



Republic of the Philippines  
**Supreme Court**  
Manila

EN BANC

G.R. No. 196425

**PROSPERO A. PICHAY, JR.,**

Petitioner,

Present:

- versus -

**OFFICE OF THE DEPUTY  
EXECUTIVE SECRETARY FOR  
LEGAL AFFAIRS –  
INVESTIGATIVE AND  
ADJUDICATORY DIVISION,  
HON. PAQUITO N. OCHOA, JR.,  
in his capacity as Executive  
Secretary, and HON. CESAR V.  
PURISIMA, in his capacity as  
Secretary of Finance, and as an *ex-officio* member of the Monetary  
Board,**

Respondents.

CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,\*  
BRION,\*\*  
PERALTA,\*\*\*  
BERSAMIN,  
DEL CASTILLO,  
ABAD,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,\*\*\*\*  
SERENO,  
REYES, and  
PERLAS-BERNABE, JJ.

Promulgated:

JULY 24, 2012

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**DECISION**

**PERLAS-BERNABE, J.:**

**The Case**

This is a Petition for Certiorari and Prohibition with a prayer for the issuance of a temporary restraining order, seeking to declare as

\* On official leave.

\*\* On leave.

\*\*\* On official business.

\*\*\*\* On leave.

unconstitutional Executive Order No. 13, entitled, “*Abolishing the Presidential Anti-Graft Commission and Transferring Its Investigative, Adjudicatory and Recommendatory Functions to the Office Of The Deputy Executive Secretary For Legal Affairs, Office of the President*”,<sup>1</sup> and to permanently prohibit respondents from administratively proceeding against petitioner on the strength of the assailed executive order.

**The Facts**

On April 16, 2001, then President Gloria Macapagal-Arroyo issued Executive Order No. 12 (E.O. 12) creating the Presidential Anti-Graft Commission (PAGC) and vesting it with the power to investigate or hear administrative cases or complaints for possible graft and corruption, among others, against presidential appointees and to submit its report and recommendations to the President. Pertinent portions of E.O. 12 provide:

Section 4. *Jurisdiction, Powers and Functions.* –

(a)     xxx     xxx     xxx

(b) The Commission, acting as a collegial body, shall have the authority to investigate or hear administrative cases or complaints against all presidential appointees in the government and any of its agencies or instrumentalities  
xxx

xxx     xxx     xxx

xxx     xxx     xxx

Section 8. *Submission of Report and Recommendations.* – After completing its investigation or hearing, the Commission *en banc* shall submit its report and recommendations to the President. The report and recommendations shall state, among others, the factual findings and legal conclusions, as well as the penalty recommend (sic) to be imposed or such other action that may be taken.”

On November 15, 2010, President Benigno Simeon Aquino III issued Executive Order No. 13 (E.O. 13), abolishing the PAGC and transferring its

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*Rollo*, pp. 51-53.

functions to the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA), more particularly to its newly-established Investigative and Adjudicatory Division (IAD). The full text of the assailed executive order reads:

#### EXECUTIVE ORDER NO. 13

#### ABOLISHING THE PRESIDENTIAL ANTI-GRAFT COMMISSION AND TRANSFERRING ITS INVESTIGATIVE, ADJUDICATORY AND RECOMMENDATORY FUNCTIONS TO THE OFFICE OF THE DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS, OFFICE OF THE PRESIDENT

WHEREAS, this administration has a continuing mandate and advocacy to fight and eradicate corruption in the different departments, bureaus, offices and other government agencies and instrumentalities;

WHEREAS, the government adopted a policy of streamlining the government bureaucracy to promote economy and efficiency in government;

WHEREAS, Section VII of the 1987 Philippine Constitution provides that the President shall have control of all the executive departments, bureaus and offices;

WHEREAS, Section 31 Chapter 10, Title III, Book III of Executive Order 292 (Administrative Code of 1987) provides for the continuing authority of the President to reorganize the administrative structure of the Office of the President;

WHEREAS, Presidential Decree (PD) No. 1416 (Granting Continuing Authority to the President of the Philippines to Reorganize the National Government), as amended by PD 1722, provides that the President of the Philippines shall have continuing authority to reorganize the administrative structure of the National Government and may, at his discretion, create, abolish, group, consolidate, merge or integrate entities, agencies, instrumentalities and units of the National Government, as well as, expand, amend, change or otherwise modify their powers, functions and authorities;

WHEREAS, Section 78 of the General Provisions of Republic Act No. 9970 (General Appropriations Act of 2010) authorizes the President of the Philippines to direct changes in the organizational units or key positions in any department or agency;

NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Philippines, by virtue of the powers vested in me by law, do hereby order the following:

SECTION 1. Declaration of Policy. It is the policy of the government to fight and eradicate graft and corruption in the different departments, bureaus, offices and other government agencies and instrumentalities.

The government adopted a policy of streamlining the government bureaucracy to promote economy and efficiency in the government.

SECTION 2. Abolition of Presidential Anti-Graft Commission (PAGC). To enable the Office of the President (OP) to directly investigate graft and corrupt cases of Presidential appointees in the Executive Department including heads of government-owned and controlled corporations, the Presidential Anti-Graft Commission (PAGC) is hereby abolished and their vital functions and other powers and functions inherent or incidental thereto, transferred to the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA), OP in accordance with the provisions of this Executive Order.

SECTION 3. Restructuring of the Office of the Deputy Executive Secretary for Legal Affairs, OP. In addition to the Legal and Legislative Divisions of the ODESLA, the Investigative and Adjudicatory Division shall be created.

The newly created Investigative and Adjudicatory Division shall perform powers, functions and duties mentioned in Section 2 hereof, of PAGC.

The Deputy Executive Secretary for Legal Affairs (DESLA) will be the recommending authority to the President, thru the Executive Secretary, for approval, adoption or modification of the report and recommendations of the Investigative and Adjudicatory Division of ODESLA.

SECTION 4. Personnel Who May Be Affected By the Abolition of PAGC. The personnel who may be affected by the abolition of the PAGC shall be allowed to avail of the benefits provided under existing laws if applicable. The Department of Budget and Management (DBM) is hereby ordered to release the necessary funds for the benefits of the employees.

SECTION 5. Winding Up of the Operation and Disposition of the Functions, Positions, Personnel, Assets and Liabilities of PAGC. The winding up of the operations of PAGC including the final disposition or transfer of their functions, positions, personnel, assets and liabilities as may be necessary, shall be in accordance with the applicable provision(s) of the Rules and Regulations Implementing EO 72 (Rationalizing the Agencies Under or Attached to the Office of the President) dated March 15, 2002. The winding up shall be implemented not later than 31 December 2010.

The Office of the Executive Secretary, with the assistance of the Department of Budget and Management, shall ensure the smooth and efficient implementation of the dispositive actions and winding-up of the activities of PAGC.

SECTION 6. Repealing Clause. All executive orders, rules, regulations and other issuances or parts thereof, which are inconsistent with the provisions of this Executive Order, are hereby revoked or modified accordingly.

SECTION 7. Effectivity. This Executive Order shall take effect immediately after its publication in a newspaper of general circulation.

On April 6, 2011, respondent Finance Secretary Cesar V. Purisima

filed before the IAD-ODESLA a complaint affidavit<sup>2</sup> for grave misconduct against petitioner Prospero A. Pichay, Jr., Chairman of the Board of Trustees of the Local Water Utilities Administration (LWUA), as well as the incumbent members of the LWUA Board of Trustees, namely, Renato Velasco, Susana Dumlao Vargas, Bonifacio Mario M. Pena, Sr. and Daniel Landingin, which arose from the purchase by the LWUA of Four Hundred Forty-Five Thousand Three Hundred Seventy Seven (445,377) shares of stock of Express Savings Bank, Inc.

On April 14, 2011, petitioner received an Order<sup>3</sup> signed by Executive Secretary Paquito N. Ochoa, Jr. requiring him and his co-respondents to submit their respective written explanations under oath. In compliance therewith, petitioner filed a Motion to Dismiss *Ex Abundante Ad Cautelam* manifesting that a case involving the same transaction and charge of grave misconduct entitled, “*Rustico B. Tutol, et al. v. Prospero Pichay, et al.*”, and docketed as OMB-C-A-10-0426-I, is already pending before the Office of the Ombudsman.

Now alleging that no other plain, speedy and adequate remedy is available to him in the ordinary course of law, petitioner has resorted to the instant petition for certiorari and prohibition upon the following grounds:

**I. E.O. 13 IS UNCONSTITUTIONAL FOR USURPING THE POWER OF THE LEGISLATURE TO CREATE A PUBLIC OFFICE.**

**II. E.O. 13 IS UNCONSTITUTIONAL FOR USURPING THE POWER OF THE LEGISLATURE TO APPROPRIATE FUNDS.**

**III. E.O. 13 IS UNCONSTITUTIONAL FOR USURPING THE POWER OF CONGRESS TO DELEGATE QUASI-JUDICIAL POWERS TO ADMINISTRATIVE AGENCIES.**

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<sup>2</sup>

Docketed as OP-DC Case No. 11-D-008.

<sup>3</sup>

*Rollo*, p. 54.

**IV. E.O. 13 IS UNCONSTITUTIONAL FOR ENCROACHING UPON THE POWERS OF THE OMBUDSMAN.**

**V. E.O. 13 IS UNCONSTITUTIONAL FOR VIOLATING THE GUARANTEE OF DUE PROCESS.**

**VI. E.O. 13 IS UNCONSTITUTIONAL FOR VIOLATING THE EQUAL PROTECTION CLAUSE.**

### **Our Ruling**

In assailing the constitutionality of E.O. 13, petitioner asseverates that the President is not authorized under any existing law to create the Investigative and Adjudicatory Division, Office of the Deputy Executive Secretary for Legal Affairs (IAD-ODESLA) and that by creating a new, additional and distinct office tasked with quasi-judicial functions, the President has not only usurped the powers of congress to create a public office, appropriate funds and delegate quasi-judicial functions to administrative agencies but has also encroached upon the powers of the Ombudsman.

Petitioner avers that the unconstitutionality of E.O. 13 is also evident when weighed against the due process requirement and equal protection clause under the 1987 Constitution.

The contentions are unavailing.

***The President has Continuing Authority to Reorganize the Executive Department under E.O. 292.***

Section 31 of Executive Order No. 292 (E.O. 292), otherwise known as the Administrative Code of 1987, vests in the President the continuing

authority to reorganize the offices under him in order to achieve simplicity, economy and efficiency. E.O. 292 sanctions the following actions undertaken for such purpose:

(1)**Restructure the internal organization of the Office of the President Proper**, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, **by abolishing, consolidating, or merging units thereof or transferring functions from one unit to another**;

(2)**Transfer any function under the Office of the President to any other Department or Agency** as well as transfer functions to the Office of the President from other Departments and Agencies; and

(3)**Transfer any agency under the Office of the President to any other Department or Agency** as well as transfer agencies to the Office of the President from other  
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departments or agencies.

In the case of *Buklod ng Kawaning EIIB v. Zamora*<sup>5</sup> the Court affirmed that the President's authority to carry out a reorganization in any branch or agency of the executive department is an express grant by the legislature by virtue of E.O. 292, thus:

But of course, the list of legal basis authorizing the President to reorganize any department or agency in the executive branch does not have to end here. We must not lose sight of the very source of the power – that which constitutes **an express grant of power**. Under Section 31, Book III of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), **“the President**, subject to the policy of the Executive Office and in order to achieve simplicity, economy and efficiency, **shall have the continuing authority to reorganize the administrative structure of the Office of the President.”** For this purpose, he may transfer the functions of other Departments or Agencies to the Office of the President. (Emphasis supplied)

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Section 31, Chapter 10, Book III of E.O. No. 292.

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G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718, 729.

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And in *Domingo v. Zamora*,<sup>6</sup> the Court gave the rationale behind the President's continuing authority in this wise:

The law grants the President this power in recognition of the recurring need of every President to reorganize his office “to achieve simplicity, economy and efficiency.” The Office of the President is the nerve center of the Executive Branch. **To remain effective and efficient, the Office of the President must be capable of being shaped and reshaped by the President in the manner he deems fit to carry out his directives and policies.** After all, the Office of the President is the command post of the President. (Emphasis supplied)

Clearly, the abolition of the PAGC and the transfer of its functions to a division specially created within the ODESLA is properly within the prerogative of the President under his continuing “*delegated legislative authority to reorganize*” his own office pursuant to E.O. 292.

Generally, this authority to implement organizational changes is limited to transferring either an office or a function from the Office of the President to another Department or Agency, and the other way around.<sup>7</sup> Only Section 31(1) gives the President a virtual freehand in dealing with the internal structure of the Office of the President *Proper* by allowing him to take actions as extreme as abolition, consolidation or merger of units, apart from the less drastic move of transferring functions and offices from one unit to another. Again, in *Domingo v. Zamora*<sup>8</sup> the Court noted:

However, the President's power to reorganize the Office of the President under Section 31 (2) and (3) of EO 292 should be distinguished from his power to reorganize the Office of the President *Proper*. Under Section 31 (1) of EO 292, the President can reorganize the Office of the President Proper by *abolishing, consolidating or merging* units, or by *transferring* functions from one unit to another. In contrast, under Section 31 (2) and (3) of EO 292, the

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<sup>6</sup> G.R. No. 142283, February 6, 2003, 397 SCRA 56.

<sup>7</sup> Paragraphs (2) and (3) of Section 31.

<sup>8</sup> G.R. No. 142283, February 6, 2003, 397 SCRA 56.

President's power to reorganize offices outside the Office of the President *Proper* but still within the Office of the President is limited to merely *transferring* functions or agencies from the Office of the President to Departments or Agencies, and *vice versa*.

The distinction between the allowable organizational actions under Section 31(1) on the one hand and Section 31 (2) and (3) on the other is crucial not only as it affects employees' tenurial security but also insofar as it touches upon the validity of the reorganization, that is, whether the executive actions undertaken fall within the limitations prescribed under E.O. 292. When the PAGC was created under E.O. 12, it was composed of a Chairman and two (2) Commissioners who held the ranks of Presidential Assistant II and I, respectively,<sup>9</sup> and was placed directly “under the Office of the President.”<sup>10</sup> On the other hand, the ODESLA, to which the functions of the PAGC have now been transferred, is an office within the Office of the President *Proper*.<sup>11</sup> Since both of these offices belong to the Office of the President *Proper*, the reorganization by way of *abolishing* the PAGC and *transferring* its functions to the ODESLA is allowable under Section 31 (1) of E.O. 292.

Petitioner, however, goes on to assert that the President went beyond the authority granted by E.O. 292 for him to reorganize the executive department since his issuance of E.O. 13 did not merely involve the abolition of an office but the creation of one as well. He argues that nowhere in the legal definition laid down by the Court in several cases does a reorganization include the act of creating an office.

The contention is misplaced.

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9                   Section 2, E.O. 12.  
10                  Section 1, E.O. 12.  
11                  Section 22, Chapter 8, Book III, *The Administrative Code of 1987*.

***The Reorganization Did not  
Entail the Creation of a New,  
Separate and Distinct Office.***

The abolition of the PAGC did not require the creation of a new, additional and distinct office as the duties and functions that pertained to the defunct anti-graft body were simply transferred to the ODESLA, which is an *existing* office within the Office of the President *Proper*. The reorganization required no more than a mere alteration of the administrative structure of the ODESLA through the establishment of a third division – the Investigative and Adjudicatory Division – through which ODESLA could take on the additional functions it has been tasked to discharge under E.O. 13. In

*Canonizado v. Aguirre*,<sup>12</sup> We ruled that –

Reorganization takes place when there is an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them. It involves a reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions.

***The Reorganization was  
Pursued in Good Faith.***

A valid reorganization must not only be exercised through legitimate authority but must also be pursued in good faith. A reorganization is said to be carried out in good faith if it is done for purposes of economy and

efficiency.<sup>13</sup> It appears in this case that the streamlining of functions within the Office of the President *Proper* was pursued with such purposes in mind.

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<sup>12</sup>

G.R. No. 133132, January 25, 2000, 323 SCRA 312.

<sup>13</sup>

*Malaria Employees and Workers Association of the Philippines, Inc. (MEWAP) v. Romulo*, G.R. No. 160093, July 31, 2007, 528 SCRA 673, 683.

In its *Whereas* clauses, E.O. 13 cites as bases for the reorganization the policy dictates of *eradicating corruption in the government* and *promoting economy and efficiency in the bureaucracy*. Indeed, the economical effects of the reorganization is shown by the fact that while Congress had initially appropriated ₱22 Million for the PAGC's operation in the 2010 annual budget,<sup>14</sup> no separate or added funding of such a considerable amount was ever required after the transfer of the PAGC functions to the IAD-ODESLA.

Apparently, the budgetary requirements that the IAD-ODESLA needed to discharge its functions and maintain its personnel would be sourced from the following year's appropriation for the President's Offices under the General Appropriations Act of 2011.<sup>15</sup> Petitioner asseverates, however, that since Congress did not indicate the manner by which the appropriation for the Office of the President was to be distributed, taking therefrom the operational funds of the IAD-ODESLA would amount to an illegal appropriation by the President. The contention is without legal basis.

***There is no usurpation of the legislative power to appropriate public funds.***

In the chief executive dwell the powers to run government. Placed upon him is the power to recommend the budget necessary for the operation of the Government,<sup>16</sup> which implies that he has the necessary authority to evaluate and determine the structure that each government agency in the executive department would need to operate in the most economical and

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<sup>14</sup> General Appropriations Act of 2010 (R.A. No. 9970).

<sup>15</sup> General Appropriations Act of 2011 (R.A. No. 10147).

<sup>16</sup> Section 25 (1), Article VI, 1987 Constitution –  
The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. x x x.

efficient manner.<sup>17</sup> Hence, the express recognition under Section 78 of R.A. 9970 or the General Appropriations Act of 2010 of the President’s authority to “direct changes in the organizational units or key positions in any department or agency.” The aforecited provision, often and consistently included in the general appropriations laws, recognizes the extent of the President’s power to reorganize the executive offices and agencies under him, which is, “even to the extent of modifying and realigning appropriations for that purpose.”<sup>18</sup>

And to further enable the President to run the affairs of the executive department, he is likewise given constitutional authority to augment any item in the General Appropriations Law using the savings in other items of

the appropriation for his office.<sup>19</sup> In fact, he is explicitly allowed by law to transfer any fund appropriated for the different departments, bureaus, offices and agencies of the Executive Department which is included in the General Appropriations Act, to any program, project or activity of any department, bureau or office included in the General Appropriations Act or approved

after its enactment.<sup>20</sup>

Thus, while there may be no specific amount earmarked for the IAD-ODESLA from the total amount appropriated by Congress in the annual budget for the Office of the President, the necessary funds for the IAD-ODESLA may be properly sourced from the President's own office budget without committing any illegal appropriation. After all, there is no usurpation of the legislature's power to appropriate funds when the President simply allocates the existing funds previously appropriated by Congress for his office.

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<sup>17</sup> *Bagaoisan v. National Tobacco Administration*, G.R. No. 152845, August 5, 2003, 408 SCRA 337, 348.

<sup>18</sup> *Banda v. Ermita*, G.R. No. 166620, April 20, 2010, 618 SCRA 488, 513.

<sup>19</sup> Section 25 (5), Article VI, 1987 Constitution –  
No law shall be passed authorizing any transfer of appropriations; however, the President, xxx may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

<sup>20</sup> Section 44, P.D. 1177 (Budget Reform Decree of 1977).

*The IAD-ODESLA is a fact-finding and recommendatory body not vested with quasi-judicial powers.*

Petitioner next avers that the IAD-ODESLA was illegally vested with judicial power which is reserved to the Judicial Department and, by way of exception through an express grant by the legislature, to administrative agencies. He points out that the name Investigative and *Adjudicatory* Division is proof itself that the IAD-ODESLA wields quasi-judicial power.

The argument is tenuous. As the OSG aptly explained in its Comment,<sup>21</sup> while the term “adjudicatory” appears part of its appellation, the IAD-ODESLA cannot try and resolve cases, its authority being limited to the conduct of investigations, preparation of reports and submission of recommendations. E.O. 13 explicitly states that the IAD-ODESLA shall “perform powers, functions and duties xxx, of PAGC.”<sup>22</sup>

Under E.O. 12, the PAGC was given the authority to “investigate or hear administrative cases or complaints against all presidential appointees in the government”<sup>23</sup> and to “submit its report and recommendations to the President.”<sup>24</sup> The IAD-ODESLA is a fact-finding and recommendatory body to the President, not having the power to settle controversies and

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<sup>21</sup> *Rollo*, p. 86.

<sup>22</sup> Section 3, E.O. 13.

<sup>23</sup> Section 4(b), E.O. 12.

<sup>24</sup> Section 8, E.O. 12.

adjudicate cases. As the Court ruled in *Cariño v. Commission on Human Rights*,<sup>25</sup> and later reiterated in *Biraogo v. The Philippine Truth Commission*:<sup>26</sup>

Fact-finding is not adjudication and it cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function. To be considered as such, the act of receiving evidence and arriving at factual conclusions in a controversy must be accompanied by the authority of applying the law to the factual conclusions to the end that the controversy may be decided or determined authoritatively, finally and definitively, subject to such appeals or modes of review as may be provided by law.

The President's authority to issue E.O. 13 and constitute the IAD-ODESLA as his fact-finding investigator cannot be doubted. After all, as Chief Executive, he is granted full control over the Executive Department to ensure the enforcement of the laws. Section 17, Article VII of the Constitution provides:

Section 17. The President shall have control of all the executive departments, bureaus and offices. **He shall ensure that the laws be faithfully executed.**

The obligation to see to it that laws are faithfully executed necessitates the corresponding power in the President to conduct investigations into the conduct of officials and employees in the executive department.<sup>27</sup>

***The IAD-ODESLA does not encroach upon the powers and duties of the Ombudsman.***

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<sup>25</sup>

G.R. No. 96681, December 2, 1991, 204 SCRA 483, 492.

<sup>26</sup>

G.R. Nos. 192935 and 193036, December 7, 2010, 637 SCRA 78, 160.

<sup>27</sup>

*Department of Health v. Camposano*, G.R. No. 157684, April 27, 2005, 457 SCRA 438, 450; *Biraogo v. Philippine Truth Commission*, G.R. Nos. 192935 and 193036, December 7, 2010, 637 SCRA 78, 160.

Contrary to petitioner's contention, the IAD-ODESLA did not encroach upon the Ombudsman's primary jurisdiction when it took cognizance of the complaint affidavit filed against him notwithstanding the earlier filing of criminal and administrative cases involving the same charges and allegations before the Office of the Ombudsman. The primary jurisdiction of the Ombudsman to investigate and prosecute cases refers to criminal cases cognizable by the Sandiganbayan and not to administrative cases. It is only in the exercise of its primary jurisdiction that the Ombudsman may, at any time, take over the investigation being conducted by another investigatory agency. Section 15 (1) of R.A. No. 6770 or the Ombudsman Act of 1989, empowers the Ombudsman to –

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has **primary jurisdiction** over cases cognizable by the Sandiganbayan and, in the exercise of its primary jurisdiction, **it may take over, at any stage, from any investigatory agency of government, the investigation of such cases.** (Emphasis supplied)

Since the case filed before the IAD-ODESLA is an administrative disciplinary case for grave misconduct, petitioner may not invoke the primary jurisdiction of the Ombudsman to prevent the IAD-ODESLA from proceeding with its investigation. In any event, the Ombudsman's authority to investigate both elective and appointive officials in the government, extensive as it may be, is by no means exclusive. It is shared with other

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similarly authorized government agencies.

While the Ombudsman's function goes into the determination of the

existence of probable cause and the adjudication of the merits of a criminal accusation, the investigative authority of the IAD-ODESLA is limited to that of a fact-finding investigator whose determinations and recommendations remain so until acted upon by the President. As such, it commits no usurpation of the Ombudsman's constitutional duties.

***Executive Order No. 13 Does Not Violate Petitioner's Right to Due Process and the Equal Protection of the Laws.***

Petitioner goes on to assail E.O. 13 as violative of the equal protection clause pointing to the arbitrariness of limiting the IAD-ODESLA's investigation only to presidential appointees occupying upper-level positions in the government. The equal protection of the laws is a guaranty against any form of undue favoritism or hostility from the government.<sup>29</sup> It is embraced under the due process concept and simply requires that, in the application of the law, “all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.”<sup>30</sup> The equal protection clause, however, is not absolute but subject to reasonable classification so that aggrupations bearing substantial distinctions may be treated differently from each other. This we ruled in *Farinas v.*

*Executive Secretary*,<sup>31</sup> wherein we further stated that –

The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. **The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and**

<sup>29</sup>

*Biraogo v. Philippine Truth Commission*, G.R. Nos. 192935 and 193036, December 7, 2010, 637 SCRA 78, 166.

<sup>30</sup>

*Ichong v. Hernandez*, 101 Phil. 1155 (1957), cited in *Fariñas v. Executive Secretary*, G.R. No. 147387, December 10, 2003, 417 SCRA 503, 525.

<sup>31</sup>

G.R. No. 147387, December 10, 2003, 417 SCRA 503.

**reasonable grounds exist for making a distinction between those who fall within such class and those who do not.**  
(Emphasis supplied)

Presidential appointees come under the direct disciplining authority of the President. This proceeds from the well settled principle that, in the absence of a contrary law, the power to remove or to discipline is lodged in the same authority on which the power to appoint is vested.<sup>32</sup> Having the power to remove and/or discipline presidential appointees, the President has the corollary authority to investigate such public officials and look into their conduct in office.<sup>33</sup> Petitioner is a presidential appointee occupying the high-level position of Chairman of the LWUA. Necessarily, he comes under the disciplinary jurisdiction of the President, who is well within his right to order an investigation into matters that require his informed decision.

There are substantial distinctions that set apart presidential appointees occupying upper-level positions in government from non-presidential appointees and those that occupy the lower positions in government. In *Salumbides v. Office of the Ombudsman*,<sup>34</sup> we had ruled extensively on the substantial distinctions that exist between elective and appointive public officials, thus:

**Substantial distinctions clearly exist between elective officials and appointive officials.** The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, **appointive officials hold their office by virtue of their designation thereto by an appointing authority.** Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority.

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*Ambas v. Buenaceda*, G.R. No. 95244, September 4, 1991, 201 SCRA 308, 314, citing *Lacanilao v. De Leon*, No. L-76532, January 26, 1987, 147 SCRA 286, 298; *Aguirre, Jr. v. De Castro*, G.R. No. 127631, December 17, 1999, 321 SCRA 95, 104.

<sup>33</sup>

*See Garcia v. Pajaro*, G.R. No. 141149, July 5, 2002, 384 SCRA 122, 135.

<sup>34</sup>

G.R. No. 180917, April 23, 2010, 619 SCRA 313.

An election is the embodiment of the popular will, perhaps the purest expression of the sovereign power of the people. It involves the choice or selection of candidates to public office by popular vote. Considering that elected officials are put in office by their constituents for a definite term, x x x complete deference is accorded to the will of the electorate that they be served by such officials until the end of the term for which they were elected. In contrast, **there is no such expectation insofar as appointed officials are concerned.** (Emphasis supplied)

Also, contrary to petitioner's assertions, his right to due process was not violated when the IAD-ODESLA took cognizance of the administrative complaint against him since he was given sufficient opportunity to oppose the formal complaint filed by Secretary Purisima. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process,<sup>35</sup> which simply means having the opportunity to explain one's side.<sup>36</sup> Hence, as long as petitioner was given the opportunity to explain his side and present evidence, the requirements of due process are satisfactorily complied with because what the law abhors is an absolute lack of opportunity to be heard.<sup>37</sup> The records show that petitioner was issued an Order requiring him to submit his written explanation under oath with respect to the charge of grave misconduct filed against him. His own failure to submit his explanation despite notice defeats his subsequent claim of denial of due process.

Finally, petitioner doubts that the IAD-ODESLA can lawfully perform its duties as an impartial tribunal, contending that both the IAD-ODESLA and respondent Secretary Purisima are connected to the President. The mere

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*Cayago v. Lina*, G.R. No. 149539, January 19, 2005, 449 SCRA 29.

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*Libres v. NLRC*, G.R. No. 12373, May 28, 1999, 307 SCRA 675.

<sup>37</sup>


*Montemayor v. Bundalian*, G.R. No. 149335, July 1, 2003, 405 SCRA 264, 269; *AMA Computer College-East Rizal, et al. v. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633.

suspicion of partiality will not suffice to invalidate the actions of the IAD-ODESLA. Mere allegation is not equivalent to proof. Bias and partiality cannot be presumed.<sup>38</sup> Petitioner must present substantial proof to show that the IAD-ODESLA had unjustifiably sided against him in the conduct of the investigation. No such evidence has been presented as to defeat the presumption of regularity in the performance of the fact-finding investigator's duties. The assertion, therefore, deserves scant consideration.

Every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, not a doubtful and argumentative one.<sup>39</sup> Petitioner has failed to discharge the burden of proving the illegality of E.O. 13, which is indubitably a valid exercise of the President's continuing authority to reorganize the Office of the President.

**WHEREFORE,** premises considered, the petition is hereby **DISMISSED.**

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice


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<sup>38</sup> *Casimiro v. Tandog*, G.R. No. 146137, June 08, 2005, 459 SCRA 624, 631.

<sup>39</sup> *Lacson v. Executive Secretary*, G.R. No. 128096, January 20, 1999, 301 SCRA 298, 311.

**WE CONCUR:**

**ANTONIO T. CARPIO**  
Senior Associate Justice




**PRESBITERO J. VELASCO, JR.**  
Associate Justice

(On official leave)  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

(On leave)  
**ARTURO D. BRION**  
Associate Justice

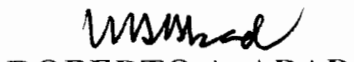
(On official business)  
**DIOSDADO M. PERALTA**  
Associate Justice



**LUCAS P. BERSAMIN**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice



**ROBERTO A. ABAD**  
Associate Justice




**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**JOSE PORTUGAL PEREZ**  
Associate Justice

(On leave)  
**JOSE CATRAL MENDOZA**  
Associate Justice



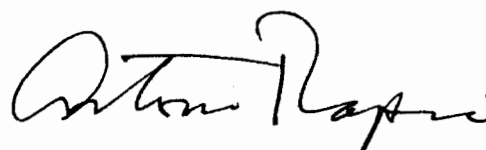
**MARIA LOURDES P. A. SERENO**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

**CERTIFICATION**

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

A handwritten signature in black ink, appearing to read "Antonio T. Carpio". The signature is fluid and cursive, with the first name "Antonio" and last name "Carpio" clearly distinguishable.**ANTONIO T. CARPIO**

Senior Associate Justice

(Per Section 12, R.A. 296,

The Judiciary Act of 1948, as amended)