

20 MAY 19 P1 59

SENATE

S. No. 1536

RECEIVED

Introduced by **SENATOR LEILA M. DE LIMA**

AN ACT
AMENDING SECTION 2 OF ACT NO. 3326, OTHERWISE KNOWN AS
“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”

EXPLANATORY NOTE

In the 2006 case of *Romualdez v. Marcelo*¹, the Supreme Court identified a “legislative gap” as the root cause of then Senior Associate Justice Antonio T. Carpio’s “apprehension” that the application of Section 2 of Act No. 3326 to the computation of the prescriptive period of offenses punished under special laws would be “[t]o allow an accused to prevent his prosecution by simply leaving this jurisdiction.” This, according to Justice Carpio:

...[U]njustifiably tilts the balance of criminal justice in favor of the accused to the detriment of the State’s ability to investigate and prosecute crimes. In this age of cheap and accessible global travel, this Court should not encourage individuals facing investigation or prosecution for violation of special laws to leave Philippine jurisdiction to sit-out abroad the prescriptive period. The majority opinion unfortunately chooses to lay basis for such anomalous practice.²

In the said 2006 Resolution, the Court dismissed the 23 criminal cases filed against Benjamin T. Romualdez for violation of Section 7 of Republic Act No. 3019, otherwise known as the “Anti-Graft and Corruption Practices Act”, in connection with

¹ G.R. Nos. 165510-33, July 28, 2006

² *Id.*

this supposed receipt of dual compensation in government during the regime of his brother-in-law, the late former President Ferdinand Marcos³.

The Supreme Court reversed its earlier decision by ruling that the graft charges against the accused have been extinguished by prescription, despite the fact that the accused was admittedly absent from the Philippines from 1986 to April 27, 2000. The majority opinion cited Act No. 3326 to hold that the prescriptive period of offenses punished under special laws is only interrupted "when proceedings are instituted against the guilty person,"⁴ and *not* by the absence of the accused from Philippine jurisdiction, which is a ground instead for the tolling of the prescriptive period under the second paragraph of Article 91 of Act No. 3815, or the Revised Penal Code (RPC).

Relying on the RPC provision, Justice Carpio dissented, reasoning that the aforementioned second paragraph of Article 91 of the RPC suppletorily applies to R.A. No. 3019 by application of Article 10 thereof.

Addressing this point, the prevailing majority in the Supreme Court ruled that the RPC provision cannot be given such suppletory effect because, by application of Section 2 of Act No. 3326, R.A. No. 3019, a special law, is not silent on the particular matter of the running of the prescriptive period for the offenses defined and punished therein.⁵

In addressing Justice Carpio's above-quoted apprehensions, the Supreme Court, in effect, stated that the remedy to resolve such issue lies with the legislature and not the courts:

The majority notes Mr. Justice Carpio's reservations about the effects of ruling that the absence of the accused from the Philippines shall not suspend the running of the prescriptive period. Our duty, however, is only to interpret the law. To go beyond that and to question the wisdom or effects of the law is certainly beyond our constitutionally mandated duty. As we have already explained –

Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because a legislative lacuna cannot be

³ Philippine Star. (01 May 2009). *Supreme Court reverses ruling, clears Kokoy of graft*. Retrieved from <https://www.philstar.com/headlines/2009/05/01/462665/supreme-court-reverses-ruling-clears-kokoy-graft>

⁴ Second paragraph of Section 2, Act No. 3326

⁵ Under Section 3 thereof and for purposes of said law, "special acts shall be acts defining and penalizing violations of the law not included in the Penal Code".

filled by judicial fiat. Indeed, courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission.⁶(Emphasis supplied).

This measure, therefore, seeks to address this so-called legislative lacuna by amending Act No. 3326 and aligning it with the second paragraph of Article 91 of the RPC. For violations penalized by special laws, absence of the accused in the Philippines will henceforth be a ground for tolling of the prescriptive period.

In view of the foregoing, the passage of this measure is earnestly sought.


LEILA M. DE LIMA

⁶ *Id.*

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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

1 Section. 1. Section 2 of Act No. 3326, otherwise known as “An Act to Establish
2 Periods of Prescription for Violations Penalized by Special Acts and Municipal
3 Ordinances and to Provide when Prescription shall Begin to Run”, is hereby amended
4 to read as follows:

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

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

12 **THE PERIOD OF PRESCRIPTION SHALL NOT RUN WHEN THE**
13 **OFFENDER IS ABSENT FROM THE PHILIPPINE TERRITORY.”**

14 **Sec. 2. Separability Clause.** - If any provision of this Act is declared invalid or
15 unconstitutional, the provisions not affected thereby shall continue to be in full force
16 and effect.

1 Sec. 3. *Repealing Clause.* - All laws, executive orders, presidential decrees,
2 presidential proclamations, letters of instruction, rules and regulations or parts
3 thereof inconsistent with the provisions of this Act are hereby repealed, modified, or
4 amended accordingly.

5 Sec. 4. *Effectivity.* - This Act shall take effect fifteen (15) days following its
6 publication in the Official Gazette or in two (2) newspapers of general circulation in
7 the Philippines.

Approved,