction of this Ombudsman Act provision is that all remedies against issuances of the Office of the Ombudsman are prohibited, except the above-stated Rule 45 remedy to the Court on pure questions of law.

C. **Validity of the second paragraph of Section 14, RA 6770.**

Of course, the second paragraph of Section 14, RA 6770's extremely limited restriction on remedies is inappropriate since a Rule 45 appeal – which is within the sphere of the rules of procedure promulgated by this Court – can only be taken against final decisions or orders of lower courts,[136] and not against "findings" of quasi-judicial agencies. As will be later elaborated upon, Congress cannot interfere with matters of procedure; hence, it cannot alter the scope of a Rule 45 appeal so as to apply to interlocutory "findings" issued by the Ombudsman. More significantly, **by confining the remedy to a Rule 45 appeal**, the provision takes away the remedy of *certiorari*, grounded on errors of jurisdiction, in denigration of the judicial power constitutionally vested in courts. In this light, the second paragraph of Section 14, RA 6770 also increased this Court's appellate jurisdiction, without a showing, however, that it gave its consent to the same. The provision is, in fact, very similar to the fourth paragraph of Section 27, RA 6770 (as above-cited), which was invalidated in the case of *Fabian v. Desierto*[137] (*Fabian*).[138]

---

135 *Bagatsing v. Ramirez*, 165 Phil. 909, 914-915 (1976).

136 Section 1, Rule 45 of the 1997 Rules of Procedure states that a "party desiring to appeal by *certiorari* from a **judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts,** whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*." (Emphasis and underscoring supplied)

This is consistent with Item (e), Section 5 (2), Article VIII of the 1987 Constitution which reads:

> Section 5. The Supreme Court shall have the following powers:
>
> x x x x
>
> (2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (e) All cases in which only an error or question of law is involved.

137 356 Phil. 787 (1998).

138 Note that "[o]ur ruling in the case of *Fabian vs. Desierto* invalidated Section 27 of Republic Act No. 6770 and Section 7, Rule III of Administrative Order No. 07 and any other provision of law implementing the aforesaid Act only insofar as they provide for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court. The only provision affected by the *Fabian* ruling is the designation of the Court of Appeals as the proper forum and of Rule 43 of the

In *Fabian*, the Court struck down the fourth paragraph of Section 27, RA 6770 as unconstitutional since it had the effect of increasing the appellate jurisdiction of the Court without its advice and concurrence in violation of Section 30, Article VI of the 1987 Constitution.[139] Moreover, this provision was found to be inconsistent with Section 1, Rule 45 of the present 1997 Rules of Procedure which, as above-intimated, applies only to a review of "judgments or final orders of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court, or other courts authorized by law;" and not of quasi-judicial agencies, such as the Office of the Ombudsman, **the remedy now being a Rule 43 appeal to the Court of Appeals**. In *Ruivivar v. Office of the Ombudsman*,[140] the Court's ratiocinations and ruling in *Fabian* were recounted:

> The case of *Fabian v. Desierto* arose from the doubt created in the application of Section 27 of R.A. No. 6770 (The Ombudsman's Act) and Section 7, Rule III of A.O. No. 7 (Rules of Procedure of the Office of the Ombudsman) on the availability of appeal before the Supreme Court to assail a decision or order of the Ombudsman in administrative cases. **In *Fabian*, we invalidated Section 27 of R.A. No. 6770 (and Section 7, Rule III of A.O. No. 7 and the other rules implementing the Act) insofar as it provided for appeal by *certiorari* under Rule 45 from the decisions or orders of the Ombudsman in administrative cases. We held that Section 27 of R.A. No. 6770 had the effect, not only of increasing the appellate jurisdiction of this Court without its advice and concurrence in violation of Section 30, Article VI of the Constitution; it was also inconsistent with Section 1, Rule 45 of the Rules of Court which provides that a petition for review on *certiorari* shall apply only to a review of "judgments or final orders of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court, or other courts authorized by law."** We pointedly said:
>
> > As a consequence of our ratiocination that Section 27 of Republic Act No. 6770 should be struck down as unconstitutional, and in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the CA under the provisions of Rule 43.[141] (Emphasis supplied)

Since the second paragraph of Section 14, RA 6770 limits the remedy against "decision or findings" of the Ombudsman to a Rule 45 appeal and thus – similar to the fourth paragraph of Section 27, RA 6770[142] – attempts

---

Rules of Court as the proper mode of appeal. All other matters included in said section 27, including the finality or non-finality of decisions, are not affected and still stand." (*Lapid v. CA*, 390 Phil. 236, 248 [2000]).

139 Section 30. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

140 587 Phil. 100 (2008).

141 Id. at 111-112.

142 For ease of reference, the provision is re-stated:

to effectively increase the Supreme Court's appellate jurisdiction without its advice and concurrence,[143] it is therefore concluded that the former provision is also unconstitutional and perforce, invalid. Contrary to the Ombudsman's posturing,[144] *Fabian* should squarely apply since the above-stated Ombudsman Act provisions are *in pari materia* in that they "cover the same specific or particular subject matter,"[145] that is, the manner of judicial review over issuances of the Ombudsman.

Note that since the second paragraph of Section 14, RA 6770 is clearly determinative of the existence of the CA's subject matter jurisdiction over the main CA-G.R. SP No. 139453 petition, including all subsequent proceedings relative thereto, as the Ombudsman herself has developed, the Court deems it proper to resolve this issue *ex mero motu* (on its own motion[146]). This procedure, as was similarly adopted in *Fabian*, finds its bearings in settled case law:

> The conventional rule, however, is that a challenge on constitutional grounds must be raised by a party to the case, neither of whom did so in this case, but that is not an inflexible rule, as we shall explain.
>
> Since the constitution is intended for the observance of the judiciary and other departments of the government and the judges are sworn to support its provisions, the courts are not at liberty to overlook or disregard its commands or countenance evasions thereof. When it is clear that a statute transgresses the authority vested in a legislative body, it is the duty of the courts to declare that the constitution, and not the statute, governs in a case before them for judgment.
>
> Thus, while courts will not ordinarily pass upon constitutional questions which are not raised in the pleadings, the rule has been recognized to admit of certain exceptions. It does not preclude a court from inquiring into its own jurisdiction or compel it to enter a judgment that it lacks jurisdiction to enter. If a statute on which a court's jurisdiction in a proceeding depends is unconstitutional, the court has no jurisdiction in the proceeding, and since it may determine whether or not it has jurisdiction, it necessarily follows that it may inquire into the constitutionality of the statute.
>
> **Constitutional questions, not raised in the regular and orderly procedure in the trial are ordinarily rejected unless the jurisdiction of the court below or that of the appellate court is involved in which case it may be raised at any time or on the court's own motion**. The Court

---

"In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court."

143 There should be no statement on the Court's lack of advice and concurrence with respect to the second paragraph of Section 14, RA 6770 since the deliberations are, in fact, silent on the said provision.

144 See Ombudsman's Memorandum, *rollo*, Vol. II, pp. 666-667. Note that nowhere does the fourth paragraph of Section 27 delimit the phrase "orders, directives or decisions" to those rendered by the Ombudsman at the conclusion of the administrative proceedings, as the Ombudsman submits.

145 See *Philippine Economic Zone Authority v. Green Asia Construction and Development Corporation*, 675 Phil. 846, 857 (2011).

146 See Black's Law Dictionary, 8th Ed., p. 615.

> *ex mero motu* may take cognizance of lack of jurisdiction at any point in the case where that fact is developed. The court has a clearly recognized right to determine its own jurisdiction in any proceeding.[147] (Emphasis supplied)

D. Consequence of invalidity.

In this case, the Rule 65 petition for *certiorari* in CA-G.R. SP No. 139453 was filed by Binay, Jr. before the CA in order to nullify the preventive suspension order issued by the Ombudsman, an interlocutory order,[148] hence, unappealable.[149]

In several cases decided after *Fabian*, the Court has ruled that Rule 65 petitions for *certiorari* against unappelable issuances[150] of the Ombudsman should be filed before the CA, and not directly before this Court:

In *Office of the Ombudsman v. Capulong*[151] (March 12, 2014), wherein a preventive suspension order issued by the Office of the Ombudsman was – similar to this case – assailed through a Rule 65 petition for *certiorari* filed by the public officer before the CA, the Court held that "[t]here being a finding of grave abuse of discretion on the part of the Ombudsman, it was certainly imperative for the CA to grant incidental reliefs, as sanctioned by Section 1 of Rule 65."[152]

In *Dagan v. Office of the Ombudsman*[153] (November 19, 2013), involving a Rule 65 petition for *certiorari* assailing a final and unappealable order of the Office of the Ombudsman in an administrative case, the Court remarked that "petitioner employed the correct mode of review in this case, *i.e.*, a special civil action for *certiorari* before the Court of Appeals."[154] In this relation, it stated that while "a special civil action for *Certiorari* is within the concurrent original jurisdiction of the Supreme Court and the Court of Appeals, such petition should be initially filed with the Court of Appeals in observance of the doctrine of hierarchy of courts." Further, the Court upheld *Barata v. Abalos, Jr.*[155] (June 6, 2001), wherein it was ruled

---

147 *Fabian* supra note 137, at 800-801.

148 A preventive suspension is a mere preventive measure, and not a penalty (see *Quimbo v. Gervacio*, 503 Phil. 886, 891 [2005]); and hence, interlocutory in nature since it "does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by [the adjudicating body] before the case is finally decided on the merits." (*Metropolitan Bank & Trust Company v. CA*, 408 Phil. 686, 694 [2001]; see also *Bañares II v. Balising*, 384 Phil. 567, 577 [2000]).

149 *Gonzales v. CA*, 409 Phil. 684, 689 (2001).

150 Includes interlocutory orders, such as preventive suspension orders, as well as final and unappealable decisions or orders under Section 27, RA 6770 which states that "[a]ny order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable."

151 G.R. No. 201643, March 12, 2014, 719 SCRA 209.

152 Id. at 219.

153 G.R. No. 184083, November 19, 2013, 709 SCRA 681.

154 Id. at 693.

155 411 Phil. 204 (2001).

that the remedy against final and unappealable orders of the Office of the Ombudsman in an administrative case was a Rule 65 petition to the CA. The same verdict was reached in *Ruivivar*[156] (September 16, 2008).

Thus, with the unconstitutionality of the second paragraph of Section 14, RA 6770, the Court, consistent with existing jurisprudence, concludes that the CA has subject matter jurisdiction over the main CA-G.R. SP No. 139453 petition. That being said, the Court now examines the objections of the Ombudsman, this time against the CA's authority to issue the assailed TRO and WPI against the implementation of the preventive suspension order, incidental to that main case.

III.

From the inception of these proceedings, the Ombudsman has been adamant that the CA has no jurisdiction to issue any provisional injunctive writ against her office to enjoin its preventive suspension orders. As basis, she invokes **the first paragraph of Section 14, RA 6770** in conjunction with her office's independence under the 1987 Constitution. She advances the idea that "[i]n order to further ensure [her office's] independence, [RA 6770] likewise insulated it from judicial intervention,"[157] particularly, "from injunctive reliefs traditionally obtainable from the courts,"[158] claiming that said writs may work "just as effectively as direct harassment or political pressure would."[159]

A. The concept of Ombudsman independence.

Section 5, Article XI of the 1987 Constitution guarantees the independence of the Office of the Ombudsman:

> Section 5. There is hereby created the **independent Office of the Ombudsman**, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas[,] and Mindanao. A separate Deputy for the military establishment may likewise be appointed. (Emphasis supplied)

In *Gonzales III v. Office of the President*[160] (*Gonzales III*), the Court traced the historical underpinnings of the Office of the Ombudsman:

> Prior to the 1973 Constitution, past presidents established several Ombudsman-like agencies to serve as the people's medium for airing grievances and for direct redress against abuses and misconduct in the

---

156 Supra note 140.
157 *Rollo*, Vol. I, p. 18.
158 Id.
159 Id.
160 G.R. Nos. 196231 and 196232, January 28, 2014, 714 SCRA 611.

> government. Ultimately, however, these agencies failed to fully realize their objective for lack of the political independence necessary for the effective performance of their function as government critic.
>
> It was under the 1973 Constitution that the Office of the Ombudsman became a constitutionally-mandated office to give it political independence and adequate powers to enforce its mandate. Pursuant to the 1973 Constitution, President Ferdinand Marcos enacted Presidential Decree (PD) No. 1487, as amended by PD No. 1607 and PD No. 1630, creating the Office of the Ombudsman to be known as Tanodbayan. It was tasked principally to investigate, on complaint or *motu proprio,* any administrative act of any administrative agency, including any government-owned or controlled corporation. When the Office of the Tanodbayan was reorganized in 1979, the powers previously vested in the Special Prosecutor were transferred to the Tanodbayan himself. He was given the exclusive authority to conduct preliminary investigation of all cases cognizable by the Sandiganbayan, file the corresponding information, and control the prosecution of these cases.
>
> With the advent of the 1987 Constitution, a new Office of the Ombudsman was created by constitutional fiat. **Unlike in the 1973 Constitution, its independence was expressly and constitutionally guaranteed**. Its objectives are to enforce the state policy in Section 27, Article II and the standard of accountability in public service under Section 1, Article XI of the 1987 Constitution. These provisions read:
>
> > Section 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.
> >
> > Section 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.[161] (Emphasis supplied)

More significantly, *Gonzales III* explained the broad scope of the office's mandate, and in correlation, the impetus behind its independence:

> Under Section 12, Article XI of the 1987 Constitution, the Office of the Ombudsman is envisioned to be the "protector of the people" against the inept, abusive, and corrupt in the Government, to function essentially as a complaints and action bureau. This constitutional vision of a Philippine Ombudsman practically intends to make the Ombudsman an authority to directly check and guard against the ills, abuses and excesses of the bureaucracy. Pursuant to Section 13 (8), Article XI of the 1987 Constitution, Congress enacted RA No. 6770 to enable it to further realize the vision of the Constitution. Section 21 of RA No. 6770 provides:
>
> > Section 21. Official Subject to Disciplinary Authority; Exceptions. – The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities, and agencies, including Members of the

---

[161] Id. at 639-641.

> Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.
>
> As the Ombudsman is expected to be an "activist watchman," the Court has upheld its actions, although not squarely falling under the broad powers granted [to] it by the Constitution and by RA No. 6770, if these actions are reasonably in line with its official function and consistent with the law and the Constitution.
>
> The Ombudsman's broad investigative and disciplinary powers include all acts of malfeasance, misfeasance, and nonfeasance of all public officials, including Members of the Cabinet and key Executive officers, during their tenure. To support these broad powers, **the Constitution saw it fit to insulate the Office of the Ombudsman from the pressures and influence of officialdom and partisan politics and from fear of external reprisal by making it an "independent" office**. x x x.
>
> x x x x
>
> Given the scope of its disciplinary authority, the Office of the Ombudsman is a very powerful government constitutional agency that is considered "a notch above other grievance-handling investigative bodies." It has powers, both constitutional and statutory, that are commensurate with its daunting task of enforcing accountability of public officers.[162] (Emphasis and underscoring supplied)

Gonzales III is the first case which grappled with the meaning of the Ombudsman's independence vis-à-vis the independence of the other constitutional bodies. Pertinently, the Court observed:

(**1**) "[T]he independence enjoyed by the Office of the Ombudsman and by the Constitutional Commissions shares certain characteristics – **they do not owe their existence to any act of Congress, but are created by the Constitution itself**; additionally, they all **enjoy fiscal autonomy**. In general terms, **the framers of the Constitution intended that these 'independent' bodies be insulated from political pressure** to the extent that the absence of 'independence' would result in the **impairment of their core functions**"[163];

(2) "[T]he Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on **the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations** is anathema to **fiscal autonomy** and violative not only [of] the express mandate of the Constitution, but especially as regards the Supreme Court, of the

---

[162] Id. at 641-642.
[163] Id. at 643 (emphases supplied).

independence and separation of powers upon which the entire fabric of our constitutional system is based";[164] and

(3) "[T]he constitutional deliberations explain the Constitutional Commissions' need for independence. In the deliberations of the 1973 Constitution, the delegates amended the 1935 Constitution by providing for a constitutionally-created Civil Service Commission, instead of one created by law, **on the premise that the effectivity of this body is dependent on its freedom from the tentacles of politics**. In a similar manner, the deliberations of the 1987 Constitution on the Commission on Audit highlighted the developments in the past Constitutions **geared towards insulating** the Commission on Audit **from political pressure**."[165]

At bottom, the decisive ruling in *Gonzales III*, however, was that the independence of the Office of the Ombudsman, as well as that of the foregoing independent bodies, **meant freedom from control or supervision of the Executive Department**:

> [T]he independent constitutional commissions have been consistently intended by the framers to be **independent from executive control or supervision or any form of political influence**. At least insofar as these bodies are concerned, jurisprudence is not scarce on how the "independence" granted to these bodies **prevents presidential interference**.
>
> In *Brillantes, Jr. v. Yorac* (G.R. No. 93867, December 18, 1990, 192 SCRA 358), we emphasized that the Constitutional Commissions, which have been characterized under the Constitution as "independent," are **not under the control of the President**, even if they discharge functions that are executive in nature. The Court declared as unconstitutional the President's act of temporarily appointing the respondent in that case as Acting Chairman of the [Commission on Elections] "however well-meaning" it might have been.
>
> In *Bautista v. Senator Salonga* (254 Phil. 156, 179 [1989]), the Court categorically stated that the tenure of the commissioners of the independent Commission on Human Rights **could not be placed under the discretionary power of the President.**
>
> x x x x
>
> The kind of independence enjoyed by the Office of the Ombudsman certainly cannot be inferior – but is similar in degree and kind – to the independence similarly guaranteed by the Constitution to the Constitutional Commissions since all these offices fill the political interstices of a republican democracy that are crucial to its existence and proper functioning.[166] (Emphases and underscoring supplied)

---

[164] Id. at 644, citing *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133, 150 (emphasis supplied).

[165] Id. at 644-645 (emphases supplied).

[166] Id. at 646-648.

Thus, in *Gonzales III*, the Court declared Section 8 (2), RA 6770, which provides that "[a] Deputy or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process," partially unconstitutional insofar as it subjected the Deputy Ombudsman to the disciplinary authority of the President for violating the principle of independence. Meanwhile, the validity of Section 8 (2), RA 6770 was maintained insofar as the Office of the Special Prosecutor was concerned since said office was not considered to be constitutionally within the Office of the Ombudsman and is, hence, not entitled to the independence the latter enjoys under the Constitution.[167]

As may be deduced from the various discourses in *Gonzales III*, the concept of Ombudsman's independence covers three (3) things:

First: **creation by the Constitution**, which means that the office cannot be abolished, nor its constitutionally specified functions and privileges, be removed, altered, or modified by law, unless the Constitution itself allows, or an amendment thereto is made;

Second: **fiscal autonomy**, which means that the office "may not be obstructed from [its] freedom to use or dispose of [its] funds for purposes germane to [its] functions;[168] hence, its budget cannot be strategically decreased by officials of the political branches of government so as to impair said functions; and

Third: **insulation from executive supervision and control**, which means that those within the ranks of the office can only be disciplined by an internal authority.

Evidently, all three aspects of independence intend to protect the Office of the Ombudsman from **political harassment and pressure**, so as to free it from the "insidious tentacles of politics."[169]

That being the case, the concept of Ombudsman independence cannot be invoked as basis to insulate the Ombudsman from judicial power constitutionally vested unto the courts. Courts are apolitical bodies, which are ordained to act as impartial tribunals and apply even justice to all. Hence, the Ombudsman's notion that it can be exempt from an incident of judicial power – that is, a provisional writ of injunction against a preventive

---

167 See id. at 648-657.

168 See *Re: COA Opinion on the Computation of the Appraised Value of the Properties Purchased by the Retired Chief/Associate Justices of the Supreme Court*, A.M. No. 11-7-10-SC, July 31, 2012, 678 SCRA 1, 13.

169 See *Gonzales III*, supra note 160, at 650, citing the Record of the Constitutional Commission, Vol. 2, July 26, 1986, p. 294.

suspension order – clearly strays from the concept's rationale of insulating the office from political harassment or pressure.

B. The first paragraph of Section 14, RA 6770 in light of the powers of Congress and the Court under the 1987 Constitution.

The Ombudsman's erroneous abstraction of her office's independence notwithstanding, it remains that the first paragraph of Section 14, RA 6770 textually prohibits courts from extending provisional injunctive relief to delay any investigation conducted by her office. Despite the usage of the general phrase "[n]o writ of injunction shall be issued by any court," the Ombudsman herself concedes that the prohibition does not cover the Supreme Court.[170] As support, she cites the following Senate deliberations:

> **Senator [Ernesto M.] Maceda.** Mr. President, I do not know if an amendment is necessary. ***I would just like to inquire for the record whether below the Supreme Court, it is understood that there is no injunction policy against the Ombudsman by lower courts. Or, is it necessary to have a special paragraph for that?***
>
> **Senator Angara.** Well, there is no provision here, Mr. President, that will prevent an injunction against the Ombudsman being issued.
>
> **Senator Maceda.** ***In which case, I think that the intention, this being one of the highest constitutional bodies, is to subject this only to certiorari to the Supreme Court. I think an injunction from the Supreme Court is, of course, in order but no lower courts should be allowed to interfere****. We had a very bad experience with even, let us say, the Forestry Code where no injunction is supposed to be issued against the Department of Natural Resources.* ***Injunctions are issued right and left by RTC judges all over the country****.*
>
> **The President.** ***Why do we not make an express provision to that effect?***
>
> **Senator Angara.** ***We would welcome that, Mr. President.***
>
> **The President.** ***No [writs of injunction] from the trial courts other than the Supreme Court****.*
>
> **Senator Maceda.** I so move, Mr. President, for that amendment.
>
> **The President**. Is there any objection? [*Silence*] Hearing none, **the same is approved**.[171]

---

[170] See *rollo*, Vol. I, pp. 670-671.

[171] Records of the Senate, August 24, 1988, p. 619. See also *rollo*, Vol. II, pp. 670-671 (emphases and underscoring in the original).

Further, she acknowledges that by virtue of Sections 1 and 5 (1), Article VIII of the 1987 Constitution, acts of the Ombudsman, including interlocutory orders, are subject to the Supreme Court's power of judicial review. As a corollary, the Supreme Court may issue ancillary injunctive writs or provisional remedies in the exercise of its power of judicial review over matters pertaining to ongoing investigations by the Office of the Ombudsman. Respecting the CA, however, the Ombudsman begs to differ.[172]

With these submissions, it is therefore apt to examine the validity of the first paragraph of Section 14, RA 6770 insofar as it prohibits all courts, except this Court, from issuing provisional writs of injunction to enjoin an Ombudsman investigation. That the constitutionality of this provision is the *lis mota* of this case has not been seriously disputed. In fact, the issue anent its constitutionality was properly raised and presented during the course of these proceedings.[173] More importantly, its resolution is clearly necessary to the complete disposition of this case.[174]

In the enduring words of Justice Laurel in *Angara v. The Electoral Commission (Angara)*,[175] the "Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative[,] and the judicial departments of the government."[176] The constitutional demarcation of the three fundamental powers of government is more commonly known as the principle of separation of powers. In the landmark case of *Belgica v. Ochoa¸ Jr.* (*Belgica*),[177] the Court held that "there is a violation of the separation of powers principle when one branch of government unduly encroaches on the domain of another."[178] In particular, "there is a violation of the principle when there is impermissible (*a*) interference with and/or (*b*) assumption of another department's functions."[179]

Under Section 1, Article VIII of the 1987 Constitution, **judicial power is allocated to the Supreme Court and all such lower courts**:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

---

172 *Rollo*, Vol. II, p. 672.

173 See discussions in Ombudsman's Memorandum, *rollo*, Vol. II, pp. 670-678 and Binay, Jr.'s Memorandum, *rollo*, Vol. II, pp. 825-833. See also TSN of the Oral Arguments, April 14, 2015, pp. 5-9.

174 See *People v. Vera*, 65 Phil. 56, 82 (1937), citing *McGirr v. Hamilton and Abreu*, 30 Phil., 563, 568 (1915); 6 R. C. L., pp. 76, 77; 12 C. J., pp. 780-782, 783.

175 63 Phil. 139 (1936).

176 Id. at 157.

177 G.R. Nos. 208566, 208493, and 209251, November 19, 2013, 710 SCRA 1.

178 Id. at 108.

179 Id.

> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

This Court is the only court established by the Constitution, **while all other lower courts may be established by laws passed by Congress**. Thus, through the passage of Batas Pambansa Bilang (BP) 129,[180] known as "The Judiciary Reorganization Act of 1980," the Court of Appeals,[181] the Regional Trial Courts,[182] and the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts[183] were established. Later, through the passage of RA 1125,[184] and Presidential Decree No. (PD) 1486,[185] the Court of Tax Appeals, and the Sandiganbayan were respectively established.

In addition to **the authority to establish lower courts**, Section 2, Article VIII of the 1987 Constitution **empowers Congress to define, prescribe, and apportion the jurisdiction** of **all courts**, **except that it may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5**[186] of the same Article:

---

180 Entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (approved on August 14, 1981).

181 See Section 3, Chapter I, BP 129.

182 See Section 13, Chapter II, BP 129.

183 See Section 25, Chapter III, BP 129.

184 Entitled "AN ACT CREATING THE COURT OF TAX APPEALS" (approved on June 16, 1954), which was later amended by RA 9282 (approved on March 30, 2004) and RA 9503 (approved on June 12, 2008).

185 Entitled "CREATING A SPECIAL COURT TO BE KNOWN AS 'SANDIGANBAYAN' AND FOR OTHER PURPOSES" (approved on June 11, 1978), which was later amended by PD 1606 (approved on December 10, 1978), RA 7975 (approved on March 30, 1995), and RA 8249 (approved on February 5, 1997).

186 Section 5, Article VIII of the 1987 Constitution provides:

> Section 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.
>
> (2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
>
> (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
>
> (c) All cases in which the jurisdiction of any lower court is in issue.
>
> (d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.
>
> (e) All cases in which only an error or question of law is involved.
>
> x x x x

> Section 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.
>
> x x x x

Jurisdiction, as hereinabove used, more accurately pertains to jurisdiction over the subject matter of an action. In *The Diocese of Bacolod v. Commission on Elections*,[187] subject matter jurisdiction was defined as "**the authority** '**to hear and determine cases of the general class to which the proceedings in question belong and is conferred by the sovereign authority which organizes the court and defines its powers**.'"

Among others, Congress defined, prescribed, and apportioned the subject matter jurisdiction of this Court (subject to the aforementioned constitutional limitations), the Court of Appeals, and the trial courts, through the passage of BP 129, as amended.

In this case, the basis for the **CA's subject matter jurisdiction** over Binay, Jr.'s main petition for ***certiorari*** in CA-G.R. SP No. 139453 is Section 9 (1), Chapter I of BP 129, as amended:

> Section 9. Jurisdiction. – The Court of Appeals shall exercise:
>
> 1. Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction[.]

Note that the CA's *certiorari* jurisdiction, as above-stated, is not only **original** but also **concurrent** with the Regional Trial Courts (under Section 21 (1), Chapter II of BP 129), and the Supreme Court (under Section 5, Article VIII of the 1987 Philippine Constitution). In view of the concurrence of these courts' jurisdiction over petitions for *certiorari*, the **doctrine of hierarchy of courts** should be followed. In *People v. Cuaresma*,[188] the doctrine was explained as follows:

> [T]his **concurrence of jurisdiction** is not x x x to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a **hierarchy of courts**. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts

---

187 See G.R. No. 205728, January 21, 2015, citing *Reyes v. Diaz*, 73 Phil. 484, 486 (1941).
188 254 Phil. 418 (1989).

> should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals.[189]

When a court has **subject matter jurisdiction** over a particular case, as conferred unto it by law, said court may then **exercise its jurisdiction** acquired over that case, which is called **judicial power**.

Judicial power, as vested in the Supreme Court and all other courts established by law, has been defined as the "**totality of powers a court exercises when it assumes jurisdiction and hears and decides a case**."[190] Under Section 1, Article VIII of the 1987 Constitution, it includes "the duty of the courts of justice **to settle actual controversies involving rights which are legally demandable and enforceable**, **and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**."

In *Oposa v. Factoran, Jr.*[191] the Court explained the expanded scope of judicial power under the 1987 Constitution:

> The first part of the authority represents the traditional concept of judicial power, involving the settlement of conflicting rights as conferred by law. The second part of the authority represents a broadening of judicial power to enable the courts of justice to review what was before forbidden territory, to wit, the discretion of the political departments of the government.
>
> As worded, the new provision vests in the judiciary, and particularly the Supreme Court, the power to rule upon even the wisdom of the decisions of the executive and the legislature and to declare their acts invalid for lack or excess of jurisdiction because they are tainted with grave abuse of discretion. The catch, of course, is the meaning of "grave abuse of discretion," which is a very elastic phrase that can expand or contract according to the disposition of the judiciary.[192]

Judicial power is never exercised in a vacuum. **A court's exercise of the jurisdiction it has acquired over a particular case conforms to the limits and parameters of the rules of procedure duly promulgated by this Court**. In other words, procedure is the framework within which judicial power is exercised. In *Manila Railroad Co. v. Attorney-General*,[193] the Court elucidated that "[t]he power or authority of the court over the subject matter existed and was fixed before procedure in a given cause began. **Procedure does not alter or change that power or authority; it**

---

189 Id. at 427.
190 Bernas, Joaquin G., S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Ed., p. 959, as cited also in the Ombudsman's Memorandum, *rollo*, Vol. II, p. 661.
191 G.R. No. 101083, July 30, 1993, 224 SCRA 792.
192 Id. at 810, citing Cruz, Isagani A., *Philippine Political Law*, 1991 Ed., pp. 226-227.
193 20 Phil. 523 (1911).

simply directs the manner in which it shall be fully and justly exercised. To be sure, in certain cases, if that power is not exercised in conformity with the provisions of the procedural law, purely, the court attempting to exercise it loses the power to exercise it legally. This does not mean that it loses jurisdiction of the subject matter."[194]

While the power to define, prescribe, and apportion the jurisdiction of the various courts is, by constitutional design, vested unto Congress, **the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts belongs exclusively to this Court**. Section 5 (5), Article VIII of the 1987 Constitution reads:

> Section 5. **The Supreme Court shall have the following powers**:
>
> x x x x
>
> (5) **Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts**, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. (Emphases and underscoring supplied)

In *Echegaray v. Secretary of Justice*[195] (*Echegaray*), the Court traced the evolution of its rule-making authority, which, under the 1935[196] and 1973 Constitutions,[197] had been priorly subjected to a power-sharing scheme

---

194 Id. at 530-531.

195 See 361 Phil. 73, 86-91 (1999).

196 Article VIII, Section 13 of the 1935 Constitution provides:

> Section 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. **The National Assembly shall have the power to repeal, alter or supplement the rules concerning pleading, practice and procedure, and the admission to the practice of law in the Philippines.** (Emphasis supplied)

197 Article X, Section 5 (5) of the 1973 Constitution provides:

> Section 5. The Supreme Court shall have the following powers.
>
> x x x x
>
> (5) **Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered, or supplemented by the Batasang Pambansa**. Such rules shall provide a simplified and inexpensive procedure for

with Congress.[198] As it now stands, the 1987 Constitution **textually altered the old provisions by deleting the concurrent power of Congress to amend the rules, thus solidifying in one body the Court's rule-making powers**, in line with the Framers' vision of institutionalizing a "**[s]tronger and more independent judiciary**."[199]

The records of the deliberations of the Constitutional Commission would show[200] that the Framers debated on whether or not the Court's rule-making powers should be shared with Congress. There was an initial suggestion to insert the sentence "The National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court", right after the phrase "Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged[,]" in the enumeration of powers of the Supreme Court. Later, Commissioner Felicitas S. Aquino proposed to delete the former sentence and, instead, after the word "[under]privileged," place a comma (,) to be followed by "the phrase with the concurrence of the National Assembly." Eventually, a compromise formulation was reached wherein (***a***) the Committee members agreed to Commissioner Aquino's proposal **to delete** the phrase "the National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court" and **(*b*)** in turn, Commissioner Aquino agreed **to withdraw** his proposal to add "the phrase with the concurrence of the National Assembly." **The changes were approved, thereby leading to the present lack of textual reference to any form of Congressional participation in Section 5 (5), Article VIII, *supra*. The prevailing consideration was that "both bodies, the Supreme Court and the Legislature, have their inherent powers.**"[201]

Thus, as it now stands, Congress has no authority to repeal, alter, or supplement rules concerning pleading, practice, and procedure. As pronounced in *Echegaray*:

> The rule making power of this Court was expanded. This Court for the first time was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the first time the power to disapprove rules of procedure of special courts and quasi-judicial bodies. **But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure. In**

> the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. (Emphasis supplied)

198 See *Re: Petition for Recognition of the Exemption of the Government Service Insurance System (GSIS) from Payment of Legal Fees*, 626 Phil. 93, 106-109 (2010).

199 *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Cabato-Cortes*, 627 Phil. 543, 549 (2010).

200 See discussions as in the Records of the Constitutional Commission, July 14, 1986, pp. 491-492.

201 Id. at 492.

> **fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive**.[202] (Emphasis and underscoring supplied)

Under its rule-making authority, the Court has periodically passed various rules of procedure, among others, the current 1997 Rules of Civil Procedure. **Identifying the appropriate procedural remedies needed for the reasonable exercise of every court's judicial power, the provisional remedies of temporary restraining orders and writs of preliminary injunction were thus provided**.

A temporary restraining order and a writ of preliminary injunction both constitute temporary measures availed of during the pendency of the action. They are, by nature, ancillary because they are mere incidents in and are dependent upon the result of the main action. It is well-settled that the **sole object of a temporary restraining order or a writ of preliminary injunction, whether prohibitory or mandatory, is to preserve the *status quo*[203] until the merits of the case can be heard**. They are usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the *status quo* of the controversy before a full hearing can be had on the merits of the case. In other words, they are preservative remedies for the protection of substantive rights or interests, and, hence, not a cause of action in itself, but merely adjunct to a main suit.[204] In a sense, they are regulatory processes meant to prevent a case from being mooted by the interim acts of the parties.

Rule 58 of the 1997 Rules of Civil Procedure generally governs the provisional remedies of a TRO and a WPI. A preliminary injunction is defined under Section 1,[205] Rule 58, while Section 3[206] of the same Rule

---

202 Supra note 195, at 88.

203 "*Status quo* is the last actual, peaceable and uncontested situation which precedes a controversy." (See *Dolmar Real Estate Dev't. Corp. v. CA,* 570 Phil. 434, 439 [2008] and *Preysler, Jr. v. CA,* 527 Phil. 129, 136 [2006].)

204 See *The Incorporators of Mindanao Institute, Inc. v. The United Church of Christ in the Philippines*, G.R. No. 171765, March 21, 2012, 668 SCRA 637, 647.

205 Section 1, Rule 58 of the 1997 Rules of Civil Procedure provides:

> Section 1. Preliminary injunction defined; classes. – A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

206 Section 3, Rule 58 of the 1997 Rules of Civil Procedure provides:

> Section. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:
>
> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

enumerates the grounds for its issuance. Meanwhile, under Section 5[207] thereof, a TRO may be issued as a precursor to the issuance of a writ of preliminary injunction under certain procedural parameters.

The power of a court to issue these provisional injunctive reliefs coincides with its **inherent power to issue all auxiliary writs, processes, and other means necessary to carry its acquired jurisdiction into effect under Section 6, Rule 135 of the Rules of Court** which reads:

> Section 6. Means to carry jurisdiction into effect. – When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law[208] or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules.

In *City of Manila v. Grecia-Cuerdo*,[209] which is a case involving "[t]he supervisory power or jurisdiction of the [Court of Tax Appeals] **to issue a writ of *certiorari*** in aid of its appellate jurisdiction"[210] over "decisions, orders or resolutions of the RTCs in local tax cases originally decided or resolved by them in the exercise of their original or appellate

---

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

[207] Section 5, Rule 58 of the 1997 Rules of Civil Procedure provides:

> Section 5. Preliminary injunction not granted without notice; exception. — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. x x x.
>
> However, subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-*sala* court or the presiding judge of a single-*sala* court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. x x x.
>
> x x x x (Emphases supplied)

[208] Rules of procedure of special courts and quasi-judicial bodies may be specifically pointed out by law and thus, remain effective unless the Supreme Court disapproves the same pursuant to Section 5 (5), Article VIII of the 1987 Constitution:

> Section 5. The Supreme Court shall have the following powers:
>
> (5) x x x. **Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court**. (Emphasis and underscoring supplied)

[209] G.R. No. 175723, February 4, 2014, 715 SCRA 182.

[210] Id. at 204.

jurisdiction,"[211] the Court ruled that said power "should coexist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC, in order to have complete supervision over the acts of the latter:"[212]

> A grant of appellate jurisdiction implies that there is included in it the **power necessary to exercise it effectively**, **to make all orders that will preserve the subject of the action, and to give effect to the final determination** of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.[213] (Emphasis supplied)

In this light, the Court expounded on the inherent powers of a court endowed with subject matter jurisdiction:

> [A] court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. **These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.**
>
> x x x x
>
> Indeed, courts possess certain **inherent powers** which may be said to be **implied from a general grant of jurisdiction**, in addition to those expressly conferred on them. **These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants**.[214] (Emphases and underscoring supplied)

Broadly speaking, the inherent powers of the courts resonates the long-entrenched constitutional principle, articulated way back in the 1936 case of *Angara*, that "where a general power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred."[215]

---

211 Id. at 197.
212 Id. at 204.
213 Id. at 204-205.
214 Id. at 205.
215 Supra note 175, at 177, citing Cooley, Constitutional Limitations, 8th Ed., Vol. I, pp. 138-139.

In the United States, the "**inherent powers doctrine** refers to the principle by which the courts deal with diverse matters over which they are thought to have intrinsic authority like procedural [rule-making] and general judicial housekeeping. To justify the invocation or exercise of inherent powers, a court must show that **the powers are reasonably necessary to achieve the specific purpose for which the exercise is sought. Inherent powers enable the judiciary to accomplish its constitutionally mandated functions**."[216]

In *Smothers v. Lewis*[217] (*Smothers*), a case involving the constitutionality of a statute which prohibited courts from enjoining the enforcement of a revocation order of an alcohol beverage license pending appeal, [218] the Supreme Court of Kentucky held:

> [T]he Court is x x x vested **with certain "inherent" powers to do that which is reasonably necessary for the administration of justice within the scope of their jurisdiction**. x x x [W]e said while considering the rule making power and the judicial power to be one and the same that ". . . **the grant of judicial power [rule making power] to the courts by the constitution carries with it, as a necessary incident, the right to make that power effective in the administration of justice.**" (Emphases supplied)

Significantly, *Smothers* characterized a court's issuance of provisional injunctive relief as an exercise of the court's inherent power, and to this end, stated that any attempt on the part of Congress to interfere with the same was constitutionally impermissible:

> It is a result of this foregoing line of thinking that we now adopt the language framework of 28 Am.Jur.2d, Injunctions, Section 15, and once and for all make clear that a court, once having obtained jurisdiction of a cause of action, has, as an incidental to its constitutional grant of power, inherent power to do all things reasonably necessary to the administration of justice in the case before it. **In the exercise of this power, a court, when necessary in order to protect or preserve the subject matter of the litigation, to protect its jurisdiction and to make its judgment effective, may grant or issue a temporary injunction in aid of or ancillary to the principal action**.

---

216 <http://definitions.uslegal.com/i/inherent-powers-doctrine/> (last visited July 27, 2015). See also Black's Law Dictionary, 8th Ed., p. 798.

217 672 S.W.2d 62 (1984).

218 The particular statute [KRS 243.580(2) and (3)] reads:

> (2) If a license is revoked or suspended by an order of the board, the licensee shall at once suspend all operations authorized under his license, except as provided by KRS 243.540, though he files an appeal in the Franklin Circuit Court from the order of revocation of suspension.
>
> (3) **No court may enjoin the operation of an order of revocation or suspension pending an appeal.** If upon appeal to the Franklin Circuit Court an order of suspension or revocation is upheld, or if an order refusing to suspend or revoke a license is reversed, and an appeal is taken to the Court of Appeals, no court may enjoin the operation of the judgment of the Franklin Circuit Court pending the appeal. (See *Smothers*, id.; emphasis supplied.)

> **The control over this inherent judicial power, in this particular instance the injunction, is exclusively within the constitutional realm of the courts. As such, it is not within the purview of the legislature to grant or deny the power nor is it within the purview of the legislature to shape or fashion circumstances under which this inherently judicial power may be or may not be granted or denied.**
>
> This Court has historically recognized constitutional limitations upon the power of the legislature to interfere with or to inhibit the performance of constitutionally granted and inherently provided judicial functions. x x x
>
> x x x x
>
> We reiterate our previously adopted language, ". . . a court, once having obtained jurisdiction of a cause of action, has, as incidental to its general jurisdiction, inherent power to do all things reasonably necessary to the administration of justice in the case before it. . ." **This includes the inherent power to issue injunctions.** (Emphases supplied)

Smothers also pointed out that the legislature's authority to provide a right to appeal in the statute does not necessarily mean that it could control the appellate judicial proceeding:

> However, the fact that the legislature statutorily provided for this appeal does not give it the right to encroach upon the constitutionally granted powers of the judiciary. **Once the administrative action has ended and the right to appeal arises the legislature is void of any right to control a subsequent appellate judicial proceeding. The judicial rules have come into play and have preempted the field.**[219] (Emphasis supplied)

With these considerations in mind, the Court rules that when Congress passed the first paragraph of Section 14, RA 6770 and, in so doing, took away from the courts their power to issue a TRO and/or WPI to enjoin an investigation conducted by the Ombudsman, it encroached upon this Court's constitutional rule-making authority. Clearly, these issuances, which are, by nature, provisional reliefs and auxiliary writs created under the provisions of the Rules of Court, are **matters of procedure** which belong exclusively within the province of this Court. Rule 58 of the Rules of Court did not create, define, and regulate a right but merely prescribed the means of implementing an existing right[220] since it only provided for temporary reliefs to preserve the applicant's right in *esse* which is threatened to be violated during the course of a pending litigation. In the case of *Fabian*,[221] it was stated that:

---

219 See id.

220 "Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasions." (*Primicias v. Ocampo*, 93 Phil. 446, 452 [1953], citing *Bustos v. Lucero*, [46 Off. Gaz., January Supp., pp. 445, 448], further citing 36 C. J. 27; 52 C. J. S. 1026); See also *Fabian*, supra note 137.

221 *Fabian*, id. at 809.

> If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but if it operates as a means of implementing an existing right then the rule deals merely with procedure.

Notably, there have been similar attempts on the part of Congress, in the exercise of its legislative power, to amend the Rules of Court, as in the cases of: (*a*) *In Re: Exemption of The National Power Corporation from Payment of Filing/ Docket Fees*;[222] (*b*) *Re: Petition for Recognition of the Exemption of the Government Service Insurance System (GSIS) from Payment of Legal Fees*;[223] and (*c*) *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Cabato-Cortes.*[224] While these cases involved legislative enactments exempting government owned and controlled corporations and cooperatives from paying filing fees, thus, effectively modifying Rule 141 of the Rules of Court (Rule on Legal Fees), it was, nonetheless, ruled that **the prerogative to amend, repeal or even establish new rules of procedure**[225] **solely belongs to the Court, to the exclusion of the legislative and executive branches of government**. On this score, the Court described its authority to promulgate rules on pleading, practice, and procedure as exclusive and "**[o]ne of the safeguards of [its] institutional independence**."[226]

That Congress has been vested with the authority to define, prescribe, and apportion the jurisdiction of the various courts under Section 2, Article VIII *supra*, as well as to create statutory courts under Section 1, Article VIII *supra*, does not result in an abnegation of the Court's own power to promulgate rules of pleading, practice, and procedure under Section 5 (5), Article VIII *supra*. Albeit operatively interrelated, these powers are nonetheless institutionally separate and distinct, each to be preserved under its own sphere of authority. **When Congress creates a court and delimits its jurisdiction, the procedure for which its jurisdiction is exercised is fixed by the Court through the rules it promulgates**. The first paragraph of Section 14, RA 6770 is **not** a jurisdiction-vesting provision, as the Ombudsman misconceives,[227] because it does not define, prescribe, and apportion the subject matter jurisdiction of courts to act on *certiorari* cases; the *certiorari* jurisdiction of courts, particularly the CA, stands under the relevant sections of BP 129 which were not shown to have been repealed. Instead, through this provision, **Congress interfered with a provisional remedy that was created by this Court under its duly promulgated rules of procedure, which utility is both integral and inherent to every court's exercise of judicial power**. **Without the Court's consent to the proscription, as may be manifested by an adoption of the same as part of the rules of procedure through an administrative circular issued**

---

222 629 Phil. 1 (2010).
223 Supra note 198.
224 Supra note 199.
225 *Neypes v. CA*, 506 Phil. 613, 626 (2005).
226 *BAMARVEMPCO v. Cabato-Cortes,* supra note 199, at 550.
227 See Ombudsman's Memorandum, *rollo*, Vol. II, pp. 668-669.

therefor, there thus, stands to be a violation of the separation of powers principle.

In addition, it should be pointed out that the breach of Congress in prohibiting provisional injunctions, such as in the first paragraph of Section 14, RA 6770, does not only undermine the constitutional allocation of powers; **it also practically dilutes a court's ability to carry out its functions**. **This is so since a particular case can easily be mooted by supervening events if no provisional injunctive relief is extended while the court is hearing the same**. Accordingly, the court's acquired jurisdiction, through which it exercises its judicial power, is rendered nugatory. Indeed, the force of judicial power, especially under the present Constitution, cannot be enervated due to a court's inability to regulate what occurs during a proceeding's course. As earlier intimated, when jurisdiction over the subject matter is accorded by law and has been acquired by a court, its exercise thereof should be unclipped. To give true meaning to the judicial power contemplated by the Framers of our Constitution, the Court's duly promulgated rules of procedure should therefore remain unabridged, this, even by statute. Truth be told, the policy against provisional injunctive writs in whatever variant should only subsist under rules of procedure duly promulgated by the Court given its sole prerogative over the same.

The following exchange between Associate Justice Marvic Mario Victor F. Leonen (Justice Leonen) and the Acting Solicitor General Florin T. Hilbay (Acting Solicitor General Hilbay) mirrors the foregoing observations:

> **JUSTICE LEONEN**:
> Okay. Now, would you know what rule covers injunction in the Rules of Court?
>
> **ACTING SOLICITOR GENERAL HILBAY**:
> Rule 58, Your Honor.
>
> **JUSTICE LEONEN**:
> 58, that is under the general rubric if Justice Bersamin will correct me if I will be mistaken under the rubric of what is called provisional remedies, our resident expert because Justice Peralta is not here so Justice Bersamin for a while. So provisional remedy you have injunction. x x x.
>
> x x x x
>
> **JUSTICE LEONEN**:
> Okay, Now, we go to the Constitution. Section 5, subparagraph 5 of Article VIII of the Constitution, if you have a copy of the Constitution, can you please read that provision? Section 5, Article VIII the Judiciary subparagraph 5, would you kindly read that provision?
>
> **ACTING SOLICTOR GENERAL HILBAY**:
> "Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts…"

JUSTICE LEONEN:

Okay, we can stop with that, promulgate rules concerning pleading, practice and procedure in all courts. This is the power, the competence, the jurisdiction of what constitutional organ?

ACTING SOLICITOR GENERAL HILBAY:

The Supreme Court, Your Honor.

JUSTICE LEONEN:

The Supreme Court. This is different from Article VIII Sections 1 and 2 which we've already been discussed with you by my other colleagues, is that not correct?

ACTING SOLICITOR GENERAL HILBAY:

Correct, Your Honor.

JUSTICE LEONEN:

Okay, so in Section 2, [apportion] jurisdiction that is the power of Congress, is that not correct?

ACTING SOLICITOR GENERAL HILBAY:

Correct, Your Honor.

JUSTICE LEONEN:

On the other hand, the power to promulgate rules is with the Court, is that not correct?

ACTING SOLICITOR GENERAL HILBAY:

Correct, Your Honor.

JUSTICE LEONEN:

A TRO and a writ of preliminary injunction, would it be a separate case or is it part of litigation in an ordinary case?

ACTING SOLICITOR GENERAL HILBAY:

It is an ancillary remedy, Your Honor.

JUSTICE LEONEN:

In fact, it originated as an equitable remedy, is that not correct?

ACTING SOLICITOR GENERAL HILBAY:

Correct, Your Honor.

JUSTICE LEONEN:

In order to preserve the power of a court so that at the end of litigation, it will not be rendered moot and academic, is that not correct?

ACTING SOLICITOR GENERAL HILBAY:

Correct, Your Honor.

JUSTICE LEONEN:

In that view, isn't Section 14, first paragraph, unconstitutional?

ACTING SOLICITOR GENERAL HILBAY:
No, Your Honor.

x x x x

JUSTICE LEONEN:
Can Congress say that a Court cannot prescribe Motions to Dismiss under Rule 16?

ACTING SOLICITOR GENERAL HILBAY:
Your Honor, Congress cannot impair the power of the Court to create remedies. x x x.

JUSTICE LEONEN:
What about bill [of] particulars, can Congress say, no Court shall have the power to issue the supplemental pleading called the bill of particular[s]? It cannot, because that's part of procedure…

ACTING SOLICITOR GENERAL HILBAY:
That is true.

JUSTICE LEONEN:
…or for that matter, no Court shall act on a Motion to Quash, is that not correct?

ACTING SOLICITOR GENERAL HILBAY:
Correct.

JUSTICE LEONEN:
So what's different with the writ of injunction?

ACTING SOLICITOR GENERAL HILBAY:
Writ of injunction, Your Honor, requires the existence of jurisdiction on the part of a court that was created by Congress. In the absence of jurisdiction… (interrupted)

JUSTICE LEONEN:
No, writ of injunction does not attach to a court. In other words, when they create a special agrarian court it has all procedures with it but it does not attach particularly to that particular court, is that not correct?

ACTING SOLICTOR GENERAL HILBAY:
When Congress, Your Honor, creates a special court…

JUSTICE LEONEN:
Again, Counsel, what statute provides for a TRO, created the concept of a TRO? It was a Rule. A rule of procedure and the Rules of Court, is that not correct?

ACTING SOLICITOR GENERAL HILBAY:
Yes, Your Honor.

JUSTICE LEONEN:
And a TRO and a writ of preliminary injunction does not exist unless it is [an] ancillary to a particular injunction in a court, is that not correct?

ACTING SOLICITOR GENERAL HILBAY:
Correct, Your Honor.

x x x x[228] (Emphasis supplied)

In *Biraogo v. The Philippine Truth Commission of 2010*,[229] the Court instructed that "[i]t is through the Constitution that the fundamental powers of government are established, limited and defined, and by which these powers are distributed among the several departments. The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer." It would then follow that laws that do not conform to the Constitution shall be stricken down for being unconstitutional.[230]

However, despite the ostensible breach of the separation of powers principle, the Court is not oblivious to the policy considerations behind the first paragraph of Section 14, RA 6770, as well as other statutory provisions of similar import. Thus, pending deliberation on whether or not to adopt the same, the Court, under its sole prerogative and authority over all matters of procedure, deems it proper to declare as ineffective the prohibition against courts other than the Supreme Court from issuing provisional injunctive writs to enjoin investigations conducted by the Office of the Ombudsman, until it is adopted as part of the rules of procedure through an administrative circular duly issued therefor.

Hence, with Congress interfering with matters of procedure (through passing the first paragraph of Section 14, RA 6770) without the Court's consent thereto, it remains that the CA had the authority to issue the questioned injunctive writs enjoining the implementation of the preventive suspension order against Binay, Jr. At the risk of belaboring the point, these issuances were merely ancillary to the exercise of the CA's *certiorari* jurisdiction conferred to it under Section 9 (1), Chapter I of BP 129, as amended, and which it had already acquired over the main CA-G.R. SP No. 139453 case.

IV.

The foregoing notwithstanding, the issue of whether or not the CA gravely abused its jurisdiction in issuing the TRO and WPI in CA-G.R. SP

---

228 TSN of the Oral Arguments, April 14, 2015, pp. 64-68.
229 651 Phil. 374, 427 (2010).
230 See *Manila Prince Hotel v. GSIS*, 335 Phil. 82, 114 (1997).

No. 139453 against the preventive suspension order is a persisting objection to the validity of said injunctive writs. For its proper analysis, the Court first provides the context of the assailed injunctive writs.

A. Subject matter of the CA's injunctive writs is the preventive suspension order.

By nature, **a preventive suspension order is not a penalty but only a preventive measure**. In *Quimbo v. Acting Ombudsman Gervacio*,[231] the Court explained the distinction, stating that **its purpose is to prevent the official to be suspended 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**:

> 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.
>
> **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 his 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.
>
> > Section. 24. Preventive suspension is **not a punishment or penalty** for misconduct in office but is considered to be a preventive measure. (Emphasis supplied)
>
> Not being a penalty, the period within which one is under preventive suspension is not considered part of the actual penalty of suspension. So Section 25 of the same Rule XIV provides:
>
> > Section 25. The period within which a public officer or employee charged is placed under preventive suspension shall **not be considered part of the actual penalty of suspension** imposed upon the employee found guilty.[232] (Emphases supplied)

---

[231] 503 Phil. 886 (2005).
[232] Id. at 891-892.

The requisites for issuing a preventive suspension order are explicitly stated in Section 24, RA 6770:

> Section 24. Preventive Suspension. – The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, **if in his judgment the evidence of guilt is strong**, **and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty**; **(b) the charges would warrant removal from the service**; **or (c) the respondent's continued stay in office may prejudice the case filed against him**.
>
> The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six (6) months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided. (Emphasis and underscoring supplied)

In other words, the law sets forth two (2) conditions that must be satisfied to justify the issuance of an order of preventive suspension pending an investigation, namely:

(**1**) The evidence of guilt is strong; and

(**2**) Either of the following circumstances co-exist with the first requirement:

(*a*) The charge involves dishonesty, oppression or grave misconduct or neglect in the performance of duty;

(*b*) The charge would warrant removal from the service; or

(*c*) The respondent's continued stay in office may prejudice the case filed against him. [233]

B. The basis of the CA's injunctive writs is the condonation doctrine.

Examining the CA's Resolutions in CA-G.R. SP No. 139453 would, however, show that the Ombudsman's non-compliance with the requisites provided in Section 24, RA 6770 was not the basis for the issuance of the assailed injunctive writs.

---

[233] *The Ombudsman v. Valeroso*, 548, Phil. 688, 695 (2007).

The CA's March 16, 2015 Resolution which directed the issuance of the assailed TRO was based on the case of ***Governor Garcia, Jr. v. CA***[234] (*Governor Garcia, Jr.*), wherein the Court emphasized that "if it were established in the CA that the acts subject of the administrative complaint were indeed committed during petitioner [Garcia's] prior term, then, following settled jurisprudence, he can no longer be administratively charged."[235] Thus, the Court, contemplating the application of the condonation doctrine, among others, cautioned, in the said case, that "it would have been more prudent for [the appellate court] to have, at the very least, on account of the extreme urgency of the matter and the seriousness of the issues raised in the *certiorari* petition, **issued a TRO** x x x"[236] during the pendency of the proceedings.

Similarly, the CA's April 6, 2015 Resolution which directed the issuance of the assailed WPI was based on the condonation doctrine, citing the case of ***Aquinaldo v. Santos***.[237] The CA held that Binay, Jr. has an ostensible right to the final relief prayed for, *i.e.*, the nullification of the preventive suspension order, finding that the Ombudsman can hardly impose preventive suspension against Binay, Jr. given that his re-election in 2013 as City Mayor of Makati condoned any administrative liability arising from anomalous activities relative to the Makati Parking Building project from 2007 to 2013.[238] Moreover, the CA observed that although there were acts which were apparently committed by Binay, Jr. beyond his first term , *i.e.*, the alleged payments on July 3, 4, and 24, 2013,[239] corresponding to the services of Hillmarc's and MANA – still, Binay, Jr. cannot be held administratively liable therefor based on the cases of ***Salalima v. Guingona, Jr.***,[240] and ***Mayor Garcia v. Mojica***,[241] wherein the condonation doctrine was applied by the Court although the payments were made after the official's election, reasoning that the payments were merely effected pursuant to contracts executed before said re-election.[242]

The Ombudsman contends that it was inappropriate for the CA to have considered the condonation doctrine since it was a matter of defense which should have been raised and passed upon by her office during the administrative disciplinary proceedings.[243] However, the Court agrees with the CA that it was not precluded from considering the same given that it was material to the propriety of according provisional injunctive relief in conformity with the ruling in *Governor Garcia*, *Jr.*, which was the subsisting jurisprudence at that time. Thus, since condonation was duly

---

234 Supra note 68. See also *rollo*, Vol. I, p. 45.
235 *Rollo*, Vol. I, p. 46.
236 *Governor Garcia*, *Jr.* supra note 68, at 690.
237 Supra note 92.
238 *Rollo*, Vol. I, p. 619.
239 All of which pertains to the payment of Phase V. See id. at 346-349. See also id. at 623.
240 Supra note 95.
241 Supra note 96.
242 Id. at 619-620.
243 See Ombudsman's Memorandum, *rollo*, Vol. II, p. 703-704.

raised by Binay, Jr. in his petition in CA-G.R. SP No. 139453,[244] the CA did not err in passing upon the same. Note that although Binay, Jr. secondarily argued that the evidence of guilt against him was not strong in his petition in CA-G.R. SP No. 139453,[245] it appears that the CA found that the application of the condonation doctrine was already sufficient to enjoin the implementation of the preventive suspension order. Again, there is nothing aberrant with this since, as remarked in the same case of *Governor Garcia, Jr.*, if it was established that the acts subject of the administrative complaint were indeed committed during Binay, Jr.'s prior term, then, following the condonation doctrine, he can no longer be administratively charged. In other words, with condonation having been invoked by Binay, Jr. as an exculpatory affirmative defense at the onset, the CA deemed it unnecessary to determine if the evidence of guilt against him was strong, at least for the purpose of issuing the subject injunctive writs.

With the preliminary objection resolved and the basis of the assailed writs herein laid down, the Court now proceeds to determine if the CA gravely abused its discretion in applying the condonation doctrine.

C. **The origin of the condonation doctrine.**

Generally speaking, condonation has been defined as "[a] victim's express or implied forgiveness of an offense, [especially] **by treating the offender as if there had been no offense**."[246]

The condonation doctrine – which connotes this same sense of complete extinguishment of liability as will be herein elaborated upon – is not based on statutory law. It is a jurisprudential creation that originated from the **1959 case** of ***Pascual v. Hon. Provincial Board of Nueva Ecija***,[247] (*Pascual*), **which was therefore decided under the 1935 Constitution**.

In *Pascual*, therein petitioner, Arturo Pascual, was elected Mayor of San Jose, Nueva Ecija, sometime in November 1951, and was later re-elected to the same position in 1955. **During his second term**, or on October 6, 1956, the Acting Provincial Governor filed **administrative charges** before the Provincial Board of Nueva Ecija against him for grave abuse of authority and usurpation of judicial functions for acting on a criminal complaint in Criminal Case No. 3556 on December 18 and 20, 1954. In defense, Arturo Pascual argued that he cannot be made liable for the acts charged against him since they were committed during his previous term of office, and therefore, invalid grounds for disciplining him during his second term. The Provincial Board, as well as the Court of First Instance of

---

244 See *rollo*, Vol. I, pp. 410-415.
245 See id. at 415-422.
246 Black's Law Dictionary, 8th Ed., p. 315.
247 106 Phil. 466 (1959).

Nueva Ecija, later decided against Arturo Pascual, and when the case reached this Court on appeal, it recognized that the controversy posed a novel issue – that is, whether or not an elective official may be disciplined for a wrongful act committed by him during his immediately preceding term of office.

As there was **no legal precedent on the issue at that time**, the Court, in *Pascual*, **resorted to American authorities** and "found that cases on the matter are conflicting due in part, probably, to differences in statutes and constitutional provisions, and also, in part, to a divergence of views with respect to the question of whether the subsequent election or appointment condones the prior misconduct."[248] **Without going into the variables of these conflicting views and cases**, it proceeded to state that:

> **The weight of authorities** x x x **seems to incline toward the rule denying the right to remove one from office because of misconduct during a prior term**, to which we fully subscribe.[249] (Emphasis and underscoring supplied)

The conclusion is at once problematic since this Court has now uncovered that there is really no established weight of authority in the United States (US) favoring the doctrine of condonation, which, in the words of *Pascual*, theorizes that an official's re-election denies the right to remove him from office due to a misconduct during a prior term. In fact, as pointed out during the oral arguments of this case, at least seventeen (17) states in the US have abandoned the condonation doctrine.[250] The Ombudsman aptly cites several rulings of various US State courts, as well as literature published on the matter, to demonstrate the fact that the doctrine is not uniformly applied across all state jurisdictions. Indeed, the treatment is nuanced:

(**1**) For one, it has been widely recognized that the propriety of removing a public officer from his current term or office for misconduct which he allegedly committed in a prior term of office is governed by the language of the statute or constitutional provision applicable to the facts of a particular case (see *In Re Removal of Member of Council Coppola*).[251] As an example, a Texas statute, on the one hand, expressly allows removal only for an act committed during a present term: "no officer shall be prosecuted or removed from office for any act he may have committed prior to his election

---

248 Id. at 471.

249 Id.

250 See Chief Justice Maria Lourdes P. A. Sereno's (Chief Justice Sereno) Interpellation, TSN of the Oral Arguments, April 21, 2015, p. 191.

251 155 Ohio St. 329; 98 N.E.2d 807 (1951); cited in Goger, Thomas, J.D., *Removal of public officers for misconduct during previous term,* 42 A.L.R.3d 691 (1972), published by Thomson Reuters (2015), p. 11.

to office" (see *State ex rel. Rawlings v. Loomis*).[252] On the other hand, the Supreme Court of Oklahoma allows removal from office for "acts of commission, omission, or neglect committed, done or omitted during a previous or preceding term of office" (see *State v. Bailey*).[253] Meanwhile, in some states where the removal statute is silent or unclear, the case's resolution was contingent upon the interpretation of the phrase "in office." On one end, the Supreme Court of Ohio strictly construed a removal statute containing the phrase "misfeasance of malfeasance in office" and thereby declared that, in the absence of clear legislative language making, the word "office" must be limited to the single term during which the offense charged against the public officer occurred (see *State ex rel. Stokes v. Probate Court of Cuyahoga County*).[254] Similarly, the Common Pleas Court of Allegheny County, Pennsylvania decided that the phrase "in office" in its state constitution was a time limitation with regard to the grounds of removal, so that an officer could not be removed for misbehaviour which occurred prior to the taking of the office (see *Commonwealth v. Rudman*).[255] The opposite was construed in the Supreme Court of Louisiana which took the view that an officer's inability to hold an office resulted from the commission of certain offenses, and at once rendered him unfit to continue in office, adding the fact that the officer had been re-elected did not condone or purge the offense (see *State ex rel. Billon v. Bourgeois*).[256] Also, in the Supreme Court of New York, Apellate Division, Fourth Department, the court construed the words "in office" to refer not to a particular term of office but to an entire tenure; it stated that the whole purpose of the legislature in enacting the statute in question could easily be lost sight of, and the intent of the law-making body be thwarted, if an unworthy official could not be removed during one term for misconduct for a previous one (*Newman v. Strobel*).[257]

(**2**) For another, condonation depended on whether or not the public officer was a successor in the same office for which he has been administratively charged. The "own-successor theory," which is recognized in numerous States as an exception to condonation doctrine, is premised on the idea that each term of a re-elected incumbent is not taken as separate and

---

252 Tex Civ App 29 SW 415 (1895), cited in Goger, Thomas, J.D., *Removal of public officers for misconduct during previous term,* 42 A.L.R.3d 691 (1972), published by Thomson Reuters (2015), p. 16, and in Silos, Miguel U., *A Re-examination of the Doctrine of Condonation of Public Officers*, 84 Phil. L.J. 22, 33 (2009).

253 1956 OK 338; 305 P.2d 548 (1956); cited in Goger, Thomas, J.D., *Removal of public officers for misconduct during previous term,* 42 A.L.R.3d 691 (1972), published by Thomson Reuters (2015), p. 15.

254 22 Ohio St. 2d 120; 258 N.E.2d 594 (1970); cited in Goger, Thomas, J.D., *Removal of public officers for misconduct during previous term,* 42 A.L.R.3d 691 (1972), published by Thomson Reuters (2015), pp. 11 and 22.

255 1946 Pa. Dist. & Cnty.; 56 Pa. D. & C. 393 (1946); cited in Goger, Thomas, J.D., *Removal of public officers for misconduct during previous term,* 42 A.L.R.3d 691 (1972), published by Thomson Reuters (2015), pp. 11.

256 45 La Ann 1350, 14 So 28 (1893); cited in Goger, Thomas, J.D., *Removal of public officers for misconduct during previous term,* 42 A.L.R.3d 691 (1972), published by Thomson Reuters (2015), pp. 26.

257 236 App Div 371, 259 NYS 402 (1932); cited in Goger, Thomas, J.D., *Removal of public officers for misconduct during previous term,* 42 A.L.R.3d 691 (1972), published by Thomson Reuters (2015), pp. 27.

distinct, but rather, regarded as one continuous term of office. Thus, infractions committed in a previous term are grounds for removal because a re-elected incumbent has no prior term to speak of[258] (see *Attorney-General v. Tufts*;[259] *State v. Welsh*;[260] *Hawkins v. Common Council of Grand Rapids*;[261] *Territory v. Sanches*;[262] and *Tibbs v. City of Atlanta*).[263]

(**3**) Furthermore, some State courts took into consideration the continuing nature of an offense in cases where the condonation doctrine was invoked. In *State ex rel. Douglas v. Megaarden*,[264] the public officer charged with malversation of public funds was denied the defense of condonation by the Supreme Court of Minnesota, observing that "the large sums of money illegally collected during the previous years are still retained by him." In *State ex rel. Beck v. Harvey*,[265] the Supreme Court of Kansas ruled that "there is no necessity" of applying the condonation doctrine since "the misconduct continued in the present term of office[;] [thus] there was a duty upon defendant to restore this money on demand of the county commissioners." Moreover, in *State ex rel. Londerholm v. Schroeder*,[266] the Supreme Court of Kansas held that "insofar as nondelivery and excessive prices are concerned, x x x there remains a continuing duty on the part of the defendant to make restitution to the country x x x, this duty extends into the present term, and neglect to discharge it constitutes misconduct."

Overall, the foregoing data clearly contravenes the preliminary conclusion in *Pascual* that there is a "weight of authority" in the US on the condonation doctrine. In fact, without any cogent exegesis to show that *Pascual* had accounted for the numerous factors relevant to the debate on condonation, an outright adoption of the doctrine in this jurisdiction would not have been proper.

At any rate, these US cases are only of persuasive value in the process of this Court's decision-making. "[They] are not relied upon as precedents, but as guides of interpretation."[267] Therefore, the ultimate analysis is on whether or not the condonation doctrine, as espoused in *Pascual*, and carried over in numerous cases after, can be held up against prevailing legal norms. Note that the doctrine of *stare decisis* does not preclude this Court from revisiting existing doctrine. As adjudged in the case of *Belgica*, the *stare*

---

258 See Ombudsman's Memorandum p. 70, *rollo*, Vol. II, p. 715, citing Silos, Miguel U., *A Re-examination of the Doctrine of Condonation of Public Officers*, 84, Phil. LJ 22, 69 (2009).

259 239 Mass. 458; 132 N.E. 322 (1921)

260 109 Iowa 19; 79 N.W. 369 (1899).

261 192 Mich. 276; 158 N.W. 953 (1916)

262 14 N.M. 493; 1908-NMSC-022 (1908).

263 125 Ga. 18; 53 S.E. 811 (1906)

264 85 Minn. 41; 88 N.W. 412 (1901), cited in Silos, Miguel U., A Re-examination of the Doctrine of Condonation of Public Officers, 84, Phil. LJ 22, 69 (2009).

265 148 Kan. 166; 80 P.2d 1095 (1938); cited in Silos, Miguel U., A Re-examination of the Doctrine of Condonation of Public Officers, 84, Phil. LJ 22, 70 (2009).

266 199 Kan. 403; 430 P.2d 304 (1967), applying *State ex rel. Beck v. Harvey*, id.

267 *Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines*, 503 Phil. 485 (2005).

decisis rule should not operate when there are powerful countervailing considerations against its application.[268] In other words, *stare decisis* becomes an intractable rule only when circumstances exist to preclude reversal of standing precedent.[269] As the Ombudsman correctly points out, jurisprudence, after all, is not a rigid, atemporal abstraction; it is an organic creature that develops and devolves along with the society within which it thrives.[270] In the words of a recent US Supreme Court Decision, "[w]hat we can decide, we can undecide."[271]

In this case, the Court agrees with the Ombudsman that since the time *Pascual* was decided, the legal landscape has radically shifted. Again, *Pascual* was a 1959 case decided under the 1935 Constitution, which dated provisions do not reflect the experience of the Filipino People under the 1973 and 1987 Constitutions. Therefore, the plain difference in setting, including, of course, the sheer impact of the condonation doctrine on public accountability, calls for *Pascual*'s judicious re-examination.

D. Testing the Condonation Doctrine.

Pascual's *ratio decidendi* may be dissected into three (3) parts:

First, the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct:

> **Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal** and this is especially true where the constitution provides that the penalty in proceedings for removal shall **not extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected or appointed**. (67 C.J.S. p. 248, citing *Rice vs. State*, 161 S.W. 2d. 401; *Montgomery vs. Nowell*, 40 S.W. 2d. 418; *People ex rel. Bagshaw vs. Thompson*, 130 P. 2d. 237; *Board of Com'rs of Kingfisher County vs. Shutler*, 281 P. 222; *State vs. Blake*, 280 P. 388; *In re Fudula*, 147 A. 67; *State vs. Ward*, 43 S.W. 2d. 217).
>
> The underlying theory is that **each term is separate from other terms** x x x.[272]

Second, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; and

---

268 Supra note 177.

269 See Ombudsman Memorandum, *rollo*, Vol. II, p. 718, citing Cardozo, Benjamin N., The Nature of the Judicial Process 149 (1921), cited in Christopher P. Banks, *Reversal of Precedent and Judicial Policy-Making: How Judicial Conceptions of Stare Decisis in the U.S. Supreme Court Influence Social Change, 32 Akron L. Rev. 233* (1999).

270 Id. at 722-723.

271 *Kimble v. Marvel Entertainment*, L.L.C., 135 S. Ct. 2401; 192 L. Ed.; 192 L. Ed. 2d 463 (2015).

272 *Pascual*, supra note 247, at 471.

> [T]hat the **reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor**. (43 Am. Jur. p. 45, citing *Atty. Gen. vs. Hasty*, 184 Ala. 121, 63 So. 559, 50 L.R.A. (NS) 553.[273] (emphasis supplied)

Third, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers:

> As held in *Conant vs. Grogan* (1887) 6 N.Y.S.R. 322, cited in 17 A.I.R. 281, 63 So. 559, 50 LRA (NS) 553 —
>
> > The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. **When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any.** It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people.[274] (Emphases supplied)

The notable cases on condonation following *Pascual* are as follows:

(**1**) ***Lizares v. Hechanova***[275] (May 17, 1966) – wherein the Court first applied the condonation doctrine, thereby quoting the above-stated passages from *Pascual* in verbatim.

(**2**) ***Inqco v. Sanchez, et al***.[276] (December 18, 1967) – wherein the Court clarified that the condonation doctrine **does not apply to a criminal case**. It was explained that a criminal case is different from an administrative case in that the former involves the People of the Philippines as a community, and is a public wrong to the State at large; whereas, in the latter, only the populace of the constituency he serves is affected. In addition, the Court noted that **it is only the President who may pardon a criminal offense**.

(**3**) ***Aguinaldo v. Santos***[277] (*Aguinaldo*; August 21, 1992) – a case **decided under the 1987 Constitution** wherein the condonation doctrine was applied in favor of then Cagayan Governor Rodolfo E. Aguinaldo although his **re-election merely supervened the pendency of the proceedings**.

---

273 Id. at 471-472.
274 Id. at 472.
275 123 Phil. 916 (1966).
276 129 Phil. 553 (1967). See also *Luciano v. The Provincial Governor*, 138 Phil. 546 (1967) and *Oliveros v. Villaluz*, 156 Phil. 137 (1974).
277 Supra note 92.

(**4**) ***Salalima v. Guingona, Jr.***[278] (*Salalima*; May 22, 1996) – wherein the Court **reinforced the condonation doctrine by stating that the same is justified by "sound public policy."** According to the Court, condonation prevented the elective official from being "hounded" by administrative cases filed by his "political enemies" during a new term, for which he has to defend himself "to the detriment of public service." Also, the Court mentioned that the administrative liability condoned by re-election covered the execution of the contract and the incidents related therewith.[279]

(**5**) ***Mayor Garcia v. Mojica***[280] (*Mayor Garcia*; September 10, 1999) – wherein the benefit of the doctrine was extended to then Cebu City Mayor Alvin B. Garcia who was administratively charged for his involvement in an anomalous contract for the supply of asphalt for Cebu City, executed only four (4) days before the upcoming elections. The Court ruled that notwithstanding the timing of the contract's execution, the electorate is presumed to have known the petitioner's background and character, including his past misconduct; hence, his subsequent re-election was deemed a condonation of his prior transgressions. More importantly, the Court held that the determinative time element in applying the condonation doctrine should be the time when the contract was perfected; **this meant that as long as the contract was entered into during a prior term, acts which were done to implement the same, even if done during a succeeding term, do not negate the application of the condonation doctrine in favor of the elective official**.

(**6**) ***Salumbides, Jr. v. Office of the Ombudsman***[281] (*Salumbides, Jr.*; April 23, 2010) – wherein the Court explained the doctrinal innovations in the *Salalima* and *Mayor Garcia* rulings, to wit:

> *Salalima v. Guingona, Jr.* and *Mayor Garcia v. Hon. Mojica* reinforced the doctrine. **The condonation rule was applied even if the administrative complaint was not filed before the reelection of the public official, and even if the alleged misconduct occurred four days before the elections, respectively**. *Salalima* did not distinguish as to the date of filing of the administrative complaint, as long as the alleged misconduct was committed during the prior term, the precise timing or period of which *Garcia* did not further distinguish, as long as the wrongdoing that gave rise to the public official's culpability was committed prior to the date of reelection.[282] (Emphasis supplied)

The Court, citing *Civil Service Commission v. Sojor*,[283] also clarified that **the condonation doctrine would not apply to appointive officials** since, as to them, there is no sovereign will to disenfranchise.

---

278 Supra note 95.
279 Id. at 921.
280 Supra note 96.
281 633 Phil. 325 (2010).
282 Id. at 335
283 577 Phil. 52, 72 (2008).

(**7**) And finally, the above discussed case of ***Governor Garcia, Jr.*** – wherein the Court remarked that it would have been prudent for the appellate court therein to have issued a temporary restraining order against the implementation of a preventive suspension order issued by the Ombudsman in view of the condonation doctrine.

A thorough review of the cases **post-1987**, among others, *Aguinaldo*, *Salalima*, *Mayor Garcia*, and *Governor Garcia, Jr.* – all cited by the CA to justify its March 16, 2015 and April 6, 2015 Resolutions directing the issuance of the assailed injunctive writs – would show that the basis for condonation under the prevailing constitutional and statutory framework was never accounted for. What remains apparent from the text of these cases is that the basis for condonation, as jurisprudential doctrine, was – and still remains – the above-cited postulates of *Pascual*, which was lifted from rulings of US courts where condonation was amply supported by their own state laws. With respect to its applicability to administrative cases, the core premise of condonation – that is, an elective official's re-election cuts off the right to remove him for an administrative offense committed during a prior term – was adopted hook, line, and sinker in our jurisprudence largely because the legality of that doctrine was never tested against existing legal norms. As in the US, the propriety of condonation is – as it should be – dependent on the legal foundation of the adjudicating jurisdiction. Hence, the Court undertakes an examination of our current laws in order to determine if there is legal basis for the continued application of the doctrine of condonation.

The foundation of our entire legal system is the Constitution. It is the supreme law of the land;[284] thus, the unbending rule is that every statute should be read in light of the Constitution.[285] Likewise, the Constitution is a framework of a workable government; hence, its interpretation must take into account the complexities, realities, and politics attendant to the operation of the political branches of government.[286]

As earlier intimated, *Pascual* was a decision promulgated in 1959. Therefore, it was decided within the context of the 1935 Constitution which was silent with respect to public accountability, or of the nature of public office being a public trust. The provision in the 1935 Constitution that comes closest in dealing with public office is Section 2, Article II which states that "[t]he defense of the State is a prime duty of government, and in the fulfillment of this duty all citizens may be required by law to render personal military or civil service."[287] Perhaps owing to the 1935 Constitution's

---

284 *Chavez v. Judicial and Bar Council,* G.R. No. 202242, July 17, 2012, 676 SCRA 579, 607.

285 *Teehankee v. Rovira*, 75 Phil. 634, 646 (1945), citing 11 Am. Jur., Constitutional Law, Section 96.

286 *Philippine Constitution Association v. Enriquez*, G.R. Nos. 113105, 113174, 113766, and 113888 August 19, 1994, 235 SCRA 506, 523.

287 See Silos, Miguel U., *A Re-examination of the Doctrine of Condonation of Public Officers*, 84, Phil. LJ 22, 69 (2009), pp. 26-27.

silence on public accountability, and considering the dearth of jurisprudential rulings on the matter, as well as the variance in the policy considerations, there was no glaring objection confronting the *Pascual* Court in adopting the condonation doctrine that originated from select US cases existing at that time.

With the advent of the 1973 Constitution, the approach in dealing with public officers underwent a significant change. The new charter introduced an entire article on accountability of public officers, found in Article XIII. Section 1 thereof positively recognized, acknowledged, and declared that "**[p]ublic office is a public trust**." Accordingly, "**[p]ublic officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency, and shall remain accountable to the people**."

After the turbulent decades of Martial Law rule, the Filipino People have framed and adopted the 1987 Constitution, which sets forth in the Declaration of Principles and State Policies in Article II that "**[t]he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption**."[288] Learning how unbridled power could corrupt public servants under the regime of a dictator, the Framers put primacy on the integrity of the public service by declaring it as a constitutional principle and a State policy. More significantly, the 1987 Constitution strengthened and solidified what has been first proclaimed in the 1973 Constitution by commanding public officers to be accountable to the people **at all times**:

> Section 1. Public office is a public trust. Public officers and employees **must at all times be accountable to the people**, **serve them with utmost responsibility, integrity, loyalty, and efficiency and act with patriotism and justice, and lead modest lives**.

In *Belgica*, it was explained that:

> [t]he aphorism forged under Section 1, Article XI of the 1987 Constitution, which states that "public office is a public trust," is an overarching reminder that every instrumentality of government should exercise their official functions only in accordance with the principles of the Constitution which embodies the parameters of the people's trust. **The notion of a public trust connotes accountability** x x x.[289] (Emphasis supplied)

---

288 Section 27, Article II.

289 *Belgica*, supra note 177, at 131, citing Bernas, Joaquin G., S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2003 Ed., p. 1108.

The same mandate is found in the Revised Administrative Code under the section of the Civil Service Commission,[290] and also, in the Code of Conduct and Ethical Standards for Public Officials and Employees.[291]

For local elective officials like Binay, Jr., the **grounds to discipline, suspend or remove an elective local official from office** are stated in **Section 60 of Republic Act No. 7160**,[292] otherwise known as the "Local Government Code of 1991" (LGC), which was approved on October 10 1991, and took effect on January 1, 1992:

> Section 60. *Grounds for Disciplinary Action*. – An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:
>
> (a) Disloyalty to the Republic of the Philippines;
> (b) Culpable violation of the Constitution;
> (c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;
> (d) Commission of any offense involving moral turpitude or an offense punishable by at least *prision* mayor;
> (e) Abuse of authority;
> (f) Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the *sangguniang panlalawigan, sangguniang panlunsod, sanggunian bayan*, and *sangguniang barangay*;
> (g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and
> (h) Such other grounds as may be provided in this Code and other laws.
>
> An elective local official may be removed from office on the grounds enumerated above by order of the proper court.

Related to this provision is **Section 40 (b) of the LGC** which states that **those removed from office as a result of an administrative case** shall be **disqualified from running for any elective local position**:

---

290 Section 1. Declaration of Policy. – The State shall insure and promote the Constitutional mandate that appointments in the Civil Service shall be made only according to merit and fitness; that the Civil Service Commission, as the central personnel agency of the Government shall establish a career service, adopt measures to promote morale, efficiency, integrity, responsiveness, and courtesy in the civil service, strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability; **that public office is a public trust and public officers and employees must at all times be accountable to the people**; and that personnel functions shall be decentralized, delegating the corresponding authority to the departments, offices and agencies where such functions can be effectively performed. (Section 1, Book V, Title I, subtitle A of the Administrative Code of 1987; emphasis supplied).

291 Section 2. Declaration of Policies. – It is the policy of the State to promote a high standard of ethics in public service. **Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest**. (Emphasis supplied) See Section 2, RA 6713 (approved on February 20, 1989).

292 Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991" (approved on October 10, 1991).

> Section 40. Disqualifications. - The following persons are disqualified from running for any elective local position:
>
> x x x x
>
> **(b) Those removed from office as a result of an administrative case;**
>
> x x x x (Emphasis supplied)

In the same sense, Section 52 (a) of the RRACCS provides that the **penalty of dismissal from service carries the accessory penalty of perpetual disqualification from holding public office**:

> Section 52. – Administrative Disabilities Inherent in Certain Penalties. –
>
> a. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking the civil service examinations.

In contrast, Section 66 (b) of the LGC states that the **penalty of suspension** shall not exceed the unexpired term of the elective local official nor constitute a bar to his candidacy for as long as he meets the qualifications required for the office. Note, however, that the provision only pertains to the duration of the penalty and its effect on the official's candidacy. **Nothing therein states that the administrative liability therefor is extinguished by the fact of re-election:**

> Section 66. *Form and Notice of Decision.* - x x x.
>
> x x x x
>
> (b) The penalty of suspension shall not exceed the unexpired term of the respondent or a period of six (6) months for every administrative offense, nor shall said penalty be a bar to the candidacy of the respondent so suspended as long as he meets the qualifications required for the office.

Reading the 1987 Constitution together with the above-cited legal provisions now leads this Court to the conclusion that the doctrine of condonation is actually bereft of legal bases.

To begin with, the concept of **public office is a public trust and the corollary requirement of accountability to the people at all times**, as mandated under the 1987 Constitution, is **plainly inconsistent** with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post. **Election is not a mode of condoning an administrative offense**, and there is simply

no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term. In this jurisdiction, **liability arising from administrative offenses may be condoned by the President** in light of Section 19, Article VII of the 1987 Constitution which was interpreted in *Llamas v. Orbos*[293] to apply to administrative offenses:

> The Constitution does not distinguish between which cases executive clemency may be exercised by the President, with the sole exclusion of impeachment cases. By the same token, if executive clemency may be exercised only in criminal cases, it would indeed be unnecessary to provide for the exclusion of impeachment cases from the coverage of Article VII, Section 19 of the Constitution. Following petitioner's proposed interpretation, cases of impeachment are automatically excluded inasmuch as the same do not necessarily involve criminal offenses.
>
> In the same vein, We do not clearly see any valid and convincing reason why the President cannot grant executive clemency in administrative cases. It is Our considered view that if the President can grant reprieves, commutations and pardons, and remit fines and forfeitures in criminal cases, with much more reason can she grant executive clemency in administrative cases, which are clearly less serious than criminal offenses.

Also, it cannot be inferred from Section 60 of the LGC that the grounds for discipline enumerated therein cannot anymore be invoked against an elective local official to hold him administratively liable once he is re-elected to office. In fact, Section 40 (b) of the LGC precludes condonation since in the first place, an elective local official who is meted with the penalty of removal could not be re-elected to an elective local position due to a direct disqualification from running for such post. In similar regard, Section 52 (a) of the RRACCS imposes a penalty of perpetual disqualification from holding public office as an accessory to the penalty of dismissal from service.

To compare, some of the cases adopted in *Pascual* were decided by US State jurisdictions wherein the doctrine of condonation of administrative liability was supported by either a constitutional or statutory provision stating, in effect, that an officer cannot be **removed** by a misconduct committed during a previous term,[294] or that the **disqualification to hold the**

---

293 279 Phil. 920, 937 (1991).

294 In ***Fudula's Petition*** (297 Pa. 364; 147 A. 67 [1929]), the Supreme Court of Pennsylvania cited (**a**) **29 Cyc. 1410** which states: "Where removal may be made for cause only, **the cause must have occurred during the present term of the officer**. **Misconduct prior to the present term even during a preceding term will not justify a removal**"; and (**b**) "x x x **Penal Code** [Cal.], paragraph 772, providing for the removal of officers for violation of duty, which states "a **sheriff cannot be removed from office, while serving his second term, for offenses committed during his first term.**" (Emphases supplied)

In ***Board of Commissioners of Kingfisher County v. Shutler*** (139 Okla. 52; 281 P. 222 [1929]), the Supreme Court of Oklahoma held that "[u]nder **section 2405, C. O. S. 1921**, the only judgment a court

office does not extend beyond the term in which the official's delinquency occurred.[295] In one case, [296] the absence of a provision against the re-election of an officer removed – unlike Section 40 (b) of the LGC– was the justification behind condonation. In another case,[297] it was deemed that condonation through re-election was **a policy under their constitution** – which adoption in this jurisdiction runs counter to our present Constitution's requirements on public accountability. There was even one case where the doctrine of condonation was not adjudicated upon but only invoked by a party as a ground;[298] while in another case, which was not reported in full in the official series, the crux of the disposition was that the evidence of a prior irregularity in no way pertained to the charge at issue and therefore, was deemed to be incompetent.[299] Hence, owing to either their variance or inapplicability, none of these cases can be used as basis for the continued adoption of the condonation doctrine under our **existing laws.**

At best, Section 66 (b) of the LGC prohibits **the enforcement of the penalty of suspension** beyond the unexpired portion of the elective local official's prior term, and likewise allows said official to still run for re-

---

can render on an officer being convicted of malfeasance or misfeasance in office is **removal from office** and **an officer cannot be removed from office under said section for acts committed by him while holding the same office in a previous term**." (Emphases supplied)

295 In ***State v. Blake*** (138 Okla. 241; 280 P. 833 [1929]), the Supreme Court of Oklahoma cited *State ex rel. Hill, County Attorney, v. Henschel*, 175 P. 393, wherein it was said: "Under the **Ouster Law (section 7603 of the General Statutes of 1915-Code Civ. Proc. 686a-)**, a public officer who is guilty of willful misconduct in office forfeits his right to hold the office for the term of his election or appointment; **but the disqualification to hold the office does not extend beyond the term in which his official delinquency occurred**." (Emphases supplied)

296 In ***Rice v. State*** (204 Ark. 236; 161 S.W.2d 401 [1942]), the Supreme Court of Arkansas cited (***a***) *Jacobs v. Parham*, 175 Ark. 86,298 S.W. 483, which quoted a headnote, that "Under Crawford Moses' Dig., [(*i.e.*, a digest of statutes in the jurisdiction of Arkansas)] 10335, 10336, a public officer is **not subject to removal from office** because of acts done prior to his present term of office in view of Const., art. 7, 27, **containing no provision against re-election of officer removed for any of the reasons named therein**." (Emphases supplied)

297 In ***State ex rel. Brickell v. Hasty*** (184 Ala. 121; 63 So. 559 [1913]), the Supreme Court of Alabama held: "x x x If an officer is impeached and removed, there is **nothing to prevent his being elected to the identical office from which he was removed for a subsequent term**, **and, this being true, a re-election to the office would operate as a condonation under the Constitution** of the officer's conduct during the previous term, to the extent of cutting off the right to remove him from subsequent term for said conduct during the previous term. It seems to be the policy of our Constitution to make each term independent of the other, and to disassociate the conduct under one term from the qualification or right to fill another term, at least, so far as the same may apply to impeachment proceedings, and as distinguished from the right to indict and convict an offending official." (Emphasis supplied)

298 In ***State Ex Rel. V. Ward*** (163 Tenn. 265; 43 S.W.2d. 217 [1931]), decided by the Supreme Court of Tennessee, Knoxville, it appears to be erroneously relied upon in *Pascual*, since the proposition "[t]hat the Acts alleged in paragraph 4 of the petition involved contracts made by defendant prior to his present term for which he cannot now be removed from office" was not a court ruling but an argument raised by the defendant in his demurrer.

299 In ***Conant v. Grogan*** (6 N.Y.S.R. 322 [1887]), which was cited in *Newman v. Strobel* (236 A.D. 371; 259 N.Y.S. 402 [1932]; decided by the Supreme Court of New York, Appellate Division) reads: "Our attention is called to ***Conant* v. *Grogan* (6 N.Y. St. Repr. 322; 43 Hun, 63**7) and *Matter of King* (25 N.Y. St. Repr. 792; 53 Hun, 631), both of which decisions are of the late General Term, and **neither of which is reported in full in the official series**. While there are expressions in each opinion **which at first blush might seem to uphold respondent's theory, an examination of the cases discloses the fact that the charge against each official related to acts performed during his then term of office, and evidence of some prior irregularity was offered which in no way pertained to the charge in issue**. **It was properly held that such evidence was incompetent**. The respondent was not called upon to answer such charge, but an entirely separate and different one." (Emphases supplied)

election. This treatment is similar to *People ex rel. Bagshaw v. Thompson* [300] and *Montgomery v. Nowell*,[301] both cited in *Pascual*, wherein it was ruled that an officer cannot be **suspended** for a misconduct committed during a prior term. However, as previously stated, nothing in Section 66 (b) states that the elective local official's administrative liability is extinguished by the fact of re-election. Thus, at all events, no legal provision actually supports the theory that the liability is condoned.

Relatedly, it should be clarified that there is no truth in *Pascual*'s postulation that the courts would be depriving the electorate of their right to elect their officers if condonation were not to be sanctioned. In political law, election pertains to the process by which a particular constituency chooses an individual to hold a public office. In this jurisdiction, there is, again, no legal basis to conclude that election automatically implies condonation. Neither is there any legal basis to say that every democratic and republican state has an inherent regime of condonation. If condonation of an elective official's administrative liability would perhaps, be allowed in this jurisdiction, then the same should have been provided by law under our governing legal mechanisms. May it be at the time of *Pascual* or at present, by no means has it been shown that such a law, whether in a constitutional or statutory provision, exists. Therefore, inferring from this manifest absence, it cannot be said that the electorate's will has been abdicated.

Equally infirm is *Pascual*'s proposition that the electorate, when re-electing a local official, are assumed to have done so with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. Suffice it to state that **no such presumption exists in any statute or procedural rule**.[302] Besides, it is contrary to human experience that the electorate would have full knowledge of a public official's misdeeds. The Ombudsman correctly points out the reality that most corrupt acts by public officers are shrouded in secrecy, and concealed from the public. **Misconduct committed by an elective official is easily covered up, and is almost always unknown to the electorate when they cast their votes**.[303] At a conceptual level, condonation presupposes that the condoner has actual knowledge of what is to be condoned. **Thus, there**

---

[300] In ***People ex rel. Bagshaw v. Thompson*** (55 Cal. App. 2d 147; 130 P.2d.237 [1942]), the Court of Appeal of California, First Appellate District cited *Thurston v. Clark*, (107 Cal. 285, 40 P. 435), wherein it was ruled: "The **Constitution does not authorize** the governor to suspend an incumbent of the office of county commissioner for an act of malfeasance or misfeasance in office committed by him prior to the date of the beginning of his current term of office as such county commissioner." (Emphasis supplied)

[301] ***Montgomery v. Nowell***, (183 Ark. 1116; 40 S.W.2d 418 [1931]; decided by the Supreme Court of Arkansas), the headnote reads as follows: "Crawford & Moses' Dig., 10, 335, providing for suspension of an officer on presentment or indictment for certain causes including malfeasance, in office **does not provide** for suspension of an officer on being indicted for official misconduct during a prior term of office." (Emphasis supplied)

[302] See Chief Justice Maria Lourdes P. A. Sereno's interpellation, TSN of the Oral Arguments, April 14, 2015, p. 43.

[303] See Ombudsman's Memorandum, *rollo*, Vol. II, p. 716, citing Silos, Miguel U., *A Re-examination of the Doctrine of Condonation of Public Officers*, 84, Phil. LJ 22, 69 (2009), p. 67.

could be no condonation of an act that is unknown. As observed in *Walsh v. City Council of Trenton*[304] decided by the New Jersey Supreme Court:

> Many of the cases holding that re-election of a public official prevents his removal for acts done in a preceding term of office are reasoned out on the theory of condonation. We cannot subscribe to that theory because condonation, implying as it does forgiveness, connotes knowledge and in the absence of knowledge there can be no condonation. One cannot forgive something of which one has no knowledge.

That being said, this Court simply finds no legal authority to sustain the condonation doctrine in this jurisdiction. As can be seen from this discourse, it was a doctrine adopted from one class of US rulings way back in 1959 and thus, out of touch from – and now rendered obsolete by – the current legal regime. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from *Pascual*, and affirmed in the cases following the same, such as *Aguinaldo*, *Salalima*, *Mayor Garcia*, and *Governor Garcia, Jr.* which were all relied upon by the CA.

It should, however, be clarified that this Court's abandonment of the condonation doctrine should be **prospective** in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.[305] Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial Bar Council*:[306]

> Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.[307]

Hence, while the future may ultimately uncover a doctrine's error, it should be, as **a general rule**, recognized as "good law" prior to its abandonment. Consequently, the people's reliance thereupon should be respected. The landmark case on this matter is *People v. Jabinal*,[308] wherein it was ruled:

> [W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

---

304 117 N.J.L. 64; 186 A. 818 (1936).
305 See Article 8 of the Civil Code.
306 632 Phil. 657 (2010).
307 Id. at 686.
308 154 Phil. 565 (1974).

Later, in *Spouses Benzonan v. CA*,[309] it was further elaborated:

> [P]ursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional.[310]

Indeed, the lessons of history teach us that institutions can greatly benefit from hindsight and rectify its ensuing course. Thus, while it is truly perplexing to think that a doctrine which is barren of legal anchorage was able to endure in our jurisprudence for a considerable length of time, this Court, under a new membership, takes up the cudgels and now abandons the condonation doctrine.

E. Consequence of ruling.

As for this section of the Decision, the issue to be resolved is **whether or not the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed injunctive writs**.

It is well-settled that an act of a court or tribunal can only be considered as with grave abuse of discretion **when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction**. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[311] It has also been held that "**grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence**."[312]

As earlier established, records disclose that the CA's resolutions directing the issuance of the assailed injunctive writs were all hinged on cases enunciating the condonation doctrine. To recount, the March 16, 2015 Resolution directing the issuance of the subject TRO was based on the case of *Governor Garcia, Jr.*, while the April 6, 2015 Resolution directing the

---

309 G.R. Nos. 97973 and 97998, January 27, 1992, 205 SCRA 515.
310 Id. at 527.
311 *Yu v. Reyes-Carpio*, 667 Phil. 474, 481-482 (2011).
312 *Tagolino v. House of Representatives Electoral Tribunal*, G.R. No. 202202, March 19, 2013, 693 SCRA 574, 599-600.

issuance of the subject WPI was based on the cases of *Aguinaldo*, *Salalima*, *Mayor Garcia,* and again, *Governor Garcia, Jr*. Thus, by merely following settled precedents on the condonation doctrine, which at that time, unwittingly remained "good law," it cannot be concluded that the CA committed a grave abuse of discretion based on its legal attribution above. Accordingly, the WPI against the Ombudsman's preventive suspension order was correctly issued.

With this, the ensuing course of action should have been for the CA to resolve the main petition for *certiorari* in **CA-G.R. SP No. 139453** on the merits. However, considering that the Ombudsman, on October 9, 2015, had already found Binay, Jr. administratively liable and imposed upon him the penalty of dismissal, which carries the accessory penalty of perpetual disqualification from holding public office, for the present administrative charges against him, the said CA petition appears to have been mooted.[313] As initially intimated, the preventive suspension order is only an ancillary issuance that, at its core, serves the purpose of assisting the Office of the Ombudsman in its investigation. It therefore has no more purpose – and perforce, dissolves – upon the termination of the office's process of investigation in the instant administrative case.

F. Exceptions to the mootness principle.

This notwithstanding, this Court deems it apt to clarify that the mootness of the issue regarding the validity of the preventive suspension order subject of this case does not preclude any of its foregoing determinations, particularly, its abandonment of the condonation doctrine. As explained in *Belgica*, "'the moot and academic principle' is not a magical formula that can automatically dissuade the Court in resolving a case. The Court will decide cases, otherwise moot, if: **first**, there is a grave violation of the Constitution; **second**, the exceptional character of the situation and the paramount public interest is involved; **third**, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and **fourth**, the case is capable of repetition yet evading review."[314] All of these scenarios obtain in this case:

First, it would be a violation of the Court's own duty to uphold and defend the Constitution if it were not to abandon the condonation doctrine now that its infirmities have become apparent. As extensively discussed, the continued application of the condonation doctrine is simply impermissible under the auspices of the present Constitution which explicitly mandates that public office is a public trust and that public officials shall be accountable to the people at all times.

---

313 See Press Release dated October 9, 2015 of the Office of the Ombdusman, <http://www.ombudsman.gov.ph/index.php?home=1&pressId=NzE3> (visited November 9, 2015).

314 Supra note 177, at 93.

Second, the condonation doctrine is a peculiar jurisprudential creation that has persisted as a defense of elective officials to escape administrative liability. It is the first time that the legal intricacies of this doctrine have been brought to light; thus, this is a situation of exceptional character which this Court must ultimately resolve. Further, since the doctrine has served as a perennial obstacle against exacting public accountability from the multitude of elective local officials throughout the years, it is indubitable that paramount public interest is involved.

Third, the issue on the validity of the condonation doctrine clearly requires the formulation of controlling principles to guide the bench, the bar, and the public. The issue does not only involve an in-depth exegesis of administrative law principles, but also puts to the forefront of legal discourse the potency of the accountability provisions of the 1987 Constitution. The Court owes it to the bench, the bar, and the public to explain how this controversial doctrine came about, and now, its reasons for abandoning the same in view of its relevance on the parameters of public office.

And fourth, the defense of condonation has been consistently invoked by elective local officials against the administrative charges filed against them. To provide a sample size, the Ombudsman has informed the Court that "for the period of July 2013 to December 2014 alone, 85 cases from the Luzon Office and 24 cases from the Central Office were dismissed on the ground of condonation. Thus, in just one and a half years, over a hundred cases of alleged misconduct – involving infractions such as dishonesty, oppression, gross neglect of duty and grave misconduct – were placed beyond the reach of the Ombudsman's investigatory and prosecutorial powers."[315] Evidently, this fortifies the finding that the case is capable of repetition and must therefore, not evade review.

In any event, the abandonment of a doctrine is wholly within the prerogative of the Court. As mentioned, it is its own jurisprudential creation and may therefore, pursuant to its mandate to uphold and defend the Constitution, revoke it notwithstanding supervening events that render the subject of discussion moot.

V.

With all matters pertaining to CA-G.R. SP No. 139453 passed upon, the Court now rules on the final issue on whether or not the CA's Resolution[316] dated March 20, 2015 directing the Ombudsman to comment on Binay, Jr.'s petition for contempt in CA-G.R. SP No. 139504 is improper and illegal.

---

315 See Ombudsman's Memorandum, *rollo*, Vol. II, p. 85.
316 *Rollo*, Vol. I, pp. 50-51.

The sole premise of the Ombudsman's contention is that, as an impeachable officer, she cannot be the subject of a charge for indirect contempt[317] because this action is criminal in nature and the penalty therefor would result in her effective removal from office.[318] However, a reading of the aforesaid March 20, 2015 Resolution **does not show that she has already been subjected to contempt proceedings**. This issuance, in fact, makes it clear that notwithstanding the directive for the Ombudsman to comment, **the CA has not necessarily given due course to Binay**, Jr.**'s contempt petition**:

> **Without necessarily giving due course to the Petition for Contempt**, respondents [Hon. Conchita Carpio Morales, in her capacity as the Ombudsman, and the Department of Interior and Local Government] are hereby DIRECTED to file Comment on the Petition/Amended and Supplemental Petition for Contempt (CA-G.R. SP No. 139504) within an inextendible period of three (3) days from receipt hereof.[319] (Emphasis and underscoring supplied)

Thus, even if the Ombudsman accedes to the CA's directive by filing a comment, wherein she may properly raise her objections to the contempt proceedings by virtue of her being an impeachable officer, the CA, in the exercise of its sound judicial discretion, may still opt not to give due course to Binay, Jr.'s contempt petition and accordingly, dismiss the same. Simply put, absent any indication that the contempt petition has been given due course by the CA, it would then be premature for this Court to rule on the issue. The submission of the Ombudsman on this score is perforce denied.

WHEREFORE, the petition is **PARTLY GRANTED**. Under the premises of this Decision, the Court resolves as follows:

(*a*) the second paragraph of Section 14 of Republic Act No. 6770 is declared **UNCONSTITUTIONAL**, while the policy against the issuance of provisional injunctive writs by courts other than the Supreme Court to enjoin an investigation conducted by the Office of the Ombudsman under the first paragraph of the said provision is declared **INEFFECTIVE** until the Court adopts the same as part of the rules of procedure through an administrative circular duly issued therefor;

---

317 See Amended and Supplemental Petition for Contempt dated March 18, 2015 wherein private respondent Binay, Jr. charged, *inter alia*, the Ombudsman for acts constituting indirect contempt under Section 3 (b), (c), and (d) of Rule 71 of the Rules of Court; id. at 362-375.

318 See *rollo*, Vol. II, pp. 734-743.

319 *Rollo*, Vol. I, p. 50.

(*b*) The condonation doctrine is **ABANDONED**, but the abandonment is **PROSPECTIVE** in effect;

(*c*) The Court of Appeals (CA) is **DIRECTED** to act on respondent Jejomar Erwin S. Binay, Jr.'s (Binay, Jr.) petition for *certiorari* in CA-G.R. SP No. 139453 in light of the Office of the Ombudsman's supervening issuance of its Joint Decision dated October 9, 2015 finding Binay, Jr. administratively liable in the six (6) administrative complaints, docketed as OMB-C-A-15-0058, OMB-C-A-15-0059, OMB-C-A-15-0060, OMB-C-A-15-0061, OMB-C-A-15-0062, and OMB-C-A-15-0063; and

(*d*) After the filing of petitioner Ombudsman Conchita Carpio Morales's comment, the CA is **DIRECTED** to resolve Binay, Jr.'s petition for contempt in CA-G.R. SP No. 139504 with utmost dispatch.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

NO PART
On Leave
ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

Please see my Concurring & Dissenting Opinion
LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

On Leave
JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

MARVIC M. V. F. LEONEN
Associate Justice

NO PART
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice