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[G.R. No. 102420. December 20, 1994]

PROSPERO A. OLIVAS, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN (DEPUTY OMBUDSMAN — AFP), and ATTY. BIENVENIDO C. BLANCAFLOR, in his capacity as Ombudsman Investigator,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; GENERAL POWER OF INVESTIGATION OF THE PCGG; TWO STAGES. — x x x the decision in *Cojuangco, Jr. v. PCGG* in which we described the general power of investigation of the PCGG as consisting of two stages: the first stage, called the *criminal investigation*, is a fact-finding inquiry conducted by law enforcement agents, whereby they gather evidence and interview witnesses and afterwards assess the evidence so that, if they find sufficient basis, they can file a complaint for the purpose of *preliminary investigation*. The second stage, called the preliminary investigation stage, is conducted for the purpose of ascertaining if there is sufficient evidence to bring a person to trial. x x x

2. ID.; ID.; ID.; ID.; THE LAW ENFORCER WHO CONDUCTED THE CRIMINAL INVESTIGATION, GATHERED THE EVIDENCE AND THEREAFTER FILED THE COMPLAINT FOR THE PURPOSE OF PRELIMINARY INVESTIGATION CANNOT BE ALLOWED TO CONDUCT THE PRELIMINARY INVESTIGATION OF HIS OWN COMPLAINT; CASE AT BAR. — x x x the PCGG could not thereafter act as an impartial judge in conducting a preliminary investigation of criminal complaints based on the same facts found by it to constitute *prima facie* evidence against petitioner. We there said: In our criminal justice system, the law enforcer who conducted the criminal investigation, gathered the evidence and thereafter filed the complaint for the purpose of preliminary investigation cannot be allowed to conduct the preliminary investigation of his own complaint. It is to say the least arbitrary and unjust. It is in such instances that We say one cannot be "a prosecutor and judge at the same time."

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Having gathered the evidence and filed the complaint as a law enforcer, he cannot be expected to handle with impartiality the preliminary investigation of his own complaint, this time as a public prosecutor. In accordance with this ruling, the PCGG indorsed the case at bar to the Office of the Ombudsman. It may be assumed that the PCGG had found sufficient evidence against petitioner to warrant submitting the case for preliminary investigation. For the rationale of *Cojuangco, Jr. v. PCGG* is that the role of law enforcer must not be confounded with that of the public prosecutor who must determine whether there was probable cause for filing the case in court. x x x

3. ID.; ID.; ID.; ID.; IN ADVERSARY PROCEEDINGS, BEFORE THE RESPONDENT CAN BE REQUIRED TO SUBMIT COUNTER-AFFIDAVITS AND OTHER SUPPORTING DOCUMENTS, THE COMPLAINANT MUST SUBMIT HIS AFFIDAVIT AND THOSE OF HIS WITNESSES. — Even in investigations looking to the prosecution of a party, Rule I, § 3 can only apply to the general criminal investigation, which in the case at bar was already conducted by the PCGG. But after the Ombudsman and his deputies have gathered evidence and their investigation has ceased to be a general exploratory one and they decide to bring the action against a party, their proceedings become adversary and Rule II, § 4(a) then applies. This means that before the respondent can be required to submit counter-affidavits and other supporting documents, the complainant must submit his affidavit and those of his witnesses. This is true not only of prosecutions of graft cases under Rep. Act No. 3019 but also of actions for the recovery of unexplained wealth under Rep. Act No. 1379, because § 2 of this latter law requires that before a petition is filed there must be a "previous inquiry similar to preliminary investigation in criminal case."

APPEARANCES OF COUNSEL

Fernandez & Olivas for petitioner.
The Solicitor General for respondents.

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D E C I S I O N

MENDOZA, *J.*:

This is a petition for *certiorari* and prohibition to annul the order, dated October 25, 1991, of respondent Ombudsman Investigator, requiring petitioner to submit his affidavit and those of his witnesses at the preliminary investigation of a case for unexplained wealth against petitioner, despite the fact that the Presidential Commission on Good Government, as complainant, had not reduced its evidence in the form of affidavits and submitted supporting documents.

Petitioner, Major Gen. Prospero A. Olivas, was Commanding General of the PC Metrocom. He was retired from the Armed Forces of the Philippines effective February 26, 1986. Shortly thereafter letters were sent to the Presidential Commission on Good Government, some of them anonymous, charging him with violations of the Anti-Graft and Corrupt Practices Act (Rep. Act No. 3019) and the Unexplained Wealth Act (Rep. Act No. 1379).

The letters were referred to the New Armed Forces of the Philippines Anti-Graft Board which the PCGG had created for the purpose of investigating cases of unexplained wealth and corrupt practices against AFP personnel, whether retired or in the active service.

On August 28, 1986, petitioner was informed by the Bank of the Philippine Islands, Greenhills Branch, that a freeze order had been issued covering his current and savings accounts. In addition, a hold order was issued against him by the PCGG.

Petitioner attended the hearings and filed his answer to the charges against him. On April 4, 1988, the Board recommended that the case against petitioner be provisionally dismissed without prejudice to its revival should new evidence be found.[1]

Petitioner was informed of the findings of the Board in a letter sent to him by the Board on August 15, 1988. The letter read in part:

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[1] Resolution of April 4, 1988, pp. 7-8, Records, pp. 21-22.

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The Board met and deliberated on your alleged unexplained wealth case in its regular meeting on 12 August 1988. In the deliberation of your case, the Board found that there is no *prima facie* case of unexplained wealth against you under R.A. 3019, the Anti-Graft and Corrupt Practices Act and thus resolved to have your case dropped and closed for insufficiency of evidence.

WHEREFORE, you are hereby officially informed that the Board has cleared you of the unexplained wealth against you, without prejudice to have you re-investigated should new evidence on graft and corrupt practices or unexplained wealth against you be brought to the attention of the Board.[2]

However, the PCGG disapproved the findings and recommendation of the AFP Anti-Graft Board and ordered a review of the case. On February 6, 1989, it issued subpoenas to petitioner and to the AFP Anti-Graft Board, directing them to appear before Fiscals Arturo T. De Guia and Peter T. Tabang on February 21, 1989, at 2:00 p.m.

On April 12, 1989, Fiscal Tabang recommended that the Board's findings be affirmed. In his memorandum to the PCGG, Fiscal Tabang stated:

After our perusal and consideration of the records of this case, the Board's resolution of April 4, 1988 appears to be supported by the evidence on record. Furthermore, the Board, thru its counsel, Col. Ernesto Punsalang, manifested that there are no new nor additional evidence against Gen. Olivas (Hearing of February 21, 1988). Likewise, on March 15, 1989, Gen. Olivas, in his Manifestation and Motion dated March 1, 1989, further clarified his position and established that the balance of ₱32,725.00 (or supposed difference in the Financial Analysis of Capt. Samuel Padilla), should be reduced to only ₱5,774.73. To the said Manifestation and Motion, the Board's counsel offered no opposition, reply nor comment.

Thus, on the basis of the foregoing premises, it is hereby recommended that the Board's resolution of April 4, 1988 be affirmed and approved.[3]

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[2] Records, p. 166.

[3] Records, p. 6.

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Apparently the recommendation of Fiscal Tabang was disapproved because petitioner received another subpoena ordering him to appear before Prosecutor Donato Sor. Suyat Jr. on August 18, 1989. In that hearing, petitioner was ordered to explain certain details regarding documents submitted by him. The directive was later embodied in an order dated August 21, 1989.

Petitioner agreed, but subsequently he filed a "Motion for Clarification with Alternative Prayer for Dismissal" in which he complained that, as of that date, no sworn complaint had been filed against him; that no affidavits and supporting documents had been submitted in evidence against him to support the charge of unexplained wealth; that the case was denominated as "*AFP Anti-Graft Board v. MGen. Prospero A. Olivas*" and yet the Anti-Graft Board had not filed a complaint against him but, on the contrary, had recommended the dismissal of the charges against him; that as there was no valid complaint, there was no legal basis for conducting a preliminary investigation; and that the PCGG had no jurisdiction over his person since it had not been alleged, as required under § 2(a) of Executive Order No. 1,[4] that he was one of the relatives, subordinates and close associates of former President Marcos and that the property which was the subject of the investigation was ill-gotten wealth which had been acquired "by taking undue advantage of [his] public office and/or using [his] power, authority, influence, connections, or relationship."

Petitioner prayed that a copy of the complaint, together with affidavits and other supporting documents, if any, be furnished

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[4] This provision reads:

§ 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:

(a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.

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to him, otherwise the preliminary investigation should be terminated and the freeze and hold orders previously issued lifted.[5]

On November 2, 1989, Commissioner Maximo A. Maceren denied petitioner's motion and gave him five days from notice within which to submit his written explanation/clarification.

Petitioner filed a motion for reconsideration, citing the fact that the charges against him had previously been dismissed by the AFP Anti-Graft Board and by Fiscal Tabang and, therefore, there was no cause of action against him. However, his motion was denied, and an order was issued directing him to submit his explanation on certain matters as enumerated in the order dated August 21, 1989.

On February 22, 1990, petitioner filed a "Compliance with Reservations *Ex Abundanti Causa*," claiming that he had submitted to the AFP Anti-Graft Board his income tax returns for the years from 1979 to 1985.

On November 23, 1990, the PCGG indorsed the records of the case, entitled "*AFP Anti-Graft Board, Camp Crame, Quezon City v. Maj. Gen. Prospero Olivas,*" to the Office of the Ombudsman.

On April 22, 1991 and June 17, 1991, the Ombudsman issued subpoenas *duces tecum* to BIR Commissioner Jose U. Ong ordering him or his representative to appear before the Investigator and to bring the income tax returns of petitioner for the years from 1978 to 1985.

On June 24, 1991, the BIR Commissioner forwarded petitioner's income tax returns for the years 1982 and 1983. It certified that the BIR did not have any record of the income tax returns of petitioner for the years 1978, 1979, 1980, 1981, 1984 and 1985.

On September 12, 1994, petitioner received a subpoena[6] in the case, now entitled "*Presidential Commissioner on Good Government v. Maj. Gen. Prospero Olivas '(Ret.),*" for violation of Rep. Act No. 1379 (Unexplained Wealth), ordering him to

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[5] Records, pp. 253-261.

[6] Records, p. 232.

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appear at a hearing on September 16, 1991 and to submit his affidavit and those of his witnesses.[7] The subpoena stated:

> A reinvestigation conducted by this office on the findings of the AFP Anti-Graft Board which was endorsed to us by complainant, Presidential Commission on Good Government, shows that you have failed to file income tax returns for the years 1978, 1979, 1980, 1981, 1984, and 1985. Consequently, a recomputation of this unexplained wealth shows a balance of ₱1,477,044.54, instead of ₱32,725.00 earlier found by the AFP Anti-Graft Board. For this purpose, we enclose as Schedule "A," "B," and "C" the basis of our revised computation of your unexplained wealth account.

Petitioner asked for a copy of the sworn complaint against him and to be shown the basis of the figures contained in the schedules attached to the subpoena, as basis for filing his counter-affidavit. He asked for 10 days from receipt of the documents within which to submit his evidence.

On October 25, 1991, respondent Bienvenido C. Blancaflor, Ombudsman Investigator in the Office of the Ombudsman, issued the assailed order, reiterating the earlier finding that petitioner had failed to file his income tax returns for the years 1978, 1979, 1980, 1981, 1984, and 1985, with the consequence of invalidating the computation made by the AFP Anti-Graft Board of respondent's unexplained wealth and significantly increasing it from ₱32,725.00 to ₱1,477,044.54. The dispositive portion of the order reads:

> WHEREFORE, premises considered, respondent is again directed for the last time to file his counter-affidavit and supporting affidavits of his witnesses, if any, and any other evidence within the inextendible period of five (5) days from receipt hereof; otherwise, failure on his part to comply with this Order will compel this office to resolve this case based on the evidence on record.
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> Let this case be set for preliminary investigation on November 7, 1991 at 2:00 o'clock in the afternoon.
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> SO ORDERED.[8]

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[7] *Id.*

[8] *Rollo*, p. 21.

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Hence this petition for *certiorari* and prohibition. Petitioner claims that the respondent Deputy Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in compelling him to submit his counter-affidavit in the absence of a complaint and affidavits of witnesses against him.

We gave due course to the petition and, after considering the respondents' comment as their answer, required the parties to file memoranda. They have done that and now we must decide this case.

The question for decision is whether the petitioner may be compelled to file his counter-affidavit notwithstanding the fact that no sworn complaint or affidavit has been filed against him.

The gist of the petitioner's contention is that a sworn complaint is a mandatory requirement for the purpose of conducting a preliminary investigation. He invokes Rule II, Sec. 4 of the Rules of Procedure of the Office of the Ombudsman which provides:

> Sec. 4. *Procedure* — The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts *shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court*, subject to the following provisions:
>
> *a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.*
>
> b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondent to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.

On the other hand, respondents in their Memorandum argue:

> There is a substantial distinction between a criminal complaint filed by a private complainant with the Office of the Ombudsman and one endorsed to the same Office by another Government agency

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such as the PCGG, the NBI, the COA, and the AFP or PNP. In the case of a private complainant, sub-paragraph (a), Section 4 of Administrative Order No. 07 provides that the "investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints." On the other hand, in the instant case which was referred to the Office of the Ombudsman by the PCGG, Respondents maintain that the letter dated November 23, 1991 of the PCGG to the Office of the Ombudsman transmitting the entire records of the case to respondents' Office serve as the complaint and the PCGG, as the complainant, in compliance with existing procedure on preliminary investigation.

In support of their contention, they cite Rule I, § 3, of the Rules of Procedure of the Office of the Ombudsman, which states:

> Sec. 3. *Form of complaints, grievances or requests for assistance.* — Complaints may be in any form, either verbal or in writing. For a speedier disposition of the complaint, however, it is preferable that it be in writing and under oath. A complaint which does not disclose the identity of the complainant will be acted upon only if it merits appropriate consideration, or contains sufficient leads or particulars to enable the taking of further action.
>
> Grievances or requests for assistance may likewise be verbal or in writing. In any case, the requesting or complaining party must indicate his address and telephone number, if any.

Respondents contend that the present proceedings are merely a continuation of the investigation conducted by the PCGG and so the petitioner cannot claim ignorance of the charges against him and that he freely participated in the proceedings before the PCGG even without any affidavit or complaint. They call attention to the fact that this case was indorsed by the PCGG, after this Court had ruled in *Cojuangco, Jr. v. PCGG*[9] that the PCGG, after acting as law enforcer by gathering evidence against a party and filing a civil complaint against him, could not thereafter act as a judge for the purpose of determining in a preliminary investigation whether there was probable cause for prosecuting the same party.

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[9] 190 SCRA 226 (1990). G.R. Nos. 92319-20, October 2, 1990.

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Additionally, respondents contend that the procedure outlined in Rule II, § 4 of the Rules of Procedure of the Office of the Ombudsman refers to preliminary investigations conducted in criminal cases, whereas proceedings under Rep. Act No. 1379 are civil in nature.

We find for petitioner. A useful starting point for a discussion of the issue in this case is the decision in *Cojuangco, Jr. v. PCGG*[10] in which we described the general power of investigation of the PCGG as consisting of two stages: the first stage, called the *criminal investigation*, is a fact-finding inquiry conducted by law enforcement agents, whereby they gather evidence and interview witnesses and afterwards assess the evidence so that, if they find sufficient basis, they can file a complaint for the purpose of preliminary investigation. The second stage, called the *preliminary investigation* stage, is conducted for the purpose of ascertaining if there is sufficient evidence to bring a person to trial.[11] We held in that case that, having found petitioner *prima facie* guilty of violation of Rep. Act No. 3019, for which reason it issued a freeze order against him and filed a civil complaint for recovery of alleged ill-gotten wealth, the PCGG could not thereafter act as an impartial judge in conducting a preliminary investigation of criminal complaints based on the same facts found by it to constitute *prima facie* evidence against petitioner. We there said:

> In our criminal justice system, the law enforcer who conducted the criminal investigation, gathered the evidence and thereafter filed the complaint for the purpose of preliminary investigation cannot be allowed to conduct the preliminary investigation of his own complaint. It is to say the least arbitrary and unjust.
>
> It is in such instances that We say one cannot be "a prosecutor and judge at the same time." Having gathered the evidence and filed the complaint as a law enforcer, he cannot be expected to handle with impartiality the preliminary investigation of his own complaint, this time as a public prosecutor.[12]

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[10] *Id*.

[11] *Id*. at 250.

[12] *Id*. at 254.

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In accordance with this ruling, the PCGG indorsed the case at bar to the Office of the Ombudsman. It may be assumed that the PCGG had found sufficient evidence against petitioner to warrant submitting the case for preliminary investigation. For the rationale of *Cojuangco, Jr. v. PCGG* is that the role of law enforcer must not be confounded with that of the public prosecutor who must determine whether there was probable cause for filing the case in court. In this case, the PCGG had issued a freeze order against petitioner's bank accounts and a hold order which it refused to lift despite the fact that the AFP panel had provisionally cleared him.

Respondents justify their order to petitioner to submit his evidence, even though there is no formal complaint, on the basis of Rule I, § 3 of the Rules of Procedure of the Office of the Ombudsman which provides that complaints filed with that office may be "in any form, either verbal or in writing." The cases which the Ombudsman may investigate, however, are not limited to criminal cases. They include those involving acts and omissions of public officials which are alleged to be merely "unjust, improper or inefficient."[13] It is to such cases that Rule I, § 3 applies primarily. Indeed, as designated "protectors of the people," the Ombudsman and his deputies are required by the Constitution[14] to "act promptly on complaints filed *in any form or manner* against public officials and employees."

Even in investigations looking to the prosecution of a party, Rule I, § 3 can only apply to the general criminal investigation, which in the case at bar was already conducted by the PCGG. But after the Ombudsman and his deputies have gathered evidence and their investigation has ceased to be a general exploratory one and they decide to bring the action against a party, their proceedings become adversary and Rule II, § 4(a) then applies. This means that before the respondent can be required to submit counter-affidavits and other supporting documents, the complainant must submit his affidavit and those of his witnesses.

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[13] CONST., ART. XI, § 13(1).

[14] *Id.*, Art. XI, § 12.

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This is true not only of prosecutions of graft cases under Rep. Act No. 3019 but also of actions for the recovery of unexplained wealth under Rep. Act No. 1379, because § 2 of this latter law requires that before a petition is filed there must be a "previous inquiry similar to preliminary investigation in criminal cases."

Indeed, since a preliminary investigation is designed to screen cases for trial, only evidence may be considered. While reports and even raw information may justify the initiation of an investigation, the stage of preliminary investigation can be held only after sufficient evidence has been gathered and evaluated warranting the eventual prosecution of the case in court. As this Court held in *Cojuangco, Jr. v. PCGG*.

> Although such a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused. Indeed, a preliminary investigation is in effect a realistic judicial appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound as a matter of law to order an acquittal. A preliminary investigation has then been called a judicial inquiry. It is a judicial proceeding. An act becomes judicial when there is opportunity to be heard and for the production and weighing of evidence, and a decision is rendered thereon.[15]

The lack of a complaint and affidavits cannot be excused on the plea that this case originated in anonymous letters sent to the PCGG. Because of leads furnished by those letters it would seem that the PCGG has found sufficient evidence justifying its demand to petitioner to explain. It is incumbent upon it as complainant to reduce the evidence into affidavits. For example, the subpoena issued to petitioner was accompanied by schedules showing how petitioner was found to have unexplained wealth amounting to ₱1,477,044.54. The figures contained in these schedules must be verified under oath by PCGG investigators who must certify to facts either of their own knowledge or from

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[15] *Supra* note 9 at 243.

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official records. It is only after the PCGG has submitted its affidavits and other documents that petitioner may be required to explain, also under oath. It is from such affidavits and counter-affidavits that respondents can then determine whether there is probable cause for bringing the case in court against petitioner.

This is a requirement not only of Rule II, § 4(a) of respondents' Rules of Procedure but also of due process in adversary proceedings. While those engaged in the investigation of graft and corruption in the government must be able to respond swiftly to complaints concerning public office, they must at the same time take care that their investigation is not used to harass or wreak vengeance on those in public office. This was an abiding concern of the Constitutional Commission[16] to which we must show equal concern.

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[16] See for example the following exchange between Commissioners Suarez and Colayco:

MR. BENGZON. Mr. Presiding Officer, may I request that Commissioner Suarez be recognized.

THE PRESIDING OFFICER (Mr. Treñas). Commissioner Suarez is recognized.

MR. SUAREZ, Thank you, Mr. Presiding Officer.

My amendments are rather simple. May I call the attention of the Committee members to Section 11 [now Art. XI, § 13(1)], particularly line 16. *There is mention here about complaints filed without the qualifying word "verified" and the phrase which reads "in any form or manner," which is susceptible to various interpretations and could contemplate even the filing of a telephone complaint. We do not like to constitutionalize harassment under Section 11, but this could be used as a weapon of harassment by unscrupulous individuals against even honest public officials.* So to avoid that possibility, Mr. Presiding Officer, may we suggest this amendment:

On line 16, I propose to delete the word "the" and instead insert the word VERIFIED before "complaints," and then after "filed" delete the comma (,) together with the phrase "in any form or manner." Therefore, Section 11, as proposed to be amended, would read: "The Ombudsman and his Deputies, as protectors of the people, shall act promptly on VERIFIED complaints filed against public officials or employees of the government, including government-owned corporations, agencies or instrumentalities, and shall notify the complainants of the action taken and the results thereof."

THE PRESIDING OFFICER (Mr. Treñas). What does the Committee say?

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To conclude, the PCGG has become the complainant in this case. Its case must stand or fall on the evidence it has. Petitioner cannot be compelled to submit his evidence in the form of counter-affidavits and supporting documents before the PCGG, as complainant, has embodied its evidence in affidavits or sworn statements.

WHEREFORE, the petition is *GRANTED* and the questioned order dated October 25, 1991 is *SET ASIDE*.

SO ORDERED.

Narvasa, C.J., Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, and *Kapunan, JJ.*, concur.

Feliciano, J., on leave.

MR. COLAYCO. Mr. Presiding Officer, I wonder if Commissioner Suarez was present during the discussion last Saturday when we explained the main thrust of Section 11. *One of the principal functions of the officer contemplated in this section is the capability to attend and act immediately on complaints not leading to prosecution but to correction or implementation of the request, either phoned in, or simply made orally or even in writing.* What we wish to cure is the despair of the common people with our government officials. We have entrenched the administration with public officials who are beyond the reach of common people. It is a very common and sad spectacle to see people going from one government office to another, trying to secure redress for their common complaints of inaction, abuse, arbitrariness on the part of public officials. In other places like Nassau County, the United States, Singapore and Japan, people are free to call in, to use the telephone simply. For instance, when going to an office, they are made to return day after day, either because the official concerned did not come to work or simply they are told," I am very busy. Will you please come back this afternoon?" These are common complaints of our people.

2 RECORD OF THE CONSTITUTIONAL COMMISSION 369-370 (Session of July 28, 1986) (Italics supplied).