Republic of the Philippines
Supreme Court
Manila

EN BANC

CESAR MATAS CAGANG,
Petitioner,

-versus-

SANDIGANBAYAN, FIFTH DIVISION, QUEZON CITY; OFFICE OF THE OMBUDSMAN; and PEOPLE OF THE PHILIPPINES,
Respondents.

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CESAR MATAS CAGANG,
Petitioner,

-versus-

SANDIGANBAYAN, FIFTH DIVISION, QUEZON CITY; OFFICE OF THE OMBUDSMAN;

G.R. Nos. 206438 and 206458

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

G.R. Nos. 210141-42

Present:

CARPIO, *Acting, C.J.,*
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,*
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,*
CAGUIOA,
MARTIRES,*
TIJAM,
REYES, JR., and
GESMUNDO, *JJ.* *

* No part.

and PEOPLE OF THE PHILIPPINES,
Respondents.

Promulgated:
July 31, 2018

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DECISION

LEONEN, *J.*:

Every accused has the rights to due process and to speedy disposition of cases. Inordinate delay in the resolution and termination of a preliminary investigation will result in the dismissal of the case against the accused. Delay, however, is not determined through mere mathematical reckoning but through the examination of the facts and circumstances surrounding each case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. Nonetheless, the accused must invoke his or her constitutional rights in a timely manner. The failure to do so could be considered by the courts as a waiver of right.

G.R. Nos. 206438 and 206458 are Petitions for Certiorari with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction[1] assailing the Resolutions dated September 12, 2012[2] and January 15, 2013[3] of the Sandiganbayan. The assailed Resolutions denied Cesar Matas Cagang's (Cagang) Motion to Quash/Dismiss with Prayer to Void and Set Aside Order of Arrest in Criminal Case Nos. SB-11-CRM-0456 and SB-11-CRM-0457.

G.R. Nos. 210141-42, on the other hand, refer to a Petition for Certiorari with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction[4] assailing the June 18, 2013 Order[5] and September 10, 2013 Resolution[6] of the Sandiganbayan. The assailed Resolutions denied Cagang's Motion to Quash Order of Arrest in Criminal Case Nos. SB-11-CRM-0456 and SB-11-CRM-0457.

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1 *Rollo* (G.R. Nos. 206438 & 206458), pp. 4–69.

2 Id. at 83–540. The Resolution was penned by Associate Justice Amparo M. Cabotaje-Tang and concurred in by Associate Justices Roland B. Jurado and Alexander G. Gesmundo of the Fifth Division of the Sandiganbayan.

3 Id. at 71–81. The Resolution was penned by Associate Justice Amparo M. Cabotaje-Tang and concurred in by Associate Justices Roland B. Jurado and Alexander G. Gesmundo of the Fifth Division of the Sandiganbayan.

4 *Rollo* (G.R. Nos. 210141-42), pp. 4–21.

5 Id. at 23. The Order was penned by Associate Justices Alexander G. Gesmundo (Acting Chair), Alex L. Quiroz, and Oscar C. Herrera, Jr. of the Fifth Division of the Sandiganbayan.

6 Id. at 26–27. The Resolution was penned by Associate Justices Roland B. Jurado (Chair), Alexander G. Gesmundo, and Amparo M. Cabotaje-Tang of the Fifth Division of the Sandiganbayan.

Both Petitions question the Sandiganbayan's denial to quash the Informations and Order of Arrest against Cagang despite the Office of the Ombudsman's alleged inordinate delay in the termination of the preliminary investigation.

On February 10, 2003, the Office of the Ombudsman received an anonymous complaint alleging that Amelia May Constantino, Mary Ann Gadian, and Joy Tangan of the Vice Governor's Office, Sarangani Province committed graft and corruption by diverting public funds given as grants or aid using barangay officials and cooperatives as "dummies." The complaint was docketed as CPL-M-03-0163 and referred to the Commission on Audit for audit investigation. A news report of Sun Star Davao dated August 7, 2003 entitled "*₱61M from Sarangani coffers unaccounted*" was also docketed as CPL-M-03-0729 for the conduct of a fact-finding investigation.[7]

On December 31, 2002, the Commission on Audit submitted its audit report finding that the officials and employees of the Provincial Government of Sarangani appear to have embezzled millions in public funds by sourcing out the funds from grants, aid, and the Countrywide Development Fund of Representative Erwin Chiongbian using dummy cooperatives and people's organizations.[8] In particular, the Commission on Audit found that:

> (1) There were releases of financial assistance intended for non-governmental organizations/people's organizations and local government units that were fraudulently and illegally made through inexistent local development projects, resulting in a loss of ₱16,106,613.00;
>
> (2) Financial assistance was granted to cooperatives whose officials and members were government personnel or relatives of officials of Sarangani, which resulted in the wastage and misuse of government funds amounting to ₱2,456,481.00;
>
> (3) There were fraudulent encashment and payment of checks, and frequent travels of the employees of the Vice Governor's Office, which resulted in the incurrence by the province of unnecessary fuel and oil expense amounting to ₱83,212.34; and
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> (4) Inexistent Sagiptaniman projects were set up for farmers affected by calamities, which resulted in wastage and misuse of government funds amounting to ₱4,000,000.00.[9]

On September 30, 2003, the Office of the Ombudsman issued a Joint

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7 *Rollo* (G.R. Nos. 206438 & 206458), pp. 206–207.
8 Id. at 207–208.
9 Id. at 208.

Order terminating Case Nos. CPL-M-03-0163 and CPL-M-03-0729. It concurred with the findings of the Commission on Audit and recommended that a criminal case for Malversation of Public Funds through Falsification of Public Documents and Violation of Section 3(e) of Republic Act No. 3019 be filed against the public officers named by the Commission on Audit in its Summary of Persons that Could be Held Liable on the Irregularities. The list involved 180 accused.[10] The case was docketed as OMB-M-C-0487-J.

After considering the number of accused involved, its limited resources, and the volumes of case records, the Office of the Ombudsman first had to identify those accused who appeared to be the most responsible, with the intention to later on file separate cases for the others.[11]

In a Joint Order dated October 29, 2003, the accused were directed to file their counter-affidavits and submit controverting evidence. The complainants were also given time to file their replies to the counter-affidavits. There was delay in the release of the order since the reproduction of the voluminous case record to be furnished to the parties "was subjected to bidding and request of funds from the Central Office."[12] Only five (5) sets of reproductions were released on November 20, 2003 while the rest were released only on January 15, 2004.[13]

All impleaded elective officials and some of the impleaded appointive officials filed a Petition for Prohibition, Mandamus, Injunction with Writ of Preliminary Injunction and Temporary Restraining Order with Branch 28, Regional Trial Court of Alabel, Sarangani. The Regional Trial Court issued a Temporary Restraining Order enjoining the Office of the Ombudsman from enforcing its October 29, 2003 Joint Order.[14]

In an Order dated December 19, 2003, the Regional Trial Court dismissed the Petition on the ground that the officials had filed another similar Petition with this Court, which this Court had dismissed.[15] Thus, some of the accused filed their counter-affidavits.[16]

After what the Office of the Ombudsman referred to as "a considerable period of time," it issued another Order directing the accused who had not yet filed their counter-affidavits to file them within seven (7) days or they will be deemed to have waived their right to present evidence on their behalf.[17]

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10 Id. at 210.
11 Id. at 210–211.
12 Id. at 211.
13 Id. at 212.
14 Id. at 212.
15 Id. at 212–213.
16 Id. at 213.
17 Id.

In a 293-page Resolution[18] dated August 11, 2004 in OMB-M-C-0487-J, the Ombudsman found probable cause to charge Governor Miguel D. Escobar, Vice Governor Felipe Constantino, Board Members, and several employees of the Office of the Vice Governor of Sarangani and the Office of the Sangguniang Panlalawigan with Malversation through Falsification of Public Documents and Violation of Section 3(e) of Republic Act No. 3019.[19] Then Tanodbayan Simeon V. Marcelo (Tanodbayan Marcelo) approved the Resolution, noting that it was modified by his Supplemental Order dated October 18, 2004.[20]

In the Supplemental Order dated October 18, 2004, Tanodbayan Marcelo ordered the conduct of further fact-finding investigations on some of the other accused in the case. Thus, a preliminary investigation docketed as OMB-M-C-0480-K was conducted on accused Hadji Moner Mangalen (Mangalen) and Umbra Macagcalat (Macagcalat).[21]

In the meantime, the Office of the Ombudsman filed an Information dated July 12, 2005, charging Miguel Draculan Escobar (Escobar), Margie Purisima Rudes (Rudes), Perla Cabilin Maglinte (Maglinte), Maria Deposo Camanay (Camanay), and Cagang of Malversation of Public Funds thru Falsification of Public Documents.[22] The Information read:

> That on July 17, 2002 or prior subsequent thereto in Sarangani, Philippines, and within the jurisdiction of this Honorable Court, accused Miguel Draculan Escobar, being the Governor of the Province of Sarangani, Margie Purisima Rudes, Board Member, Perla Cabilin Maglinte, Provincial Administrator, Maria Deposo Camanay, Provincial Accountant, and Cesar Matas Cagang, Provincial Treasurer, and all high-ranking and accountable public officials of the Provincial Government of Sarangani by reason of their duties, conspiring and confederating with one another, while committing the offense in relation to office, taking advantage of their respective positions, did then and there willfully, unlawfully and feloniously take, convert and misappropriate the amount of THREE HUNDRED SEVENTY[-]FIVE THOUSAND PESOS (P375,000.00), Philippine Currency, in public funds under their custody, and for which they are accountable, by falsifying or causing to be falsified Disbursement Voucher No. 101-2002-7-10376 and its supporting documents, making it appear that financial assistance has been sought by Amon Lacungam, the alleged President of Kalalong Fishermen's Group of Brgy. Kalaong, Maitum, Sarangani, when in truth and in fact, the accused knew fully well that no financial assistance had been requested by Amon Lacungan and his association, nor did said Amon Lacungan and his association receive the aforementioned amount, thereby facilitating the

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18 Id. at 201–490.
19 Id. at 468–490.
20 Id. at 490.
21 Id. at 1091.
22 Id. at 936–939.

> release of the above-mentioned public funds in the amount of THREE HUNDRED SEVENTY[-]FIVE THOUSAND PESOS (P375,000.00) through the encashment by the accused of Development Bank of the Philippines (DBP) Check No. 11521401 dated July 17, 2002, which amount they subsequently misappropriated to their personal use and benefit, and despite demand, said accused failed to return the said amount to the damage and prejudice of the government and the public interest in the aforesaid sum.
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> CONTRARY TO LAW.[23]

The Sandiganbayan docketed the case as Crim. Case No. 28331. Escobar, Maglinte, and Cagang were arraigned on December 6, 2005 where they pleaded not guilty. Rudes and Camanay remained at large.[24]

On June 17, 2010, the Sandiganbayan rendered a Decision[25] in Crim. Case No. 28331 acquitting Escobar, Maglinte, and Cagang for insufficiency of evidence. Maglinte, however, was ordered to return ₱100,000.00 with legal interest to the Province of Sarangani. The cases against Rudes and Camanay were archived until the Sandiganbayan could acquire jurisdiction over their persons.[26]

In a Memorandum[27] dated August 8, 2011 addressed to Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales), Assistant Special Prosecutor III Pilarita T. Lapitan reported that on April 12, 2005, a Resolution[28] was issued in OMB-M-C-0480-K finding probable cause to charge Mangalen and Macagcalat with Malversation of Public Funds through Falsification and Violation of Section 3(e) of Republic Act No. 3019.[29] Thus, it prayed for the approval of the attached Informations:

> It should be noted that in a Memorandum dated 10 December 2004 and relative to OMB-M-C-03-0487-J from which OMB-M-C-04-0480-K originated, Assistant Special Prosecutor Maria Janina Hidalgo recommended to Ombudsman Marcelo that the status of state witness be conferred upon Gadian. This recommendation was approved by Ombudsman Marcelo on 20 December 2004. Hence, as may be noted[,] Gadian was no longer included as respondent and accused in the Resolution dated 12 April 2005 and the attached Information.
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> Related cases that originated from OMB-M-C-03-0487-J for which no further preliminary investigation is necessary were filed before the

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23 Id. at 941.
24 Id.
25 Id. at 491–583. The Decision was penned by Associate Justice Gregory S. Ong (Chair) and concurred in by Associate Justices Jose R. Hernandez and Samuel R. Martires of the Fourth Division of the Sandiganbayan.
26 Id. at 582.
27 Id. at 430–434.
28 Id. at 424–429.
29 Id. at 428–429.

> courts. One of these cases is now docketed as Criminal Case No. 28293 and pending before the Sandiganbayan, First Division. It is noteworthy that in its Order dated 14 November 2006 the Sandiganbayan, First Division granted the Motion to Dismiss of the counsel of Felipe Constantino after having submitted a duly certified true copy of his client's Death Certificate issued by the National Statistics Office. Considering the fact therefore, there is a necessity to drop Constantino as accused in this case and accordingly, revised the attached Information.
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> An Information for Malversation through Falsification of Public Documents is also submitted for your Honor's approval considering that no such Information is attached to the records of this case.
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> VIEWED IN THE FOREGOING LIGHT, it is respectfully recommended that, in view of his death, Felipe Constantino no longer be considered as accused in this case and that the attached Informations be approved.[30]

Ombudsman Carpio Morales approved the recommendation on October 20, 2011.[31] Thus, on November 17, 2011, Informations[32] for Violation of Section 3(e) of Republic Act No. 3019 and Malversation of Public Funds through Falsification of Public Documents were filed against Cagang, Camanay, Amelia Carmela Constantino Zoleta (Zoleta), Macagcalat, and Mangalen. The Informations read:

> [For Violation of Section 3(e), Republic Act No. 3019]
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> That on 20 September 2002, or sometime prior or subsequent thereto, in Sarangani, Philippines, and within the jurisdiction of this Honorable Court, accused Provincial Treasurer CESAR MATAS CAGANG, Provincial Accountant MARIA DEPOSO CAMANAY, and Executive Assistant to Vice Governor Felipe Katu Constantino, AMELIA CARMELA CONSTANTINO ZOLETA, and then Vice-Governor and now deceased Felipe Katu Constantino, all of the Provincial Government of Sarangani, committing the offense in relation to the performance of their duties and functions, taking advantage of their respective official positions, through manifest partiality, evident bad faith or gross inexcusable negligence, conspiring and confederating with Barangay Captain UMBRA ADAM MACAGCALAT and HADJI MONER MANGALEN, the alleged President and Treasurer, respectively of Kamanga Muslim-Christian Fishermen's Cooperative ("Cooperative"), did then and there willfully, unlawfully and feloniously cause the disbursement of the amount of Three Hundred and Fifty Thousand Pesos (P350,000.00) under SARO No. D-98000987 through Development Bank of the Philippines Check No. 282398 dated 20 September 2002 and with HADJI MONER MANGELEN as payee thereof, by falsifying Disbursement Voucher No. 401-200209-148 dated 20 September 2002 and its supporting documents to make it appear that financial assistance was requested and given to the Cooperative, when in truth and in fact, neither was there a request for financial assistance received by the said

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30 *Rollo* (G.R. Nos. 210141-42), pp. 433–434.
31 Id. at 434.
32 *Rollo* (G.R. Nos. 206438 & 206458), pp. 140–147.

Cooperative after the check was encashed, as herein accused, conspiring and confederating with each other, did then and there malverse, embezzle, misappropriate and convert to their own personal use and benefit the said amount of P350,000.00 thereby causing undue injury to the government in the aforesaid amount.

CONTRARY TO LAW.

[For Malversation of Public Funds thru Falsification of Public Documents]

That on 20 September 2002, or sometime prior or subsequent thereto, in Sarangani, Philippines, and within the jurisdiction of this Honorable Court, accused Provincial Treasurer CESAR MATAS CAGANG, and now deceased Felipe Katu Constantino, being then the Provincial Treasurer and Vice-Governor respectively, of the Province of Sarangani who, by reason of their public positions, are accountable for and has control of public funds entrusted and received by them during their incumbency as Provincial Treasurer and Vice-Governor respectively, of said province, with accused Provincial Accountant MARIA DEPOSO CAMANAY, and Executive Assistant to Vice Governor Felipe Katu Constantino, AMELIA CARMELA CONSTANTINO ZOLETA, and then Vice-Governor and now deceased Felipe Katu Constantino, all of the Provincial Government of Sarangani, committing the offense in relation to the performance of their duties and functions, taking advantage of their respective official positions, conspiring and confederating with Barangay Captain UMBRA ADAM MACAGCALAT and HADJI MONER MANGALEN, the alleged President and Treasurer, respectively of Kamanga Muslim-Christian Fishermen's Cooperative ("Cooperative"), did then and there willfully, unlawfully and feloniously falsify or cause to be falsified Disbursement Voucher No. 401-200209-148 dated 20 September 2002 and its supporting documents, by making it appear that financial assistance in the amount of Three Hundred and Fifty Thousand Pesos (P350,000.00) had been requested by the Cooperative, with CESAR MATAS CAGANG, despite knowledge that the amount of P350,000.00 is to be sourced out from SARO No. D-98000987, still certifying that cash is available for financial assistance when Countrywide Development Funds could not be disbursed for financial aids and assistance pursuant to DBM Circular No. 444, and MARIA DEPOSO CAMANAY certifying as to the completeness and propriety of the supporting documents despite non-compliance with Commission on Audit Circular No. 96-003 prescribing the requirements for disbursements of financial assistance and aids, thus facilitating the issuance of Development Bank of the Philippines Check No. 282398 dated 20 September 2002 in the amount of P350,000.00 and in the name of HADJI MONER MANGELEN, the alleged Treasurer of the Cooperative, when in truth and in fact, neither was there a request for financial assistance received by the said Cooperative after the check was encashed, as herein accused, conspiring and confederating with each other, did then and there malverse, embezzle, misappropriate and convert to their own personal use and benefit the said amount of P350,000.00 thereby causing undue injury to the government in the aforesaid amount.

CONTRARY TO LAW.[33]

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[33] *Rollo* (G.R. Nos. 210141-42), pp. 35–42.

The cases were docketed as Criminal Case Nos. SB-11-0456 and SB-11-0457.

Cagang filed a Motion to Quash/Dismiss with Prayer to Void and Set Aside Order of Arrest while Macagcalat and Mangalen separately filed their own Motion to Quash/Dismiss with Prayer to Void and Set Aside Order of Arrest. Cagang argued that there was an inordinate delay of seven (7) years in the filing of the Informations. Citing *Tatad v. Sandiganbayan*[34] and *Roque v. Ombudsman*,[35] he argued that the delay violated his constitutional rights to due process and to speedy disposition of cases.[36] The Office of the Ombudsman, on the other hand, filed a Comment/Opposition arguing that the accused have not yet submitted themselves to the jurisdiction of the court and that there was no showing that delay in the filing was intentional, capricious, whimsical, or motivated by personal reasons.[37]

On September 10, 2012, the Sandiganbayan issued a Resolution[38] denying the Motions to Quash/Dismiss. It found that Cagang, Macagcalat, and Mangalen voluntarily submitted to the jurisdiction of the court by the filing of the motions.[39] It also found that there was no inordinate delay in the issuance of the information, considering that 40 different individuals were involved with direct participation in more or less 81 different transactions.[40] It likewise found *Tatad* and *Roque* inapplicable since the filing of the Informations was not politically motivated.[41] It pointed out that the accused did not invoke their right to speedy disposition of cases before the Office of the Ombudsman but only did so after the filing of the Informations.[42]

Cagang filed a Motion for Reconsideration[43] but it was denied in a Resolution[44] dated January 15, 2013. Hence, Cagang filed a Petition for Certiorari[45] with this Court, docketed as G.R. Nos. 206438 and 206458.[46]

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34 242 Phil. 563 (1988) [Per J. Yap, En Banc].
35 366 Phil. 368 (1999) [Per J. Panganiban, Third Division].
36 *Rollo* (G.R. Nos. 206438 & 206458), p. 84.
37 Id. at 85–86.
38 Id. at 83–108. The Resolution was penned by Associate Justice Amparo M. Cabotaje-Tang and concurred in by Associate Justices Roland B. Jurado (Chair) and Alexander G. Gesmundo of the Fifth Division of the Sandiganbayan.
39 *Rollo* (G.R. Nos. 206438 & 206458), pp. 91–92.
40 Id. at 103–104.
41 Id. at 94–95.
42 Id. at 104.
43 Id. at 109–139.
44 Id. at 71–81. The Resolution was penned by Associate Justice Amparo M. Cabotaje-Tang and concurred in by Associate Justices Roland B. Jurado (Chair) and Alexander G. Gesmundo of the Fifth Division Sandiganbayan.
45 Id. at 4–69.
46 The Sandiganbayan, the Office of the Ombudsman, and the People were ordered to comment on the petition. (*Rollo* [G.R. Nos. 206438 & 206458], p. 1036).

In an Urgent Motion to Quash Order of Arrest[47] dated June 13, 2013 filed before the Sandiganbayan, Cagang alleged that an Order of Arrest was issued against him.[48] He moved for the quashal of the Order on the ground that he had a pending Petition for Certiorari before this Court.[49]

In an Order[50] dated June 28, 2013, the Sandiganbayan denied the Urgent Motion to Quash Order of Arrest on the ground that it failed to comply with the three (3)-day notice rule and that no temporary restraining order was issued by this Court.

Cagang filed a Motion for Reconsideration[51] but it was denied by the Sandiganbayan in a Resolution[52] dated September 10, 2013. Hence, he filed a Petition for Certiorari with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction,[53] essentially seeking to restrain the implementation of the Order of Arrest against him. This Petition was docketed as G.R. Nos. 210141-42.

On February 5, 2014, this Court issued a Temporary Restraining Order[54] in G.R. Nos. 210141-42 enjoining the Sandiganbayan from continuing with the proceedings of the case and from implementing the warrant of arrest against Cagang. This Court likewise consolidated G.R. Nos. 206438 and 206458 with G.R. Nos. 210141-42.[55] The Office of the Special Prosecutor submitted its separate Comments[56] to the Petitions on behalf of the People of the Philippines and the Office of the Ombudsman.[57]

Petitioner argues that the Sandiganbayan committed grave abuse of discretion when it dismissed his Motion to Quash/Dismiss since the Informations filed against him violated his constitutional rights to due process and to speedy disposition of cases. Citing *Tatad v. Sandiganbayan*,[58] he argues that the Office of the Ombudsman lost its jurisdiction to file the cases in view of its inordinate delay in terminating the preliminary investigation almost seven (7) years after the filing of the complaint.[59]

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47 *Rollo* (G.R. Nos. 210141-42), pp. 43–47.
48 A copy of the Order of Arrest is not attached to the *rollo*.
49 *Rollo* (G.R. Nos. 210141-42), pp. 44–45.
50 Id. at 23. The Order was penned by Associate Justices Alexander G. Gesmundo (Acting Chair), Alex L. Quirol, and Oscar C. Herrera, Jr. of the Fifth Division of the Sandiganbayan.
51 Id. at 29–34.
52 Id. at 26–27. The Resolution was penned by Associate Justices Roland B. Jurado (Chair), Alexander G. Gesmundo, and Amparo M. Cabotaje-Tang of the Fifth Division of the Sandiganbayan.
53 Id. at 4–21.
54 Id. at 112–113.
55 Id. at 111.
56 *Rollo* (G.R. Nos. 206438 & 206458) pp. 1062–1074, and *Rollo* (G.R. Nos. 210141-42), pp. 117–129.
57 Petitioner filed his Reply in G.R. Nos. 206438 & 206458 (*Rollo*, pp. 1522–1526) and filed a Compliance with Motion to Adopt Reply dated 11 September 2015 in G.R. Nos. 210141-42 (*Rollo*, pp. 482–487).
58 242 Phil. 563 (1988) [Per J. Yap, En Banc].
59 *Rollo* (G.R. Nos. 206438 & 206458), p. 30.

Petitioner further avers that the dismissal of cases due to inordinate delay is not because the revival of the cases was politically motivated, as in *Tatad*, but because it violates Article III, Section 16 of the Constitution[60] and Rule 112, Section 3(f)[61] of the Rules of Court.[62] He points out that the Sandiganbayan overlooked two (2) instances of delay by the Office of the Ombudsman: the first was from the filing of the complaint on February 10, 2003 to the filing of the Informations on November 17, 2011, and the second was from the conclusion of the preliminary investigation in 2005 to the filing of the Informations on November 17, 2011.[63]

Petitioner asserts that the alleged anomalous transactions in this case were already thoroughly investigated by the Commission on Audit in its Audit Report; thus, the Office of the Ombudsman should not have taken more than seven (7) years to study the evidence needed to establish probable cause.[64] He contends that "[w]hen the Constitution enjoins the Office of the Ombudsman to 'act promptly' on any complaint against any public officer or employee, it has the concomitant duty to speedily resolve the same."[65]

Petitioner likewise emphasizes that the Sandiganbayan should have granted his Motion to Quash Order of Arrest since there was a pending Petition before this Court questioning the issuance of the Informations against him. He argues that the case would become moot if the Order of Arrest is not quashed.[66]

The Office of the Special Prosecutor, on the other hand, alleges that petitioner, along with his co-accused Camanay, Zoleta, Macagcalat, and Magalen have remained at large and cannot be located by the police, and that they have not yet surrendered or been arrested.[67] It argues that the parameters necessary to determine whether there was inordinate delay have been repeatedly explained by the Sandiganbayan in the assailed Resolutions. It likewise points out that petitioner should have invoked his right to speedy disposition of cases when the case was still pending before the Office of the Ombudsman, not when the Information was already filed with the Sandiganbayan. It argues further that *Tatad* was inapplicable since there were peculiar circumstances which prompted this Court to dismiss the

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60 CONST, art. III, sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

61 RULES OF COURT, Rule 112, sec. 3. Procedure. -- The preliminary investigation shall be conducted in the following manner:

. . . .

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

62 *Rollo* (G.R. Nos. 206438 & 206458), pp. 42–55.

63 Id. at 51.

64 Id. at 56.

65 Id. at 60.

66 *Rollo* (G.R. Nos. 210141-42), pp. 13–14.

67 *Rollo* (G.R. Nos. 206438 & 206458), p. 1062.

information due to inordinate delay.[68]

The Office of the Special Prosecutor argues that the Sandiganbayan already made a judicial determination of the existence of probable cause pursuant to its duty under Rule 112, Section 5 of the Rules of Court.[69] It points out that a petition for certiorari is not the proper remedy to question the denial of a motion to quash and that the appropriate remedy should be to proceed to trial.[70]

Procedurally, the issues before this Court are whether or not the pendency of a petition for certiorari with this Court suspends the proceedings before the Sandiganbayan, and whether or not the denial of a motion to quash may be the subject of a petition for certiorari. This Court is also tasked to resolve the sole substantive issue of whether or not the Sandiganbayan committed grave abuse of discretion in denying petitioner Cesar Matas Cagang's Motion to Quash/Dismiss with Prayer to Void and Set Aside Order of Arrest and Urgent Motion to Quash Order of Arrest on the ground of inordinate delay.

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To give full resolution to this case, this Court must first briefly pass upon the procedural issues raised by the parties.

Contrary to petitioner's arguments, the pendency of a petition for certiorari before this Court will not prevent the Sandiganbayan from proceeding to trial absent the issuance of a temporary restraining order or writ of preliminary injunction. Under Rule 65, Section 7[71] of the Rules of Court:

> Section 7. Expediting proceedings; injunctive relief. — The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case.
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> The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for certiorari with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to

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68 Id. at 1069–1072.
69 *Rollo* (G.R. Nos. 210141-42), p. 125.
70 Id. at 127.
71 As amended by A.M. No. 07-7-12-SC (2007).

> proceed with the principal case may be a ground for an administrative charge.

Since this Court did not issue injunctive relief when the Petition in G.R. Nos. 206438 and 206458 was filed, the Sandiganbayan cannot be faulted from proceeding with trial. It was only upon the filing of the Petition in G.R. Nos. 210141-42 that this Court issued a Temporary Restraining Order to enjoin the proceedings before the Sandiganbayan.

As a general rule, the denial of a motion to quash is not appealable as it is merely interlocutory. Likewise, it cannot be the subject of a petition for certiorari. The denial of the motion to quash can still be raised in the appeal of a judgment of conviction. The adequate, plain, and speedy remedy is to proceed to trial and to determine the guilt or innocence of the accused. Thus, in *Galzote v. Briones*:[72]

> ...In the usual course of procedure, a denial of a motion to quash filed by the accused results in the continuation of the trial and the determination of the guilt or innocence of the accused. If a judgment of conviction is rendered and the lower court's decision of conviction is appealed, the accused can then raise the denial of his motion to quash not only as an error committed by the trial court but as an added ground to overturn the latter's ruling.
>
> In this case, the petitioner did not proceed to trial but opted to immediately question the denial of his motion to quash via a special civil action for certiorari under Rule 65 of the Rules of Court.
>
> As a rule, the denial of a motion to quash is an interlocutory order and is not appealable; an appeal from an interlocutory order is not allowed under Section 1 (b), Rule 41 of the Rules of Court. Neither can it be a proper subject of a petition for certiorari which can be used only in the absence of an appeal or any other adequate, plain and speedy remedy. The plain and speedy remedy upon denial of an interlocutory order is to proceed to trial as discussed above.[73]

Ordinarily, the denial of a motion to quash simply signals the commencement of the process leading to trial. The denial of a motion to quash, therefore, is not necessarily prejudicial to the accused. During trial, and after arraignment, prosecution proceeds with the presentation of its evidence for the examination of the accused and the reception by the court. Thus, in a way, the accused is then immediately given the opportunity to meet the charges on the merits. Therefore, if the case is intrinsically without any grounds, the acquittal of the accused and all his suffering due to the charges can be most speedily acquired.

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[72] 673 Phil. 165 (2011) [Per J. Brion, Second Division].

[73] Id. at 172 citing *Santos v. People*, 585 Phil. 337 (2008) [Per J. Chico-Nazario, Third Division].

The rules and jurisprudence, thus, balance procedural niceties and the immediate procurement of substantive justice. In our general interpretation, therefore, the accused is normally invited to meet the prosecution's evidence squarely during trial rather than skirmish on procedural points.

A party may, however, question the denial in a petition for certiorari if the party can establish that the denial was tainted with grave abuse of discretion:

> [A] direct resort to a special civil action for certiorari is an exception rather than the general rule, and is a recourse that must be firmly grounded on compelling reasons. In past cases, we have cited the interest of a "more enlightened and substantial justice;" the promotion of public welfare and public policy; cases that "have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof;" or judgments on order attended by grave abuse of discretion, as compelling reasons to justify a petition for certiorari.
>
> In grave abuse of discretion cases, certiorari is appropriate if the petitioner can establish that the lower court issued the judgment or order without or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief. The petitioner carries the burden of showing that the attendant facts and circumstances fall within any of the cited instances.[74]

Petitioner alleges that the Sandiganbayan committed grave abuse of discretion when it denied his Motion to Quash/Dismiss, insisting that the denial transgressed upon his constitutional rights to due process and to speedy disposition of cases. A petition for certiorari under Rule 65 is consistent with this theory.

II

The Constitution guarantees the right to speedy disposition of cases. Under Article III, Section 16:

> Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

The right to speedy disposition of cases should not be confused with the right to a speedy trial, a right guaranteed under Article III, Section 14(2) of the Constitution:

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[74] Id. at 172–173 *citing Curata v. Philippine Ports Authority*, 608 Phil. 9 (2009) [Per J. Velasco, En Banc].

> Section 14.
>
> . . . .
>
> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

The right to a speedy trial is invoked against the courts in a criminal prosecution. The right to speedy disposition of cases, however, is invoked even against quasi-judicial or administrative bodies in civil, criminal, or administrative cases before them. As *Abadia v. Court of Appeals*[75] noted:

> The Bill of Rights provisions of the 1987 Constitution were precisely crafted to expand substantive fair trial rights and to protect citizens from procedural machinations which tend to nullify those rights. Moreover, Section 16, Article III of the Constitution extends the right to a speedy disposition of cases to cases "before all judicial, quasi-judicial and administrative bodies." This protection extends to all citizens, including those in the military and covers the periods before, during and after the trial, affording broader protection than Section 14(2) which guarantees merely the right to a speedy trial.[76]

Both rights, nonetheless, have the same rationale: to prevent delay in the administration of justice. In *Corpuz v. Sandiganbayan*:[77]

> The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.
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> While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances.

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75 306 Phil. 690 (1994) [Per J. Kapunan, En Banc].

76 Id. at 698–699.

77 484 Phil. 899 (2004) [Per J. Callejo, Sr., Second Division].

> It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.[78]

While the right to speedy trial is invoked against courts of law, the right to speedy disposition of cases may be invoked before quasi-judicial or administrative tribunals in proceedings that are adversarial and may result in possible criminal liability. The right to speedy disposition of cases is most commonly invoked in fact-finding investigations and preliminary investigations by the Office of the Ombudsman since neither of these proceedings form part of the actual criminal prosecution. The Constitution itself mandates the Office of the Ombudsman to "act promptly" on complaints filed before it:

> Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.[79]

As if to underscore the importance of its mandate, this constitutional command is repeated in Republic Act No. 6770,[80] which provides:

> Section 13. Mandate. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

Neither the Constitution nor Republic Act No. 6770 provide for a specific period within which to measure promptness. Neither do they provide for criteria within which to determine what could already be considered as delay in the disposition of complaints. Thus, judicial interpretation became necessary to determine what could be considered "prompt" and what length of time could amount to unreasonable or "inordinate delay."

The concept of inordinate delay was introduced in *Tatad v. Sandiganbayan*,[81] where this Court was constrained to apply the "radical

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78 Id. at 917 citing *State v. Frith*, 194 So. 1 (1940); *Smith v. United States*, 3 L.Ed.2d 1041 (1959); *Barker v. Wingo*, 33 L.Ed.2d 101 (1972); and *McCandles v. District Court*, 61 N.W.2d. 674 (1954).

79 CONST., art. XI, sec. 12.

80 The Ombudsman Act of 1989.

81 242 Phil. 563 (1988) [Per J. Yap, En Banc].

relief" of dismissing the criminal complaint against an accused due to the delay in the termination of the preliminary investigation.

In *Tatad*, a report was submitted to the Legal Panel, Presidential Security Command sometime in October 1974, charging Francisco S. Tatad (Tatad) with graft and corruption during his stint as Minister of Public Information. In October 1979, Tatad submitted his resignation. It was only on December 29, 1979 that a criminal complaint was filed against him. Then President Ferdinand Marcos accepted his resignation on January 26, 1980. On April 1, 1980, the Tanodbayan[82] referred the complaint to the Criminal Investigation Service, Presidential Security Command for fact-finding. On June 16, 1980, the Investigation Report was submitted finding Tatad liable for violation of Republic Act No. 3019.

Tatad moved for the dismissal of the case but this was denied on July 26, 1982. His motion for reconsideration was denied on October 5, 1982. Affidavits and counter-affidavits were submitted on October 25, 1982. On July 5, 1985, the Tanodbayan issued a resolution approving the filing of informations against Tatad. Tatad filed a motion to quash on July 22, 1985. The motion to quash was denied by the Sandiganbayan on August 9, 1985. The Sandiganbayan, however, ordered the filing of an amended information to change the date of the alleged commission of the offense. In compliance, the Tanodbayan submitted its amended information on August 10, 1985. Tatad filed a motion for reconsideration but it was denied by the Sandiganbayan on September 17, 1985. Hence, he filed a Petition for Certiorari and Prohibition with this Court, questioning the filing of the cases with the Sandiganbayan.

On April 10, 1986, this Court required the parties to move in the premises considering the change in administration brought about by the EDSA Revolution and the overthrow of the Marcos regime. On June 20, 1986, the new Tanodbayan manifested that as the charges were not political in nature, the State would still pursue the charges against Tatad.

In resolving the issue of whether Tatad's constitutional rights to due process and to speedy disposition of cases were violated, this Court took note that the finding of inordinate delay applies in a case-to-case basis:

> In a number of cases, this Court has not hesitated to grant the so-called "radical relief" and to spare the accused from undergoing the rigors and expense of a full-blown trial where it is clear that he has been deprived of due process of law or other constitutionally guaranteed rights. Of course, it goes without saying that in the application of the doctrine

[82] The Tanodbayan is now the Ombudsman. *See* CONST., art. XI, sec. 5 & The Ombudsman Act of 1989.

> enunciated in those cases, particular regard must be taken of the facts and circumstances peculiar to each case.[83]

This Court found that there were peculiar circumstances which attended the preliminary investigation of the complaint, the most blatant of which was that the 1974 report against Tatad was only acted upon by the Tanodbayan when Tatad had a falling out with President Marcos in 1979:

> A painstaking review of the facts cannot but leave the impression that political motivations played a vital role in activating and propelling the prosecutorial process in this case. Firstly, the complaint came to life, as it were, only after petitioner Tatad had a falling out with President Marcos. Secondly, departing from established procedures prescribed by law for preliminary investigation, which require the submission of affidavits and counter-affidavits by the Tanodbayan referred the complaint to the Presidential Security Command for fact-finding investigation and report.
>
> We find such blatant departure from the established procedure as a dubious, but revealing attempt to involve an office directly under the President in the prosecution was politically motivated. We cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends or other purposes alien to, or subversive of, the basic and fundamental objective of serving the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may the public's perception of the impartiality of the prosecutor be enhanced.[84]

Thus, the delay of three (3) years in the termination of the preliminary investigation was found to have been inordinate delay, which was violative of petitioner's constitutional rights:

> We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutionally guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Rights (both in the 1973 and the 1987 Constitutions), the inordinate delay is violative of the petitioner's constitutional rights. A delay of close to three (3) years cannot be deemed reasonable or justifiable in the light of the circumstance obtaining in the

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[83] 242 Phil. 563, 573 (1988) [Per J. Yap, En Banc] *citing Salonga vs. Cruz Paño,* 219 Phil. 402 (1985) [Per J. Gutierrez, En Banc]; *Mead vs. Argel*, 200 Phil. 650 (1982) [Per J. Vasquez, First Division]; *Yap vs. Lutero*, 105 Phil. 3007; and *People vs. Zulueta*, 89 Phil. 752 (1951) [Per J. Bengzon, First Division].

[84] Id. at 574–575.

> case at bar. We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and grueling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high-ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liabilities required by Republic Act No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and grueling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. The other two charges relating to alleged bribery and alleged giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, certainly do not warrant or justify the period of three years, which it took the Tanodbayan to resolve the case.[85]

Political motivation, however, is merely one of the circumstances to be factored in when determining whether the delay is inordinate. The absence of political motivation will not prevent this Court from granting the same "radical relief." Thus, in *Angchangco v. Ombudsman*,[86] this Court dismissed the criminal complaints even if the petition filed before this Court was a petition for mandamus to compel the Office of the Ombudsman to resolve the complaints against him after more than six (6) years of inaction:

> Here, the Office of the Ombudsman, due to its failure to resolve the criminal charges against petitioner for more than six years, has transgressed on the constitutional right of petitioner to due process and to a speedy disposition of the cases against him, as well as the Ombudsman's own constitutional duty to act promptly on complaints filed before it. For all these past 6 years, petitioner has remained under a cloud, and since his retirement in September 1994, he has been deprived of the fruits of his retirement after serving the government for over 42 years all because of the inaction of respondent Ombudsman. If we wait any longer, it may be too late for petitioner to receive his retirement benefits, not to speak of clearing his name. This is a case of plain injustice which calls for the issuance of the writ prayed for.[87]

As in *Angchangco*, this Court has applied the *Tatad* doctrine in *Duterte v. Sandiganbayan*,[88] *Roque v. Ombudsman*,[89] *Cervantes v. Sandiganbayan*,[90] *Lopez, Jr. v. Ombudsman*,[91] *Licaros v. Sandiganbayan*,[92] *People v. SPO4 Anonas*,[93] *Enriquez v. Ombudsman*,[94] *People v.*

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85 Id. at 575–576.
86 335 Phil. 766 (1997) [Per J. Melo, Third Division].
87 Id. at 772.
88 352 Phil. 557 (1998) [Per J. Kapunan, Third Division].
89 366 Phil. 368 (1999) [Per J. Panganiban, Third Division].
90 366 Phil. 602 (1999) [Per J. Pardo, First Division].
91 417 Phil. 39 (2001) [Per J. Gonzaga-Reyes, Third Division].
92 421 Phil. 1075 (2001) [Per J. Panganiban, En Banc].
93 542 Phil. 539 (2007) [Per J. Sandoval-Gutierrez, First Division].
94 569 Phil. 309 (2008) [Per J. Sandoval-Gutierrez, First Division].

Sandiganbayan, First Division,[95] *Inocentes v. People*,[96] *Almeda v. Ombudsman*,[97] *People v. Sandiganbayan, Fifth Division*,[98] *Torres v. Sandiganbayan*,[99] and *Remulla v. Sandiganbayan*.[100]

This Court, however, emphasized that "[a] mere mathematical reckoning of the time involved is not sufficient"[101] to rule that there was inordinate delay. Thus, it qualified the application of the *Tatad* doctrine in cases where certain circumstances do not merit the application of the "radical relief" sought.

Despite the promulgation of *Tatad*, however, this Court struggled to apply a standard test within which to determine the presence of inordinate delay. *Martin v. Ver*,[102] decided in 1983, attempted to introduce in this jurisdiction the "balancing test" in the American case of *Barker v. Wingo*, thus:

> [T]he right to a speedy trial is a more vague and generically different concept than other constitutional rights guaranteed to accused persons and cannot be quantified into a specified number of days or months, and it is impossible to pinpoint a precise time in the judicial process when the right must be asserted or considered waived ...
>
> [A] claim that a defendant has been denied his right to a speedy trial is subject to a balancing test, in which the conduct of both the prosecution and the defendant are weighed, and courts should consider such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, in determining whether defendant's right to a speedy trial has been denied . . .[103]

The *Barker* balancing test provides that courts must consider the following factors when determining the existence of inordinate delay: *first*, the length of delay; *second*, the reason for delay; *third*, the defendant's

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95 723 Phil. 444 (2013) [Per J. Bersamin, First Division].

96 G.R. Nos. 205963-64, July 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/205963-64.pdf> [Per J. Brion, Second Division].

97 G.R. No. 204267, July 25, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/204267.pdf> [Per J. Del Castillo, Second Division].

98 G.R. Nos. 199151-56, July 25, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/199151-56.pdf> [Per J. Peralta, Third Division].

99 G.R. Nos. 221562-69, October 5, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/221562-69.pdf> [Per J. Velasco, Jr., Third Division].

100 G.R. No. 218040, April 17, 2017, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/218040.pdf> [Per J. Mendoza, Second Division.

101 *Licaros v. Sandiganbayan*, 421 Phil. 1075, 1093 (2001) [Per J. Panganiban, En Banc] citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921 (2001) [Per C.J. Davide, Jr., En Banc].

102 208 Phil. 658 (1983) [Per J. Plana, En Banc].

103 Id. at 664 *citing Barker v. Wingo*, 407 U.S. 514 (1972).

assertion or non-assertion of his or her right; and *fourth*, the prejudice to the defendant as a result of the delay.

For a period of time, this balancing test appeared to be the best way to determine the existence of inordinate delay. Thus, this Court applied both the *Tatad* doctrine and the *Barker* balancing test in the 1991 case of *Gonzales v. Sandiganbayan*:[104]

> It must be here emphasized that the right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered.[105]

The combination of both *Tatad* and the balancing test was so effective that it was again applied in *Alvizo v. Sandiganbayan*,[106] where this Court took note that:

> [D]elays per se are understandably attendant to all prosecutions and are constitutionally permissible, with the monition that the attendant delay must not be oppressive. Withal, it must not be lost sight of that the concept of speedy disposition of cases is a relative term and must necessarily be a flexible concept. Hence, the doctrinal rule is that in the determination of whether or not that right has been violated, the factors that may be considered and balanced are the length of delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay.[107]

Determining the length of delay necessarily involves a query on when a case is deemed to have commenced. In *Dansal v. Fernandez*,[108] this Court recognized that the right to speedy disposition of cases does not only include the period from which a case is submitted for resolution. Rather, it covers

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[104] 276 Phil. 323 (1991) [Per J. Regalado, En Banc].

[105] Id. at 333–334 *citing* CONST., art. III, sec. 16; CONST., art. III, sec. 14(2); *Kalaw vs. Apostol*, et al., 64 Phil. 852 (1937) [Per J. Imperial, First Division]; *Que, et al. vs. Cosico, et al.*, 258 Phil. 211 (1989) [Per J. Gutierrez, Jr., Third Division]; *Andres, et al. vs. Cacdac, Jr., et al.*, 198 Phil. 600 (1981) [Per J. Concepcion, Jr., Second Division]; and *Martin vs. Ver, et al.*, 208 Phil. 658 (1983) [Per J. Plana, En Banc].

[106] 292-A Phil. 144 (1993) [Per J. Regalado, En Banc].

[107] Id. at 155 *citing* *Pollard vs. United States*, 352 U.S. 354 (1957); I BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 421 (1st ed); and *Barker vs. Wingo*, 407 U.S. 514 (1972).

[108] 383 Phil. 897 (2000) [Per J. Purisima, Third Division].

the entire period of investigation even before trial. Thus, the right may be invoked as early as the preliminary investigation or inquest.

In criminal prosecutions, the investigating prosecutor is given a specific period within which to resolve the preliminary investigation under Rule 112, Section 3 of the Rules of Court.[109] Courts are likewise mandated to resolve cases within a specific time frame. Article VIII, Section 15 of the Constitution provides:

> Section 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.
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> (2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pending, brief, or memorandum required by the Rules of Court or by the court itself.
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> (3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and

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[109] RULES OF COURT, Rule 110, sec. 3 provides:
Section 3. Procedure. — The preliminary investigation shall be conducted in the following manner:
(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.
(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.
The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.
Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.
(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.
(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.
(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.
The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.
(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

> served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.
>
> (4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay.

Under Republic Act No. 8493, or The Speedy Trial Act of 1998, the entire trial period must not exceed 180 days, except as otherwise provided for by this Court.[110] The law likewise provides for a time limit of 30 days from the filing of the information to conduct the arraignment, and 30 days after arraignment for trial to commence.[111] In order to implement the law, this Court issued Supreme Court Circular No. 38-98[112] reiterating the periods for the conduct of trial. It also provided for an extended time limit from arraignment to the conduct of trial:

> Section 7. *Extended Time Limit.* — Notwithstanding the provisions of the preceding Sections 2 and 6 for the first twelve-calendar-month period following its effectivity, the time limit with respect to the period from arraignment to trial imposed by said provision shall be one hundred eighty (180) days. For the second twelve-month period, the time limit shall be one hundred twenty (120) days, and for the third twelve-month period the time limit shall be eighty (80) days.

The Circular likewise provides for certain types of delay which may be excluded in the running of the periods:

> Section 9. *Exclusions.* — The following periods of delay shall be excluded in computing the time within which trial must commence:
>
> (a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:
>
> (1) delay resulting from an examination of the physical and mental condition of the accused;

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[110] Rep. Act No. 8493, sec. 5 provides:
Section 5. *Time Limit for Trial.* – In criminal cases involving persons charged of a crime, except those subject to the Rules on Summary Procedure, or where the penalty prescribed by law does not exceed six (6) months imprisonment, or a fine of One thousand pesos (P1,000.00) or both, irrespective of other imposable penalties, the justice or judge shall, after consultation with the public prosecutor and the counsel for the accused, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court pursuant to Sec. 3, Rule 22 of the Rules of Court.

[111] Rep. Act No. 8493, sec. 7 provides:
Section 7. *Time Limit Between Filing of Information and Arraignment and Between Arraignment and Trial.* – The arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. Thereafter, where a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. Trial shall commence within thirty (30) days from arraignment as fixed by the court.

[112] Implementing the Provisions of Republic Act No. 8493 (1998).

> (2) delay resulting from proceedings with respect to other criminal charges against the accused;
> (3) delay resulting from extraordinary remedies against interlocutory orders;
> (4) delay resulting from pre-trial proceedings: Provided, that the delay does not exceed thirty (30) days;
> (5) delay resulting from orders of inhibition or proceedings relating to change of venue of cases or transfer from other courts;
> (6) delay resulting from a finding of the existence of a valid prejudicial question; and
> (7) delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of an essential witness.

For purposes of this subparagraph, an essential witness shall be considered absent when his whereabouts are unknown or his whereabouts cannot be determined by due diligence. An essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence.

(c) Any period of delay resulting from the fact that the accused is mentally incompetent or physically unable to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or as to whom the time for trial has not run and no motion for separate trial has been granted.

(f) Any period of delay resulting from a continuance granted by any court motu proprio or on motion of either the accused or his counsel or the prosecution, if the court granted such continuance on the basis of his findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial.

These provisions have since been incorporated in Rule 119, Sections 1,[113] 2,[114] 3,[115] and 6[116] of the Rules of Court.

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[113] RULES OF COURT, rule 119, sec. 1. Time to prepare for trial. — After a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. The trial shall commence within thirty (30) days from receipt of the pre-trial order.

[114] RULES OF COURT, rule 119, sec. 2 provides:
Section 2. Continuous trial until terminated; postponements. — Trial once commenced shall continue from day to day as far as practicable until terminated. It may be postponed for a reasonable period of time for good cause.
The court shall, after consultation with the prosecutor and defense counsel, set the case for continuous

Several laws have also been enacted providing the time periods for disposition of cases.

In Republic Act No. 6975, as amended by Republic Act No. 8551, resolution of complaints against members of the Philippine National Police must be done within ninety (90) days from the arraignment of the accused:

> Section 55. Section 47 of Republic Act No. 6975 is hereby amended to read as follows:
>
> "Section 47. Preventive Suspension Pending Criminal Case. — Upon the filing of a complaint or information sufficient in form and substance against a member of the PNP for grave felonies where the penalty imposed

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trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Supreme Court.

The time limitations provided under this section and the preceding section shall not apply where special laws or circulars of the Supreme Court provide for a shorter period of trial.

[115] RULES OF COURT, rule 119, sec. 3 provides:

Section 3. Exclusions. — The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

(1) Delay resulting from an examination of the physical and mental condition of the accused;

(2) Delay resulting from proceedings with respect to other criminal charges against the accused;

(3) Delay resulting from extraordinary remedies against interlocutory orders;

(4) Delay resulting from pre-trial proceedings; provided, that the delay does not exceed thirty (30) days;

(5) Delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;

(6) Delay resulting from a finding of the existence of a prejudicial question; and

(7) Delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of an essential witness.

For purposes of this subparagraph, an essential witness shall be considered absent when his whereabouts are unknown or his whereabouts cannot be determined by due diligence. He shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence.

(c) Any period of delay resulting from the mental incompetence or physical inability of the accused to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or, as to whom the time for trial has not run and no motion for separate trial has been granted.

(f) Any period of delay resulting from a continuance granted by any court motu proprio, or on motion of either the accused or his counsel, or the prosecution, if the court granted the continuance on the basis of its findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial.

[116] RULES OF COURT, rule 119, sec. 6 provides:

Section 6. Extended time limit. — Notwithstanding the provisions of section 1(g), Rule 116 and the preceding section 1, for the first twelve-calendar-month period following its effectivity on September 15, 1998, the time limit with respect to the period from arraignment to trial imposed by said provision shall be one hundred eighty (180) days. For the second twelve-month period, the time limit shall be one hundred twenty (120) days, and for the third twelve-month period, the time limit shall be eighty (80) days.

> by law is six (6) years and one (1) day or more, the court shall immediately suspend the accused from office for a period not exceeding ninety (90) days from arraignment: provided, however, that if it can be shown by evidence that the accused is harassing the complainant and/or witnesses, the court may order the preventive suspension of the accused PNP member even if the charge is punishable by a penalty lower than six (6) years and one (1) day: provided, further, that the preventive suspension shall not be more than ninety (90) days except if the delay in the disposition of the case is due to the fault, negligence or petitions of the respondent: provided, finally, that such preventive suspension may be sooner lifted by the court in the exigency of the service upon recommendation of the chief, PNP. Such case shall be subject to continuous trial and shall be terminated within ninety (90) days from arraignment of the accused."

Republic Act No. 9165,[117] Section 90 provides that trial for drug-related offenses should be finished not later than 60 days from the filing of the information:

> Section 90. Jurisdiction. —
> . . . .
>
> Trial of the case under this Section shall be finished by the court not later than sixty (60) days from the date of the filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case for resolution.

Republic Act No. 9372,[118] Section 48 mandates continuous trial on a daily basis for cases of terrorism or conspiracy to commit terrorism:

> Section 48. Continuous Trial. — In cases of terrorism or conspiracy to commit terrorism, the judge shall set the continuous trial on a daily basis from Monday to Friday or other short-term trial calendar so as to ensure speedy trial.

Republic Act No. 9516[119] amends Presidential Decree No. 1866[120] to provide for continuous trial for cases involving illegal or unlawful possession, manufacture, dealing, acquisition, and disposition of firearms, ammunitions, and explosives:

> Section 4-B. Continuous Trial. — In cases involving violations of this Decree, the judge shall set the case for continuous trial on a daily basis from Monday to Friday or other short-term trial calendar so as to ensure

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117 The Comprehensive Dangerous Drugs Act of 2002.
118 The Human Security Act of 2007.
119 An Act Further Amending the Provisions of Presidential Decree No. 1866, as Amended (2007).
120 Entitled Codifying the Law on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Other Relevant Purposes (1983).

> speedy trial. Such case shall be terminated within ninety (90) days from arraignment of the accused.

Implementing rules and regulations have also provided for the speedy disposition of cases. The Implementing Rules and Regulations on the Reporting and Investigation of Child Abuse Cases[121] provide that trial shall commence within three (3) days from arraignment:

> Section 21. *Speedy Trial of Child Abuse Cases.* — The trial of child abuse cases shall take precedence over all other cases before the courts, except election and habeas corpus cases. The trial in said cases shall commence within three (3) days from the date the accused is arraigned and no postponement of the initial hearing shall be granted except on account of the illness of the accused or other grounds beyond his control.

The Revised Rules and Regulations Implementing Republic Act No. 9208,[122] as amended by Republic Act No. 10364,[123] mandates the speedy disposition of trafficking cases:

> Section 76. *Speedy Disposition of [Trafficking in Persons] Cases.* — Where practicable and unless special circumstance require; otherwise, cases involving violation of R.A. No. 9208 shall be heard contiguously: with hearing dates spaced not more than two weeks apart. Unnecessary delay should be avoided, strictly taking into consideration the Speedy Trial Act and SC Circular No. 38-98 dated 11 August 1998.

Laws and their implementing rules and regulations, however, do not generally bind courts unless this Court adopts them in procedural rules.[124] In any case, this Court has already made several issuances setting periods for the conduct of trial.

Rule 17, Section 1 of the Rules of Procedure in Environmental Cases[125] provide that trial must not exceed three (3) months from the issuance of the pre-trial order:

> Section 1. Continuous trial. — The court shall endeavor to conduct continuous trial which shall not exceed three (3) months from the date of the issuance of the pre-trial order.

Rule 14, Section 2 of the Rules of Procedure for Intellectual Property Rights Cases[126] iimits the period of presenting evidence to 60 days per party:

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121 IMPLEMENTING RULES AND REGULATIONS of Rep. Act No. 7610 (1992).
122 The Anti-Trafficking in Persons Act of 2003.
123 The Expanded Anti-Trafficking in Persons Act of 2012.
124 *See* CONST., art. VIII, sec.5 (5) on this Court's power to promulgate rules of practice and procedure.
125 A.M. No. 09-6-8-SC (2010).
126 A.M. No. 10-3-10-SC (2011).

> Section 2. Conduct of trial. — The court shall conduct hearings expeditiously so as to ensure speedy trial. Each party shall have a maximum period of sixty (60) days to present his evidence-in-chief on the trial dates agreed upon during the pre-trial.

Supreme Court Administrative Order No. 25-2007[127] provides that trial in cases involving the killings of political activists and members of the media must be conducted within 60 days from its commencement:

> The cases referred to herein shall undergo mandatory continuous trial and shall be terminated within sixty (60) days from commencement of trial. Judgment thereon shall be rendered within thirty (30) days from submission for decision unless a shorter period is provided by law or otherwise directed by this Court.

The Guidelines for Decongesting Holding Jails by Enforcing the Right of the Accused to Bail and to Speedy Trial[128] provide for strict time limits that must be observed:

> Section 8. Observance of time limits. — It shall be the duty of the trial court, the public or private prosecutor, and the defense counsel to ensure, subject to the excluded delays specified in Rule 119 of the Rules of Court and the Speedy Trial Act of 1998, compliance with the following time limits in the prosecution of the case against a detained accused:
>
> (a) The case of the accused shall be raffled and referred to the trial court to which it is assigned within three days from the filing of the information;
>
> (b) The court shall arraign the accused within ten (10) days from the date of the raffle;
>
> (c) The court shall hold the pre-trial conference within thirty (30) days after arraignment or within ten (10) days if the accused is under preventive detention; provided, however, that where the direct testimonies of the witnesses are to be presented through judicial affidavits, the court shall give the prosecution not more than twenty (20) days from arraignment within which to prepare and submit their judicial affidavits in time for the pre-trial conference;
>
> (d) After the pre-trial conference, the court shall set the trial of the case in the pre-trial order not later than thirty (30) days from the termination of the pre-trial conference; and
>
> (e) The court shall terminate the regular trial within one hundred eighty (180) days, or the trial by judicial affidavits within sixty (60) days, reckoned from the date trial begins, minus the excluded delays or

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[127] Re: Designation of Courts to Hear, Try, and Decide Cases Involving Killings of Political Activists and Members of the Media (2007).

[128] A.M. No. 12-11-2-SC (2014).

> postponements specified in Rule 119 of the Rules of Court and the Speedy Trial Act of 1998.

A dilemma arises as to whether the period includes proceedings in quasi-judicial agencies before a formal complaint is actually filed. The Office of the Ombudsman, for example, has no set periods within which to conduct its fact-finding investigations. They are only mandated to act promptly. Thus, in *People v. Sandiganbayan, Fifth Division*,[129] this Court stated that a fact-finding investigation conducted by the Office of the Ombudsman should not be deemed separate from preliminary investigation for the purposes of determining whether there was a violation of the right to speedy disposition of cases:

> The State further argues that the fact-finding investigation should not be considered a part of the preliminary investigation because the former was only preparatory in relation to the latter; and that the period spent in the former should not be factored in the computation of the period devoted to the preliminary investigation.
>
> The argument cannot pass fair scrutiny.
>
> The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. *Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated.*[130] (Emphasis supplied)

People v. Sandiganbayan, Fifth Division[131] must be re-examined.

When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.

This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.

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[129] 723 Phil. 444 (2013) [Per J. Bersamin, First Division].
[130] Id. at 493.
[131] 723 Phil. 444 (2013) [Per J. Bersamin, First Division].

Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. In *People v. Sandiganbayan, Fifth Division*,[132] the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned.

With respect to fact-finding at the level of the Ombudsman, the Ombudsman must provide for reasonable periods based upon its experience with specific types of cases, compounded with the number of accused and the complexity of the evidence required. He or she must likewise make clear when cases are deemed submitted for decision. The Ombudsman has the power to provide for these rules and it is recommended that he or she amend these rules at the soonest possible time.

These time limits must be strictly complied with. If it has been alleged that there was delay within the stated time periods, the burden of proof is on the defense to show that there has been a violation of their right to speedy trial or their right to speedy disposition of cases. The defense must be able to prove *first*, that the case took much longer than was reasonably necessary to resolve, and *second*, that efforts were exerted to protect their constitutional rights.[133]

What may constitute a reasonable time to resolve a proceeding is not determined by "mere mathematical reckoning."[134] It requires consideration of a number of factors, including the time required to investigate the complaint, to file the information, to conduct an arraignment, the application for bail, pre-trial, trial proper, and the submission of the case for decision.[135] Unforeseen circumstances, such as unavoidable postponements or force majeure, must also be taken into account.

The complexity of the issues presented by the case must be considered in determining whether the period necessary for its resolution is reasonable. In *Mendoza-Ong v. Sandiganbayan*[136] this Court found that "the long delay in resolving the preliminary investigation could not be justified on the basis

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[132] 723 Phil. 444 (2013) [Per J. Bersamin, First Division].

[133] *See R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631.

[134] *Licaros v. Sandiganbayan*, 421 Phil. 1075, 1093 (2001) [Per J. Panganiban, En Banc] citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921 (2001) [Per C.J. Davide, Jr., En Banc].

[135] *See R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631.

[136] 483 Phil. 451 (2004) [Per J. Quisumbing, Special Second Division].

of the records."[137] In *Binay v. Sandiganbayan*,[138] this Court considered "the complexity of the cases (not run-of-the-mill variety) and the conduct of the parties' lawyers"[139] to determine whether the delay is justifiable. When the case is simple and the evidence is straightforward, it is possible that delay may occur even within the given periods. Defense, however, still has the burden to prove that the case could have been resolved even before the lapse of the period before the delay could be considered inordinate.

The defense must also prove that it exerted meaningful efforts to protect accused's constitutional rights. In *Alvizo v. Sandiganbayan,*[140] the failure of the accused to timely invoke the right to speedy disposition of cases may work to his or her disadvantage, since this could indicate his or her acquiescence to the delay:

> Petitioner was definitely not unaware of the projected criminal prosecution posed against him by the indication of this Court as a complementary sanction in its resolution of his administrative case. He appears, however, to have been insensitive to the implications and contingencies thereof by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection hence impliedly with his acquiescence.[141]

In *Dela Peña v. Sandiganbayan*,[142] this Court equated this acquiescence as one that could amount to laches, which results in the waiver of their rights:

> [I]t is worthy to note that it was only on 21 December 1999, after the case was set for arraignment, that petitioners raised the issue of the delay in the conduct of the preliminary investigation. As stated by them in their Motion to Quash/Dismiss, "[o]ther than the counter-affidavits, [they] did nothing." Also, in their petition, they averred: "Aside from the motion for extension of time to file counter-affidavits, petitioners in the present case did not file nor send any letter-queries addressed to the Office of the Ombudsman for Mindanao which conducted the preliminary investigation." They slept on their right — a situation amounting to laches. The matter could have taken a different dimension if during all those four years, they showed signs of asserting their right to a speedy disposition of their cases or at least made some overt acts, like filing a motion for early resolution, to show that they were not waiving that right. Their silence may, therefore be interpreted as a waiver of such right. As aptly stated in *Alvizo*, the petitioner therein was "insensitive to the implications and contingencies" of the projected criminal prosecution posed against him "by not taking any step whatsoever to accelerate the

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137 Id. at 457.
138 374 Phil. 413 (1999) [Per J. Kapunan, En Banc].
139 Id. at 448 *citing Cadalin vs. POEA's Administrator*, 308 Phil. 728 (1994) [Per J. Quiason, First Division].
140 292-A Phil. 144 (1993) [Per J. Regalado, En Banc].
141 Id. at 155–156.
142 412 Phil. 921 (2001) [Per CJ. Davide, En Banc].

> disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection, [and] hence impliedly with his acquiescence."[143]

This concept of acquiescence, however, is premised on the presumption that the accused was fully aware that the preliminary investigation has not yet been terminated despite a considerable length of time. Thus, in *Duterte v. Sandiganbayan*,[144] this Court stated that *Alvizo* would not apply if the accused were unaware that the investigation was still ongoing:

> Petitioners in this case, however, could not have urged the speedy resolution of their case because they were completely unaware that the investigation against them was still on-going. Peculiar to this case, we reiterate, is the fact that petitioners were merely asked to comment, and not file counter-affidavits which is the proper procedure to follow in a preliminary investigation. After giving their explanation and after four long years of being in the dark, petitioners, naturally, had reason to assume that the charges against them had already been dismissed.[145]

Similarly, in *Coscolluela v. Sandiganbayan*:[146]

> Records show that they could not have urged the speedy resolution of their case because they were unaware that the investigation against them was still on-going. They were only informed of the March 27, 2003 Resolution and Information against them only after the lapse of six (6) long years, or when they received a copy of the latter after its filing with the SB on June 19, 2009. In this regard, they could have reasonably assumed that the proceedings against them have already been terminated. This serves as a plausible reason as to why petitioners never followed-up on the case altogether. . .
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> . . . .
>
> Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:
>
> > A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.[147]

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[143] Id. at 932 citing *Guerrero v. Court of Appeals*, 327 Phil. 496 (1996) [Per J. Panganiban, Third Division] and *Alvizo v. Sandiganbayan*, 292-A Phil. 144 (1993) [Per J. Regalado, En Banc].

[144] 352 Phil. 557 (1998) [Per J. Kapunan, Third Division].

[145] Id. at 582–583.

[146] 714 Phil. 55 (2013) [Per J. Perlas-Bernabe, Second Division].

[147] Id.at 63–64 *citing Barker v. Wingo*, 407 U.S. 514 (1972).

Justice Caguioa submits that this Court should depart from *Dela Peña*. He explains that the third factor of the *Barker* balancing test, i.e., waiver by the accused, was applied within the context of the Sixth Amendment[148] of the American Constitution in that it presupposes that the accused has already been subjected to criminal prosecution. He submits that as the right to speedy disposition of cases may be invoked even before criminal prosecution has commenced, waiver by the accused should be inapplicable.

The right to speedy disposition of cases, however, is invoked by a respondent to any type of proceeding once delay has already become *prejudicial* to the respondent. The invocation of the constitutional right does not require a threat to the right to liberty. Loss of employment or compensation may already be considered as sufficient to invoke the right. Thus, waiver of the right does not necessarily require that the respondent has already been subjected to the rigors of criminal prosecution. The failure of the respondent to invoke the right even when or she has already suffered or will suffer the consequences of delay constitutes a valid waiver of that right.

While the *Barker* balancing test has American roots, a catena of cases has already been decided by this Court, starting from *Tatad*, which have taken into account the Philippine experience.

The reality is that institutional delay[149] a reality that the court must address. The prosecution is staffed by overworked and underpaid government lawyers with mounting caseloads. The courts' dockets are congested. This Court has already launched programs to remedy this situation, such as the Judicial Affidavit Rule,[150] Guidelines for Decongesting Holding Jails by Enforcing the Right of the Accused to Bail and to Speedy Trial,[151] and the Revised Guidelines for Continuous Trial.[152] These programs, however, are mere stepping stones. The complete eradication of institutional delay requires these sustained actions.

Institutional delay, in the proper context, should not be taken against the State. Most cases handled by the Office of the Ombudsman involve individuals who have the resources and who engage private counsel with the means and resources to fully dedicate themselves to their client's case. More often than not, the accused only invoke the right to speedy disposition of cases when the Ombudsman has already rendered an unfavorable

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[148] U.S. CONST., Amendment 6 provides:
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

[149] *See R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631 for a full definition of the term.

[150] A.M. No. 12-8-8-SC (2012).

[151] A.M. No. 12-11-2-SC (2014).

[152] A.M. No. 15-06-10-SC (2017).

decision. The prosecution should not be prejudiced by private counsels' failure to protect the interests of their clients or the accused's lack of interest in the prosecution of their case.

For the court to appreciate a violation of the right to speedy disposition of cases, delay must not be attributable to the defense.[153] Certain unreasonable actions by the accused will be taken against them. This includes delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case. When proven, this may constitute a waiver of the right to speedy trial or the right to speedy disposition of cases.

If it has been alleged that there was delay beyond the given time periods, the burden of proof *shifts*. The prosecution will now have the burden to prove that there was no violation of the right to speedy trial or the right to speedy disposition of cases. *Gonzales v. Sandiganbayan*[154] states that "vexatious, capricious, and oppressive delays," "unjustified postponements of the trial," or "when without cause or justifiable motive a long period of time is allowed to elapse without the party having his [or her] case tried"[155] are instances that may be considered as violations of the right to speedy disposition of cases. The prosecution must be able to prove that it followed established procedure in prosecuting the case.[156] It must also prove that any delay incurred was justified, such as the complexity of the cases involved or the vast amount of evidence that must be presented.

The prosecution must likewise prove that no prejudice was suffered by the accused as a result of the delay. *Corpuz v. Sandiganbayan*[157] defined prejudice to the accused as:

> Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.[158]

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153 *See Ty-Dazo v. Sandiganbayan*, 424 Phil. 945 (2002) [Per J. Kapunan, First Division].
154 276 Phil. 323 (1991) [Per J. Regalado, En Banc].
155 Id. at 333–334.
156 *See Ty-Dazo v. Sandiganbayan*, 424 Phil. 945 (2002) [Per J. Kapunan, First Division].
157 484 Phil. 899 (2004) [Per J. Callejo, Sr., Second Division].
158 Id. at 918 *citing Barker v. Wingo*, 33 L.Ed.2d 101 (1972) and *United States v. Marion*, 30 L.Ed.2d 468 (1971).

In *Coscolluela v. Sandiganbayan*:[159]

> Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.[160]

The consequences of delay, however, do not only affect the accused. The prosecution of the case will also be made difficult the longer the period of time passes. In *Corpuz v. Sandiganbayan*:[161]

> Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in Williams v. United States, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.[162]

The consequences of the prosecution's failure to discharge this burden are severe. Rule 119, Section 9 of the Rules of Court requires that the case against the accused be dismissed if there has been a violation of the right to speedy trial:

> Section 9. Remedy where accused is not brought to trial within the time limit. — If the accused is not brought to trial within the time limit required by Section 1(g), Rule 116 and Section 1, as extended by Section 6 of this rule, the information may be dismissed on motion of the accused on the ground of denial of his right to speedy trial. The accused shall have the burden of proving the motion but the prosecution shall have the burden of going forward with the evidence to establish the exclusion of time under

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159 714 Phil. 55 (2013) [Per J. Perlas-Bernabe, Second Division].

160 Id. at 66 citing *Mari v. Gonzales*, 673 Phil. 46 (2011) [Per J. Peralta, Third Division].

161 484 Phil. 899 (2004) [Per J. Callejo, Sr., Second Division].

162 Id. at 918 *citing United States v. Hawk*, 88 L.Ed.2d 640 (1986); *State v. Frith*, 194 So. 1 (1940); and *Williams v. United States*, 250 F.2d. 19 (1957).

> section 3 of this Rule. The dismissal shall be subject to the rules on double jeopardy.
>
> Failure of the accused to move for dismissal prior to trial shall constitute a waiver of the right to dismiss under this section.

Tatad, as qualified by *Angchangco*, likewise mandates the dismissal of the case if there is a violation of the right to speedy disposition of cases. The immediate dismissal of cases is also warranted if it is proven that there was malicious prosecution, if the cases were politically motivated, or other similar instances. Once these circumstances have been proven, there is no need for the defense to discharge its burden to prove that the delay was inordinate.

To summarize, inordinate delay in the resolution and termination of a preliminary investigation violates the accused's right to due process and the speedy disposition of cases, and may result in the dismissal of the case against the accused. The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules. If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay.

The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.

III

This Court proceeds to determine whether respondent committed inordinate delay in the resolution and termination of the preliminary investigation against petitioner.

There is no showing that this case was attended by malice. There is no evidence that it was politically motivated. Neither party alleges this fact. Thus, this Court must analyze the existence and cause of delay.

The criminal complaint against petitioner was filed on **February 10, 2003**. On **August 11, 2004**, the Office of the Ombudsman issued a Resolution finding probable cause against petitioner. This Resolution, however, was modified by the Resolution dated **October 18, 2004**, which ordered the conduct of further fact-finding investigation against some of the other respondents in the case. This further fact-finding was resolved by the Office of the Ombudsman on **April 12, 2005**. On **August 8, 2011**, or six (6) years after the recommendation to file informations against petitioner was approved by Tanodbayan Marcelo, Assistant Special Prosecutor II Pilarita T. Lapitan submitted the informations for Ombudsman Carpio Morales' review. Informations against petitioner were filed on **November 17, 2011**.

Six (6) years is beyond the reasonable period of fact-finding of ninety (90) days. The burden of proving the justification of the delay, therefore, is on the prosecution, or in this case, respondent.

Respondent alleged that the delay in the filing of the informations was justified since it was still determining whether accused Mary Ann Gadian (Gadian) could be utilized as a state witness and it still had to verify accused Felipe Constantino's death. The recommendation, however, to utilize Gadian as a state witness was approved by Tanodbayan Marcelo on **December 20, 2004**.[163] Felipe Constantino's death was verified by the Sandiganbayan in its **November 14, 2006** Order.[164] There is, thus, delay from November 14, 2006 to August 8, 2011.

This Court finds, however, that despite the pendency of the case since 2003, petitioner only invoked his right to speedy disposition of cases when the informations were filed on November 17, 2011. Unlike in *Duterte* and *Coscolluela*, petitioner was aware that the preliminary investigation was not yet terminated.

Admittedly, while there was delay, petitioner has not shown that he asserted his rights during this period, choosing instead to wait until the information was filed against him with the Sandiganbayan.

Furthermore, the case before the Sandiganbayan involves the alleged malversation of millions in public money. The Sandiganbayan has yet to determine the guilt or innocence of petitioner. In the Decision dated June 17, 2010 of the Sandiganbayan acquitting petitioner in Crim. Case No. 28331:

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[163] *Rollo* (G.R. Nos. 210141-42), p. 433.
[164] Id.

> We wish to iterate our observation gathered from the evidence on record that the subject transaction is highly suspect. There is a seeming acceptance of the use of questionable supporting documents to secure the release of public funds in the province, and the apparent undue haste in the processing and eventual withdrawal of such funds. However, obvious as the irregularities may be, which can only lead to distrust in the ability of public officials to safeguard public funds, we are limited to a review only of the evidence presented vis-à-vis the charges brought forth before this Court. Thus, We cannot make any pronouncement in regard to such seeming irregularities.[165]

The records of the case show that the transactions investigated are complex and numerous. As respondent points out, there were over a hundred individuals investigated, and eventually, 40 of them were determined to have been involved in 81 different anomalous transactions.[166] Even granting that the Commission on Audit's Audit Report exhaustively investigated each transaction, "the prosecution is not bound by the findings of the Commission on Audit; it must rely on its own independent judgment in the determination of probable cause."[167] Delays in the investigation and review would have been inevitable in the hands of a competent and independent Ombudsman.

The dismissal of the complaints, while favorable to petitioner, would undoubtedly be prejudicial to the State. "[T]he State should not be prejudiced and deprived of its right to prosecute the criminal cases simply because of the ineptitude or nonchalance of the Office of the Ombudsman."[168] The State is as much entitled to due process as the accused. In *People v. Leviste*:[169]

> [I]t must be emphasized that the state, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case. A hasty dismissal such as the one in question, instead of unclogging dockets, has actually increased the workload of the justice system as a whole and caused uncalled-for delays in the final resolution of this and other cases. Unwittingly, the precipitate action of the respondent court, instead of easing the burden of the accused, merely prolonged the litigation and ironically enough, unnecessarily delayed the case - in the process, causing the very evil it apparently sought to avoid. Such action does not inspire public confidence in the administration of justice.[170]

This Court finds that there is no violation of the accused's right to speedy disposition of cases considering that there was a waiver of the delay of a complex case. Definitely, granting the present Petitions and finding

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165 *Rollo* (G.R. Nos. 206438 & 206458), pp. 581–582.
166 *Rollo* (G.R. Nos. 210141-42), pp. 119–120.
167 *Binay v. Sandiganbayan*, 374 Phil. 413, 450 (1999) [Per J. Kapunan, En Banc].
168 *Jacob v Sandiganbayan*, 649 Phil. 374, 392 (2010) [Per J. Leonardo-De Castro, First Division].
169 325 Phil. 525 (1996) [Per J. Panganiban, Third Division].
170 Id. at 538.

grave abuse of discretion on the part of the Sandiganbayan will only prejudice the due process rights of the State.

IV

This Court now clarifies the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked.

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars,[171] and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the

[171] *See* ponencia, pp. 24, 28–29 for stating current resolutions and circulars of this Court setting the periods for disposition.

complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.

WHEREFORE, the Petitions are **DENIED**. The Temporary Restraining Order dated February 5, 2014 is **LIFTED**. The Sandiganbayan is **DIRECTED** to resolve Case No. SB-11-CRM-0456 and Case No. SB-11-CRM-0457 with due and deliberate dispatch.

The period for the determination of whether inordinate delay was committed shall commence from the filing of a formal complaint and the conduct of the preliminary investigation. The periods for the resolution of the preliminary investigation shall be that provided in the Rules of Court, Supreme Court Circulars, and the periods to be established by the Office of the Ombudsman. Failure of the defendant to file the appropriate motion after the lapse of the statutory or procedural periods shall be considered a waiver of his or her right to speedy disposition of cases.

The ruling in *People v. Sandiganbayan, Fifth Division*[172] that fact-finding investigations are included in the period for determination of inordinate delay is **ABANDONED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Acting Chief Justice

Please see concurring opinion
PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(No part)
DIOSDADO M. PERALTA
Associate Justice

I join the dissent of J. Caguioa
LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

I join the concurring opinion of J. Velasco
ESTELA M. PERLAS-BERNABE
Associate Justice

(No part)
FRANCIS H. JARDELEZA
Associate Justice

I dissent. See separate dissenting opinion.
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[172] 723 Phil. 444 (2013) [Per J. Bersamin, First Division].

(No part)
SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

(No part)
ALEXANDER G. GESMUNDO
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.

ANTONIO T. CARPIO
Acting Chief Justice