


## EN BANC

G.R. No. 196231 --- EMILIO A. GONZALES III, *Petitioner,*  
*versus* OFFICE OF THE PRESIDENT  
OF THE PHILIPPINES, *etc., et al.,*  
*Respondents.*

G.R. No. 196232 --- WENDELL BARRERAS-SULIT,  
*Petitioner, versus* ATTY. PAQUITO N.  
OCHOA, JR., *etc., et al., Respondents.*

Promulgated:

September 4, 2012 

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## DISSENTING OPINION

ABAD, J.:

This case is not too complicated. Section 8(2) of Republic Act (R.A.) 6770 gave the Office of the President (OP) the power to investigate and remove from office the Deputies Ombudsman and the Special Prosecutor who work directly under the supervision and control of the Ombudsman. Using this power, the OP investigated and found petitioner Emilio Gonzales III, Deputy Ombudsman for the Military and Other Law Enforcement Offices, guilty of gross neglect in handling the pending case against a police officer who subsequently hijacked a tourist bus. Using the same power, the OP initiated a similar investigation of a case against petitioner Wendell Barreras-Sulit, the Special Prosecutor, for alleged corruption, she having allowed her office to enter into a plea-bargaining agreement with Major General Carlos F. Garcia who had been charged with plunder.

Gonzales and Sulit filed separate petitions, the first in G.R. 196231 and the second in G.R. 196232. Gonzales assails the correctness of the OP decision that dismissed him from the service. Both challenges the constitutionality of Section 8(2) of R.A. 6770 which gave the President the power to investigate and remove them.

The *ponencia* would have the Court uphold the constitutionality of Section 8(2), R.A. 6770 that empowers the President to investigate and remove Deputy Ombudsman Gonzales and Special Prosecutor Sulit from office. It argues that, although the Constitution expressly provides for the removal of the Ombudsman himself, which is by impeachment, it fails to



provide a procedure for the removal from office of a Deputy Ombudsman or Special Prosecutor. By enacting Section 8(2) of R.A. 6770, Congress simply filled in a void that the Constitution itself authorizes.

The *ponencia* relies on Section 2, Article XI of the Constitution for support:

*Section 2.* The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. **All other public officers and employees may be removed from office as provided by law**, but not by impeachment. (Emphasis ours)

The removal from office of a Deputy Ombudsman or a Special Prosecutor, says the *ponencia*, falls in the category of public officers and employees that “may be removed from office as provided by law.”

True enough, the above Section 2 above provides that only the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed by impeachment and that other public officers and employees may be removed by law. But this cannot literally be taken to mean that Congress may authorize the President to investigate and remove all non-impeachable public officers and employees.

Surely, Congress may not authorize the President to exercise this power against those that the Constitution expressly or implicitly shields from his influence or intervention. For instance, Congress cannot authorize the President to remove lower court judges, although they are not subject to impeachment, since such authority is reserved by the Constitution to the Supreme Court.<sup>1</sup> Further, as the Court held in *Bautista v. Salonga*,<sup>2</sup> although the Chairman and Members of the Commission on Human Rights are not impeachable public officials, their terms cannot be made to depend on the pleasure of the President since the Constitution perceives them as exercising functions independent of him.

Actually, there was no existing “void” in the matter of the removal of the Deputy Ombudsman and the Special Prosecutor when Congress enacted R.A. 6770. Administrative Code of 1987, then in force, already vested in heads of offices, including the Ombudsman, the power to investigate and

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<sup>1</sup> Section 11, Article VIII of the 1987 Constitution –

“The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. **The Supreme Court *en banc* shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.**” (Emphasis ours)

<sup>2</sup> 254 Phil. 156, 183-184 (1989).

take disciplinary action against all officers and employees under him, the Deputy Ombudsman and the Special Prosecutor included.<sup>3</sup>

In subsequently enacting R.A. 6770, Congress in effect removed such power of investigation and removal, insofar as the Deputy Ombudsman and the Special Prosecutor were concerned, from the Ombudsman and transferred the same to the President. As will shortly be shown below, such wresting of power from the Ombudsman is an appalling blow to his constitutionally mandated independence from the influence and threats of the other departments and agencies of government.

Section 5, Article XI of the 1987 Constitution provides:

*Section 5.* There is hereby created the **independent Office of the Ombudsman**, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy, and at least one Deputy each for Luzon, Visayas and Mindanao. A separate Deputy for the military establishment may likewise be appointed. (Emphasis supplied)

The Constitution has reasons for making the Office of the Ombudsman “independent.” Its primordial duty is to investigate and discipline all elective and appointive government officials.<sup>4</sup> Specifically, Section 13, Article XI of the Constitution vests in that Office the absolute power to investigate any malfeasance, misfeasance, or non-feasance of public officers or employees. This function places it a notch higher than other grievance-handling, investigating bodies. With the exception of those who are removable only by impeachment, the Office of the Ombudsman can investigate and take action against any appointive or elected official for corruption in office, be they Congressmen, Senators, Department Secretaries, Governors, Mayors, or Barangay Captains.

Thus, the Office of the Ombudsman needs to be insulated from the pressures, interventions, or vindictive acts of partisan politics.<sup>5</sup> The Court has itself refrained from interfering with the Office of the Ombudsman’s exercise of its powers. It is not the Court but the Ombudsman who is the champion of the people and the preserver of the integrity of public service.<sup>6</sup> The Office of the Ombudsman, which includes the Deputy Ombudsman and the Special Prosecutor, cannot be beholden to or fearful of any one, the President included.<sup>7</sup>

The power to impeach is a function of check and balance under the Constitution. But the power to remove “public officers and employees” from office, in the realm of administrative law, is a function of supervision, if not control. Keeping the Deputies in the Office of the Ombudsman and

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<sup>3</sup> Sec. 47, par. (2), Chapter 6, Subtitle A, Title IX.

<sup>4</sup> The Ombudsman Act of 1989, Section 21.

<sup>5</sup> *Department of Justice v. Liwag*, 491 Phil. 270, 283 (2005).

<sup>6</sup> *Dimayuga v. Office of the Ombudsman*, 528 Phil. 42, 48 (2006).

<sup>7</sup> *Id.*

the Special Prosecutor independent as the Constitution commands and subjecting them to the President's control or supervision are incompatible ideas.

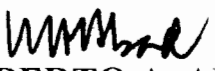
To say that the Deputy Ombudsman and the Special Prosecutor will remain independent of the President notwithstanding that he can investigate and remove them from office at any time is the equivalent of saying that monkeys grow out of trees. If there is any one that the holder of public office fears, it is that person who has the power to remove him.

If the Court were to uphold the Constitutionality of Section 8(2) of R.A. 6770, then the Deputy Ombudsman and the Special Prosecutor will be able to openly defy the orders of the Ombudsman and disregard his policies without fear of disciplinary sanction from him. The law makes them subject to investigation and removal only by the President. It is him they have to obey and will obey. Surely, this is not what the Constitution contemplates in an "independent" Office of the Ombudsman.

The present cases are precisely in point. The Ombudsman did not herself appear to regard Gonzales and Sulit's actuations in the subject matters of the cases against them worthy of disciplinary action. But, given that the Secretary of Justice, an alter ego of the President, took an opposite view, the President deigned to investigate them. In effect, the President is able to substitute his judgment for that of the Ombudsman in a matter concerning a function of the latter's office. This gives the President a measure of control over the Ombudsman's work.

From here on, if the Court chooses to uphold the constitutionality of Section 8(2) of R.A. 6770, the Deputy Ombudsman and the Special Prosecutor would be consulting the Office of the President or the Secretary of Justice before they act in any case in which the latter has an interest. This is the ludicrous and unpalatable situation that the framers of the Constitution envisaged and sought to avoid when they granted the Office of the Ombudsman independence from others who wield governmental powers.<sup>8</sup>

I, therefore, vote to grant the petitions, declare Section 8(2) of Republic Act 6770 that empowers the President to remove the Deputy Ombudsman and the Special Prosecutor unconstitutional and void, annul the decision of the Office of the President against Deputy Ombudsman Emilio Gonzales III dated March 31, 2011, and permanently enjoin that Office from further proceeding with the administrative case against Special Prosecutor Wendell Barreras-Sulit.

  
**ROBERTO A. ABAD**  
Associate Justice

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<sup>8</sup> Section 12, Article XI of the 1987 Constitution.