A YEAR AND A HALF OF CONSTITUTIONAL LAW: 1987-1988

*Vicente V. Mendoza**

I. JUDICIAL REVIEW IN OPERATION

Problems of Prospectivity and Retroactivity

1. *The Effectivity of the New Constitution.* — In *De Leon v. Esguerra,*[1] the Court, in an opinion by Justice Melencio-Herrera, held that the new Constitution had come into force and effect on February 2, 1987, and not on February 11, 1987, when the President proclaimed its ratification.[2] The ruling was based on Art. XVIII, Sec. 27 of the new Constitution, providing that the Constitution "shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite." Although a similar provision of the 1973 Constitution[3] had been construed to refer to the date of proclamation of the results of the plebiscite[4] presumably because, until then, it was not possible to tell whether the Constitution had been adopted,[5] the Court in *De Leon* felt bound by the intent of the Constitutional Commission, as expressed in the record of its proceedings to make the Constitution effective on the date of its ratification.[6] As Chief Justice Teehankee said in his concurring opinion, "[The record] shows that the clear, unequivocal and express intent of the Constitutional Commission in unanimously approving . . . Section 27 of Transitory Article XVIII of the 1987 Constitution was that 'the act of ratification is the act of voting by the people. So that is the date of of the ratification' and that 'the canvass thereafter [of the votes] is merely the mathematical confirmation of what was done during the date of the plebiscite and the proclamation of the President is merely the official confirmatory declaration of an act which was actually done by the Filipino people in adopting the Constitution when they cast their votes on the date of the plebiscite.' "[7]

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1 153 SCRA 602 (1987).

2 Proclamation No. 58.

3 1973 CONST., Art. XVII, Sec. 16.

4 Javellana v. Executive Secretary, 50 SCRA 30 (1973); *accord,* Magtoto v. Manguera, 63 SCRA 4 (1975); Occeña v. COMELEC, 104 SCRA 1 (1981).

5 Dean Sinco states that "The better rule seems to be that an amendment takes effect at the time the votes are canvassed and the results made public." PHILIPPINE POLITICAL LAW 55 (11th Ed., 1962).

6 5 RECORD OF THE PHILIPPINE CONSTITUTIONAL COMMISSION 620-23 (1986).

7 The first statement quoted was that of Commissioner Nolledo, while the second was that of Commissioner Regalado at the session of the Constitutional Commission held on October 8, 1986. 5 RECORD 622.

Justice Sarmiento dissented, contending that the date of proclamation (February 11, 1987) should be considered the date of effectivity, on the basis of precedents set by past Constitutions and constitutional amendments. He argued that the new Constitution could not be applied to acts done before the proclamation of its effectivity without invalidating those acts.

There is merit in this position. To be sure, the Provisional Constitution in its Art. V, Sec. 5 also provided that the new Constitution to be framed would become "effective upon ratification by a majority of the votes cast" in the plebiscite. It is also true that the Constitutional Commission intended the new charter to take effect on the date of the plebiscite. The question, however, is, should the new Constitution take effect on that date if to do so would result in the nullification of acts done in reliance on the former law? In this case the replacement of a local official had been done pursuant to the Provisional Constitution before the new Constitution was proclaimed to have been ratified and to have become effective. In the case of statutes, it has been held in *Tañada v. Tuvera*[8] that statutes can take effect only after their publication. As Justice Feliciano forcefully argued in his concurring opinion in that case:

> A statute which by its terms provides for its coming into effect immediately, upon approval thereof, is properly interpreted as coming into effect immediately upon publication thereof. . . . Such statute, in other words, should not be regarded as purporting literally to come into effect immediately upon its approval or enactment and without need of publication. For so to interpret such statute would be to collide with the constitutional obstacle posed by the due process clause. . . .[9]

This reasoning applies *mutatis mutandis* to constitutions.

On the other hand, in *Zaldivar v. Sandiganbayan*[10] and *Zaldivar v. Gonzales*[11] the Court in effect suspended the effectivity of a provision of the Constitution by giving its decision in those case only prospective effect. The Court ruled that its decision of April 27, 1988, holding Art. XI, Sec. 7 to have transferred the power of the Tanodbayan to investigate graft cases to the Ombudsman, applied only to cases filed after that date but not to those filed before, with the exception of cases in which that decision was made and similar other cases in which the accused had questioned the authority of the Tanodbayan. For support, the Court cited the case of *Johnson v. New Jersey*[12] in which the U.S. Supreme Court gave its decision in *Miranda v. Arizona*,[13] requiring that suspects in police interrogations must be warned of their rights of silence and to counsel, only prospective effect. But *Johnson v. New Jersey*

[8] 146 SCRA 446 (1986).
[9] *Id.*, at 458.
[10] G.R. Nos. 79690-707, May 19, 1988.
[11] G.R. No. 80578, May 19, 1988.
[12] 388 U.S. 719 (1966).
[13] 384 U.S. 436 (1966).

dealt with the effect of an overruling doctrine on pending cases, considering that the new doctrine changes existing rules. The purpose was to make case law operate in similar fashion as statute law, and that is, prospectively. On the other hand, the decision in the *Zaldivar* cases does not constitute an overruling doctrine. It is the Constitution, not the decision in those cases interpreting Art. XI, Sec. 7, which made new law. If the Constitution took effect on February 2, 1987, it should be applied to cases filed after that date. To rule that, nevertheless, cases filed after that date but before the promulgation of the Supreme Court decision on April 27, 1988 should not be affected by the new rule is to make the decision and not the Constitution the prevailing rule.

Indeed, it is the rule on de facto public officers and not the technique of prospective overruling that should have been more appropriately applied in those cases. Application of that rule would save from invalidation all cases filed by the Tanodbayan before the decision in that case without exempting those, who like the petitioners, brought suits before the Court.

2. *Effectivity of Overruling Decisions.* — In 1975, the Supreme Court held that the Constitution's new *Miranda* rule did not affect the validity of confessions obtained before January 17, 1973. The Court ruled:

> We hold that this specific portion of this constitutional mandate has and should be given a prospective and not a retroactive effect. Consequently, a confession obtained from a person under investigation for the commission of an offense, who has not been informed of his right (to silence and) to counsel, is inadmissible in evidence if the same had been obtained after the effectivity of the New Constitution on January 17, 1973. Conversely, such confession is *admissible* in evidence against the *accused,* if the same had been obtained *before* the effectivity of the new Constitution, even if presented after January 17, 1973 and even if he had not been informed of his right to counsel, since no law gave the accused the right to be so informed before that date.[14]

The Court was concerned, lest the retroactive application of the new rule "would have great unsettling effect on the administration of justice in this country," especially since only four years before, in another case,[15] it had rejected the application of the *Miranda* case to Philippine cases.[16]

Similarly, after the Court had decided to change the case-to-case approach to voluntariness of waivers[17] and adopted an absolute rule requiring the assistance of counsel before a suspect can waive the right to counsel during custodial interrogations,[18] the Court did not apply the new doctrine to a confession given before the date of its new decision.[19] But,

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[14] Magtoto v. Manguera, 63 SCRA 4 (1975).
[15] People v. Jose, 37 SCRA 450 (1971).
[16] The ruling in *People v. Jose* was reiterated in *People v. Paras,* 56 SCRA 248 (1974).
[17] People v. Caguioa, 95 SCRA 2 (1980).
[18] People v. Galit, 135 SCRA 465 (1985).
[19] People v. Nabaluna, 142 SCRA 446 (1986).

in *People v. Albofera*[20] and *Olaes v. People*,[21] the Court appears to have departed from its previous rulings giving overruling decisions only prospective effect, as it applied the *per se* rule to confessions given before March 20, 1985, the date the overruling decision was announced. Perhaps the exclusion of confessions in those cases should have been justified solely on the ground that, even by the old test of voluntariness, the waivers were involuntary. After all the Court found that the police had failed to give meaningful warnings.

II. THE STRUCTURE AND POWERS OF THE GOVERNMENT

A. *The President*

1. *Presidential Appointments Subject to Confirmation.* — In *Sarmiento v. Mison*,[22] the petitioners, as taxpayers, sought to prohibit the Commissioner of Customs from performing his functions and the Secretary of the Budget from paying the latter's salary on the ground that the Customs Commissioner's appointment, without confirmation by the Commission on Appointments, was invalid. In issue was Art. VII, Sec. 16 of the Constitution which provides that —

> The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of the departments, agencies, commissions or boards.
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> The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.

Through Justice Padilla, the Court held that only those mentioned in the first sentence are subject to confirmation by the Commission on Appointments; the rest may be appointed solely by the President. Since the Commissioner of Customs is not among those mentioned in the first sentence, his appointment does not require confirmation.

The Court defined four classes of Presidential appointees:

> *First*, the heads of the executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank

[20] 152 SCRA 123 (1987).
[21] G.R. Nos. 78347-49, Nov. 9, 1987.
[22] G.R. No. 79974, Dec. 17, 1987.

> of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution:
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> [The "other officers" whose appointments are vested in the President in the 1987 Constitution are:
> 1. Regular members of the Judicial and Bar Council (ART. VIII, Sec. 8(2);
> 2. Chairman and Commissioners of the Civil Service Commission (ART. IX-B, Sec. 1(2);
> 3. Chairman and Commissioners of the Commission on Elections (ART. IX-C, Sec. 1(2);
> 4. Chairman and Commissioners of the Commission on Audit (ART. IX-D, Sec. 1(2); and,
> 5. Members of the regional consultative commission (ART. X, Sec. 18)].
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> *Second,* all other officers of the Government whose appointments are not otherwise provided for by law;
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> *Third,* those whom the President may be authorized by law to appoint;
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> *Fourth,* officers lower in rank whose appointments the Congress may by law vest in the President alone.

The Court invoked both *text* and *legislative history* of Art. VII, Sec. 16 in support of its interpretation. It called attention to the language of the provision that, with respect to the first class of public officers, the President's power is to "*nominate* and, with the consent of the Commission on Appointments, *appoint*" such officers. It contrasted this with the language used with respect to the second and third classes of officers, to wit: "[The President] shall also appoint all other officers of the government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint," without mention of the Commission on Appointments.

For the legislative history of the provision, the Court turned to the record of the Constitutional Commission, which showed that the original draft of Art. VII, Sec. 16 was as follows:

> The president shall nominate and, with the consent of a Commission on Appointment, shall appoint the heads of the executive departments and bureaus, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain and all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may by law vest the appointment of inferior officers in the President alone, in the courts, or in the heads of departments.

However, Commissioner Vicente Foz moved for the amendment of the provision, *first,* by dropping heads of bureaus from the list of officers whose appointments are subject to confirmation on the ground that "The position of bureau director is actually low in the executive department and to require further confirmation of presidential appointment of heads of bureaus would subject them to political influence" and, *second,* by putting a period after the word "captain" and replacing the phrase "and all" with the phrase "He shall also appoint." Commissioner Regalado, Vice Chairman of the

Committee on the Executive Department, gave this interpretation if Foz's amendments were adopted: "Madam President, the Committee accepts the proposed amendment because it makes it clear that those other officers mentioned therein do not have to be confirmed by the Commission on Appointments." When put to a vote, Foz's proposals were both approved.[23]

There are two problems raised by the Court's interpretation of Art. VII, Sec. 16. *First,* if colonels and naval captains are subject to confirmation, why not also other officers higher in rank, like the Central Bank Governor, who, under the Court's categorization, falls under the third group, namely, "those whom he may be authorized by law to appoint"? *Second,* if only those in the first class of officers are subject to confirmation by the Commission on Appointments, why does the Constitution say that the appointments of those belonging to the fourth class may be vested "in the President alone" thus implying that the appointments of others needed confirmation?

With respect to the first problem, the Court stated that the "contrasts [in the language used] underscore the purposive intention and deliberate judgment of the framers of the 1987 Constitution" to require confirmation with respect to the first class. With respect to the second problem, it said the use of the word "alone" was merely a "slip or *lapsus* in draftmanship." The original draft of Art. VII, Sec. 16 was adopted from the provision of the 1935 Constitution.[24] The members of the Constitutional Commission overlooked the fact that, after they had decided to trim down the list of appointments subject to confirmation, the word "alone" lost its meaning and should have been deleted. Concluding, the Court held:

> Coming now to the immediate question before the Court, it is evident that the position of Commissioner of the Bureau of Customs (a bureau head) is not one of those within the first group of appointments where the consent of the Commission on Appointments is required. As a matter of fact, as already pointed out, while the 1935 Constitution includes "heads of bureaus" among those officers whose appointments need the consent of the Commission on Appointments, the 1987 Constitution, on the other hand, deliberately excluded the position of "heads of bureaus" from appointments that need the consent (confirmation) of the Commission on Appointments.

Chief Justice Teehankee concurred, emphasizing that the decision in the case did not foreclose consideration of the validity of Senate Bill No. 137, then pending in the Congress, providing for the confirmation of all appointments made by the President. The bill was subsequently approved

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[23] 2 RECORD 514-15, 520 (1986).

[24] Art. VII, Sec. 10(3) of the 1935 Constitution provided: "The President shall nominate and with the consent of the Commission on Appointments, shall appoint the heads of the executive departments and bureaus, officers of the Army from the rank of colonel, of the Navy and Air Forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint."

by both houses of Congress, but it was subsequently disapproved by the President. Ironically, the decision in this case formed the basis for the President's veto of the bill.

Justices Melencio-Herrera and Sarmiento filed separate concurring opinions, stressing the language of Art. VII, Sec. 16. Under the first sentence, the President "nominates" and, with the consent of the Commission on Appointments, "appoints." The second sentence, on the other hand, uses only the term "appoint."

On the other hand, Justices Gutierrez and Cruz dissented in separate opinions. Justice Gutierrez contended:

> In providing for the appointment of members of the Supreme Court and judges of lower courts (Section 9, Article VIII), the Ombudsman and his deputies (Section 9, Article XI), the Vice President as a member of cabinet (Section 3, Article VII) and, of course, those who by law the President alone may appoint, the Constitution clearly provides no need for confirmation. This can only mean that all other appointments need confirmation. Where there is no need for confirmation or where there is an alternative process to confirmation, the Constitution expressly so declares. Without such a declaration, there must be confirmation.

He argued that if only those mentioned in the first sentence are subject to confirmation there would be no need to mention the other officers whose appointments are vested solely in the President.

Justice Cruz pointed out absurd results flowing from the majority interpretation:

> Following this interpretation, the Undersecretary of Foreign Affairs, who is not the head of his department, does not have to be confirmed by the Commission on Appointments, but the ordinary consul, who is under his jurisdiction, must be confirmed. The colonel is by any standard lower in rank than the Chairman of the Commission on Human Rights, which was created by the Constitution; yet the former is subject to confirmation but the latter is not because he does not come under the first sentence. The Special Prosecutor whose appointment is not vested by the Constitution in the President, is not subject to confirmation under the first sentence, and neither are the Governor of the Central Bank and the members of the Monetary Board because they fall under the second sentence as interpreted by the majority opinion. Yet in the case of the multi-sectoral members of the regional consultative commission, whose appointment is vested by the Constitution in the President under Article X, Section 18, their confirmation is required although their rank is decidedly lower.

Resort to the text and the legislative history of a constitutional provision is an accepted mode of interpretation. But, in the case of Art. VII, Sec. 16, it is inadequate. For example, did the framers of the Constitution intend to exempt from the requirement of confirmation the appointment of the Governor of the Central Bank, whose powers are so vast he can actually plunge the nation into a financial crisis? If they did, for what reason did they exempt his appointment? The fact is that the absurd situations

pointed out in the dissent of Justice Cruz were not discussed in the Constitutional Commission, and it is doubtful whether, had their attention been called to such situations, the Commissioners would have exempted the officers in question from confirmation. Nor is legislative history of Art. VII, Sec. 16 all that clear. In concluding the debate on this provision, Commissioner Joaquin Bernas said in answer to a query of Commissioners Hilario Davide and Francisco Rodrigo that Congress was not precluded from requiring that certain other appointments of the President be submitted to the Commission on Appointments for confirmation. The record of the Commission shows the following:

> MR. DAVIDE: I just would like to get a clearer intention. With the acceptance of that proposed amendment, would Congress be prohibited from creating an office and vesting the authority of appointing the officials therein on the President, with the requirement that such appointments should bear the conformity or consent of the Commission on Appointments? Under the proposal, it would seem that all other such officials may be appointed without the consent of the Commission on Appointments, prohibiting, therefore, the legislature to so create an office for which the requirement for consent of the Commission on Appointments for positions therein is stated in the law itself.
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> FR. BERNAS: Madam President, the constitutional list of officers whose appointments need the confirmation of the Commission on Appointments is not exclusive. If the Congress is so minded, it may require other officers also to be confirmed by the Commission Appointments.
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> MR. RODRIGO: Madam President, before we vote, may I be clarified. As worded now, other officers, aside from those enumerated here, may also be appointed by the President with the confirmation of the Commission on Appointments, if it is so provided in this Constitution. I remember Commissioner Bernas say that officers may also need the confirmation of the Commission on Appointments if so provided by law, so that the approval of that amendment which says "UNDER THIS CONSTITUTION" does not exclude the power of the legislature to enact a law providing that these officials shall need the confirmation of the Commission on Appointments.
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> FR. BERNAS: It does not.
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> MR. RODRIGO: Thank you.
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> THE PRESIDENT: Is there any objection to this proposed amendment of Commissioners Foz and Davide as accepted by the Committee? (*Silence*) The chair hears none; the amendment, as amended, is approved.[25]

Can Congress require confirmation of certain nominations if the purpose of the first sentence is really to limit the participation of Congress in the appointing process? The fact is that while the decision to exempt the appointment of bureau directors was explained, there was not even an

[25] 2 RECORD 520-521; July 31, 1986.

explanation for the other decision to put a period after the enumeration of officers subject to confirmation. This makes resort to the record of the Constitutional Commission inadequate for determining the meaning and scope of Art. VII, Sec. 16. Perhaps the Court should have limited its ruling in *Sarmieno v. Mison* to the precise case of bureau directors, leaving the determination of the question with respect to other appointments to a future day.

2. *President's Power to Grant Amnesties.* — While the President has the power to grant amnesties with the concurrence of a majority of all the members of Congress,[26] he cannot approve an application for amnesty filed by persons not otherwise covered by his amnesty proclamation. If he does, his act will have no legal effect. This was the ruling in *Macaga-an v. People.*[27] The petitioners were convicted by the Sandiganbayan of estafa through falsification of public documents. They invoked amnesties extended to them by President Marcos pursuant to P.D. No. 1082. However, the Decree covered only political offenses committed by members and supporters of the Moro National Liberation Front (MNLF) and the Bangsa Moro Army. The Supreme Court, through Justice Feliciano, held that petitioners were not entitled to amnesty and that the act of the former President, approving their applications for amnesty, was without legal effect.

3. *President's Power to Order Arrest of Convict for Violation of Pardon.* — In *Torres v. Gonzales,*[28] the question was whether the determination that a convict has violated the conditions of his pardon must be made by the courts, or whether the President can make such determination and, if so, order the commitment of the convict. The Court, in an opinion by Justice Feliciano, held that the Executive Department has the option either (1) to order the recommitment of the convict so that he will serve the unexpired portion of his original sentence, pursuant to Sec. 65(i) of the Revised Administrative Code, or (2) to prosecute him under Art. 159 of the Revised Penal Code. With respect to the first option, the Court stated that, as the convict consented to place his liberty upon the judgment of the pardoning authority, "he [could not] invoke the aid of the courts, however erroneous the findings may be upon which his recommitment was ordered."[29] The Court explained:

> It may be emphasized that what is involved in the instant case is *not* the prosecution of the parolee for a subsequent offense *in the regular course of administration of the criminal law.* What is involved is rather the ascertainment of whether the convict has breached his undertaking that he would "not again violate any of the penal laws of the Philippines" *for purposes of reimposition upon him of the remitted portion of his original sentence.* The consequences that we here deal with are the consequences of

[26] CONST., Art. VII, Sec. 19.
[27] 152 SCRA 430 (1987).
[28] 152 SCRA 272 (1987).
[29] The language is from Tesoro v. Director of Prisons, 68 Phil. 154 (1939).

> an ascertained breach of the conditions of a pardon. A convict granted conditional pardon, like the petitioner herein, who is recommitted, must of course be convicted by final judgment of a court of the subsequent crime or crimes with which he was charged before *the criminal penalty for such subsequent offense(s)* can be imposed upon him. Again, since Article 159 of the Revised Penal Code defines a distinct, substantive, felony, the parolee or convict who is regarded as having violated the provisions thereof must be charged, prosecuted and convicted by final judgment before he can be made to suffer the penalty prescribed in Article 159.[30]

Accordingly, the Court dismissed the petition for writ of habeas corpus of petitioner who had been ordered recommitted after it was found that he had been charged with sedition and 20 counts of estafa.

Justice Cruz dissented, arguing that in the absence of a final judgment of conviction finding the petitioner guilty of the charges, he cannot be found to have violated the condition of his pardon that he "would not violate any of the penal laws of the Philippines."

B. *The Judiciary*

1. *Automatic Review of Death Sentences and the Abolition of the Death Penalty.* — Rule 122, Sec. 10 of the 1985 Rules of Criminal Procedure provides for the automatic review of death sentences. In *People v. Lasanas*,[31] the Supreme Court held that, under this Rule, cases involving offenses which, although not punished with death, arose out of the same occurrence as those involving offenses giving rise to capital cases are also subject to automatic review. The Court said this interpretation would be favorable to the accused because it would result in the review of all the facts, although it is also quite possible that such review can result in the imposition of a greater penalty if that imposed by the lower court is found by the Supreme Court to be erroneus. Such possibility would soon be obviated in view of the abolition of the death penalty in the new Constitution.[32] In the future, Justice Feliciano pointed out, in his opinion for the Court, unless the death penalty is reinstituted or mandatory review of *reclusion perpetua* cases is provided for, an accused would have to appeal both his conviction for an offense punishable with *reclusion perpetua* and his conviction for a less serious crime or crimes committed on the same occasion as the more serious one.

2. *Period for Deciding Cases.* — In *De Roma v. Court of Appeals*,[33] the Supreme Court held that Art. X, Sec. 11(1) of the 1973 Constitution, providing that "the maximum period within which a case or matter shall be decided or resolved from the date of its submission shall be eighteen months for the Supreme Court, and, unless reduced by the Supreme Court,

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30 152 SCRA at 280 (Emphasis by the Court).
31 152 SCRA 27 (1987).
32 Art. III, Sec. 19(1).
33 152 SCRA 205 (1987).

twelve months for all inferior collegiate courts, and three months for all other inferior courts" was directory and that the failure of the Court of Appeals to comply with this provision did not deprive it of jurisdiction or invalidate its decision. It cited its earlier ruling in *Marcelino v. Cruz*[34] that the three-month period for trial courts to decide cases was not mandatory.

It would seem, however, that the failure of the Supreme Court or the Court of Appeals to decide cases within the prescribed period, while not a ground for divesting the Court of its jurisdiction or of nullifying any decision rendered outside that period, nonetheless has other consequences on the decision. Under Art. X, Sec. 11(2), "when the applicable maximum period shall have lapsed without the rendition of the corresponding decision or resolution because the necessary vote cannot be had, the judgment, order, or resolution appealed from shall be deemed affirmed, except in those cases where a qualified majority is required and in appeals from judgments of conviction in criminal cases; and in original special civil actions and proceedings for habeas corpus, the petition in such cases shall be deemed dismissed."

The provision may be directory as far as the trial courts were concerned, as held in *Marcelino v. Cruz,* because Art. X, Sec. 11(2) applied only to the failure of either the Supreme Court or the Court of Appeals to decide cases within the prescribed period. As to them, their failure to decide cases within three months would result only in administrative liability of judges who, pursuant to Sec. 5 of Judiciary Act of 1948, would not be able to draw their salaries. But with regard to the Supreme Court and other collegiate appellate courts, the 1973 Constitution attached consequences for their delays to their decisions.

Anyway, the new Constitution in its Art. VIII, Sec. 15, now considers the period therein prescribed to be mandatory. While the failure of courts to decide cases within the prescribed periods would not result either in the loss of their jurisdiction or in the nullification of their decisinos, such failure nonetheless would render judges and justices responsible for the delay. Thus, Art. VIII, Sec. 15 reads:

> (1) All cases or matters filed after the effectivity of this Constitution *must* be decided or resolved within twenty-four months from date of submission for the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.
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> (2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.
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> (3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forth-

[34] 121 SCRA 51 (1983).

> with be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.
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> (4) Despite the expiration of the applicable *mandatory* period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay.

3. *Income Taxation of Judges.* — In *Nitafan v. Commissioner of Internal Revenue*,[35] the question was whether under the 1987 Constitution, members of the judiciary are again exempt from the payment of income tax. The question arose because a provision of the previous Constitution, that "No salary or any form of emolument of any public officer or employee, including constitutional officers, shall be exempt from the payment of income tax,"[36] was not reproduced in the new Constitution. Art. VIII, Sec. 10 simply provides:

> The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased.

Except that the word is "decreased" rather than "diminished," this provision is similar to Art. VIII, Sec. 9 of the 1935 document, which in two cases[37] had been construed as exempting members of the judiciary from the payment of income tax on the ground that the imposition of such tax would constitute a "diminution" of their salaries and impair the independence of the judiciary.

In holding petitioners, who are judges, liable to the payment of income tax, the Court cited the record of the 1986 Constitutional Commission which shows that a proposal to exempt judges from the payment of income tax was defeated and the ruling in *Perfecto v. Meer* and *Endencia v. David* rejected. The record of the Commission also shows that it decided to include a provision similar to that found in the 1973 Constitution, declaring that the salaries of public officers and employees are not exempt from the payment of income tax, but in the final drafting the Commission overlooked to do so.[38] Justice Melencio-Herrera, for the Court, stated: "The framers of the fundamental law, as the alter ego of the people, have expressed in clear and unmistakable terms the meaning and import of section 10, Article VIII of the 1987 Constitution that . . . all citizens should bear their aliquot part of the cost of maintaining the government and should share the burden of general income taxation equitably."

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35 152 SCRA 284 (1987).
36 1973 CONST., Art. XV, Sec. 6.
37 Perfecto v. Meer, 85 Phil. 552 (1950); Endencia v. David, 93 Phil. 696 (1953).
38 1 RECORD 505-506, July 14, 1986.

C. *The PCGG*

1. *Validity of Sequestration, Freeze and Takeover Orders.* — The Provisional Constitution, adopted in the aftermath of the February 1986 revolution, provided for the recovery of "ill-gotten properties amassed by the leaders and supporters of the previous regime" and, for this purpose, authorized the "sequestration and freezing of assets or accounts."[39] To implement this provision, the Presidential Commission on Good Government was created with power to sequester any building or office wherein ill-gotten wealth or property may be found and any record pertaining thereto "to prevent their destruction, concealment or disappearance," as well as to provisionally take over "business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos."[40]

The Court discussed the scope of the powers of the PCGG in *Bataan Shipyard & Engineering Co. v. PCGG.*[41] The Bataan Shipyard & Engineering Co., or BASECO, was one of the companies sequestered by the PCGG pursuant to its powers under Executive Order No. 1. BASECO brought a suit for certiorari and prohibition in the Supreme Court, questioning the validity of Executive Order No. 1 and its amendments and several orders issued by the PCGG, under which BASECO was made to produce its corporate documents, its contract for security services terminated, and scrap iron belonging to it sold or disposed of, and its officers separated from its service.

The Court dismissed the petition by the vote of 10 to 4 of its members. The Justices were unanimous in upholding the validity of Executive Order No. 1 and its amendments under which the sequestration orders were issued. The Justices divided on the validity of the takeover order by which the PCGG exercised acts of ownership.

The opinion of the Court, written by Justice Narvasa, sustained the validity of the Executive Orders on the basis of the Provisional Constitution of 1986 which directed the government to take steps to recover "ill-gotten properties of the former President and those close to him" and on the general police power of the state. "There can be no debate about the validity and eminent propriety of the Government's plan," the Court said, although it quickly added that there must be "judicial proceedings so that the recovery of ill-gotten properties may be validly and properly adjudged and consummated." Pending such proceedings and in order to prevent the concealment, disappearance, destruction, dissipation or loss of assets and properties, the Court pointed out, the PCGG is empowered to issue sequestration or freeze orders or to provisionally take over a business. It empha-

39 PROVISIONAL CONST., Art. II, Sec. 1(d).
40 Exec. Order No. 1, Feb. 28, 1986, Secs. 2 and 3(b)(c).
41 150 SCRA 181 (1987).

sized that these are merely provisional remedies. The Court noted that the new Constitution requires the filing of judicial actions within six months of its ratification on February 2, 1987, in the case of sequestration and "freeze orders" issued before that date, and within six months from the issuance of such orders, in the case of those issued after February 2, 1987, otherwise the order is deemed automatically lifted. In addition, the Court said, there must be in all cases "a prima facie factual foundation" for the issuance of such orders, with "adequate and fair opportunity [given to the party against whom it is issued] to contest it and endeavor to cause its negation and nullification."

The majority then proceeded to determine the ownership of BASECO. The majority found that although twenty were listed as stockholders of the company as of April 23, 1986, only three corporations held 95.82% of the 218,819 outstanding shares of stocks and that when the former President left Malacañang Palace at the height of the revolution, he left behind certificates of stocks corresponding to those held by the controlling stockholders, endorsed in blank, together with deeds of assignments. From these findings, the Court concluded that there was prima facie basis for holding that BASECO was owned by President Marcos. It explained:

> In the light of the affirmative showing by the Government that, *prima facie* at least, the stockholders and directors of BASECO as of April, 1986 were mere "dummies", nominees or *alter egos* of President Marcos; at any rate, that they are no longer owners of any shares of stock in the corporation, the conclusion cannot be avoided that said stockholders and directors have no basis and no standing whatever to cause the filing and prosecution of the instant proceeding; and to grant relief to BASECO, as prayed for in the petition, would in effect be to restore the assets, properties and business sequestered and taken over by the PCGG to persons who are "dummies," nominees or *alter egos* of the former president.

The Court held that the PCGG has the power to vote sequestered shares, although the power is not to be exercised to replace directors or revise the articles or by-laws of a corporation or otherwise bring about substantial changes in its policies, except for "demonstrably weighty and defensible grounds" and always for the purpose of preventing dissipation of assets.

Chief Justice Teehankee and Justice Padilla filed separate concurring opinions. The Chief Justice's opinion summarized the points of agreement and disagreement among the members. Justice Padilla, on the other hand, said that while ordinarily the PCGG should have no authority to change BASECO's board of directors, however, in this case he was "entirely satisfied that President Marcos owned the company" and that he "could not have acquired [its] ownership out of his lawfully-gotten wealth," thus justifying the action of the PCGG.

Justice Gutierrez, joined by Justices Bidin and Cortés, dissented. He argued that a finding that BASECO was owned by President Marcos should be made only after trial. He complained that —

> . . . After this decision, there is nothing more for a trial court to ascertain. Certainly, no lower court would dare to arrive at findings contrary to this Court's conclusions, no matter how insistent we may be in labelling such conclusions as *"prima facie."* . . .
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> . . . .
>
> The election of the members of a board of directors is distinctly and unqualifiedly an act of ownership. When stockholders of a corporation elect or remove members of a board of directors, they exercise their right of ownership in the company they own. By no stretch of the imagination can the revamp of a board of directors be considered as a mere act of conserving assets or preventing the dissipation of sequestered assets. The broad powers of a sequestrator are more than enough to protect sequestered assets. There is no need and no legal basis to reach out further and exercise ultimate acts of ownership.

Justice Melencio-Herrera, joined by Justice Feliciano, concurred in a separate opinion but said:

> It would be more in keeping with legal norms if forfeiture proceedings provided for under Republic Act No. 1379 be filed in Court and the PCGG seek judicial appointment as a receiver or administrator, in which case, it would be empowered to vote sequestered shares under its custody (Section 55, Corporation Code). Thereby, the assets in litigation are brought within the Court's jurisdiction and the presence of an impartial Judge, as a requisite of due process, is assured. For, even in its historical context, sequestration is a judicial matter that is best handled by the courts.

Justice Cruz also dissented along more or less the same line that, without a court order, the PCGG was without power to exercise acts of ownership. He said, "Voting the shares is an act of ownership."

As stated before, the disagreement on the Court centered on the power of the PCGG to exercise acts of ownership. While the majority agreed that sequestration, freeze, and takeover orders are merely provisional and conservatory measures and that the PCGG could only exercise acts of administration as distinguished from acts of ownership, in the particular case of BASECO, the removal of the directors of the corporation was justified because the evidence showed prima facie that they were "tools of President Marcos." On the other hand, the dissenting Justices questioned the majority's finding that BASECO was owned by President Marcos on the basis solely of evidence submitted by the PCGG. In their view, this question must be resolved after trial. Meantime, the PCGG must limit itself to acts of mere administration and refrain from exercising acts of ownership, such as voting the shares of stock it has sequestered.

Would a different rule apply if what is involved is the sequestration of shares of stocks in a newspaper or magazine company? In *Liwayway*

Publishing, Inc. v. PCGG[42] and *Bulletin Publishing v. PCGG*,[43] the Court, through Chief Justice Teehankee, enjoined the PCGG in stopping withdrawals, transfers or remittances from bank deposits of the Liwayway Publishing Co., and from voting the shares of stocks in the Bulletin Publishing Co. which it had sequestered.

Earlier, Liwayway Publishing had claimed that the prohibition would virtually shut down the publication, for which reason the PCGG agreed not to exercise its powers in a way that would "impinge upon the freedom of expression or freedom to publish the newspaper." On the other hand, in the *Bulletin* case, although the PCGG had declared its intention to vote the shares of stocks of three individuals suspected of being "cronies" or "dummies" of former President Marcos, it later abandoned its plan "for the purpose of maintaining [the company's] freedom and independence as guaranteed in the Constitution." The PCGG announced it would instead take other steps to prevent the dissipation and disposition of funds and assets of the company. The resolution of the case was facilitated by the fact that, while it was pending, the sequestered shares of two of the suspected "cronies" (Jose Y. Campos and Cesar Zalamea) were paid for by the Bulletin Publishing Co. to the government. On the other hand, with respect to the shares of the third stockholder (Eduardo Cojuangco, Jr.), the Bulletin Publishing made a cash deposit. In the event it was determined in the pending case in the Sandiganbayan that the shares belong to the State, the stocks would be issued in the name of the Republic of the Philippines and then endorsed by it to the Bulletin Publishing Co. Should the shares be declared to belong to Cojuangco, the government would return the money deposited by the Bulletin Publishing. In enjoining the PCGG to allow Liwayway Publishing to withdraw from its accounts and from voting the shares of stocks of Bulletin Publishing, the Court declared that its purpose was to "uphold the freedom of our press institutions to independently manage their affairs and effectively preserve their editorial policies and objectives, without the shadow of government participation and intervention."

Actually, the fact that the companies in these cases were publishing firms was only incidental. The "freeze" of the bank deposits of Liwayway Publishing and the threat of the PCGG to vote the sequestered shares of stocks in the Bulletin Publishing Co. were not directed at the exercise by the two firms of their freedom to publish. The PCGG orders would have no more impact on press freedom than a law setting a speed limit would have on a reporter rushing to an important public event. The "freeze" of bank deposits, if it would "virtually shut down the publication," as claimed in the *Liwayway Publishing Co.* case, and the threat to vote the shares of stock in the *Bulletin Publishing Co.* case, would be invalid, regardless of whether

[42] G.R. No. 77422, April 15, 1988.
[43] G.R. No. 79126, April 15, 1988.

the sequestered company is engaged in newspaper publication or any other business. Conversely, if it was shown that the stockholders and directors of the two firms were mere "dummies" of the former President, the PCGG orders would be valid, given the ruling in *BASECO*.[44] A governmental act, which only incidentally restricts freedom of speech, is valid, unless it can be shown that the restriction has a significant or disproportionate effect on such freedom.[45] For example, an ordinance prohibiting the littering of streets in the interest of cleanliness and sanitation is different from an ordinance prohibiting the distribution of leaflets in the streets.[46]

Indeed, the problem raised by the proposed actions of the PCGG in the *Liwayway* and *Bulletin* cases was not press freedom but the propriety, in a democratic society, of the government being in the business of running a news publication. The issue was the institutional autonomy of the press rather than free speech.

On the other hand, in *PCGG v. Peña*,[47] the Court ruled that acts of the PCGG, done pursuant to Art. XVIII, Sec. 26 of the 1987 Constitution, in relation to Sec. 2 of Executive Order No. 14, could be questioned only in the Sandiganbayan and not in any other court, and that in the event of an appeal, the case would be exclusively reviewable by the Supreme Court. On this ground, the Supreme Court set aside an injunctive order issued by the Regional Trial Court in Pasig, Metro Manila, restraining the depository bank of sequestered firms (American Inter-Fashion Corp. and De Soleil Apparel Mfg. Co.) from releasing funds without the signature of the PCGG fiscal agent whose authority had been subsequently revoked by the PCGG. The Court, through Chief Justice Teehankee, said:

> Having been charged with the herculean task of bailing the country out of the financial bankruptcy and morass of the previous regime and returning to the people what is rightfully theirs, the Commission could ill-afford to be impeded or restrained in the performance of its functions by writs or injunctions emanating from tribunals co-equal to it and inferior to this Court. Public policy dictates that the Commission be not embroiled or swamped by legal suits before inferior courts all over the land, since the loss of time and energy required to defend against such suits would defeat the very purpose of its creation. Hence, section 4(a) of Executive Order No. 1 has expressly accorded the Commission and its members immunity from suit for damages in that: "No civil action shall lie against the Commission or any member thereof for anything done or omitted in the discharge of the task contemplated by this order."

Justice Feliciano, although concurring "with the great bulk of the majority opinion" of the Chief Justice, wrote a separate opinion, stating

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[44] *Cf.* Associated Press v. NLRB, 301 U.S. 103 (1937) (law recognizing employees' rights of self-organization and bargaining, even as applied to a press agency, is valid).

[45] *See* Stone, *Content-Neutral Restrictions*, 54 U. of CHI. L. REV. 46, 105-114 (1987).

[46] Schneider v. State, 308 U.S. 147 (1938) (city ordinance forbidding distribution of leaflets invalid).

[47] G.R. No. 77663, April 12, 1988.

"certain qualifications which do not affect the result reached," but which, he said, must be made. After stating his agreement with the holding that all cases pertaining to the recovery of ill-gotten wealth of the former President and the latter's associates are exclusively cognizable by the Sandiganbayan, "[which] is all that is necessary to arrive at the resolution of this case," Justice Feliciano stated the qualifications for his concurrence. First, he disagreed that the PCGG is a quasi-judicial body like, for instance, the National Labor Relations Commission (NLRC) or the Securities and Exchange Commission (SEC). It is more like a public prosecutor, he said, and, as such, its findings are not entitled to the same respect that findings of administrative agencies have. It can only determine the existence of a *prima facie* case, for the purpose of filing it in the Sandiganbayan. Second, Justice Feliciano took issue with the majority claim that the PCGG enjoys immunity from suits. He said that this view "would institutionalize the irresponsibility and non-accountability of members and staff of the PCGG, a notion that is clearly repugnant to both the 1973 and 1987 Constitutions and a privileged status not claimed by any other official of the Republic under the 1987 Constitution." He argued that the grant of immunity under Sec. 4(a) of Executive Order No. 1 meant no more than that "the PCGG or any member thereof may not be held civilly liable for acts done in the performance of official duty, provided that such member had acted in good faith and within the scope of his lawful authority."

Justice Gutierrez, on the other hand, dissented, protesting the Court's finding that the predecessor-in-interest of the sequestered firms, Glorious Sun Fashion Garments Mfg. Co., was a "crony" corporation. He argued that, on the contrary, the company was the victim of the past regime and should be allowed to seek redress from the courts on issues which had nothing to do with "cronyism."

2. *Validity of Hold Orders.* — Sec. 3(d) Executive Order No. 1, dated February 28, 1986, empowered the PCGG to enjoin or restrain "any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate, or otherwise make ineffectual the efforts of the Commission to carry out its task under this order." Pursuant to this power, the PCGG issued Rules and Regulations for the issuance of "hold orders." In *Kant Kwong v. PCGG*,[48] the Supreme Court set aside a hold order issued against foreign nationals representing Hongkong investors in two firms which had been sequestered. The Court found that the hold order had expired and that whatever reasons justified its issuance at the beginning, had ceased. The reasons for the hold order were: ,

> Unexplained withholding of documents, covering substantial past shipments;
>
> deliberate delay in cashing letters of credit resulting in the lapse thereof;

[48] G.R. No. 79484, Dec. 7, 1987.

> failure to remit payments due for past shipments, their obvious and unmitigated campaign to obstruct the release of funds needed for operations of the two garment firms;
>
> orchestrated acts to discredit the Officer-in-Charge of the garment firms and the Commission and to obstruct the smooth operations of the garment firms . . .

But the PCGG claimed in the Supreme Court that it had successfully instituted reforms in the sequestered firms and that as a result they were then making "modest profits." Through Justice Melencio-Herrera, the Court wryly observed:

> Indeed, if petitioners have "obstructed the smooth operations" of the sequestered garment firms and "discredited their Officer-in-Charge," might it not be peferable that they be out of the country to ensure the cessation of their acts allegedly inimical to the operations of the sequestered garment firms?

The Court accordingly upheld petitioners' right to travel and to freedom of movement as "guaranteed by the 1987 Constitution[49] and the Universal Declaration of Human Rights[50] to which the Philippines is a signatory." Thus, a constitutional guarantee was extended even to aliens residing within the country. In an earlier case, the Court had held the provision on arrests[51] also applicable to aliens.[52]

D. *Powers of the Special Prosecutor and Ombudsman under th New Charter*

In *Zaldivar v. Sandiganbayan*[53] and *Zaldivar v. Gonzales*,[54] jointly decided by the Supreme Court, it was held that the new Constitution transferred the power of the Tanodbayan to investigate and prosecute graft cases to the Ombudsman. Accordingly, the Court declared cases filed by the Tanodbayan against the petitioner for violation of the Anti-Graft and Corrupt Practices Act void and ordered him (the Tanodbayan) to desist from investigating other cases against the petitioner. In its resolution on the motion for reconsideration, in which it was contended that the original ruling would result in the invalidation of many other cases filed by respondent Gonzales with the Sandiganbayan, the Court declared its decision to be only prospectively applicable, except with respect to the *Zaldivar* cases and those in which the accused had questioned the authority of the Tanodbayan to continue prosecuting cases on his own after February 2, 1987, the date the new Constitution took effect. The Court also held that the provision on the Office of Ombudsman did not need implementing legislation, thus rejecting the argument of respondent Tanodbayan that until the Office

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49 Art. III, sec. 6.
50 Art. 8.
51 Art. III, Sec. 2.
52 Qua Chee Gan v. Deportation Board, 9 SCRA 27 (1963).
53 G.R. Nos. 79690-707, April 27, 1988.
54 G.R. No. 80578, April 27, 1988.

of Ombudsman was organized by law, he continued to exercise his old powers.

In ruling that the Tanodbayan under the 1973 Constitution had lost the power to investigate upon the effectivity of the new charter, the Court relied on the following provisions of the new Constitution:

> Art. XI, Sec. 7: The existing Tanodbayan shall hereafter be known as Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.
>
> Art. XI, Sec. 13: The Office of the Ombudsman shall have the following powers, functions and duties:
>
> (1) Investigate on its own, or on complaint by any person, any act or omission that appears to be illegal, unjust, improper, or inefficient.

The decision in these cases drew criticisms from some quarters. Former Constitutional Commissioner Blas Ople said:

> The Court linked Section 7 to Section 13, as it should, but it misread the nature of the investigative function of the Ombudsman in Subsection (1) of Section 13.
>
> What is contemplated in that section is not the power to investigate and to prosecute anti-graft cases, which clearly continued to be lodged in the Office of the Special Prosecutor (Section 7) but the duty of the Ombudsman to "act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations . . ." [Sec. 12]
>
> This function is to be distinguished from investigation and prosecution because the Ombudsman *would cease to be that unique creature if it was clothed with prosecution powers.*[55]

The power to investigate and prosecute criminal cases which are cognizable by the Sandiganbayan is vested in the Tanodbayan by Secs. 10(b) and 17 of PD No. 1630. On the other hand, the power to investigate administrative acts claimed to be contrary to law, unreasonable, improper, or inefficiently performed, is separately conferred on him by Secs. 10(a) and 12. One could thus argue that what was vested in the Ombudsman by Art. XI, Sec. 13(1), is the investigation of administrative acts but that the investigation of criminal complaints has been continued in the Tanodbayan (Special Prosecutor). However, the Court rejected this distinction in its resolution on the motion for reconsideration in *Zaldivar v. Sandiganbayan* and *Zaldivar v. Gonzales.*[56] It held that the Constitution does not distinguish between the investigation of administrative offenses and that of criminal offenses and that the framers of the Constitution intended to make the Special Prosecutor a "mere subordinate of the Ombudsman" whose authority is needed before the Special Prosecutor can act.

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[55] Ople, *The Crisis of the Supreme Court*, 2 NATION WATCH 2, at 5 (May 2, 1988).
[56] G.R. Nos. 79690-707 & 80578, May 19, 1988.

Because of claim that the ruling would result in the nullification of a number of cases filed by the Tanodbayan with the Sandiganbayan, the Court limited the effect of its decision to cases filed by the Tanodbayan (now Special Prosecutor) after April 27, 1988, the date of promulgation of the decision, with the exception of the cases in which the decision was made and those then pending in which the authority of the Special Prosecutor was similarly questioned. The Supreme Court invoked *Johnson v. New Jersey,* 388 U.S. 719 (1966) in which the ruling in *Miranda v. Arizona,* 384 U.S. 436 (1966), which gave suspects under custodial interrogation the rights to certain "warnings" and to the assistance of counsel, was applied only with respect to trials occurring after the date of its promulgation on July 13, 1966.

The technique of prospective overruling is used in the United States to cushion the impact of new rulings. It has found application mainly in cases dealing with the rights of criminal defendants because of their effect on pending cases. For this purpose, the U.S. Supreme Court has taken into account "(a) the purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standard, and (c) the effect on the administration of justice of a retroactive application of the new standards."[57] In later cases, that Court placed increasing emphasis on the precise moment at which the State first relied on the discarded standards, because that point "determines the impact that newly articulated constitutional principles will have upon convictions obtained pursuant to investigatory and prosecutorial practices not previously proscribed." The fact that under this technique only parties to the case where the new ruling was made and those in subsequent cases would benefit from the new ruling, but those in cases previously decided would not, was considered simply as "an unavoidable consequence of the necessity that constitutional adjudication not stand as mere dictum."[58]

Zaldivar v. Sandiganbayan was not the first time the Philippine Supreme Court used the technique of prospective overruling. In *People v. Nabaluna,*[59] the Court gave the new rule laid down in *People v. Galit,*[60] regarding waiver of the right to counsel in police custodial interrogations, prospective effect.

The technique of prospective overruling is premised on a recognition that the new decision makes new law and, as law generally speaks prospectively, so must the new doctrine also be prospective in application.[61] The

57 Stovall v. Denno, 388 U.S. 293 (1967).
58 Jenkins v. Delaware, 395 U.S. 213 (1969).
59 142 SCRA 446 (1986).
60 135 SCRA 465 (1985).
61 Compare Justice Frankfurter's statement in Griffin v. Illinois, 351 U.S. 12 (1956): "For sound reasons, law generally speaks prospectively. . . . We should not indulge in the fiction that the law now announced has always been the law and, therefore, that those who did not avail themselves of it waived their rights. It is much more conducive to law's self-respect to recognize candidly the considerations that give

decision in *Zaldivar*, however, does not make new law but only interprets the new Constitution. It is the Constitution which constitutes new law, by allocating the powers and functions between the Ombudsman and the Special Prosecutor. Hence, it is the Constitution — not the decision in *Zaldivar v. Sandiganbayan* — which should be given prospective effect.

The absurdity of giving prospective application to the decision interpreting the law is best seen when it is considered that while the Court held that, effective February 2, 1987 (when the new Constitution took effect), the Special Prosecutor could no longer file cases without the prior authority of the Ombudsman, the Court nevertheless held that its ruling took effect only on the date it was made on April 27, 1988. The net result is that the Special Prosecutor actually ceased to have independent power to prosecute graft cases only on April 27, 1988.

The Court's concern that unless its decision was prospectively applied the decision would have unsettling effect on the administration of justice could have been resolved simply by considering the Special Prosecutor a de facto public officer acting under his old powers as Tanodbayan. Of course, this would mean that all cases filed by him before the decision in *Zaldivar v. Sandiganbayan,* including those filed against the petitioner in that case, were valid. This approach would avoid possible criticism that the decision in that case favored only the parties in that case and others who questioned the authority of the Special Prosecutor.

E. *Government Reorganization and Security of Tenure*

The Provisional Constitution, adopted in the aftermath of the February 1986 revolution, provided for the reorganization of the government to "promote economy, efficiency, and the eradication of graft and corruption."[62] The reorganization embraced changes in personnel, structure, and functions of the government.

With respect to personnel reorganization, Art. III, Sec. 2 of the Provisional Constitution provided:

> All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986.

To cushion the impact of reorganization on the security of tenure of civil service employees, Executive Order No. 17, which took effect on May 28, 1986, provides that the separation or replacement of personnel in the career civil service should be for "justifiable reasons."[63]

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prospective content to a new pronouncement of law. . . .". *See also* Manguera v. Magtoto, 63 SCRA 4 (1975).

[62] Art. III, Sec. 1.

[63] Executive Order No. 17, Sec. 3 listed the grounds as follows:

When the new Constitution took effect, superseding the Provisional Constitution, it reiterated the latter's provision[64] for the payment of retirement and other benefits to those separated from the service as a result of reorganization, provided they belonged to the career civil service. Art. XVIII, Sec. 16 of the new Constitution provides:

> Career civil service employees separated from the service not for cause but as a result of the reorganization pursuant to Proclamation No. 3 dated March 25, 1986 and the reorganization following the ratification of this Constitution shall be entitled to appropriate separation pay and to retirement and other benefits accruing to them under the laws of general application in force at the time of their separation. In lieu thereof, at the option of the employees, they may be considered for employment in the Government or in any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporation and their subsidiaries. This provision also applies to career officers whose resignation, tendered in line with the existing policy, had been accepted.

There are thus two sets of rules, one being applicable to career service employees and the other one to all other employees. With respect to career service employees the rules are: (1) Career service employees can be separated from the service only for cause as defined in Executive Order No. 17, Sec. 3, and (2) summary dismissals, although for cause, must be made within one year from February 25, 1986. The one-year period would have ended on February 25, 1987, but, because of the effectivity of the new Constitution on February 2, 1987, the period was in effect shortened.

Accordingly, the Supreme Court upheld in several cases decisions of the Review Committee[65] ordering the reinstatement of civil service employees found to have been dismissed without just cause.[66] In *Fernandez v. De la Paz*,[67] the Court upheld the security of tenure of petitioner who had been replaced as Assistant Director of Professional Services of the East Avenue Medical Center and transferred to the Research Office. Her transfer, without her consent, was held to be a removal without cause and, since it was

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1) Existence of a case for summary dismissal pursuant to Section 40 of the Civil Service Law;
2) Existence of a probable cause for violation of the Anti-Graft and Corrupt Practices Act as determined by the Ministry head concerned;
3) Gross incompetence or inefficiency in the discharge of functions;
4) Misuse of public office for partisan political purposes;
5) Any other analogous ground showing that the incumbent is unfit to remain in the service or his separation/replacement is in the interest of the service.

64 Art. III, Sec. 3.

65 Created under Executive Order No. 17 to handle appeals of dismissed employees.

66 Simon v. Gonzales, G.R. Nos. 78705-07, June 23, 1987 (employees in the Quezon City government); Simon v. Ordoñez, G.R. Nos. 79790, Dec. 8, 1987 (employees of Quezon City government dismissed for allegedly failing to file statement of assets and liabilities and unspecified violations of Anti-Graft and Corrupt Practices Act); *contra*, Hernandez v. Ordoñez, G.R. No. 79142, Feb. 9, 1988 ("[The Provisional Constitution] did not require the existence of any ground or cause for removal of any of the elective and appointive officials under the 1973 Constitution, provided that the same was made within the one-year period from February 25, 1986.").

67 G.R. No. 78946, April 15, 1988.

effected only on May 29, 1987, beyond the one-year period, it was held to be illegal. It is to be noted, however, that in *Hernandez v. Ordoñez*,[68] the Court had earlier upheld the removal of the City General Services Officer of Quezon City solely on the consideration that it was made within the one-year period, regardless of the merit of the case.

With respect to the termination of employment as a result of the reorganization of the structure and functions of the government, the rule is that career service employees may be laid off, on the principle that security of tenure can be invoked only with respect to existing offices so that where an office is abolished, there can be no claim to security of tenure.[69]

In *Jose v. Arroyo*,[70] a petition for certiorari and prohibition was filed in the Supreme Court to stop the implementation of Executive Order No. 127, which provided for the reorganization of the Bureau of Customs. The petition was dismissed on the ground that, pursuant to Art. XVIII, Sec. 16 of the 1987 Constitution, the reorganization decreed by the Provisional Constitution could be carried out even after February 2, 1987 and even if the result would be the separation of career service employees without cause.

A different set of rules applies to non-career service employees, like elective officials. With respect to them, the rules are: (1) Such employees can be removed from office even without cause, provided their removal was made on or before February 2, 1987;[71] (2) In case of separation as a result of reorganization, noncareer service employees, unlike career service employees, are not entitled to the payment of separation pay or retirement benefits because Art. XVIII, Sec. 16 applies only to career service employees who are separated from the service as a result of reorganization.

Following these rules, in *Lecaroz v. Ferrer*,[72] the removal of a municipal mayor on March 26, 1987 was set aside on the ground that after the one-year period he could only be removed from office for any of the causes provided in Sec. 60 of the Local Government Code (BP Blg. 337) and only after proper proceedings. While the petitioner concerned had been investigated, the Secretary of Local Government had yet to render a decision which, according to the Court, must state clearly and distinctly the facts and the reasons for such decision, as required by Sec. 65(1) of the Local Government Code.

The resolution of the Court was written by Justice Padilla. Chief Justice Teehankee wrote a concurring opinion, in which Justice Yap con-

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[68] *Supra* note 66.

[69] *E.g.*, Manalang v. Quitoriano, 94 Phil. 903 (1954).

[70] G.R. No. 78435, Aug. 11, 1987.

[71] *See* Executive Order No. 17, sec. 11 which expressly excepts from its coverage the following: elective officials, those designated to replace them, presidential appointees, casual and contractual employees and employees and officials removed pursuant to disciplinary proceedings.

[72] 152 SCRA 337 (1987).

curred, distinguishing the case from *De la Serna v. Ferrer,*[73] in which it was held that a local official, who had merely been designated officer-in-charge of the Office of the Governor (of Bohol), "could be removed at will by the appointing authority, with or without cause, and without need of notice or any form of hearing." As the Chief Justice pointed out in his concurring opinion in *Lecaroz,* such officer "accepts his designation as essentially a temporary one." Consequently, the removal of De la Serna as officer-in-charge on April 7, 1987, even though made outside the one year period, was valid.

In *De Leon v. Esguerra,*[74] the Court, in an opinion by Justice Melencio-Herrera, held the ouster on February 8, 1987 of a Barangay Captain and of the members of the Barangay Council, whose term of office was for six years from June 7, 1982, to be illegal. It ruled that the new Constitution had taken effect on February 2, 1987 and that, consequently, "petitioners must . . . be held to have acquired security of tenure. . . ." The Court further held that until the term of office of barangay officials had been determined by law, the term of office of six years provided in Sec. 3 of the Barangay Election Act of 1982 (BP Blg. 222) must govern.

The ruling in *De Leon* was followed in *Reyes v. Ferrer,*[75] in which the Court, through Justice Cortés, held that the removal on February 23, 1987 of a member of the Sangguniang Panglunsod, whose term of office, as representative of the Kabataang Barangay Federation, was three years, was invalid, having been made after the new Constitution had taken effect.

Actually, what Art. III, Sec. 2 of the Provisional Constitution provides for is not the removal or dismissal of government personnel but their termination upon the issuance of a proclamation or executive order or the designation or appointment and qualification of their successors within one year. Suppose the successor was appointed within the one-year period, but he qualified for office only after that period, would the incumbent be deemed to have been removed or replaced? In *Osias v. Ferrer,*[76] the Court said no, because under Art. III, Sec. 2, the appointment of a successor and the latter's assumption of office must both take place within the one-year period, shortened, as already explained, by a few days as a result of the effectivity of the new Constitution. The petitioner was Barangay Captain of Barangay Apolonio Samson, Quezon City, whose term of office was six years, from May 1982. Respondent Bonifacio C. Oliveros was appointed on January 15, 1987 to replace him, but Oliveros took his oath of office only on March 24. In upholding petitioner's right to continue in office, the Court, through Justice Paras, ruled that under Art. III, Sec. 2 of the Provisional

[73] G.R. No. 77938, July 23, 1987.
[74] 153 SCRA 602 (1987).
[75] G.R. No. 77801, Dec. 11, 1987.
[76] G.R. No. 77047, March 28, 1988.

Constitution, "the successor must have been not only designated or appointed prior to February 2, 1987 but must have *qualified* before said date."

This interpretation prompts two observations. *First,* it seems to be excessively literal. The period prescribed in Art. III, Sec. 2 is intended to limit the government's power to terminate the employment of those holding office under the 1973 Constitution. This purpose is served once the government has exercised its power to appoint. When the appointee will assume office is not entirely within the power of the government. One thing is the period within which the government may replace incumbents under the 1973 Constitution. Quite another matter is until when the incumbent so replaced may hold over. For the purpose of providing that the termination of incumbents shall be effective only upon the qualification of his successor is only to prevent an interruption in the public service.

Second, the text of Art. III, Sec. 2, as published in 82 O.G. 1567, cannot be relied upon for ascertaining its meaning because it appears to suffer from a typographical omission in the sense that the phrase "if such is made within a period of one year from February 25, 1986" does not mean "if such *appointment and qualification* is made within a period of one year from February 25, 1986" but only "if such appointment is made."[77] Indeed, the text of Art. III, Sec. 2, as quoted in the Court's opinion in *De Leon v. Esguerra,*[78] reads:

> SEC. 2. All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such appointment is made within a period of one year from February 25, 1986.

Although the *Official Gazette* is considered the repository of all statutes and is generally regarded as controlling, its conclusive character, in this particular case, is put in question by typographical errors evident upon a mere reading of the text of the Provisional Constitution. In the case of Art. III, Sec. 2, it is logical to conclude that only the appointment of a successor need be made within the one-year period, because that provision is a limitation on the power of the government to replace incumbents of the previous regime and not on the right of the successor to assume office. As already stated, the successor is required to take his oath before the incumbent's tenure is deemed ended only to prevent a void in the public service. For his part the incumbent holds over until his successor qualifies for the office.[79]

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[77] For that matter the text suffers from other typographical errors. For instance, Art. III is printed after Art. V. In Art. III, Sec. 3, the phrase "Any public office or employees" clearly means "Any public officer or employee."

[78] *Supra* note 74.

[79] *See* Nueno v. Angeles, 76 Phil. 12 (1946).

Conformably with the ruling in *Osias v. Ferrer,* the Supreme Court, through Justice Gancayco, nullified in *Anggay v. Abalos*[80] the relief of Barangay Captains of Balo-i, Lanao del Norte, it appearing that while the designations of their successors were dated January 27, 1987 and their oaths of office were dated the following day, January 28, they had actually assumed office only in March and in April 1987 as shown by the dates of issue of their residence certificates.

On the other hand, it was held in *Ignacio v. Banate*[81] that, to effect the relief of an elective or appointive officer under Art. III, Sec. 2 of the Provisional Constitution, the successor must have the qualification for that office. Thus, the designation of respondent as member of the Sangguniang Panglungsod, in place of the petitioner whose appointment to that body was by virtue of his having been elected president of the Katipunang Panglunsod Ng Mga Barangay, under Sec. 173 of the Local Government Code, was void.

To summarize, elective public officials holding office under the 1973 Constitution could be removed from office by appointing or designating their successors, provided (1) their removal was done on or before February 2, 1987, (2) their successors assume office on or before the same date, and (3) their successors have the qualifications prescribed by law for the position.

III. INDIVIDUAL RIGHTS

A. *Procedural Rights in the Administration of Criminal Justice System*

1. *Damage Suits For Human Rights Violations.* — In *Aberca v. Ver,*[82] the Supreme Court, through Justice Yap, held that the suspension of the privilege of the writ of habeas corpus deprives a party only of a remedy to seek his release from illegal detention but not of his right under Art. 32 of the Civil Code to sue for damages for illegal arrest and other violations of constitutional rights, and that military officers, if responsible for such violations, can be held liable in such action. Accordingly, the Court set aside an order of the trial court, dismissing a complaint for damages brought against then Major General Fabian Ver and several officers of the Armed Forces, except two, for alleged illegal search and seizures, illegal arrests, and torture of petitioners by members of the so-called "Task Force Makabansa" of the Armed Forces of the Philippines in the course of preemptive strikes against communist underground houses in 1983, when the privilege of the writ of habeas corpus was suspended. The Court said:

> It may be that the respondents, as members of the Armed Forces of the Philippines, were merely responding to their duty, as they claim, "to prevent or suppress lawless violence, insurrection, rebellion and subversion."

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[80] G.R. No. 78189, April 15, 1988.
[81] 153 SCRA 546 (1987).
[82] G.R. No. 69866, April 15, 1988.

> . . . But this cannot be construed as a blanket license or a roving commission untrammelled by any constitutional restraint, to disregard or transgress upon the rights and liberties of the individual citizen enshrined in and protected by the Constitution. The Constitution remains the supreme law of the land to which all officials, high or low, civilian or military, owe obedience and allegiance at all times.

While holding that a superior military officer is not answerable for damages on the theory of *respondeat superior,* nevertheless the Court said such officers may be held liable if found to be "directly or indirectly" responsible for the violations of constitutional rights because of the specific language of Art. 32 of the Civil Code.

Under what circumstances a superior military officer may be found responsible for an arrest in an emergency situation was discussed in *Moyer v. Peabody,*[83] which dealt with an action for damages for imprisonment of the plaintiff. The action was brought against the former governor of Colorado and the adjutant general of the National Guard who had ordered the arrest of the plaintiff during a state of insurrection. Justice Holmes, speaking for the Court, affirmed the dismissal of the action stating: "So long as such arrests are made in good faith and in the honest belief that they are needed in order to head the insurrection off, the governor is the final judge and cannot be subjected to an action after he is out of office on the ground that he had reasonable ground for his belief."

It would be a different matter, however, if, as in *Aberca v. Ver,* the complaint alleged intimidation and harassment by military authorities. Such allegation is equivalent to an allegation of bad faith.

2. *Search and Seizure.* — In *Olaes v. People,*[84] the Court rejected a claim that the seizure of marijuana cigarettes from the petitioners was illegal because the search warrant was a general warrant. While the search warrant was entitled "For Violation of RA 6425, otherwise known as the Dangerous Drugs Act of 1972," it specified that petitioners had in their possession at 628 Comia St., Filtration, Sta. Rita, Olongapo City "marijuana dried stalks/leaves/seeds/cigarettes and other regulated/prohibited and exempt narcotics preparations which is the subject of the offense stated above." The Court held that "Although the specific section of the Dangerous Drugs Act is not pinpointed, there is no question at all of the specific offense alleged to have been committed as a basis for the finding of probable cause."

3. *The Right to Counsel in Custodial Interrogations.* — In two cases, *People v. Albofera*[85] and *Olaes v. People,*[86] both decided in 1987, the

[83] 212 U.S. 416, 417 (1908).
[84] G.R. Nos. 78347-49, Nov. 9, 1987.
[85] *Supra* note 20.
[86] *Supra* note 21.

Supreme Court gave retroactive application to its 1983 ruling[87] that no custodial investigation can be conducted unless it is in the presence of counsel and that, although the right to counsel may be waived, the waiver to be valid must be made with the assistance of counsel. The confession in *Albofera* was given on July 2, 1981, while those in *Olaes* were given on September 24, 1982. The question, although not raised in those cases, was whether the 1983 ruling in *Morales,* which constituted new law, could be retroactively applied, because, before that ruling, the voluntariness of waivers of *Miranda* rights was determined on a case-to-case basis, taking into account the facts of each case. The new ruling could not have been anticipated at the time the confessions were taken by law enforcement authorities who might have relied instead on the old practice. In *People v. Nabaluna,*[88] the Court gave only prospective application to the *Galit* and *Morales* rulings.

The exclusion of the confessions in *Albofera* and *Olaes,* however, can be justified on other grounds, namely, that, in both cases, there was a failure of law enforcement agents to give meaningful warnings of the rights under the Constitution. The warnings actually given were at best "ceremonial and perfunctory," giving no assurance that the accused fully understood their constitutional rights. The application of the *Galit* and *Morales* rulings was only an additional reason for the Supreme Court's decision excluding from evidence extrajudicial confessions.

4. *Custodial Phase of Investigation.* — At what stage of the police investigation is a suspect entitled to the Miranda warnings? In *Gamboa v. Cruz,*[89] the accused was arrested without a warrant for vagrancy. The arrest took place on July 19, 1979 at 7 A.M. He was taken to Police Precinct No. 2 in Manila. The next day, he was included in a police line-up of five detainees and was pointed to by the complainant as a companion of the main suspect, on the basis of which the accused was ordered to stay and sit in front of the complainant, while the latter was interrogated. The accused was thereafter charged with robbery. After the prosecution had rested, the accused moved to dismiss the case against him on the ground that he had been denied the assistance of counsel during the line-up. However, his motion was denied. He then filed a petition for certiorari.

The Supreme Court 12 to 3 dismissed the petition. The majority opinion of Justice Padilla stated that the right to counsel attaches only upon the start of an investigation, when the police officer starts to ask questions designed to elicit information and/or confessions or admissions from the accused. As the police line-up in this case was not a part of the

[87] People v. Galit, 135 SCRA 446 (1985); Morales v. Ponce Enrile, 121 SCRA 538 (1983).
[88] 142 SCRA 446 (1986).
[89] G.R. No. 56291, June 27, 1988.

custodial inquest, the petitioner was not entitled to counsel, according to the majority.

Chief Justice Yap dissented, contending that the investigation had commenced the moment the accused was taken from the police line-up and made to sit in front of the complainant, while the latter made a statement to the police. The right to counsel must be afforded the accused the moment he is under custodial investigation and not only when a confession is being exacted from him, he argued.

Justice Sarmiento, joined by Justice Gancayco, also dissented. He pointed out that the accused was in custody so that his confrontation with the complainant became adversarial and not only informational. He said that while a police line-up is not per se critical because in most cases it is merely part of evidence-gathering process, in this case the fact that the accused stood charged with an offense (vagrancy) and had been detained made the case different.

On the other hand, Justice Cruz concurred in a separate opinion, pointing out the lack of showing that improper suggestions had been made by the police to influence the witnesses in the identification of the accused.

5. *Trial in Absentia.* — In *Gimenez v. Nazareno*,[90] it was held that an accused, who has been duly tried *in absentia*,[91] loses the right to present evidence on his own behalf and to confront and cross-examine the witnesses against him. It was, therefore, error for the trial court, after allowing the prosecution to present its evidence, to suspend the proceedings until the accused could be arrested. The Supreme Court, in an opinion by Justice Gancayco, said:

> The contention of the respondent judge that the right of the accused to be presumed innocent will be violated if a judgment is rendered as to him is untenable. [The accused] is still presumed innocent. Judgment of conviction must still be based upon the evidence presented in court. Such evidence must prove him guilty beyond reasonable doubt. Also, there can be no violation of due process since the accused was given the opportunity to be heard.
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> Nor can it be said that an escapee who has been tried *in absentia* retains his rights to cross-examine and to present evidence on his behalf. By his failure to appear during the trial of which he had notice, he virtually waived these rights.

6. *Double Jeopardy.* — In *People v. Relova*,[92] the accused was charged with violation of an ordinance of Batangas City, prohibiting the installation of electric wiring and devices in a building without permit from the city government, but the case was dismissed by the City Court on the ground that the offense had prescribed. Fourteen days later the City Fiscal charged

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90 G.R. No. L-37933, April 15, 1988.
91 Art. III, Sec. 14(2).
92 148 SCRA 292 (1987).

the accused with theft under Art. 309(1) of the Revised Penal Code. However, the Court of First Instance also dismissed the case on the ground that it placed the accused in double jeopardy. The prosecution appealed. The Supreme Court, through Justice Feliciano, affirmed the dismissal. It said:

> The first sentence of Art. IV, Sec. 22 [now Art. III, Sec. 21] sets forth the general rule: the constitutional protection against double jeopardy is not available where the second prosecution is for an offense that is different from the offense charged in the first or prior prosecution, although both the first and second offenses may be based upon the same act or set of acts. The second sentence embodies an exception to the general proposition: the protection against double jeopardy is available although the prior offense charged under an ordinance be different from the offense charged subsequently under a national statute such as the Revised Penal Code, *provided* that both offenses spring from the same act or set of acts. . . .
>
> Put a little differently, where the offenses charged are penalized either by different sections of the same statute or by different statutes, the important inquiry relates to the *identity of offenses* charged: the protection against double jeopardy is available only where an identity is shown to exist between the earlier and the subsequent offenses charged. In contrast, where one offense is charged under a municipal ordinance while the other is penalized by a statute the critical inquiry is to the *identity of the acts* which the accused is said to have committed and which are alleged to have given rise to the two offenses: the protection against double jeopardy is available so long as the acts which constitute or have given arise to the first offense under a municipal ordinance are the same acts which constitute or have given rise to the offense charged under a statute.
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> The discussions during the 1934-35 Constitutional Convention show that the second sentence was inserted precisely for the purpose of extending the constitutional protection against double jeopardy to a situation which would not otherwise be covered by the first sentence.
>
> The question of identity or lack of identity of offenses is addressed by examining the essential elements of the two offenses charged, as much elements are set out in the respective legislative definitions of the offenses involved. The question of identity of the acts which are claimed to have generated liability both under a municipal ordinance and a national statute must be addressed, in the first instance, by examining the location of such acts in time and space.

B. *Due Process in Administrative Proceedings*

1. *Administrative Agencies and the Judicial Function.* — In two cases decided in 1987, the Court upheld the grant of quasi-judicial powers to administrative agencies, even as it affirmed the availability of judicial review of their decisions. In *Tropical Homes, Inc. v. National Housing Authority*,[93] it rejected a challenge to the validity of PD No. 1344, which gives the National Housing Authority exclusive jurisdiction to hear and decide cases

[93] 152 SCRA 540 (1987).

involving claims of subdivision lots buyers for refund.[94] Justifying the grant of such power, Justice Gutierrez, speaking for the Court, said: "The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts."[95]

The petitioner also questioned the constitutionality of Sec. 2 of PD No. 1344, which provides that the decision of the NHA is "appealable only to the President of the Philippines and in the event the appeal is filed the decision is not reversed and/or amended within a period of thirty (30) days, the decision is deemed affirmed." The petitioner, which had been ordered to refund what a buyer had paid, appealed to the Office of the President, but the President failed to act on its appeal. As the NHA had ordered the execution of its decision, petitioner filed a petition for certiorari and prohibition in the Supreme Court, contending that the statute, by providing that the decision of the NHA is appealable "only to the President of the Philippines," effectively bars judicial review and that under it the affirmance of the NHA's decision, as a result of the inaction of the President, renders such decision final and executory." The Court found no merit in the claim. Through Justice Gutierrez, it pointed out that the writs of certiorari, prohibition and mandamus are always available to any party whose rights are violated as a result of administrative acts which are contrary to the Constitution. It also pointed out that the Judiciary Reorganization Act of 1980 (BP Blg. 120, Sec. 9) provides for review of the decisions of administrative agencies by the Court of Appeals.

In another case, *Antipolo Realty v. National Housing Authority*,[96] the Court sustained the NHA's jurisdiction over actions for specific performance of contracts brought by subdivision lot buyers. The NHA ordered a realty firm to reinstate a contract to sell, which the firm had cancelled. The NHA held that the buyer had a right to suspend payment of amortizations because of the seller's failure to comply with its obligation to make certain improvements. The petitioner assailed the jurisdiction of the NHA, pointing out that the case involved the interpretation of a contract which only court could make. The Court, through Justice Feliciano, dismissed the contention:

> . . . Limited delegation of judicial or quasi-judicial authority to administrative agencies . . . is well recognized in our jurisdiction, basically because the need for special competence and experience has been recognized as essential in the resolution of questions of complex or specialized character and because of a companion recognition that the dockets of our regular courts have remained crowded and clogged.
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> . . . .
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> . . . One thrust of the multiplication of administrative agencies is

[94] Sec. 1(b).
[95] *Supra* note 93 at 549.
[96] 153 SCRA 399 (1987).

> that the interpretation of contracts is no longer a uniquely judicial function exercisable only by our regular courts.

The Court then affirmed the ruling of the NHA that a lot buyer has the right to suspend payments without incurring arrearages, if the seller fails to make stipulated improvements, and to a corresponding extension of the period of payment when the contractual promise is fulfilled.

2. *Trial-type Hearing Not Always Required.* — In *Richards v. Asoy*,[97] the Supreme Court ordered the disbarment of an attorney on the basis of the records of a case, a verified complaint of the client, and the latter's follow up letter, all showing the attorney's negligence and lack of zeal in pursuing his client's case, resulting in the dismissal twice of the case. The Court stated in a per curiam opinion:

> The facts, as disclosed, require no further evidentiary hearing, and speak for themselves. *Res ipsa loquitur.* The Orders of the Trial Court dismissing Civil Case No. 181-P are of record and Respondent's excuse that he can no longer recall them is feeble. Respondent's side has been fully heard in the pleadings he has filed before this Court. A trial-type hearing is not *de riqueur.* The requirement of due process has been duly satisfied. What due process abhors is absolute lack of opportunity to be heard.[98]

3. *"Cardinal Primary Rights."* — In *Adamson & Adamson v. Amores*,[99] the petitioner was granted by the Board of Investment a certificate of authority to expand its business of manufacturing hygienic products. Subsequently, petitioner filed a petition with the BOI to stop a rival firm, Johnson & Johnson, Inc., from manufacturing and selling its products which, it alleged, Johnson & Johnson had no authority to do. Adamson asked for a "stop and desist" order. On May 14, 1980 a hearing was held by the BOI, during which the parties, through counsels, were heard, and, on October 21, 1980, a decision was rendered dismissing Adamson's petition. Adamson brought the case to the Court of First Instance of Manila but the court denied Adamson's motion for a writ of preliminary injunction. Adamson then filed a petition for certiorari in the Supreme Court, contending that the BOI hearing on May 14, 1980 was intended only on its application for a "stop and desist" order and that because the BOI thereafter rendered a decision without further hearing, Adamson was denied due process. Adamson further argued that the BOI's decision was based solely on the findings of the director and not of the Board of Governors which rendered the decision.

The Supreme Court, through Justice Fernan, found the petition to be without merit. It said:

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[97] 152 SCRA 45 (1987).
[98] *Id.*, at 49.
[99] 152 SCRA 237 (1987).

> Based on the foregoing, We rule that petitioner was not deprived of its right to procedural due process in the BOI. In the first place, it was notified of the May 14, 1980 hearing. The notice specified that the hearing was on the *petition* although it also stated therein with particularity, petitioner's prayer for a stop and desist order. Necessarily, it is immaterial that said notice was sent before Johnson filed its answer to the petition and there was yet no joinder of issues considering that the proceeding was before an administrative tribunal where technicalities that should be observed in a regular court may be dispensed with.
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> Secondly, during the hearing, petitioner was given the opportunity to present its case, including its prayer for a stop and desist order. As clearly enunciated in the minutes of the hearing which We have painstakingly studied and set forth herein to determine if any irregularity attended the questioned BOI proceeding, it was conducted for the purpose of hearing the arguments and receiving evidence of the parties "to resolve the case expeditiously." Having been given the *opportunity* to put forth its case, petitioner has only itself, or better still, its counsel and officers who were present therein, to blame for its failure to do so.
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> Petitioner's right to procedural due process was not violated when the hearing was conducted before a director of the BOI and not before the members of the board themselves who decided the case. The requirements of a fair hearing do not mandate that the actual taking of testimony or the presentation of evidence be before the same officer who will make the decision on the case.[100]

C. *The Protection of Substantive Rights*

1. *The Taking of Property Under Eminent Domain.* — During the last regime, several decrees were issued, uniformly providing for the determination of just compensation by reference to the value declared by the owner or the market value as determined by the assessor, whichever was lower. These were PD No. 76, PD No. 464, PD No. 794 and PD No. 1533. In previous decisions of the Supreme Court, the validity of these decrees was upheld on the basis of the Transitory Clause (Art. XVII, Sec. 3(2)) of the 1973 Constitution, declaring all Presidential issuances under martial law to be "part of the law of the land [to] remain valid, legal, binding and effective . . . unless modified, revoked or superseded by subsequent [ones] or unless expressly and explicitly modified or repealed by the regular National Assembly."[101]

In *Export Processing Zone v. Dulay*,[102] which involved the expropriation by the EPZA of a private land in Lapu-Lapu City, the Court, in an opinion by Justice Gutierrez, invalidated PD No. 1533 for being an invasion of the province of the judicial department and a denial of due process to private property owners. The Court said:

> The method of ascertaining just compensation under the aforecited decree constitutes impermissible encroachment on judicial prerogatives. It

[100] *Id.*, at 250-251.

[101] *See, e.g.*, National Housing Authority v. Reyes, 123 SCRA 245 (1983); Heirs of Juancho Ardona v. Reyes, 125 SCRA 220 (1983).

[102] 149 SCRA 305 (1987).

tends to render this Court inutile in a matter which under the Constitution is reserved to it for final determination.

Thus, although in an expropriation proceeding the court technically would still have the power to determine the just compensation for the property, following the decree, its task would be relegated to simply stating the lower value of the property as declared either by the owner or the assessor. . . .

Just compensation means the value of the property at the time of the taking. It means a fair and full equivalent for the loss sustained. All the facts as to the condition of the property and its surroundings, its improvements and capabilities, should be considered. In this particular case, the tax declarations presented by the petitioner as basis for just compensation were made by the Lapu-Lapu City assessor long before martial law, when land was not only much cheaper but when assessed values of properties were stated in figures constituting only a fraction of their true market value. The private respondent was not even the owner of the properties at the time it purchased the lots for development purposes. To peg the value of the lots on the basis of documents which are out of date and at prices below the acquisition cost of present owners would be arbitrary and confiscatory.

The following month, the Court in *Manotok v. National Housing Authority,*[103] invalidated two other decrees (PD No. 1669 and PD No. 1670) which expropriated two estates in the City of Manila. The decrees are notable for their substitution of the executive process in place of the judicial process. PD No. 1669 provided in pertinent parts:

Section 1. The real properties known as the 'Tambunting Estate' and covered by TCT Nos. 119059, 122450, 122451, 122452 and Lots Nos. 1-A, 1-C, 1-D, 1-E, 1-F and 1-H of (LRC) Psd-230517 (Previously covered by TCT No. 119058) of the Register of Deeds of Manila with an area of 52,688.70 square meters, more or less are hereby declared expropriated. The National Housing Authority hereinafter referred to as the "Authority" is designated administrator of the National Government with authority to immediately take possession, control, disposition, with the power of demolition of the expropriated properties and their improvements and shall evolve and implement a comprehensive development plan for the condemned properties.

. . . .

Section 6. Notwithstanding any provision of law or decree to the contrary and for the purpose of expropriating this property pegged at the market value determined by the City Assessor pursuant to Presidential Decree No. 76, as amended, particularly by Presidential Decree No. 1533 which is in force and in effect at the time of the issuance of this decree, in assessing the market value, the City Assessor shall consider existing conditions in the area, notably that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation cost. Subject to the foregoing, the just compensation for the above property should not exceed a maximum of SEVENTEEN MILLION PESOS (₱17,000,000.00) which shall be payable to the owners within a period of five (5) years in five (5) equal installments.

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[103] 150 SCRA 89 (1987).

Except that it related to another piece of land owned by the same family, PD No. 1670 is similar to PD No. 1669.

The petitioners challenged the constitutionality of the two decrees on the ground that the direct expropriation of their properties constituted a denial of due process and equal protection of the laws, and the Supreme Court sustained their challenge. Justice Gutierrez, who also wrote the Court's opinion in *EPZA v. Dulay*,[104] explained that while in its previous decisions the Court had "presumed the validity of the beautiful 'whereases' in the decrees governing expropriations and legitimated takings of private property which, in normal times would have been constitutionally suspect, . . . [s]ubsequent developments have shown that a disregard [of] basic liberties and the shortcut methods embodied in the decrees on expropriation do not achieve the desired results. It appears that constitutionally suspect methods or authoritarian procedures cannot be the basis for social justice." He noted that while the decrees were issued avowed for a public purpose, "squatter colonies and blighted areas have multiplied" and that the decrees only favored a few squatters at the expense of the property owner. Justice Gutierrez said: "It is a foregone conclusion that the favored squatters allowed to buy these choice lots would lose no time . . . to either lease out or sell their lots to wealthy merchants even as they seek other places where they can set up new squatter colonies." Then returning to "established principles of justice and fairness which have been with us since the advent of constitutional government," the Court nullified the two decrees on the ground that they violated the petitioners' right to be heard and not to be singled out for particular application of the state's power of eminent domain. The Court said:

> . . . There is no mention of any market value declared by the owner. Section 6 of the two decrees pegs just compensation at the market value determined by the City Assessor. The City Assessor is warned by the decrees to "consider existing conditions in the area, notably that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation cost."
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> . . . .
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> In the instant petitions, there is no showing whatsoever as to why the properties involved were singled out for expropriation through decrees or what necessity impelled the particular choices or selections. In expropriations through legislation, there are, at least, debates in Congress open to the public, scrutiny by individual members of the legislature, and very often, public hearings before the statute is enacted. Congressional records can be examined. In these petitions, the decrees show no reasons whatsoever for the choice of the properties as housing projects. . . .

104 *Supra* note 102.

Indeed, except that they did not condemn *people* but *property,* the two decrees amounted to a bill of attainder, a discredited device of Stuart Kings in securing the conviction of individuals.

2. *Freedom of Expression versus the Right of Privacy.* — In *Ayer Production v. Capulong,*[105] the Supreme Court, in an opinion by Justice Feliciano, upheld the right of an Australian film maker to produce a "docudrama" on the February 1986 revolution in the Philippines, against the claim of the private respondent Juan Ponce Enrile that the making of the film, entitled "The Four Day Revolution," would violate his right of privacy. Ponce Enrile had forbidden the use of his name. In addition he brought an action in the Regional Trial Court to enjoin production of the movie. The trial court issued an injunction, forbidding the film producer from filming the movie and from making any reference to Ponce Enrile.

The Supreme Court promptly set aside the injunction of the trial court. The Court reiterated the view that movies come within the protection of the Free Speech Clause of the Constitution. "The circumstance that the production of motion picture films is a commercial activity expected to yield profit, is not a disqualification for availing of freedom of speech and of expression." Turning to Ponce Enrile's claim of privacy, the Court ruled that the right of privacy cannot be invoked to resist publication of matters of public interest. It stated:

> Private respondent is a "public figure" precisely because, *inter alia,* of his participation as a principal actor in the culminating events of the change of government in February 1986. Because his participation therein was major in character, a film reenactment of the peaceful revolution that fails to make reference to the role played by private respondent would be grossly unhistorical. The right of privacy of a "public figure" is necessarily narrower than that of an ordinary citizen. Private respondent has not retired into the seclusion of simple private citizenship. He continues to be a "public figure." After a successful political campaign during which his participation in the EDSA Revolution was directly or indirectly referred to in the press, radio and television, he sits in a very public place, the Senate of the Philippines.

The Court also stated that the trial court's injunction amounted to a prior restraint on freedom of expression. "[A] weighty presumption of invalidity vitiates measures of prior restraint upon the exercise of such freedoms," the Court said.

The Court ordered the dismissal of a similar case brought by Colonel Gregorio Honasan, another figure in the EDSA revolution, noting that by turning fugitive from justice, the colonel had forfeited any right to claim privacy.

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[105] G.R. Nos. 82380 & 82398, April 29, 1988.