

COMMENT:

THE TERM OF OFFICE
OF CONSTITUTIONAL COMMISSIONERS:
PROBLEMS IN INTERPRETATION AND APPLICATION

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I. INTRODUCTION

Under the 1987 Constitution, there are three independent Constitutional Commissions: the Civil Service Commission, the Commission on Elections, and the Commission on Audit.¹ The singular attribute essential to these Constitutional Commissions is their independence from the three main branches of the government. The power to regulate vital aspects of the whole government machinery, which of necessity must be insulated from political pressures in order for the government to function effectively, is reserved to the Constitutional Commissions.

The Civil Service Commission (hereinafter CSC) is primarily tasked with the establishment of a career service, the appointment to which shall be based on merit and fitness.² It shall:

adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the civil service, strengthen the merit and rewards system, integrate all human resources development programs for all level and ranks, and institutionalize a management climate conducive to public accountability.³

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¹ CONST. art. IX, sec. 1.

² CONST. art. IX-B, sec. 3.

³ CONST. art. IX-B, sec. 3.

Aside from these, the CSC, as a quasi-judicial body, has administrative jurisdiction over all appointive officials and employees in the civil service, except Presidential appointees⁴ and court personnel.⁵

In a democracy, the Commission on Elections (hereinafter COMELEC) plays the vital role of enforcing and administering all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.⁶ It also exercises exclusive original jurisdiction over all contests relating to the elections, specifically those over returns and the qualifications of all elective regional, provincial, and city officials. Moreover, it holds appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.⁷

Formerly called the General Auditing Office,⁸ the Commission on Audit (hereinafter COA) has the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the government, or any of its subdivisions, agencies or instrumentalities, including government-owned or controlled corporations with original charter.⁹ In sum, the COA has the power to review and regulate disbursement of public funds to prevent irregular, unnecessary, excessive, extravagant or unconscionable expenditure or uses of government funds and properties.

Controversies regarding the length of the term of Constitutional Commissioners recur every first week of February of each year. This year, newspapers reported several stories on the controversy surrounding the expiration of the term of office of two COMELEC Commissioners,

⁴ Civil Service Commission v. Nayga, et al., G.R. No. 131710, 17 February 1998. See *Olonan v. Civil Service Commission*, CA-G.R. No. 37637-SP, 19 January 1996.

⁵ CONST. art. VIII, sec. 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof. See also *Maceda v. Vasquez*, G.R. No. 102781, 22 April 1993, 221 SCRA 464.

⁶ CONST. art. IX-C, sec. 2 par. (1).

⁷ CONST. art. IX-C, sec. 2 par. (2). See also Art. IX-C, sec. 2 pars. (3)-(9) for the other functions of the COMELEC.

⁸ CONST. (1935), art. XI.

⁹ CONST. art. IX-D, sec. 2, par. (1).

Manolo B. Gorospe and Japal Guiani.¹⁰ The unfolding of events as reported by a newspaper is symptomatic of the confusion surrounding the term of office of Constitutional Commissioners. The first report is captioned "2 retiring COMELEC commissioners holding out."¹¹ The following day, the same newspaper reported that President Joseph E. Estrada had asked Chief Presidential Legal Counsel Magdangal Elma to study the legal issue involved.¹² On 4 February 1999, COMELEC Commissioner Manolo B. Gorospe was quoted as saying: "[But] because of the mathematical or arithmetical miscomputation, they put it there as if the term of office should expire 2 February 1999"¹³ Finally, on 5 February 1999, the newspaper reported that Chief Presidential Legal Counsel Elma recommended that the two COMELEC Commissioners be allowed to stay another year as they had not yet completed their seven-year term provided for under the Constitution.¹⁴ However, the same article reported that concerned lawyers from the COMELEC had furnished reporters with a four-page opinion stating that the two Commissioners should have retired last 2 February 1999 because the reckoning period for determining the beginning of the terms of office of the Commissioners should begin on 2 February 1987, the date the Constitution was ratified.¹⁵

What seems to be the problem in the interpretation and application of a seemingly straightforward and non-contentious rule?

The problem stems from the commencement of the term of those first appointed under the Constitution. There are two conflicting views on the matter. One is that the term of office of Constitutional

¹⁰ Donna Pazzibugan, *2 retiring Comelec commissioners holding out*, PHILIPPINE DAILY INQUIRER, 2 February 1999, at A3; Juliet Labog-Javellana, *Palace unsure of Comelec execs' terms*, PHILIPPINE DAILY INQUIRER, 3 February 1999, at A3; Donna Pazzibugan, *Gorospe bad mouths bad math*, PHILIPPINE DAILY INQUIRER, 4 February 1999, at A1; and Juliet Labog-Javellana and Donna Pazzibugan, *Palace says Comelec execs can stay; lawyers disagree*, PHILIPPINE DAILY INQUIRER, 5 February 1999, at A4.

¹¹ Donna Pazzibugan, *2 retiring Comelec commissioners holding out*, PHILIPPINE DAILY INQUIRER, 2 February 1999, at A3.

¹² Juliet Labog-Javellana, *Palace unsure of Comelec execs' terms*, PHILIPPINE DAILY INQUIRER, 3 February 1999, at A3.

¹³ Donna Pazzibugan, *Gorospe bad mouths bad math*, PHILIPPINE DAILY INQUIRER, 4 February 1999, at A1.

¹⁴ Juliet Labog-Javellana and Donna Pazzibugan, *Palace says Comelec execs can stay; lawyers disagree*, PHILIPPINE DAILY INQUIRER, 5 February 1999, at A4.

¹⁵ *Id.*

Commissioners commenced on 2 February 1987, or upon the ratification of the Constitution. On the opposite side is the view that the term of office of Constitutional Commissioners commenced on 2 February 1988, or one year after the ratification of the Constitution. Necessarily, the commencement of the term of those first appointed would affect the tenure of present Constitutional Commissioners because the counting of the seven-five-three staggered term is reckoned from that date.

No less than the Supreme Court, sitting *en banc*¹⁶ in the case of *Abella v. Commission on Elections*,¹⁷ has recognized that the determination of the commencement of the term of Constitutional Commissioners, in relation to article XVIII, section 15 (Transitory Provisions), is a constitutional issue.

It is important to determine with finality the date of the commencement of the terms of office of the Constitutional Commissioners because each day of uncertainty increases the risk of having the Constitutional Commissions governed by officials who no longer have the right to hold the office. Thus, a commissioner whose term has actually ended might still be rendering decisions, issuing policies and spending public funds.¹⁸ Or perhaps, a Commissioner who should have served only for the unexpired portion of the predecessor's term is already serving beyond the latter's term.

As the title states, this Comment will cover the term of office of Constitutional Commissioners only. The Office of the Ombudsman, though constitutionally mandated, is not in the same category as that of the Constitutional Commissions. In fact, an enabling law¹⁹ was still necessary in order for the constitutional provisions on the Ombudsman to be effective.

¹⁶ Ten Justices concurred, Chief Justice Marcelo Fernan inhibited himself, and two Justices were on leave.

¹⁷ G.R. No. 100710, 3 September 1991, 201 SCRA 253.

¹⁸ On 15 June 1999, COA denied the appeal of CSC Commissioner Thelma P. Gaminde and affirmed the disallowance on her salaries and allowances, including that of her co-terminus staff. See COA Decision No. 99-090.

¹⁹ Exec. Order No. 243 (1987). Declaring the Effectivity of the Office of the Ombudsman as provided for in the 1987 Constitution. See Rep. Act No. 6770, The Ombudsman Act of 1989.

II. THE CONFLICT

A. Term v. tenure

The term of office is defined as "the time during which the officer may claim to hold the office as of right, and fixes the interval after which several incumbents shall succeed one another."²⁰ In other words, the term of office of a public official is a fixed period set by law that is not affected by extraneous circumstances such as the tenure of the incumbent or the occurrence of a vacancy in a public office. It remains an iron-clad rule that not even a construction by the appointing authority can change. In the case of members of Constitutional Commissions, their term of office is fixed by the Constitution, hence, not susceptible to change or extension for reasons other than an amendment of the Constitution itself.²¹

If term is the fixed period and definite time that a public officer can hold office, tenure, on the other hand, is defined as the "term during which the incumbent actually holds the office . . . the tenure may be shorter than the term for reasons within or beyond the power of the incumbent."²² Tenure is the period that a public officer actually holds office, not necessarily as a matter of right. Ideally, term and tenure should coincide. However, an incumbent's tenure may be shorter than the term but in no case may the tenure exceed the term,²³ except when the incumbent is allowed by law to hold-over.

It goes without saying that questions as regards right to hold office are questions solely of term, never of tenure.

In fixing the term of office, the Constitution or the law may also provide for the time or date when the term begins. However,

²⁰ *Nueno v. Angeles*, G.R. No. 89, 1 February 1946, 12 SCRA 21, 21-22. See also *Guekeko v. Santos*, 76 Phil. 237 (1946).

²¹ FLOYD MECHEM, A TREATISE ON THE LAW OF PUBLIC OFFICES AND OFFICERS 254 (1890).

²² *Nueno v. Angeles*, G.R. No. 89, 1 February 1946, 12 SCRA 21, 21-22.

²³ *Visarra v. Miraflores*, G.R. No. L-20508, 16 May 1963, 8 SCRA 1, 12.

when no time is fixed by law for the commencement of the term, the general rule is that the term commences from the date of the appointment.²⁴ This is liable to make the commencement of the term of office dependent on the whim or predilection of the appointing authority. The wisdom of invoking this general rule is doubted in a situation like the present where the Constitution itself provides for the term of office, especially because terms are designed in such a way as to maintain a staggered system of succession.

B. The term of office of Constitutional Commissioners²⁵

In order to guarantee the independence of the Constitutional Commissions from political intervention, the Constitution provides for a fixed term of office for the Chairmen and members of the Constitutional Commissions. Except for those first appointed under the 1987 Constitution, all members of the Constitutional Commissions shall each have a fixed term of seven years, without reappointment.²⁶ Since the commissioners have a fixed term, and can only be removed from office by impeachment,²⁷ they are not at the mercy of any of the branches of the government. Hence, they would be less susceptible to political intervention.

In addition to the fixed term of office, the framers of the Constitution also adopted the system of staggering terms as a means of ensuring that no President would have the opportunity to appoint, during his own term, more than one member or group of members to the Constitutional Commissions,²⁸ thereby precluding the possibility that a President, through loyalty or debt of gratitude of the appointees, would have control of any or all the Constitutional Commissions.²⁹

²⁴ 63 AM. JUR. 2d *Commencement of Term* § 151 at 722 (1972).

²⁵ For purposes of brevity, the word "Commissioners" shall include the Chairmen of Constitutional Commissions, unless otherwise indicated.

²⁶ CONST. art. IX-B, C, D, sec. 1, par. (2).

²⁷ CONST. art. XI, sec. 2.

²⁸ However, under the present situation, a President is actually given the opportunity to appoint at least two sets of officers in the Constitutional Commissions.

²⁹ ISAGANI CRUZ, *PHILIPPINE POLITICAL LAW* 281 (1995).

Another reason for the staggered terms is to provide the stable ground necessary for continuity in the policies of the commissions.³⁰

By following the seven-five-three scheme, the term of a commissioner or a group of commissioners (in the case of COMELEC) expires on a staggered basis, thereby creating a vacancy in each of the Commissions every two years.³¹ However, a careful scrutiny of the seven-five-three scheme shows that the much vaunted interval of two years is only possible within the same batch of commissioners, that is, among the first-termers, the second-termers, and so on. After the expiration of the term of office of one batch, an interval of three years results. The period between the expiration of the term of those first appointed to the seven-year term and the expiration of the term of the second termers under the third line of succession is three years. After this, the interval would again be two years among the second batch. To illustrate, assuming that 1987 is the reckoning period, the term of those first appointed would expire in 1990 (third line), 1992 (second line) and 1994 (first line). The term of the second termers for the third line of succession would begin in 1990 and end in 1997. Between 1994 and 1997 is a gap of three years, not two years.

The same three-year interval would also occur if we assume that 1988 is the reckoning period, the term of those first appointed would expire in 1991 (third line), 1993 (second line) and 1995 (first line). The term of the second termers for the third line of succession would begin in 1991 and end in 1998. Between 1995 and 1998 is a gap of three years, not two years.

As follows are two charts showing the constitutionally mandated terms of office of Constitutional Commissioners pursuant to the specifications set therein, taking into consideration the two conflicting views as to the commencement of the term of office:

³⁰ *Id.* at 281.

³¹ HECTOR DE LEON, TEXTBOOK ON THE PHILIPPINE CONSTITUTION 328 (1994).

1987 as the reckoning point

Lines of succession	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
1 st line <i>(initial 7yr.term)</i>	start																					
2 nd line <i>(initial 5yr.term)</i>																						
3 rd line <i>(initial 3yr.term)</i>																						

1988 as the reckoning point

Lines of succession	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
1 st line (initial 7yr.term)	start																					
2 nd line (initial 5yr.term)																						
3 rd line (initial 3yr.term)																						

Legend:

x	:	end of term
A	:	first termers
B	:	second termers
C	:	third termers

Of those first appointed to the Civil Service Commission and the Commission on Audit, the Constitution provides that the chairmen shall hold office for seven years, a member for five years, and another member for three years.³² The COMELEC, which is composed of seven members, including the chairman, also follows the staggered terms. The only difference is that it was not specified that the chairman would be appointed to the seven-year term; rather, the provision only provided that of those first appointed, three members shall hold office for seven years, two members for five years, and the last two members for three years.³³

The case of *Republic v. Imperial*³⁴ laid down the two conditions indispensable to the system of staggering of terms. First, the terms of those first appointed should start on a common date.³⁵ Second, in case of vacancy occurring before the expiration of the term, the succeeding appointee shall only serve for the unexpired portion of the term of his predecessor.³⁶ Only by strictly adhering to these two conditions would the constitutional intent be achieved.

Needless to say, commissioners of the different Constitutional Commissions are similarly situated as regards their terms of office. What applies to a commissioner of one Constitutional Commission necessarily applies to the commissioners of the two other commissions.

C. A constitutional issue: 1987 or 1988?

As stated in the introduction, there are two conflicting views regarding the date or time when the term of office of Constitutional Commissioners began. Surprisingly, both views rely on the same provisions of the Constitution, namely, article IX-B, C, D, section 1, paragraph (2) and article XVIII, section 15 of the Transitory Provisions.

³² CONST. art. IX-B, C, sec. 1, par. (2).

³³ CONST. art. IX-C, sec. 1, par. (2).

³⁴ 96 Phil. 770 (1955).

³⁵ CRUZ, *supra* note 29, at 281.

³⁶ CONST. art. IX-B, C, D, sec. 1, par. (2).

Article IX-B, section 1, paragraph (2) provides:

The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, a Commissioner for five years, and another Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

Similar provisions are found under Article IX-C and D under the same section.

Article XVIII, section 15, provides:

The incumbent Members of the Civil Service Commission, the Commission on Elections, and the Commission on Audit shall continue in office for one year after the ratification of this Constitution, unless they are sooner removed for cause or become incapacitated to discharge the duties of their office or appointed to a new term thereunder. In no case shall any Member serve longer than seven years including service before the ratification of this Constitution.

1. 1987 as the reckoning point

The date of the ratification of the Constitution,³⁷ which in the first place provided for the term of office of Constitutional Commissioners, is the date of the commencement of the terms of office of Constitutional Commissioners. This view is premised on the fact that it was the 1987 Constitution that fixed the term of office of these officials. It is but logical to conclude, in the absence of a specific provision in the Constitution stating otherwise, that indeed, the term of office of the commissioners commenced on the date of ratification. To the proponents of this view, article XVIII, section 15 did not have the effect of delaying by one year the commencement of the terms of office of Constitutional Commissioners.

³⁷ *De Leon v. Esguerra*, G.R. No. L-78059, 31 August 1987, 153 SCRA 602. The ruling in this case held that the 1997 Constitution was ratified in a plebiscite held on 2 February 1987, the date of its effectivity.

In an opinion rendered by then Secretary of Justice Franklin M. Drilon, he categorically stated that:

Under the 1987 Constitution, the staggered 7-5-3 year terms of the first three Commissioners simultaneously commenced on February 2, 1987, the date of the ratification of the said Constitution.³⁸

Furthermore, Secretary Drilon also construed section 15 of the Transitory Provisions as applicable only to incumbent members of the Constitutional Commissions who were reappointed as commissioners under the 1987 Constitution and that said provision was included in the Transitory Provisions merely to ensure that no reappointed incumbent member would have an aggregate tenure of more than seven years.³⁹

The COA itself, in its Decision No. 99-090 dated 15 June 1999,⁴⁰ adopted the view that 1987 should be the reckoning date. This decision involved the appointment of Thelma P. Gaminde as Commissioner of the Civil Service Commission on 11 June 1993. Her appointment paper also set the expiration of her term of office on 2 February 1999. Instead of relinquishing her post, Commissioner Gaminde remained in office after 2 February 1999.⁴¹ She relied on an opinion rendered by then Deputy Executive Secretary and Chief Presidential Legal Counsel Renato C. Corona,⁴² to the effect that her term would expire on 2 February 2000 and not on 2 February 1999.

Due to the uncertainty as to when the term of Commissioner Gaminde expired or would expire, CSC Chairman Corazon Alma G. De Leon sought the opinion of the COA as to whether or not Commissioner Gaminde and her co-terminus staff may still be paid their salaries notwithstanding the apparent expiration of her term on 2 February 1999.⁴³

³⁸ Sec. of Justice Op. No. 88, s. 1991, 16 May 1991. This opinion was rendered by the DOJ in answer to a query posed by the then COA Commissioner Rogelio B. Espiritu on the expiration of the term of then COA Commissioner Bartolome C. Fernandez, Jr., among others.

³⁹ *Id.* at 3.

⁴⁰ COA Decision No. 99-099, 15 June 1999.

⁴¹ As of this writing, Commissioner Gaminde is still holding office as Commissioner.

⁴² Deputy Executive Secretary Renato Corona. Op., s. 1998, 7 April 1998. This opinion will be discussed later in the paper.

⁴³ COA Decision No. 99-099, 15 June 1999.

On 18 February 1999, the General Counsel of COA stated that the term of office of Commissioner Gaminde expired on 2 February 1999, and that she was no longer entitled to collect her salaries and other emoluments after that date.⁴⁴ As a result of this opinion, the salaries and other emoluments paid by the CSC to Commissioner Gaminde and her staff after 2 February 1999 were disallowed by the CSC Auditor.⁴⁵ Hence, Commissioner Gaminde appealed the disallowance to COA proper.

In disposing of the appeal, the COA stated as follows:

Reckoned from the date the 1987 Constitution took effect (February 2, 1987), the term of the first appointees should successively expire as follows: February 2, 1990 for the three-year term; February 2, 1992 for the five-year term; and February 2, 1994 for the Chairman . . . It is thus our position that the framers of the Constitution have intended to establish a fixed date for the expiration of the term of the first appointees to be reckoned from the ratification of the Constitution and not made dependent upon the date of their appointment.⁴⁶

The decision also construed section 15 of the Transitory Provisions as merely providing for the hold-over of the incumbents for one year after the ratification of the Constitution.⁴⁷

It is axiomatic that the holding-over of the incumbent does not affect the term of office, which remains the same whether or not the position is vacant, or whether or not the tenure of the incumbent has exceeded the term fixed by law. In cases like this, the tenure of the new appointee would be less than the duration of his mandated term of office. This situation should not in any way entitle the new appointee to exceed his term of office in order for the period of his tenure to be the same as the length of his mandated term of office. To reiterate, the term of office does not countenance outside factors, except for an amendment of the same law which fixes the term.

⁴⁴ *Id.* at 2.

⁴⁵ See Notice of Disallowance No. 99-002-101(99), 24 March 1999.

⁴⁶ COA Decision No. 99-099, 15 June 1999 at 4-5.

⁴⁷ COA Decision No. 99-099, 15 June 1999 at 6.

2. 1988 as the reckoning point

Proponents of the view that 1988 ought to be the reckoning point rely on the actual date of the appointments issued by the President. The argument proceeds thus: those first appointed should follow the seven-five-three staggered term. After these initial appointments, all succeeding appointments would be for a term of seven years. Thus, considering that then President Corazon C. Aquino issued appointments to the first batch of appointees only in 1988, it follows that the term of office of the second batch should be seven years reckoned from the date the appointments of those first appointed expired.

In a clarificatory letter, then Deputy Executive Secretary and Chief Presidential Legal Counsel Renato C. Corona, stated that:

The term of Commissioners is set at seven years without reappointment. Of the first Commissioners appointed, however, the Chairman shall have a term of seven years, another of five years, and the third of three years. Every two years, the term of one Commissioner expires leaving always two veteran Commissioners behind. Given the foregoing provision of law, it follows that your (Commissioner Gaminde of the CSC) appointment made on June 11, 1993, replacing Commissioner Samilo N. Barlongay (1988-1993), is set to expire on February 2, 2000 and not on February 2, 1999.⁴⁸

Corona relied on the actual year of the appointment of Commissioner Gaminde and from that date counted seven years, representing the length of term provided by the constitution, and came up with 2 February 2000 as the expiry date of her appointment. The above formulation failed to consider or at least to differentiate between term and tenure. Term is fixed by law and tenure does not affect the term. To rely on the date of the appointment is in effect to rely on the tenure, which is not decisive in cases involving the right of a public official to hold office. Thus, the opinion suffers from an infirmity of basis and reasoning.

Similarly, COMELEC Commissioners Manolo B. Gorospe and Japal Guiani justified their refusal to retire on the ground that they would be shortchanged of another year,⁴⁹ that is, their service would only be for six years instead of the seven years mandated by the Constitution. Gorospe contended

⁴⁸ See Deputy Executive Secretary Renato Corona. Op., s. 1998, 7 April 1998.

⁴⁹ See Pazzibugan, *supra* note 13, at A1.

that since he was appointed in 1993, he has until the year 2000 to complete his seven-year term. Guiani also adopted this line of reasoning, that since he succeeded the late Commissioner Graduacion Claraval who was also appointed in 1993, then he should remain in office until 2 February 2000.

Even Chief Presidential Legal Counsel Magdangal Elma appears to have subscribed to this line of reasoning. Executive Secretary Ronaldo Zamora quoted Elma as saying that to follow the expiry dates indicated in the appointments of Gorospe and Guiani (2 February 1999) would have the effect of depriving them of the seven-year term prescribed by the Constitution.⁵⁰

While ideally, term and tenure should coincide, the length of actual service, the tenure, has nothing to do with the term of office. That the tenure of a commissioner is less than the length of term would not justify the extension of the tenure if the term, as fixed by law, has already prescribed.⁵¹ Thus, it can happen that a commissioner who is appointed on the sixth year of a seven-year term would only serve for one year. There would be no deprivation of the right to hold office because although he was appointed to a seven-year term, the first six years of that term had already lapsed when he was appointed. The same commissioner cannot claim, after having served for one year, that his term has not yet expired. In the contemplation of the law, his term has already expired notwithstanding the fact that he has served only one year of the seven-year term.

III. THE SOLUTION: 1988 AS THE RECKONING POINT IN VIEW OF SECTION 15 OF THE TRANSITORY PROVISIONS

This Comment advances the view that 1988 should be the reckoning period in determining the term of office of Constitutional Commissioners in view of article XVIII, section 15 of the Constitution.

The express language of the Constitution itself provided for the one-year extension of the term of office of commissioners after the ratification of the Constitution. Incumbent members "*shall continue in office for one year after the ratification*" (emphasis supplied).⁵² Their continuance in office is not merely in a hold-over capacity but rather, as a matter of right. This is why before the

⁵⁰ See Labog-Javellana and Pazzibugan, *supra* note 14, at A4.

⁵¹ See also Republic v. Imperial, 96 Phil. 770 (1955).

⁵² CONST. art. XVIII, sec. 15.

one year period is up, they can only be removed for cause or due to incapacity. In short, the discretion of the appointing authority, who is also the disciplining authority, does not come into play. Had they been merely on hold-over, then the President can effect their removal within the one year period by appointing other persons to succeed them.

The phrase "*or appointed to a new term thereunder*"⁵³ means that the incumbent who is reappointed shall continue in office not just for one year after the ratification but until the expiration of the five-year or three-year term of office, depending on which line he was appointed to. This explains the use of the word "*unless*." It does not mean that the President can appoint anyone to a new term under the 1987 Constitution before the lapse of one year as this would ruin the staggered term system which requires for its effective application that appointments should start on a common date. Thus, assuming that there is a vacancy and the President has appointed someone after the ratification of the Constitution but before 2 February 1988, this would simply mean that the appointee is to serve only until 1 February 1988, unless of course that person is issued another appointment on 2 February 1988, subject to the maximum tenure of seven years.

Assuming *arguendo* that article XVIII, section 15 is susceptible of more than one interpretation, thereby opening the door to other extrinsic aids to construction,⁵⁴ resort to the Records of the Constitutional Commission supports the view that the terms of office commenced in 1988.

The following are excerpts from the Records of the Constitutional Commission regarding section 15 of the Transitory Provisions.

MR. FOZ. In the appointments extended by the President to the incumbent chairmen and commissioners of the three Constitutional Commissions, there is no fixed term for them to serve...It is believed that their terms were not fixed precisely to await the drafting of the new Constitution and its ratification. The proposed amendment seeks to remedy the existing situation *by setting a one-year period from the ratification of this new Constitution in which the officials concerned shall continue in office...*

⁵³ CONST. art. XVIII, sec. 15.

⁵⁴ RUBEN AGPALO, STATUTORY CONSTRUCTION 352 (1995).

MR. DE LOS REYES. Yes. Let us take, for example, the case of Commissioner Felipe of the COMELEC. He was appointed by the deposed President Marcos and he has served for about two years, I think. Now, after the ratification of the Constitution, *he will have one more year*. That is the proposal of the Commissioner.

MR. DE LOS REYES. The Commissioner means that after one year, he cannot be reappointed by President Aquino to serve for seven years because he had already served for four years?

MR. FOZ. If we consider his past tenure, Mr. Presiding Officer. (emphasis supplied)⁵⁵

It is thus clear that the framers of the Constitution intended to give the incumbents of the Constitutional Commissions one year after the ratification within which to hold office, subject to the usual grounds for removal, that is, for cause and due to incapacity. Since the incumbents were given one year, the President could not have issued appointments from 2 February 1987 to 1 February 1988 because there were no vacancies. The positions only became vacant on 2 February 1988. On the other hand, if there was a real vacancy, an appointment issued before 2 February 1988 would have been effective only until 2 February 1988 because to suppose otherwise would destroy the staggered scheme.

To hold that the term of office of those first appointed commenced upon the ratification of the Constitution would result in an absurd situation where the terms of office commenced or started to run even before the positions to which the term pertains became vacant, and more importantly, even before the term of office of the incumbents (as extended for one year after the ratification), expired. There would then be an overlapping of the term of the incumbents and of those first appointed, for the period 2 February 1987 to 2 February 1988. It is submitted that the framers of the Constitution did not and would not countenance such a situation.

⁵⁵ I RECORD 438-39 (3 October 1986).

IV. IMPACT ON THE PRESENT COMPOSITION OF THE CONSTITUTIONAL COMMISSIONS

A. Civil Service Commission

Appointments of commissioners in the Civil Service Commission are generally based on 1988 as the commencement period. As such, a holding that 1987 is the correct date would have the effect of shortening the tenure of the incumbents. Chairman Corazon Alma G. De Leon's tenure would only be until 2 February 2001 or a total of six years. The same is true for Commissioner Gaminde who would be bound to comply, however belatedly, with the expiry date of her appointment on 2 February 1999. The disallowance by COA of her salaries and other emoluments would then be proper. The third member, Commissioner Jose F. Erestain, Jr., would not be affected because his term of office is in keeping with the view that 1987 is the reckoning point.

On the other hand, a ruling that 2 February 1988 is the date of the commencement of the term of office of the Constitutional Commissioners would mean that Chairman De Leon can hold office as a matter of right until 2 February 2002. Likewise, Commissioner Gaminde would be entitled to remain in office until 2 February 2000. The disallowance by COA would then be voided.

Commissioner Erestain, who was appointed under the third line of succession would in effect be on hold-over status.⁵⁶ He succeeded Commissioner Ramon P. Ereneta, Jr., whose term is from 1991 to 1998, when the latter retired on 2 February 1997. Since Commissioner Ereneta's term had not yet expired, any one appointed under the third line of succession should serve only for the unexpired portion of the term, that is, from 3 February 1997 to 2 February 1998. As of 3 February 1998, the position is deemed vacant⁵⁷ and

⁵⁶ The author is of the opinion that hold-over is not countenanced by the Constitutional provision fixing the term of office of Constitutional Commissioners. The provision is quite categorical when it stated that there shall be no reappointment and that a successor shall only serve for the unexpired portion of a particular term. All these factors point to only one conclusion: that hold-over is not allowed.

⁵⁷ 63 AM. JUR. 2d *Vacancy*, generally § 130 at 709 (1972). "[I]t is vacant in the eye of the law whenever it is unoccupied by a legally qualified incumbent who has the lawful right to continue therein until the happening of some future event."

Commissioner Erestain no longer has the right to continue in office. At any time, the President can appoint another person in his stead.

B. Commission on Elections

All appointments in the Commission on Elections were issued following 1988 as the commencement period. Similar with the CSC, a ruling that 1987 is the correct date of the commencement of the terms of office of Constitutional Commissioners would result in the shortening of the tenure of the incumbent members. At most, the incumbents can only serve a maximum of six years. Commissioners Gorospe and Guiani would have to step down because their term of office had expired on 2 February 1999. After this date, they no longer have the right to remain in office and the President may properly issue appointments to fill up their positions. In fact, if COA is as vigilant with COMELEC as it was with the CSC, they should also disallow the salaries and other emoluments of Commissioners Gorospe and Guiani.

On the other hand, if the correct reckoning date is 2 February 1988, the COMELEC Commissioners would have no problem because from the very start, appointments issued in favor of COMELEC Commissioners were based on this date, with the exception only of Commissioner Alfredo Abueg, Jr., who was appointed on 16 December 1987.

C. Commission on Audit

The Commission on Audit is the only Constitutional Commission where the appointments were issued following the ratification of the Constitution as the commencement period. Thus, the tenure of the incumbent members would not be affected by a declaration that 1987 is the correct starting point.

On the other hand, a strict application of the principles concerning the term of office of public officers would result in two vacancies, namely in the position of Chairman and the Member appointed under the third line of succession (the positions of Chairman Celso D. Gangan and Commissioner Raul C. Flores).

In 1986, Teofisto T. Guingona, Jr., was appointed Chairman of the COA. The following year, he resigned and ran for the Senate. Then President Aquino filled the resulting vacancy by appointing Eufemio C. Domingo on 16 March 1987. Following the intent of the framers of the Constitution to provide a one-year extension to the terms of the incumbents before the commencement of the term of office of Constitutional Commissioners, Chairman Domingo can only serve until 2 February 1988, unless he is issued a new appointment on 3 February 1988. But because no new appointment was issued to him, it follows that his term ended on 2 February 1988. Legally, from 3 February 1988 to April 1993, the position of Chairman is vacant. The first term was filled only when Chairman Pascasio S. Banaria was appointed in April of 1993. However, Chairman Banaria did not finish his term (1988-1995) and retired in February 1994. The present Chairman of COA (Gangan) was appointed in 1994 and should serve only for the unexpired portion of the first term, that is, until 2 February 1995. Thus, a strict application of the principles governing the term of office would lead to a vacancy at the top position of COA.

A similar situation would happen in the third line of succession (representing the initial three-year term). Commissioner Alberto P. Cruz was appointed in December 1987 and should serve only until 2 February 1988, unless the President has issued a new appointment in his favor. Since no new appointment was forthcoming, Commissioner Cruz' term expired on 2 February 1988. His successor, Rogelio B. Espiritu, who was appointed in September 1990 would be considered the first-term, i.e., the person appointed to the initial three-year term. As a result, Espiritu should have served only until 2 February 1991. The second-term, Raul C. Flores, who was appointed in 1997 should have served only until 2 February 1998 because the second term to which he was in effect appointed is only from 3 February 1991 until 2 February 1998. Therefore, Commissioner Flores no longer has a legal right to hold office as Commissioner.

For the second line of succession, then COA Commissioner Bartolome C. Fernandez was appointed in 1986. Bearing in mind the additional year granted to the incumbent members upon the ratification of the Constitution, Commissioner Fernandez had the right to hold office only until 2 February 1988. However, he was issued another appointment in July 1987 to the second line of succession, thereby giving him a fresh five-year term. If 1988 is the reckoning date, as of 3 February 1988, Fernandez no longer has the right to

hold office, notwithstanding the evident intent of the then President to have him serve a fresh term of five years. Commissioner Sofronio Ursal, who was appointed in 1992 would perforce have to be considered as the first-termmer and should only serve until 1993 or five years after 2 February 1988. It follows that Commissioner Emmanuel M. Dalman who was appointed in 1999, is the second-termmer and can only serve until 2 February 2000.

To conclude, a determination of the correct date of the commencement of the term of office of Constitutional Commissioners would ineluctably change the composition of these Offices. Mindful of the vital functions being performed by these Offices through the leadership of the incumbent Commissioners, a change in the composition would mean differences in the policies and decisions arrived at by these collegiate bodies. To anyone directly dealing with these Offices, it might spell the difference between keeping a job or getting dismissed from the service, between qualification or disqualification from running for an elective post, and between allowance or disallowance of public expenditures. Most important of all, this involves the disbursement of public funds to people who no longer have the right to remain in office.

V. CONCLUSION AND RECOMMENDATION

After all has been written, the resolution of the issue rests on the Supreme Court. It is for the High Court to construe article XVIII, section 15 in relation to articles IX-B,C,D, section 1 paragraph (2) of the Constitution. Only when the highest tribunal has spoken will the doubts, the controversies and the problems relating to the term of office of Constitutional Commissioners, cease.

Nonetheless, the Supreme Court or any inferior court cannot, on its own, rule on this issue unless a petition for quo warranto is filed before it. Quo warranto is a special civil action to determine the right to the use or exercise of an office and to oust the holder from its enjoyment.⁵⁸ A petition for quo warranto must be commenced by the Solicitor General or any public prosecutor, either upon the order of the President or on their own, if they have

⁵⁸ RUBEN AGPALO, *THE LAW OF PUBLIC OFFICERS* 126 (1998).

good reason to believe that quo warranto proceedings are warranted to determine the right of a public official to remain in office.⁵⁹

A person claiming a better right to the office may also bring an action for quo warranto in his own name.⁶⁰ However, this option is not feasible because the appointing authority actually issues appointments that condone the different patterns of appointment established by each constitutional commission. It is not possible then to find an individual who can claim, as against the incumbent, a better right to the office.

It is high time for the constitutional issue, recognized as early as 1991, to be resolved. Perhaps the President or the Solicitor General can take its cue from this Comment and institute quo warranto proceedings against Constitutional Commissioners who they think have exceeded their term of office. The Supreme Court would then have no choice but to rule on the matter.

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⁵⁹ RULES OF COURT, Rule 66, sec. 2.

⁶⁰ RULES OF COURT, Rule 66, sec. 5.