



Republic of the Philippines
Supreme Court
Baguio City

EN BANC

REY NATHANIEL C. IFURUNG,
Petitioner,

G.R. No. 232131

Present:

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

-versus-

HON. CONCHITA C. CARPIO MORALES
in her capacity as the Ombudsman,
HON. MELCHOR ARTHUR H.
CARANDANG, HON. GERARD ABETO
MOSQUERA, HON. PAUL ELMER M.
CLEMENTE, HON. RODOLFO M.
ELMAN, HON. CYRIL ENGUERRA
RAMOS in their capacities as Deputies
Ombudsman, and THE OFFICE OF THE
OMBUDSMAN,
Respondents,

Promulgated:

April 24, 2018

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DECISION

MARTIRES, J.:

Through this Petition for Certiorari and Prohibition, petitioner Rey Nathaniel C. Ifurung (*petitioner*), *in propria persona*, seeks a declaration from the Court that: (a) Section (*Sec.*) 8(3) in relation to Sec. 7 of Republic Act (*R.A.*) No. 6770, also known as the Ombudsman Act of 1989, is unconstitutional for being an outright transgression of Sec. 11, in relation to Secs. 8 and 10 of Article (*Art.*) XI of the 1987 Constitution; and (b) all individual respondents as *de facto* Ombudsman and Deputies Ombudsman, respectively, and all these positions are vacant.¹

* On Leave.

** Acting Chief Justice.

¹ *Rollo*, pp. 3-4.

The Petition

Petitioner, who claims to be a taxpayer, a concerned Filipino citizen, and a member of the Bar, invokes the jurisprudence laid down by the Court in *Funa v. Villar*,² in asserting that he has *locus standi* to file the instant petition. He avers that he is seeking the correction of a recurring statutory wrong and a declaration from the Court that the positions held by the respondents are vacant.³

Respondents are the incumbent officials of the Office of the Ombudsman, viz: Conchita Carpio Morales, Ombudsman (*Ombudsman Morales*); Melchor Arthur H. Carandang, Overall Deputy Ombudsman; Gerard Abeto Mosquera, Deputy Ombudsman for Luzon; Paul Elmer M. Clemente as Deputy Ombudsman for Visayas; Rodolfo M. Elman, Deputy Ombudsman for Mindanao; and Cyril Enguerra Ramos, Deputy Ombudsman for the Military.⁴

Petitioner maintains that the constitutional issue raised in his petition is of transcendental importance since this Court's ruling will finally determine the correct term and tenure of the Ombudsman and his deputies and settle the matter as to the constitutionality of Sec. 8(3) of R.A. No. 6770. He alleges that Sec. 8(3), in relation to Sec. 7 of R.A. No. 6770, which provides that in case of a vacancy at the Office of the Ombudsman due to death, resignation, removal or permanent disability of the incumbent Ombudsman and his deputies, the newly appointed Ombudsman and his deputies shall be appointed to a full term of seven (7) years, is constitutionally infirm as it contravenes Sec. 11 in relation to Secs. 8 and 10 of Art. XI of the 1987 Constitution. He avers that like all constitutionally created positions, i.e., President, Vice-President, Senators, Members of the House of Representatives and Members of the Civil Service Commission (*CSC*), the Commission on Elections (*COMELEC*), and the Commission on Audit (*COA*), the successor to the positions of the Ombudsman and deputies should serve only the unexpired term of the predecessor. Hence, petitioner insists that the incumbent Ombudsman and deputies have been overstaying in their present positions for more than two years considering that their terms have expired on 1 February 2015. "To allow them to stay in the said positions one day longer constitutes a continuing affront to the 1987 Constitution, unduly clips presidential prerogatives, and deprives the nation of the services of legitimate Ombudsman and Deputies Ombudsman."⁵

To fortify his position, petitioner states that the intent of the framers of the 1987 Constitution during its 26 July 1986 discussion was to constitutionalize the Office of the Ombudsman, i.e., by granting it autonomy

² 686 Phil. 571 (2012).

³ *Rollo*, pp. 4-5.

⁴ *Id.* at 5.


⁵ *Id.* at 6-7.



and independence the same as and equal to those of the other constitutionally created offices and positions. That in the process of constitutionalizing the Office of the Ombudsman, the framers ensured its stature and clout as a constitutional body like the COMELEC, the COA, the CSC, and the Commission on Human Rights (*CHR*), viz: by creating the office and giving it fiscal autonomy and independence thus making it a constitutionally created office; by providing the qualifications, disqualifications, manner of appointment, cessation, and removal from office; and by specifying the salary, positional rank, term of office, powers, functions, and duties thereof; thereby making the Ombudsman and the deputies constitutionally created positions. He claims that the intention of the framers was evident in Secs. 5 to 14, Art. XI of the 1987 Constitution.⁶

According to the petitioner, with the effectivity of the 1987 Constitution, President Corazon C. Aquino (*President Aquino*), on 24 July 1987, issued pursuant to Sec. 6,⁷ Art. XVIII of the 1987 Constitution, Executive Order (*E.O.*) No. 243⁸ creating the Office of the Ombudsman. On 17 November 1989, R.A. No. 6770 was approved. Considering that the intent of the framers of the Constitution was that the position of the Ombudsman and the deputies shall have the same status as the three constitutional commissions, the limitations as to the latter's term of office shall likewise apply to the Ombudsman and the deputies. Hence, petitioner maintains that the grant of a full term to an Ombudsman's successor, when the vacancy in the office is for a cause other than the expiration of term, is an outright non-observance of the intent of the framers and Sec. 11, Art. XI of the 1987 Constitution.⁹

Petitioner insists that in *Gaminde v. COA (Gaminde)*,¹⁰ the Court en banc has determined that the starting point of the terms of office of the first appointees to the constitutional commissions is uniformly set on 2 February 1987. He maintains as regards the appointment of Conrado M. Vasquez as first Ombudsman in May 1988, the seven-year term which was supposed to start on 2 February 1987 and culminate seven (7) years thereafter, was not complied with.¹¹

The petitioner presented the following table:¹² 

⁶ Id. at 11-14.

⁷ Sec. 6. The incumbent President shall continue to exercise legislative powers until the first Congress is convened. (Transitory Provisions).

⁸ Entitled "Declaring The Effectivity of the Creation of the Office of the Ombudsman as provided for in the 1987 Constitution."

⁹ *Rollo*, p. 14.

¹⁰ 401 Phil. 77 (2000).

¹¹ *Rollo*, pp. 15-16.

¹² Id. at 16.

OMBUDSMAN	7-YEAR TERM	ACTUAL TENURE	DE FACTO SERVICE	CESSATION OF SERVICE
Conrado M. Vasquez	1st 2 Feb. 1987 to 1 Feb. 1994	May 1988 to May 1995	2 Feb. 1994 to May 1995	Supposed expiration of term
Aniano A. Desierto	2nd 2 Feb. 1994 to 1 Feb. 2001	4 Aug. 1995 to 3 Aug. 2002	2 Feb. 2001 to 3 Aug. 2002	Supposed expiration of term
Simeon V. Marcelo	3rd 2 Feb. 2001 to 1 Feb. 2008	10 Oct. 2002 to Nov. 2005	Not applicable	Resignation
Ma. Mercedes Navarro-Gutierrez		1 Dec. 2005 to 1 Feb. 2008	Not applicable	Not applicable
Ma. Mercedes Navarro-Gutierrez	4th 2 Feb. 2008 to 1 Feb. 2015	2 Feb. 2008 to 6 May 2011	2 Feb. 2008 to 6 May 2011	Resignation
Conchita Carpio Morales		25 July 2011 to 1 Feb. 2015	Not applicable	Not applicable
Conchita Carpio Morales	5th 2 Feb. 2015 to 1 Feb. 2022	2 Feb. 2015 to present	2 Feb. 2015 to present	Not applicable

Petitioner states that it can be gleaned from the above data that the explicit seven-year term for the Ombudsman and the deputies has neither been followed nor complied with.¹³

Petitioner claims that Ombudsman Morales should have ceased to hold office on 1 February 2015 considering that the unexpired term of the supposed fourth seven-year term ended on that date; thus, Ombudsman Morales has been holding the position in a *de facto* capacity since 2 February 2015 up to the present. This observation, petitioner claims, holds true with the other respondent deputies.¹⁴

Petitioner posits that the “recurrence of this cycle of noncompliance and nonobservance of the intent of the framers and the explicit provision of the 1987 Philippine Constitution is an outright affront to the fundamental law of the land and, if it remains unchecked, will create a cycle of non-compliance with and nonobservance of what the Constitution provides.”¹⁵

¹³ Id. at 17.

¹⁴ Id.

¹⁵ Id.

Petitioner argues that the Office of the Ombudsman is not *sui generis*; thus, what applies and holds true for all the other constitutionally created offices and positions should also apply to this office. The Ombudsman cannot be an exception to the rule set by the 1987 Constitution, i.e., to serve for the unexpired term, so much so that each uncompleted term creates a fresh term for the appointed Ombudsman. Petitioner speculates that such fresh term of seven years could effectively deprive an incoming President the power and opportunity to appoint an Ombudsman. Thus the term of the Ombudsman will be subject to political maneuverings such that the outgoing President can divest the next President of the prerogative to appoint. If the unexpired term is the policy, every President can appoint an Ombudsman.¹⁶

Petitioner cites the ruling in *Tañada v. Angara*¹⁷ (*Tañada*) and *Imbong v. Ochoa*¹⁸ (*Imbong*) to justify his position that he availed of the appropriate remedies of certiorari and prohibition in the instant case.¹⁹

Asserting that the present petition involves the resolution of a constitutional issue which affects the very fabric and integrity of the Office of the Ombudsman, petitioner pleads for the exemption from the observance of the rule on hierarchy of courts in view of the transcendental importance of this constitutional issue.²⁰

The Comment of the Respondents

Respondents, through the Office of the Solicitor General (*OSG*), claim that petitioner failed to appreciate the *verba legis* approach to constitutional construction; and that, instead, petitioner resorted to an interpretation that was not only self-serving but also devoid of basis and reason.²¹

Respondents aver that Sec. 11, Art. XI of the 1987 Constitution is clear that the term of the Ombudsman and the Deputies shall be seven years without reappointment without distinction on the cause of filling the vacancy. According to the respondents, to follow petitioner's interpretation would lead to a distinction not found in the law between: (1) the term of the Ombudsman and the deputies who succeeded a predecessor who finished a full term of seven years; and (2) the term of the Ombudsman and the deputies who merely succeeded the predecessor who did not finish the full term of seven years.²²

Respondents state that unlike Sec. 11, Art. XI of the 1987 Constitution, the term of office of the constitutionally created offices provides that a



¹⁶ Id. at 20-21.

¹⁷ 338 Phil. 546 (1997).

¹⁸ 732 Phil. 1 (2014).

¹⁹ *Rollo*, pp. 24-27.

²⁰ Id. at 32.

²¹ Id. at 62.

²² Id. at 63-65.

successor who is appointed to any vacancy shall only serve the unexpired term of the successor.²³

To disprove the petitioner's assertion that the distinction as to the term of office of constitutionally created offices applies to the Ombudsman and his Deputies, respondents explain that there are other offices created by the Constitution, viz: Supreme Court, Judicial and Bar Council (*JBC*), Senate Electoral Tribunal (*SET*), House of Representatives Electoral Tribunal (*HRET*), judges of lower courts, elective local officials, and the CHR, among others, where such distinction does not apply.²⁴

Respondents allege that the deliberations of the framers of the Constitution reveal their intent to grant the Ombudsman and his deputies the same rank and salary as the Chair and members of the Constitutional Commissions but not by the staggered term.²⁵

Respondents contend that the ruling in *Gaminde* where the rotational system of appointment of the CSC chairperson and the commissioners was crucial to the determination of the start of Commissioner Gaminde's term, does not apply to the Office of the Ombudsman where there are no seven-five-three-year rotational intervals for the appointment. Moreover, the Office of the Ombudsman is not a commission composed of a chairperson and several commissioners; thus, whether the term of the first Ombudsman began on 2 February 1987 would be immaterial because the succeeding Ombudsman shall have a fresh seven-year term.²⁶

Respondents maintain that the present petition seeks to unseat respondents from public office; thus, the *Tañada* and *Imbong* rulings on which petitioner anchors his petition would not apply since these cases do not involve an attack on a public officer's title. Moreover, the present petition, which involves a collateral attack on the respondents' title, should be dismissed for being an improper remedy. Respondents emphasize that the proper remedy would have been a petition for *quo warranto* under Rule 66 of the Rules of Court to be initiated by the Solicitor General or public prosecutor when directed by the President of the Philippines.²⁷

ISSUES

I.

Whether Section 8(3) of R.A. No. 6770 is unconstitutional for being violative of Section 11 in relation to Sections 8 and 10,

²³ Id. at 65-68.

²⁴ Id. at 69-70.

²⁵ Id. at 70-72.

²⁶ Id. at 72-74.

²⁷ Id. at 75-77.



Article XI of the 1987 Philippine constitution and applicable jurisprudence.

II.

Whether the instant petition is the proper remedy.

III.

Whether this Honorable Court has jurisdiction.

OUR RULING

To properly resolve this petition, it would be better to dwell foremost on the issue of whether petitioner has availed of the proper vehicle to obtain the relief he pleads the Court.

A petition for certiorari is the proper remedy to challenge the constitutionality of Sec. 8(3) of R.A. No. 6770.

To justify his claim that a petition for certiorari and prohibition is the proper remedy to assail the validity of Sec. 8(3) of R.A. No. 6770, petitioner cites the ruling in *Tañada* and *Imbong* that “certiorari, prohibition, and mandamus are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials, as there is no plain, speedy, or adequate remedy in the ordinary course of law.”

To counter petitioner’s justification and to prove that *quo warranto* was the proper remedy in this case, respondents cite *Topacio v. Ong*.²⁸

Respondents failed to consider that the factual antecedents in *Topacio* are not on four-square with the present petition. In that case, Ferdinand Topacio’s petition for certiorari and prohibition sought, in the main, to prevent Justice Gregory Ong from further exercising the powers, duties, and responsibilities of a Sandiganbayan Associate Justice. Topacio chiefly moored his petition on the ground that Ong did not qualify to be appointed as an Associate Justice of the Sandiganbayan on the basis of his citizenship, i.e., whether gauged from his birth certificate which indicates him to be a Chinese citizen or against his bar records bearing out his status as a naturalized Filipino citizen. Simply put, the petition principally involved a review of Ong’s qualification for appointment as Associate Justice of the



²⁸ 595 Phil. 491 (2008).

Sandiganbayan which violated, according to Topacio, Sec. 7,²⁹ Art. VIII of the 1987 Constitution requiring that the members of the Supreme Court or any collegiate court be natural-born citizens of the Philippines. Thus, the Court held:

While denominated as a petition for certiorari and prohibition, the petition partakes of the nature of a *quo warranto* proceeding with respect to Ong, for it effectively seeks to declare null and void his appointment as an Associate Justice of the Sandiganbayan for being unconstitutional. While the petition professes to be one for certiorari and prohibition, petitioner even adverts to a *quo warranto* aspect of the petition.

Being a collateral attack on a public officer's title, the present petition for certiorari and prohibition must be dismissed.³⁰

On the one hand, petitioner prefaced his petition as follows:

This is a petition for certiorari and prohibition under Rule 65 of the Rules of Court seeking to declare the following:

- (a) Section 8(3) in relation to Section 7 of Republic Act No. 6770, also known as the Ombudsman Act of 1989, as unconstitutional for being an outright transgression of Section 11 in relation to Sections 8 and 10 of Article XI of the 1987 Constitution; and
- (b) All individual respondents as de facto Ombudsman and Deputies Ombudsman, respectively, and all their positions vacant.

This Honorable Court's jurisdiction over cases involving the constitutionality of laws pursuant to Sections 4(2) and 5 of Article VIII of the 1987 Constitution is being respectfully invoked in view of the transcendental importance of the instant matter.³¹

The pertinent provisions of Art. XI of the 1987 Constitution which petitioner avers was transgressed by Sec. 8(3) of R.A. No. 6770 are as follows:

Sec. 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of recognized probity and independence, and members of the Philippine Bar, and must not have been candidates for any elective office in the immediately preceding election. The Ombudsman must have for ten years or more been a judge or engaged in the practice of law in the Philippines.

x x x x

Sec. 10. The Ombudsman and his Deputies shall have the rank of Chairman and Members, respectively, of the Constitutional Commissions, and they

²⁹ Sec. 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

³⁰ *Topacio v. Ong*, supra note 28 at 503.

³¹ *Rollo*, pp. 3-4.



shall receive the same salary, which shall not be decreased during their term of office.

Sec. 11. The Ombudsman and his Deputies shall serve for a term of seven years without reappointment. They shall not be qualified to run for any office in the election immediately succeeding their cessation from office.

Clear from his petition was that the petitioner beseeches the Court for a declaration primarily as to the unconstitutionality of Sec. 8(3) in relation to Sec. 7 of R.A. No. 6770, and as a consequence thereof, a pronouncement that the incumbent Ombudsman and the deputies are *de facto* officers and whose offices are vacant. The petition does not task the Court to scrutinize the qualification of the respondents to hold office as Ombudsman and deputies but rather to determine the constitutionality of Sec. 8(3) of R.A. No. 6770 in so far as their term of office is concerned.

In contrast with *Topacio* where the very issue involved was the qualification to office of Ong, the present petition attacks the validity of a law, which petitioner claims has transgressed Sec. 11 in relation to Secs. 10 and 11, Art. XI of the 1987 Constitution. Petitioner points out that the legislature went beyond the parameters of these constitutional provisions when it crafted Sec. 8(3) of R.A. No. 6770,³² and that “there is no other plain, speedy, and adequate remedy in the ordinary course of law that can correct the long-running, pervasive, and continuous violation of Sec. 11 in relation to Secs. 8 and 10, Art. XI of the 1987 Constitution and the applicable jurisprudence.”³³

Under the 1987 Constitution, judicial power includes the duty of the courts of justice not only “to settle actual controversies involving rights which are legally demandable and enforceable,” but also “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”³⁴ Its expanded power of review provides:

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

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.³⁵

Fundamental is the rule that grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law, or existing

³² Id. at 122.

³³ Id. at 154.

³⁴ *Samahan ng Progresibong Kabataan v. Quezon City*, G.R. No. 225442, 8 August 2017.

³⁵ Art. VIII, 1987 Constitution.



jurisprudence.³⁶ We have already ruled that petitions for certiorari and prohibition filed before the Court “are the remedies by which the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government may be determined under the Constitution,” and explained that “[w]ith respect to the Court, x x x the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but **also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.**”³⁷

“Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. The question thus posed is judicial rather than political. x x x. The duty to adjudicate remains to assure that the supremacy of the Constitution is upheld.”³⁸ The Court however, does not have unrestrained authority to rule on just any and every claim of constitutional violation. Hence, the legal teaching is that the power of judicial review is limited by four exacting requisites, viz: (a) there must be an actual case or controversy; (b) the petitioners must possess *locus standi*; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the *lis mota* of the case.³⁹

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.⁴⁰ Closely linked to this requirement is that the question must be ripe for adjudication, i.e., when the act being challenged has had a direct adverse effect on the individual or entity challenging it.⁴¹ It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action.⁴²

The Court holds that the present petition involves an actual case or controversy and that the same is ripe for judicial determination. It will be noted that, granting there was merit to the position raised by the petitioner that Sec. 8(3) of R.A. No. 6770 is unconstitutional, the incumbent Ombudsman and deputies are *de facto* officers who have overstayed in office since 2 February 2015. Of prime consideration, too, if petitioner’s position is

³⁶ *Tagolino v. HRET*, 706 Phil. 534, 558 (2013).

³⁷ *Samahan ng Progresibong Kabataan v. Quezon City*, supra note 34 citing *Araullo v. Aquino*, 737 Phil. 457, 525 (2014). (emphasis in the original)

³⁸ *Tañada v. Angara*, supra note 17 at 574.

³⁹ *Saguisag v. Ochoa*, 777 Phil. 280, 349 (2016).

⁴⁰ *Philippine Constitution Association v. Philippine Government*, G.R. No. 218406, 29 November 2016.

⁴¹ *Id.*

⁴² *Araullo v. Aquino*, 737 Phil. 457, 533 (2014).

correct, is the alleged pervasive noncompliance and non-observance of the constitution relative to the seven-year term of office of the Ombudsman and the deputies, the principles of which, albeit relevant to the constitutional commissions, have been settled in *Gaminde*. It should likewise be taken into account, granting that petitioner's challenge to Sec. 8(3) of R.A. No. 6770 was valid and legal, that there are continuing illegal disbursements of public funds to pay the salaries of the *de facto* Ombudsman and deputies. From these considerations, it cannot be gainsaid that there is indeed a justiciable controversy involving an alleged serious infringement of the fundamental law, and which the Court is duty bound to resolve.

Locus standi is defined as follows:

A personal and substantial interest in the case such that the party has sustained or will sustain a direct injury as a result of the governmental act that is being challenged. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.⁴³

Jurisprudence dictates that a party challenging the constitutionality of a law, act or statute must show "not only that the law is invalid, but also that he has sustained or is in immediate or imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way."⁴⁴ There is likewise the teaching that *locus standi* is merely a matter of procedure and that, in some cases, suits are not brought by parties who have been personally injured by the operation of a law or any other government act, but by concerned citizens, taxpayers, or voters who actually sue in the public interest.⁴⁵ This liberal stance has been exemplified in *Funa v. Villar*,⁴⁶ viz:

To have legal standing, therefore, a suitor must show that he has sustained or will sustain a "direct injury" as a result of a government action, or have a "material interest" in the issue affected by the challenged official act. However, the Court has time and again acted liberally on the *locus standi* requirements and has accorded certain individuals, not otherwise directly injured, or with material interest affected, by a Government act, standing to sue provided a constitutional issue of critical significance is at stake. The rule on *locus standi* is after all a mere procedural technicality in relation to which the Court, in a *catena* of cases involving a subject of transcendental import, has waived, or relaxed, thus allowing non-traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been personally injured by the operation of a law or any other government act. In *David*, the Court laid

⁴³ *Association of Flood Victims v. COMELEC*, 740 Phil. 472, 481 (2014) citing *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632-633 (2000).

⁴⁴ *Ferrer v. Bautista*, 762 Phil. 233, 249 (2015).

⁴⁵ *Bayan Muna v. Romulo*, 656 Phil. 246, 265 (2011).

⁴⁶ *Supra* note 2.

out the bare minimum norm before the so-called “non-traditional suitors” may be extended standing to sue, thusly:

- 1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
- 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
- 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
- 4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.⁴⁷

Petitioner, who claims to be a taxpayer, asserts that there has been illegal disbursement of public funds in paying the salaries of the respondents. As a concerned citizen, he avers that the issues in this petition are of transcendental importance.

The Court has jurisdiction over the instant petition.

In arguing that the Court should exercise its power of judicial review and assume jurisdiction over his case, petitioner pleads this Court to consider the principal issue raised in his petition to be one of transcendental importance, such that the principle of hierarchy of courts, which he perceives as a possible obstacle to his cause, may no longer apply or should be dispensed with. To this end, he pleads and outlines the following arguments:

41. This Honorable Court’s percipient wisdom is exigent and urgently needed in order to mark a watershed in the Office of the Ombudsman on account of the following, *viz*:

- i. *First*. Direct resort to this Honorable Court is allowed because there is a genuine issue of constitutionality which must be immediately addressed. In the instant case, Section 8 (3) of R.A. No. 6770, if not declared unconstitutional, will continue to contravene Section 11 in relation to Sections 8 and 10, Article XI of the 1987 Philippine Constitution, and applicable jurisprudence.
- ii. *Second*. The issue raised herein is of transcendental importance. In the instant case, there has been a pervasive non-compliance with the seven (7) year term of the Ombudsman. The decision of this Honorable Court in the instant case will, in the manner of *Gaminde*, provide for the correct term and tenure of succeeding Ombudsmen.
- iii. *Third*. The constitutional issue raised in this case is better decided by this Honorable Court which can rule with finality as to the constitutionality of Section 8 (3) of R.A. No. 6770.



⁴⁷ Id. at 585-586 cited in *Funa v. Agra*, 704 Phil. 205, 218 (2013).

- iv. *Fourth.* The time element involved in the instant case cannot be ignored. Respondent Carpio-Morales has been holding the position of Ombudsman in a *de facto* capacity for more than two (2) years already. The vacancy and the appointment of a new Ombudsman is now imperative.
- v. *Fifth.* The instant petition involves a constitutional organ. The Office of the Ombudsman is a constitutional office, hence, in the words of *The Diocese of Bacolod*,⁴⁸ “a ruling by this court would be in the best interest of respondents, in order that their actions may be guided accordingly in the future.”
- vi. *Sixth.* There is no other plain, speedy and adequate remedy in the ordinary course of law that can correct the long running and recurring, pervasive and continuous violation of Section 11 in relation to Sections 8 and 10, Article XI of the 1987 Philippine Constitution, and applicable jurisprudence.
- vii. *Seventh.* This petition directly puts into question the status and legitimacy of respondent Carpio-Morales as Ombudsman and her deputies’ continued service as such considering that, pursuant to Section 11 in relation to Sections 8 and 10, Article XI of the 1987 Philippine Constitution, and applicable jurisprudence, her term already expired on 2 February 2015.⁴⁹

Interestingly, the OSG hardly addressed these points in its Comment and Memorandum. Nowhere did the OSG counter petitioner’s claim that the principal issue he raised is of such transcendental importance that his case may escape the application of the principle of the hierarchy of courts.

The Court has explained the necessity of the application of the hierarchy of courts in *Bañez, Jr. v. Concepcion*:⁵⁰

The Court must enjoin the observance of the policy on the hierarchy of courts, and now affirms that the policy is not to be ignored without serious consequences. The strictness of the policy is designed to shield the Court from having to deal with causes that are also well within the competence of the lower courts, and thus leave time to the Court to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. The Court may act on petitions for the extraordinary writs of certiorari, prohibition and mandamus only when absolutely necessary or when serious and important reasons exist to justify an exception to the policy.⁵¹

However, the doctrine of hierarchy of courts is not an iron-clad rule as it in fact admits the jurisprudentially established exceptions thereto, viz: (a) a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. A direct resort to this court includes availing of the remedies of certiorari and

⁴⁸ Referring to *The Diocese of Bacolod v. COMELEC*, 751 Phil. 301 (2015).

⁴⁹ *Rollo*, pp. 32-33.

⁵⁰ 693 Phil. 399 (2012).

⁵¹ *Id.* at 412 cited in *The Diocese of Bacolod v. COMELEC*, supra note 48 at 328.



prohibition to assail the constitutionality of actions of both legislative and executive branches of the government; (b) when the issues involved are of transcendental importance; (c) cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter; (d) the constitutional issues raised are better decided by this court; (e) the time element; (f) the filed petition reviews the act of a constitutional organ; (g) petitioners have no other plain, speedy, and adequate remedy in the ordinary course of law; and (h) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.⁵² Petitioner has amplified in his petition these exceptions to justify a relaxation on the adherence to the doctrine of hierarchy of courts.

Before proceeding any further, the Court observes that petitioner has named only the incumbent Ombudsman and the deputies as respondents in his petition although the present controversy deals with the constitutionality of a legislative act and, corollary thereto, the act of the President in appointing the respondents allegedly beyond the seven-year term as prescribed by the constitution and explicated through our jurisprudential declarations. The Court hastens to add that it was equally raised in this petition that there were alleged illegal disbursement of public funds as a result of the pervasive noncompliance with the constitutional requirement on the seven-year term of office of the Ombudsman and the deputies; yet, the petitioner failed to include the Department of Budget and Management (*DBM*) as a respondent.

Notwithstanding these observations, the Court notes that respondents' present counsel, the OSG, would have likewise represented the legislative body, the Office of the President, or the DBM had they been equally named as respondents in this petition. Bearing in mind that the arguments of the OSG relative to the constitutionality of Sec. 8(3) of R.A. No. 6770 would have equally applied to these persons had they been included as respondents in this petition and that the Court has already determined that it shall take cognizance of this case pursuant to its expanded power of review, we shall then set aside our misgivings on the failure of the petitioner to include the other respondents in his petition.

The History of the Office of the Ombudsman

The word "ombudsman" originated from Sweden when in 1809 it established the position of *Justlieombudsman* with the purpose of overseeing government administration. The title loosely translates as "citizen's defender" or "representative of the people."⁵³ The Ombudsman was primarily tasked

⁵² *The Diocese of Bacolod v. COMELEC*, supra note 48 at 331-335.

⁵³ http://www.ombudsman.wa.gov.au/About_Us/History.htm visited on 11 April 2018.



with receiving complaints from persons aggrieved by administrative action or inaction, conducting investigation thereon, and making recommendations to the appropriate administrative agency based on his findings. The Ombudsman relied mainly on the power of persuasion and the high prestige of the office to effect his recommendations.⁵⁴

In the Philippines, the Office of the Ombudsman considers the Permanent Commission in the Revolutionary Government as its precursor. The Permanent Commission, created pursuant to Art. 21⁵⁵ of the Decree of 23 June 1898, was designated to decide, on appeal, all criminal cases resolved by the provincial councils involving the department secretaries and the provincial and municipal officials.⁵⁶

The Permanent Commission continued its existence after the ratification of the Constitution of 1899, popularly known as the Malolos Constitution. Under No. 1, Art. 55 of said Constitution, one of the powers of the Commission was to “declare if there is sufficient cause to proceed against the President of the Republic, the Representatives, Department Secretaries, the Chief Justice of the Supreme Court and the Solicitor General in the cases provided by the Constitution.”⁵⁷

In May 1950, President Elpidio R. Quirino created the Integrity Board charged with receiving complaints against public officials for acts of corruption, dereliction of duty, and irregularity in office, and conducting a thorough investigation of these complaints.⁵⁸

On 30 December 1953, President Ramon Magsaysay issued Executive Order (*E.O.*) No. 1 creating the Presidential Complaints and Action Commission for the purpose of expediting actions on all complaints against the manner of various officials and personnel of the different executive departments, bureaus, offices, agencies, instrumentalities, and government-owned or -controlled corporations.

On 15 July 1958, President Carlos P. Garcia (*President Garcia*) issued E.O. No. 306 creating the Presidential Committee on Administration Performance Efficiency (*PCAPE*). The PCAPE was to be headed by a Technical Assistant designated by the President, and who shall be known as the Chairman.



⁵⁴ *Uy v. Sandiganbayan*, 407 Phil. 154, 166 (2001).

⁵⁵ Art. 21. Congress shall designate a permanent Commission of Justice presided by the Vice-President aided by one of the Department Secretaries and with these and seven others elected by plurality vote, from among the Representatives, shall compose the said Commission.

The Commission shall decide on appeal all criminal cases decided by the provincial councils; and shall have original and exclusive original jurisdiction to decide cases filed against Department Secretaries and provincial and municipal officials.

⁵⁶ <https://www.ombudsman.gov.ph/index.php?home=1&navId=MQ==&subNavId=ODU=>; last visited on 12 April 2018.

⁵⁷ *Id.*

⁵⁸ *Uy v. Sandiganbayan*, *supra* note 54 at 167.

On 7 March 1960, President Garcia issued E.O. No. 382 which granted to PCAPE all the powers of an investigating committee under Sects. 71⁵⁹ and 580⁶⁰ of the Revised Administrative Code,⁶¹ including the power to summon witnesses, administer oaths, and take testimony or evidence relevant to the investigation. However, on 29 December 1961, President Garcia issued E.O. No. 456 abolishing the PCAPE.

When President Diosdado P. Macapagal (*President Macapagal*) assumed office on 30 December 1961, he issued E.O. No. 1 re-creating the PCAPE for the purpose of achieving greater efficiency, competence, and dedication in the administration of government and ensuring the prompt and faithful performance of assigned duties, functions, and directives by the implementing government offices, agencies, and instrumentalities. The PCAPE was to be headed by a technical assistant designated by the President, and who shall be known as the Presidential Executive Assistant and be a member of the Cabinet.

On 18 January 1962, President Macapagal issued E.O. No. 4 which gave life to the Presidential Anti-Graft Committee (*PAGC*) to be composed of such personnel as the President may designate from time to time. The PAGC had the following functions:

1. To inquire into, and take measures to prevent, the occurrence of graft and of violations of R.A. No. 3019⁶² in such departments, bureaus, offices, agencies, or instrumentalities, including government-owned or -controlled corporations, as the President may determine, under the supervision of the Department Head concerned; and
2. In such departments, bureau, offices, agencies, or instrumentalities, including government-owned or -controlled corporations, as the President may determine, to implement and enforce R.A. No. 1379⁶³ by inquiring into, investigating, determining, and verifying any and all

⁵⁹ Sec. 71. *Power of investigating officer to take testimony.* – Any officer, committee, or person designated by the (Governor-General) President of the Philippines to conduct any investigation which may be lawfully prosecuted upon his order may, in the execution of such duty, summon witnesses, administer oaths, and take testimony relevant to the investigation in question.

⁶⁰ Sec. 580. *Powers incidental to taking of testimony.* – When authority to take testimony or evidence is conferred upon an administrative officer or upon any non-judicial person, committee, or other body, such authority shall be understood to comprehend the right to administer oaths and summon witnesses and shall include authority to require the production of documents under a subpoena *duces tecum* or otherwise, subject in all respects to the same restrictions and qualifications as apply in judicial proceedings of a similar character.

Saving the provisions of section one hundred and two of this Act, anyone who, without lawful excuse, fails to appear upon summons issued under the authority of the preceding paragraph or who, appearing before any individual or body exercising the power therein defined, refuses to make oath, give testimony, or produce documents for inspection, when thereunto lawfully required, shall be subject to discipline as in case of contempt of court and upon application of the individual or body exercising the power in question shall be dealt with by the judge of first instance having jurisdiction of the case in the manner provided by law.

⁶¹ Act No. 2711, dated 10 March 1917.

⁶² Entitled "Anti-Graft and Corrupt Practices Act."

⁶³ Entitled "An Act Declaring Forfeiture in Favor of the State any Property Found to have been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor."

unlawfully acquired properties of the officials and employees thereof, and obtaining the needed evidence to establish such unlawful acquisition of property or other forms of wealth acquired by them while in public office.

By virtue of E.O. No. 4 issued on 7 January 1966, President Ferdinand E. Marcos (*President Marcos*) created the Presidential Agency on Reforms and Government Operations (*PARGO*) which shall be directly under and responsible only to the President of the Philippines. The PARGO shall be headed by the Assistant to the President, and is a member of the Cabinet.

In 1969, R.A. No. 6028⁶⁴ creating the Office of the Citizens Counselor, was passed. Its pertinent provisions read:

Sec. 3. To carry out the purposes of this Act, there is hereby created an office to be known as the Office of the citizen's Counselor to which the President, with the consent of the Commission on Appointments, shall appoint an officer to be known as the Citizen's counselor, hereinafter referred to as the Counselor. The Citizen's Counselor shall be assisted by two (2) Associate Counselors, who shall be appointed by the President of the Philippines with the consent of the Commission on Appointments.

Sec. 4. No person may be appointed Counselor unless he has been a member of the Supreme Court or of the Court of Appeals.

No person may be appointed Associate Counselor unless he is a citizen of the Philippines, at least forty years of age and has for ten (10) years or more been a judge of a court of record or engaged actively in the practice of law.

No person may serve as Counselor or Associate Counselor (a) within two (2) years of the last day on which he served as a member of Congress; (b) while he is a candidate for or holds any other public office; or (c) while he is actively engaged in any other calling for profit or reward.

No Counselor or Associate Counselor shall be a candidate for any public office within two (2) years from the last day on which he served as Counselor or Associate Counselor.

In 1970, President Marcos created a Complaints and Investigation Office and in the following year, the Presidential Administrative Assistance Committee.⁶⁵

In view of the failure of these offices to accomplish the noble purpose for which they were created, the framers of the 1973 Constitution saw the need to constitutionalize the office of the Ombudsman, to be known as the *Tanodbayan*, in order to give it political independence and adequate powers

⁶⁴ Entitled "An Act to Promote Higher Standards of Efficiency and Justice in the Administration of Laws as well as to Better Secure the Right of the People to Petition the Government for Redress of Grievances Creating Herefor the Office of the Citizens Counselor."

⁶⁵ <https://www.ombudsman.gov.ph/index.php?home=1&navId=MQ=&subNavId=ODU=>; last visited on 13 April 2018.

to enforce its recommendations.⁶⁶ Thus, the Tanodbayan was vested with the power to receive and investigate complaints relative to public office, including those in government-owned or -controlled corporations; make appropriate recommendations; and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil or administrative cases before the proper court or body.⁶⁷

In the exercise of his power under Proclamation No. 1081,⁶⁸ President Marcos issued on 11 June 1978, P.D. No. 1487 creating the Office of the Ombudsman to be known as the Tanodbayan. Pertinently, Sec. 6 thereof provides for the term of office of the Tanodbayan and the deputies as follows:

Section 6. Term of Office.

- (a) The Tanodbayan and his Deputies shall serve for a term of seven years without reappointment unless removed by the President upon his determination that the Tanodbayan or any of his Deputies has become incapacitated or has been guilty of neglect of duty, or misconduct.
- (b) **If the Office of Tanodbayan becomes vacant for any cause, the Senior Deputy Tanodbayan shall serve as Acting Tanodbayan until the Tanodbayan shall have been appointed for a full term.** (emphasis and underlining supplied)

On 10 December 1978, President Marcos issued P.D. No. 1607⁶⁹ amending P.D. No. 1487. Significantly, the above-quoted Sec. 6 of P.D. No. 1487 was reiterated in P.D. No. 1607.

On 18 July 1979, P.D. Nos. 1487 and 1607 were amended when President Marcos issued P.D. No. 1630⁷⁰ wherein Sec. 6 merely repeated the same section of its precursors as to the term of office of the Tanodbayan and the deputies.

The independence of the Office of the Ombudsman was further reinforced under the 1987 Constitution. Sec. 7, Art. XI of the 1987 Constitution provides that the existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor which shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under the constitution. The Ombudsman and the deputies shall have the rank of chairman and members, respectively, of the constitutional commissions, and they shall receive the same salary, which shall not be decreased during their term of

⁶⁶ GOROSPE, Political Law, 2016 Ed., pp. 793-794.

⁶⁷ Sec. 6, Art. XIII of the 1973 Constitution

⁶⁸ Entitled "Proclaiming a State of Martial Law in the Philippines," dated 21 September 1972.

⁶⁹ Entitled "Revising Presidential Decree No. 1487 Creating the Office of the Ombudsman, to be known as Tanodbayan."

⁷⁰ Entitled "Further Revising Presidential Decree No. 1487, as revised by Presidential Decree No. 1607, Creating the Office of the Tanodbayan."

office.⁷¹ The Ombudsman and his deputies shall serve for a term of seven years without reappointment. They shall not be qualified to run for any office in the election immediately succeeding their cessation from office.⁷²

On 24 July 1987, President Aquino, in the exercise of her legislative powers pursuant to Sec. 6, Art. XVIII⁷³ of the 1987 Constitution, issued E.O. No. 243⁷⁴ providing for the framework of the Office of the Ombudsman. Sec. 6 of E.O. No. 243 is quoted:

Sec. 6. The Ombudsman and his Deputies shall have the rank of Chairman and Members, respectively, of the Constitutional Commissions, and they shall receive the same salary, which shall not be decreased during their term of office.

On 17 November 1989, the Eighth Congress approved R.A. No. 6770⁷⁵ providing for the functional and structural organization of the Office of the Ombudsman. The pertinent provisions of R.A. No. 6770 read:

Section 7. Term of Office. — The Ombudsman and his Deputies, including the Special Prosecutor, shall serve for a term of seven (7) years without reappointment.

Section 8. Removal; Filling of Vacancy. —

x x x x

(3) In case of vacancy in the Office of the Ombudsman due to death, resignation, removal or permanent disability of the incumbent Ombudsman, the Overall Deputy shall serve as Acting Ombudsman in a concurrent capacity until a new Ombudsman shall have been appointed for a full term. In case the Overall Deputy cannot assume the role of Acting Ombudsman, the President may designate any of the Deputies, or the Special Prosecutor, as Acting Ombudsman.

x x x (emphasis supplied)

Sec. 8(3) of R.A. No. 6770 is not unconstitutional.

Before proceeding to the very core issue of this petition, the Court reminds itself of its ruling in *Estrada v. Sandiganbayan*,⁷⁶ viz:



⁷¹ Sec. 10, Art. XI of the 1987 Constitution.

⁷² Sec. 11, Art. XI of the 1987 Constitution.

⁷³ Sec. 6. The incumbent President shall continue to exercise legislative powers until the first Congress is convened.

⁷⁴ Entitled "Declaring the Effectivity of the Creation of the Office of the Ombudsman as Provided for in the 1987 Constitution."

⁷⁵ Entitled "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes."

⁷⁶ 421 Phil. 290 (2001).

Preliminarily, the whole gamut of legal concepts pertaining to the validity of legislation is predicated on the basic principle that a legislative measure is presumed to be in harmony with the Constitution. Courts invariably train their sights on this fundamental rule whenever a legislative act is under a constitutional attack, for it is the postulate of constitutional adjudication. This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. Thus it has been said that the presumption is based on the deference the judicial branch accords to its coordinate branch - the legislature.

If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence, in determining whether the acts of the legislature are in tune with the fundamental law, courts should proceed with judicial restraint and act with caution and forbearance. Every intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort. In construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality.

In *La Union Credit Cooperative, Inc. v. Yaranon* we held that as long as there is some basis for the decision of the court, the constitutionality of the challenged law will not be touched and the case will be decided on other available grounds. Yet the force of the presumption is not sufficient to catapult a fundamentally deficient law into the safe environs of constitutionality. Of course, where the law clearly and palpably transgresses the hallowed domain of the organic law, it must be struck down on sight lest the positive commands of the fundamental law be unduly eroded.

Verily, the onerous task of rebutting the presumption weighs heavily on the party challenging the validity of the statute. He must demonstrate beyond any tinge of doubt that there is indeed an infringement of the constitution, for absent such a showing, there can be no finding of unconstitutionality. A doubt, even if well-founded, will hardly suffice. As tersely put by Justice Malcolm, "**To doubt is to sustain.**"⁷⁷ x x x (emphasis supplied)

Petitioner anchors his challenge on the constitutionality of Sec. 8(3) of R.A. No. 6770 in the belief that because the Ombudsman and the deputies have the same rank and salary as the chairman and the members of the constitutional commissions, their term of office, following the Court's disquisition in *Gaminde*, shall always be seven years counted from 2 February 1987 and seven years thereafter, and not the full term of seven years.

a. *The Office of the Ombudsman is not a constitutional commission.*

It must be stressed that the Office of the Ombudsman is not a constitutional commission. Sec. 1, Art. IX of the 1987 Constitution



⁷⁷ Id. at 342-343.

specifically enumerates the independent constitutional commissions in the Philippines, viz: the CSC, the COMELEC, and the COA. The common provisions among these three constitutional commissions are as follows:

Section 2. No member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which, in any way, may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or-controlled corporations or their subsidiaries.

Section 3. The salary of the Chairman and the Commissioners shall be fixed by law and shall not be decreased during their tenure.

Section 4. The Constitutional Commissions shall appoint their officials and employees in accordance with law.


Section 5. The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

Section 6. Each Commission *en banc* may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules, however, shall not diminish, increase, or modify substantive rights.

Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

Section 8. Each Commission shall perform such other functions as may be provided by law.⁷⁸

A commission is defined as "a board or committee officially appointed and empowered to perform certain acts or exercise certain jurisdiction of a public nature or relation."⁷⁹ Noteworthy, the CSC is composed of a chairman and two commissioners;⁸⁰ the COMELEC, a chairman and six commissioners;⁸¹ and the COA, a chairman and two commissioners. Clearly provided in Sec. 7 is that these three constitutional commissions shall decide by a majority vote of all its members any case or matter brought before it; thus, the commissions are collegial bodies whose manner of working is characterized by a sharing of responsibility among the chairman and the commissioners of the commission.



⁷⁸ 1987 Constitution, Art. IX.

⁷⁹ Black's Law Dictionary, Sixth Ed., p. 272.

⁸⁰ 1987 Constitution, Art. IX (B), Sec. 1.

⁸¹ 1987 Constitution, Art. IX (C), Sec. 1.

In contrast, the present Office of the Ombudsman, albeit composed of the Ombudsman to be known as Tanodbayan, the Overall Deputy, the Deputy for Luzon, the Deputy for the Visayas, the Deputy for Mindanao, the Deputy for the Military and Other Law Enforcement Office (*MOLEO*), and the Special Prosecutor, is not a collegial body. The Ombudsman and the deputies do not resolve cases by a majority of all its members but rather are confined within the sphere of their respective jurisdiction, i.e., the Deputy Ombudsman for Luzon, for cases involving public officials and employees assigned in Luzon; the Deputy Ombudsman for Visayas, for those assigned in Visayas; the Deputy Ombudsman for Mindanao, for those assigned in Mindanao; the Deputy Ombudsman for MOLEO, for those assigned in the military and the police; and the Special Prosecutor, in the conduct preliminary investigation and prosecution of criminal cases within the jurisdiction of the Sandiganbayan.⁸² The Overall Deputy, on the one hand, oversees and administers the operations of the different offices under the Office of Ombudsman⁸³ while the Ombudsman is the final approving authority on the disposition of cases before the sectoral offices, i.e., Luzon, Visayas, Mindanao, MOLEO, and the Office of the Special Prosecutor.

b. The undeniable intent of the framers of the 1987 Constitution in Sec. 10, Art. XI was to provide that the rank and salary of the Ombudsman and his deputies shall be the same as that of the chairman and members, respectively, of the constitutional commissions.

Sec. 10, Art. XI of the 1987 Constitution reads:

SECTION 10. The Ombudsman and his Deputies shall have the rank of Chairman and Members, respectively, of the Constitutional Commissions, and they shall receive the same salary, which shall not be decreased during their term of office. (underlining supplied)

A reading on the deliberation of the framers of the 1987 Constitution relative to this provision is in order:

MR. REGALADO. x x x

On Section 10, regarding the Ombudsman, there has been concern aired by Commissioner Rodrigo about who will see to it that the Ombudsman will perform his duties because he is something like a guardian of the government. This recalls the statement of Juvenal that while the Ombudsman is the guardian of the people "*quis custodiet ipsos custodies*," who will guard the guardians? I understand here that the Ombudsman who

⁸² R.A. No. 6770, Sec. 11(4)(a).

⁸³ R.A. No. 6770, Sec. 11(2).



has the rank of a chairman of a constitutional commission is also removable only by impeachment.

MR. ROMULO. That is the intention, Madam President.

MR. REGALADO. Only the Ombudsman?

MR. MONSOD. Only the Ombudsman.

MR. REGALADO. So not his deputies, because I am concerned with the phrase "have the rank of." We know, for instance, that the City Fiscal of Manila has the rank of a justice of the Intermediate Appellate Court, and yet he is not part of the judiciary. So I think we should clarify that also and read our discussions into the Record for purposes of the Commission and the Committee.

MR. ROMULO. Yes. If I may just comment: the Ombudsman in this provision is a rank in itself really. That is how we look at it. But for purposes of government classification and salary, we thought we have to give him a recognizable or an existing rank as a point of reference more than anything else.⁸⁴

x x x x (emphasis supplied)

and

MR. DE LOS REYES. On lines 9 and 10 of page 4, it is stated:

"A deputy of the Ombudsman shall have the same rank of a Commissioner of a Constitutional Commission and his salary, which shall not be decreased during his term of office."

The sentence does not sound right.

Will the Committee agree that we adopt the same arrangement in the first sentence, so that the Deputy Ombudsman shall have the same rank of a Commissioner and shall receive the same salary, which shall not be decreased during his term of office?

THE PRESIDENT. So, what is the proposed amendment?

MR. DE LOS REYES. The proposed amendment is to delete the phrase "and his salary" on line 11 and instead, to substitute it with the phrase: **AND SHALL RECEIVE THE SAME SALARY.**

THE PRESIDENT. Is that accepted?

x x x x

MR. MAAMBONG. Madam President, I am sorry if I am taking a dual role here but I have an anterior amendment to the same Section 10.

On page 4, Section 10, I propose to simplify the paragraph by deleting the second sentence from lines 9 to 13. The first sentence of Section 10, starting on line 6, should read: "The Ombudsman **AND HIS DEPUTIES**"

⁸⁴ Record of the Constitutional Commission, Vol. II, p. 273.



shall have the rank of a Chairman AND MEMBERS OF A CONSTITUTIONAL COMMISSION and THEY shall receive the salary, which shall not be decreased during THEIR term of office.”

X X X X

MR. DE LOS REYES. Would Commissioner Maambong be agreeable to the insertion of the word RESPECTIVELY?

MR. MAAMBONG. In what portion of the amendment?

MR. DE LOS REYES. “CHAIRMAN AND MEMBERS OF THE CONSTITUTIONAL COMMISSION, RESPECTIVELY.”

MR. MAAMBONG. The amendment is accepted.


X X X X

THE PRESIDENT. Is there any objection to the proposed amendment on Section 10? (*Silence*) The Chair hears none; the amendment is approved.

MR. MAAMBONG. May I read the sentence for the record so that we will not be confused. Section 10 reads: “The Ombudsman and his Deputies shall have the rank of a Chairman and members of a Constitutional Commission, respectively, and they shall receive the same salary, which shall not be decreased during their term of office.”⁸⁵ X X X

The discussion confirms that the intent of the framers of the Constitution in qualifying that the salary and rank of the Ombudsman and the deputies shall be the same as that of the chairman and the members of the constitutional commissions, was for the purpose of having a government classification as to salary and a point of reference as to rank.

The words “salary” and “rank” were utilized by the framers in their ordinary and common usage. The word “salary” is defined as “a reward or recompense for services performed. In a more limited sense, a fixed periodical compensation paid for services rendered.”⁸⁶ The word “rank,” on the other hand, “is often used to express something different from *office*. It then becomes a designation or title of honor, dignity or distinction conferred upon an officer in order to fix his relative position in reference to other officers in matters of privilege, precedence, and sometimes of command, or by which to determine his pay and emoluments.”⁸⁷ From these definitions, it is obvious that neither the words “salary” nor “rank” even remotely includes the “term of office,” which is the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another.⁸⁸



⁸⁵ Id. at 307.

⁸⁶ Black's Law Dictionary, Sixth Ed., p. 1337.

⁸⁷ Id. at 1259.

⁸⁸ *Fetalino v. Commission on Elections*, 700 Phil. 129, 145 (2012) citing *Nueno v. Angeles*, 76 Phil. 12, 21-22 (1946).

It is a well-settled principle of legal hermeneutics that the words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification, unless it is evident that the legislature, or in this case the framers of the fundamental law, intended a technical or special legal meaning to those words.⁸⁹ As much as possible, the words of the Constitution should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say.⁹⁰ It is presumed that the framers and the people meant what they said when they said it, and that this understanding was reflected in the Constitution and understood by the people in the way it was meant to be understood when the fundamental law was ordained and promulgated.⁹¹ *Index animi sermo* or “speech is the index of intention” and *verba legis non est recedendum* or “from the words of a statute there should be no departure.”⁹²

It must be underscored that the framers of the Constitution in Sec. 10, Art. XI limited to **rank and salary** the similarity between the Ombudsman and the deputies on one hand, and the chairman and the members of the constitutional commission on the other. Applying the basic precept of statutory construction that the express mention of one person, thing, act or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*,⁹³ it is beyond cavil that pursuant to Sec. 10, Art. XI, it is only with reference to “salary” and “rank” that the Ombudsman and his deputies should be similar to the chairman and the members of the constitutional commission. *Expressum facit cessare tacitum*. What is expressed puts an end to what is implied.⁹⁴ Thus, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters,⁹⁵ like “term of office” for “rank” and “salary” as insisted by the petitioner. Time and time again, it has been repeatedly declared by this Court that where the law speaks in clear and categorical language, there is no room for interpretation, only application.⁹⁶ It is best to keep in mind the reminder from Holmes that “there is no canon against using common sense in construing laws as saying what it obviously means.”⁹⁷

Moreover, the framers of the fundamental law could have easily and conveniently provided that the term of office of the Ombudsman and his deputies shall be the same as that of the chairman and members of the constitutional commissions if this was their obvious intent. *Casus omissus pro*

⁸⁹ *Estrada v. Sandiganbayan*, supra note 76 at 348.

⁹⁰ *Chavez v. JBC*, 691 Phil. 173, 199 (2012).

⁹¹ *Saguisag v. Ochoa*, supra note 39 at 373.

⁹² *Padilla v. Congress of the Philippines*, G.R. No. 231671, 25 July 2017.

⁹³ *Commissioner of Internal Revenue v. Puregold Duty Free, Inc.*, 761 Phil. 419, 444-445 (2015).

⁹⁴ *San Miguel Corporation Employees Union-Philippine Transport and General Workers Organization v. San Miguel Packaging Products Employees Union-Pambansang Diwa ng Manggagawang Pilipino*, 559 Phil. 549, 574 (2007).

⁹⁵ *Malinas v. COMELEC*, 439 Phil. 319, 335 (2002).

⁹⁶ *Umali v. The Judicial and Bar Council*, G.R. No. 228628, 25 July 2017.

⁹⁷ *Republic Flour Mills, Inc. v. Commissioner of Customs*, 148-A Phil. 223, 227-228 (1971).

omisso habendus est. A person, object or thing omitted must have been omitted intentionally.⁹⁸

c. The constitutional commissions observe the regular rotational plan which cannot apply to the Office of the Ombudsman.

The regular rotation or cycle that is explicitly provided in Art. IX of the 1987 Constitution and inherently unique to the constitutional commissions is an argument that works heavily against the position of the petitioner that the limitations on the term of office of these commissions equally apply to the Ombudsman and his deputies.

It is instructive that in the 1949 case of *Nationalista Party v. De Vera*,⁹⁹ the Court laid down the following ruling when it interpreted Sec. 1, Art. X of the 1935 Constitution¹⁰⁰ relative to the term of office of the commissioners of the independent COMELEC, to wit:

In order to carry out the purpose of the Constitution of placing in the Commission a new member every three years, it is essential that after the first Commissioners have been appointed, every subsequent appointment shall so fix the appointee's term of office as to maintain the three years difference between the dates of expiration of the respective terms of the incumbents. And this can be done if after the appointments of the first three Commissioners, the successor of any one of them who ceases prior to the expiration of his term, be appointed only for the unexpired portion of that term. Of course, when a Commissioner ceases because of the expiration of his term his successor must be appointed for a term of nine years; but when he ceases on other grounds prior to the expiration of his term, his successor must be appointed only for the unexpired portion of that term, otherwise the appointment would be offensive to the Constitution.¹⁰¹

In *Republic v. Imperial*,¹⁰² the Court held that this particular provision of the 1935 Constitution, when taken together with the prescribed term of office for nine years without reappointment, evidences a deliberate plan to have a regular rotation or cycle in the membership of the COMELEC, by having subsequent members appointable only once every three years. With these periods it was the intention to have one position vacant every three years, so that no President can appoint more than one commissioner, thereby

⁹⁸ *San Miguel Corporation Employees Union-Philippine Transport and General Workers Organization v. San Miguel Packaging Products Employees Union-Pambansang Diwa ng Manggagawang Pilipino*, supra note 94 at 574.

⁹⁹ 85 Phil. 126 (1949).

¹⁰⁰ Sec. 1. There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years. The Chairman and the other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution.

¹⁰¹ *Nationalista Party v. De Vera*, supra note 99 at 134-135.

¹⁰² 96 Phil. 770, 775 (1955) cited in *Gaminde v. COA*, supra note 10 at 87.

preserving and safeguarding the independence and impartiality of the Commission as a body, we may add, for the impartiality and independence of each individual commissioner's tenure was safeguarded by other provisions in the same Article X of the fundamental charter.¹⁰³ Moreover, the rotation of the commissioners' appointments at regular and fixed intervals of three years was a deliberate plan, was shown by the history of the provision and by selection of the fixed term of nine years for all subsequent appointees, since no other term would give such a result.

In *Imperial*, we established that for the operation of the rotational plan, two conditions, both indispensable to its workability, are required, viz: (1) that the terms of the first three commissioners should *start on a common date*; and (2) that any vacancy due to death, resignation or disability before the expiration of the term should be filled *only for the unexpired balance of the term*. Without satisfying these conditions, the regularity of the intervals between appointments would be destroyed, and the evident purpose of the rotation, i.e., to prevent that a four-year administration should appoint more than one permanent and regular commissioner, would be frustrated. It was settled therefore that of the first three COMELEC commissioners appointed whose office shall all commence on a common date, one commissioner shall have a term of office of nine years, the other for six years, and the remaining one for three years.

The rotational plan, which was unique for the COMELEC under the 1935 Constitution, was subsequently applied to the CSC and the COA pursuant to Art. XII of the 1973 Constitution, viz:

B. THE CIVIL SERVICE COMMISSION

SECTION 1. (1) The Civil Service embraces every branch, agency, subdivision, and instrumentality of the Government, including every government-owned or-controlled corporation. It shall be administered by an independent Civil Service Commission composed of a Chairman and two Commissioners, who shall be natural-born citizens of the Philippines, and, at the time of their appointment, are at least thirty-five years of age and holders of a college degree, and must not have been candidates for any elective position in the election immediately preceding their appointment. **The Chairman and the Commissioners shall be appointed by the President for a term of seven years without reappointment. Of the Commissioners first appointed, one shall hold office for seven years, another for five years, and the third for three years. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.**

x x x x

C. THE COMMISSION ON ELECTIONS

SECTION 1. x x x



¹⁰³ *Nationalista Party v. De vera*, supra note 99 at 134-135 and *Nationalista Party v. Bautista*, 85 Phil. 101, 107 (1949)

(2) The Chairman and the Commissioners shall be appointed by the President for a term of seven years without reappointment. **Of the Commissioners first appointed, three shall hold office for seven years, three for five years, and the last three for three years. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.**

X X X X

D. COMMISSION ON AUDIT

SECTION 1. x x x

(2) The Chairman and the Commissioners shall be appointed by the President for a term of seven years without reappointment. **Of the Commissioners first appointed, one shall hold office for seven years, another for five years, and the third for three years. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.** (emphases supplied)

The regular rotation in the constitutional commissions was carried over in Art. IX of the 1987 Constitution, as follows:

B. The Civil Service Commission

SECTION 1. x x x

(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. **Of those first appointed, the Chairman shall hold office for seven years, a Commissioner for five years, and another Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor.** In no case shall any Member be appointed or designated in a temporary or acting capacity.

X X X X

C. The Commission on Elections

SECTION 1. x x x

(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. **Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last Members for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor.** In no case shall any Member be appointed or designated in a temporary or acting capacity.

X X X X



D. Commission on Audit

SECTION 1. x x x

(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. **Of those first appointed, the Chairman shall hold office for seven years, one Commissioner for five years, and the other Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.** In no case shall any Member be appointed or designated in a temporary or acting capacity. (emphases supplied)

Corollary to these provisions in the 1987 Constitution, the terms of the first chairmen and commissioners of the constitutional commissions must start on a common date, irrespective of the variations in the dates of appointments and qualifications of the appointees, in order that the expiration of the first terms of seven, five and three years should lead to the regular recurrence of the two-year interval between the expiration of the terms.¹⁰⁴

Unlike the constitutional commissions in the 1973 and 1987 Constitutions, the Ombudsman and the deputies do not make a collegial body thus, making it implausible to apply the regular rotation or cycle in its membership. The Ombudsman and the deputies, in contrast to the constitutional commissions, do not decide by a majority vote of all its members any case or matter brought before the Office of the Ombudsman. To stress, the Ombudsman and the deputies have their respective jurisdiction; hence, they could not have common responsibility relative to the discharge of their separate and distinct functions.

Granting that the regular rotation applies to the Office of the Ombudsman and that the first appointed Ombudsman shall enjoy a seven-year term, then these queries are posed: Will the seven-year term likewise apply to the first appointed deputies? Who among the first appointed deputies shall take the five-year term? Or the three-year term? Obviously, the 1987 Constitution does not provide the answers plainly because there is nothing specific in the fundamental law that provides for the regular rotation of seven-five-three-year term of office in the Office of the Ombudsman. Thus, it is only apposite to apply the well-settled rule that the court may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers¹⁰⁵ or, in this case, the framers of the 1987 Constitution. To stress, it is presumed that these provisions have been carefully crafted in order to express the objective it seeks to attain.¹⁰⁶

Belatedly, as this issue is raised for the first time in his memorandum, petitioner points out another dimension as to the alleged unconstitutionality of

¹⁰⁴ *Gaminde v. COMELEC*, supra note 10 at 87-88.

¹⁰⁵ *Kida v. Senate of the Philippines*, 683 Phil. 198, 221 (2012).

¹⁰⁶ *Saguisag v. Ochoa*, supra note 39 at 373.



Sec. 8(3) of R.A. No. 6770. Petitioner avers that Sec. 8(3) of R.A. No. 6770, in so far as provides that the Overall Deputy shall serve as Acting Ombudsman in a concurrent capacity until a new Ombudsman shall have been appointed for a full term runs counter to what is uniformly provided in Sec. 2 of Art. IX(A), (B), and (C) of the 1987 Constitution, viz: "In no case shall any member be appointed or designated in a temporary or acting capacity."¹⁰⁷

To the point of being monotonous, Art. IX of the 1987 Constitution refers exclusively to the constitutional commissions; thus, such proscription as to the appointment or designation in a temporary or acting capacity of a member applies only to the constitutional commissions and cannot extend to the Ombudsman and the deputies. Indeed, Art. XI of the constitution does not provide for such prohibition. What is clear however, is that the Ombudsman and the deputies shall, during their tenure, be subject to the same disqualifications and prohibitions as provided for in Sec. 2 of Article IX(A) of this Constitution, "[n]o Member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or -controlled corporations or their subsidiaries."

d. The ruling in Gaminde as to the terms of office of the chairman and members of the constitutional commissions does not apply to the Ombudsman and the deputies.

In *Gaminde*, petitioner Gaminde was appointed on 11 June 1993 as *ad interim* CSC commissioner, and assumed office on 22 June 1993. From her appointment paper, Gaminde's term was to expire on 2 February 1999. When Gaminde sought clarification from the Office of the President as to the expiration of her term of office, she was informed by the Chief Presidential Legal Counsel that it would expire on 2 February 2000. The COA General Counsel, however, opined otherwise, stating that Gaminde's term had expired on 2 February 1999, conformably with the constitutional intent. As a result, the salaries and emoluments of Gaminde and her co-terminous staff effective 2 February 1999, were disallowed in audit. Gaminde appealed to the COA en banc but the commission affirmed the propriety of the disallowance. Gaminde's motion for reconsideration was denied by COA.

Finding that Gaminde's term expired on 2 February 1999, the Court ruled that 2 February 1987 was the proper starting point of the terms of office of the first appointees to the constitutional commissions with staggered seven-


¹⁰⁷ *Rollo*, p. 123.

five-three-year terms considering the plain language of Art. IX (B), Sec. 1 (2), Art. IX (C), Sec. 1 (2) and Art. IX (D), Sec. 1 (2) of the 1987 Constitution that uniformly prescribed a seven-year term of office for members of the constitutional commissions, without re-appointment; and for the first appointees terms of seven, five and three years, without re-appointment. If there was a belated appointment or qualification, the interval between the start of the term and the actual qualification of the appointee must be counted against the latter.

Relevant to Sec. 15,¹⁰⁸ Art. XVIII of the 1987 Constitution, the Court stated that this provision under the Transitory Provisions contemplates tenure, not term of the incumbent chairperson and members of the CSC, the COMELEC, and the COA who shall continue in office for one year after the ratification of this Constitution, unless they are sooner removed for cause or become incapacitated to discharge the duties of their office or appointed to a new term thereunder. The incumbent members of the constitutional commissions shall continue in office for one year after the ratification of the 1987 Constitution pursuant to their existing appointments unless their tenure is cut short by the appointing power. However, Sec. 15, Art. XVIII will not have any effect on the term of office fixed in Art. IX of the 1987 Constitution providing for a seven-five-three year rotational interval for the first appointees to the constitutional commissions.

The Court draws attention to the fact that its ruling in *Gaminde* applies exclusively to the CSC, the COMELEC, and the COA for the reason that Art. IX of the 1987 Constitution pertains solely to the constitutional commissions. Indeed, the jurisprudential teachings since 1949 in *Bautista* and *De vera*, in 1955 in *Imperial*, albeit referring to the terms of office of the COMELEC chairman and members, and now in *Gaminde*, pertain to the three constitutional commissions, and nothing else. It will be absurd, as it is devoid of any valid and legal reason, to extend the application of the *Gaminde* ruling to the Office of the Ombudsman when this office is admittedly not a constitutional commission.

e. Sec. 8(3) of R.A. No. 6770 is consistent with Sec. 11, Art. XI of the 1987 Constitution.

Tracing the history of the creation of the now Office of the Ombudsman, the 1973 Constitution provides: 

¹⁰⁸ Sec. 15. The incumbent Members of the Civil Service Commission, the Commission on Elections, and the Commission on Audit shall continue in office for one year after the ratification of this Constitution, unless they are sooner removed for cause or become incapacitated to discharge the duties of their office or appointed to a new term thereunder. In no case shall any Member serve longer than seven years including service before the ratification of this Constitution.

Sec. 6. The Batasang Pambansa shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office, including those in government-owned or -controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body.¹⁰⁹

It was by virtue of P.D. No. 1487 that President Marcos, in the exercise of his power under Proclamation No. 1081, clearly defined the term of office of the Tanodbayan and his deputies, *viz*:

Section 6. *Term of Office.*

- (a) The Tanodbayan and his Deputies shall serve for a term of seven years without reappointment unless removed by the President upon his determination that the Tanodbayan or any of his Deputies has become incapacitated or has been guilty of neglect of duty, or misconduct.
- (b) **If the Office of Tanodbayan becomes vacant for any cause, the Senior Deputy Tanodbayan shall serve as Acting Tanodbayan until the Tanodbayan shall have been appointed for a full term.** (emphasis and underlining supplied)

P.D. No. 1607 and P.D. No. 1630 were subsequently issued by President Marcos amending P.D. No. 1487. Significantly, the amendatory decrees plainly reiterated the very same provision found in Sec. 6 of P.D. No. 1487.

On the one hand, Sec. 11, Art. XI of the 1987 Constitution reads:

Sec. 11. The Ombudsman and his Deputies shall serve for a term of seven years without reappointment. They shall not be qualified to run for any office in the election immediately succeeding their cessation from office.

The quoted provision of the Constitution is clear and explicit: (a) the Ombudsman and the deputies shall serve the term of seven years; (b) that the Ombudsman and the deputies shall not be reappointed; and (c) the Ombudsman and the deputies shall not run for any office in the election immediately succeeding their cessation from office.

Contrary to the position of the petitioner, Sec. 11, Art. XI by itself is clear and can stand on its own. Notably, the framers plainly provided for a seven-year term of the Ombudsman and the deputies. For sure, nowhere in the Constitution can it be gathered that the appointment to any vacancy for the position of Ombudsman and the deputies shall be only for the unexpired term of the predecessor. This can only mean that it was the intent of the framers that the appointment to the positions of the Ombudsman and the deputies,

¹⁰⁹ Art. XIII.



whether it be for the expired or unexpired term of the predecessor, shall always be for a full term of seven years. *Ubi lex non distinguit nec nos distinguere debemus*. Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish.¹¹⁰ Where the law is free from ambiguity, the court may not introduce exceptions or conditions where none is provided from considerations of convenience, public welfare, or for any laudable purpose; neither may it engraft into the law qualifications not contemplated.¹¹¹

More importantly, it can be easily deduced from the decrees issued by President Marcos preceding the creation of the Office of the Ombudsman under the 1987 Constitution that the appointment of the Tanodbayan and the deputies shall be for a full term of seven years regardless of the reason for the vacancy in the position.

Jurisprudence teaches us that a statute should be construed in harmony with the constitution, viz:

As the constitution is the fundamental law to which all laws are subservient, a statute should not be interpreted independently of the Constitution. The statute should be construed in harmony with, and not in violation of, the fundamental law. The legislature, in enacting a statute, is presumed to have adhered to the constitutional limitations. Courts should accordingly presume that it was the intention of the legislature to enact a valid, sensible, and just law one which operates no further than maybe necessary to effectuate the specific purpose of the law.¹¹²

In our review of Sec. 8(3) of R.A. No. 6770, we note that in case of death, resignation, removal, or permanent disability of the Ombudsman, the new Ombudsman shall be appointed for a full term. Undoubtedly, Sec. 8(3), R.A. No. 6770 is consistent with Sec. 11, Art. XI of the 1987 Constitution in so far as it provides that the Ombudsman and the deputies shall serve for a term of seven years. Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law.¹¹³

Petitioner asserts that in case of a vacancy for reasons other than the expiration of the term in the other constitutionally created offices, the successor shall serve for the unexpired term of the predecessor. In an attempt to fortify his assertion he cites the term of the Office of the President,¹¹⁴ the

¹¹⁰ *People of the Philippines v. Sandiganbayan*, 581 Phil. 419, 429 (2008).

¹¹¹ *Navarro v. Ermita*, 634 Phil. 594, 610-611 (2010).

¹¹² AGPALO, *Statutory Construction*, Fourth Ed., 1998, pp. 266-267.

¹¹³ *Navarro v. Ermita*, supra note 111 at 612 citing *Fariñas v. The Executive Secretary*, 463 Phil. 179, 197 (2003).

¹¹⁴ 1987 Constitution, Art. VII, Sec. 8. In case of death, permanent disability, removal from office, or resignation of the President, the Vice-President shall become the President to serve the unexpired term. In case of death, permanent disability, removal from office, or resignation of both the President and Vice-President, the President of the Senate or, in case of his inability, the Speaker of the House of

Vice-President,¹¹⁵ the Senators, and the Members of the House of Representatives.¹¹⁶

The Court is not persuaded.

Petitioner failed to consider that there are other offices created under the 1987 Constitution where the successor is not limited to hold office for the unexpired term of the predecessor. To name a few: (a) the justices of the Supreme Court and the judges of the lower courts hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office;¹¹⁷ hence, in case the incumbent reaches the age of seventy or when a vacancy occurs for any other reason, the successor shall hold office until he reaches the age of seventy or becomes incapacitated to discharge his duties; (b) the JBC, where the regular members are the following: a representative each from the Integrated Bar of the Philippines (IBP) and the private sector; a professor of law; and a retired member of the Supreme Court.¹¹⁸ Of the regular members first appointed, the representative of the IBP shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year. The Chief Justice shall be the *ex officio* Chairman of the JBC, and the Secretary of Justice and a representative of the Congress as *ex officio* Members. Thus, the Chief Justice shall remain as the *ex officio* JBC Chairman until the mandatory retirement age of 70 or becomes incapacitated to discharge the duties of the office; the Secretary of Justice, while holding this Cabinet position; and the representative of Congress,¹¹⁹ until recalled by the chamber or until the term of the representative expires, his term prematurely ends due to death, resignation, removal, or permanent disability; (c) the Senate and the House Electoral Tribunal, where each electoral tribunal shall be composed of nine members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or

Representatives, shall then act as President until the President or Vice-President shall have been elected and qualified.

The Congress shall, by law, provide who shall serve as President in case of death, permanent disability, or resignation of the Acting President. He shall serve until the President or the Vice-President shall have been elected and qualified, and be subject to the same restrictions of powers and disqualifications as the Acting President.

¹¹⁵ 1987 Constitution, Art. VII, Sec. 9. Whenever there is a vacancy in the Office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the Members of the Senate and the House of Representatives who shall assume office upon confirmation by a majority vote of all the Members of both Houses of the Congress, voting separately.

¹¹⁶ 1987 Constitution, Art. VI, Sec. 9. In case of vacancy in the Senate or in the House of Representatives, a special election may be called to fill such vacancy in the manner prescribed by law, but the Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term.

¹¹⁷ 1987 Constitution, Art. VIII, Sec. 11.

¹¹⁸ 1987 Constitution, Art. VIII, Sec. 8(1).

¹¹⁹ *In Chavez v. JBC*, supra note 90 at 206-207, the Supreme Court ruled that the word Congress in Sec. 8(1) of the 1987 Constitution "must be taken to mean the entire legislative department. A *fortiori*, a pretext of oversight cannot prevail over the more pragmatic scheme which the Constitution laid with firmness, that is, that the JBC has a seat for a single representative of Congress, as one of the co-equal branches of government."

organizations registered under the party-list system represented therein. The senior Justice in the electoral tribunal shall be its Chairman. Following the earlier discussion on the JBC, the term of the Justices shall be until they reach the mandatory retirement age of 70 or become incapacitated to discharge the duties of the office; and the members of the Senate and the House of Representatives, until they are recalled by the chamber, or their term expires, or their term prematurely ends due to death, resignation, removal, or permanent disability; and (e) the Commission on Appointments (CA), which shall be composed of twelve Senators and twelve members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented herein. The President of the Senate shall be the *ex officio* chairman of the CA.¹²⁰ Hence, the *ex officio* chairman shall remain as such until he becomes the President of the Senate, while the members shall continue as such until recalled by the chamber, or until their term expires, or their term prematurely ends due to death, resignation, removal, or permanent disability.

It is a legal teaching that the courts, as guardians of the Constitution, have the inherent authority to determine whether a statute enacted by the legislature transcends the limit imposed by the fundamental law. And where the acts of the other branches of government run afoul of the Constitution, it is the judiciary's solemn and sacred duty to nullify the same.¹²¹ The Court has punctiliously reviewed the 1987 Constitution and its jurisprudential declarations but found nothing that would at the very least tenuously support the argument of the petitioner that Sec. 8(3) of R.A. No. 6770 is unconstitutional.

Going back to our earlier pronouncement that the onerous task of rebutting the presumption weighs heavily on the party challenging the validity of the statute, the Court rules that the petitioner has miserably failed to prove that Sec. 8(3) of R.A. No. 6770 transgresses the provisions of the 1987 Constitution. As such, the Court has no option but to deny the petition.

To summarize:

Pertinent to Sec. 10, Art. XI of the 1987 Constitution, it is only as to the rank and salary that the Ombudsman and the deputies shall be the same with the chairman and members, respectively, of the constitutional commissions.

Harmonizing Sec. 11, Art. XI of the 1987 Constitution with Sec. 8(3) of R.A. No. 6770, in any vacancy for the positions of Ombudsman and the deputies, whether as a result of the expiration of the term or death,

¹²⁰ Rule of the Commission on Appointments, as amended on 5 September 2007.

¹²¹ *Navarro v. Ermita*, supra note 111 at 612 citing *Fariñas v. The Executive Secretary*, 463 Phil. 179, 197 (2003).



resignation, removal, or permanent disability of the predecessor, the successor shall always be appointed for a full term of seven years.

Unlike the constitutional commissions in Art. IX of the 1987 Constitution, the seven-year term of office of the first appointees for Ombudsman and the deputies is not reckoned from 2 February 1987, but shall be reckoned from their date of appointment. Accordingly, the present Ombudsman and deputies shall serve a full term of seven years from their date of appointment unless their term is cut short by death, resignation, removal, or permanent disability.

The *Gaminde* ruling applies to the constitutional commissions and not to the Office of the Ombudsman.

WHEREFORE, the petition is **DISMISSED**.


SO ORDERED.


SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:

(On Leave)
MARIA LOURDES P.A. SERENO
Chief Justice


ANTONIO T. CARPIO
Acting Chief Justice


PRESBITERO J. VELASCO, JR
Associate Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


DIOSDADO M. PERALTA
Associate Justice

Perlas
LUCAS P. BERSAMIN

Associate Justice


MARIANO C. DEL CASTILLO

Associate Justice


ESTELA M. PERLAS-BERNABE

Associate Justice


MARVIC M.V.F. LEONEN

Associate Justice


FRANCIS H. JARDELEZA

Associate Justice


ALFREDO BENJAMIN S. CAGUIOA

Associate Justice


NOEL GIMENEZ TIJAM

Associate Justice


ANDRES B. REYES, JR.

Associate Justice


ALEXANDER G. GESMUNDO

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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

CERTIFIED TRUE COPY


EDGAR O. ARICHETAClerk of Court En Banc
Supreme Court