EN BANC

G.R. Nos. 206438 & 206458 ***(Cesar Matas Cagang vs. Sandiganbayan, Fifth Division, Quezon City; Office of the Ombudsman; and People of the Philippines)***

G.R. Nos. 210141-42 ***(Cesar Matas Cagang vs. Sandiganbayan, Fifth Division, Quezon City; Office of the Ombudsman; and People of the Philippines)***

Promulgated:

July 31, 2018

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

CONCURRING OPINION

VELASCO, JR., *J.*:

I concur with the *ponencia* of Justice Marvic M.V.F. Leonen. Allow me, however, to submit my elucidation of the factors to be considered in determining inordinate delay.

a. Length of the delay

The Court has never set a threshold period for concluding preliminary investigation proceedings before the Office of the Ombudsman premised on the idea that "speedy disposition" is a relative and flexible concept. It has often been held that a mere mathematical reckoning of the time involved is not sufficient in determining whether or not there was inordinate delay on the part of the investigating officer, and that particular regard must be taken of the facts and circumstances peculiar to each case.[1] This is diametrically opposed with Sec. 58 of the 2008 Manual for Prosecutors[2] observed by the National Prosecutorial Service, which states that the investigating prosecutor must terminate the preliminary investigation proceeding within sixty (60) days from the date of assignment, extendible to ninety (90) days for complaints charging a capital offense. And to further contradistinguish, the Judiciary is mandated by the Constitution to resolve matters and

---

[1] *Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008.

[2] SEC. 58. *Period to resolve cases under preliminary investigation.* - The following periods shall be observed in the resolution of cases under preliminary investigation:

a) The preliminary investigation of complaints charging a capital offense shall be terminated and resolved within ninety (90) days from the date of assignment to the Investigating Prosecutor.

b) The preliminary investigation of all other complaints involving crimes cognizable by the Regional Trial Courts shall be terminated and resolved within sixty (60) days from the date of assignment.

c) In cases of complaints involving crimes cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, the preliminary investigation - should the same be warranted by the circumstances - shall be terminated and resolved within sixty (60) days from the date of assignment to the Investigating Prosecutor.

controversies within a definite timeline.[3] The trial courts are required to decide cases within sixty (60) days from date of submission, twelve (12) months for appellate courts, and two (2) years for the Supreme Court. The prescribed period for the Judicial branch at least gives the party litigants an idea on when they could reasonably expect a ruling from the courts, and at the same time ensures that judges are held to account for the cases not so timely disposed.

The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on complaints brought before him. This imposition, however, should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.[4] More importantly, this duty does not license this Court to fix a specific period for the office to resolve the cases and matters before it, lest We encroach upon the constitutional prerogative of the Ombudsman to promulgate its own rules and procedure.[5]

Be that as it may, the Court is not precluded from determining the inclusions and exclusions in determining the period of delay. For instance, in *People v. Sandiganbayan,*[6] We have ruled that the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of cases.

In the said case, the Ombudsman, on November 25, 2002, ordered the Philippine Anti-Graft Commission (PAGC) to submit documents relevant to the exposé on the alleged involvement of then Secretary of Justice Hernando Perez in acts of bribery. The following day, then Ombudsman Simeon Marcelo ordered Cong. Mark Jimenez to submit a complaint-affidavit on the exposé, which directive he complied with on December 23, 2002. On January 2, 2003, a Special Panel was created to evaluate and conduct preliminary investigation. The informations based on the complaint of Cong. Jimenez were all filed on April 15, 2008.

Upholding the dismissal of the criminal information by the Sandiganbayan, the Court ruled thusly:

> 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.

---

[3] **Article VIII, Section 15(1) of the 1987 Constitution relevantly reads:**

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.

[4] *Flores v. Hernandez, Sr.*, G.R. No. 126894, March 2, 2000.

[5] Constitution, Article XI, Section 13 (8).

[6] G.R. No. 188165, December 11, 2013.

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.[7] (emphasis added)

This ruling necessitates a re-examination.

In *Ombudsman v. Jurado*,[8] we ruled that:

> x x x It is undisputed that the FFB of the OMB recommended that respondent together with other officials of the Bureau of Customs be criminally charged for violation of Section 3(e) of R.A. No. 3019 and Section 3601 of the Tariff and Customs Code. The same bureau also recommended that respondent be administratively charged. Prior to the fact-finding report of the FFB of the OMB, respondent was never the subject of any complaint or investigation relating to the incident surrounding Magleis non-existent customs bonded warehouse. In fact, in the original complaint filed by the Bureau of Customs, respondent was not included as one of the parties charged with violation of the Tariff and Customs Code. With respect to respondent, there were **no *vexatious, capricious, and oppressive delays* because he was not made to undergo any investigative proceeding prior to the report and findings of the FFB.**
>
> Simply put, prior to the report and recommendation by the FFB that respondent be criminally and administratively charged, respondent was neither investigated nor charged. That respondent was charged only in 1997 while the subject incident occurred in 1992, is not necessarily a violation of his right to the speedy disposition of his case. The record is clear that prior to 1997, respondent had no case to speak of he was not made the subject of any complaint or made to undergo any investigation. x x x (emphasis added)

We must distinguish between fact-finding investigations conducted before and after the filing of a formal complaint. When a formal criminal complaint had been initiated by a private complainant, the burden is upon such complainant to substantiate his allegations by appending all the necessary evidence for establishing probable cause. The fact-finding investigation conducted by the Ombudsman after the complaint is filed should then necessarily be included in computing the aggregate period of the preliminary investigation.

---

[7] Id.

[8] G.R. No. 154155, August 6, 2008.

On the other hand, if the fact-finding investigation precedes the filing of a complaint as in incidents investigated *motu proprio* by the Ombudsman, such investigation should be excluded from the computation. The period utilized for case build-up will not be counted in determining the attendance of inordinate delay.

It is only when a formal verified complaint had been filed would the obligation on the part of the Ombudsman to resolve the same promptly arise. Prior to the filing of a complaint, the party involved is not yet subjected to any adverse proceeding and cannot yet invoke the right to the speedy disposition of a case, which is correlative to an actual proceeding. In this light, the doctrine in *People v. Sandiganbayan* should be revisited.

With respect to investigations relating to anonymous complaints or *motu proprio* investigations by the Ombudsman, the date when the Ombudsman receives the anonymous complaint or when it started its *motu proprio* investigations and the periods of time devoted to said investigations cannot be considered in determining the period of delay. For the respondents, the case build up phase of an anonymous complaint or a *motu proprio* investigation is not yet exposed to an adversarial proceeding. The Ombudsman should of course be aware that a long delay may result in the extinction of criminal liability by reason of the prescription of the offense.

Even if the person accused of the offense subject of said anonymous complaint or *motu proprio* investigations by the Ombudsman is asked to attend invitations by the Ombudsman for the fact finding investigations, this directive cannot be considered in determining inordinate delay. These conferences or meetings with the persons subject of the anonymous complaints or *motu proprio* investigations are simply conducted as preludes to the filing of a formal complaint if it finds it proper. This should be distinguished from the exercise by the Ombudsman of its prosecutory powers which involve determination of probable cause to file information with the court resulting from official preliminary investigation. Thus, the period spent for fact-finding investigations of the ombudsman prior to the filing of the formal complaint by the Field Investigation Office of the Ombudsman is irrelevant in determining inordinate delay.

In sum, the reckoning point when delay starts to run is the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the Ombudsman of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations. The period devoted to the fact-finding investigations prior to the date of the filing of the formal complaint with the Ombudsman shall NOT be considered in determining inordinate delay. After the filing of the formal complaint, the time devoted to fact finding investigations shall always be factored in.

b. Reasons for the delay

Valid reasons for the delay identified and accepted by the Court include, but are not limited to: (1) extraordinary complications such as the degree of difficulty of the questions involved, the number of persons charged, the various pleadings filed, and the voluminous documentary and testimonial evidence on record; and (2) acts attributable to the respondent.

The period for re-investigation cannot automatically be taken against the State. Re-investigations cannot generally be considered as "vexatious, capricious, and oppressive" practices proscribed by the constitutional guarantee since these are performed for the benefit of the accused. As *Braza v. Sandiganbayan*[9] *(Braza)* instructs:

> Indeed, the delay can hardly be considered as "vexatious, capricious and oppressive." x x x Rather, it appears that Braza and the other accused were merely afforded sufficient opportunities to ventilate their respective defenses in the interest of justice, due process and fair investigation. The re-investigation may have inadvertently contributed to the further delay of the proceedings but this process cannot be dispensed with because it was done for the protection of the rights of the accused. Albeit the conduct of investigation may hold back the progress of the case, the same was essential so that the rights of the accused will not be compromised or sacrificed at the altar of expediency. (emphasis added) x x x

A survey of jurisprudence reveals that most of the complaints dismissed for violation of the right to speedy disposition of a case stems from the Ombudsman's failure to satisfactorily explain the inordinate delay.[10]

c. Assertion of Right by the Accused

The Court had ruled in several cases that failure to move for the early resolution of the preliminary investigation or similar reliefs before the Ombudsman amounted to a virtual waiver of the constitutional right. *Dela Peña v. Sandiganbayan (Dela Peña)*, for example, ruled that the petitioners therein slept on their rights, amounting to laches, when they did not file nor send any letter-queries to the Ombudsman during the four-year (4-year) period the preliminary investigation was conducted. The Court, citing *Alvizo*, further held therein that:

> x x x 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 are not waiving that right.

---

[9] G.R. No. 195032, February 20, 2013.

[10] *Tatad v. Sandiganbayan*, G.R. Nos. 72335-39, March 21, 1988; *Angchangco v. Ombudsman*, G.R. No. 122728, February 13, 1997; *Roque v. Ombudsman*, G.R. No. 129978, May 12, 1999; *Coscolluela v. Sandiganbayan*, G.R. No. 191411, July 15, 2013; and *People v. Sandiganbayan*, G.R. No. 188165, December 11, 2013.

> 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 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.

Following *Dela Peña*, it is the duty of the respondent to bring to the attention of the investigating officer the perceived inordinate delay in the proceedings of the formal preliminary investigation. Failure to do so may be considered a waiver of his/her right to speedy disposition of cases. If respondent fails to assert said right, then it may be presumed that he/she is allowing the delay only to later claim it as a ruse for dismissal. This could also address the rumored "parking fee" allegedly being paid by some respondents so that delay can be set up as a ground for the dismissal of their respective cases. Needless to say, investigating officers responsible for this kind of delay should be subjected to administrative sanction.

d. Prejudice to the respondent

The length of the delay and the justification proffered by the investigating officer therefor would necessarily be counterbalanced against any prejudice suffered by the respondent. Indeed, reasonable deferment of the proceedings may be allowed or tolerated to the end that cases may be adjudged only after full and free presentation of evidence by all the parties, especially where the deferment would cause no substantial prejudice to any party.[11] As taught in *Coscolluela:*

> 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.[12] x x x

"*Prejudice*," as a criterion in the speedy disposition of cases, has been discussed in *Corpuz v. Sandiganbayan*[13] in the following manner:

> x x x Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be

---

[11] *Padua v. Ericta*, No. L-38570, May 24, 1988.
[12] Supra note 10.
[13] G.R. No. 162214, November 11, 2004.

> 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.

In the macro-perspective, though, it is not only the respondent who stands to suffer prejudice from any delay in the investigation of his case. For inordinate delays likewise makes it difficult for the prosecution to perform its bounden duty to prove the guilt of the accused beyond reasonable doubt when the case is filed in court:

> 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.[14]

It is for the Courts then to determine who between the two parties was placed at a greater disadvantage by the delay in the investigation.

Time frame for resolution of criminal complaint

The Ombudsman has the power to formulate its own rules on pleading and procedure. It has in fact laid down its rules on preliminary investigation. All these controversies surrounding inordinate delay can easily be avoided had it prescribed a rule on the disposition period for the investigating graft officer to resolve the preliminary investigation of the formal complaints. **Like the Department of Justice with respect to preliminary investigations by its prosecutors, it should provide a disposition period from the date of the filing of the formal complaint up to a specific date within which the graft prosecutor should determine the existence of probable cause**. This will potentially solve all the motions and petitions that raise the defense of inordinate delay, putting the perennial issue to rest. In the meantime, the above-enunciated criteria shall be considered in determining the presence of inordinate delay.

---

[14] *Caballes v. Court of Appeals*, G.R. No. 163108, February 23, 2005.

I, therefore, vote to **DENY** the petitions.

PRESBITERO J. VELASCO, JR.
Associate Justice