

EN BANC

G.R. No. 196231 – EMILIO A. GONZALES III versus OFFICE OF THE PRESIDENT OF THE PHILIPPINES, et al.

G.R. No. 196232 – WENDELL BARRERAS-SULIT versus PAQUITO N. OCHOA JR., et al.

Promulgated:

September 4, 2012

Caridad

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CONCURRING OPINION

CARPIO, J.:

Our Constitution does not impart a fixed and rigid concept of independence among the offices that it creates. While it declares certain bodies as “independent”, we cannot assume that the independence of the Ombudsman¹ is the same as the independence of the Judiciary. Neither is the independence of the Constitutional Commissions the same as that of the National Economic and Development Authority, the *Bangko Sentral ng Pilipinas* or the Commission on Human Rights.² This Court cannot make a “one size fits all” concept of independence because the Constitution itself differentiates the degree of independence of these bodies.

In this case, the petitions seek to strike down Section 8(2) of Republic Act No. 6770 or the Ombudsman Act of 1989 which delegates to the

¹ CONSTITUTION, Art. XI, Sec. 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.

² These are the bodies that the 1987 Constitution considers as “independent.” See CONSTITUTION, Art. IX-A, Sec. 1; Art. XII, Secs. 9 and 20; Art. XIII, Sec. 17.

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President the power to remove a Deputy Ombudsman or the Special Prosecutor “for any of the grounds provided for the removal of the Ombudsman, and after due process.” The provision allegedly compromises the independence of the Ombudsman by imposing an external disciplinary authority, namely the President.

I agree with the *ponencia* that Section 8(2) of the Ombudsman Act does not violate the Constitution. The constitutional principle of independence does not obviate the possibility of a check from another body. After all, one of the constitutive principles of our constitutional structure is the system of checks and balances — a check that is not within a body, but outside of it. This is how our democracy operates — on the basis of distrust.³

I.

Section 2, Article XI of the 1987 Constitution prescribes how all public officers and employees, **both impeachable and non-impeachable**, may be removed. Section 2 provides:

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.** (Boldfacing and underscoring supplied)

Section 2 of Article XI consists of two parts. The first sentence identifies the public officials who are subject to removal only by impeachment. **The second sentence *explicitly* leaves to the discretion of Congress, through an implementing law, the removal of *all other* public officers and employees. In other words, by stating that all other non-**

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See J. ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW (2002).

impeachable officers and employees “*may be removed from office as provided by law*” — the Constitution expressly grants to Congress the power to determine the manner and cause of removal, including who will be the disciplinary authority, of non-impeachable officers and employees. Clearly, Section 8(2) of the Ombudsman Act is valid and constitutional since Congress is expressly empowered to legislate such law pursuant to Section 2, Article XI of the Constitution.

The original text of Section 2⁴ of Article XI did not include the second sentence.⁵ Its subsequent inclusion was only meant to exclude “all other public officers and employees” from removal through impeachment. Otherwise, Congress would have the plenary power to remove public officers and employees through impeachment or through any other mode of removal. Thus, at the outset, the framers of the 1987 Constitution saw no need to textualize this power — for it was already taken for granted as part of the plenary power of Congress. However, to limit this plenary power of Congress, the framers expressly excluded impeachment as a mode of removing “all other public officers and employees.”

This Court has repeatedly declared that the Constitution “confer[s] plenary legislative x x x powers subject only to limitations provided in the Constitution.”⁶ Thus, in inserting the second sentence in Section 8(2), Article XI of the 1987 Constitution, the framers intended to limit impeachment only to public officers enumerated in the first sentence of Section 2:

MR. REGALADO. I propose to add in Section 2 as a last sentence thereof as already amended the following: ALL OTHER PUBLIC OFFICERS AND EMPLOYEES MAY BE REMOVED FROM OFFICE AS PROVIDED BY LAW BUT NOT BY IMPEACHMENT. The reason for

⁴ As amended and consolidated by the Committee on Accountability of Public Officers of the 1986 Constitutional Commission.

⁵ II RECORD, CONSTITUTIONAL COMMISSION 263 (26 July 1986).

⁶ *Marcos v. Manglapus*, 258 Phil. 479, 499 (1989); *Vera v. Avelino*, G.R. No. L-543, 31 August 1946, 77 Phil. 192; *Ople v. Torres*, G.R. No. 127685, 23 July 1998, 354 Phil. 948.

the amendment is this: **While Section 2 enumerates the impeachable officers, there is nothing that will prevent the legislature as it stands now from providing also that other officers not enumerated therein shall also be removable only by impeachment, and that has already happened.**

Under Section 1 of P.D. No. 1606, the Sandiganbayan Decree, justices of the Sandiganbayan may be removed only by impeachment, unlike their counterparts in the then Court of Appeals. They are, therefore, a privileged class on the level of the Supreme Court. In the Committee on Constitutional Commissions and Agencies, there are many commissions which are sought to be constitutionalized – if I may use the phrase – and the end result would be that if they are constitutional commissions, the commissioners there could also be removed only by impeachment. **What is there to prevent the Congress later – because of the lack of this sentence that I am seeking to add – from providing that officials of certain offices, although nonconstitutional, cannot also be removed except by impeachment?**

THE PRESIDING OFFICER (Mr. Treñas). What does the Committee say on the proposed amendment of Commissioner Regalado?

MR. MONSOD. May we ask Commissioner Regalado a few questions?

Does this mean that with this provision, the other officers in the case of the Sandiganbayan would not be removable by impeachment?

MR. REGALADO. For the present and during the interim and until the new Congress amends P.D. No. 1606, that provision still stands. But the proposed amendment will not prevent the legislature from subsequently repealing or amending that portion of the law. Also, it will prevent the legislature from providing for favoured public officials as not removable except by impeachment.

MR. MONSOD. Mr. Presiding Officer, the Committee is willing to accept the amendment of Commissioner Regalado.

THE PRESIDING OFFICER (Mr. Treñas). The proposed amendment of Commissioner Regalado has been accepted by the Committee.⁷ (Emphasis supplied)

Clearly, Congress has the power and discretion to delegate to the President the power to remove a Deputy Ombudsman or the Special Prosecutor under Section 8(2) of the Ombudsman Act. While the 1987 Constitution already empowers the Ombudsman to investigate⁸ and to

⁷ II RECORD, CONSTITUTIONAL COMMISSION 356-357 (28 July 1986).

⁸ CONSTITUTION, Art. XI, Sec. 13(1): Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

recommend to remove⁹ a Deputy Ombudsman and the Special Prosecutor, this does not preclude Congress from providing other modes of removal.

The Deputy Ombudsman and the Special Prosecutor are not among the impeachable officers under the 1987 Constitution. Thus, as expressly provided in Section 2, Article XI of the Constitution, they “**may be removed from office as provided by law.**” Congress, pursuant to this constitutional provision and in the exercise of its plenary power, enacted the Ombudsman Act, conferring on the President the power to remove the Deputy Ombudsman and the Special Prosecutor as provided in Section 8(2) of the Ombudsman Act.

However, the Ombudsman Act also grants the Ombudsman the authority to remove a Deputy Ombudsman and the Special Prosecutor through the general grant of disciplinary authority over all elective and appointive officials, in reiteration of Sections 13(1) and (2), Article XI of the Constitution:¹⁰

Section 21. Officials Subject to Disciplinary Authority; Exceptions. – The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.¹¹

In view of Section 8(2) and Section 21 of the Ombudsman Act, the legislative intent is to grant concurrent jurisdiction to the President and the Ombudsman in the removal of the Deputy Ombudsman and the Special Prosecutor. An “endeavor should be made to harmonize the provisions of a

⁹ CONSTITUTION, Art. XI, Sec. 13(3): Direct the officer concerned to take appropriate action against a public official or employee at fault, and **recommend his removal**, suspension, demotion, fine, censure, or prosecution, and **ensure compliance therewith.** (Emphasis supplied)

¹⁰ See notes 8 and 9.

¹¹ R.A. No. 6770, Sec. 21.

law x x x so that each shall be effective.”¹² This is not a hollow precept of statutory construction. This is based not only on democratic principle but also on the separation of powers, that this Court should not be so casual in voiding the acts of the popularly elected legislature unless there is a clear violation of the Constitution.

II.

When the 1987 Constitution speaks of “independent” bodies, it does not mean complete insulation from other offices. The text, history and structure of the Constitution contemplate checks and balances that result in the expansion, contraction or concurrence of powers, a coordinate functioning among different bodies of government that is not limited to the executive, legislative and judicial branches, but includes the “independent” constitutional bodies. The very structure of our government belies the claim that “independent” bodies *necessarily* have exclusive authority to discipline its officers.

Not all constitutional declarations are enforceable by courts.¹³ We declared some of them as not self-executing such as the Declaration of Principles and State Policies under Article II.¹⁴ However, the independence of constitutional bodies is a judicially enforceable norm. Textually, the Constitution does not define the term “independent” and thus, the contours of this principle may not be immediately clear. The question therefore arises: to what extent can this Court enforce the independence of bodies like the Ombudsman? Can we impose a particular notion of independence, amidst the silence of the constitutional text, to the extent of nullifying an act of Congress?

¹² *Valera v. Tuason, Jr.*, 80 Phil. 823, 827 (1948). See also *Mactan-Cebu International Airport Authority v. Urgello*, G.R. No. 162288, 4 April 2007, 520 SCRA 515, 535, citing *Civil Service Commission v. Joson, Jr.*, G.R. No. 154674, 27 May 2004, 429 SCRA 773, 786.

¹³ *Tañada v. Angara*, 338 Phil. 546 (1997); *Manila Prince Hotel v. Government Service Insurance System*, 335 Phil. 82 (1997); *Kilosbayan, Inc. v. Morato*, 316 Phil. 652 (1995).

¹⁴ *Id.*

The answer lies in the Constitution itself which circumscribes the exercise of judicial power. The Constitution clearly intended different degrees of independence among the “independent” bodies that it created. For some, such as the National Economic and Development Authority, *Bangko Sentral ng Pilipinas* and Commission on Human Rights, the operationalization of independence is constitutionally committed to the discretion of Congress.¹⁵ For the others, like the Civil Service Commission, the Commission on Audit and the Commission on Elections, legislative power is decidedly more limited,¹⁶ with express guarantees like fiscal autonomy¹⁷ and rule-making power on pleadings and practice.¹⁸

The Constitution does not enumerate in detail all the possible legislative powers. The Constitution has vested Congress with plenary powers — as the general repository of the police power of the State — to fill-in gaps in the Constitution for the governance of this country. However, when the Constitution expressly empowers Congress to do a specific act — like expressly empowering Congress to provide the mode of removal of all non-impeachable government officers and employees, there can be no doubt whatsoever that Congress can enact such a law.

Any reading of the 1987 Constitution does not warrant the conclusion that all bodies declared by the Constitution as “independent” have exclusive disciplinary authority over all their respective officials and employees. Unlike the Judiciary where such exclusivity is expressly provided for in the Constitution,¹⁹ there is no reason to read such provision in the Ombudsman

¹⁵ CONSTITUTION, Art. XII, Secs. 9 and 20; Art. XIII, Sec. 17.

¹⁶ See CONSTITUTION, Art. IX-A, Sec. 3 (the salaries of the Chairman and the Commissioners are fixed by law but shall not be decreased during their tenure), Sec. 4 (appointment of other officials and employees in accordance with law) and Sec. 8 (the constitutional commissions may perform other functions as may be provided by law).

¹⁷ CONSTITUTION, Art. IX-A, Sec. 5.

¹⁸ CONSTITUTION, Art. IX-A, Sec. 6.

¹⁹ CONSTITUTION, Art. VIII, Sec. 6 (“The Supreme Court shall have administrative supervision over all courts and the personnel thereof.”) and Sec. 11 (“x x x The Supreme Court *en banc* shall have the power to discipline judges of lower courts, or order their dismissal by a vote of majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.”).

where the Constitution is silent. On the contrary, the constitutional provision that non-impeachable officers and employees “**may be removed from office as provided by law**” removes any doubt that Congress can determine the mode of removal of non-impeachable officers and employees of “independent” bodies other than the Judiciary. An “independent” body does not have exclusive disciplinary authority over its officials and employees unless the Constitution expressly so provides, as in the case of the Judiciary.

There are other constitutional bodies declared “independent,”²⁰ but disciplinary authority is statutorily lodged somewhere else.²¹ Under the New Central Bank Act (Republic Act No. 7653), the President also has the power to remove a member of the Monetary Board on specified grounds.²² There is

²⁰ Supra, note 2.

²¹ Id.

²² R.A. No. 7653, Sec. 10. *Removal*. — The President may remove any member of the Monetary Board for any of the following reasons:

- (a) If the member is subsequently disqualified under the provisions of Section 8 of this Act; or
- (b) If he is physically or mentally incapacitated that he cannot properly discharge his duties and responsibilities and such incapacity has lasted for more than six (6) months; or
- (c) If the member is guilty of acts or operations which are of fraudulent or illegal character or which are manifestly opposed to the aims and interests of the Bangko Sentral; or
- (d) If the member no longer possesses the qualifications specified in Section 8 of this Act.

See also III RECORDS, CONSTITUTIONAL COMMISSION 611 (22 August 1986):

THE PRESIDENT. Commissioner Rodrigo is recognized.

MR. RODRIGO. Madam President, may I ask a question for clarification? The section says, “The Congress shall establish an independent central monetary authority.” My question has reference to the word “independent.” How is independence of this authority supported by the Constitution?

In the case of the judiciary, the Members are independent because they have a fixed term and they may not be removed except by impeachment or some very difficult process. This applies to the different constitutional commissions. But in the case of this central monetary authority which we call “independent”, how is this independence maintained?

MR. VILLEGAS. The thinking is: Congress, in establishing that independent central monetary authority, should provide a fixed term. Actually that was contained in the original Davide amendment but we thought of leaving it up to Congress to determine that term — a fixed term of probably five years or seven years serving in the monetary board.

nothing anomalous in this mode of removal because the Constitution expressly authorizes the legislature to provide for such mode of removal. This Court cannot enforce a speculative notion of independence — that an “independent” body has exclusive disciplinary authority — for doing so would be a species of judicial legislation or a disguised constitutional amendment.

III.

This Court has no business limiting the plenary power of Congress unless the Constitution expressly so limits it. The fact that different constitutional bodies are treated differently under the Constitution shows that independence is a broadly delineated norm. With this level of generality, the constitutional meaning of independence is only that of independent decision-making that is free from partisanship and political pressures. It does not even mean fiscal autonomy unless the Constitution says so.²³ Thus, it is generally left to Congress to particularize the meaning of independence, subject only to specific constitutional limitations. Nothing in the Constitution tells us that an “independent” body necessarily has exclusive disciplinary authority over its officials and employees.

MR. RODRIGO. Does this include that they may not be removed except by impeachment by the Congress?

MR. VILLEGAS. Exactly.

MR. RODRIGO. Just like the members of the other constitutional commissions?

MR. VILLEGAS. Yes. That is why we say that they shall be subject to the same disabilities or disqualifications as the members of the constitutional commissions.

MR. RODRIGO. Are we leaving that to Congress?

MR. VILLEGAS. That is right.

MR. RODRIGO: Thank you.

²³ *Commission on Human Rights Employees’ Association v. Commission on Human Rights*, G.R. No. 155336, 21 July 2006, 496 SCRA 226.

A completely “independent” body is alien to our constitutional system. There is no office that is insulated from a possible correction from another office. The executive, legislative and judicial branches of government operate through the system of checks and balances. All independent constitutional bodies are subject to review by the courts. A fiscally autonomous body is subject to audit by the Commission on Audit, and Congress cannot be compelled to appropriate a bigger budget than that of the previous fiscal year.²⁴

Section 8(2) of the Ombudsman Act is consistent with our system of checks and balances. The provision is a narrow form of delegation which empowers the President to remove only two officers in the Office of the Ombudsman, *i.e.* the Deputy Ombudsman and the Special Prosecutor. The proposition that an external disciplinary authority compromises the Ombudsman’s independence fails to recognize that the Constitution expressly authorizes Congress to determine the mode of removal of all non-impeachable officers and employees. It also fails to recognize that under a system of checks and balances, an external disciplinary authority is desirable and is often the norm.

In disciplinary cases, the 1987 Constitution empowers the Ombudsman to direct the proper disciplinary authority “to take appropriate action against a public official or employee at fault, and **recommend** his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.”²⁵ This is further implemented by the Ombudsman Act which provides that “[a]t its option, the Office of **the Ombudsman may refer certain complaints to the proper disciplinary authority** for the institution of appropriate administrative proceedings against erring public

²⁴ See CONSTITUTION, Art. VIII, Sec. 3; Art. IX-A, Sec. 5; Art. XI, Sec. 14.

²⁵ CONSTITUTION, Art. XI, Sec. 13, par. (3). Emphasis supplied.

officers or employees, which shall be determined within the period prescribed in the civil service law.”²⁶

Clearly, the Ombudsman is not constitutionally empowered to act alone. Congress can even authorize the Department of Justice or the Office of the President to investigate cases within the jurisdiction of the Ombudsman. Similarly, the Ombudsman can investigate public officers and employees who are under the disciplinary authority of heads of other bodies or agencies.²⁷ The cases cited in the *ponencia*, i.e. *Hagad v. Gozo-Dadole*²⁸ and *Office of the Ombudsman v. Delijero, Jr.*²⁹ — illustrate that concurrent jurisdiction does not impair the independence of the Ombudsman. Duplication of functions may not at all times promote efficiency, but it is not proscribed by the Constitution.

Accordingly, I vote to **DENY** the petition in G.R. No. 196232, and to **GRANT** in part the petition in G.R. No. 196231, in accordance with the *ponencia* of Justice Estela M. Perlas-Bernabe.



ANTONIO T. CARPIO
Associate Justice

²⁶ R.A. No. 6770, Sec. 23(2).

²⁷ The Administrative Code of 1987 (Executive Order No. 292) provides that the heads of agencies are generally empowered to investigate and decide matters involving disciplinary actions against officers and employees under their jurisdiction. ADMINISTRATIVE CODE, Book V, Title I, Subtitle A, Chapter 7, Secs. 47, par. (2) and 48, par. (1).

²⁸ G.R. No. 108072, 12 December 1995, 251 SCRA 242.

²⁹ G.R. No. 172635, 20 October 2010, 634 SCRA 135.