

GUALBERTO J. DELA LLANA, PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE COMMISSION ON AUDIT, THE SECRETARY OF FINANCE AND THE BUDGET COMMISSIONER, RESPONDENTS.

G.R. No. L-47245. December 09, 1977

Ponente: CASTRO, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a39288ca381e/>

CASTRO, C.J.:

Considering the allegations, issues presented, and arguments adduced (a) in what the petitioner has denominated as a "Petition for Prohibition or Declaratory Relief," (b) in the Solicitor General's Comment on the petition, and (c) at the hearing on November 24, 1977, the Court Resolved NOT to give due course to the petition and to DISMISS the same, for the reasons hereunder set forth.

(1) The question to be submitted to the people in the December 17, 1977 referendum which reads, "Do you vote that President Ferdinand E. Marcos continue in office as incumbent President and be Prime Minister after the organization of the Interim Batasang Pambansa as provided for in Amendment No. 3 of the 1976 Amendments to the Constitution?," is in neither the nature nor the form of an amendment. The holding of the referendum will not result in an indirect amendment to Amendment No. 3 to the Constitution which provides that "The incumbent President of the Philippines shall be the Prime Minister and he shall continue to exercise all his powers even after the interim Batasang Pambansa is organized and ready to discharge its functions and likewise he shall continue to exercise his powers and prerogatives under the Nineteen Hundred and Thirty Five Constitution and the powers vested in the President and the Prime Minister under this Constitution." Presidential Decree No. 1229 which calls for the December 17, 1977 referendum cannot therefore be said to suffer from any constitutional infirmity. If the people vote "yes," Amendment No. 3 will merely be reaffirmed and reinforced. If the people vote "no," the incumbent President, heeding "the will" of the people, will – as he has categorically announced -- resign; in such situation, he will be merely exercising the prerogative, inherent in all public officials, to resign. In either case the Constitution, as it now reads, will remain unaltered.

(2) The matter of whether or not the holding of the December 17, 1977 referendum is unnecessary because the people, on several occasions, had already expressed their assent to the incumbent President's continuance in office and their approval of his programs of government, is a political and non-justiciable question, involving as it does the wisdom, no more and no less, of the decision to call for a referendum. The power to determine when a referendum should be called and what matter is important for referral to the people, resides in the political branch of the Government, the exercise of which involves consideration of a multitude of factors – political, social, economic, etc. – normally outside the periphery of competence of the courts.

(3) The call for the referendum is explicitly authorized by Amendment No. 7 of the Constitution which in part provides that "Referenda conducted thru the barangays and under the supervision of the Commission on Elections may be called at any time the government deems it necessary to ascertain the will of the people regarding any important matter whether of national or local interest." If, pursuant to this grant of power, the President decides,

as he has decided, to consult with the people and submit himself to a vote of confidence in a referendum because he deems it important to do so, he cannot be constitutionally faulted. His action would also be in full accord with the spirit of Section 1, Article XIII of the Constitution, which states that public office is a public trust and that public officers shall remain accountable to the people.

It is clear from the above that the petition does not pose any question of sufficient importance or significance to warrant the further intention of the Court.

The dismissal of the instant petition is immediately executory.

Makasiar, Antonio, Aquino, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

Fernando, J., on official leave.

Teehankee and Muñoz Palma, JJ., files a dissent.

Barredo, J., concurs in a separate opinion.

Martin, J., on sick leave.

Normal 150 Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

SEPARATE OPINION

BARREDO, J.:

I concur in the resolution drafted by the Chief Justice, but I feel it is imperative that I clarify my position as to one particular point, namely, whether or not the result of the forthcoming referendum will have a substantial bearing on the implementation of the second paragraph of Amendment No. 3 approved in October, 1976 to the Constitution of the Philippines of 1973, which provides that the "incumbent President of the Philippines (meaning President Marcos) shall be the Prime Minister."

Of course, should the result of the referendum be affirmative, no possible constitutional problem can arise because President Marcos will be assuming his position as Prime Minister as the amendment ordains, albeit it should be emphasized that he would be doing so by direct mandate of the people rather than by choice of the members of the Batasan, which is not explicitly in accordance with the prescribed procedure in parliamentary governments – an innovation of the 1976 amendments patterned somehow after the one introduced by the transitory provisions of the Constitution of 1973 in regard to the interim Prime Minister of the quondam interim National Assembly, which, however, permitted the Assembly to subsequently make its own choice of its prime minister.

It is if the results should be negative that the question might arise as to whether or not, in effect, the aforementioned amendment would then be itself amended by denying to the incumbent President the office vested in him by the amendment. In this connection, it must be borne in mind that, in strict sense, whether or not President Marcos will assume said office could be his prerogative to decide as an individual, for which decision, either way, he would, naturally, stand responsible to the people. In a democracy, it is only an elective office that one cannot decline after being voted into it by the electorate. Ordinarily, an office cannot be conferred upon any individual by means of a constitutional or statutory provision, hence the right to decline must be deemed reserved to the designee, if any such provision should be enacted. Now, if President Marcos may decline on his own personal volition to accept the office in question, if only because he might feel it is best to follow strictly the

parliamentary-system-procedure of allowing the parliament to select its prime minister, and such declination would not constitute an amendment of the amendment in question, why would a declination based on a mandate of the people voiced in a referendum be categorized as a constitutional amendment?

In other words, there is a juridical distinction between an outright amendment to the Constitution, on the one hand, and on the other, a mandate of the people permitting President Marcos to do what he is at liberty to do, that is, decline the office the constitutional amendment has designed for him, without causing any alteration or modification of the terms of the Constitution.

In any event, in essence, the question in the forthcoming referendum may be deemed a proposal to vary the provision of Amendment No. 3, by making the implementation thereof dependent on the result of the referendum. Substantially, therefore, the affirmative vote of the people will amount to a ratification or approval of the proposal. Matters of form aside, there is no violation of the procedure for constitutional amendment, particularly when it is considered that the motivation is precisely to ascertain with more definiteness the true will of the people on the specific question, isolated from other issues, if they really want President Marcos to be the prime minister in the Batasang Pambansa.

Normal 150 Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:#{behavior:url(#ieooui)} /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

MUÑOZ PALMA, J.:

I am constrained to dissent from the Resolution of the majority and vote for giving due course to the Petition and granting the relief prayed for.

1. The proposed referendum for December 17, 1977 which submits to the people the following question:

"Do you vote that President Ferdinand E. Marcos continue in office as incumbent President and be Prime Minister after the organization of the Interim Batasang Pambansa as provided for in Amendment No. 3 of the 1976 Amendments to the Constitution?"

is premised or based on or has reference to amendment No. 3 of the 1976 Amendments to the Constitution.* Inasmuch as it was my opinion in *Sanidad vs. Commission on Elections, et al.*, L-44640 and others, October 12, 1976, that Presidential Decrees 991 and 1033 which called for a national referendum-plebiscite on October 16, 1976, are null and void as they contravene the express provisions of the 1973 Constitution on the amending process, perforce P.D. 1229, object of this petition, is without constitutional and legal basis.

2. The necessity for holding the December 17, 1977 Referendum is to my mind a justiciable question and can be inquired into by the Court as it involves the use of public funds, a power granted under the Constitution to the legislative branch of the Government, it is true, but one that is subject to certain limitations so that the matter of whether or not that power has been transgressed or abused or whether or not the appropriation of public funds for the purpose indicated is within the authority granted by the law or the Constitution is within the competence of the Court to inquire into and resolve.

3. It is claimed by respondents that the President is authorized to call for a Referendum under Amendment No. 7 of the Constitution.** Although I held the view in *Aquino, Jr., Herrera, and others vs. Commission on Elections*, L-40004, January 31, 1975, which sought to stop the holding of a Referendum on February 27, 1975, that the holding of a Referendum is a device for consulting the people on national issues and may be authorized as an exercise of the executive power under the present composition of the government, however, I likewise stated that a referendum under martial rule can be of no far-reaching significance as it is accomplished under an atmosphere or climate of fear. To that I may add that under a martial law regime there is, undeniably, repression of certain rights and freedoms, and any opinion expressed would not pass the test of a free and untrammelled expression of the will of the people.

That "(M)artial law connotes power of the gun, meant coercion by the military, and compulsion and intimidation" was so stated by President Ferdinand E. Marcos upon proclamation of martial law in the country. (Daily Express, November 29, 1972, page 4 quoted in Chief Justice Roberto Concepcion's Opinion in *Javellana vs. Executive Secretary, et al.*, and other cases, L-36142, March 31, 1973, 50 SCRA 30, 132)

Hence, the futility of such a referendum which entails an expenditure of public funds amounting to ten million pesos which could be diverted to relieve the economic distress of our low-income people.

* Amendment No. 3 - The incumbent President of the Philippines shall, within 30 days from the election and selection of the Members, convene the interim Batasang Pambansa and preside over its sessions until the Speaker shall have been elected. The incumbent President of the Philippines shall be the Prime Minister and he shall continue to exercise all his powers even after the interim Batasang Pambansa is organized and ready to discharge its functions, and likewise he shall continue to exercise his powers and prerogatives under the 1935 Constitution and the powers vested in the President and the Prime Minister under this Constitution.

** Amendment No. 7 - The barangays and sanggunians shall continue as presently constituted but their functions, powers, and composition may be altered by law.

Referenda conducted through the barangays and under the supervision of the Commission on Elections may be called at any time the Government deems it necessary to ascertain the will of the people regarding any important matter, whether of national or local interest.

Normal Raquel 7 10 2006-11-07T22:51:00Z 2008-05-20T23:33:00Z 1 453 2585 21 6 3032 10.2625 Normal 150 Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING OPINION

SANTOS, J.:

I would like to add by way of addendum to my vote to deny due course to this petition, on the grounds already explained by the Chief Justice, the following.

The forthcoming referendum on December 17, 1977 is a milestone in the nation's continuing search for a truly

free and democratic mechanism to ascertain the people's will on vital issues that concern them. This particular referendum on the issue of whether or not the people would want President Ferdinand E. Marcos to "continue in office as incumbent President and be Prime Minister after the organization of the Interim Batasang Pambansa as provided for in Amendment No. 3 of the 1976 Amendments to the Constitution" affords our people, as the sovereign authority, the constitutional prerogative of expressing their views in regard to important matters, this time, of national concern, pursuant to Amendment No. 7 which provides for the calling of a referendum "at any time the government deems it necessary to ascertain the will of the people regarding any important matter whether of national or of local interest." This is, after all, the essence and implementation of the constitutional mandate and principle that sovereignty resides in the people. Our continuing search for the democratic mechanism is specifically enhanced because, for the first time there is the categorical commitment by the incumbent President, no less, to resign if he is voted down by the people. This assurance should be enough for those who are genuinely concerned about national affairs to campaign for "No" votes if they so desire--because they do not believe in or agree with the manner the President conducts the affairs of the nation during these critical times or even because they do not like martial law, or that they believe it should now be terminated.

I also feel strongly--having been once a member of the Citizens' National Committee on Referenda, Plebiscites and Elections (CINACORPE), along with Ambassador Emilio Abello, Bishops Macario V. Ga and Mariano Gaviola, Commissioner Cesar Miraflor, Justice Roberto Regala and others, that the Filipino people are free, in the real sense of the term, to vote as they wish in this forthcoming referendum. I have great faith, indeed I am certain, that if the majority of our people really and truly desire to vote "No", not all the Armed Forces, as well as the officialdom combined, can prevent them from so expressing their desire. So that there is, I submit, no basis--except perhaps in isolated instances and these would be difficult if not impossible to prevent--for the apprehension that the people will vote "Yes" because of the alleged coercive atmosphere generated by martial law. Those who fear that the people are intimidated into voting against their free will, fail to take the strong Filipino commitment and fidelity to democratic processes and free-dom into account, or do not realize that our people will not tolerate subversion or perversion of their sovereign will even under martial law.

Normal 150 Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*(behavior:url(#ieooui) } /* Style Definitions */
table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0;
mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in;
mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New
Roman";}

DISSENTING OPINION

TEEHANKEE, J.:

I concur with the dissenting opinion of Justice Cecilia Muñoz Palma in accordance with my previous dissenting opinions in the 1975 Referendum cases[1] and the 1976 Referendum-Plebiscite cases[2] and wish to stress only the following considerations:

1. In *Gonzales vs. Comelec*,[3] I had pointed out that such referendums which concededly are "purely consultative" and cannot abrogate nor amend the Constitution are not provided for nor authorized by the 1973 Constitution and that "the referendum power of the people" as it is known in law and usage "is a negative power through which appeal may be taken directly to the people from an affirmative action taken by their representatives." [4] I held therein that "prescinding from the question of whether it is subject to judicial review and determination, the termination of martial law is not a matter of choice for the people (who much less than the

courts can have 'judicially discoverable and manageable standards' nor 'the complete picture of the emergency' to make the determination) but a matter of the President's constitutional duty to determine and declare the termination of martial law when the necessity therefor has ceased. As necessity creates the rule, so it limits its duration." It may be noted that along the same principle, the proposal to include and submit to the December 17, 1977 referendum the question of reimposition of curfew was eventually discarded on the ground that it was not a proper subject for submittal in a referendum.

2. In the October, 1976 Amendments to the 1973 Constitution, it was provided in paragraph 7 thereof inter alia that "(R)efereenda conducted thru the barangays and under the supervision of the Commission on Elections may be called at any time the government deems it necessary to ascertain the will of the people regarding any important matter whether of national or local interest," obviously to remedy the void in the 1973 Constitution. But even under such amendment authorizing referendums, the question to be submitted at the scheduled referendum of voting that "President Ferdinand E. Marcos continue in office as incumbent President and be Prime Minister after the organization of the Interim Batasang Pambansa as provided for in Amendment No. 3 of the 1976 Amendments to the Constitution" is not a proper subject for submittal to a referendum, contrary to the ruling of the majority.

3. Under said amendment, questions that may be submitted to referendums that are now constitutionally authorized (by virtue of the majority ruling in the Sanidad case) refer to "any important matter whether of national or local interest." The proposed question does not come within the context or purview of such "important matter" to be submitted to the people for consultation. As brought out at the hearing, the question of whether President Marcos continue in office as incumbent President and be Prime Minister after the organization of the Interim Batasang Pambansa is not a proper subject matter for referendum because it goes against the whole structure and spirit of the Constitution which does not envision nor authorize the affirmation or repudiation of a single personality in office (not to mention that he and the Batasang Bayan itself unanimously held that "no election is possible under the Constitution for the position [of incumbent President] he presently holds"[5]) but calls for contested elections on fixed dates specified by the Constitution[6] in free elections under the Commission on Elections (a constitutional commission).

Whether free contested elections can be held under martial law is yet another question. The opinion expressed by some ranking justices in the 1973 ratification cases on the question of the people's acceptance of the new Constitution, that "under a regime of martial law, with the free expression of opinions through the usual media vehicles restricted, we have no means of knowing, to the point of judicial certainty, whether the people have accepted the Constitution,"[7] would seem to be equally applicable thereto.

I am constrained, therefore, to vote to give due course to the petition and to grant the relief prayed for.

[1] Aquino vs. Comelec, L-40004, Jan. 31, 1975, and Gonzales vs. Comelec, L-40117, Feb. 22, 1975.

[2] Sanidad vs. Comelec, L-44640, Guzman vs. Comelec, L-44684, and Gonzales vs. Comelec, L-44714, October 12, 1976.

[3] L-40117, Feb. 22, 1975.

[4] The most recent example is the proposed referendum to the people of Los Angeles City, California whether or not to affirm their mayor's action of bidding for the city to be the site of the World Olympiad.

[5] Respondents' Comment, p. 11.

[6] Art. VIII, sec. 5(1).

[7] Joint separate opinion of then Associate Justices Querube C. Makalintal and Fred Ruiz Castro in *Javellana vs. Executive Secretary*, L-36142, Mar. 31, 1973, as joined by the writer.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.