Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ILDEFONSO T. PATDU, JR., REBECCA S. CACATIAN, and GERONIMO V. QUINTOS, *Petitioners,*	**G.R. No. 230171**[1]
	Present:
- versus -	PERLAS-BERNABE, *S.A.J.,* *Chairperson,* HERNANDO, INTING, GAERLAN, and DIMAAMPAO, *JJ.*
HON. CONCHITA CARPIO-MORALES, in her capacity as Ombudsman, and FIELD INVESTIGATION OFFICE-OFFICE OF THE OMBUDSMAN, *Respondents.*	Promulgated: SEP 27 2021

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DECISION

HERNANDO, *J.*:

This petition for review on *certiorari*[2] assails the August 4, 2016 Resolution[3] and February 21, 2017 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 146382. The CA resolutions dismissed a petition for *certiorari*, which assailed the August 4, 2014 Resolution[5] and March 17, 2015

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[1] On a preliminary note, the *rollo* of this case is improperly paginated. Pagination jumped from page 396 to page 697. Note, however, that this is merely a typographical error in the pagination; the documents are not incomplete.

[2] *Rollo,* pp. 26-84. Filed on April 17, 2017.

[3] Id. at 85-86. Penned by Associate Justice Mariflor P. Punzalan-Castillo, and concurred in by Associate Justices Florito S. Macalino and Zenaida T. Galapate-Laguilles.

[4] Id. at 87-95. Id.

[5] Id. at 285-311. Penned by Graft Investigation and Prosecution Officer I Clarence N. Joson, and approved by Preliminary Investigation and Administrative Adjudication Bureau-B Director Moreno F. Generoso (recommending approval) and Ombudsman Conchita Carpio-Morales.

Joint Order[6] of respondent Office of the Ombudsman (OMB) in OMB-C-C-08-0201-E, for lack of jurisdiction. The OMB Resolution and Joint Order found probable cause for the filing of criminal cases for violation of Section 3(e) of Republic Act No. (RA) 3019[7], as amended, and Malversation through Falsification[8] against petitioners Ildefonso T. Patdu, Jr. (Patdu), Rebecca S. Cacatian (Rebecca), and Geronimo V. Quintos (Quintos) (collectively, petitioners), together with several other government officials and one private individual.[9]

The Factual Antecedents:

This case arose from a complaint[10] filed by the OMB Field Investigation Office (FIO) against Iloilo Second District Representative Judy J. Syjuco (Representative Syjuco), Technical Education and Skills Development Authority Director-General Augusto Syjuco, Jr. (Syjuco, Jr.), Department of Transportation and Communications (DOTC) Management Division Inspector Marcelo P. Desiderio, Jr. (Desiderio), DOTC Management Technical Inspector Danilo M. Dela Rosa (Dela Rosa), and Domingo Samuel Jonathan L. Ng (Ng), proprietor of West Island Beverages Distributor (West Island), for Estafa, Falsification of Public Documents, and violation of Section 3(e) of RA 3019.[11]

A supplemental complaint[12] was filed by the FIO to include DOTC Storekeeper III Antonio D. Cruz (Cruz) as respondent for the same charges.[13] Likewise, the FIO, charged DOTC Secretary Leandro Mendoza (Secretary Mendoza), DOTC Bids and Awards Committee (BAC) Chairman Domingo A. Reyes, Jr. (Reyes), BAC Vice Chairman Elmer A. Soneja (Soneja), BAC members Director III Cacatian, Director III Patdu, Legal Officer V Quintos, and Venancio G. Santidad (Santidad) with violation of Section 3(e) of RA 3019.[14]

The filing of the foregoing resulted from the investigation conducted by the FIO pursuant to a complaint-affidavit filed by Iloilo Provincial Administrator Manuel P. Mejorada.[15]

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6 Id. at 355-367.
7 Entitled "Anti-Graft and Corrupt Practices Act."
8 THE REVISED PENAL CODE, Art. 217 in relation to Arts. 171 and 48.
9 The other respondent government officials and private individual in the OMB proceedings (who also eventually became accused in the trial proper before the Sandiganbayan) did not appeal the OMB findings.
10 *Rollo*, p. 39.
11 Id. at 286.
12 Id. at 40.
13 Id. at 286.
14 Id.
15 Id. at 287.

The Complaints:

Through a letter dated December 15, 2004, Representative Syjuco informed Secretary Mendoza that the Department of Budget Management (DBM) issued special allotment release orders (SARO) in the total amount of ₱6,249,528.00, for the purchase of communications equipment for Region VI.[16] She also requested to avail of an alternative method of procurement allowed by the implementing rules of RA 9184[17], otherwise known as the Government Procurement Reform Act, to facilitate the purchase.[18] On December 21, 2004, a day after Secretary Mendoza received the letter, the BAC issued a resolution recommending the purchase of communications equipment for Region VI through direct contracting.[19] This was approved by Secretary Mendoza.[20]

On December 23, 2004, Ng submitted his quotation for 1,582 units of Nokia 1100 cellphone model.[21] He noted that the items will be delivered to Representative Syjuco's district office in Iloilo.[22] In his quotation, Ng allegedly enclosed a Distribution Certification issued by Smart Communications, Inc. (Smart) stating that West Island was assigned as its exclusive distributor in areas that include the entire Second district of Iloilo.[23] However, it was alleged, that this certification was issued only on January 4, 2005, several days after the award of the contract to West Island on December 28, 2004.[24] In addition, West Island is only a distributor of Smart Value Credits or Smartload as provided in its Marketing Distributorship Agreement with Smart.[25]

It was further claimed that Purchase Order DOTC-2004-12-250 for the purchase of the cellphone units was already prepared even before the contract was awarded to West Island. This resulted from a personal follow up by Representative Syjuco to Santidad.[26]

The documentary requirements were allegedly prepared in haste in order to beat the December 31, 2004 deadline, otherwise, the SAROs will expire and the allotment will revert to the general funds.[27]

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[16] Id. at 287.
[17] Entitled "An Act Providing for the Modernization, Standardization, and Regulation of the Procurement Activities of the Government, and for Other Purposes," approved on January 10, 2003.
[18] *Rollo*, p. 287.
[19] Id.
[20] Id.
[21] Id. Total amount of quotation is ₱6,248,900.00 for 1582 units at ₱3,950.00 each.
[22] Id.
[23] Id. at 104, 287-288.
[24] Id. at 287-288.
[25] Id. at 288.
[26] Id.
[27] Id.

On February 22, 2005, West Island received the purchase order.[28] On the same day, Dela Rosa, the DOTC management technical inspector, issued a Technical Inspection Report stating that the cellphone units have been delivered, inspected, and found to be working properly.[29] This was corroborated by Desiderio, the DOTC management division inspector, in his Inspection Report.[30] Cruz, the storekeeper, also issued a certificate of acceptance of the units.[31] West Island, for its part, issued a delivery receipt and a charge invoice for the cellphone units in the amount of ₱6,248,900.00.[32]

It was claimed, however, that Ng received payment without delivering the cellphone units.[33] Manuel Perez (Perez), the head of Sales Strategies and Systems of Smart, in his affidavit, stated that West Island was never an exclusive distributor for the company; and it did not make any purchase of Nokia 1100 cellphone units therefrom.[34]

Mayor Isabelo Maquino (Mayor Maquino) of Santa Barbara, Iloilo also executed an affidavit, in which he denied receiving any cellphone units from the DOTC and signing any Invoice Receipt of Property.[35]

Counter-Arguments of Petitioners and Other Respondents (in the OMB):

Secretary Mendoza, in his Consolidated Counter-Affidavit, argued that his acts cannot be characterized with manifest partiality, evident bad faith, or gross inexcusable negligence. He did not favor West Island or any other specific person and he approved the BAC resolutions in good faith.[36] On the assumption that Direct Contracting was not proper in this instance, its adoption did not create liability on their part under Section 65 of RA 9184.[37] He added that there was nothing unusual in Ng's letter even if the certification was dated January 4, 2005 subsequent to the award of the contract to West Island, as Ng could have actually released his letter to DOTC only on January 4, 2005.[38] Secretary Mendoza also presented the defense that he enjoys presumption of regularity in the discharge of his public functions.[39] Lastly, he argued that there was no

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[28] Id.
[29] Id.
[30] Id.
[31] Id.
[32] Id.
[33] Id.
[34] Id. at 288-289.
[35] Id. at 289.
[36] Id.
[37] Id.
[38] Id.
[39] Id.

allegation and proof that he acted in conspiracy with the other respondents in perpetrating the offenses charged.[40]

Representative Syjuco and Syjuco, Jr. asserted that they did not hold, release, pay, and receive the communications equipment and had no control over the disbursement of the amounts under the SAROs.[41] They claimed that it was the DOTC BAC, which adopted the alternative method of procurement.[42] There was no injury to the government because there was documentary proof that the cellphone units were indeed delivered to the DOTC, moreover, DOTC would not have paid if the equipment were not delivered.[43] They also claimed that they were neither close to Ng nor privy to any of his transactions, they denied preparing Ng's certification dated January 4, 2005 and participation in the preparation of the Invoice Receipt of Property which allegedly contained the forged signature of Mayor Maquino.[44] The extent of Representative Syjuco's participation was limited to the preparation of the letter dated December 15, 2004 that informed Secretary Mendoza of the issuance of the SAROs and recommended the adoption of an alternative method of procurement.[45]

Santidad alleged that his signing of the resolutions as then provisional member of the BAC was not attended by manifest partiality, evident bad faith, or gross inexcusable negligence as there was no clear inclination on his part to favor West Island, Ng, or any specific person.[46] He claimed that as it was his ministerial duty to affix his signature on the invoice receipt; he relied in good faith on the technical inspection report issued by the DOTC inspection officials, and on the certificate of acceptance issued by Cruz.[47] Santidad also stated that he cannot be expected to personally inspect the cellphone units because that duty belonged to the Inspection Management Divisions.[48] Lastly, he contended that the complaints did not clearly allege specific acts that show conspiracy.[49]

Cruz, the storekeeper, countered that his participation here was the preparation and forwarding to management of a request for inspection (with the necessary documents), and the signing of a certificate of inspection as the items were already inside a padlocked container van ready for shipment to Iloilo.[50] He insisted that he repeatedly requested Santidad to go to Iloilo to inspect the items

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40 Id. at 289-290.
41 Id. at 290.
42 Id.
43 Id.
44 Id.
45 Id. at 290-291.
46 Id. at 291.
47 Id.
48 Id. at 291-292.
49 Id. at 292.
50 Id.

and to witness the signing of the invoice receipt, but to no avail as no travel orders were issued.[51]

Petitioners, together with BAC Vice Chairman Soneja, in their Joint Counter-Affidavit, argued that the BAC, in issuing the board resolution recommending adoption of direct contracting, relied on the recommendations of a technical working group (TWG).[52] The TWG issued a memorandum recommending the adoption of direct contracting with the condition that Section 50(c)[53] of the implementing rules of RA 9184 be sufficiently complied with.[54] It also found West Island to be the exclusive distributor of Smart in Panay.[55] They claimed that a director in the DOTC Procurement, Supply, and Property Management Service certified that West Island has no sub-dealers in Panay selling at a lower price, and that no suitable substitute can be obtained from other suppliers in the locality.[56] The BAC even posted in the DOTC website a notice to resort to an alternative mode of procurement.[57] They claimed that the resolution dated December 21, 2004 was not issued in haste because it determined in good faith whether Representative Syjuco's request was tenable by referring the matter to the TWG.[58] The impending expiration of the SAROs on December 31, 2004 was not the main consideration for the issuance of the resolution.[59] On the matter of the Smart Distribution Certificate, petitioners posited that the date January 4, 2005 appears to be a typographical error because it was enclosed in Ng's letter dated December 23, 2004.[60] On the allegation that the resolution was issued ahead of the certification, petitioners contended that this observation is erroneous as the same was a reiteration of a similar certification already issued, which served as basis for the TWG's recommendation to the BAC.[61] Lastly, petitioners argued that mere issuance of resolutions did not necessarily entail that the BAC acted with manifest partiality, bad faith, or gross negligence in the performance of their duties.[62]

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[51] Id.

[52] Id.

[53] Section 50. *Direct Contracting.* —
Direct Contracting or single source procurement is a method of procurement of goods that does not require elaborate bidding documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. Direct contracting may be resorted to by concerned procuring entities under any of the following conditions:
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c) Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.

[54] *Rollo*, p. 293.

[55] Id.

[56] Id.

[57] Id.

[58] Id.

[59] Id.

[60] Id.

[61] Id.

[62] Id.

Findings and Ruling of the Ombudsman:

In its August 4, 2014 Resolution,[63] the OMB found probable cause to charge petitioners together with Representative Syjuco, Secretary Mendoza, Reyes, Soneja, Santidad, Desiderio, Dela Rosa, and Ng, with violation of Section 3(e) of RA 3019, and Malversation through Falsification. The OMB found that these individuals, conspired with each other through seemingly separate but collaborative acts to defraud the government.[64] It found that the elements of violation of Section 3(e) of RA 3019 were present. The first and second elements were not in issue, while the third and fourth elements were shown by the concerted acts of the charged individuals.

The OMB noted that under RA 9184, public bidding is the general rule while alternative methods may be resorted to only in highly exceptional cases and when justified by the conditions provided in the law and rules.[65] Direct Contracting, therefore, may be resorted to by the procuring entity for goods sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices, and for which no substitute can be obtained at more advantageous terms for the government.[66]

The OMB ruled that the TWG already knew even before the DOTC received Representative Syjuco's letter that direct contracting was the method to be used for the purchase of the equipment.[67] In the same vein, petitioners, as well as Secretary Mendoza and Santidad, acceded to Representative Syjuco's letter and TWG's recommendation despite the absence of any condition that would justify resort to direct contracting.[68] There was no determination by the TWG that the communications equipment was necessary for Region VI—this determination, as stated by the OMB, is essential before the BAC can conclude that resort to direct contracting is proper.[69] Further, the OMB found the assertion that West Island was an exclusive distributor of Smart in the area hardly convincing, because the cellphone units were sourced from and even inspected in the office of Smart in Makati City, only to be subsequently delivered to Iloilo.[70] It would have been more advantageous for the government to have contracted directly with Smart Makati City or any other manufacturer or dealer therein.[71] Further, the stipulations that prices may change without prior notice and that units will be subject to availability in Ng's quotation defeat the condition that the terms of the contract should be more advantageous to the

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[63] Id. at 285-311.
[64] Id. at 295.
[65] Id. at 296.
[66] Id.
[67] Id. at 297.
[68] Id.
[69] Id.
[70] Id. at 298-299.
[71] Id. at 299.

government.[72] In other words, petitioners and the other public officials resorted to Direct Contracting because of the need for communications equipment, yet they awarded the contract to West Island, which had not assured that units were indeed available.[73]

On the contention that petitioners, as well as Soneja, were misled by Ng's certification, the OMB emphasized that it cannot be the case as they are required to exercise all the necessary prudence to ensure that the most advantageous price and terms for the government is obtained.[74] The OMB added that fraud is too obvious for them to be misled: the requisition, issue voucher, and the purchase order were approved before the awarding of the contract to West Island. In addition, the Smart Distribution Certification was issued after the award of the contract. This also showed that the award of the contract preceded Ng's quotation, which was supposedly part of the initial steps of the process.[75]

The OMB also found that there was no actual delivery of the cellphone units.[76] Both inspection reports, the certificate of acceptance, and the invoice receipt were falsified.[77] The OMB gave credence to Mayor Maquino's affidavit, wherein he stated that he did not receive any cellphone units from DOTC, and that he did not sign any invoice receipt therefor.[78] Mayor Maquino's statements were corroborated by Perez, Smart's head of sales, when he stated that no cellphone units were purchased by West Island during the relevant period, and that the serial numbers of the units allegedly purchased by West Island matched those that were already sold by Smart to other parties.[79]

The OMB then concluded that despite all these anomalies in the procurement, Ng still received payment for the fictitious delivery of cellphone units.[80]

Likewise, the OMB ruled that the foregoing also amounted to Malversation of Public Funds through Falsification of Public Documents.[81]

The charges against Secretary Mendoza are dismissed by reason of his death, the charges against Syjuco, Jr. are likewise dismissed for insufficiency of evidence against him.[82]

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[72] Id.
[73] Id.
[74] Id. at 301.
[75] Id. at 301-302.
[76] Id. at 303.
[77] Id.
[78] Id.
[79] Id.
[80] Id. at 305.
[81] Id. at 306-309.
[82] Id. at 310.

The OMB, in a separate Resolution dated August 4, 2014, also ruled that petitioners and the other public officials charged in the criminal cases are guilty of grave misconduct and serious dishonesty, warranting the imposition of the penalty of dismissal from service.[83]

Petitioners, on their own, moved for the reconsideration[84] of the criminal aspect of the OMB Resolution. This, however, was denied by the OMB in its Joint Order[85] dated March 17, 2015. In the Joint Order, the OMB also took the opportunity to amend its previous Resolutions to include storekeeper Cruz[86] among the individuals to be charged with the violation of RA 3019 and Malversation through Falsification.

The dispositive portion, as amended in the Joint Order, of the OMB Resolution reads:

> WHEREFORE, finding probable cause to prosecute respondents 2nd District of Iloilo Representative Judy J. Syjuco, DOTC BAC Chairman Domingo A. Reyes, Jr., Vice-Chairman Elmer A. Soneja and members Director III Rebecca S. Cacatian, Director III Ildefonso T. Patdu, Jr., Legal Officer V Geronimo V. Quintos, Director III Venancio G. Santidad, DOTC Inspector Marcelo P. Desiderio, Jr., DOTC Technical Inspector Danilo M. Dela Rosa, Storekeeper III Antonio D. Cruz and private respondent Domingo Samuel Jonathan L. Ng for Malversation through Falsification and violation of Section 3(e) of RA 3019, let an Information for violation of Section 3(e) of RA 3019 and Information for Malversation through Falsification be filed against them before the Sandiganbayan.
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> The charges against DOTC Secretary Leandro R. Mendoza are dismissed by reason of his death on October 7, 2013.
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> The charges against TESDA Dir. Augusto L. Syjuco, Jr. are dismissed for insufficiency of evidence against him.
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> SO ORDERED.[87]

Aggrieved, petitioners filed a petition for *certiorari*[88] before the CA to assail the criminal aspect of the OMB Resolution and the Joint Order.

Meanwhile, on October 18, 2016, the Office of the Special Prosecutor filed before the Sandiganbayan two separate Informations charging petitioners and the other respondents in the OMB proceedings with violation of Section 3(e) of

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[83] Id. at 357.
[84] Id. at 312-328; supplemental Motion for Reconsideration filed by Patdu at *rollo*, pp.329-354.
[85] Id. at 355-367.
[86] Id. at 365-366.
[87] Underscored portion is the amendment.
[88] *Rollo*, p. 44.

RA 3019, and Malversation of Public Funds through Falsification of Public Documents.[89]

Ruling of the Court of Appeals:

In its August 4, 2016 Resolution, the CA dismissed the petition outright for having been filed with the wrong court. It reasoned that the remedy to assail the OMB's findings of probable cause in criminal cases is by filing an original action for *certiorari* with this Court.[90] It ruled that it has no jurisdiction over the criminal aspect of a case elevated from the OMB. The CA explained that it has jurisdiction over decisions in administrative disciplinary cases only, which can be assailed via Rule 43 of the Rules of Court.[91]

Petitioners moved for the reconsideration of the foregoing Resolution.

In its February 21, 2017 Resolution, the CA denied petitioners' motion for reconsideration[92] and elaborated its discussion on jurisdiction. It added that the second paragraph of Section 14 of RA 6770,[93] which states that "No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law," has been declared unconstitutional in *Carpio-Morales v. Court of Appeals*[94] *(Carpio-Morales)* for increasing this Court's appellate jurisdiction without its advice and concurrence.[95] The CA explained that this invalidation does not mean that all kinds of remedies from the decisions or findings of the OMB may now be brought to the CA; with respect to probable cause findings in criminal cases, the remedy is still with this Court.[96] It held that *Carpio-Morales* affirmed and retained the applicability of *Fabian v. Desierto*[97] *(Fabian),* which served as basis for the current rule that the OMB's findings of probable cause in criminal cases may be assailed via a petition for *certiorari* filed with this Court.[98] This rule has not been abandoned in *Carpio-Morales*.[99] Thus, petitioners in the instant case should have gone to this Court instead of the CA.

Petitioners now assail these CA Resolutions by filing the instant petition for review on *certiorari* with this Court. They contend that the invalidation of the second paragraph of Section 14 in *Carpio-Morales* is all encompassing as

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[89] Id. at 368-371, 372-376.
[90] Id. at 86.
[91] Id.
[92] Id. at 95.
[93] Entitled "Act No. 6770, an act providing for the functional and structural organization of the Office of the Ombudsman, and for other purposes" approved on November 17, 1989.
[94] 772 Phil. 672 (2015).
[95] Id. *Rollo*, p. 89.
[96] *Rollo*, p. 91.
[97] 356 Phil. 787 (1998).
[98] *Rollo*, pp. 92-93.
[99] Id.

the Court did not make a distinction on whether the ruling is exclusively applicable to administrative cases.[100] Hence, the ruling in *Carpio-Morales* likewise applies to findings of probable cause in criminal cases.[101] Petitioners add that the CA's reliance on the *Fabian* case is misplaced because the same never categorically stated that the remedy to assail findings of probable cause is via a petition for *certiorari* before this Court.[102] Nonetheless, there were other cases where it was affirmed that the remedy to assail findings of probable cause is through the said remedy before this Court.[103] Petitioners claim, however, that the striking down of the second paragraph of Section 14 of RA 6770 necessarily abandoned the earlier rulings on the remedy to assail findings of probable cause.[104] The appellate court, therefore, has jurisdiction upon observance of the doctrine on hierarchy of courts.

On the merits, petitioners claim that the OMB gravely abused its discretion in finding probable cause to hold them criminally liable, because conspiracy among the perpetrators was not established to hold petitioners liable.[105] They add that as BAC members, the determination of their commission of overt acts for establishing conspiracy should be confined in the bidding and qualification phases of the procurement process.[106] They also insist that they have done their jobs and the TWG and their subordinates in good faith.[107] Lastly, petitioners claim that the OMB arbitrarily delayed the resolution of their case, thereby violating their constitutional right to speedy disposition of cases.[108]

Petitioners ultimately pray for the remand of the case to the CA by reinstating the petition for *certiorari* filed therein.[109] In the event that the CA has no jurisdiction, they pray for this Court to rule on the merits by nullifying the assailed OMB Resolution and Joint Order for being rendered with grave abuse of discretion.[110]

Respondents OMB and FIO, through the Office of the Solicitor General, filed their Comment.[111] Respondents argue that *Carpio-Morales* has no application in the instant case, because its doctrine is limited to administrative cases.[112] They contend that the findings of probable cause are cognizable by this Court via Rule 65 of the Rules of Court on the ground of the OMB's grave abuse

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[100] Id. at 47-51.
[101] Id. at 51.
[102] Id. at 51-53.
[103] Id. at 53-57.
[104] Id. at 57-58.
[105] Id. at 64-65, 67-70
[106] Id. at 65.
[107] Id. at 66, 72.
[108] Id. at 74-78.
[109] Id. at 78-79.
[110] Id.
[111] Id. at 699-725.
[112] Id. at 711-713.

of discretion.[113] As this Court has jurisdiction over the instant case, respondents add that petitioners lost their remedy when they filed their petition for *certiorari* with the CA.[114]

On the merits, respondents assert that there was no grave abuse of discretion in finding probable cause against petitioners. They argue that the OMB afforded all parties ample opportunity to be heard and it is not incumbent for the OMB to definitively establish the elements of the crime during the preliminary investigation as probable cause merely implies a probability of guilt.[115] Based on the evidence submitted, the OMB determined that there is a *prima facie* existence of the elements of the crimes charged against petitioners.[116] Petitioners, as members of the BAC, were not able to justify the adoption of direct contracting.[117] Reliance on the TWG and subordinates is not a proper defense as the BAC is required to scrutinize every transaction that its agency will enter into. Thus, the BAC should have checked if the requirements and procedures under the law were properly observed.[118] In this regard, petitioners failed to establish grave abuse of discretion on the part of the OMB.[119] Its factual findings, therefore, should be accorded respect, if not finality.[120] Lastly, respondents counter that there was no violation of petitioners' right to speedy disposition of cases.[121]

Petitioners filed their reply[122] and reiterated the arguments in their Petition.

Issue

Considering the foregoing, the sole issue for the resolution of the Court is whether the CA erred in dismissing petitioners' petition for *certiorari* for lack of jurisdiction.

Our Ruling

The petition has no merit. The CA did not err in dismissing the petition for *certiorari* outright. The proper mode to assail the OMB's finding of probable cause in criminal cases is by filing a petition for *certiorari* before this Court—which petitioners failed to do.

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[113] Id.
[114] Id. at 713-714.
[115] Id. at 714-716.
[116] Id. at 717
[117] Id. at 718-719.
[118] Id. at 719-721
[119] Id. at 722.
[120] Id. at 714.
[121] Id. at 723.
[122] Id. at 729-746.

The question to be resolved in this case is not novel. Indeed, in *Carpio-Morales*, the Court struck down as unconstitutional the second paragraph of Section 14 of RA 6770. However, it is settled that the doctrine laid down in *Carpio-Morales* has no application in criminal cases before the OMB.

In *Gatchalian v. Office of the Ombudsman*[123] *(Gatchalian)*, the Court examined previous case law and clarified that *Carpio-Morales* has limited application to administrative cases before the OMB.[124] The antecedents of *Gatchalian* are similar with the instant case. The OMB found probable cause to indict petitioner Gatchalian and other individuals for violation of RA 3019, Malversation, and violation of the Manual of Regulations for Banks in relation to the New Central Bank Act.[125] Petitioner therein also filed a petition for *certiorari* before the CA to assail the OMB ruling and reasoned that he elevated the case to the CA by virtue of the ruling in *Carpio-Morales*.[126] The appellate court dismissed the petition for lack of jurisdiction and opined that *Carpio-Morales* "should be understood in its proper context, *i.e.*, that what was assailed therein was the preventive suspension order arising from an administrative case filed against a public official."[127] On further appeal, this Court agreed with the CA's disposition—the relevant portions of the Decision state:

> **A thorough reading of the *[Carpio-]Morales* decision, therefore, would reveal that it was limited in its application—that it was meant to cover only decisions or orders of the Ombudsman in administrative cases.** The Court never intimated, much less categorically stated, that it was abandoning its rulings in *Kuizon* and *Estrada* and the distinction made therein between the appellate recourse for decisions or orders of the Ombudsman in administrative and non-administrative cases. Bearing in mind that Morales dealt with an interlocutory order in an administrative case, **it cannot thus be read to apply to decisions or orders of the Ombudsman in non-administrative or criminal cases.**
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> It is thus clear that the *[Carpio-]Morales* decision never intended to disturb the well-established distinction between the appellate remedies for orders, directives, and decisions arising from administrative cases and those arising from non-administrative or criminal cases.
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> Gatchalian's contention that the unconstitutionality of Section 14 of R.A. 6770 declared in *[Carpio-]Morales* equally applies to both administrative and criminal cases—and thus the CA from then on had jurisdiction to entertain petitions for certiorari under Rule 65 to question orders and decisions arising from criminal cases—is simply misplaced. Section 14 of R.A. 6770 was declared unconstitutional because it trampled on the rule-making powers of the Court by: 1) prescribing the mode of appeal, which was by Rule 45 of the Rules of Court,

[123] G.R. No. 229288, August 1, 2018.
[124] Id.
[125] Id.
[126] Id.
[127] Id.

for all cases whether final or not; and 2) rendering nugatory the certiorari jurisdiction of the CA over incidents arising from administrative cases.

The unconstitutionality of Section 14 of R.A. 6770, therefore, did not necessarily have an effect over the appellate procedure for orders and decisions arising from criminal cases precisely because the said procedure was not prescribed by the aforementioned section. To recall, the rule that decisions or orders of the Ombudsman finding the existence of probable cause (or the lack thereof) should be questioned through a petition for certiorari under Rule 65 filed with the Supreme Court was laid down by the Court itself in the cases of *Kuizon, Tirol Jr., Mendoza-Arce v. Ombudsman, Estrada,* and subsequent cases affirming the said rule. The rule was, therefore, not anchored on Section 14 of R.A. 6770, but was instead a rule prescribed by the Court in the exercise of its rule-making powers. The declaration of unconstitutionality of Section 14 of R.A. 6770 was therefore immaterial insofar as the appellate procedure for orders and decisions by the Ombudsman in criminal cases is concerned.

The argument therefore that the promulgation of the *[Carpio-]Morales* decision—a case which involved an interlocutory order arising from an administrative case, and which did not categorically abandon the cases of *Kuizon, Tirol, Jr., Mendoza-Arce,* and *Estrada*—gave the CA certiorari jurisdiction over final orders and decisions arising from non-administrative or criminal cases is clearly untenable.

To stress, it is the better practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same. Following the principle of *stare decisis et non quieta movere*—or follow past precedents and do not disturb what has been settled—the Court therefore upholds the abovementioned established rules on appellate procedure, and so holds that the CA did not err in dismissing the case filed by petitioner Gatchalian for lack of jurisdiction.[128]

Therefore, the remedy to assail the OMB's findings of probable cause in criminal or non-administrative cases is still by filing a petition for *certiorari* with this Court, and not with the CA. This doctrine has never been struck down or abandoned by *Carpio-Morales.*

This is supported by a more recent case, *Yatco v. Office of the Deputy Ombudsman for Luzon*[129] *(Yatco). Yatco* also assailed the OMB's ruling in a criminal case for lack of probable cause before the CA, which the latter likewise dismissed. As that case was also further appealed, the Court, in its disposition, reiterated *Gatchalian,* and stated:

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[128] Id.

[129] G.R. No. 244775, July 6, 2020.

> **Meanwhile, with respect to criminal charges, the Court has settled that the remedy of an aggrieved party from a resolution of the Ombudsman finding the presence or absence of probable cause is to file a petition for certiorari under Rule 65 of the Rules of Court and the petition should be filed not before the CA, but before the Supreme Court.** In the fairly recent case of *Gatchalian v. Office of the Ombudsman,* (decided on August 1, 2018), the Court traced the genesis of the foregoing procedure and cited a wealth of jurisprudence recognizing the same:
>
> x x x x
>
> Thus, it is evident from the foregoing that the remedy to assail the ruling of the Ombudsman in non-administrative/criminal cases (*i.e.,* file a petition for certiorari under Rule 65 of the Rules of Court before the Supreme Court) is well-entrenched in our jurisprudence.[130] (Emphasis supplied)

Based on the foregoing jurisprudence, it remains that OMB resolutions on probable cause in criminal cases are assailable by filing a petition for *certiorari* with this Court. This has always been and is still the prevailing rule. To repeat, *Carpio-Morales* did not invalidate this remedy as it covers administrative cases only. The CA has no jurisdiction over findings of probable cause in criminal cases.

In the instant case, the CA, therefore, did not err in dismissing the petition for *certiorari* for lack of jurisdiction. Petitioners have erroneously filed their petition for *certiorari* with the appellate court, when it should have been filed before this Court.

It follows then that petitioners have lost their right to assail the OMB's finding of probable cause against them when they elevated the case before the wrong forum. Similar with how the Court proceeded in *Gatchalian* and *Yatco,* it is not proper for this Court to just assume jurisdiction and rule on the merits of the instant case given petitioners' availment of the wrong remedy.[131]

Now that Informations were already filed in the Sandiganbayan, petitioners have all the opportunity there during the trial proper to dispute the findings of probable cause, and, possibly, to eventually clear their names from the alleged crimes.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED.** The Resolutions dated August 4, 2016 and February 21, 2017 issued by the Court of Appeals in CA-G.R. SP No. 146382 are hereby **AFFIRMED.**

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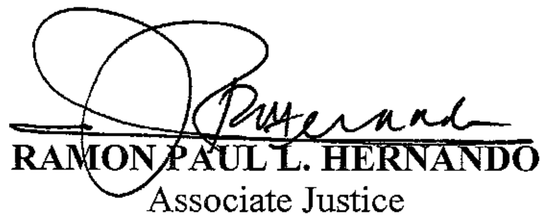
[130] Id. Emphasis supplied.

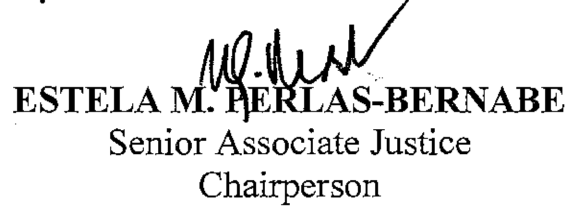
[131] See notes 123 and 129.

SO ORDERED.



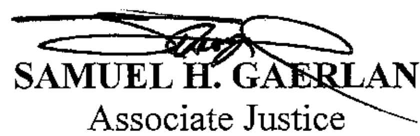
RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:



ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

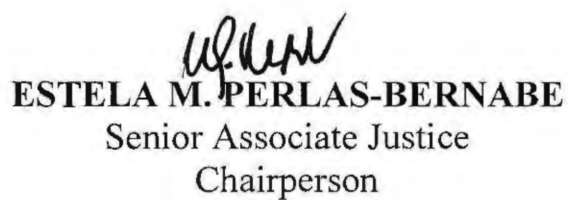


SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

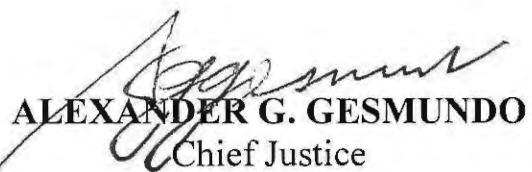
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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's Division.



ALEXANDER G. GESMUNDO
Chief Justice

G.R. No. 230171 – ILDEFONSO T. PATDU, JR., REBECCA S. CACATIAN, and GERONIMO V. QUINTOS, *Petitioners v.* **HON. CONCHITA CARPIO-MORALES, in her capacity as Ombudsman, and FIELD INVESTIGATION OFFICE-OFFICE OF THE OMBUDSMAN,** *Respondents.*

Promulgated:
SEP 27 2021

x---x

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur. The petition for *certiorari* filed by petitioners Ildefonso T. Patdu, Jr., Rebecca S. Cacatian, and Geronimo V. Quintos (petitioners) before the Court of Appeals (CA) assailing the Office of the Ombudsman's (Ombudsman) finding of probable cause against them was correctly dismissed since it was filed before the wrong court. Petitioners should have instead filed their *certiorari* petition before the Supreme Court. I note that while the supervening filing of the Informations before the Sandiganbayan may have rendered the issue moot,[1] nonetheless, ruling on such issue remains permissible under the capable of repetition yet evading review, and guidance to the bench, bar and public exceptions.[2]

I.

As background, petitioners insist that the CA should have taken cognizance of their petition filed before it in light of the Court's ruling in *Carpio-Morales v. Court of Appeals*[3] (*Carpio-Morales*), where the Court struck down as unconstitutional the second paragraph of Section 14 of Republic Act No. 6770,[4] or "The Ombudsman Act of 1989" (Section 14, par. 2), which reads:

> Section 14. Restrictions. — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a *prima facie* evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.
>
> **No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.** (Emphasis and underscoring supplied)

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[1] See *Beltran v. Sandiganbayan (Second Division)*, G.R. No. 201117, January 22, 2020.

[2] "[T]he Court will decide cases, otherwise moot, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest are involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review." (*International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, 791 Phil. 243, 259 [2016])

[3] 772 Phil. 672 (2015).

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

Petitioners claim that the said provision applies to **all** decisions or findings of the Ombudsman, and not only those rendered in administrative cases. Hence, since Section 14, par. 2 was entirely struck down, petitioners posit that they properly filed their petition assailing the Ombudsman's determination of probable cause before the CA, and not the Supreme Court.

To recount, *Carpio-Morales* struck down Section 14, par. 2 because it "**ban[ned] the whole range of remedies against issuances of the Ombudsman, by prohibiting**: (*a*) an appeal against any decision or finding of the Ombudsman, and (*b*) 'any application of remedy' (subject to [a Rule 45 appeal to the Supreme Court]) against the same."

> To recount, the second paragraph of Section 14, RA 6770 states that "[n]o court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law."
>
> As a general rule, the second paragraph of Section 14, RA 6770 bans the whole range of remedies against issuances of the Ombudsman, by prohibiting: (a) an appeal against any decision or finding of the Ombudsman, and (b) "any application of remedy" (subject to the exception below) against the same. To clarify, the phrase "application for remedy," being a generally worded provision, and being separated from the term "appeal" by the disjunctive "or", refers to any remedy (whether taken mainly or provisionally), except an appeal, following the maxim *generalia verba sunt generaliter intelligenda*: general words are to be understood in a general sense. By the same principle, the word "findings," which is also separated from the word "decision" by the disjunctive "or", would therefore refer to any finding made by the Ombudsman (whether final or provisional), except a decision.
>
> The subject provision, however, crafts an exception to the foregoing general rule. While the specific procedural vehicle is not explicit from its text, it is fairly deducible that the second paragraph of Section 14, RA 6770 excepts, as the only allowable remedy against "the decision or findings of the Ombudsman," a Rule 45 appeal, for the reason that it is the only remedy taken to the Supreme Court on "pure questions of law," x x x[5]

Accordingly, the Court concluded that "by confining the remedy to a Rule 45 appeal, the provision takes away the remedy of *certiorari*, grounded on errors of jurisdiction, **in denigration of the judicial power constitutionally vested in courts.**"[6]

Moreover, "the second paragraph of Section 14, RA 6770's extremely limited restriction on remedies is **inappropriate** since a Rule 45 appeal — **which is within the sphere of the rules of procedure promulgated by this Court** — **can only be taken against final decisions or orders of lower courts, and not against 'findings' of quasi-judicial agencies**."[7] In this regard, Congress impinged upon the rule-making power of the Court; thus, it

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[5] Id. at 711-712.
[6] Id. at 714.
[7] Id.

was held that "Congress cannot interfere with matters of procedure; **hence, it cannot alter the scope of a Rule 45 appeal so as to apply to interlocutory 'findings' issued by the Ombudsman.**"[8]

Furthermore, "the second paragraph of Section 14, RA 6770 also increased th[e] [Supreme] Court's appellate jurisdiction, **without a showing, however, that it gave its consent to the same**[;]"[9] hence, it violated Section 30,[10] Article VI of the Constitution.

In fine, Section 14, par. 2 was struck down since its restrictive limitation of Ombudsman remedies to a Rule 45 appeal to the Supreme Court: (*a*) denigrated **judicial power** by taking away the remedy of *certiorari* against the decisions and findings of the Ombudsman; (*b*) interfered in the Court's **rule-making power** by mandating a Rule 45 appeal against "findings" of a quasi-judicial agency, albeit interlocutory in nature; and (*c*) increased **the appellate jurisdiction of the Supreme Court, without its advice and concurrence.**

While the Court in *Carpio-Morales* did not explicitly qualify whether or not the striking down of Section 14, par. 2 was pertinent only to decisions and findings of the Ombudsman in administrative cases, the Court, in the subsequent case of *Gatchalian v. Office of the Ombudsman*[11] (*Gatchalian*), took the opportunity to clarify that indeed Section 14, par. 2 was struck down relative to its application to administrative cases only. The *ponencia* correctly relied on *Gatchalian* as basis for denying the present petition.

In *Gatchalian*, the Court explained the particular context in which the *Carpio-Morales* case was decided, *i.e.*, an administrative case filed before the Ombudsman. Hence, it is within this context that the Court's striking down of Section 14, par. 2 should be viewed:

> In the *Morales case, what was involved was the preventive suspension order issued by the Ombudsman against Jejomar Binay, Jr. (Binay) in an* **administrative case** filed against the latter. The preventive suspension order was questioned by Binay in the CA via a petition for *certiorari* under Rule 65 with a prayer for the issuance of a temporary restraining order (TRO). The CA then granted Binay's prayer for a TRO, which the Ombudsman thereafter questioned in this Court for being in violation of Section 14 of R.A. 6770, which provides:
>
> x x x x
>
> Relying on the second paragraph of the abovequoted provision, the Ombudsman also questioned the CA's subject matter jurisdiction over the petition for *certiorari* filed by Binay.

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[8] Id.

[9] Id.

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

[11] See G.R. No. 229288, August 1, 2018.

The Court in *Morales applied the same rationale used in Fabian*, and held that the second paragraph of Section 14 is unconstitutional:

> Since the second paragraph of Section 14, RA 6770 limits the remedy against "decision or findings" of the Ombudsman to a Rule 45 appeal and thus — similar to the fourth paragraph of Section 27, RA 6770 — attempts to effectively increase the Supreme Court's appellate jurisdiction without its advice and concurrence, it is therefore concluded that the former provision is also unconstitutional and perforce, invalid. Contrary to the Ombudsman's posturing, *Fabian* should squarely apply since the above-stated Ombudsman Act provisions are in *pari materia* in that they "cover the same specific or particular subject matter," that is, the manner of judicial review over issuances of the Ombudsman.
>
> x x x x

Thus, with the unconstitutionality of the second paragraph of Section 14, RA 6770, the Court, consistent with existing jurisprudence, concludes that the CA has subject matter jurisdiction over the main CA-G.R. SP No. 139453 petition.[12] (Emphases supplied)

Notably, the petitioners in this case raise essentially the same argument raised in *Gatchalian*, which was therein found to be untenable:

> Gatchalian argues that the consequence of the foregoing is that *all* orders, directives, and decisions of the Ombudsman — whether it be an incident of an administrative or criminal case — are now reviewable by the CA.
>
> The contention is untenable.
>
> The Court agrees with the CA that the *Morales decision should be read and viewed in its proper context. The Court in Morales held that the CA had subject matter jurisdiction over the petition for certiorari* under Rule 65 filed therein because what was assailed in the said petition was a preventive suspension order, which was an interlocutory order and thus unappealable, issued by the Ombudsman. Consistent with the rationale of *Estrada*, the Court held that a petition for *certiorari* under Rule 65 was proper as R.A. 6770 did not provide for an appeal procedure for interlocutory orders issued by the Ombudsman. The Court also held that it was correctly filed with the CA because the preventive suspension order was an incident of an **administrative case**. The Court in *Morales was thus applying only what was already well-established in jurisprudence.*[13] (Emphases supplied)

Further, the Court, in *Gatchalian*, observed that there was **no categorical abandonment** of the rulings in *Kuizon v. Desierto*[14] (*Kuizon*) and *Estrada v. Desierto*[15] (*Estrada*), wherein it was expressed that, as a procedural rule, "[t]he remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause **in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to**

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12 Id.
13 Id.
14 406 Phil. 611 (2001).
15 406 Phil. 1 (2001).

file an original action for *certiorari* with this Court and not with the Court of Appeals."[16]

More significantly, *Gatchalian* insightfully observed that "the rule that decisions or orders of the Ombudsman finding the existence of probable cause (or the lack thereof) should be questioned through a petition for *certiorari* under Rule 65 filed with the Supreme Court ***was laid down by the Court itself in the cases of Kuizon, Tirol Jr., Mendoza-Arce v. Ombudsman, Estrada, and subsequent cases affirming the said rule*. The rule was, therefore, not anchored on Section 14 of R.A. 6770, but was instead a rule prescribed by the Court in the exercise of its rule-making powers**."[17] Thus, "[t]he declaration of unconstitutionality of Section 14 of R.A. 6770 was x x x immaterial insofar as the appellate procedure for orders and decisions by the Ombudsman in criminal cases is concerned."[18] In *Gatchalian*:

> A thorough reading of the *Morales* decision, therefore, would reveal that it was limited in its application — that it was meant to cover only decisions or orders of the Ombudsman in administrative cases. The Court never intimated, much less categorically stated, that it was abandoning its rulings in *Kuizon* and *Estrada* and the distinction made therein between the appellate recourse for decisions or orders of the Ombudsman in administrative and non-administrative cases. Bearing in mind that *Morales* dealt with an interlocutory order in an administrative case, it cannot thus be read to apply to decisions or orders of the Ombudsman in non-administrative or criminal cases.
>
> x x x x
>
> It is thus clear that the *Morales* decision never intended to disturb the well-established distinction between the appellate remedies for orders, directives, and decisions arising from administrative cases and those arising from non-administrative or criminal cases.
>
> x x x Section 14 of R.A. 6770 was declared unconstitutional because it trampled on the rule-making powers of the Court by 1) prescribing the mode of appeal, which was by Rule 45 of the Rules of Court, for all cases whether final or not; and 2) rendering nugatory the *certiorari* jurisdiction of the CA over incidents arising from administrative cases.
>
> **The unconstitutionality of Section 14 of R.A. 6770, therefore, did not necessarily have an effect over the appellate procedure for orders and decisions arising from criminal cases precisely because the said procedure was not prescribed by the aforementioned section. To recall, the rule that decisions or orders of the Ombudsman finding the existence of probable cause (or the lack thereof) should be questioned through a petition for *certiorari* under Rule 65 filed with the Supreme Court was laid down by the Court itself in the cases of *Kuizon, Tirol Jr., Mendoza-Arce v. Ombudsman, Estrada*, and subsequent cases affirming the said rule. The rule was, therefore, not anchored on Section 14 of R.A. 6770, but was instead a rule prescribed by the Court in the exercise of its rule-making powers**. The declaration of unconstitutionality of Section 14 of R.A. 6770 was therefore immaterial insofar as the appellate

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16 Supra note 11.
17 Id.
18 Id.

> procedure for orders and decisions by the Ombudsman in criminal cases is concerned.[19] (Emphasis and underscoring supplied)

Thus, to recap, since Section 14, par. 2 (which restrictively mandated the remedy from the Ombudsman rulings directly to the Supreme Court via Rule 45) was struck down in *Carpio-Morales* relative to its application to administrative cases, and not to non-administrative/criminal cases, the **prevailing procedural rules** remain distinguished as follows: ***(a)*** Ombudsman rulings in administrative cases cannot be directly elevated to this Court but must be either appealed or (if interlocutory in nature) assailed by *certiorari* to the **CA**, whereas ***(b)*** Ombudsman rulings in non-administrative/criminal cases can be – and in fact, should be – directly elevated to **this Court** by *certiorari* only.

II.

At this juncture, I find it instructive to point out that the foregoing procedural rules ultimately stem from the Court's rule-making power. *Kuizon* and *Estrada*, as well as the *Carpio-Morales* doctrines are practically extant manifestations of the Court's exercise of its rule-making power because through these rulings, the Court laid down how Ombudsman cases are to be judicially assailed. Of course, the rule-making power of the Court is not absolute; it must still be exercised within the confines of the CA and the Supreme Court's jurisdiction as conferred by law under the parameters of the statute and the Constitution. The dynamic relation between judicial power, jurisdiction, and the Court's rule-making power was discussed in *Carpio-Morales* as follows:

> **Judicial power, as vested in the Supreme Court and all other courts established by law, has been defined as the "totality of powers a court exercises when it assumes jurisdiction and hears and decides a case.**" Under Section 1, Article VIII of the 1987 Constitution, it includes "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."
>
> x x x x
>
> **Judicial power is never exercised in a vacuum. A court's exercise of the jurisdiction it has acquired over a particular case conforms to the limits and parameters of the rules of procedure duly promulgated by this Court. In other words, procedure is the framework within which judicial power is exercised**. In *Manila Railroad Co. v. Attorney-General*, the Court elucidated that "[t]he power or authority of the court over the subject matter existed and was fixed before procedure in a given cause began. Procedure does not alter or change that power or authority; it simply directs the manner in which it shall be fully and justly exercised. To be sure, in certain cases, if that power is not exercised in conformity with the provisions of the procedural law, purely, the court

[19] Id.

> attempting to exercise it loses the power to exercise it legally. This does not mean that it loses jurisdiction of the subject matter."
>
> **While the power to define, prescribe, and apportion the jurisdiction of the various courts is, by constitutional design, vested unto Congress, the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts belongs exclusively to this Court.**[20] (Emphases and underscoring supplied)

Being procedural in nature, the Court has the power to alter the framework of remedies set in assailing Ombudsman rulings, as per *Kuizon* and *Estrada*, as well as *Carpio-Morales*, among others. In this regard, *Carpio-Morales* poignantly discussed that "[t]he prerogative to amend, repeal or even establish new rules of procedure solely belongs to the Court, to the exclusion of the legislative and executive branches of government:"

> x x x [T]he prerogative to amend, repeal or even establish new rules of procedure solely belongs to the Court, to the exclusion of the legislative and executive branches of government. On this score, the Court described its authority to promulgate rules on pleading, practice, and procedure as exclusive and "[o]ne of the safeguards of [its] institutional independence."
>
> That Congress has been vested with the authority to define, prescribe, and apportion the jurisdiction of the various courts under Section 2, Article VIII *supra*, as well as to create statutory courts under Section 1, Article VIII *supra*, does not result in an abnegation of the Court's own power to promulgate rules of pleading, practice, and procedure under Section 5 (5), Article VIII *supra*. Albeit operatively interrelated, these powers are nonetheless institutionally separate and distinct, each to be preserved under its own sphere of authority. When Congress creates a court and delimits its jurisdiction, the procedure for which its jurisdiction is exercised is fixed by the Court through the rules it promulgates.[21]

Since the Court has the power to alter procedural rules, and since the pertinent doctrines in *Carpio-Morales*, *Kuizon*, and *Estrada* effectively set procedural rules as above-discussed – to my mind – it necessarily follows that the Court, in the exercise of its rule-making power, is not altogether precluded from modifying or abandoning, in the future, the procedural framework in which Ombudsman rulings – both administrative and non-administrative/criminal – are judicially assailed, provided that such exercise stays within jurisdictional limitations.

Although much has been said about the remedial framework relative to Ombudsman rulings in *Carpio-Morales* and *Gatchalian*, the Court has yet to express the underlying rationale behind the differentiated treatment between administrative and non-administrative/criminal cases. While it is clear that these rules are procedural in nature and thus, fall within the purview of the Court's rule-making power, the question as to "*why does the Court, as a matter of procedural policy and prerogative, allow direct resort from*

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[20] Supra note 3, at 731-733.

[21] Id. at 743-744.

Ombudsman rulings to it only in non-administrative/criminal cases, and not in administrative cases?" has yet to be rationally discussed. Thus, I find it opportune to offer my thoughts on this unaddressed matter for future guidance.

III.

Section 9 (3) of Batas Pambansa Bilang 129 (BP 129),[22] otherwise known as "The Judiciary Reorganization Act of 1980," provides that the CA has "[e]xclusive appellate jurisdiction over all final judgements, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commission." Pursuant thereto, Rule 43 – a mode of appeal – was created.

Section 1 of Rule 43 states that such mode of appeal "shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by **any quasi-judicial agency in the exercise of its quasi-judicial functions**."

> Section 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by **any quasi-judicial agency in the exercise of its quasi-judicial functions**. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (Emphasis and underscoring supplied)

Case law holds that "[a]n administrative agency performs **quasi-judicial functions** if it renders awards, ***determines the rights of opposing parties, or if their decisions have the same effect as the judgment of a court***."[23]

When the Ombudsman renders a ruling in an administrative case and hence pronounces administrative liability and metes the corresponding penalty, it clearly exercises a quasi-judicial function because its decision is determinative and has the same effect as a court judgment; hence, the Ombudsman's final rulings in this respect are susceptible to a Rule 43 appeal to the CA. Since appellate jurisdiction on final administrative rulings lies with

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[22] Entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on August 14, 1981.

[23] See *De Lima v. Reyes*, 776 Phil. 623, 636 (2016).

the CA, it is necessarily implied that Ombudsman administrative interlocutory orders assailable by *certiorari* may be filed before the same.[24]

On the other hand, when the Ombudsman renders a ruling in a non-administrative/criminal case (*i.e.*, a preliminary investigation resulting in a determination of probable cause), it does not exercise a quasi-judicial function. Jurisprudence instructs that "[i]n a preliminary investigation, the prosecutor does not determine the guilt or innocence of an accused. The prosecutor only determines 'whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.' **As such, the prosecutor does not perform quasi-judicial functions**."[25] In *Santos v. Go*,[26] it was elucidated that:

> [t]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. **While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.**
>
> ***Though some cases describe the public prosecutor's power to conduct a preliminary investigation as quasi-judicial in nature, this is true only to the extent that, like quasi-judicial bodies, the prosecutor is an officer of the executive department exercising powers akin to those of a court, and the similarity ends at this point***. A quasi-judicial body is as an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making. A quasi-judicial agency performs adjudicatory functions such that its awards determine the rights of parties, and their decisions have the same

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[24] In *City of Manila v. Grecia-Cuerdo*, 726 Phil. 9 (2014):

> The foregoing notwithstanding, while there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that 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.
>
> On the strength of the above constitutional provisions, **it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court.** It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases.
>
> Indeed, in **order for any appellate court, to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari*.** In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total. (Emphases and underscoring supplied)

[25] Supra note 23, at 636.

[26] 510 Phil. 137 (2005).

> effect as judgments of a court. Such is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an information against a person charged with a criminal offense, or when the Secretary of Justice is reviewing the former's order or resolutions.[27] (Emphasis and underscoring supplied)

Since the Ombudsman's determination of probable cause as a result of its preliminary investigation is not considered as an exercise of a quasi-judicial function, it is not subject to a Rule 43 appeal. In fact, insofar as the Ombudsman is concerned, this determination is inappealable.

To my mind, this variance in **the appellate permissibility to the CA** is the policy justification as to (*a*) why direct recourse to the Court in administrative cases is not allowed, and on the flipside (*b*) why direct recourse to the Court in criminal cases is allowed. ***Because a Rule 43 appeal is an available remedy in administrative cases, Ombudsman rulings in such cases should be elevated first to the CA and hence, should not be directly filed before this Court. In contrast, because a Rule 43 appeal is not available in non-administrative/criminal cases, Ombudsman rulings in such cases cannot be elevated to the CA; hence, the only remaining recourse is directly to this Court.*** To be clear, this latter recourse to the Court is not an appeal, but *certiorari*, which is an original action.[28] In this regard, it deserves mentioning that "a special civil action for *certiorari* under Rule 65 is an original or independent action based on grave abuse of discretion amounting to lack or excess of jurisdiction and it will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[29]

IV.

Parenthetically, it should be clarified that although the Ombudsman's determination of probable cause is not susceptible to Rule 43 or any appeal for that matter, it is not completely insulated from judicial review. The Court's expanded judicial power allows it 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**." Thus, while the Ombudsman does not exercise a quasi-judicial function when it determines the existence of probable cause, the Court can still review such determination through *certiorari* under the lens of grave abuse of discretion.[30]

When it comes to *certiorari*, it is acknowledged that the Regional Trial Courts, the CA, and the Supreme Court have concurrent original jurisdiction. However, this concurrent original jurisdiction is circumscribed by the doctrine of hierarchy of courts. Indeed, "the original jurisdiction this Court shares with the Court of Appeals and regional trial courts is not a license to immediately

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[27] Id. at 147-148.

[28] See *Reyes v. Ombudsman*, G.R. Nos. 212593-94, 213163-78, 213540-41, 213542-43, 215880-94 & 213475-76, 783 Phil. 304 (2016).

[29] *City of Manila v. Grecia-Cuerdo*, supra note 24.

[30] See *De Lima v. Reyes*, supra note 23, citing PHIL. CONST., Art. VIII, Sec. 1.

seek relief from this Court. Petitions for *certiorari*, prohibition, and *mandamus* must be filed in keeping with the doctrine of hierarchy of courts."[31]

Case law states that **"[t]he doctrine of hierarchy of courts is grounded on considerations of judicial economy.**" In *Ha Datu Tawahig v. Lapinid*[32] (*Ha Datu Tawahig)*, citing *Aala v. Mayor Uy*:[33]

> The doctrine on hierarchy of courts is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts. **The logic behind this policy is grounded on the need to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," as well as to prevent the congestion of the Court's dockets**. Hence, for this Court to be able to "satisfactorily perform the functions assigned to it by the fundamental charter[,]" it must remain as a "court of last resort." This can be achieved by relieving the Court of the "task of dealing with causes in the first instance."[34] (Emphasis and underscoring supplied)

Ha Datu Tawahig further observes that "[a]pplying this doctrine is not merely for practicality; it also ensures that courts at varying levels act in accord with their respective competencies."[35]

However, as in every general rule, the doctrine of hierarchy of courts admits of exceptions. After all, it is a matter of Court policy based on practical and judicial economy considerations. Among these exceptions where direct resort to the Supreme Court on *certiorari* is allowed are "**when the subject of review involves acts of a constitutional organ**;" "when there is **no other plain, speedy, adequate remedy in the ordinary course of law**;" "when the petition includes questions that may affect public welfare, public policy, or **demanded by the broader interest of justice**", and "**when the appeal was considered as an inappropriate remedy**", *viz.*:

> [T]he doctrine on hierarchy of courts is not an inflexible rule. In *Spouses Chua v. Ang*, this Court held that "[a] strict application of this rule may be excused when the reason behind the rule is not present in a case[.]" This Court has recognized that a direct invocation of its original jurisdiction may be warranted in exceptional cases as when there are compelling reasons clearly set forth in the petition, or when what is raised is a pure question of law.
>
> In a fairly recent case, we summarized other well-defined exceptions to the doctrine on hierarchy of courts. **Immediate resort to this Court may be allowed when any of the following grounds are present**: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better

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[31] See *Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019.
[32] Id.
[33] 803 Phil. 36 (2017).
[34] Supra note 31.
[35] Id.

> decided by this Court; (5) when time is of the essence; **(6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice**; (9) when the order complained of was a patent nullity; and **(10) when the appeal was considered as an inappropriate remedy.**[36] (Emphasis and underscoring supplied)

All of these four exceptions attend when it comes to the *certiorari* review of non-administrative/criminal cases of the Ombudsman; hence, "[i]mmediate resort to this Court may be allowed." In this case, the review sought is against an act of a constitutional organ, where there is no available appeal or any other adequate remedy in the ordinary course of law. Furthermore, the weightier consequences of a criminal proceeding (inasmuch as it involves a person's liberty) vis-à-vis an administrative case, permits direct recourse to this Court as demanded by the broader interests of justice. In fact, due to the impending possibility of a warrant of arrest being issued, it may be also said that the matter falls within the "time is of the essence" exception as well.

Therefore, in contrast to the framework of remedies when it comes to administrative cases, direct resort to this Court through *certiorari* against non-administrative/criminal Ombudsman cases is the proper procedural rule. Hence, as manifested by existing case law: (*a*) Ombudsman rulings in administrative cases cannot be directly elevated to this Court but must be either appealed or (if interlocutory in nature) assailed by *certiorari* to the CA, whereas (*b*) Ombudsman rulings in non-administrative/criminal cases should be directly elevated to this Court by *certiorari*. The above-discussed legal nuances justify the distinction.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

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36 Id.