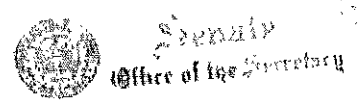


SIXTEENTH CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
First Regular Session )



'13 JUL -3 P2 31

SENATE  
S. No. 396

RECEIVED BY: ja

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Introduced by Senator Miriam Defensor Santiago

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EXPLANATORY NOTE

The Constitution, Article XI, Sections 1 and 12 provide:

SEC. 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice and lead modest lives.

SEC. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on the complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

The failure of the Ombudsman to promptly act on cases imbued with public interest, such as the cases of the PNP Euro-Generals, the fertilizer scam, the misuse of the Road Users Tax, and the NBN-ZTE scandal, is well-documented. In all these cases, various committees of the Senate have recommended the prosecution of the public officials involved.

Such inaction of the Office of the Ombudsman, whose office is constitutionally mandated to fight corruption, weakens our government's anti-corruption program as a whole. It is therefore imperative for Congress to legislate laws that will strengthen the Office of the Ombudsman and speed up the process by which corrupt public officials are brought to justice.

One way to speed up the process is by removing the redundancy caused by doing a separate preliminary investigation even after a *prima facie* evidence of guilt has been established in a congressional hearing in aid of legislation.

A preliminary investigation is an element of due process which, while granted by law, is not a constitutional right. The purpose of preliminary investigation is to determine whether there is a sufficient ground to engender a well-grounded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial.<sup>1</sup>

Preliminary investigation is merely inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof, and it does not place the person against whom it is taken in jeopardy.<sup>2</sup>

The purpose is, however, satisfied if the accused is given all the opportunity to submit countervailing evidence.<sup>3</sup> Probable cause merely implies probability of guilt and should be determined in a summary manner. Preliminary investigation is not a part of a trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to establish his innocence.<sup>4</sup>

Given the inquisitorial nature of the congressional hearings, it is possible that in the course of the investigations, a *prima facie* case against a person involved in the matter investigated upon, may be established. In such instances, part of the resolution of the case would be to recommend the prosecution of persons against whom a *prima facie* case has been established. In such instances, a preliminary investigation would be redundant as the person sought to be prosecuted would already have been given the opportunity to avail of the rights available to persons subject of preliminary investigation, including the right to provide countervailing evidence.

Such arrangement would not only speed up the prosecution process of the Office of the Ombudsman but also make the congressional hearings more meaningful as the persons involved

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<sup>1</sup> Webb v. Vizconde, 247 SCRA 652 (1995).

<sup>2</sup> Tandoc v. Resultan, 175 SCRA 37 (1989).

<sup>3</sup> People v. Pocularan, 167 SCRA 176 (1988).

<sup>4</sup> Webb v. De Leon, 247 SCRA 652 (1995).


would have to treat such hearings more seriously since the findings of the Congress can be adopted by the Office of the Ombudsman and cause the filing of information against them.

This power should be tempered by a proviso which allows the Office of the Ombudsman to conduct a preliminary investigation in cases with insufficient evidence.

It is important to underscore the fact that the power of the Office of the Ombudsman to prosecute does not directly originate from the Constitution. It is found in Republic Act No. 6770, or the Ombudsman Law. This means that while the Office of the Ombudsman has constitutional basis, the Ombudsman's power to prosecute is a creation of the legislature and not of the Constitution.

The records of the Constitutional Commission establishes the following points: (1) since the power of the Ombudsman to prosecute is a creation of the legislature, that power is subject to revision by Congress; and (2) since the power to conduct preliminary investigations is an incident to the Ombudsman's power to prosecute, it follows that such procedural power is also subject to the revisory powers of Congress.<sup>5</sup>

This bill aims to expedite the prosecution of cases recommended by Congress and hasten the delivery of justice on matters of national concern.<sup>6</sup>

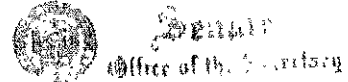
*act*  
  
MIRIAM DEFENSOR SANTIAGO

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<sup>5</sup> See II Records of the Constitutional Commission 265-271 (1986).

<sup>6</sup> This case was originally filed during the Fifteenth Congress, Second Regular Session.

SIXTEENTH CONGRESS OF THE REPUBLIC )  
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First Regular Session )



'13 JUL -3 P2 31

SENATE  
S. No. 396

RECEIVED BY: Jea

Introduced by Senator Miriam Defensor Santiago

1 AN ACT  
2 AMENDING REPUBLIC ACT NO. 6770, OTHERWISE KNOWN AS THE OMBUDSMAN  
3 ACT, EXPEDITING THE PROSECUTION OF CASES RECOMMENDED BY CONGRESS  
4 AND FOR OTHER PURPOSES

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

5 SECTION 1. A new Section 20-A shall be inserted after Section 20 of Republic Act No.  
6 6770, otherwise known as the Ombudsman Act, which shall read as follows:

7 SEC. 20-A. *Recommendations by Congress.* – The Office of the  
8 Ombudsman shall have the power to immediately cause the filing of an  
9 information against and prosecute the officials over which it has disciplinary  
10 authority, as provided in this Act, without preliminary investigation, upon  
11 recommendation by either the Senate or the House of Representatives; provided  
12 that the Office of the Ombudsman has made a determination that the said  
13 recommendation is supported by evidence sufficient to prosecute the case as  
14 provided in its rules. The Office of the Ombudsman shall make such  
15 determination within thirty (30) days from receipt of the congressional  
16 recommendation.

17 The chamber of Congress, from which the congressional recommendation  
18 originated, shall transmit all evidence gathered during their inquiry along with  
19 their recommendation. The Office of the Ombudsman may then adopt the results  
20 of the congressional inquiry in place of a preliminary investigation.

21 If the Office of the Ombudsman determines that the evidence provided is  
22 insufficient, it shall conduct a separate preliminary investigation and shall

1           communicate the result of such investigation to the chamber of Congress from  
2           which the congressional recommendation originated.

3                     In all such cases, the Office of the Ombudsman shall ensure that the cases  
4           covered by congressional recommendations are given priority.

5           SECTION 2. *Separability Clause.* – If any provision of this Act is declared  
6           unconstitutional or invalid, the remainder of the Act which is not affected thereby shall continue  
7           to be in full force and effect.

8           SECTION 3. *Repealing Clause.* – All laws, decrees, orders, rules, and regulations or  
9           parts thereof inconsistent with the provisions of this Act are hereby repealed, amended, or  
10          modified accordingly.

11          SECTION 4. *Effectivity Clause.* – This Act shall take effect after fifteen (15) days  
12          following its publication in at least two (2) newspapers of general circulation.

Approved,