



Republic of the Philippines  
 Supreme Court  
 Baguio City

SECOND DIVISION

JUANITO VICTOR C.  
 REMULLA,

G.R. No. 218040

Petitioner,

Present:

- versus -

CARPIO, J., Chairperson,  
 PERALTA,  
 MENDOZA,  
 LEONEN, and  
 MARTIRES, JJ.

SANDIGANBAYAN (SECOND  
 DIVISION) and ERINEO S.  
 MALIKSI,

Promulgated:

Respondents.

17 APR 2017

X

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DECISION

MENDOZA, J.:

This is a petition for *certiorari* seeking to annul and set aside the February 2, 2015<sup>1</sup> and March 20, 2015<sup>2</sup> Resolutions of the Sandiganbayan Second Division in Criminal Case No. SB-14-CRM-0432, which dismissed the case filed by Juanito Victor C. Remulla (*Remulla*) against respondent Erineo S. Maliksi (*Maliksi*) for violation of Section 3 (e) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

On August 12, 2005, Remulla filed a criminal complaint against Maliksi before the Office of the Ombudsman (*Ombudsman*) for violation of Section 3 (e) of R.A. No. 3019. He alleged that Maliksi, as governor of Cavite, caused the purchase of certain medical supplies from Allied Medical Laboratories Corporation in November 2002 without conducting any public bidding, thereby giving unwarranted benefit or preference to it. On December 15, 2005, Maliksi filed his counter-affidavit.<sup>3</sup>

<sup>1</sup> Penned by Associate Justice Teresita V. Diaz-Baldos with Associate Justices Napoleon E. Inoturan and Maria Cristina J. Cornejo, concurring; *rollo*, pp. 19-29.

<sup>2</sup> *Id.* at 31-35.

<sup>3</sup> *Id.* at 24.

*The Ombudsman Ruling*

After almost nine (9) years, in a resolution, dated August 27, 2014, the Ombudsman found probable cause against Maliksi for violation of Section 3 (e) of R.A. No. 3019.<sup>4</sup>

Maliksi filed his motion for reconsideration, arguing that there was no probable cause and that there was a violation of his right to a speedy disposition of his case.<sup>5</sup> In its order, dated October 22, 2014, the Ombudsman denied the said motion for reconsideration.<sup>6</sup>

In November 2014, the Ombudsman filed an information for violation of Section 3 (e) of R.A. No. 3019 against Maliksi before the Sandiganbayan. Maliksi then filed his Motion to Dismiss,<sup>7</sup> dated November 20, 2014, alleging that the finding of probable cause against him was null and void, and that his constitutional right to a speedy disposition of his case was violated. According to him, the 9-year delay in the proceedings caused him undue prejudice.

*The Sandiganbayan Ruling*

In its February 2, 2015 Resolution, the Sandiganbayan found that Maliksi's right to a speedy disposition of his case was violated. Thus, it dismissed the case against him. It stated that the explanation provided by the Ombudsman, through the Office of the Special Prosecutor (*OSP*), was insufficient to justify its 9-year delay in the resolution of Maliksi's case. The Sandiganbayan noted that the interval was caused by the delay in the routing or transmission of the records of the case, which was unacceptable. Citing *Coscolluela v. Sandiganbayan*,<sup>8</sup> (*Coscolluela*), it wrote that it was inconsequential to determine whether an accused had followed up on his case because it was not his duty to do so. The Sandiganbayan opined that it was the Ombudsman's responsibility to expedite the resolution of the case within a reasonable time.

On February 12, 2015, the *OSP* filed a Motion for Partial Reconsideration<sup>9</sup> arguing that the delay in the preliminary investigation was neither whimsical nor capricious, considering that Maliksi did not complain on the delay.

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<sup>4</sup> Id. at 6.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id. at 52-68.

<sup>8</sup> 714 Phil. 55 (2013).

<sup>9</sup> *Rollo*, pp. 41-51.

In its assailed resolution, dated March 20, 2015, the Sandiganbayan denied the motion for partial reconsideration. It reiterated that the fact-finding of the case, which lasted for three (3) years, and the preliminary investigation, which lasted for six (6) years, were due to mechanical routing and avoidable delay. The Sandiganbayan found that such delays were unnecessary and unacceptable. It also echoed *Coscolluela* that it was not the duty of the respondent in a preliminary investigation to follow up on the prosecution of his case.

Hence, this petition.

### Issue

**WHETHER THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE CRIMINAL CASE AGAINST RESPONDENT.<sup>10</sup>**

Remulla argues that the Sandiganbayan should not have dismissed the case as there was a finding of probable cause; that there was no violation of Maliksi's right to a speedy disposition of his case because he did not promptly assert his right; that mere mathematical reckoning of the time involved is not sufficient to invoke inordinate delay; that in *Tilendo v. Ombudsman*<sup>11</sup> (*Tilendo*), there must be an active assertion of the right to a speedy disposition of cases before the Ombudsman; and that *Coscolluela* is inapplicable because the petitioner therein was completely unaware of his pending case.

In his Comment,<sup>12</sup> Maliksi countered that the petition was defective because it was filed by Remulla, a private party. He underscored that only the Office of the Solicitor General (*OSG*), or, in certain instances, the OSP, may bring or defend actions for or on behalf of the Republic of the Philippines. Maliksi also pointed out that the delay of nine (9) years in the preliminary investigation of his case was clearly an inordinate delay. He cited the cases of *Tatad v. Tanodbayan*<sup>13</sup> and *People v. Sandiganbayan*,<sup>14</sup> where even delays of even shorter period of years were considered violations of the right to speedy disposition of cases. Finally, Maliksi argued that the petition was a violation of his constitutional right against double jeopardy because a dismissal of criminal case due to the right to speedy disposition of a case is tantamount to an acquittal.

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<sup>10</sup> Id. at 6.

<sup>11</sup> 559 Phil. 739 (2007).

<sup>12</sup> Id. at 144-152.

<sup>13</sup> 242 Phil. 563 (1988).

<sup>14</sup> 723 Phil. 444 (2013).

In his Reply,<sup>15</sup> Remulla averred that he had the legal standing to file this subject petition as a taxpayer or a citizen because public funds were illegally disbursed. He contended that the length of delay was not the only factor that must be considered in determining inordinate delay. Remulla invoked the cases of *Guerrero v. CA*<sup>16</sup> (*Guerrero*), *Bernat v. Sandiganbayan*<sup>17</sup> (*Bernat*) and *Tello v. People*<sup>18</sup> (*Tello*), where the failure of the accused to assert his right to a speedy disposition of his case was deemed a waiver for such right. He pointed out that Maliksi knew that there was a pending case against him but he never asserted his right to a speedy disposition of his case during the preliminary investigation. Finally, Remulla claimed that there was no violation of the right against double jeopardy as the dismissal of Maliksi's case was tainted with grave abuse of discretion.

In its Comment,<sup>19</sup> the Ombudsman, through the OSP, argued that Court must provide a definitive ruling on the concept of inordinate delay because the current model was still in a state of perpetual flux. It opined that *Coscolluela* was inapplicable in the present case as Maliksi was aware of the pending case against him before the Ombudsman. The OSP also emphasized that the Sandiganbayan merely dismissed the case against Maliksi by considering the sole factor of length of delay. It cited the case of *Barker v. Wingo*,<sup>20</sup> where the defendant's assertion of, or failure to assert, his right to a speedy trial was one of the factors to be considered in an inquiry whether there was deprivation of such right. The OSP echoed the argument of Remulla that an accused who does not take any step whatsoever to accelerate the disposition of the case was deemed to have slept on his right and have given acquiesces to the supervening delays.

### **The Court's Ruling**

The petition is bereft of merit.

*The petition was filed by a private party*

Procedural law mandates that all criminal actions, commenced by a complaint or an information, shall be prosecuted under the direction and control of a public prosecutor. In appeals of criminal cases before the Court of Appeals (*CA*) and before this Court, the OSG is the appellate counsel of the People, pursuant to Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code.<sup>21</sup> In certain instances, the OSP represented the

<sup>15</sup> *Rollo*, pp. 177-185.

<sup>16</sup> 327 Phil. 496 (1996).

<sup>17</sup> 472 Phil. 869 (2004).

<sup>18</sup> 606 Phil. 514 (2009).

<sup>19</sup> *Rollo*, pp. 245-255.

<sup>20</sup> 407 U.S. 514.

<sup>21</sup> *Jimenez v. Sorongon*, 700 Phil. 316, 324 (2012).

People when it involved criminal cases within the jurisdiction of the Sandiganbayan.<sup>22</sup>

The present case challenges the dismissal of a criminal case due to the violation of the right to speedy disposition of cases. The petition filed before this Court was initiated by Remulla in his capacity as a private complainant without the intervention of either the OSG or the OSP. Although he claims that he has legal standing as a taxpayer, the present case is criminal in nature and the People is the real party in interest.<sup>23</sup> Remulla captioned his petition as “People of the Philippines v. Sandiganbayan (Second Division) and Erineo S. Maliksi”<sup>24</sup> but it is clear that he does not represent the People.

Only on rare occasions when the offended party may be allowed to pursue the criminal action on his own behalf such as when there is a denial of due process,<sup>25</sup> or where the dismissal of the case is capricious shall *certiorari* lie.<sup>26</sup> As will be discussed later, Remulla failed to qualify in any of these exceptional circumstances. Accordingly, he has no legal personality to assail the dismissal of the criminal case against Maliksi on the ground of violation of the right to a speedy disposition of his case.

*The right to a speedy disposition of cases is a relative concept*

The right to a speedy disposition of a case, like the right to a speedy trial,<sup>27</sup> is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed.<sup>28</sup>

<sup>22</sup> *Office of the Ombudsman v. Breva*, 517 Phil. 396, 405 (2006).

<sup>23</sup> *Supra* note 21.

<sup>24</sup> *Rollo*, p. 3.

<sup>25</sup> *Supra* note 21.

<sup>26</sup> *Villareal v. People*, 680 Phil. 527, 558 (2012).

<sup>27</sup> See *Philippine Coconut Producers Federation, Inc. v. Republic*, 679 Phil. 508 (2012), where it was held that the right to a speedy trial is available only to an accused and is a peculiarly criminal law concept, while the broader right to a speedy disposition of cases may be tapped in any proceedings conducted by state agencies.

<sup>28</sup> *Lumanlaw y Bulinao v. Peralta, Jr.*, 517 Phil. 588, 598 (2006).

More than a decade after the 1972 leading U.S. case of *Barker v. Wingo*<sup>29</sup> was promulgated, this Court, in *Martin v. Ver*,<sup>30</sup> began adopting the "balancing test" to determine whether a defendant's right to a speedy trial and a speedy disposition of cases has been violated. As this test necessarily compels the courts to approach such cases on an *ad hoc* basis, the conduct of both the prosecution and defendant are weighed *apropos* the four-fold factors, to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. None of these elements, however, is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.<sup>31</sup>

In this case, Remulla argues that the cases of *Tilendo*, *Guerrero*, *Bernat*, and *Tello* dictate that it is mandatory for a respondent or accused to actively assert his right to a speedy disposition of his case before it may be dismissed on the said ground. He insists that Maliksi failed to follow up on his case during the preliminary investigation, hence, he cannot invoke his right to a speedy disposition of his case. Further, he avers that the doctrine in *Coscolluela*, where the Court held that there was no need for the respondent to follow up his case, is not controlling and it is only applicable when the respondent is completely unaware of the preliminary investigation against him.

To resolve these issues, the first set of cases cited by Remulla must be examined to determine whether it is mandatory for a respondent or accused to assert his right to a speedy disposition of his case. Also, the case of *Coscolluela* and its related cases must be evaluated whether the respondent or accused has the obligation to follow up his case.

*Tilendo*, *Guerrero*, *Bernat*,  
and *Tello* cases

In *Tilendo*, the petitioner therein invoked his right to a speedy disposition of his case because the preliminary investigation by the NBI lasted for three (3) years before it filed a complaint before the Ombudsman. In denying his petition, the Court held that there was no unreasonable delay to speak of because the preliminary investigation stage only began after the NBI filed its complaint against Tilendo. Even assuming there was delay in the termination of the preliminary investigation, Tilendo did not do anything to accelerate the disposition of his case.

<sup>29</sup> Supra note 20.

<sup>30</sup> 208 Phil. 658 (1983).

<sup>31</sup> *Spouses Uy v. Adriano*, 536 Phil. 475, 498 (2006).

In *Guerrero*, the last pleading before the Court of First Instance was filed on December 21, 1979. The case was later re-assigned to two other judges, and on March 14, 1990, the last judge found out that the transcript of stenographic notes (*TSN*) was incomplete and ordered the parties to have the same completed. The petitioner therein filed a motion to dismiss on the ground that his right to a speedy trial had been violated. The Court ruled that there was no such violation because it was only after the new judge reset the retaking of the testimonies that the petitioner asserted his right. It was also held that a judge could hardly be faulted for the delay because he could not have rendered the decision without the *TSN*. The Court observed that the conduct of the case could have a different dimension had the petitioner made some overt act to assert his right.

Later, in *Bernat*, the criminal case against the petitioner therein was submitted for resolution before the Sandiganbayan on August 23, 1994. It was reassigned to Justice Ma. Cristina G. Cortez-Estrada upon her assumption of office on November 3, 1998; and sometime in 2002, she found out that some of the *TSN* were missing. Thus, the parties were ordered to attend a conference to discuss the matter. Instead of attending the conference, the petitioner therein filed a motion asserting his right to a speedy trial. In dismissing his argument, the Court cited the case of *Guerrero* where the *TSN* were also lost and the judge had to retake the testimonies. It noted that the petitioner failed to assert his rights. The Court also reiterated the ruling in *Guerrero* that the case could have taken a different dimension had the petitioner actively asserted his right to a speedy trial.

Similarly, *Tello* echoed the doctrine in *Bernat* because the petitioner therein did not take any step to accelerate the disposition of his case. He only invoked his right to speedy trial after the Sandiganbayan promulgated its decision convicting him for malversation of public funds.

#### *Coscolluela and its related cases*

In *Coscolluela*, the petitioners therein were investigated for violation of Section 3(e) of R.A. No. 3019. In a resolution, dated March 27, 2003, the assigned graft investigator found probable cause against the petitioners. The Ombudsman, however, only approved the said resolution on May 21, 2009 and filed the information on June 19, 2009. The petitioners sought to dismiss the case as the delay of six (6) years violated their right to a speedy disposition of their case. In upholding the position of the petitioners, the Court ruled that there was unjustified delay in the preliminary investigation of the case. The Ombudsman could not give a sufficient justification why it took six (6) years before it approved the resolution of the graft investigator. The Court also held that it was not the petitioners' duty to follow up on the

prosecution of their case. The petitioners therein were not informed of the ongoing preliminary investigation against them.

*Coscolluela* relied on the case of *Duterte v. Sandiganbayan*<sup>32</sup> (*Duterte*) to justify that there was no requirement to follow up a case. In the said case, the petitioners were required to file a comment, instead of a counter-affidavit. The preliminary investigation was delayed for four (4) years. They could not have urged the speedy resolution of their case because they were completely unaware that the investigation was still ongoing. The Court also noted therein that the Ombudsman failed to present any plausible, special or even novel reason which could justify the 4-year delay in terminating its investigation and the incident did not involve complicated factual and legal issues.

Earlier, in *Cervantes v. Sandiganbayan*<sup>33</sup> (*Cervantes*), a complaint for violation of Section 3(e) of R.A. No. 3019 was filed before the Tanodbayan. On October 16, 1986, the petitioner therein filed an affidavit to answer the allegations against him. On May 18, 1992, or after almost six (6) years, an information was filed by the OSP with the Sandiganbayan. The petitioner asserted his right to a speedy disposition of his case. The Court upheld his right because the OSP's explanation that no political motivation appeared to have tainted the prosecution of the case was insufficient reason to excuse the inordinate delay. It was also ruled therein that "[i]t is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, **regardless of whether the petitioner did not object to the delay** or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him."<sup>34</sup>

More recently, in *People v. Sandiganbayan*<sup>35</sup> (*People*), a complaint was filed against the private respondents therein on December 28, 1994 before the Ombudsman. The last counter-affidavit was filed by the private respondents on March 11, 1996. On July 10, 1996, the special prosecution officer issued a memorandum recommending the filing of violation of Section 3 (e) of R.A. 3019 and was approved by the Deputy Ombudsman. Instead of filing the information, however, the case was subjected to several "thorough review and reevaluation." It was only on October 6, 2009 that the criminal informations were filed before the Sandiganbayan. Eventually, the private respondents implored their right to speedy disposition of their case.

It was held therein that there was inordinate delay of twelve (12) years from the time that the last counter-affidavit was filed until the informations were lodged before the court. The explanation of the OSP that the case was

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<sup>32</sup> 352 Phil. 557 (1998).

<sup>33</sup> 366 Phil. 602 (1999).

<sup>34</sup> *Id.* at 609.

<sup>35</sup> G.R. Nos. 199151-56, July 25, 2016.



subjected to a painstaking review and that the Ombudsman had to transfer to its new building were not given credence by the Court. It emphasized that the Ombudsman simply failed to timely exercise its discretion as to whether or not to file criminal cases against the private respondents. The Court did not sustain the OSP's argument that the respondents must be blamed for not taking any step whatsoever to accelerate the disposition of the matter. Citing *Cervantes*, the Court reiterated that it was the duty of the prosecutor to expedite the prosecution of the case regardless of the fact that the accused did not object to the delay.

Finally, in *Inocentes v. People*<sup>36</sup> (*Inocentes*), a complaint for violation of Section 3 (e) was filed before the Ombudsman against the petitioner therein. Following the denial of his motion for reconsideration on November 14, 2005, the prosecution filed the informations with the Regional Trial Court (RTC) Tarlac City. On March 14, 2006, however, the Ombudsman ordered the withdrawal of the informations. From this point, it took almost six (6) years, or only on May 2, 2012, before the informations were filed with the Sandiganbayan. The Court opined that there was inordinate delay in the disposition of the petitioner's case because it took six (6) years before his case and the records thereof was transferred from the RTC to the Sandiganbayan. The argument of the OSP that the petitioner had no right to complain about the delay because he failed to seasonably invoke his right was not upheld by the Court. It reiterated the doctrine of *Coscolluela* that it was not the petitioners' duty to follow up on the prosecution of their case.

#### *Harmonizing the two sets of cases*

The first set of cases shows that the criminal cases were not dismissed because of the non-assertion of the accused of their right to a speedy disposition of cases or speedy trial. Other factors in the balancing test were also considered by the Court, particularly, the reason for the delay in the proceedings and the prejudice caused by the delay.

In *Guerrero* and *Bernat*, it was held that the delay was acceptable because there was a necessity to retake the testimonies of the witnesses due to the lost TSN. The courts could not have adjudicated the case without the TSN. On the other hand, in *Tilendo*, the Court accepted the explanation of the OSP that there was no inordinate delay because the NBI's inquiry was not part of the preliminary investigation. Hence, as the length of delay in these cases were properly justified by the prosecution and the accused therein failed to take steps to accelerate their cases, the Court found that there was no prejudice caused, which would warrant the assertion of their right to a speedy disposition of cases.

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<sup>36</sup> G.R. Nos. 205963-64, July 7, 2016.

In the second set of cases, the lengthy delay in the proceeding against the accused therein was not satisfactorily explained. In *Cervantes*, the prosecution provided a lackluster excuse that there was no inordinate delay because the case was not politically motivated. In *People*, the filing of the case in court was drastically delayed because it was subjected to unnecessary reviews, and the Ombudsman basically failed to decide whether to file the case or not. In *Inocentes*, there was an unwarranted delay in the filing of the case due to the lethargic transfer of the records from the RTC to the Sandiganbayan. Finally, in *Coscolluela*, the Ombudsman could not give an explanation why the preliminary investigation was delayed for six years.

Essentially, the Court found in those cases that the State miserably failed to give an acceptable reason for the extensive delay. Due to the manifest prejudice caused to the accused therein, the Court no longer gave weighty consideration to their lack of objection during the period of delay. It was emphasized in those cases that it was the duty of the prosecutor to expedite the prosecution of the case regardless if the accused failed to object to the delay.

Based on the foregoing, there is no conflict between the first and the second set of cases. In the first set, the Court did not solely rely on the failure of the accused to assert his right; rather, the proper explanation on the delay and the lack of prejudice to the accused were also considered therein. In the same manner, the Court in the second set of cases took into account several factors in sustaining the right of the accused to a speedy disposition of cases, such as the length of delay, the failure of the prosecution to justify the period of delay, and the prejudice caused to the accused. The utter failure of the prosecution to explain the delay of the proceedings outweighed the lack of follow ups from the accused.

Accordingly, both sets of cases only show that “[a] balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.”<sup>37</sup> To reiterate, none of the factors in the balancing test is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. *Corpus v. Sandiganbayan*<sup>38</sup> thoroughly explained how the factors of the balancing test should be weighed, particularly the prejudiced caused by the delay, to wit:

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<sup>37</sup> *Corpus v. Sandiganbayan*, 484 Phil. 899, 917 (2004).

<sup>38</sup> *Id.*

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

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

**Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State.** For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.<sup>39</sup> [Emphases supplied]

Remulla argues that the assertion or non-assertion of the right to a speedy disposition of cases determines whether the court must dismiss the case for inordinate delay or continue the proceedings. Such argument, however, fails to persuade. It must be emphasized that the balancing test is a relative and flexible concept. The factors therein must be weighed according to the different facts and circumstances of each case. The courts are given wide judicial discretion in analyzing the context of the case, bearing in mind the prejudice caused by the delay both to the accused and the State.

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<sup>39</sup> Id. at 918-919.

In addition, there is no constitutional or legal provision which states that it is mandatory for the accused to follow up his case before his right to its speedy disposition can be recognized. To rule otherwise would promote judicial legislation where the Court would provide a compulsory requisite not specified by the constitutional provision. It simply cannot be done, thus, the *ad hoc* characteristic of the balancing test must be upheld.

Likewise, contrary to the argument of the OSP, the U.S. case of *Barker v. Wingo*,<sup>40</sup> from which the balancing test originated, recognizes that a respondent in a criminal case has no compulsory obligation to follow up on his case. It was held therein that “[a] defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.”<sup>41</sup>

Finally, Remulla argues that the doctrine in *Coscolluela* – that the accused has no duty to follow up on the prosecution of their case – only applies to cases where the accused is unaware of the preliminary investigation. A review of related and subsequent cases, however, validates the said doctrine that it is applicable even if the accused was fully informed and had participated in the investigation. In *Cervantes*, the petitioner filed his affidavit before the Tanodbayan to answer the allegations against him. In *People*, the respondents therein were able to file their counter-affidavit with the Ombudsman. In *Inocentes*, the petitioner filed a motion for reconsideration before the Ombudsman. In all these cases, the accused were completely informed of the preliminary investigation against them and they were able to participate in the proceedings before the delays were incurred. In spite of this, the Court applied the doctrine in *Coscolluela* because it was the Ombudsman's responsibility to expedite the proceedings within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it.

In fine, it has been settled that the factors in the balancing test must be given different consideration and weight based on the factual circumstances of each case. Applying such principle in this case, the Court can now determine whether or not the Ombudsman committed inordinate delay and violated Maliksi's right to a speedy disposition of his case.

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<sup>40</sup> *Supra* note 20.

<sup>41</sup> *Id.* at 527.

*The Ombudsman failed to justify the delay in the proceedings*

As indicated in the resolution, dated February 2, 2015, of the Sandiganbayan, the OSP gave the following explanation regarding the delay in the proceedings against Maliksi as follows:

In justifying the length of time that it took the OMB to resolve the case, the prosecution meticulously explains that three different cases were filed against the accused, two of which were from the complaint of Juan (sic) Victor C. Remulla for Violation of the Anti-Graft Law and for Grave Misconduct, which was received by the Office of the Deputy Ombudsman for Luzon on **August 7, 2005** (*Remulla complaints*). The third case was through the Feedback Report of PCSO Fund Allocation Department Manager Teresita Brazil regarding the “Approved Financial Assistance of P10M to province of Cavite c/o Gov. Ayong Maliksi,” which was transmitted to the Ombudsman Central Office in 2005 (*PCSO complaint*). This was allegedly assigned for fact-finding investigation in **July 3, 2006** under CPL-C-05-0188. Upon completion of the investigation, the complete record of the third case was said to have been forwarded to the Office of the Deputy Ombudsman for Luzon on **September 26, 2008** for consolidation with the two cases initiated by complainant Remulla.

Since the complete records of the Remulla cases, including the proposed Resolution and Decision, had already been submitted to the Ombudsman Proper for approval on January 9, 2007, through the Central Record Division, the Deputy Ombudsman for Luzon sent a Memorandum dated **October 24, 2008** to the Ombudsman requesting that the third PCSO case be incorporated with the two Remulla cases already resolved. This Memorandum Request was allegedly received by the Ombudsman Proper on **June 4, 2009** and approved by then Ombudsman Merceditas N. Gutierrez. On **April 6, 2010**, the Chief Administrative Officer of the Office of the Deputy Ombudsman for Luzon forwarded the complete record of the third PCSO case to the Chief of the Central Records Division for incorporation with the two Remulla cases.

Continuing to the recital of events, the prosecution states that the cases against the accused were resolved by the Office of the Deputy Ombudsman for Luzon as early as 2007 and were forwarded in the same year to the Ombudsman Proper for final approval. Unfortunately, final action on the Resolution was allegedly overtaken by disruptive incidents and political events like the 2010 hostage-taking at the Quirino Grandstand and the impeachment of Ombudsman Gutierrez that led to her resignation in April 2011.<sup>42</sup> [Emphases supplied]

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<sup>42</sup> *Rollo*, pp. 25-26.

The length of delay in the proceedings of Maliksi's case must first be determined. In *People v. Sandiganbayan*,<sup>43</sup> it was held that inordinate delay should be computed from the time of the fact-finding investigation until the completion of the preliminary investigation by the Ombudsman. The Court expounded that "[t]he guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated."<sup>44</sup>

Applying the foregoing rule, the delay in Maliksi's case started from the fact-finding investigation of the Ombudsman when he filed his counter-affidavit in Remulla cases on December 15, 2005 until the completion of the PCSO case on October 24, 2008, or a span of three (3) years. At that point, the preliminary investigation began, until it was terminated on August 27, 2014 and the information was filed before the court in November 2014, or a period of six (6) years. Thus, the Sandiganbayan observed that the delay incurred in the proceedings lasted for a total period of nine (9) years. Even if the Court excludes the fact-finding stage of three (3) years, there was still six (6) years of inordinate delay.

As to the reason for the delay, the Court is of the view that the explanation provided by the OSP fails to justify the delay of six (6) years in the resolution of the case against Maliksi because, *first*, there was a delay in the approval of the Remulla complaints by the Ombudsman. These complaints were filed in 2005 and Maliksi filed his counter-affidavit in the same year, on December 15, 2005. According to the OSP, the proposed resolution and decision for the Remulla cases were submitted to the Ombudsman as early as January 9, 2007 for approval. The resolution and decision, however, remained unacted by the Ombudsman so much so that it was only after one (1) year and nine (9) months that the Deputy Ombudsman for Luzon was able to send a memorandum, dated October 24, 2008, for their consolidation with the PCSO case. No explanation for the Ombudsman's inaction on the Remulla cases was advanced by the OSP.

*Second*, while the memorandum for consolidation of the Remulla and PCSO cases was dated October 24, 2008, it was only received by the Ombudsman on June 4, 2009. Evidently, the mere routing or transfer of the memorandum from the Deputy Ombudsman for Luzon to the Ombudsman

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<sup>43</sup> *Supra* note 14.

<sup>44</sup> *Id.* at 493.

took almost eight (8) months. Then Ombudsman Gutierrez approved the memorandum for consolidation on an unspecified date.

*Third*, notwithstanding the approval of the consolidation by the Ombudsman, it was only on April 6, 2010 when the Chief Administrative Officer of the Deputy Ombudsman for Luzon forwarded the complete record of the third PCSO case to the Chief of the Central Records Division. As the approval of the memorandum on consolidation was undated, the Sandiganbayan assumed that the cause of delay was either the Ombudsman's belated approval or the Chief Administrative Officer of the Deputy Ombudsman's delay in the transmittal of the case records. In either case, a delay of ten (10) months for the implementation of a memorandum for consolidation is unacceptable.

Noticeably, the transfer of these memoranda and records are ministerial in nature and does not require the exercise of discretion. Thus, the Court is baffled on how these routine acts could take so long to be accomplished. As properly observed by the Sandiganbayan, routine matters could have been exercised at a faster pace in order to avoid unnecessary delay that expectedly bears heavily on litigants.<sup>45</sup>

*Fourth*, from the time that the consolidation of the Remulla and PCSO cases were approved on April 6, 2010, it took four (4) years, or until July 8, 2014, before the joint resolution finding probable cause against Maliksi was issued by the Ombudsman. There is a void of account as to what exactly happened to the case during this 4-year period. Even more baffling was that although the cases were consolidated, the information filed in November 2014 only involved the Remulla case.

*Lastly*, the OSP sought the understanding of the Sandiganbayan and explained that the resolution of the consolidated cases was overtaken by disruptive events such as the 2010 hostage-taking at the Quirino Grandstand and the impeachment complaint against the Ombudsman Gutierrez. These excuses, however, could hardly be considered as enough reason to warrant the delay in the proceedings. Obviously, these events have no direct relation to the Remulla and PCSO cases to affect their speedy resolution. The functions of the Ombudsman under the Constitution are not suspended by the occurrence of unrelated events to its mandate, whether political or not. Moreover, to sustain the argument of the OSP would set a perilous precedent as the delayed cases pending before the Ombudsman from 2010 to 2014 can simply be overlooked by citing these occasions.

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<sup>45</sup> *Rollo*, p. 27.

Based on the foregoing, the explanation provided by the OSP falls short of the reasonable justification to authorize delay in the proceedings. It was downright unnecessary to prolong the proceedings for a period of nine (9) years. To summarize, the initial delay began when the Ombudsman did not act with dispatch on the approval or disapproval of the proposed resolution and decision in the Remulla. Due to its delay, the Deputy Ombudsman for Luzon was able to send a memorandum for consolidation with the PCSO case. The mere routing or transfer of the memorandum to the Ombudsman incurred eight (8) months of delay. Then, when the memorandum was approved, it took ten (10) months before the records could be transferred from the Deputy Ombudsman for Luzon to the Ombudsman. Finally, for a period of four (4) years, the consolidated cases sat at the Ombudsman. As the OSP did not submit an explanation as to the status of the case in that 4-year period, the Court can only conduct guesswork on the cause of its delay.

Had the Ombudsman immediately approved or disapproved the proposed resolution and decision submitted to its office on January 9, 2007, then the case would have been promptly acted upon. If filed before the Sandiganbayan, the prosecution and the defense could have timely presented their case. Instead, the Ombudsman chose inaction which led to a chain of delays lasting until July 8, 2014. After the lapse of nine (9) years of being kept in the dark, Maliksi could not have had the opportunity to timely present his case in court due to the extensive delay in the preliminary investigation. Certainly, this protracted period of uncertainty over his criminal case caused him prejudice, living under a cloud of anxiety, suspicion and even, hostility.

Further, in light of the circumstances of this case, the Court does not give great weight to Maliksi's lack of objection over the delay because the OSP miserably failed to defend the Ombudsman's inaction. The prosecution could not give an acceptable reason to justify the 9-year interval before the case was filed in court. The proceedings were marred by the delay in the mechanical transfer of documents and records. No steps were taken by the Ombudsman to ensure that the preliminary investigation would be resolved in a timely manner. Clearly, the failure of the prosecution to justify the 9-year interval before the case was filed in court far outweighs Maliksi's own inaction over the delay. As articulated in *Coscolluela, Duterte, Cervantes, People*, and *Inocentes*, the Court reiterates that it is the duty of the prosecutor to expedite the prosecution of the case regardless of whether or not the accused objects to the delay.

Likewise, Remulla's argument that the Sandiganbayan only took into account the length of delay in the proceedings deserves scant consideration. Aside from the length of delay, the anti-graft court thoroughly discussed the Ombudsman's failure to give a suitable reason for the delay and the



prejudice it had caused to Maliksi. The latter's lack of follow up with his case was not given much weight because of the prosecution's manifest failure to justify the protracted lull in the proceedings. The Sandiganbayan, after properly taking into consideration all the relevant factors in the balancing test and gave different weight on each factor based on the particular circumstances of this case, came to a conclusion that the Ombudsman committed inordinate delay. The case underwent the intricate and difficult balancing test before Maliksi's right to a speedy disposition of his case was sustained. Thus, the Court rules that the Sandiganbayan did not commit a grave abuse of discretion in dismissing the criminal case against Maliksi.

To conclude, the Court finds it proper to reiterate the underlying principle of the constitutional right to a speedy disposition of cases in the landmark case of *Tatad v. Sandiganbayan*.<sup>46</sup>

xxx Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutional guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Right (both in the 1973 and the 1987 Constitutions), the inordinate delay is violative of the petitioner's constitutional rights. xxx

It has been suggested that the long delay in terminating the preliminary investigation should not be deemed fatal, for even the complete absence of a preliminary investigation does not warrant dismissal of the information. True — but the absence of a preliminary investigation can be corrected by giving the accused such investigation. But an undue delay in the conduct of a preliminary investigation cannot be corrected for now, until man has not yet invented a device for setting back time.<sup>47</sup>

**WHEREFORE**, the petition is **DENIED**. The February 2, 2015 and March 20, 2015 Resolutions of the Sandiganbayan Second Division in SB-14-CRM-0432 are **AFFIRMED** in *toto*.

**SO ORDERED.**

  
**JOSE CATRAL MENDOZA**  
Associate Justice

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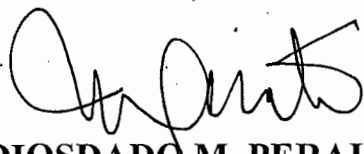
<sup>46</sup> *Supra* note 13.

<sup>47</sup> *Id.* at 575-576.

**WE CONCUR:**



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice



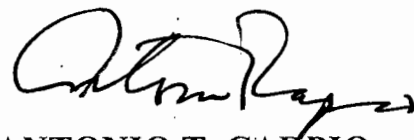
**MARVIC M.V.F. LEONEN**  
Associate Justice



**SAMUEL R. MARTIRES**  
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.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**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.



**MARIA LOURDES P. A. SERENO**  
Chief Justice