

**G.R. No. 139930 (Republic of the Philippines, *petitioner* v. Eduardo M. Cojuangco, Jr., Juan Ponce Enrile, Maria Clara M. Lobregat, Jose R. Eleazar, Jr., Jose C. Concepcion, Rolando P. Dela Cuesta, Emmanuel M. Almeda, Hermenegildo X. Zayco, Narciso M. Pineda, Iñaki R. Mendezona, Danilo S. Ursua, Teodoro D. Regala, Victor P. Lazatin, Eleazar B. Reyes, Eduardo U. Escueta, Leo J. Palma, Douglas Lu Ym, Sigfredo Veloso and Jaime Gandiaga, *respondents*).**

Promulgated:

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## **SEPARATE DISSENTING OPINION**

**PERLAS-BERNABE, J.:**

*I respectfully submit that the purported violation of Section 3(e) of Republic Act No. 3019 for which the respondents are charged has not prescribed.*

The subject offense was allegedly committed in 1979, hence, the applicable law on prescription is Section 11 of RA 3019 which provides for a 10-year prescriptive period<sup>1</sup> for all violations of its provisions.

In computing the prescriptive period for violations of special laws, Section 2 of Act 3326<sup>2</sup> provides:

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<sup>1</sup> Amended by *Batas Pambansa Blg. 195* on March 16, 1982 which now provides for a prescriptive period of 15 years.

<sup>2</sup> "AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN."

Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

The *ponencia* is of the considered view that prescription should be reckoned from **February 8, 1980**, the date United Coconut Oil Mills, Inc. (UNICOM) registered its *THIRD* Amended Articles of Incorporation with the Securities and Exchange Commission (SEC). The amendment reflected the increase in the capital stock of UNICOM from 10,000,000 shares without par value to one billion shares (1,000,000,000) divided into: (a) 500,000,000 Class "A" voting common shares; (b) 400,000,000 Class "B" voting common shares; and (c) 100,000,000 Class "C" non-voting common shares, all with par value of P1.00 per share. Since the changes in UNICOM's corporate structure had been recorded in a publicly accessible government agency without any "allegation that respondent members of the board of directors of UCPB (United Coconut Planters Bank) connived with UNICOM to suppress public knowledge of the investment," the *ponencia* reckoned the prescriptive period from the said date of registration and concluded that when the complaint was filed on March 1, 1990, the 10-year prescriptive period had already lapsed.

I disagree.

A close examination of UNICOM's *third* amended articles of incorporation reveals merely the following: (a) the increase in its capital

stock to 1 billion shares or its equivalent of 1 billion pesos (P1,000,000,000.00); (b) its division into (i) 500,000,000 Class "A" voting common shares; (ii) 400,000,000 Class "B" voting common shares; and (iii) 100,000,000 Class "C" non-voting common shares, all with par value of P1.00 per share; and (c) the conversion of the paid-up subscription of its 5,000,000 no par value shares<sup>3</sup> into fully paid 500,000,000 Class "A" voting common shares, "at the ratio of 100 Class 'A' voting shares for every one (1) no par value share".<sup>4</sup>

Notably, the said amendments were couched in general terms without any reference to the specific shareholdings of UNICOM's investors. Particularly, UCPB, the extent of and/or loss in its investment were not reflected nor can be discerned in the subject amended articles. Thus, even with the knowledge of its registration, no apparent violation can be perceived.

Neither did the submission by UNICOM of the required annual General Information Sheet create suspicion of any wrongdoing on the part of the respondents because it only contained the corporation's present capital structure without any comparative data of previous stockholdings.

Hence, the mere filing of the subject documents with the SEC could not have imparted "knowledge" or made the government aware that UCPB's investment, for and in behalf of the coconut farmers, had been dissipated by P95,000,000.00 and that respondent- incorporators were unduly benefited by the increase in their investment from P5,000,000.00 to P100,000,000.00. For knowledge of a transaction is not equivalent to knowledge of an

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<sup>3</sup> As provided in its September 17, 1979 Certificate of Increase in Capital Stock, *rollo*, pp. 79-82.

<sup>4</sup> *Id.* at 97.

*anomalous* transaction, absent any apparent irregularity that could have raised any suspicion against an otherwise regular commercial transaction.

Accordingly, prescription should be reckoned from the issuance of then President Corazon C. Aquino of Executive Order No. 1 (Creating the Presidential Commission on Good Government) on **February 28, 1986**, which admittedly spurred the investigation on the subject UNICOM investment. It must be pointed out that respondents' questioned act occurred during the height of the Marcos regime which was toppled by the EDSA revolution in 1986. It was therefore only at that time when the right of the then people's government to investigate and prosecute the errant public officials or those closely associated with the Marcoses accrued. Consequently, the filing of the resultant complaint on March 1, 1990, 4 years after the issuance of EO No.1, was well within the 10-year prescriptive period.

I therefore vote to **GRANT** the instant petition.

**ESTELA M. PERLAS-BERNABE**  
Associate Justice