



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

'17 MAR -6 P12 :00

SENATE

RECEIVED BY: _____

SENATE BILL NO. 1361

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 Resolution of the Supreme Court in the case of *Romualdez v. Marcelo*¹, the majority opinion identified a "legislative gap" as the root cause of Associate Justice Antonio T. Carpio's "apprehension" that the application of Section 2 of Act No. 3326 (dated 4 December 1926)² 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 the basis for such anomalous practice.³

In the said 2006 Resolution, the Court dismissed the twenty-three (23) criminal cases filed against Benjamin (Kokoy) T. Romualdez for violation of Section 7 of Republic Act (R.A.) No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act", in connection with his supposed receipt of dual compensation in

¹ G.R. Nos. 165510-33, July 28, 2006.

² "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," which has been in effect since 4 December 1926.

³ *Id.*

government during the regime of his brother-in-law, the late former President Ferdinand Marcos.⁴

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. In doing so, the majority opinion cited Act No. 3326 to hold that prescription period of offenses punished under special laws are only interrupted “when proceedings are instituted against the guilty person,”⁵ and *not* by the absence of the accused from Philippine jurisdiction, which is a grounds for the tolling of the prescriptive period under the second paragraph of Article 91 of Act No. 3815, otherwise known as “The Revised Penal Code” (RPC).

Relying on the RPC provision, Associate Carpio dissented, reasoning that the aforementioned second paragraph 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. 3326,⁶ 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.⁷

In addressing Justice Carpio’s above-quoted apprehensions, the Supreme Court effectively 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 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

⁴ <http://www.philstar.com:8080/headlines/462665/supreme-court-reverses-ruling-clears-kokoy-graft>

⁵ Second paragraph of Section 2, Act No. 3326.

⁶ 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”.

⁷ Citing *People v. Moreno*, 60 Phil. 712 (1934) to state “that the suppletory application of the Revised Penal Code to special laws, by virtue of Article 10 thereof, finds relevance only when the provisions of the special law are silent on a particular matter...”

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.⁸ (Emphasis supplied)

This measure, therefore, seeks to address this so-called “legislative gap” by amending Act 3326 and aligning it with the second paragraph of Article 91 of the Revised Penal Code. For violations penalized by special laws, absence of the accused in the Philippines will now be a ground for tolling of the prescriptive period.

For these reasons, the passage of the measure is earnestly sought.


LHILA M. DE LIMA

⁸ *Id.* citing *Canet v. Decena*, G.R. No. 155344, January 20, 2004, 420 SCRA 388 at 394.



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TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN"

Be it enacted by the Senate and 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 the
6 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 investigation
8 and punishment.

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

12 **"FURTHERMORE, IN THE CASE OF SPECIAL LAWS, THE TERM OF**

1 **PRESCRIPTION SHALL LIKEWISE NOT RUN WHILE THE**
2 **OFFENDER IS ABSENT FROM PHILIPPINE JURISDICTION.”**

3 **SEC. 2.** Separability Clause. - Should any provision of this Act be declared invalid, the
4 remaining provisions shall continue to be valid and subsisting.

5 **SEC. 3.** Repealing Clause. - All laws, executive orders, or administrative orders, rules
6 and regulations or parts thereof, which are inconsistent with this Act are hereby
7 amended, repealed or modified accordingly.

8 **SEC. 4.** Effectivity. - This Act shall take effect fifteen (15) days after its publication in
9 at least two (2) newspapers of general circulation.

Approved,