THE ELECTORAL TRIBUNALS UNDER THE CONSTITUTION: APPRAISAL AND PROPOSAL

INTRODUCTION

As originally adopted in 1935, the Constitution of the Philippines provided:

> "There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six Members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein. The senior Justice in the Commission shall be its Chairman. The Electoral Commission shall be the sole judge of all contests relating to the election, returns and qualifications of the Members of the National Assembly."[1]

As amended in 1940, the Constitution provides:

> "The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein. The Senior Justice in each Electoral Tribunal shall be its Chairman."[2]

The amendment did not alter the substance of the original provision. The Constitution as ratified by the Filipino people on May 14, 1935 provided for a unicameral National Assembly. By the 1940 amendment, the National Assembly was changed to Congress of the Philippines, a bicameral body made up of the Senate and the House of Representatives. Hence, it was also necessary to provide each House a separate electoral tribunal to judge all contests relating to the election, returns, and qualification of its members.

Prior to the adoption of the Constitution, the practice was to have election protests against the members of the legislature tried and investigated by committees on election, upon whose report each House acted and made decision.[3]

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[1] Art. VI, Sec. 4.
[2] Art. VI, Sec. 6.
[3] Villaruz, *Commentaries and Opinions on the Constitution of the Philippines*, 130.

When the proposition was made to transfer the power of the Philippine Legislature to decide election protests involving its members to the Electoral Commission, the Constitutional Convention was divided into two camps.

The opponents of the proposal stressed two reasons for their opposition: (1) it would impair the doctrine of the seraparation of powers resulting in the emasculation of the legislative branch of the government, and (2) it would endanger the independence and integrity of the judiciary. Furthermore, membership in the Electoral Commission might force the three justices designated to abandon their work in connection with the administration of justice in the Supreme Court due to the pressure of their tasks in the Commission.[4]

On the other hand, those in favor of the Electoral Commission claimed that the legislature was not as well qualified as the courts to determine questions of fact in an election contest; that the time of the legislature should be spent in the enactment of laws and not in hearing election contests; and that the abolition of party lines, because of the equal representation of the majority and minority parties in the National Assembly and the presence of the three Justices of the Supreme Court, would insure greater political justice.[5] In the majority of election protests brought before the legislative body, the results were known before they had been tried because the interest of the party controlled and dictated the decisions and in cases where decisions would be patently a miscarriage of justice, apparent even to the masses, technicalities and irregularities in the proceedings were resorted to in order to procure the undue delay of the resolution of the election cases. And in such case there was no remedy except through political channels.[6]

THE INSUFFICIENCY OF THE CONSTITUTIONAL PROVISION

Due to its brevity, the constitutional provision under consideration presents many problems. Some of these were solved by statutes and judicial decisions; others seem to be incapable of equitable solution.

The Constitution does not define what a "party" is. However, the National Assembly enacted the Election Code which provided that "Political party or simply party, when used in this Code means an

[4] 1 ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION, 261-266 (1949). 266 (1949).
[5] *Ibid.*, on 261-262.
[6] Baizas, D. *Electoral Commission,* 8 LAW J. 142.

organized group of persons pursuing the same political ideals in a government and includes its branches and divisions."[7] This Code was revised by the Congress, but the definition was retained without any change whatsoever.[8]

A. *The Problem of Membership*

Even though the statute has defined what a party is, some aspects of the membership in the Electoral Tribunal still remain a riddle. The constitutional provision does not say whether, in case there are more members in either or both Houses of Congress who do not belong to any party than those who are party members, the former will be considered in the determination of which party is the largest, or whether they will be allowed to choose their party after election.[9] It does not also say whether, in case two minority parties coalesce or merge the new party thus formed can lay claim to being the party having the largest number of votes, and so nominate three members to the Electoral Tribunal.[10] It is also silent as to the composition of the Electoral Tribunal when there are three parties having the same number of votes in either House of Congress.[11] A more ticklish problem arises in the case where there are three parties in either House, one party obtaining the most votes and the other two obtaining an equal number of votes. In such a situation which party will be recognized as the "party having the second largest number of votes?"[12] What will be the criterion or criteria for granting recognition to one party and withholding it from the other? In case these two parties agree to apportion between them the three nominees appertaining to the second largest party, how will the division be made? Will the division of the term of the third nominee into two such that one party will be represented in the Tribunal during the first half of the term and the other during the second half be an equitable solution considering the fact that most election protests are decided at the end of the term of office of the protestees? If such an arrangement is agreed upon, will the nominee holding office during the second half of the term be able to perform his function properly and vote wisely with regard to cases heard but not decided during the time when he was not yet a member of the Tribunal?

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[7] Com. Act No. 357, sec. 76.
[8] Rep. Act No. 108, sec. 80, otherwise known as the "Revised Election Code."
[9] Baizas, *op. cit.*, 500.
[10] Mijares, R. *Critical Study of Article VI, Section 4 of the Constitution of the Philippines,"* 19 PHIL. L J. 154.
[11] Baizas, *op. cit.*, 500.
[12] *Id.*

Prior to February 28, 1957, there were controversies as to how the representations to the Electoral Tribunal could be determined when the second largest party was composed of only one member or when there was only one party in either or both Houses of the Congress. The Supreme Court dealt with these problems in *Tañada v. Cuenco*.[13] In this case, the Senate, on behalf of the Nationalista Party chose three senators as members of the Senate Electoral Tribunal. Senator Tañada, on behalf of the Citizens Party, the party having the second largest number of votes in the Senate, after nominating himself, the only member of such party, refused to make any further nomination. Upon nomination of the majority floor leader, on behalf of the Committee on Rules of the Senate and over the objections of Senators Tañada and Sumulong, the Senate chose two senators belonging to the majority, so that with the three majority senators previously chosen upon nomination of their party, there would have been five majority senators and one minority senator in the Senate Electoral Tribunal. In invalidating the selection of the two majority senators upon the nomination of the majority floor leader, the Supreme Court held:

> "It is clear from the foregoing that the main objective of the framers of our Constitution in providing for the establishment, first, of an Electoral Commission, and then of one Electoral Tribunal for each House of Congress, was to insure the exercise of judicial impartiality in the disposition of election contest affecting members of the lawmaking body. To achieve this purpose, two devices were resorted to, namely; (a) the party having the second largest number of votes, in the National Asesmbly or in each house of Congress, were given the same number of representatives in the Electoral Commission or Tribunal so that they may realize that partisan considerations could not control the adjudication of said cases, and thus be induced to act with greater impartiality; and (b) the Supreme Court was given in said body the same number of representatives as each one of said political parties, so that the influence of the former may be decisive and endow said Commission or Tribunal with judicial temper."

The Supreme Court continued:

> "It is patent, however, that the most vital feature of the Electoral Tribunals is the equal representation of said parties therein, and the resulting equilibrium to be maintained by the Justices of the Supreme Court as members of said Tribunals.
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> "What has been said above, relative to the conditions antecedent to and concomitant with the adoption of section 11 of Article VI of the Constitution, reveals clearly that its framers intended to prevent the majority from controlling the Electoral Tribunals, and that the structure thereof if founded upon the equilibrium between the majority and the minority parties therein,

[13] 103 Phil. 1051. (1957).

> with the Justices of the Supreme Court, who are members of said Tribunals, holding the resulting balance of power. The procedure prescribed in said provision for the selection of members of the Electoral Tribunal is vital to the role they are called upon to play. It constitutes the essence of said Tribunals. Hence, compliance with said procedure is mandatory, and acts performed in violation thereof are null and void."

Therefore, the Supreme Court held:

> ". . . the Senate may not elect, as members of the Senate Electoral Tribunal, those Senators who have not been nominated by the political parties specified in the Constitution; that they nominate not more than three (3) Senators, nor any of them, may be nominated by a person or party other than the one having the second largest number of votes in the Senate or its representative therein."

The Supreme Court, in this case ruled that the Senate Electoral Tribunal must be made up only of seven members: three Justices of the Supreme Court, three members of the majority party, and the sole member of the minority party. From this decision it can be inferred that in case there is only one party in the Senate, then the Electoral Tribunal shall be composed of only six members, three Justices of the Supreme Court and three members from the only political party in the Senate.[14]

If in the case of *Tañada v. Cuenco,* instead of nominating two other members, the Senate rejected the nomination by Tañada of himself, would the Supreme Court have sustained the action of the Senate? In other words, does the Senate have the power to decline or throw out the nominations of the parties having the power to nominate, especially the nominations of the second largest party, or are the nominations of the proper political parties equivalent to the appointment of the nominees to the Tribunal? The Constitution provides that "the remaining six Members . . . *shall be chosen by each House,* three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein." (Italics supplied)

If this provision is to be construed literally, the majority party in each House can easily frustrate the right of the minority party to be represented in the Tribunal by rejecting all the nominations of the latter. But it is not amiss to state that the Commission on Appointments possesses the power to reject the nominations made by the President of the Philippines.

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[14] Aruego, J. *Riddle of the Constitution,* 15 DEC. L. J. 169.

The Constitution is silent as to the tenure of the members of the Electoral Tribunals. It provides only that the Electoral Tribunals "shall be constituted within thirty days after the Senate and the House of Representatives shall have been organized with the election of their President and Speaker, respectively."[15] This provision does not state how long these members are to sit in the Tribunals. However, in the case of *Suanes v. Chief Accountant of the Senate*.[16] The Supreme Court stated that ". . . the Chief Justice, in the exercise of his constitutional power to designate associate justice as members of the Electoral Tribunals, has established the policy in conformity with what he believes to be the true meaning of the Constitution, that associate justices thus designated cannot be changed by him during the periods of their incumbency except in cases of vacancy. The evident purpose is to maintain the independence of each associate justice in the performance of his duties as member of an Electoral Tribunal." But a different consideration applies to the legislative members of the Electoral Tribunals. Continued membership in the political party which nominated a legislative member seems necessary to continued membership in the Electoral Tribunal. This can be clearly inferred from the case of *Concordia v. Tolentino*.[17] In this case, Representative Concordia was chosen member of the House Electoral Tribunal upon nomination of the Nacionalista Party. Later on, he was replaced by Tolentino upon the action of the Nacionalista members of the House of Representatives. Alleging that his removal was due to the Nacionalista Party's disapproval of his vote in the election protest against Pelaez before the Tribunal, Concordia filed a petition for quo warranto against Tolentino. In dismissing the petition, the Supreme Court declared: "It appearing that Petitioner Concordia has already left the Nacionalista Party and joined the Liberal Party, his petition now lacks proper basis."

This decision was criticized as follows:

> "Here we find that the Court considered membership in the political party as a basis for membership in the Electoral Tribunal. It is submitted that this view does not find a support in the Constitution. The Constitution provides 'the remaining six shall be members of the Senate or the House of Representatives as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein.'
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> "It will be readily seen that the parties only nominate, the nominee does not even have to be a member of the party making

[15] Art. VI, Sec. 13.
[16] 81 Phil. 818. (1948).
[15] Art. VI, Sec. 13.

> the nomination. It is clear, therefore, that membership in a political party, as far as the Constitution is concerned does not affect the tenure of the members of the Tribunals coming from the Senate or House of Representatives.
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> "To sanction the ouster of Concordia was to undermine the very independence of the tribunal because as the Electoral Tribunal cannot be independent if at least six of its nine members can be coerced under pain of removal, to be party men first and impartial judges, last. The framers sought to create an Electoral Tribunal of nine impartial judges, not a tribunal of three judges and six party men."[18]

The criticism appears to have some validity but it loses sight of the fact that the very purpose of the provision giving the first two largest parties in each House of Congress the right to nominate is to make the nominees, at least at the beginning of every contest, the representatives of their respective parties in the Electoral Tribunal. If the nominee of one party transfers to the other party, it is obvious that such nominee will no longer represent the party which nominated him. On the contrary all his decisions as a member of the Electoral Tribunal will be guided by his new loyalty, which, due to the very nature of politics, is necessarily opposed to his former loyalty. Consequently, the transfer will upset the political equilibrium in the Tribunal, that is, the equal representation of the political parties involved in the Tribunal. The political parties affected, therefore, must be deemed to have the implied power to change their representatives, at least, when such nominees cease to be members of the party nominating them.

Considering the circumstances under which it was made, the statement that "the framers sought to create an Electoral Tribunal of nine impartial judges, not a tribunal of three judges and six party men" is only true to a certain extent. In the case of *Tañada v. Cuenco,* the Supreme Court stated that the framers of the constitution intended to prevent the majority party from controlling the Electoral Tribunals. Hence its structure "is founded upon the equilibrium between the majority and the minority parties therein, with the Justices of the Supreme Court, who are members of said Tribunals holding the resulting balance of power."

The Supreme Court also observed in the same case that if the challenged nomination and election were sanctioned, "the Nacionalista Party would have five (5) members in the Senate Electoral Tribunal,

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[18] Padilla, S. Jr. *The Electoral Tribunals and the Judiciary,* 29 PHIL. L. J. 635-636. (1954).

as against one (1) member of the Citizens Party and three members of the Supreme Court. With the absolute majority thereby attained by the majority party in said Tribunal, the philosophy underlying the same would be entirely upset. The equilibrium between the political parties therein would be destroyed."

In the case of *Angara v. Electoral Commission*,[19] the Supreme Court also maintained that:

> "From the deliberations of our Constitutional Convention it is evident that the purpose was to transfer in its totality all the powers previously exercised by the legislature in matters pertaining to contested elections of its members to an independent and impartial tribunal. It was not so much the knowledge and appreciation of the contemporary constitutional precedent, however, as the long-felt need of determining contests devoid of partisan considerations which prompted the people, acting through their delegates to the Convention, to provide for this body known as Electoral Commission. *With this end in view, a composite body in which both the majority and minority parties are equally represented to off-set partisan influence in its deliberations was created,* and further endowed with judicial temper by including in its membership three justices of the Supreme Court." (Italics supplied).

From the foregoing statements of the Supreme Court, it is clear that, although it was hoped that all the members of the Electoral Tribunals would act as impartial judges, the framers of the Constitution were aware that partisan considerations could not be absolutely prevented from entering into the decisions of the legislative members of the Tribunal. In order to forestall political partisanship from dominating the decisions of the Tribunal, the device of equal representation of the two largest political parties was instituted. Another consideration which works against the criticism above quoted is that a member of the Tribunal who leaves the party which nominated him cannot be impartial vis-a-vis his former party.

B. *The Question of Jurisdiction*

The Constitution provides that "The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members."

This provision was interpreted by the Senate Electoral Tribunal in the case of *Hidalgo v. Manglapus*,[20] in this manner. "The lan-

[19] 63 Phil. 139. (1936)
[20] Electoral Case No. 5, Senate Electoral Tribunal, (Aug. 24, 1967).

guage of the constitutional provision, it thus appears is such that it envisions not only election protests, but all contests of whatever nature, so long as they relate to the election, returns, and qualifications of Senators."

The question of jurisdiction of the Senate Electoral Tribunal became an issue in the case of *Lagumbay v. The Commission on Election*,[21] where the petitioner, a senatorial candidate asked the Commission on Elections to annul the returns from certain precincts as fraudulent because they were against "statistical probabilities." The Commission refused but the Supreme Court in a six to four decision ordered the returns excluded.

The question of jurisdiction was a basis for separate dissents. Thus, Justice J. P. Bengzon, with whom Justices Bautista Angelo and Zaldivar concurred, dissented from the majority stating that:

> ". . . the majority would, against the provision of our Constitution, share the Senate Electoral Tribunal's exclusive power to judge all contests relating to the election, returns and qualifications of Senators. For it has in effect exercised the power to annul votes on the ground of fraud or irregularity in the voting — a power that I consider alien to the functions of a canvassing body and proper only to a tribunal acting in an electoral protest. . .
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> "Speaking again of drawing lines, I hold the view that the jurisdictional line between the Senate Electoral Tribunal and other bodies, such as the Supreme Court or the Commission on Elections, should not be plotted along 'statistical probabilities.' For that is not where the Constitution draws the line. It constitutes the Senate Electoral Tribunal the SOLE judge of ALL contests relating to the ELECTION, RETURNS, and qualifications of Senators, without regard to whether the voting subject matter of said contests is or is not contrary to all 'statistical probabilities'. 'SOLE JUDGE,' 'ALL CONTESTS' and 'RELATING TO . . . RETURNS' are the meaningful KEY PHRASES in the Constitution."

Justice Regala, dissenting in a separate opinion, declared:

> "In the first place, I cannot subscribe to the majority opinion that 'obviously manufactured' returns may be annulled by this Court. With respect to the contested returns, it is my view that the Senate Electoral Tribunal, and only that body, has the right and the jurisdiction to exercise that power. Our Constitution has been most careful to provide that the said Tribunal shall be 'sole judge of all contests relating to the election, returns and qualifications' of Senators (Article VI, sec. 11). The assumption by this Court of the power that it did in this case, in effect amend the aforementioned provision to provide that the Senate Electoral Tribunal

[21] Lagumbay v. Commission on Elections and Climaco, G.R. No. 254444, Jan. 31, 1966.

> shall be 'the judge of some contests relating to the election, returns and qualifications' of Senators. The result is that the word 'all' has been reduced to just 'some' by this Court as it excludes therefrom such returns as are, in the language of the decision, 'obviously manufactured'."

C. *The Issue of Judicial Review*

Unlike the Commission on Elections, which is embodied under a separate Article in the Constitution, the Electoral Tribunal is a mere provision included in Article VI entitled "Legislative Department." The question, therefore, arises as to whether the Tribunal is only an agency of the Legislative Department. If it is a mere instrumentality of Congress, is its decision subject to the review of the House to which it belongs? If it is not, can its decisions be reviewed by the Supreme Court?

The question of whether the Electoral Tribunals, as created by the Constitution, are mere agencies of the Congress or are entities distinct from and independent of the Congress to the extent of possessing complete control of their internal affairs, was passed upon by the Supreme Court in the case of *Suanes v. Chief Accountant of the Senate*.[22] In this case Suanes was appointed by the Chairman of the Senate Electoral Tribunal and later on, by the President of the Senate to the same position but for different amounts of compensation. To determine which of the two appointments prevailed, the Court deemed it necessary to pass upon the broader issue stated above. In resolving the issue, the Court stated:

> "Respondents maintain that the constitutional provision creating the Electoral Tribunals and defining their powers appears in section 11 of Article VI of the Constitution which refers to the Legislative Department, and from this they infer that said Tribunals are thus intended as parts of the Legislature. And this is alleged to be corroborated by the language of said section 11 of Article VI of the Constitution which provides that 'the Senate and the House of Representatives shall each have an Electoral Tribunal . . .' Since these tribunals as elsewhere adverted to, were created by the Constitution as separate and independent organs so that they may perform their constitutional functions with independence and impartiality completely devoid of partisan influence or consideration, the topographical location of section 11 in Article VI of the Constitution becomes innocuous and immaterial and the words 'shall each have' above referred to can have no other meaning than that the houses of Congress are each provided with independent constitutional organs to settle issues pertaining to Congress which, in the eyes of the Constitution Con-

[22] See footnote no. 16.

> gress cannot adequately decide. It may be said furthermore that the inclusion of the provision creating the Electoral Tribunals in Article VI of the Constitution, may be attributed to the circumstance that the settlement by said Tribunals of contests relating to the election, returns and qualifications of the members of the Legislative Department, should be placed in the very same article relating to that body. Such inclusion does not mean that the Electoral Tribunals are dependent upon the Legislative Department, in the same manner that non-inclusion of the Civil Service in Article VII relating to the Executive Department does not mean that the Civil Service is independent from the Executive branch of the government."

The decision in the case of *Suanes v. Chief Accountant* was an affirmation of the previous statements of the Court in the case of *Angara v. Electoral Commission*[23] that "The Electoral Commission is a constitutional creation, invested with the necessary authority in the performance and execution of the limited and specific functions assigned to it by the Constitution. Although it is not a power in our tripartite scheme of government, it is, to all intents and purposes, when acting within the limits of its authority, an independent organ. It is to be sure, closer to the legislative department than to any other . . . But it is a body separate from and independent of the legislature."

In the case of *Angara*, the petitioner was elected member of the National Assembly and his election was confirmed by the said body. Several days after, his opponent filed a protest in the Electoral Commission. This prompted Angara to bring an action for prohibition to the Supreme Court alleging that since his election had been confirmed by the National Assembly, the Electoral Commission had no authority to entertain the electoral protest against him. In denying the petition and holding that the Commission had authority, the Court also defined its power to review the decisions of the Electoral Commission in this manner:

> "Upon principle, reason and authority, we are clearly of the opinion that upon the admitted facts of the present case, this court has jurisdiction over the Electoral Commission and the subject matter of the present controversy for the purpose of determining the character, scope and extent of the constitutional grant to the Electoral Commission as the sole judge of all contests relating to the election, returns, and qualifications of the members of the National Assembly.
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> "The Electoral Commission . . . is a constitutional organ, created for a specific purpose, namely, to determine all contests relating to the election, returns and qualifications of the members of the National Assembly. Although, the Electoral Commis-

[23] See footnote no. 19.

> sion may not be interfered with, when and while acting within the limits of its authority, it does not follow that it is beyond the reach of the constitutional mechanism adopted by the people and that it is not subject to constitutional restrictions. The Electoral Commission is not a separate department of the government, and even if it were, conflicting claims of authority between the departments and agencies of the government are necessarily determined by the judiciary in justiciable and appropriate cases."

In the case of *Morrero v. Bocar*,[24] the Supreme Court also stated that "the judgment rendered by the Commission in the exercise of such an acknowledged power is beyond judicial interference, except, in any event, upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law."

The decision in the *Morrero v. Bocar* case amplifies the power of judicial review enunciated in the case of *Angara v. Electoral Commission* and in doing so the Supreme Court seems to have overextended its power. The later decision implies that the Supreme Court can review the decision of the Electoral Commission even if the latter rendered the decision in the proper exercise of its jurisdiction upon the allegation that it abused its discretion, such abuse amounting to a denial of due process. This pronouncement seems to destroy the provision that the Electoral Commission is the "sole judge" of all contests within its jurisdiction. By way of example, let us suppose that the protest against Senator Benigno Aquino was decided in his favor. Let us assume further that Senator Aquino was definitely underage, therefore, not qualified to be a senator. Upon appeal, will the Supreme Court review the decision of the Senate Electoral Tribunal? If it does, the Supreme Court, under the assumptions, will inevitably find out that Senator Aquino was underage. If it nullifies the decision of the Senate Electoral Tribunal, will the Tribunal still be the "sole judge" of all contests relating to the qualifications of senators?

APPRAISAL

The events that transpired after the adoption of the Constitution prove the validity of some of the objections of the opponents of the Electoral Commission, at the same time, they show the shortcomings of the reasons advanced by its proponents.

Although the participation of the Supreme Court in the Electoral Tribunals did not diminish its independence and dignity, it surely impaired the ability of the Court to dispense justice to the masses with

[24] 66 Phil. 429. (1938).

proper dispatch. This is evidenced by the increasing number of cases, both criminal and civil, awating final adjudication in the Supreme Court. It is of common knowledge that it takes many years for an appealed case to be decided by the Supreme Court. This is not only due to the very nature of ligitigious proceedings but also due to the incontrovertible fact that the highest tribunal of the land is overburdened.[25] In 1960, the Supreme Court adjudicated 1,628 cases, writing 893 full decisions and 735 resolutions. In comparison, the United States Supreme Court, in its 1960-1961 term, disposed of only 133 cases with full decisions, writing only 118 opinions because some opinions decided more than one case.[26]

One of the main reasons for the creation of the Electoral Commission was to place the resolution of contests relating to election, returns, and qualifications of the members of the National Assembly in an impartial tribunal. The aspiration of the framers of the Constitution was to make the legislative members of the Tribunal the representatives of their respective parties in every case before it only for the purpose of safeguarding the interest of their parties in the course of the litigation. Once the facts of the case are known, the legislative members, like the Justices of the Supreme Court, should act act as impartial judges. This expectation does not seem to materialize. In the sixty-three cases decided by the House Electoral Tribunal from 1946 to 1953, the legislative members voted strictly along party lines in almost all cases.[27] This trend has not changed.

An impartial tribunal is one which decides a case according to its merits. The fact that two-thirds of the members of the Tribunal disregard the merits of the case and vote according to the dictates of their political affiliations cannot make the Tribunal truly impartial though in effect the decision may be impartial in some instances. Under such condition, it is always necessary, for an impartial decision, that there must be, at least, two parties in each House. Where the Tribunal is composed only of three members of the sole party in each House and three Justices of the Supreme Court and the protest is against a party member, the protestant cannot obtain any redress even if his case is

[25] From 1958 to 1967, a total of 15,518 cases have been filed in the Supreme Court, for an average of 1,538 per year, divided as follows: 1958 — 1,538; 1959 — 1,604; 1960 — 1,459; 1961 — 1,408; 1962 — 1,377; 1963 — 1,593; 1964 — 1,713; 1965 — 1,504; 1966 — 1,488; 1967 — 1,497. (Fox, V. "This is how the Supreme Court Works," *Manila Times*, p. 1, col. 4, June 25, 1968.)

[26] Peck, C. *Administrative Law and the Public Law Environment in the Philippines*, 40 WASH. L. REV. 408 (1965).

[27] Padilla, Jr., *op. cit.*, p. 647.

meritorious because the voting will always result in a deadlock, the three legislative members voting in favor of their party member and the three justices in favor of the protestants; hence, the status quo is maintained: the protestant still outside of Congress and the protestee holding on the seat which he does not deserve.

The presence of the representatives of the second largest party is not even a guarantee that political justice will be obtained if such representatives are not impartial. This is exemplified by the case of *Lim v. Pelaez.*[28] In this case the House Electoral Tribunal disqualified Pelaez, a Liberal, as the representative of Misamis Oriental by a five-to-three vote with one Nacionalista abstaining, on the ground that he lacked the necessary residence qualification required by the Constitution. Here, it is to be noted that all the Liberal members of the Tribunal voted for the ouster of their fellow Liberal while all the three justices, like one man, dissented from the opinion of the majority. This unusual action of the three Liberals was indirectly explained by a well-known writer as the result of Pelaez's position contrary to and vote against the pet measures, inside and outside Congress, of Malacañan, which was then occupied by a Liberal President.[29]

Aside from these shortcomings, an obnoxious practice appears to have been formed among the members of the House Electoral Tribunal:

> "It is an established pattern that some House electoral protests have to be scheduled for last minute determination shortly before the expiration of the terms of the protestees.
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> "Two reasons are advanced for the uniform delays in the final adjudication of the election protest. One is the fact that all the six members of the electoral tribunal run for reelection for which reason they have no time to sit down to finish the cases assigned to them. The other reason is that an election protest should be left undetermined to justify the solon-members' collection of their transportation allowances in attending the weekly session of the body."[30]

Another reason for the creation of the Electoral Commission is that it would facilitate the early determination of election contests. But in February 1965 nine months before another congressional election, eight of the protests filed in the House Electoral Tribunal resulting from the 1961 election remained unresolved.[31] So notorious was the

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[28] 49 O.G. 3952, Electoral Case No. 36 (House Electoral Tribunal).

[29] Locsin, T. *Justice, the Case of Emmanuel Pelaez, Philippine Free Press*, p. 3, Jan. 17, 1953.

[30] De Gracia, *What Happen to Those Election Protests*, I Weekly Nations 8.

[31] *Baranco, v. Poll Protests*, Examiner, Issue No. 129, 7.

inefficiency of the Electoral Tribunals and so serious the resultant injustice that the Supreme Court took cognizance of these facts in one of the cases before it, thus:

> "The well-known delay in the adjudication of election protests often gave the successful contestant a mere pyrrhic victory, i.e., vindication when the term of office is about to expire, or has expired. And so the notion has spread among candidates for public office that the 'important thing' is the proclamation; and to win it, they or their partisans have tolerated or abetted the tampering or the 'manufacture' of election returns just to get the proclamation, and then let the victimized candidate to [sic] file the protest, and spend his money to work for an empty triumph."[32]

PROPOSAL

Erasmo Cruz was adjudged by the House Electoral Tribunal the duly elected Congressman of the first district of Bulacan on May 2, 1953. He was able to attend only the last few days of the last session of the Second Congress before his term expired. Artemio Lobrin won his case in a decision rendered at the end of November 1961. The elected lawmaker's only official act was to sit with the members of the Fourth Congress to canvass the presidential and vice-presidential returns in the general elections of November 12, 1961.[33]

No man with fair sense of justice will relish the repetition of these two cases. The Electoral Tribunals, especially the House Electoral Tribunal, fall short of their goal. It is, therefore, submitted that, in order to remedy this deplorable situation, the functions and powers of the Electoral Tribunals should be transferred to a separate constitutional body without legislative members, but independent from all the branches of the Government, the Supreme Court included. The Tribunal must be a constitutional body like the Electoral Tribunals so that it can perform its duties without fear that it might be abolished if a decision offends the powers-that-be. The new tribunal to be created may be called the Supreme Court Electoral Tribunal, to distinguish it from the Supreme Court and other courts.

It is proposed that the Supreme Electoral Tribunal should be composed of one Supreme Electoral Justice and such number of Associate Justices as might be determined by Congress but not less than six. The minimum number of members is proposed to minimize the effect of extra-legal pressures that will be wrought upon the individual

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[32] Lagumbay v. Commission on Election and Climaco G.R. No. 254444, Jan. 31, 1966.

[33] De Gracia, *op. cit.*

members of the Tribunal because it is a truism that there is strength in number, at least psychologically and it is this kind of indirect pressure that will be brought upon the members of the Tribunal by the interested political parties rather than physical coercion.

The members of the Tribunal should be appointed by the President of the Philippines with the approval of the Commission on Appointments. However, if the President, in case of vacancy, should fail to appoint a successor within a period of two months, the majority of the remaining members of the Tribunal would have the right to elect the successor without the need of the approval of the Commission on Appointments. If two or more nominees obtain the same number of votes, the nominee in whose favor the vote of the Supreme Justice was cast should be deemed elected. Also, the Commission on Appointments should act on the appointment within one month from its submission by the President. In case of failure to act within that period, the Commission would lose its right to pass upon the appointment and the appointee should automatically become a member of the Tribunal. The purpose of limiting the period within which the President may exercise the right to appoint, and the Commission to act on such appointment is to compel the President to appoint a successor and the Commission to act on such appointment within a reasonable time. If the vacancy remains unfilled for a long time, the work of the Tribunal will be impaired. This proposal will also limit the political bargaining between the President and the Commission on Appointments on such appointment.

No person may be appointed to the Tribunal unless he is a natural-born citizen of the Philippines, is at least forty years of age, and has for ten years or more been a judge of a court of record or engaged in the practice of law in the Philippines.

The requirement that a member of the Tribunal be a natural-born citizen will obviate any question of divided loyalty with regard to the vote of any member. This requirement is important when the Tribunal is considering protests in local elections. Since candidates for local offices need not be natural-born citizens of the Philippines, members of the Tribunal who are only naturalized citizens might favor those candidates who are also naturalized citizens, especially those coming from the same country of origin of the justices. In deciding electoral protests, especially in closely contested election, the decision of the Tribunal must be directed by unblemished impartiality. The justices, like Caesar's wife, must be beyond suspicion. The other require-

ment would insure the competence of the members of the Tribunal in the application and interpretation of the law and precepts of justice and equity.

The members of the Tribunal should hold office during good behaviour, as long as they are physically and mentally capable of discharging the duties of their office. This will keep in office justices who, in spite of old age, can still perform their duties creditably and at the same time keep out those who, notwithstanding their youth, become incapacitated to discharge the duties of their office. However, they should be given the option to retire upon reaching the age of seventy. When a justice appears to be no longer capable of performing his duties, a vote should be taken, at the instance of any other member, to determine whether to retire him or not. The vote of two-thirds of all the members shall be necessary to carry out the decision.

They would receive a fixed compensation which should not be diminished nor increased during their continuance in office. They should only be removed in the same manner and for the same reasons as the President and Justices of the Supreme Court, that is, by impeachment. These provisions should guarantee the independence of the Tribunal and the impartiality of its decisions because they would protect the members from acts of vengeance on the part of the executive and the legislative branches of the government whose members might have been adversely affected by its decisions. The fixed compensation would prevent the members from acquiescing to the demands of the members of the other branches of the government for fear that their salary would be reduced, and at the same time it would prevent them from being subservient in the hope that their salary would be increased. The fixed tenure of office would guarantee the right of the members against arbitrary removal. The only way to remove them would be by impeachment and this would not be resorted to by Congress unless there was a clear and positive ground for doing so. To resort to this means capriciously would be to commit political suicide. Such a grave abuse of power would not be countenanced by the people as a whole.

The Tribunal should have the exclusive original jurisdiction over all contests relating to the election, returns, and qualifications of the members of Congress and of the President and the Vice-President of the Republic. The Tribunal should also have exclusive appellate jurisdiction over all election protests from the barrio captain to the provin-

cial governor. It should also have all the powers inherent in courts of justice as essential to the execution of its powers and to the maintenance of its authority.

All contests involving the President, the Vice-President and the members of Congress should be decided by the Tribunal en banc. The vote of the majority should be necessary to pronounce a judgment. In taking cognizance of its appellate jurisdiction, the Tribunal may be divided into two divisions. The concurrence of the majority of each division should be necessary for the pronouncement of a judgment.

In the proper exercise of its functions, the decision of the Tribunal should be final and unappealable. Its decisions could be appealed to the Supreme Court only to determine whether or not the former had jurisdiction to act on the matter in question. Alleged abuse of discretion on the part of the Tribunal would not be a ground to appeal its decision because it would defeat one of the main purposes of the proposal, that is, to provide an adequate means for a speedy resolution of election cases.

Since elections are held in the Philippines every two years, it is unlikely that the Tribunal should run out of cases to decide, but if that situations occurred, the law might constitute it into two additional divisions of the Court of Appeals. In such a case the decisions of each division might be appealed to the Supreme Court, on any ground provided for by law.

Two benefits which can be derived from the adoption of the proposal are readily apparent. First, it would enable the Supreme Court to devote its full time to the adjudication of ordinary cases. It would relieve the Supreme Court of the duty of acting as the Presidential Electoral Tribunal under Republic Act No. 1793, taking cognizance of presidential and vice-presidential election protests. Six of its members would also be released from their duties in the Electoral Tribunals of Congress, thereby enabling them to dedicate their full time to the fulfillment of their primary duties as members of the Supreme Court. Invariably, the lower courts and the Supreme Court are swamped with election cases after every election and the election protests in the lower courts usually reach the Supreme Court, the consequence of which is to draw the attention of the Court away from the ordinary cases which have been pending in the Court, many of them for a long time. As a result of the national election of 1961, the following election cases

were filed: one case (Garcia v. Macapagal) before the Presidential Electoral Tribunal, one case (Hidalgo v. Manglapus) before the Senate Electoral Tribunal, 30 cases before the House Electoral Tribunal and 269 cases before the Provincial and City Fiscals.[34] In the local election of 1963, 103 cases were filed before the Provincial and City Fiscals.[35] In the national election of 1965, the following cases were filed: one case (Roxas v. Lopez) before the Presidential Electoral Tribunal, one case (Climaco v. Lagumbay) before the Senate Electoral Tribunal, 33 cases before the House Electoral Tribunal, and 122 cases before the Provincial and City Fiscals.[36]

The other reason is that the transfer of all election protests to a separate tribunal would lead not only to the speedy adjudication of all election cases but also to their impartial resolution because the judges have no personal interest in the result.

Election protests by their very nature are difficult to resolve considering the amount and the kinds of evidence that the courts must consider. The review of the election returns, especially the analysis of handwriting of voters involving thousands of ballots, is a long and complicated process. But with a separate tribunal fully devoting its time to the determination of election cases, the period for their consideration might be shortened and the complicated process untangled as the tribunal develops a degree of expertise resulting from the accumulation of experience and the consequent acquisition of techniques in meeting the problems that might arise.

DIOGENES C. DAYAN

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[34] *Report of the Commission on Elections to the President and Congress on the Manner the Elections were held on Nov.* 14, 1961, pp. 287-288.
[35] *Report of the Commission on Elections to the President and Congress on the Manner the Elections were held on Nov.* 12, 1963, pp. 566-558.
[36] *Report of the Commission on Elections to the President and Congress on the Manner the Elections were Held on Nov.* 9, 1965, pp. 310-315