

R.C.C. NO. 28

VOL. I, July 11, 1986

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Friday, July 11, 1986

OPENING OF SESSION

At 9:30 a.m., the President, the Honorable Cecilia Muñoz Palma, opened the session.

THE PRESIDENT: The session is called to order.

NATIONAL ANTHEM

THE PRESIDENT: Everybody will please rise to sing the National Anthem.

Everybody rose to sing the National Anthem.

THE PRESIDENT: Everybody will please remain standing for the Prayer to be led by the Honorable Blas F. Ople.

Everybody remained standing for the Prayer.

PRAYER

MR. OPLE: Lord, You were the Original Taskmaster. In the Old Testament, You gave a covenant to Your people. It was a good CBA or Collective Bargaining Agreement, as we would call it now, but the enjoyment of its benefits required reciprocal performance and sacrifice.

You promised them deliverance from oppression and the ultimate refuge of a land of justice flowing with milk and honey. But this was not going to be a simple gift of Your bounty. You did not promise a free lunch.

It was going to be a test of faith on a long journey beset by all kinds of dangers, hunger, discord and mutinies, the sword of unforeseen enemies, and the ultimate risk, the loss of moral endurance and of the will to struggle, the people's capitulation not to external enemies but to their own internal weakness.

Lord, in this Constitutional Commission, we are drafting a Constitution that when ratified, will be the highest covenant between our people and their government. We are humbled by the sheer majesty of this task. It is beyond our means to promise a covenant that will redeem our people from the bondage of centuries of poverty, disease and injustice, and that will bring them to a promised land flowing with milk and honey. But it is within our means to forge, with common dedicated labors, a framework of law and justice that will honor the humanity in every man and put the odds of the unending struggle for justice on earth on the side of the just and the faithful among Your children.

Extend to us, O Lord, the grace of Your own covenant with Your people. Help us so that we may live up to our name as the one Christian nation in Asia, a Christian nation graced by a new and stronger solidarity with our Muslim brothers in Mindanao. Help us frame a covenant between our people and their government that will heal all remaining wounds and bitterness from the past, that will forge a lasting solidarity among us through the

structures of a just society, but always under the grace of Your Divine inspiration and guidance. Amen.

ROLL CALL

THE PRESIDENT: The Secretary-General will please call the roll.

THE SECRETARY-GENERAL, reading:

Alonto Present [*] Nieva Present

Aquino Present Nollado Present

Azcuna Present Ople Present

Bacani Present Padilla Present

Bengzon Present [*] Quesada Present

Bennagen Present Rama Present

Bernas Present Regalado Present

Rosario Braid Present [*] Reyes de los Present

Brocka Present Rigos Present

Calderon

Present Rodrigo Present

Castro de Present Romulo Present

Colayco Absent Rosales Present

Concepcion Present Sarmiento Present

Davide Present Suarez Present

Foz Present Sumulong Present

Garcia Present Tadeo Present

Gascon

Present Tan Present

Guingona Present Tingson Present

Jamir Present Treñas Present

Laurel Present Uka Absent

Lerum Present Villacorta Present [*]

Maambong Absent Villegas Present

Monsod Present

The President is present.

The roll call shows 39 Members responded to the call.

THE PRESIDENT: The Chair declares the presence of a quorum.

MR. CALDERON: Madam President.

THE PRESIDENT: The Assistant Floor Leader is recognized.

MR. CALDERON: I move to dispense with the reading of the Journal, of the previous session.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

APPROVAL OF JOURNAL

MR. CALDERON: Madam President, I move that we approve the Journal of the previous session.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

MR. CALDERON: Madam President, I move that we proceed to the Reference of Business.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

The Secretary-General will read the Reference of Business.

REFERENCE OF BUSINESS

The Secretary-General read the following Proposed Resolutions on First Reading, Communications and Committee Report, the President making the corresponding references:

PROPOSED RESOLUTIONS ON FIRST READING

Proposed Resolution No. 473, entitled:

RESOLUTION TO INCORPORATE IN THE ARTICLE ON THE TRANSITORY PROVISIONS A PROVISION AUTHORIZING THE PRESIDENT TO REVIEW ALL CONTRACTS, CONCESSIONS, PERMITS, OR OTHER FORMS OF PRIVILEGES FOR THE EXPLORATION, DEVELOPMENT, EXPLOITATION OR UTILIZATION OF THE NATURAL RESOURCES ENTERED INTO, GRANTED, ISSUED OR ACQUIRED BEFORE THE EFFECTIVITY OF THE NEW CONSTITUTION, AND TO AMEND, MODIFY OR REVOKE THE SAME.

Introduced by Hon. Davide, Jr.

To the Committee on Amendments and Transitory Provisions.

Proposed Resolution No. 474, entitled:

RESOLUTION TO INCORPORATE IN THE ARTICLE ON TRANSITORY PROVISIONS OF THE NEW CONSTITUTION A PROVISION THAT UNTIL THE NATIONAL ASSEMBLY FIRST ELECTED UNDER THIS CONSTITUTION SHALL HAVE ELECTED THE SPEAKER, THE INCUMBENT VICE-PRESIDENT SHALL BE THE PRESIDING OFFICER THEREOF.

Introduced by Hon. Davide, Jr.

To the Committee on Amendments and Transitory Provisions.

Proposed Resolution No. 475, entitled:

RESOLUTION TO INCORPORATE IN THE ARTICLE ON TRANSITORY PROVISIONS A PROVISION FIXING THE DATE OF EFFECTIVITY OF THE NEW CONSTITUTION AND ITS EFFECTS ON PREVIOUS CONSTITUTIONS.

Introduced by Hon. Davide, Jr.

To the Committee on Amendments and Transitory Provisions.

Proposed Resolution No. 476, entitled:

RESOLUTION TO INCORPORATE IN THE TRANSITORY PROVISIONS OF THE NEW CONSTITUTION A PROVISION ACCORDING RECOGNITION TO LAWS, PROCLAMATIONS, ORDERS, DECREES, INSTRUCTIONS OR ACTS NOT OTHERWISE INCONSISTENT WITH THE NEW CONSTITUTION, UNLESS THEY ARE MODIFIED OR REPEALED BY THE NATIONAL ASSEMBLY.

Introduced by Hon. Davide, Jr.

To the Committee on Amendments and Transitory Provisions.

Proposed Resolution No. 477, entitled:

RESOLUTION TO EXTEND STATE RECOGNITION AND SUPPORT TO COMMUNITY MEDIA AND OTHER FORMS OF SMALL MEDIA.

Introduced by Hon. Rosario Braid.

To the Committee on General Provisions.

Proposed Resolution No. 478, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION A PROVISION ON THE RIGHT TO COMMUNICATE AND INITIATE COMMUNICATION.

Introduced by Hon. Rosario Braid.

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Proposed Resolution No. 479, entitled:

RESOLUTION TO INCORPORATE IN THE DECLARATION OF PRINCIPLES THE RECOGNITION OF RURAL DEVELOPMENT AND AGRARIAN REFORM AS PRIORITIES OF THE STATE.

Introduced by Hon. Rosario Braid.

To the Committee on Social Justice.

Proposed Resolution No. 480, entitled:

RESOLUTION TO INCLUDE A SECTION IN THE DECLARATION OF PRINCIPLES RECOGNIZING NON-GOVERNMENTAL INSTITUTIONS AND MASS-BASED ORGANIZATIONS AS PARTNERS IN DEVELOPMENT.

Introduced by Hon. Rosario Braid.

To the Committee on Preamble, National Territory, and Declaration of Principles.

Proposed Resolution No. 481, entitled:

RESOLUTION TO INCORPORATE IN THE CONSTITUTION A PROVISION RECOGNIZING THE ROLE OF THE YOUTH IN NATION-BUILDING AND GUARANTEEING THEIR REPRESENTATION IN POLICY-MAKING BODIES OF THE GOVERNMENT.

Introduced by Hon. Gascon.

To the Committee on Preamble, National Territory, and Declaration of Principles.

Proposed Resolution No. 482, entitled:

RESOLUTION TO GIVE MEANING AND SUBSTANCE TO THE CONSTITUTIONAL PROVISION AGAINST CRUEL OR UNUSUAL PUNISHMENT.

Introduced by Hon. Natividad, Maambong, Ople and de los Reyes, Jr.

To the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights.

Proposed Resolution No. 483, entitled:

RESOLUTION TO ADOPT A SECTION IN THE TRANSITORY PROVISIONS FREEZING ALL SEQUESTRATION ORDERS ISSUED BY VIRTUE OF PROCLAMATION NO. 3 ON MARCH 25, 1986 UPON THE ADOPTION OF THIS CONSTITUTION UNTIL JUDICIAL CONFIRMATION.

Introduced by Hon. Bernas and Aquino.

To the Committee on Amendments and Transitory Provisions.

Proposed Resolution No. 484, entitled:

RESOLUTION TO INCORPORATE IN THE TRANSITORY PROVISIONS A PROVISION REQUIRING ALL OFFICIALS AND EMPLOYEES OF THE GOVERNMENT INCLUDING THOSE IN GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND THE OFFICERS AND MEMBERS OF THE ARMED FORCES OF THE PHILIPPINES TO TAKE AN OATH TO SUPPORT PROTECT, PRESERVE, AND DEFEND THE NEW CONSTITUTION.

Introduced by Hon. Davide, Jr.

To the Committee on Amendments and Transitory Provisions.

Proposed Resolution No. 485, entitled:

RESOLUTION TO INCORPORATE IN THE TRANSITORY PROVISIONS OF THE NEW CONSTITUTION A PROVISION REQUIRING THE SUBMISSION OF ALL TREATIES OR INTERNATIONAL AGREEMENTS WHICH WERE NOT RATIFIED BY THE PREVIOUS LEGISLATURES TO THE NATIONAL ASSEMBLY FOR APPROPRIATE ACTION.

Introduced by Hon. Davide, Jr.

To the Committee on Amendments and Transitory Provisions.

COMMUNICATIONS

Letter from the National Nutrition Council signed by Dr. Josefina Atienza-Salvaña, requesting mention of nutrition as one of the fields in which the state shall provide social services.

(Communication No. 169 — Constitutional Commission of 1986)

To the Committee on Preamble, National Territory, and Declaration of Principles.

Letter from the Labor Advisory Consultative Council, signed by Mr. J. Edralin and three others, submitting a draft resolution proposing protection to labor and guaranteeing basic human and trade union rights.

(Communication No. 170 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Letter from the Supreme Cooperative Council of the Philippines signed by Messrs. Arcadio S. Lozada, Manuel F.

Verzosa and Vicente A. Martires, submitting a draft resolution proposing a state policy on cooperatives.

(Communication No. 171 — Constitutional Commission of 1986)

To the Committee on the National Economy and Patrimony.

Letter from the Honorable Commissioner Cirilo A. Rigos, transmitting a letter from Mr. Liberato Gamo, a retired civil servant of 253 Constancia St., Sampaloc, Manila, requesting a constitutional assurance that retirees shall receive in full their gratuities at the time of their retirement.

(Communication No. 172 — Constitutional Commission of 1986)

To the Committee on Constitutional Commissions and Agencies.

Letter from Mr. Jeremias U. Montemayor for the Federation of Free Farmers, submitting a copy of the article "Social Justice and the Constitution."

(Communication No. 173 — Constitutional Commission of 1986)

To the Committee on Social Justice.

Communication from Mr. Fabian M. Dayrit, recommending provisions on science and technology.

(Communication No. 174 — Constitutional Commission of 1986)

To the Committee on Human Resources.

COMMITTEE REPORT

Committee Report, No. 23 on Proposed Resolution No. 486, prepared by the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights, entitled:

RESOLUTION TO INCORPORATE IN THE NEW CONSTITUTION AN ARTICLE ON THE BILL OF RIGHTS,

recommending its approval in substitution of Proposed Resolution Nos. 4, 84, 26, 28, 40, 45, 48, 58, 65, 94, 98, 101, 103, 131, 154, 160, 165, 169, 175, 184, 191, 202, 209, 210, 226, 237, 242, 245, 250, 258, 261, 274, 287, 293, 297 and 314.

Sponsored by Hon. Laurel, Jr., Bernas, Davide, Jr., Bengzon, Jr., Abubakar, Colayco, Sarmiento, Tadeo, Garcia, Villegas, Rodrigo, Bennagen, Lerum, Bacani, Padilla and Natividad:

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Bengzon be recognized for an information.

THE PRESIDENT: Commissioner Bengzon is recognized.

MR. BENGZON: Good morning.

Madam President, may I announce to the Commission that, in line with the results of the caucus of the Chairman and the Vice-Chairman of the Steering Committee the other day, it was decided that the last day for the filing of proposed resolutions will be on July 15; thereafter, whatever proposals the Commissioners may have will be introduced already as amendments.

Likewise, may I take this opportunity to announce that if we finish the Article on the Judiciary today, the Steering

Committee intends to schedule the period of sponsorship and debate and also the period of amendments on Monday for Committee Report Nos. 19 and 20 with respect to the Civil Service Commission and the Commission on Audit.

So, may I alert the Chairman and members of the Committee on Constitutional Commissions and Agencies to be prepared for Monday in the event that we finish the Article on the Judiciary today.

Thank you.

MR. RAMA: Madam President.

THE PRESIDENT: Yes, the Floor Leader is recognized.

MR. RAMA: May I ask that Commissioner Foz be recognized.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: Madam President, in-response to the announcement of the Chairman of the Steering Committee regarding our reports, I wonder if it is feasible to take up Committee Report No. 19 first before Committee Report No. 20. Committee Report No. 19 refers to the Civil Service Commission including the Common Provisions for the three constitutional commissions. I do not see how we can tackle the two reports at the same time.

MR. BENGZON: I did not mean that we would consider Committee Report Nos. 19 and 20 simultaneously but one after the other.

Thank you.

THE PRESIDENT: Committee Report No. 19 refers to the Civil Service Commission and Committee Report No. 20 refers to the Commission on Audit. Is that correct?

MR. BENGZON: Yes, Madam President.

MR. RAMA: Madam President.

THE PRESIDENT: The Floor Leader is recognized.

CONSIDERATION OF COMMITTEE REPORT NO. 18

(Article on the Judiciary)

Continuation

PERIOD OF SPONSORSHIP AND DEBATE

MR. RAMA: I move that we continue the consideration of Committee Report No. 18 on the draft Article on the Judiciary. We are still in the period of sponsorship and debate.

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

MR. RAMA: Madam President, I ask that Commissioner Tadeo be recognized to interpellate the sponsor.

THE PRESIDENT: If the other members of the Committee on the Judiciary desire to sit with the Chairman, they can do so. Maybe we can provide chairs for them.

Commissioner Tadeo is recognized.

MR. TADEO: Madam President, Kagalangalang na Commissioner, Chief Justice Concepcion, mayroon lamang po akong ilang paglilinaw tungkol dito sa page 6, lines 8 to 11 na nagsasaad:

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. . .

Batay po ito sa isang konkretong karanasan ng mga magbubukid at sakada sa Negros kung saan naisampa ang kaso nila tungkol po sa "amelioration fund" o iyong 10 centavos per picul ng asukal. Simula po ng naisampa ito sa Korte Suprema, bumilang na po ito ng 20 taon o mahigit pa. Samantalang dito sa bagong panukalang resolusyon, ang isinasaad lamang ay 24 na buwan. Ang kaso pong ito sa Korte Suprema ay inabot ng maraming taon at lumagpas na sa panahong ayon dito sa resolusyon. Hindi naman nila maihabla ang mga Justices ng Korte Suprema at tinatanong ng mga magbubukid kung bakit natapos na ang maraming taon ay wala pang desisyon. Saan pa sila pupunta? Ang Korte Suprema na ang pinakamataas na hukuman.

Kagalanggalang na Commissioner Concepcion, ang sabi po ng Korte Suprema tungkol dito ay wala pa raw regulasyon para maisakatuparan ang taning na panahong 18 o 24 na buwan. Ano po kaya ang paraan para hindi naman ito maabuso? Lumagpas na sa panahon po ang kasong ito ng mga magbubukid. Ang isinasaad po sa 1973 Constitution ay 18 buwan; dito po naman sa ating bagong panukala ay kinakailangang makapaghatol kaagad ang Korte Suprema sa loob ng 24 na buwan mula nang isampa ang kaso. Pero iyon pong kasong iyon ay napakaraming taon na ang binilang, wala pa ring nangyayari. Ano po kaya ang mabuting paraan para hindi natin ito maabuso?

MR. CONCEPCION: By the way, may I announce to the Commission that the members of the Committee on the Judiciary have been kind enough to help me in arguing on a number of questions and they have offered individually to speak on certain specific matters; and this question happens to be the subject on which Commissioner Treñas has offered his assistance.

THE PRESIDENT: So, Commissioner Treñas is recognized.

MR. TREÑAS: Madam President, fellow Commissioners: It is true that under the 1973 Constitution, we have Section 11, paragraph 1 of the Article on the Judiciary which required the maximum period of 18 months for the Supreme Court to decide a case submitted to it. However, in a decision rendered by the Supreme Court, the word "shall" was construed or interpreted as merely directory. That is why the Committee, in going over this provision, wanted to make it clear to the Supreme Court and to the other collegiate and lower courts that this provision is not merely directory but mandatory. Hence, we decided to change the word "shall" to MUST which is stronger. However, the present provision shall apply after the effectivity of the present Constitution. Insofar as cases filed before the effectivity of the present Constitution are concerned, Chief Justice Teehankee informed us that it is physically impossible to apply the period. That is why we have recommended in the Transitory Provisions that the court shall take such proper means for the early disposition of cases filed before the effectivity of the present Constitution. Am I clear?

MR. TADEO: Kung sa kabila nito ay lumagpas pa rin ang 24 na buwan na wala pang desisyon, ano po ang epekto nito?

MR. TREÑAS: As clarified by our Chairman, who was a former Chief Justice of the Supreme Court, while we did not put it very clearly, we feel that this will now constitute a violation of the Constitution. Furthermore, the Commissioner will note that we added a new provision to Section 14, subsection 2, which says:

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.

So, the Constitution itself clarifies when a case or matter is deemed submitted for decision.

Furthermore, we added another new provision, subsection 3, which says:

Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties.

Therefore, there will now appear in the record of the case the fact that said period has already expired because the corresponding certification shall be issued and, therefore, the parties adversely affected may take such appropriate action they may deem necessary and proper.

THE PRESIDENT: Is Commissioner Tadeo satisfied?

MR. TREÑAS: Am I clear?

MR. TADEO: Yes.

MR. TREÑAS: Thank you very much.

MR. RAMA: Madam President.

THE PRESIDENT: Yes.

MR. RAMA: I ask that Commissioner Monsod be recognized.

THE PRESIDENT: Commissioner Monsod is recognized.

MR. MONSOD: Thank you.

Will the honorable Commissioner yield to some questions?

MR. CONCEPCION: With pleasure.

THE PRESIDENT: Commissioner Monsod may proceed.

MR. MONSOD: Thank you.

In Section 15, it is provided that an amount equivalent to not less than two percent of the national budget shall be automatically appropriated and regularly released for the Judiciary. May I know the basis of this two percent?

MR. CONCEPCION: May I refer the matter to Commissioner Suarez.

MR. SUAREZ: Thank you, Madam President.

When Chief Justice Claudio Teehankee and former Chief Justice Felix Makasiar discussed this matter with the Committee on the Judiciary, both of them strongly recommended that in order to maintain the independence of the Judiciary, the annual budget allocated for it should be determined and fixed and should be automatically released regularly without the necessity of the chief magistracy of the land lobbying in the executive and in the legislative departments, which is not only demeaning to the Chief Justice of the Supreme Court but violative of the principle of independence of the three departments.

Chief Justice Claudio Teehankee recommended that at least three percent of the total annual national budget be set aside for the Judiciary corresponding to its annual budget. But when we discussed this in the committee level, we came up with the suggestion that the three percent might be a little too much; hence, we agreed to recommend to the Constitutional Commission at least two percent.

On the basis of the 1986 national budget, which is about P68 billion, the Judiciary would therefore be entitled,

based on a two-percent mathematical figure, to something like P1.2 billion. That is the basis for your Committee recommending a two percent for the Judiciary.

MR.-MONSOD: Is the Committee aware that the budget for 1986 is about P114 billion?

MR. SUAREZ: We took that into account also. In other words, the figure based on two percent could be increased from year to year. The three main features of this particular provision are: one, there must be a fixed budget for the Judiciary; second, it must be automatically appropriated; and third, it must be regularly released without need of provocation on the part of the Judiciary. Those were our main concern.

MR. MONSOD: If the provision were imposed, say, this year, the budget for 1986 as originally provided was about P750 million, of which about P10 million was for capital expenditures. If this two-percent automatic provision stays in the Constitution, the budget for the Judiciary for 1986 will be increased to P2.2 billion, almost three times the original budget.

My concern, is that a fixed percentage like this would be tantamount to a preemption by the Judiciary of the budget process and priorities which do not belong to the Judiciary. Even if it is assumed that the Judiciary needs to increase the salaries of its personnel and it needs one-time expenditures for capital requirements, the P2.2 billion seems to be far in excess of what the Judiciary would need at the moment.

MR. SUAREZ: The Gentleman is, therefore, suggesting that it should be reduced to reasonable levels?

MR. MONSOD: My suggestion is to introduce an amendment at the appropriate time that would assure fiscal autonomy to the Judiciary — which I assume is the primary objective—and at the same time, for it not to impose an undue burden on the budget by means of an arbitrary allocation that may not have a basis on the actual requirements, both operating expenses and capital expenditures.

MR. SUAREZ: The way we understand the reason for Chief Justice Teehankee's suggesting a three-percent budget based on the total national budget is that the Judiciary may need funds for the construction of buildings and also the possible regionalization of the Intermediate Appellate Court.

MR. MONSOD: I concede that there may be a one-time need for capital expenditures, but let us remember that when we put a section like this in the Constitution, this now becomes a recurring allocation from year to year. But at some point in time, capital expenditures may not be needed; the Judiciary will then have excess funds. I agree that the integrity of the people in the Judiciary is such that, perhaps, they will be prudent to return some of the money.

MR. SUAREZ: Yes.

MR. MONSOD: Unfortunately, considering human nature and the nature of bureaucracy, expenditures usually expand to the amount of money available. We may then really be taking money away from more priority expenditures.

For example, the budget for the entire University of the Philippines System is about P676 million. The budget for the entire secondary education is about P894 million. So, if we perpetuate this, we may be really prioritizing wrongly the needs of the people, with respect to the funds in excess of the real needs of the Judiciary.

MR. SUAREZ: The Gentleman mentioned a possible situation where the allocation would exceed the actual needs of the Judiciary. Let us rely on the integrity of the Chief Justice of the Supreme Court; he would certainly take steps for the reversion of these appropriated funds to the National Treasury. That is the normal course of . . .

MR. MONSOD: My suggestion is that we institutionalize some safeguards so that we do not rely solely on the

integrity and prudence of the Judiciary.

MR. SUAREZ: If the Gentleman has in mind a practical and effective measure in order that at least this matter of independence of the Judiciary can be secured, the Committee will be very happy to accept any suggestion.

MR. MONSOD: Thank you.

MR. SUAREZ: Thank you.

MR. ROMULO: May I only add to the thinking of a practical solution. One problem here is that the administration of justice and, therefore, the delivery of justice to our people is always put at the bottom of the list. The end of government is to deliver justice, so the priority should be number one. We have to point out to the legislature — because it often forgets — that beyond the economic needs, there is at least an equal need for justice. We cannot have an efficient delivery of justice through the courts without the corresponding appropriations. I do not necessarily disagree with the Gentleman but I think we have to keep in mind that in the order of priorities, justice should certainly be on top.

MR. MONSOD: Mr. Presiding Officer, I think there is no dispute as to the priority of justice. There may be a dispute as to the priority of buildings as against expenditures for essential services. Maybe we can take all that into consideration during the period of amendments.

At this juncture, the President relinquished the Chair to the Honorable Renato V. Sarmiento.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Sarmiento): Yes, the Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Guingona be recognized.

THE PRESIDING OFFICER (Mr. Sarmiento): Commissioner Guingona is recognized.

MR. GUINGONA: Thank you, Mr. Presiding Officer.

In his response, Commissioner Treñas said that when the Chief Justice appeared before the Committee, he asserted that it was physically impossible — these are the words used by the Commissioner — for the Supreme Court to render decision within 18 months as provided for. Am I correct?

MR. ROMULO: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Sarmiento): Commissioner Romulo is recognized.

MR. ROMULO: Let me clarify this before Commissioner Treñas does, if he wishes to.

The 18-month period does not refer to new cases. He was saying that, in fact, they cannot possibly finish the backlog in 18 months and, therefore, any new mandatory period should be prospective, not retroactive. That is really what Chief Justice Teehankee meant. Would Commissioner Treñas wish to add something?

MR. TREÑAS: Mr. Presiding Officer, in reply to the request for clarification, the sense was as explained by Commissioner Romulo insofar as cases already filed with the Supreme Court are concerned. That is why, when we explained that we intended to make the provisions of Section 14 (1) mandatory, Chief Justice Teehankee was agreeable, provided that these provisions shall be prospective.

MR. ROMULO: Thank you.

MR. CONCEPCION: There are about 5,000 old cases pending in the Supreme Court. In the lower courts, there

are about 538,000. Let us limit ourselves to the Supreme Court. If we seek to adopt identical measures to finish old and new cases, it would be impossible for the court to reduce its backlog, apart from the psychological effect on the justices. A new justice, perhaps, would have to begin with about 1,000 old cases in addition to the cases that may be filed hereafter. So, we thought that the old cases should be the object of a plan or method or treatment different or separate from the new cases. The draft proposed by the Committee imposes in a mandatory manner a period of 24 months for the new cases filed with the Supreme Court. But with respect to the old cases, plans should be made not only for the Supreme Court but also for the lower courts for the reduction of the backlog.

Psychologically, when a justice has so many cases, he knows it is impossible for him to dispose of them during his tenure or term. The psychological effect is to say: "What is the use? At any rate, it is impossible for me." But if we give him means to keep up with the new cases and then dispose of some of the old cases, that would show him that he is given ample opportunity to contribute to the reduction of the backlog with reference to the old cases. He may develop a certain feeling of security that the job is not beyond his capacity to

handle properly. So, there are two policies there: one, with respect to the old cases; and the other, all those that may be filed hereafter.

MR. GUINGONA: Thank you.

But a reading of Section 14 shows that there is no distinction made as to cases, such that all cases do not refer to prospective or back cases. I thought the Gentleman may be referring also to the backlog of 50,000 cases that the honorable Commissioner Concepcion had mentioned.

MR. CONCEPCION: No distinction was made in that paragraph or section because the period prescribed in the previous paragraph refers to cases filed hereafter.

MR. GUINGONA: I see. Thank you.

Considering the concept of "justice delayed is justice denied," I was also wondering whether it would be in the interest of justice for the justices of the Supreme Court to tackle the prospective cases, and then take up little by little the back cases, or whether to first give preference to back cases because some of them have been pending for many, many years, as mentioned by Commissioner Tadeo. If we go immediately to the prospective cases because these are the cases that the new justices of the Supreme Court will be able to appreciate better, what happens to the back cases?

MR. CONCEPCION: I will put it this way: I had occasion to mention yesterday that there are 1,700 judges, excluding those of the Supreme Court, as of now. If each one disposes of one case a month among those which are debated and which are backlogs, every month there would be 1,700 cases less in the backlog. In 10 months that would be 17,000 cases, and in 12 months, it would be 20,000 while the new cases are being disposed of within the period newly established for them. I think that will contribute considerably to unclogging the docket. However, we have to consider another problem. We have had, in effect, three reorganizations since the proclamation of martial law. When martial law was proclaimed, all judges were required to file their resignations. We can imagine its psychological effect upon the incumbents at the time. At this point in time, it is only human for judges to think "What is the use?" They may be dismissed from the service, or something else may happen resulting in their transfer to another station. The disenchantment of the judges affected is understandable.

The reorganization also took place in 1980 with the same effect. With the present revolutionary government, there is, in effect, the same sword dangling over the heads of all judges in the Philippines. We hope that these things do not happen again; that no reorganization shall take place at the expense of the tenure of incumbent judges. Otherwise, reorganizations would affect the morale of the Judiciary.

MR. GUINGONA: Thank you.

May I add a parenthetical remark. Under Proclamation No. 3, Her Excellency, the President, had set one year for government reorganization. So, as far as the Judiciary is concerned, the reorganization is not yet completed. We will have to wait for one year, from the time Proclamation No. 3 was promulgated before the sword dangling over their heads . . .

MR. CONCEPCION: But still the sword is hanging and that has a very deleterious effect.

MR. GUINGONA: I was told that I have only three minutes more. I was referring to the Supreme Court, not to the lower courts, when I asked the question because the Gentleman mentioned that there are 50,000 cases in the Supreme Court that have not yet been decided.

MR. CONCEPCION: No, about 5,000.

MR. GUINGONA: Even then, 5,000 is a large number of cases.

The second question has reference to Section 9, about the administrative supervision over all courts to be retained in the Supreme Court. I was wondering if the Committee had taken into consideration the proposed resolution for the transfer of the administrative supervision from the Supreme Court to the Ministry of Justice. But as far as I know, none of the proponents had been invited to explain or defend the proposed resolution.

Also, I wonder if the Committee also took into consideration the fact that the UP Law Constitution Project in its Volume I, entitled: Annotated Provision had, in fact, made this an alternative proposal, the transfer of administrative supervision from the Supreme Court to the Ministry of Justice.

Thank you.

MR. CONCEPCION: May I refer the question to Commissioner Regalado?

THE PRESIDING OFFICER (Mr. Sarmiento): Commissioner Regalado is recognized.

MR. REGALADO: Thank you, Mr. Presiding Officer.

We did invite Minister Neptali Gonzales, who was the proponent for the transfer of supervision of the lower courts to the Ministry of Justice. I even personally called up and sent a letter or a short note inviting him, but the good Minister unfortunately was enmeshed in a lot of official commitments. We wanted to hear him because the Solicitor General of his office, Sedfrey Ordoñez, appeared before us, and asked for the maintenance of the present arrangement wherein the supervision over lower courts is with the Supreme Court. But aside from that, although there were no resource persons, we did further studies on the feasibility of transferring the supervision over the lower courts to the Ministry of Justice. All those things were taken into consideration *motu proprio*.

Proposed Resolution No. 363 cites as one of the Committee's reasons for asking that the administrative supervision be transferred to the Ministry of Justice the case of Manila Electric Company vs. Pasay Transportation wherein the Supreme Court refused to be constituted as a board of arbitrators that would exercise administrative or quasi-judicial functions. Unfortunately, the same is not involved in the present situation. It was the case of the Supreme Court being made a board of arbitrators.

I did further researches on this and I also noted the UP draft as well as all the other drafts that we had.

In his memorandum to us, Chief Justice Teehankee did amplify on that situation when he stated that what appears in the 1973 Constitution wherein supervision over the lower courts is with the Supreme Court merely recognized what has been even before a present and existing power because it is inherent in the Supreme Court as a judicial

power. He took note of his experience when he was Secretary of Justice which department at that time was in charge of the supervision over courts. He also noted the opinions of such legal and constitutional stalwarts like the late Chief Justice Ricardo Paras, Senators Claro M. Recto, Vicente J. Francisco, Quintin Paredes, Lorenzo Tañada, and our colleague, Commissioner Ambrosio Padilla, who are living legends in their own time. He came up with the statement that the position of the Secretary of Justice in our government then as supervising the lower courts has no counterpart in the United States or in Europe where the chief function of the head of the department of justice is merely to act as a chief legal adviser of the government or to supervise the public prosecutors. He also pointed to the fact that contrary to the impressions in some quarters, the Supreme Court is not unnecessarily burdened with administrative problems affecting inferior courts and personnel because the main bulk of these problems is handled by the Office of the Court Administrator. He cited statistics on the setup of the Supreme Court and others which, if necessary, I will get into.

The proper cases on this matter are *People vs. Gutierrez*, November 26, 1970, *Garcia vs. Macaraig*, 1971; *Osmena, Jr. vs. Secretary of Justice*, 1971, wherein the Supreme Court said that the practice of having the Minister of Justice supervise the lower courts is of doubtful constitutionality. That is also reiterated in the book of Commissioner Bernas and in the book of now Justice Isagani Cruz. The position here of the Supreme Court is that supervision will not necessarily unburden the Supreme Court. Aside from the fact that there is the court administrator, we have now also added further the Judicial and Bar Council which, aside from merely proposing nominees to the President, will have such other duties as to help in the performance of functions of the Supreme Court. The theory of this is that the power of the Supreme Court to supervise the inferior courts is an inherent judicial power only articulated in the 1973 Constitution, and since the Supreme Court has the power to discipline the members of the lower courts, the power to discipline necessarily carries with it the power to supervise because in the power to supervise, we are aborting what would eventually be an administrative case. Since it is the Supreme Court which will remove the judges or provide for sanctions on matters of discipline, why do we have to wait for that matter to become an administrative case when the element of supervision may prevent the acts of the lower courts from aggravating into an administrative case; after all, it is still homespun logic that an ounce of prevention is worth a pound of cure?

MR. GUINGONA: Thank you.

May I just make it of record that none of the signers of the proposed resolution regarding the transfer of administrative supervision from the Supreme Court to the Ministry of Justice had, in fact, been invited to attend and express their views.

MR. CONCEPCION: Mr. Presiding Officer, I have to protest against that statement. They have been invited but they did not show up.

MR. GUINGONA: I am sorry, Mr. Presiding Officer.

MR. CONCEPCION: My secretary personally called up the Office of the Minister of Justice about six or seven times, and each time found reason why he could not come. We did not merely write to him. We have written even to the judges of the Shari'a courts in Mindanao.

MR. GUINGONA: I appreciate that, Mr. Presiding Officer.

MR. CONCEPCION: But I object to the Gentleman's statement that none of those in favor had been invited.

MR. GUINGONA: No, I was referring to the proponents of the proposed resolution that the Commissioner, Honorable Regalado, had referred to earlier. I am sorry; perhaps, I did not clarify.

MR. CONCEPCION: It is all right; I am sorry, too.

MR. REGALADO: May I add further that aside from the invitations sent by Justice Concepcion, and aside from the telephone calls of our committee secretary, I also talked with Commissioner Josefina Garcia who is presently with Minister Gonzales, and through her I sent a personal invitation, even a position paper. Unfortunately, we never received a response.

MR. GUINGONA: I have no quarrel about that. I do believe the Gentleman invited the Minister many times. I was not referring to the Minister.

May I also make of record that it is my view that the case cited by the honorable Commissioner, which is Manila Electric Company vs. Pasay Transportation, is, in fact, a reiteration of the provision contained here except that insofar as that case was concerned, it referred only to the Supreme Court and not to the lower courts. But when it spoke of board of arbitrators, it was speaking of an agency or an office that was exercising administrative function. Since we are talking about administrative supervision, there is no question that administrative supervision is also an administrative function.

The last question, Mr. Presiding Officer, is in connection with the testimony of Chief Justice Teehankee. I wonder if the 24-month period was suggested by the honorable Chief Justice or was set by the Committee. If it had been set by the Committee, has there been a reaction from the Chief Justice, a reaction in the sense that he concurred with the 24-month allotment, that they can finish both the prospective cases and the back cases in reasonable time?

MR. ROMULO: No, he concurred that they could work on the new cases but not the old cases. We precisely asked him how many months he thought they would need because this would now be mandatory.

MR. GUINGONA: I thank the Commissioner. Thank you, Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Sarmiento): The honorable Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Aquino be recognized.

THE PRESIDING OFFICER (Mr. Sarmiento): The Honorable Aquino is recognized.

MS. AQUINO: Mr. Presiding Officer, may I refer the Commissioner to Section 2 on the power of the National Assembly to define, prescribe and apportion the jurisdiction of the various courts. Does the Gentleman contemplate giving to the National Assembly, likewise, the power to add to the jurisdiction of the Supreme Court?

MR. CONCEPCION: This Section 2 was part of Section 1 of the 1973 Constitution. Therefore, we did not intend to give or withdraw from the National Assembly any of these powers.

MS. AQUINO: How does this section contemplate the power to abolish courts? May the legislature enact a statute declaring an existing judicial position vacant?

MR. CONCEPCION: What section is this?

MS. AQUINO: With regard to the same section, Mr. Presiding Officer, how does this contemplate the power of the National Assembly to abolish the court?

MR. CONCEPCION: This is part of the 1973 Constitution.

MS. AQUINO: As to Section 1, how does this portion treat the matter of political questions or nonjusticiable

controversies?

MR. CONCEPCION: That is a very nice question.

I had occasion to explain at the beginning of my remarks yesterday that the committee members were worried about the inaction of the Supreme Court over some of the most important cases, both from the legal and the national viewpoint, in view of the allegation that the issue before them was a political question. The Committee found it necessary to define "judicial power" and "political question." There were a number of decisions in the past endeavoring to define "political question." Yet, while they did not seem to be sufficiently effective, if I may use this expression, upon the courts, there was still something hazy and the matter of political question came up from time to time. Since it was rather risky to define a political question, the Committee felt it would be best to say that certain questions were not political. That is what appears in the second part of the second paragraph — ". . . To determine whether or not there has been a great abuse of discretion amounting to lack of or excess jurisdiction. . .

MS. AQUINO: Thank you for the explanation.

I appreciate the intention of the Committee in addressing that problem because for a while I was laboring under the impression that the Committee may have confused the distinction between "jurisdiction" and "judicial power" in this proposal.

MR. CONCEPCION: No, the Commissioner will notice that the paragraph begins with the statement: "Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable or enforceable. . ." That is judicial power per se, but in a number of cases the court declared that it has no such power because the questions raised were political in nature. Now we are saying that questions involving jurisdiction or abuse in its exercise are nonpolitical but justiciable cases.

MS. AQUINO: Thank you.

May I draw the Gentleman's attention to subparagraph (2) of Section 3 and its effects. There is, of course, a growing tendency among governments to accumulate more and more power on the pretext of general welfare, and that kind of a tendency is practically irresistible. My apprehension is in Section 3 (2). Under this rule, all that the Executive or the National Assembly needs for the confirmation of its acts would be a small number, considering that the requirement to strike down a law as unconstitutional is a majority plus one. Of course, we appreciate the committee report being already a radical departure from the 1973 Constitution which requires a vote of 10. This made it very difficult for the Supreme Court to correct the errors of an executive or legislative action. Conformably, with the intent of the principle of checks and balances, would it not be more apt to just limit the required number to a majority vote instead of a majority plus one?

MR. CONCEPCION: That was the original plan of the Committee, but there were other members who felt that that was too much. As usual, the Committee had to yield to some of its members to find a middle ground on which there could be a consensus.

MS. AQUINO: It is my sense that the function of the judiciary is to protect individual rights, that it should not be some kind of an arsenal for the exercise of the legislative or the executive power. That was why I thought it might be best to limit it to just a majority vote.

MR. CONCEPCION: That is a good observation, but if the Commissioner will go over Section 7(5), she will notice that this portion says: "Promulgate rules concerning the protection and enforcement of constitutional rights. . ." Note also that this is the first part of the paragraph. This was introduced upon the request of Commissioner

Azcuna in order to stress that constitutional rights are not merely declaratory but are also enforceable. That is why this phrase which did not appear in the 1973 Constitution is an innovation.

MS. AQUINO: I thank Commissioner Concepcion for calling my attention to that portion, but in the same section, even as the Supreme Court is given the power to initiate to the legislature, in effect, it is reserved the power to repeal.

MR. CONCEPCION: But "with the advice and concurrence of the Supreme Court" — that is another innovation.

MS. AQUINO: That is noteworthy because it is by itself already a radical departure from the 1973 Constitution.

MR. CONCEPCION: That is definitely substantial.

MS. AQUINO: But in the ultimate analysis, the effect of this provision is to vest in the two branches of the government the power to provide for the rules in the enforcement of constitutional rights and the conduct of the Bar, etc. I was thinking whether it would not be more proper and more appropriate to confine the powers of the legislature to just confirmation, meaning, the Supreme Court has rightfully the power to initiate the rules, and to the legislature the power to confirm these.

MR. CONCEPCION: Perhaps if the Commissioner will read the provision in the Constitution, the rule-making power of the Supreme Court would be subject to revocation, alteration and modification by the legislature, but the members of the Committee felt that the members of the legislature should not govern the internal operation of the court.

Second, the legislature cannot claim to know better than the court itself — its internal problems and how to solve them. But it will be noticed that we did not require concurrence only; we require advice. In other words, there should be consultation.

MS. AQUINO: I agree perfectly with the Commissioner. If that was the intention, would it not have been more appropriate, therefore, to vest in the legislature just the power of confirmation? When we reserve to the legislature the power to repeal and to revoke, the ultimate effect is that the legislature is more superior to the judiciary.

MR. CONCEPCION: May I refer the matter to Commissioner Regalado?

MR. REGALADO: Thank you, Mr. Presiding Officer.

We actually envisioned the situation where the Supreme Court and the legislature, working hand in hand, can individually initiate, subject to the concurrence of the other, the revisions of the Rules of Court. The Rules of Court partakes of the nature of law and has the effect of a law.

Therefore, if we say that the legislature cannot repeal, will it not be contrary to the constitutional provision against irrepealability of laws?

MS. AQUINO: It was not really much of a clarification. Thank you anyway.

May I call the attention of the honorable sponsor to Section 14 (3) which provides for the issuance of the certification when the period of 24 months shall have lapsed. What is the effect of this? Is this mandatory or directory? If the court is unable to act within 24 months, does it lose jurisdiction over the case?

MR. CONCEPCION: No, but these certifications are required to facilitate the impeachment of the judges or justices concerned because they would provide documentary evidence signed by them showing that they have knowingly failed to comply with the Constitution. By the presentation of the document, the burden would fall upon the judge concerned.

MS. AQUINO: Thank you.

MR. CONCEPCION: The Commissioner will note that, in addition to this, and before this certification, there is another certification required upon submission of the case for decision.

So, these are warnings that are given to the judges, who, if they are really lawyers, should understand the implications of the warning — that the Constitution extends all possible facilities to make it possible for them to discharge their duties, and if they fail to do so, they are required to put on record a number of things which furnish evidence of their violation of the Constitution. These measures cannot leave any doubt as to the mandatory nature of the period prescribed.

MS. AQUINO: Finally, on the matter of exemption from tax of the salary of justices, does this not violate the principle of the uniformity of taxation and the principle of equal protection of the law? After all, tax is levied not on the salary but on the combined income, such that when the judge receives a salary and it is commingled with the other income, we tax the income, not the salary. Why do we have to give special privileges to the salary of justices?

MR. CONCEPCION: It is the independence of the Judiciary. We prohibit the increase or decrease of their salary during their term. This is an indirect way of decreasing their salary and affecting the independence of the judges.

MS. AQUINO: I appreciate that to be in the nature of a clause to respect tenure, but the special privilege on taxation might, in effect, be a violation of the principle of uniformity in taxation and the equal protection clause.

Thank you, Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Sarmiento): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Lerum be recognized for the clarificatory question.

THE PRESIDING OFFICER (Mr. Sarmiento): Commissioner Lerum is recognized.

MR. LERUM: Will the distinguished sponsor answer just one or two questions?

MR. CONCEPCION: With pleasure.

MR. LERUM: Under the 1973 Constitution which provides for 15 justices, cases have accumulated to such an extent that the said court was even unable to comply with the requirement that cases should be decided within 18 months. However, under the proposed amendment, this number is being reduced to 11. May we know the reason for the reduction?

MR. CONCEPCION: In the first place, the membership of 15 provided in the 1973 Constitution did not help increase the output of the Supreme Court. On the other hand, in many respects, it was a deterrent to the speedy disposition of cases. Of course, one other factor is the economy, I mean, the cost of operating a court. Then, too, it is easier for the 11 to reach a consensus than the 15. At any rate, the court in the past seldom had a full complement of 15 justices — the usual thing has been a court of 11 or 12. And considering the number of votes required for certain matters, that constituted a further deterrent to the speedy disposition of cases.

MR. LERUM: We realize that, Mr. Presiding Officer, but I think the cure for this is to put into this Constitution a provision that vacancies in the Supreme Court must be filled within one month or two months because that is one way of ensuring a full complement of 15. Does the Commissioner not think that that is the more reasonable action to be taken in this regard?

MR. CONCEPCION: As I mentioned, 15 is more unwieldy than 11.

MR. LERUM: We realize that also, but will 15 people studying all the cases appealed to the Supreme Court not produce more than the 11?

MR. CONCEPCION: Theoretically, yes, but it all depends also upon who are appointed to the Supreme Court.

MR. LERUM: We have a new President and new appointees now. Does the Commissioner not think that by adding some more to these people already appointed, their output will be more?

MR. CONCEPCION: The President barely knows the appointees, I mean, their professional performance and potentialities. I will tell of one case: There was a justice in the Supreme Court who went on sick leave for two months. Then he returned to the Philippines. At the end of the year, he had disposed of more cases than those who worked with the Supreme Court for 12 months. The problem really is in the selection of the best men. It is just like most everything, I suppose. Every young man tries to marry the best woman but very often, what he thought the best was the worst. This is part of the imperfections of human beings, I suppose.

MR. LERUM: I will come to another point regarding the amendment which provides that all cases filed after the approval of the Constitution shall be decided within 24 months. I am worried about what is going to happen to these pending cases in the Supreme Court because with that provision, the members of the Supreme Court will devote their time to the new cases being filed and neglect the cases that should have been decided by them within 18 months as provided by the present Constitution.

Does the Commissioner not think that this is unfair to the litigants with cases pending with the Supreme Court?

MR. CONCEPCION: I have explained to Commissioner Aquino that there is a paragraph or section requiring the Supreme Court to adopt a system whereby the backlog can be gradually reduced. I stated that I suppose all judges, including justices, if they have an output of, let us say, five cases a month, could easily make six cases a month — just one addition, one of the old pending.

There is another reason why we modified the provision of the Constitution. Under the old Constitution, upon the expiration of the period prescribed, in a number of cases the decision appealed from would be considered affirmed and in other cases the petition would be denied. Private practitioners consider this unfair. Why, they say, should our client suffer for the inaction of the court? So we would want our cases just the same to be decided.

Likewise, we have adopted certain measures whereby we indicate that disciplinary action in the form of impeachment insofar as the members of the Supreme Court are concerned, and disciplinary action by the Supreme Court over lower courts will be taken. In other words, we say, "This is not biro-biro, this is totohanan. We will go after your head. We have given you certain facilities but do not abuse them. You begin a new slate." So that is it.

MR. LERUM: I have asked these questions because I am intending to present an amendment so that there will be no discrimination between the old and the new cases.

Thank you.

MR. ROMULO: May I just ask why 11 may be more effective than 15. It must be remembered that this is a collegial court and, therefore, decisions must be arrived at by a majority. As our experience in this Commission validates, it is easier for us to agree in the Committee than in the Commission as a whole because there are more ideas that have to be put in. As to the second point, let me read our suggested provision:

The Supreme Court shall adopt for itself and the lower courts a systematic plan to expedite the decision or resolution of the cases or matters filed with the Supreme Court or the lower courts prior to the effectivity of thus

Constitution.

One must reckon with human limitations. If we impose a mandatory period for both the old and the new, we will end up with neither the old nor the new being decided in time.

MR. RAMA: Mr. Presiding Officer.

At this juncture, the Presiding Officer relinquished the Chair to the Honorable Jose E. Suarez.

THE PRESIDING OFFICER (Mr. Suarez): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner de Castro be recognized.

THE PRESIDING OFFICER (Mr. Suarez): Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you, Mr. Presiding Officer.

The honorable sponsor was my professor in Constitutional Law . . . (Laughter) in the graduate school. And if ever I ask a few questions or make some suggestions, it is in the spirit of a student asking his professor or suggesting to his professor.

Honorable sponsor, upon my retirement in the Armed Forces in 1964 and from being the Chairman of the Police Commission in 1973, I began my practice of law. Since then and up to 1986, I have had some horrifying experiences with our judges and our courts.

Section 14 on page 6 has been the center of questions since yesterday and the whole morning today. I will not add anymore to the many comments made by my co-members in the Commission, but I would like only to inform the honorable sponsor that if he sees the notice of hearings of lower courts, particularly of the regional trial courts and the municipal trial courts, it is always for 8:30 in the morning. And as my usual practice, I would prefer to be ahead thirty minutes than be late by one minute. So, I normally arrive at about 8:10 or 8:20, hurrying up my breakfast and dressing up as best as I can to be present at the court ahead of time.

Normally, I would be very thankful if the judge would appear at nine o'clock. Usually, it is at ten o'clock, and sometimes he would not appear at all and just send word through his clerk of court that all cases are postponed, for no reason at all. Oftentimes, he would appear at ten o'clock and when one counsel would ask for postponement, it was granted without the judge asking for any good reason at all. So, I had been left there waiting for him for two hours only to find out that the hearing was canceled.

With so many cases pending in court, I really wonder how our judges and our courts — the lower courts, particularly — can litigate these cases.

So, I will request the honorable sponsor to write and inform the honorable Chief Justice on this matter. I was trying to find out when Chief Justice Teehankee would appear before the Committee because I would like to air this problem to him.

I filed a motion for preliminary mandatory injunction in one case and urged in a written motion for immediate resolution of the case. I approached the judge and reminded him about it but it took him one-and-a-half years to decide that motion.

This is just for the information of the honorable Chairman. As I said, I have been in the practice for only 12 years; I do not know about the experience of the other practitioners. If the honorable Chairman of the Judiciary Committee can bring this matter to the attention of the honorable Chief Justice, perhaps it may resolve pending cases much faster. There was a judge whose neck I nearly grabbed because he would not issue an order for

attachment unless there was P1,000 underneath the table. When the P1,000 was put under the papers of the case, in one minute the order for preliminary attachment was signed.

This is with regard to Section 6 (4) on page 3 which says:

The regular members of the Council shall receive such emoluments, and the ex-officio members shall receive such allowances, as may be determined by the Supreme Court.

We have in the general provisions a prohibition on double compensation. I think this was filed by the honorable Commissioner Davide. Allowances are considered double compensation in our general provisions. I think this subsection 4 needs a reconciliation by the Committee on Style.

MR. ROMULO: That is a good point. Precisely, we are taking that into account. So, whatever the Commissioner decides in the General Provisions, we will abide by it. It is a present concept that allowances are not considered double compensation. But if the new Constitution considers allowances double compensation, we will delete this provision.

MR. DE CASTRO: Thank you.

MR. ROMULO: Thank you.

MR. CONCEPCION: There is another reason, which is, that those assigned to a Judicial and Bar Council will have their hands full for years and there is no end to it. So at least they are entitled to transportation expenses. Even the ex-officio members particularly would have to spend transportation expenses for the discharge of their duties.

MR. DE CASTRO: Mr. Presiding Officer, in our deliberations, we did not consider transportation expenses an allowance because one asks for reimbursement for what he spends for his transportation.

At this juncture, the Presiding Officer relinquished the Chair to the Honorable Renato V. Sarmiento.

MR. CONCEPCION: So, the Commissioner suggest that instead of the word "allowance," it be ACTUAL EXPENSES INCURRED. I do not know if the Committee would consider that matter favorably.

MR. DE CASTRO: I think the Committee will consider that because during the past regime a Cabinet member was receiving as much as P100,000 in allowances only. I think that was the reason the Honorable Davide filed that motion which we took as a very good one. On page 4, subsection 3 states:

Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not last longer than six months without the consent of the judge concerned.

I have a case under a judge who comes from Cavite assigned in the Regional Trial Court of Biñan. While our case was under pretrial, his six months' assignment had elapsed and he waited for his order for reassignment. Until now, I have not heard about my case which has been under pretrial since October 1985. I really wonder how long a pretrial case could last, if we have this system of assignment of judges every six months by the Supreme Court. I suggest that we assign a permanent judge who could handle voluminous cases. I hope this matter could be remedied.

Subsection 5, lines 22 to 24, states:

. . . Rules of Procedure of special courts and quasi-judicial bodies shall take effect upon approval by the Supreme Court.

We resolved in the Committee on Constitutional Commissions and Agencies that quasi-judicial bodies, such as

the Civil Service Commission, the Commission on Audit and the Commission on Elections, shall decide their cases within 60 days based on the rules they submit to the Supreme Court for approval. I really wonder how the Supreme Court can immediately approve or disapprove such rules. I presume that the reason for this is to give administrative due process to whoever the respondent is, and these quasi-judicial bodies are ever aware of administrative due process on the cases they handle. I really wonder if this could be made in the reverse such that the rules and procedures promulgated by quasi-judicial bodies should take effect until repealed, revised or amended by the Supreme Court. If we wait for the approval of the rules by the Supreme Court, just as we have waited for the decisions within 24 months on our cases handled by the Supreme Court under Section 14, I wonder how these quasi-judicial bodies could terminate their cases within 60 days as mandated by the Committee.

Thank you, Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Sarmiento): The Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Rustico de los Reyes be recognized.

THE PRESIDING OFFICER (Mr. Sarmiento): The Honorable de los Reyes is recognized.

MR. DE LOS REYES: Will the honorable sponsor and his cosponsors yield to a few questions?

MR. CONCEPCION: Gladly.

MR. DE LOS REYES: Thank you. Most of the questions I would have asked were covered by the questions of Commissioner Aquino, so, I just have two points to clarify, Mr. Presiding Officer, one of which is the right of the state to appeal. As I understand it, this constitutes a radical departure from the usual concept of double jeopardy. Once an accused is acquitted by any court which has jurisdiction over the case, after arraignment and plea and a trial has been held, the decision is final and an appeal by the state cannot be entertained for any reason because that will place the accused in double jeopardy. Therefore, by inserting this provision in the committee report, the Committee on the Judiciary has preempted the right of the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights to pass upon that question. If ever an appeal were granted to the state, it should be on the limited ground of mistrial, which means that there has been no trial at all or that the prosecution has been denied due process. But when there is complete trial, complete with the appreciation and presentation of evidence by both the prosecution and the accused, I do not think the state should be allowed to appeal, even on the ground that the judgment of acquittal is manifestly against the evidence and with grave abuse of discretion amounting to lack or excess of jurisdiction. The terms "manifestly against the evidence" and "with grave abuse of discretion" are very flexible, and I think this will work against the poor litigants. I am just a small town lawyer in our province and I have been in practice for 25 years. I consider the court my second home, the Revised Penal Code and the Rules of Court my second bibles. I could see that 95 percent of these litigants are poor people. They are detained in the city jail, municipal jail or in the provincial jail. They cannot even afford to file bail bonds. They are defended by de officio lawyers who sometimes come to court unprepared; it is good that we now have the CLAO. If these poor people are the offended parties, does the sponsor believe they could afford to hire a good lawyer to prepare them a petition for review on certiorari to show the Supreme Court that the decision was manifestly against the evidence and with grave abuse of discretion amounting to lack or excess of jurisdiction? Only the right litigants could afford that. Very few rich litigants get convicted, Mr. Presiding Officer, because they either pay the victims or their families to settle the case or pay off the witnesses to silence them. As I said, Mr. Presiding Officer, from my little experience as a lawyer, it is these 95 percent poor people, who line up in courts waiting for their cases to be heard, that will be affected by this provision of giving the state the right to

appeal.

In the 1971 Constitutional Convention where the same question was raised, Delegate Julias had this comment which turned the tide and resulted in the disapproval of giving the state the right to appeal:

There is reason to commend but the reasons against far outweigh the reasons in favor.

In the first place, it would tend to multiplicity of suits; it would increase the burden of the Supreme Court. Second, it would be expensive if we meet fiscals who have an exaggerated opinion of themselves and who have more professional pride or amor propio than gray matter their heads.

Let me give an example: Here is a farmer or a poor laborer who is lucky because he was acquitted. But his opponent happens to be a millionaire who can afford to get a top-notch lawyer to prepare a petition for certiorari, so instead of enjoying his freedom after having languished in jail for two years or three years, he finds himself again exposed to the jeopardy of being convicted because of that appeal by the state.

I have heard the assurances of certain sponsors that he will be set free in the meanwhile. But the general rule is that while the appeal is pending, the judgment is not final and generally the accused would continue to languish in jail. Assuming he will be set free, the temptation to flee on the part of the accused who was found guilty is very great because he does not know whether he will be convicted again by the Supreme Court. Although there is a saying that the innocent is as bold as a lion while the wicked flees, that is not true in reality. A man who is afraid he might get convicted by the Supreme Court is tempted to flee. I think we are saying that the Supreme Court is infallible, that it will not and cannot commit any mistake; that it is the lower court that usually commits the mistake.

One retired Justice of the Supreme Court told me that the only difference between a lawyer committing a mistake when he cites the Roman Law and the Supreme Court committing a mistake is that the lawyer loses the case while the Supreme Court's mistake becomes the supreme law of the land, because the Supreme Court is supreme even in its errors.

I, therefore, believe, that the mischief sought to be prevented by allowing the state to appeal due to occasional mistakes of the lower court in acquitting, perhaps, a guilty person is nothing compared to the mischief and injustice a poor accused will suffer. It will open the gates to endless appeals. It will clog the dockets of the Supreme Court which will be hard put in determining even preliminarily the existence of a ground that the decision was manifestly against the evidence and with grave abuse of discretion.

Mr. Presiding Officer, why should we discourage appeal by the state? The controlling consideration is the inequality of the parties in power, situation and advantage in criminal cases where the government with its unlimited resources, trained detectives, willing officers and counsel learned in the law, stood arrayed against a single defendant unfamiliar with the practice of the courts, unacquainted with their officers or attorneys, often without means and frequently too terrified to make a defense, if he had one, while his character and his life, liberty, or property rested upon the result of the trial.

Here is an accused who, after already suffering enough by undergoing a long and rigorous trial while languishing in jail, gets acquitted. Finally, the state appeals. Not even the most corrupt soul in the Judiciary, not even the most corrupt judge in the lower courts, could be so dismally insensitive as to pronounce the exculpation of a defendant without looking at the proof.

Here is another reasons the state should not be granted appeal. In the case of *Greene v. United States*, 355, U.S., 184, 1957, it says:

The underlying idea is that the State, with all its resources and powers, should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal, and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty.

I hope with these observations the sponsor will reconsider his proposal to allow the state to appeal.

Thank you.

MR. CONCEPCION: I refer the matter to Commissioner Padilla.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Sarmiento): The honorable Floor Leader is recognized.

MR. RAMA: I ask that Commissioner Ople be recognized.

THE PRESIDING OFFICER (Mr. Sarmiento): The Honorable Ople is recognized.

MR. ROMULO: Does Commissioner de los Reyes not want a reply from the Committee?

MR. DE LOS REYES: I took a seat because I have no more questions to ask. The Committee may reply, if it so desires.

Thank you.

MR. ROMULO: We would like Commissioner Padilla to reply for a few minutes.

MR. RAMA: I ask that Commissioner Padilla be recognized.

THE PRESIDING OFFICER (Mr. Sarmiento): The Honorable Padilla is recognized.

MR. PADILLA: Thank you, Mr. Presiding Officer.

I am not going to talk about the infallibility of the Supreme Court or the fallibility of a trial judge, because that does not seem to be very relevant to the legal issues involved. Of course, no human institution is perfect or infallible, but there is greater security or more reason for good administration of justice should the Supreme Court give due course to a petition for review on certiorari than the trial judge who, in addition to the many circumstances mentioned by Commissioner de Castro, may act with arbitrariness in manifest disregard of the evidence and with grave abuse of discretion amounting to lack or excess of jurisdiction.

Also, I would not want to comment too much on the poor litigant, who is assumed by Commissioner de los Reyes to be the accused. Perhaps, in comparison with the resources of the state, the accused may be regarded as poor. But oftentimes, it is the victim of the crime, the offended party, who is poor.

Rule 122, Section 2 of the 1964 Rules of Court reads:

The People of the Philippines cannot appeal if the defendant would be placed thereby in double jeopardy. In all other cases, either party may appeal from a final judgment or ruling, or from an order made after judgment affecting the substantial rights of the appellant.

The present rule, Rule 122, Section 2 of the 1985 Rules on Criminal Procedure, is more simple: Any party may appeal from a final judgment or order except if the accused would be placed thereby to double jeopardy. In a decision rendered by the Supreme Court under the present law, *People vs. Veridiano*, 113, SCRA, 64, the respondent judge reversed the city court's judgment of conviction acquitting Mr. Veridiano on the ground that his liability to the complainant was purely civil in nature and directed him to comply with the civil obligation to

return to the complaining witness the sum of P6,000. The fiscal appealed the decision directly to the Supreme Court. He was required to file the appropriate petition under RA 5440, a 1968 law not known to some judges and lawyers up to this time which superseded Rule 42 and Rule 122 (1) of the Rules of Court in the sense that an appeal to the Supreme Court on a question of law is no longer a matter of right.

The Supreme Court has the discretion to give due course to the appeal or to deny it outright. That is one remedy to prevent the clogging of the dockets of this court. We hold that the judgment of acquittal rendered by the Court of First Instance is void for lack of appellate jurisdiction, *corum non iudice*. So even under our present law, an appeal may be had by the state or by the fiscal when the trial court or the lower court — whether acting in appellate or original jurisdiction — has no jurisdiction. When there is a question of error of jurisdiction, the remedy is by *certiorari*, as distinguished from an error of judgment which is not covered by petitions for *certiorari*.

In the case of the *United States v. Kepner*, a Philippine case (11 Phil. 669) that reached the U.S. Federal Supreme Court (195 U-S 100), Justice Holmes, in his dissenting opinion, stated:

It seems to me that, logically and rationally, a man cannot be said to be more than once in jeopardy in the same case however often he may be tried. The jeopardy is one continuing jeopardy from its beginning to the end of the cause. One may be accused of manslaughter that is the equivalent of homicide, and yet, if the victim dies, he may be prosecuted and convicted for murder.

This remark or observation of Justice Holmes is embodied in Rule 117, Section 7 on "Former Conviction or Acquittal, Double Jeopardy," which added under "However," new provisions; paragraphs a, b and c. These new provisions of the 1985 Rules on Criminal Procedure read:

However, the conviction of the accused shall not be a bar to another prosecution or an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

(a) The graver offense developed due to intervening facts arising from the same act or omission constituting the former charge . . .

An example is this paragraph (a) where the victim suffered serious physical injuries and the accused pleaded guilty and was convicted. But thereafter, the victim died and there was a judicial proceeding, not for the lesser offense or serious physical injuries but for the graver offense of homicide. There are other exceptions acknowledged by the Supreme Court in the 1985 Rules on Criminal Procedure, and I quote:

(b) The facts constituting the graver charge became known or were discovered only after the filing of the formal complaint or information. Or,

(c) The plea of guilt to the lesser offense was made without the consent of the fiscal and of the offended party.

Mr. Presiding Officer, the opinion of Justice Holmes in the *Kepner* case says: "The Constitution permits a second trial in the same case. The reason, I submit, is that there can be but one jeopardy in one case." Then he concludes:

A second trial in the same case must be regarded as only a continuation of the jeopardy which began with the trial below.

Mr. Presiding Officer, the opinion of Justice Holmes even speaks of a new trial, but the proposal is limited to an appeal by petition for review on *certiorari* based on the ground already in the record of the same case with out further a new trial proceeding. When the judge who rendered a judgment of acquittal or dismissal has disregarded manifestly the evidence on record, his conduct is with grave abuse of discretion amounting to lack or excess of jurisdiction.

It may be said that the opinion of Justice Holmes was a dissenting view in the *Kepner* case. That dissenting opinion has become the majority opinion by the decision penned by Justice Cardoso in *Palko v. Connecticut*, 302, U.S. 310 which involved the following decision:

A statute of Connecticut permitting appeals in criminal cases to be taken by the State is challenged by appellants as an infringement of the 14th amendment of the Constitution of the United States.

The argument was that the effect of the new trial was to place the accused twice in jeopardy for the same offense and in so doing violated the 14th amendment of the Constitution of the United States. In this decision, after discussing the principle of double jeopardy, it made express reference to the *United States v. Kepner* case in 1904 by a closely divided court. Justice Cardoso said, and I quote:

. . . Dissenting opinions show how much was to be said in favor of a different ruling. Right-minded men, as we learn from those opinions, could reasonably, even mistakenly, believe that a second trial was lawful in prosecutions subject to the Fifth Amendment, if it was all in the same case. Even more plainly, right-minded men could reasonably believe that in espousing that conclusion they were not favoring a practice repugnant to the conscience of mankind. Is double jeopardy in such circumstances, if double jeopardy it must be called, a denial of due process forbidden to the State?

After discussing other basic principles of the Constitution, like the right against self-incrimination or not to be a witness against oneself, the right of peaceful assembly, the immunities granted in the Constitution, the immunity from compulsory self-incrimination, and the principle of due process of law, the decision in said case of *Palko v. Connecticut* through Justice Cardoso states, and I quote:

The state is not attempting to wear out the accused by a multitude of cases with accumulated trials. It asks no more than this, that the case against him shall go on until there shall be a trial free from the corrosion of substantial legal error. *State v. Felch*, 92 Vt. 477, 105 A. 23 . . . This is not cruelty at all, nor even vexation in any immoderate degree. If the trial had been infected with error adverse to the accused, there might have been a review at his instance, and as often as necessary to purge the vicious taint. A reciprocal privilege, subject at all times to the discretion of the presiding judge (*State v. Carabetta*, 106 Conn, 114, 137 A. 394), has now been granted to the state. There is here no seismic innovation. The edifice of justice stands, in its symmetry, to many, greater than before.

Madam President, when a case is submitted to the judgment of a trial judge, we should, perhaps, presume that that judgment is in accordance with the evidence and the law. But there are instances — I hope, few and rare instances — when a trial judge does not act as an impartial judge for good administration of justice for even when the evidence is overwhelming to prove beyond reasonable doubt the guilt of the accused, he arbitrarily acquit the accused for some extraneous reasons other than the merits of the case, perhaps, through bribery, superior order, under influence of others or for whatever reason. Sometimes, the decision appraises the evidence that will lead to no other conclusion but guilt, and yet, in violation of all the premises in the decision; the conclusion is acquittal or dismissal. Now, the proposed appeal is only in the discretion of the Supreme Court and only by a petition for review on certiorari and only on the ground that, as stated, is manifestly against the evidence and with grave abuse of discretion amounting to lack or excess of jurisdiction. This proposal will lead to a good and sound administration of justice. This will also serve as a deterrent against few corrupt judges who, in derogation of all principles of reason and justice, will simply come to the conclusion that the accused is acquitted even contrary to the evidence presented. And invariably, the acquittal is with such grave abuse of discretion that it amounts to lack or excess of jurisdiction.

Mr. Presiding Officer, in the course of a criminal trial where both parties are given the opportunity to present their evidence, and the judge decides to acquit the accused, even if the judge is mistaken, but honestly, probably the

fiscal or the offended party should not be allowed to disturb judgment of acquittal. But when such judgment of acquittal is deliberate due to corruption, then the state and/or the offended party should be extended some relief. There may be diversity of opinions whether a particular judgment of acquittal is justice to the accused or an injustice to the offended party. This provision does not allow the state nor the offended party an absolute right to appeal. There must be a petition for review on certiorari based on the grounds mentioned that are very restrictive. Such a petition may even be dismissed outright in the discretion of the Supreme Court. But there must be an avenue for the correct and sound administration of justice. Many of us always talk of the accused and we never remember the mention of the crime, the complainant, and the offended party. The complainant is entitled to justice as much as the accused. And to say that the offended party is rich and the accused is poor, I feel that the situation is just the reverse. Oftentimes, those who commit crimes, those who disobey the Ten Commandments and violate the tenets of good conscience in society are the rich, the powerful, the influential, and the victims are the poor, the underprivileged, the oppressed. That is the real situation. We cannot overlook it and claim in general terms that this proposal will only benefit the accused who are poor.

So, in the light of the abuse, Mr. Presiding Officer, the question is: Would an appeal by petition for review on certiorari constitute double jeopardy? Double jeopardy really means a separate, a new proceeding. In other words, based on the same fact, Mr. Veridiano has been prosecuted and another trial or another case is filed to prosecute the same accused for the same act and for the same offense. That is the essence of double jeopardy. But as stated by Justice Holmes, even an appeal is not a separate trial. It is a continuation of the same case. And in the cases that I quoted, especially the case of *Palko v. Connecticut*, which contemplated not only a new trial, a separate trial, but even an ordinary appeal, our proposal is very restrictive in the sense that it does not justify a new trial, much less, a separate trial. And then, it is not a matter of right but of discretion of the Supreme Court and the Supreme Court has jurisdiction over all cases involving the jurisdiction of the courts.

Thank you very much.

MR. DE LOS REYES: Mr. Presiding Officer, may I make a short rejoinder to Commissioner Padilla's comment?

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Sarmiento): The Floor Leader is recognized.

MR. RAMA: A reservation was made by Commissioner Ople to speak en contra and he is the last speaker. With respect to the request of Commissioner Rustico de los Reyes, I am registering him under the period of amendments. He will have all his time there.

THE PRESIDING OFFICER (Mr. Sarmiento): The Honorable Ople is recognized.

MR. OPLE: May I yield one minute of my time to my colleague, Commissioner Rustico de los Reyes, if that will be allowed by the Chair.

THE PRESIDING OFFICER (Mr. Sarmiento): The Honorable de los Reyes is recognized to speak for one minute.

MR. DE LOS REYES: Thank you, Mr. Presiding Officer.

The case cited by Commissioner Padilla, with all due respect, I think, would not be a case in point. He cited a case where an accused is charged with a complaint for frustrated homicide and later on, the victim died. Naturally, the information had to be amended to homicide and the Supreme Court held that there was no double jeopardy there because an intervening factor came about.

In all the other cases cited by Commissioner Padilla, including those American cases, there was supposed to be

some sort of a mistrial where the state was not afforded the opportunity to present its evidence completely. But in a case, as contemplated in this provision, where there was a plea, where there was a presentation of evidence by both parties, and the court, after appreciating the evidence, reached the conclusion that the accused was not guilty, that principle cited by Commissioner Padilla does not apply. And that is upheld in the case of *People vs. Montemayor*, 26 SCRA 687, where the Supreme Court reaffirmed the doctrine that this constitutional guarantee is an insuperable obstacle to the state appealing from a judgment of acquittal. That is the latest decision on the matter.

I yield now to Commissioner Ople.

THE PRESIDING OFFICER (Mr. Sarmiento): The Honorable Ople is recognized.

MR. OPLE: Thank you very much, Mr. Presiding Officer.

I have no legal erudition to contribute to this debate which is, I think, so be an exclusive dialogue of lawyers in the Constitutional Commission, and it is always with trepidation that laymen like myself cross this threshold of the arcane domain of the men of the bench and the Bar.

Mr. Presiding Officer, I thought I would like to look at this Article on the Judiciary from a macro view and later on would like to proceed to specific provisions. I would like to raise questions of general equity for the government. I must confess I am disturbed by the propensity throughout this Article in its various provisions to accord the Supreme Court, the lower courts and the judicial system as a whole, a whole plethora of privileges and immunities that are denied the rest of the government of the Republic of the Philippines. There is a bold assumption of executive and legislative powers in this proposed Article.

Of course, we share deeply the concern expressed by the sponsor, Commissioner Roberto Concepcion, for whom we have the highest respect, to surround the Supreme Court and the judicial system as a whole with a whole armor of defenses against the executive and legislative invasion of their independence. But in so doing, some of the citizens outside, especially the humble government employees, might say that in trying to erect a bastion of justice, we might end up with a fortress of privilege, an island of extraterritoriality under the Republic of the Philippines, because a good number of powers and rights accorded to the Judiciary here may not be enjoyed in the remotest degree by other employees of the government.

An example is the exemption from income tax, which is a kind of economic immunity, which is, of course, denied to the entire executive department and the legislature.

There is an appropriation power built in this Article, Mr. Presiding Officer, an appropriation authority being exclusively reserved by the Constitution without providing the same power to the legislature. It says that two percent of the national budget is automatically appropriated for the Judiciary. I understand the budget for this year is P116 billion. Two percent of that would be equivalent to P2.3 billion, if my instant calculation is correct, versus the budget of the Judiciary for 1986 — if I am not mistaken, it is about P600 million. And, therefore, under this provision, certainly, the Supreme Court and the lower courts will be getting more than 100 percent increase in their budget at a time when all the teachers and employees of the government would like to join marches and rallies. Some of them have actually declared strikes in order to alleviate or to mitigate their own plight.

Also, this Article, of course, seeks to perpetuate a situation where the Supreme Court administers the courts, instead of the executive branch. I think there is a tendency to equate judicial independence with certain immunities and privileges for the courts to such a degree and a quantum as to raise a real question of equity and justice for employees of the government in general.

And, of course, I am also disturbed by a proposed provision according to which the Chief Justice shall address the National Assembly at the opening of its regular session, which is just a formality. But, I think, in effect, it also elevates the courts to the same pre-eminence and majesty as that of the Chief Executive of the Republic of the Philippines since historically the opening of the National Assembly is the occasion for the head of state or head of government to deliver a state-of-the-nation address. I am not against the Chief Justice addressing the National Assembly, but, perhaps, we can allow him to do so on the second day or any other day, not on the first day.

Mr. Presiding Officer, I spoke of certain legislative powers assumed here. And, earlier, Commissioner Aquino has adverted to that and stated that my objection is on a different ground from her. I think it must be understood that the legislative power should be exercised by the legislature even if there is a sense in which the Supreme Court may be accorded all the autonomy that it desires for formulating rules that have to do with their own function; that the advice and concurrence of the Supreme Court is stated as a requirement before the National Assembly can exercise its own law-making power. I think this is a real diminution of the legislative power that should remain unimpaired.

And, again, in Section 2 of the proposed Article, the legislature is restrained from exercising its authority to reorganize the government where the security of tenure of the Judiciary might be impaired. I think we should dissociate security of tenure from the exercise of legislative power. There must be a strong guarantee for security of tenure, but not put in such a way as to tie the hands of the lawmaking power in what I consider a very inappropriate intrusion into the field of law-making.

So, these are some of what I said earlier would be a macro approach to the proposed Article on the Judiciary. And having said that, I just would like to pose two or three questions to the sponsor, if he will yield.

MR. CONCEPCION: With pleasure.

MR. OPLE: Thank you, Mr. Presiding Officer.

During the period of amendments, can the sponsor consider an amendment wherein they might consider returning the management of the courts to the executive branch of the government?

MR. CONCEPCION: I did not get the question.

MR. OPLE: I have in mind Section 9 on page 5, which says: "The Supreme Court shall have administrative supervision over all courts and the personnel thereof," and another section provides that the appointing power for court officials, and personnel is also vested in the Supreme Court.

Is the deliberation of the Committee so far gone and their commitment so firm to the management of the courts by the Supreme Court that they may no longer be able to consider during the period of amendments a proposal to revert the administration of the courts to the executive branch of the government while their substantive function is fully protected from any invasion by the executive branch?

MR. CONCEPCION: That has been considered by the Committee, but the members of the Committee — and I think a good number of the Members of the Commission — feel that one of the major infirmities in the administration of justice in the Philippines has been the overwhelming intrusion of politics in the operation of the courts not only in the appointment of judges but also of their staff. Graft and corruption was such I would say that under the last administration it was considerably widespread. I will give an illustration.

At one time, the Department of Justice felt that it was necessary to increase the number of judges in the Courts of First Instance by seven. The Supreme Court or the Department of Justice was told, "if you want this group to be successful, you should agree to have a new additional branch to each province."

I have another illustration. A young man was appointed judge to one of these new branches. The branch could not operate because of the absence of a clerk of court. Why was there an absence of a clerk of court? Because the congressman for the district or province concerned insisted that a pharmacist be appointed as clerk of court.

First of all, political intervention made it difficult to organize the court. Second, it tended to show to the Judiciary that the Judiciary's fate is considerably dependent upon the politician.

MR. OPLE: I thank the Presiding Officer and the sponsor.

In that respect, I consider it a great loss to this Commission that the Minister of Justice failed to arrive on the due date after having been invited. And, certainly, the other side of the question — the President through the Minister of Justice having superintendence over the courts — may never be fully known to this Commission in the absence of an authoritative spokesman. I am told by Commissioner Guingona that Minister Gonzales would come, but he has not settled his doubts on the propriety of coming here in the light of some admonitions he received that members of the Cabinet may be misinterpreted or misunderstood as trying to influence the Constitutional Commission. But in any case, these are subjects that I hope the sponsor would be kind enough to allow to be brought up again during the period of amendments. The Floor Leader has been circulating very diligently during the past few minutes, I hope not in an excess of the exercise of his constitutional powers.

Thank you, Mr. Presiding Officer.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Sarmiento): The Floor Leader is recognized.

MR. GUINGONA: May I please be allowed to clarify some points in just one minute?

THE PRESIDING OFFICER (Mr. Sarmiento): Commissioner Guingona is recognized.

MR. GUINGONA: Mr. Presiding Officer, I just wanted to clarify this matter. Commissioner Ople asked me why I think Minister Gonzales did not come. In my reply, I made no reference at all — if the honorable Commissioner will remember — to Minister Gonzales. I think perhaps the members of the Cabinet are reluctant to come because of the statement made by the President here and released in the papers to the effect that she does not want to exert any influence at all, directly or indirectly, in the drafting of this Constitution. I said that members of the Cabinet might have the feeling that they might be indirectly influencing the committee meetings if they will come here. But I did not make any definite reference to Minister Gonzales because I have not had a chance to ask him or to talk to him.

MR. RAMA: Mr. Presiding Officer, it is already 12:07 p.m.

MR. ROMULO: Mr. Presiding Officer, just for the record, the point raised by Commissioners Guingona and Ople has been clarified by Commissioner Regalado, and he can stand up on that. There was no objection on any body's part for them to appear here; and that, in fact, some of his fellow Ministers have appeared here. Perhaps, he did not want to champion a lost cause.

MR. RAMA: Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Sarmiento): The Floor Leader is recognized.

MR. RAMA: I move that we close the period of sponsorship and debate on the Article on the Judiciary.

THE PRESIDING OFFICER (Mr. Sarmiento): Is there any objection? (Silence) The Chair hears none; the period of sponsorship and debate is closed.

ADJOURNMENT OF SESSION

MR. RAMA: Mr. Presiding Officer, I move that we adjourn until Monday at nine o'clock in the morning.

THE PRESIDING OFFICER (Mr. Sarmiento): Is there any objection? (Silence) The Chair hears none; the session is adjourned until Monday at nine o'clock in the morning.

It was 12:08 p.m.

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