

**PHILIPPINE CONSTITUTION ASSOCIATION, EXEQUIEL B. GARCIA
AND RAMON A. GONZALES, PETITIONERS, VS. HON. SALVADOR
ENRIQUEZ, AS SECRETARY OF BUDGET AND MANAGEMENT; HON.
VICENTE T. TA...**

G.R. No. 113105. August 19, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

Once again this Court is called upon to rule on the conflicting claims of authority between the Legislative and the Executive in the clash of the powers of the purse and the sword. Providing the focus for the contest between the President and the Congress over control of the national budget are the four cases at bench. Judicial intervention is being sought by a group of concerned taxpayers on the claim that Congress and the President have impermissibly exceeded their respective authorities, and by several Senators on the claim that the President has committed grave abuse of discretion or acted without jurisdiction in the exercise of his veto power.

I

House Bill No. 10900, the General Appropriation Bill of 1994 (GAB of 1994), was passed and approved by both houses of Congress on December 17, 1993. As passed, it imposed conditions and limitations on certain items of appropriations in the proposed budget previously submitted by the President. It also authorized members of Congress to propose and identify projects in the "pork barrels" allotted to them and to realign their respective operating budgets.

Pursuant to the procedure on the passage and enactment of bills as prescribed by the Constitution, Congress presented the said bill to the President for consideration and approval.

On December 30, 1993, the President signed the bill into law, and declared the same to have become Republic Act No. 7663, entitled "AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY ONE, NINETEEN HUNDRED AND NINETY-FOUR, AND FOR OTHER PURPOSES" (GAA of 1994). On the same day, the President delivered his Presidential Veto Message, specifying the provisions of the bill he vetoed and on which he imposed certain conditions.

No step was taken in either House of Congress to override the vetoes.

In G.R. No. 113105, the Philippine Constitution Association, Exequiel B. Garcia and Ramon A. Gonzales as taxpayers, prayed for a writ of prohibition to declare as unconstitutional and void: (a) Article XLI on the Countrywide Development Fund, the special provision in Article I entitled Realignment of Allocation for Operational Expenses, and Article XLVIII on the Appropriation for Debt Service or the amount appropriated under said Article XLVIII in excess of the P37.9 Billion allocated for the Department of Education, Culture and

Sports; and (b) the veto of the President of the Special Provision of Article XLVIII of the GAA of 1994 (Rollo, pp. 88-90, 104-105)

In G.R. No. 113174, sixteen members of the Senate led by Senate President Edgardo J. Angara, Senator Neptali A. Gonzales, the Chairman of the Committee on Finance, and Senator Raul S. Roco, sought the issuance of the writs of certiorari, prohibition and mandamus against the Executive Secretary, the Secretary of the Department of Budget and Management, and the National Treasurer.

Suing as members of the Senate and taxpayers, petitioners question: (1) the constitutionality of the conditions imposed by the President in the items of the GAA of 1994: (a) for the Supreme Court, (b) Commission on Audit (COA), (c) Ombudsman, (d) Commission on Human Rights (CHR), (e) Citizen Armed Forces Geographical Units (CAFGU'S) and (f) State Universities and Colleges (SUC's); and (2) the constitutionality of the veto of the special provision in the appropriation for debt service.

In G.R. No. 113766, Senators Alberto G. Romulo and Wigberto Tanada (a co-petitioner in G.R. No. 113174), together with the Freedom from Debt Coalition, a non-stock domestic corporation, sought the issuance of the writs of prohibition and mandamus against the Executive Secretary, the Secretary of the Department of Budget and Management, the National Treasurer, and the COA.

Petitioners Tanada and Romulo sued as members of the Philippine Senate and taxpayers, while petitioner Freedom from Debt Coalition sued as a taxpayer. They challenge the constitutionality of the Presidential veto of the special provision in the appropriations for debt service and the automatic appropriation of funds therefor.

In G.R. No. 113888, Senators Tanada and Romulo sought the issuance of the writs of prohibition and mandamus against the same respondents in G.R. No. 113766. In this petition, petitioners contest the constitutionality of: (1) the veto on four special provisions added to items in the GAA of 1994 for the Armed Forces of the Philippines (AFP) and the Department of Public Works and Highways (DPWH); and (2) the conditions imposed by the President in the implementation of certain appropriations for the CAFGU's, the DPWH, and the National Housing Authority (NHA).

Petitioners also sought the issuance of temporary restraining orders to enjoin respondents Secretary of Budget and Management, National Treasurer and COA from enforcing the questioned provisions of the GAA of 1994, but the Court declined to grant said provisional reliefs on the time-honored principle of according the presumption of validity to statutes and the presumption of regularity to official acts.

In view of the importance and novelty of most of the issues raised in the four petitions, the Court invited former Chief Justice Enrique M. Fernando and former Associate Justice Irene Cortes to submit their respective memoranda as Amicus Curiae, which they graciously did.

II

Locus Standi

When issues of constitutionality are raised, the Court can exercise its power of judicial review only if the following requisites are compresent: (1) the existence of an actual and appropriate case; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case (*Luz Farms v. Secretary of the Department of Agrarian Reform*, 192 SCRA 51 [1990]; *Dumlao v. Commission on Elections*, 95 SCRA 392 [1980]; *People v. Vera*, 65 Phil. 56 [1937]).

While the Solicitor General did not question the locus standi of petitioners in G.R. No. 113105, he claimed that

the remedy of the Senators in the other petitions is political (i.e., to override the vetoes) in effect saying that they do not have the requisite legal standing to bring the suits.

The legal standing of the Senate, as an institution, was recognized in *Gonzales v. Macaraig, Jr.*, 191 SCRA 452 (1990). In said case, 23 Senators, comprising the entire membership of the Upper House of Congress, filed a petition to nullify the presidential veto of Section 55 of the GAA of 1989. The filing of the suit was authorized by Senate Resolution No. 381, adopted on February 2, 1989, and which reads as follows:

"Authorizing and Directing the Committee on Finance to Bring in the Name of the Senate of the Philippines the Proper Suit with the Supreme Court of the Philippines contesting the Constitutionality of the Veto by the President of Special and General Provisions, particularly Section 55, of the General Appropriation Bill of 1989 (H.B. No. 19186) and For Other Purposes."

In the United States, the legal standing of a House of Congress to sue has been recognized (*United States v. American Tel. & Tel. Co.*, 551 F. 2d 384, 391 [1976]; Notes: Congressional Access To The Federal Courts, 90 Harvard Law Review 1632 [1977]).

While the petition in G.R. No. 113174 was filed by 16 Senators, including the Senate President and the Chairman of the Committee on Finance, the suit was not authorized by the Senate itself. Likewise, the petitions in G.R. Nos. 113766 and 113888 were filed without an enabling resolution for the purpose.

Therefore, the question of the legal standing of petitioners in the three cases becomes a preliminary issue before this Court can inquire into the validity of the presidential veto and the conditions for the implementation of some items in the GAA of 1994.

We rule that a member of the Senate, and of the House of Representatives for that matter, has the legal standing to question the validity of a presidential veto or a condition imposed on an item in an appropriation bill.

Where the veto is claimed to have been made without or in excess of the authority vested on the President by the Constitution, the issue of an impermissible intrusion of the Executive into the domain of the Legislature arises (Notes: Congressional Standing To Challenge Executive Action, 122 University of Pennsylvania Law Review 1366 [1974]).

To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution (*Coleman v. Miller*, 307 U.S. 433 [1939]; *Holtzman v. Schlesinger*, 484 F. 2d 1307 [1973]).

An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress (*Kennedy v. Jones*, 412 F. Supp. 353 [1976]). In such a case, any member of Congress can have a resort to the courts.

Former Chief Justice Enrique M. Fernando, as Amicus Curiae, noted:

"This is, then, the clearest case of the Senate as a whole or individual Senators as such having a substantial interest in the question at issue. It could likewise be said that there was the requisite injury to their rights as Senators. It would then be futile to raise any locus standi issue. Any intrusion into the domain appertaining to the Senate is to be resisted. Similarly, if the situation were reversed, and it is the Executive Branch that could allege a transgression, its officials could likewise file the corresponding action. What cannot be denied is that a Senator has standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in his office" (Memorandum, p. 14).

It is true that the Constitution provides a mechanism for overriding a veto (Art. VI, Sec. 27 [1]). Said remedy,

however, is available only when the presidential veto is based on policy or political considerations but not when the veto is claimed to be ultra vires. In the latter case, it becomes the duty of the Court to draw the dividing line where the exercise of executive power ends and the bounds of legislative jurisdiction begin.

III

G.R. NO. 113105

1. Countrywide Development Fund

Article XLI of the GAA of 1994 sets up a Countrywide Development Fund of P2,977,000,000.00 to "be used for infrastructure, purchase of ambulances and computers and other priority projects and activities and credit facilities to qualified beneficiaries." Said Article provides:

"COUNTRYWIDE DEVELOPMENT FUND

For Fund requirements of countrywide

development projects..... P2,977,000,000

New Appropriations, by Purpose Current Operating Expenditures

A. PURPOSE

Maintenance

and Other

Personal Operating Capital

Services Expenses Outlays Total

1. For

Countrywide

Development

Projects P250,000,000 P2,727,000,000 P2,977,000,000

TOTAL NEW

APPROPRIATIONS P250,000,000 P2,727,000,000 P2,977,000,000

Special Provisions

1. Use and Release of Funds. The amount herein appropriated shall be used for infrastructure, purchase of ambulances and computers and other priority projects and activities, and credit facilities to qualified beneficiaries as proposed and identified by officials concerned according to the following allocations: Representatives, P12,500,000 each; Senators, P18,000,000 each; Vice-President, P20,000,000; PROVIDED, That, the said credit facilities shall be constituted as a revolving fund to be administered by a government financial institution (GFI) as a trust fund for lending operations. Prior years releases to local government units and national government agencies for this purpose shall be turned over to the government financial institution which shall be the sole administrator of credit facilities released from this fund.

The fund shall be automatically released quarterly by way of Advice of Allotments and Notice of Cash Allocation directly to the assigned implementing agency not later than five (5) days after the beginning of each

quarter upon submission of the list of projects and activities by the officials concerned.

2. Submission of Quarterly Reports. The Department of Budget and Management shall submit within thirty (30) days after the end of each quarter a report to the Senate Committee on Finance and the House Committee on Appropriations on the releases made from this Fund. The report shall include the listing of the projects, locations, implementing agencies and the endorsing officials" (GAA of 1994, p. 1245).

Petitioners claim that the power given to the members of Congress to propose and identify the projects and activities to be funded by the Countrywide Development Fund is an encroachment by the legislature on executive power, since said power in an appropriation act is in implementation of a law. They argue that the proposal and identification of the projects do not involve the making of laws or the repeal and amendment thereof, the only function given to the Congress by the Constitution (Rollo, pp. 78-86).

Under the Constitution, the spending power called by James Madison as "the power of the purse," belongs to Congress, subject only to the veto power of the President. The President may propose the budget, but still the final say on the matter of appropriations is lodged in the Congress.

The power of appropriation carries with it the power to specify the project or activity to be funded under the appropriation law. It can be as detailed and as broad as Congress wants it to be.

The Countrywide Development Fund is explicit that it shall be used "for infrastructure, purchase of ambulances and computers and other priority projects and activities and credit facilities to qualified beneficiaries xxx." It was Congress itself that determined the purposes for the appropriation.

Executive function under the Countrywide Development Fund involves implementation of the priority projects specified in the law.

The authority given to the members of Congress is only to propose and identify projects to be implemented by the President. Under Article XLI of the GAA of 1994, the President must perforce examine whether the proposals submitted by the members of Congress fall within the specific items of expenditures for which the Fund was set up, and if qualified, he next determines whether they are in line with other projects planned for the locality. Thereafter, if the proposed projects qualify for funding under the Fund, it is the President who shall implement them. In short, the proposals and identifications made by the members of Congress are merely recommendatory.

The procedure of proposing and identifying by members of Congress of particular projects or activities under Article XLI of the GAA of 1994 is imaginative as it is innovative.

The Constitution is a framework of a workable government and its interpretation must take into account the complexities, realities and politics attendant to the operation of the political branches of government. Prior to the GAA of 1991, there was an uneven allocation of appropriations for the constituents of the members of Congress, with the members close to the Congressional leadership or who hold cards for "horse-trading," getting more than their less favored colleagues. The members of Congress also had to reckon with an unsympathetic President, who could exercise his veto power to cancel from the appropriation bill a pet project of a Representative or Senator.

The Countrywide Development Fund attempts to make equal the unequal. It is also a recognition that individual members of Congress, far more than the President and their congressional colleagues are likely to be knowledgeable about the needs of their respective constituents and the priority to be given each project.

2. Realignment of Operating Expenses

Under the GAA of 1994, the appropriation for the Senate is P472,000,000.00 of which P464,447,000.00 is appropriated for current operating expenditures, while the appropriation for the House of Representatives is

P1,171,924,000.00 of which P1,165,297,000.00 is appropriated for current operating expenditures (GAA of 1994, pp. 2, 4, 9, 12).

The 1994 operating expenditures for the Senate are as follows:

"Personal Services

Salaries, Permanent

153,347

Salaries/Wages, Contractual/Emergency

6,870

Total Salaries and Wages

160,217

Other Compensation

Step Increments

1,073

Honoraria and Commutable Allowances

3,731

Compensation Insurance Premiums

1,579

Pag-I.B.I.G. Contributions

1,184

Medicare Premiums

888

Bonus and Cash Gift

14,791

Terminal Leave Benefits

2,000

Personnel Economic Relief Allowance

10,266

Additional Compensation of P500 under A.O. 53

11,130

Others

57,173

Total Other Compensation

103,815

01 Total Personal Services

264,032

Maintenance and Other Operating Expenses

02 Travelling Expenses

32,841

03 Communication Services

7,666

04 Repair and Maintenance of Government Facilities

1,220

05 Repair and Maintenance of Government Vehicles

318

06 Transportation Services

128

07 Supplies and Materials

20,189

08 Rents

24,584

14 Water/Illumination and Power

6,561

15 Social Security Benefits and Other Claims

3,270

17 Training and Seminars Expenses

2,225

18 Extraordinary and Miscellaneous Expenses

9,360

23 Advertising and Publication

24 Fidelity Bonds and Insurance Premiums

1,325

29 Other Services

89,778

Total Maintenance and Other Operating Expenditures

200,415

Total Current Operating Expenditures

464,447

(GAA of 1994, pp. 3-4)

The 1994 operating expenditures for the House of Representatives are as follows:

Personal Services

Salaries, Permanent

261,557

Salaries/Wages, Contractual/Emergency

143,643

Total Salaries and Wages

405,200

Other Compensation

Step Increments

4,312

Honoraria and Commutable Allowances

4,764

Compensation Insurance Premiums

1,159

Pag-I.B.I.G. Contributions

5,231

Medicare Premiums

2,281

Bonus and Cash Gift

35,669

Terminal Leave Benefits

29

Personnel Economic Relief

Allowance

21,510

Additional Compensation of P500 under A. O. 53

21,768

Others

106,140

Total Other Compensation

202,863

01 Total Personal Services

608,063

Maintenance and Other Operating Expenses

02 Travelling Expenses

139,611

03 Communication Services

22,514

04 Repair and Maintenance of Government Facilities

5,116

05 Repair and Maintenance of Government Vehicles

1,863

06 Transportation Services

178

07 Supplies and Materials

55,248

10 Grants/Subsidies/Contributions

940

14 Water/Illumination and Power

14,458

15 Social Security Benefits and Other Claims

325

17 Training and Seminars Expenses

7,236

18 Extraordinary and Miscellaneous Expenses

14,474

20 Anti-Insurgency/Contingency Emergency Expenses

9,400

23 Advertising and Publication Expenses

242

24 Fidelity Bonds and Insurance Premiums

1,420

29 Other Services

284,209

Total Maintenance and Other Operating Expenses

557,234

Total Current Operating Expenditures

1,165,297

(GAA of 1994, pp. 11-12)

The Special Provision Applicable to the Congress of the Philippines provides:

"4. Realignment of Allocation for Operational Expenses. A member of Congress may realign his allocation for operational expenses to any other expense category provided the total of said allocation is not exceeded" (GAA of 1994, p. 14).

The appropriation for operating expenditures for each House is further divided into expenditures for salaries, personal services, other compensation benefits, maintenance expenses and other operating expenses. In turn, each member of Congress is allotted for his own operating expenditure a proportionate share of the appropriation for the House to which he belongs. If he does not spend for one item of expense, the provision in question allows him to transfer his allocation in said item to another item of expense.

Petitioners assail the special provision allowing a member of Congress to realign his allocation for operational

expenses to any other expense category (Rollo, pp. 82-92), claiming that this practice is prohibited by Section 25(5), Article VI of the Constitution. Said section provides:

"No law shall be passed authorizing any transfer of appropriations: however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations."

The proviso of said Article of the Constitution grants the President of the Senate and the Speaker of the House of Representatives the power to augment items in an appropriation act for their respective offices from savings in other items of their appropriations, whenever there is a law authorizing such augmentation.

The special provision on realignment of the operating expenses of members of Congress is authorized by Section 16 of the General Provisions of the GAA of 1994, which provides:

"Expenditure Components. Except by act of the Congress of the Philippines, no change or modification shall be made in the expenditure items authorized in this Act and other appropriation laws unless in cases of augmentations from savings in appropriations as authorized under Section 25(5) of Article VI of the Constitution" (GAA of 1994, p. 1273).

Petitioners argue that the Senate President and the Speaker of the House of Representatives, but not the individual members of Congress are the ones authorized to realign the savings as appropriated.

Under the Special Provisions applicable to the Congress of the Philippines, the members of Congress only determine the necessity of the realignment of the savings in the allotments for their operating expenses. They are in the best position to do so because they are the ones who know whether there are savings available in some items and whether there are deficiencies in other items of their operating expenses that need augmentation. However, it is the Senate President and the Speaker of the House of Representatives, as the case may be, who shall approve the realignment. Before giving their stamp of approval, these two officials will have to see to it that:

- (1) The funds to be realigned or transferred are actually savings in the items of expenditures from which the same are to be taken; and
- (2) The transfer or realignment is for the purpose of augmenting the items of expenditure to which said transfer or realignment is to be made.

3. Highest Priority for Debt Service

While Congress appropriated P86,323,438,000.00 for debt service (Article XLVII of the GAA of 1994), it appropriated only P37,780,450,000.00 for the Department of Education, Culture and Sports. Petitioners urged that Congress cannot give debt service the highest priority in the GAA of 1994 (Rollo, pp. 93-94) because under the Constitution it should be education that is entitled to the highest funding. They invoke Section 5(5), Article XIV thereof, which provides:

"(5) The State shall assign the highest budgetary priority to education and ensure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction and fulfillment."

This issue was raised in *Guingona, Jr. v. Carague*, 196 SCRA 221 (1991), where this Court held that Section 5(5), Article XIV of the Constitution, is merely directory, thus:

"While it is true that under Section 5(5), Article XIV of the Constitution, Congress is mandated to 'assign the highest budgetary priority to education' in order to 'insure that teaching will attract and retain its rightful share

of the best available talents through adequate remuneration and other means of job satisfaction and fulfillment,' it does not thereby follow that the hands of Congress are so hamstrung as to deprive it the power to respond to the imperatives of the national interest and for the attainment of other state policies or objectives.

As aptly observed by respondents, since 1985, the budget for education has tripled to upgrade and improve the facility of the public school system. The compensation of teachers has been doubled. The amount of P29,740,611,000.00 set aside for the Department of Education, Culture and Sports under the General Appropriations Act (R.A. No. 6831), is the highest budgetary allocation among all department budgets. This is a clear compliance with the aforesaid constitutional mandate according highest priority to education.

Having faithfully complied therewith, Congress is certainly not without any power, guided only by its good judgment, to provide an appropriation, that can reasonably service our enormous debt, the greater portion of which was inherited from the previous administration. It is not only a matter of honor and to protect the credit standing of the country. More especially, the very survival of our economy is at stake. Thus, if in the process Congress appropriated an amount for debt service bigger than the share allocated to education, the Court finds and so holds that said appropriation cannot be thereby assailed as unconstitutional."

G.R. NO. 113105

G.R. NO. 113174

Veto of Provision on Debt Ceiling

The Congress added a Special Provision to Article XLVIII (Appropriations for Debt Service) of the GAA of 1994 which provides:

"Special Provisions

1. Use of the Fund. The appropriation authorized herein shall be used for payment of principal and interest of foreign and domestic indebtedness; PROVIDED, That any payment in excess of the amount herein appropriated shall be subject to the approval of the President of the Philippines with the concurrence of the Congress of the Philippines; PROVIDED, FURTHER, That in no case shall this fund be used to pay for the liabilities of the Central Bank Board of Liquidators.

2. Reporting Requirement. The Bangko Sentral ng Pilipinas and the Department of Finance shall submit a quarterly report of actual foreign and domestic debt service payments to the House Committee on Appropriations and Senate Finance Committee within one (1) month after each quarter" (GAA of 1994, pp. 1266).

The President vetoed the first Special Provision, without vetoing the P86,323,438,000.00 appropriation for debt service in said Article. According to the President's Veto Message:

"IV. APPROPRIATIONS FOR DEBT SERVICE

I would like to emphasize that I concur fully with the desire of Congress to reduce the debt burden by decreasing the appropriation for debt service as well as the inclusion of the Special Provision quoted below. Nevertheless, I believe that this debt reduction scheme cannot be validly done through the 1994 GAA. This must be addressed by revising our debt policy by way of innovative and comprehensive debt reduction programs conceptualized within the ambit of the Medium-Term Philippine Development Plan.

Appropriations for payment of public debt, whether foreign or domestic, are automatically appropriated pursuant to the Foreign Borrowing Act and Section 31 of P.D. No. 1177 as reiterated under Section 26, Chapter 4, Book VI of E.O. No. 292, the Administrative Code of 1987. I wish to emphasize that the

constitutionality of such automatic provisions on debt servicing has been upheld by the Supreme Court in the case of 'Teofisto T. Guingona, Jr. and Aquilino Q. Pimentel, Jr. v. Hon. Guillermo N. Carague, in his capacity as Secretary of Budget and Management, et al.,' G.R. No. 94571, dated April 22, 1991.

I am, therefore vetoing the following special provision for the reason that the GAA is not the appropriate legislative measure to amend the provisions of the Foreign Borrowing Act, P.D. No. 1177 and E.O. No. 292:

'Use of the Fund. The appropriation authorized herein shall be used for payment of principal and interest of foreign and domestic indebtedness: PROVIDED, That any payment in excess of the amount herein appropriated shall be subject to the approval of the President of the Philippines with the concurrence of the Congress of the Philippines: PROVIDED, FURTHER, That in no case shall this fund be used to pay for the liabilities of the Central Bank Board of Liquidators'" (GAA of 1994, p. 1290).

Petitioners claim that the President cannot veto the Special Provision on the appropriation for debt service without vetoing the entire amount of P86,323,438.00 for said purpose (Rollo, G.R. No. 113105, pp. 93-98; Rollo, G.R. No. 113174, pp. 16-18). The Solicitor General counterposed that the Special Provision did not relate to the item of appropriation for debt service and could therefore be the subject of an item veto (Rollo, G.R. No. 113105, pp. 54-60; Rollo, G.R. No. 113174, pp. 72-82).

This issue is a mere rehash of the one put to rest in *Gonzales v. Macaraig, Jr.*, 191 SCRA 452 (1990). In that case, the issue was stated by the Court, thus:

"The fundamental issue raised is whether or not the veto by the President of Section 55 of the 1989 Appropriations Bill (Section 55 FY '89), and subsequently of its counterpart Section 16 of the 1990 Appropriations Bill (Section 16 FY '90), is unconstitutional and without effect."

The Court re-stated the issue, just so there would not be any misunderstanding about it, thus:

"The focal issue for resolution is whether or not the President exceeded the item-veto power accorded by the Constitution. Or differently put, has the President the power to veto 'provisions' of an Appropriations Bill?"

The bases of the petition in *Gonzales*, which are similar to those invoked in the present case, are stated as follows:

"In essence, petitioners' cause is anchored on the following grounds: (1) the President's line-veto power as regards appropriation bills is limited to item/s and does not cover provision/s; therefore, she exceeded her authority when she vetoed Section 55 (FY '89) and Section 16 (FY '90) which are provisions; (2) when the President objects to a provision of an appropriation bill, she cannot exercise the item-veto power but should veto the entire bill; (3) the item-veto power does not carry with it the power to strike out conditions or restrictions for that would be legislation, in violation of the doctrine of separation of powers; and (4) the power of augmentation in Article VI, Section 25 [5] of the 1987 Constitution, has to be provided for by law and, therefore, Congress is also vested with the prerogative to impose restrictions on the exercise of that power.

The restrictive interpretation urged by petitioners that the President may not veto a provision without vetoing the entire bill not only disregards the basic principle that a distinct and severable part of a bill may be the subject of a separate veto but also overlooks the Constitutional mandate that any provision in the general appropriations bill shall relate specifically to some particular appropriation therein and that any such provision shall be limited in its operation to the appropriation to which it relates (1987 Constitution, Article VI, Section 25 [2]). In other words, in the true sense of the term, a provision in an Appropriations Bill is limited in its operation to some particular appropriation to which it relates, and does not relate to the entire bill."

The Court went one step further and ruled that even assuming *arguendo* that "provisions" are beyond the executive power to veto, and Section 55 (FY '89) and Section 16 (FY '90) were not "provisions" in the budgetary sense of the term, they are "inappropriate provisions" that should be treated as "items" for the purpose of the

President's veto power.

The Court, citing *Henry v. Edwards, La.*, 346 So. 2d 153 (1977), said that Congress cannot include in a general appropriations bill matters that should be more properly enacted in separate legislation, and if it does that, the inappropriate provisions inserted by it must be treated as "item," which can be vetoed by the President in the exercise of his item-veto power.

It is readily apparent that the Special Provision applicable to the appropriation for debt service insofar as it refers to funds in excess of the amount appropriated in the bill, is an "inappropriate" provision referring to funds other than the P86,323,438,000.00 appropriated in the General Appropriations Act of 1991.

Likewise the vetoed provision is clearly an attempt to repeal Section 31 of P.D. No. 1177 (Foreign Borrowing Act) and E.O. No. 292, and to reverse the debt payment policy. As held by the Court in *Gonzales*, the repeal of these laws should be done in a separate law, not in the appropriations law.

The Court will indulge every intendment in favor of the constitutionality of a veto, the same as it will presume the constitutionality of an act of Congress (*Texas Co. v. State*, 254 P. 1060; 31 Ariz, 485, 53 A.L.R. 258 [1927]).

The veto power, while exercisable by the President, is actually a part of the legislative process (Memorandum of Justice Irene Cortes as Amicus Curiae, pp. 3-7). That is why it is found in Article VI on the Legislative Department rather than in Article VII on the Executive Department in the Constitution. There is, therefore, sound basis to indulge in the presumption of validity of a veto. The burden shifts on those questioning the validity thereof to show that its use is a violation of the Constitution.

Under his general veto power, the President has to veto the entire bill, not merely parts thereof (1987 Constitution, Art. VI, Sec. 27[1]). The exception to the general veto power is the power given to the President to veto any particular item or items in a general appropriations bill (1987 Constitution, Art. VI, Sec. 27[2]). In so doing, the President must veto the entire item.

A general appropriations bill is a special type of legislation, whose content is limited to specified sums of money dedicated to a specific purpose or a separate fiscal unit (Beckman, *The Item Veto Power of the Executive*, 31 Temple Law Quarterly 27 [1957]).

The item veto was first introduced by the Organic Act of the Philippines passed by the U.S. Congress on August 29, 1916. The concept was adopted from some State Constitutions.

Cognizant of the legislative practice of inserting provisions, including conditions, restrictions and limitations, to items in appropriations bills, the Constitutional Convention added the following sentence to Section 20(2), Article VI of the 1935 Constitution:

"xxx When a provision of an appropriation bill affects one or more items of the same, the President cannot veto the provision without at the same time vetoing the particular item or items to which it relates xxx."

In short, under the 1935 Constitution, the President was empowered to veto separately not only items in an appropriations bill but also "provisions."

While the 1987 Constitution did not retain the aforementioned sentence added to Section 11(2) of Article VI of the 1935 Constitution, it included the following provision:

"No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates" (Art. VI, Sec. 25[2]).

In *Gonzales*, we made it clear that the omission of that sentence of Section 16(2) of the 1935 Constitution in the 1987 Constitution should not be interpreted to mean the disallowance of the power of the President to veto a "provision."

As the Constitution is explicit that the provision which Congress can include in an appropriations bill must "relate specifically to some particular appropriation therein" and "be limited in its operation to the appropriation to which it relates," it follows that any provision which does not relate to any particular item, or which extends in its operation beyond an item of appropriation, is considered "an inappropriate provision" which can be vetoed separately from an item. Also to be included in the category of "inappropriate provisions" are unconstitutional provisions and provisions which are intended to amend other laws, because clearly these kind of laws have no place in an appropriations bill. These are matters of general legislation more appropriately dealt with in separate enactments. Former Justice Irene Cortes, as Amicus Curiae, commented that Congress cannot by law establish conditions for and regulate the exercise of powers of the President given by the Constitution for that would be an unconstitutional intrusion into executive prerogative.

The doctrine of "inappropriate provision" was well elucidated in *Henry v. Edwards*, supra., thus:

"Just as the President may not use his item-veto to usurp constitutional powers conferred on the legislature, neither can the legislature deprive the Governor of the constitutional powers conferred on him as chief executive officer of the state by including in a general appropriation bill matters more properly enacted in separate legislation. The Governor's constitutional power to veto bills of general legislation ... cannot be abridged by the careful placement of such measures in a general appropriation bill, thereby forcing the Governor to choose between approving unacceptable substantive legislation or vetoing 'items' of expenditures essential to the operation of government. The legislature cannot by location of a bill give it immunity from executive veto. Nor can it circumvent the Governor's veto power over substantive legislation by artfully drafting general law measures so that they appear to be true conditions or limitations on an item of appropriation. Otherwise, the legislature would be permitted to impair the constitutional responsibilities and functions of a co-equal branch of government in contravention of the separation of powers doctrine ... We are no more willing to allow the legislature to use its appropriation power to infringe on the Governor's constitutional right to veto matters of substantive legislation than we are to allow the Governor to encroach on the constitutional powers of the legislature. In order to avoid this result, we hold that, when the legislature inserts inappropriate provisions in a general appropriation bill, such provisions must be treated as 'items' for purposes of the Governor's item veto power over general appropriation bills.

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"xxx Legislative control cannot be exercised in such a manner as to encumber the general appropriation bill with veto-proof 'logrolling measures,' special interest provisions which could not succeed if separately enacted, or 'riders,' substantive pieces of legislation incorporated in a bill to insure passage without veto. xxx" (Underlining supplied).

Petitioners contend that granting arguendo that the veto of the Special Provision on the ceiling for debt payment is valid, the President cannot automatically appropriate funds for debt payment without complying with the conditions for automatic appropriation under the provisions of R.A. No. 4860 as amended by P.D. No. 81 and the provisions of P.D. No. 1177 as amended by the Administrative Code of 1987 and P.D. No. 1967 (Rollo, G.R. No. 113766, pp. 9-15).

Petitioners cannot anticipate that the President will not faithfully execute the laws. The writ of prohibition will not issue on the fear that official actions will be done in contravention of the laws.

The President vetoed the entire paragraph one of the Special Provision of the item on debt service, including the

provisos that the appropriation authorized in said item "shall be used for payment of the principal and interest of foreign and domestic indebtedness" and that "in no case shall this fund be used to pay for the liabilities of the Central Bank Board of Liquidators." These provisos are germane to and have a direct connection with the item on debt service. Inherent in the power of appropriation is the power to specify how the money shall be spent (*Henry v. Edwards*, LA, 346 So., 2d., 153). The said provisos, being appropriate provisions, cannot be vetoed separately. Hence the item veto of said provisions is void.

We reiterate, in order to obviate any misunderstanding, that we are sustaining the veto of the Special Provision of the item on debt service only with respect to the proviso therein requiring that "any payment in excess of the amount herein, appropriated shall be subject to the approval of the President of the Philippines with the concurrence of the Congress of the Philippines xxx".

G.R. NO. 113174

G.R. NO. 113766

G.R. NO. 113888

1. Veto of provisions for revolving funds of SUCs.

In the appropriation for State Universities and Colleges (SUC's), the President vetoed special provisions which authorize the use of income and the creation, operation and maintenance of revolving funds. The Special Provisions vetoed are the following:

"(H.7) West Visayas State University

'Equal Sharing of Income. Income earned by the University subject to Section 13 of the special provisions applicable to all State Universities and Colleges shall be equally shared by the University and the University hospital' (GAA of 1994, p. 395).

x x x

(J.3) Leyte State College

'Revolving Fund for the Operation of LSC House and Human Resources Development Center (HRDC). The income of Leyte State College derived from the operation of its LSC House and HRDC shall be constituted into a Revolving Fund to be deposited in an authorized government depository bank for the operational expenses of these projects/services. The net income of the Revolving Fund at the end of the year shall be remitted to the National Treasury and shall accrue to the General Fund. The implementing guidelines shall be issued by the Department of Budget and Management" (GAA of 1994, p. 415).

The vetoed Special Provisions applicable to all SUC's are the following:

"12. Use of Income from Extension Services. State Universities and Colleges are authorized to use their income from their extension services. Subject to the approval of the Board of Regents and the approval of a special budget pursuant to Sec. 35, Chapter 5, Book VI of E.O. No. 292, such income shall be utilized solely for faculty development, instructional materials and work study program" (GAA of 1994, p. 490).

x x x

"13. 'Income of State Universities and Colleges. The income of State Universities and Colleges derived from tuition fees and other sources as may be imposed by governing boards other than those accruing to revolving funds created under LOI Nos. 872 and 1026 and those authorized to be recorded as trust receipts pursuant to

Section 40, Chapter 5, Book VI of E.O. No. 292 shall be deposited with the National Treasury and recorded as a Special Account in the General Fund pursuant to P.D. No. 1234 and P.D. No. 1437 for the use of the institution, subject to Section 35, Chapter 5, Book VI of E.O. No. 292: PROVIDED, That disbursements from the Special Account shall not exceed the amount actually earned and deposited: PROVIDED, FURTHER, That a cash advance on such income may be allowed State Universities and Colleges representing up to one-half of income actually realized during the preceding year and this cash advance shall be charged against income actually earned during the budget year: AND PROVIDED, FINALLY, That in no case shall such funds be used to create positions, nor for payment of salaries, wages or allowances, except as may be specifically approved by the Department of Budget and Management for income-producing activities, or to purchase equipment or books, without the prior approval of the President of the Philippines pursuant to Letter of Implementation No. 29.

All collections of the State Universities and Colleges for fees, charges and receipts intended for private recipient units, including private foundations affiliated with these institutions shall be duly acknowledged with official receipts and deposited as a trust receipt before said income shall be subject to Section 35, Chapter 5, Book VI of E.O. No. 292" (GAA of 1994, p. 490).

The President gave his reasons for the veto thus:

"Pursuant to Section 65 of the Government Auditing Code of the Philippines, Section 44, Chapter 5, Book VI of E.O. No. 292, s. 1987 and Section 22, Article VII of the Constitution, all income earned by all Government offices and agencies shall accrue to the General Fund of the Government in line with the One Fund Policy enunciated by Section 29 (1), Article VI and Section 22, Article VII of the Constitution. Likewise, the creation and establishment of revolving funds shall be authorized by substantive law pursuant to Section 66 of the Government Auditing Code of the Philippines and Section 45, Chapter 5, Book VI of E.O. No. 292.

Notwithstanding the aforementioned provisions of the Constitution and existing law, I have noted the proliferation of special provisions authorizing the use of agency income as well as the creation, operation and maintenance of revolving funds.

I would like to underscore the fact that such income were already considered as integral part of the revenue and financing sources of the National Expenditure Program which I previously submitted to Congress. Hence, the grant of new special provisions authorizing the use of agency income and the establishment of revolving funds over and above the agency appropriations authorized in this Act shall effectively reduce the financing sources of the 1994 GAA and, at the same time, increase the level of expenditures of some agencies beyond the well-coordinated, rationalized levels for such agencies. This corresponding increases the overall deficit of the National Government" (Veto Message, p. 3).

Petitioners claim that the President acted with grave abuse of discretion when he disallowed by his veto the "use of income" and the creation of "revolving fund" by the Western Visayas State University and Leyte State Colleges when he allowed other government offices, like the National Stud Farm, to use their income for their operating expenses (Rollo, G.R. No. 113174, pp. 15-16).

There was no undue discrimination when the President vetoed said special provisions while allowing similar provisions in other government agencies. If some government agencies were allowed to use their income and maintain a revolving fund for that purpose, it is because these agencies have been enjoying such privilege before by virtue of the special laws authorizing such practices as exceptions to the "one-fund policy" (e.g., R.A. No. 4618 for the National Stud Farm, P.D. No. 902-A for the Securities and Exchange Commission; E.O. No. 359 for the Department of Budget and Management's Procurement Service).

2. Veto of provision on 70% (administrative)/30% (contract) ratio for road maintenance.

In the appropriation for the Department of Public Works and Highways, the President vetoed the second paragraph of Special Provision No. 2, specifying the 30% maximum ratio of works to be contracted for the maintenance of national roads and bridges. The said paragraph reads as follows:

"2. Release and Use of Road Maintenance Funds. Funds allotted for the maintenance and repair of roads which are provided in this Act for the Department of public Works and Highways shall be released to the respective Engineering District, subject to such rules and regulations as may be prescribed by the Department of Budget and Management. Maintenance funds for roads and bridges shall be exempt from budgetary reserve.

Of the amount herein appropriated for the maintenance of national roads and bridges, a maximum of thirty percent (30%) shall be contracted out in accordance with guidelines to be issued by the Department of Public Works and Highways. The balance shall be used for maintenance by force account.

Five percent (5%) of the total road maintenance fund appropriated herein to be applied across the board to the allocation of each region shall be set aside for the maintenance of roads which may be converted to or taken over as national roads during the current year and the same shall be released to the central office of the said department for eventual sub-allotment to the concerned region and district: PROVIDED, That any balance of the said five percent (5%) shall be restored to the regions on a pro-rata basis for the maintenance of existing national roads.

No retention or deduction as reserves or overhead expenses shall be made, except as authorized by law or upon direction of the President" (GAA of 1994, pp. 785-786; Underlining supplied).

The President gave the following reason for the veto:

"While I am cognizant of the well-intended desire of Congress to impose certain restrictions contained in some special provisions, I am equally aware that many programs, projects and activities of agencies would require some degree of flexibility to ensure their successful implementation and therefore risk their completion. Furthermore, not only could these restrictions and limitations derail and impede program implementation but they may also result in a breach of contractual obligations.

D.1.a. A study conducted by the Infrastructure Agencies show that for practical intent and purposes, maintenance by contract could be undertaken to an optimum of seventy percent (70%) and the remaining thirty percent (30%) by force account. Moreover, the policy of maximizing implementation through contract maintenance is a covenant of the Road and Road Transport Program Loan from the Asian Development Bank (ADB Loan No. 1047-PHI-1990) and Overseas Economic Cooperation Fund (OECF Loan No. PH-C17-199). The same is a covenant under the World Bank (IBRD) Loan for the Highway Management Project (IBRD Loan No. PH-3430) obtained in 1992.

In the light of the foregoing and considering the policy of the government to encourage and maximize private sector participation in the regular repair and maintenance of infrastructure facilities, I am directly vetoing the underlined second paragraph of Special Provision No. 2 of the Department of Public Works and Highways" (Veto Message, p. 11).

The second paragraph of Special Provision No. 2 brings to fore the divergence in policy of Congress and the President. While Congress expressly laid down the condition that only 30% of the total appropriation for road maintenance should be contracted out, the President, on the basis of a comprehensive study, believed that contracting out road maintenance projects at an option of 70% would be more efficient, economical and practical.

The Special Provision in question is not an inappropriate provision which can be the subject of a veto. It is not alien to the appropriation for road maintenance, and on the other hand, it specifies how the said item shall be expended -- 70% by administrative and 30% by contract.

The 1987 Constitution allows the addition by Congress of special provisions, conditions to items in an expenditure bill, which cannot be vetoed separately from the items to which they relate so long as they are "appropriate" in the budgetary sense (Art. VII, Sec. 25[2]).

The Solicitor General was hard put in justifying the veto of this special provision. He merely argued that the provision is a complete turnabout from an entrenched practice of the government to maximize contract maintenance (Rollo, G.R. No. 113888, pp. 85-86). That is not a ground to veto a provision separate from the item to which it refers.

The veto of the second paragraph of Special Provision No. 2 of the item for the DPWH is therefore unconstitutional.

3. Veto of provision on purchase of medicines by AFP.

In the appropriation for the Armed Forces of the Philippines (AFP), the President vetoed the special provision on the purchase by the AFP of medicines in compliance with the Generics Drugs Law (R.A. No. 6675). The vetoed provision reads:

"12. Purchase of Medicines. The purchase of medicines by all Armed Forces of the Philippines units, hospitals and clinics shall strictly comply with the formulary embodied in the National Drug Policy of the Department of Health" (GAA of 1994, p. 748).

According to the President, while it is desirable to subject the purchase of medicines to a standard formulary, "it is believed more prudent to provide for a transition period for its adoption and smooth implementation in the Armed Forces of the Philippines" (Veto Message, p. 12).

The Special Provision which requires that all purchases of medicines by the AFP should strictly comply with the formulary embodied in the National Drug Policy of the Department of Health is an "appropriate" provision. It is a mere advertence by Congress to the fact that there is an existing law, the Generics Act of 1988, that requires "the extensive use of drugs with generic names through a rational system of procurement and distribution." The President believes that it is more prudent to provide for a transition period for the smooth implementation of the law in the case of purchases by the Armed Forces of the Philippines, as implied by Section 11 (Education Drive) of the law itself. This belief, however, cannot justify his veto of the provision on the purchase of medicines by the AFP.

Being directly related to and inseparable from the appropriation item on purchases of medicines by the AFP, the special provision cannot be vetoed by the President without also vetoing the said item (*Bolinao Electronics Corporation v. Valencia*, 11 SCRA 486 [1964]).

4. Veto of provision on prior approval of Congress for purchase of military equipment.

In the appropriation for the modernization of the AFP, the President vetoed the underlined proviso of Special Provision No. 2 on the "Use of Fund," which requires the prior approval of Congress for the release of the corresponding modernization funds, as well as the entire Special Provision No. 3 on the "Specific Prohibition":

"2. Use of the Fund. Of the amount herein appropriated, priority shall be given for the acquisition of AFP assets necessary for protecting marine, mineral, forest and other resources within Philippine territorial borders and its economic zone, detection, prevention or deterrence of air or surface intrusions and to support diplomatic moves aimed at preserving national dignity, sovereignty and patrimony: PROVIDED, That the said modernization fund shall not be released until a Table of Organization and Equipment for FY 1994-2000 is submitted to and approved by Congress.

3. Specific Prohibition. The said Modernization Fund shall not be used for payment of six (6) additional S-211 Trainer planes, 18 SF-260 Trainer planes and 150 armored personnel carriers" (GAA of 1994, p. 747).

As reason for the veto, the President stated that the said condition and prohibition violate the Constitutional mandate of non-impairment of contractual obligations, and if allowed, "shall effectively alter the original intent of the AFP Modernization Fund to cover all military equipment deemed necessary to modernize the Armed Forces of the Philippines" (Veto Message, p. 12).

Petitioners claim that Special Provision No. 2 on the "Use of Fund" and Special Provision No. 3 are conditions or limitations related to the item on the AFP modernization plan.

The requirement in Special Provision No. 2 on the "Use of Fund" for the AFP modernization program that the President must submit all purchases of military equipment to Congress for its approval, is an exercise of the "congressional or legislative veto." By way of definition, a congressional veto is a means whereby the legislature can block or modify administrative action taken under a statute. It is a form of legislative control in the implementation of particular executive actions. The form may be either negative, that is requiring disapproval of the executive action, or affirmative, requiring approval of the executive action. This device represents a significant attempt by Congress to move from oversight of the executive to shared administration (Dixon, *The Congressional Veto and Separation of Powers: The Executive on a Leash*, 56 North Carolina Law Review, 423 [1978]).

A congressional veto is subject to serious questions involving the principle of separation of powers.

However the case at bench is not the proper occasion to resolve the issues of the validity of the legislative veto as provided in Special Provisions Nos. 2 and 3 because the issues at hand can be disposed of on other grounds. Any provision blocking an administrative action in implementing a law or requiring legislative approval of executive acts must be incorporated in a separate and substantive bill. Therefore, being "inappropriate" provisions, Special Provisions Nos. 2 and 3 were properly vetoed.

As commented by Justice Irene Cortes in her memorandum as Amicus Curiae: "What Congress cannot do directly by law it cannot do indirectly by attaching conditions to the exercise of that power (of the President as Commander-in-Chief) through provisions in the appropriation law."

Furthermore, Special Provision No. 3, prohibiting the use of the Modernization Fund for payment of the trainer planes and armored personnel carriers, which have been contracted for by the AFP, is violative of the Constitutional prohibition on the passage of laws that impair the obligation of contracts (Art. III, Sec. 10), more so, contracts entered into by the Government itself.

The veto of said special provision is therefore valid.

5. Veto of provision on use of savings to augment AFP pension funds.

In the appropriation for the AFP Pension and Gratuity Fund, the President vetoed the new provision authorizing the Chief of Staff to use savings in the AFP to augment pension and gratuity funds. The vetoed provision reads:

"2. Use of Savings. The Chief of Staff, AFP, is authorized, subject to the approval of the Secretary of National Defense, to use savings in the appropriations provided herein to augment the pension fund being managed by the AFP Retirement and Separation Benefits System as provided under Sections 2(a) and 3 of P.D. No. 361" (GAA of 1994, p. 746).

According to the President, the grant of retirement and separation benefits should be covered by direct appropriations specifically approved for the purpose pursuant to Section 29(1) of Article VI of the Constitution.

Moreover, he stated that the authority to use savings is lodged in the officials enumerated in Section 25(5) of Article VI of the Constitution (Veto Message, pp. 7-8).

Petitioners claim that the Special Provision on AFP Pension and Gratuity Fund is a condition or limitation which is so intertwined with the item of appropriation that it could not be separated therefrom.

The Special Provision, which allows the Chief of Staff to use savings to augment the pension fund for the AFP being managed by the AFP Retirement and Separation Benefits System is violative of Sections 25(5) and 29(1) of the Article VI of the Constitution.

Under Section 25(5), no law shall be passed authorizing any transfer of appropriations, and under Section 29(1), no money shall be paid out of the Treasury except in pursuance of an appropriation made by law. While Section 25(5) allows as an exception the realignment of savings to augment items in the general appropriations law for the executive branch, such right must and can be exercised only by the President pursuant to a specific law.

6. Condition on the deactivation of the CAFGU's

Congress appropriated compensation for the CAFGU's, including the payment of separation benefits but it added the following Special Provision:

"1. CAFGU Compensation and Separation Benefit. The appropriation authorized herein shall be used for the compensation of CAFGU's including the payment of their separation benefit not exceeding one (1) year subsistence allowance for the 11,000 members who will be deactivated in 1994. The Chief of Staff, AFP, shall, subject to the approval of the Secretary of National Defense, promulgate policies and procedures for the payment of separation benefit" (GAA of 1994, p. 740).

The President declared in his Veto Message that the implementation of this Special Provision to the item on the CAFGU's shall be subject to prior Presidential approval pursuant to P.D. No. 1597 and R.A. No. 6758. He gave the following reasons for imposing the condition:

"I am well cognizant of the laudable intention of Congress in proposing the amendment of Special Provision No. 1 of the CAFGU. However, it is premature at this point in time of our peace process to earmark and declare through special provision the actual number of CAFGU members to be deactivated in CY 1994. I understand that the number to be deactivated would largely depend on the result or degree of success of the on-going peace initiatives which are not yet precisely determinable today. I have desisted, therefore, to directly veto said provisions because this would mean the loss of the entire special provision to the prejudice of its beneficent provisions. I therefore declare that the actual implementation of this special provision shall be subject to prior Presidential approval pursuant to the provisions of P.D. No. 1597 and R.A. No. 6758" (Veto Message, p. 13).

Petitioners claim that the Congress has required the deactivation of the CAFGU's when it appropriated the money for payment of the separation pay of the members of thereof. The President, however, directed that the deactivation should be done in accordance to his timetable, taking into consideration the peace and order situation in the affected localities.

Petitioners complain that the directive of the President was tantamount to an administrative embargo of the congressional will to implement the Constitution's command to dissolve the CAFGU's (Rollo, G.R. No. 113174, p. 14; G.R. No. 113888, pp. 9, 14-16). They argue that the President cannot impair or withhold expenditures authorized and appropriated by Congress when neither the Appropriations Act nor other legislation authorize such impounding (Rollo, G.R. No. 113888, pp. 15-16).

The Solicitor General contends that it is the President, as Commander-in-Chief of the Armed Forces of the

Philippines, who should determine when the services of the CAFGU's are no longer needed (Rollo, G.R. No. 113888, pp. 92-95).

This is the first case before this Court where the power of the President to impound is put in issue. Impoundment refers to a refusal by the President, for whatever reason, to spend funds made available by Congress. It is the failure to spend or obligate budget authority of any type (Notes: Impoundment of Funds, 86 Harvard Law Review 1505 [1973]).

Those who deny to the President the power to impound argue that once Congress has set aside the fund for a specific purpose in an appropriations act, it becomes mandatory on the part of the President to implement the project and to spend the money appropriated therefor. The President has no discretion on the matter, for the Constitution imposes on him the duty to faithfully execute the laws.

In refusing or deferring the implementation of an appropriation item, the President in effect exercises a veto power that is not expressly granted by the Constitution. As a matter of fact, the Constitution does not say anything about impounding. The source of the Executive authority must be found elsewhere.

Proponents of impoundment have invoked at least three principal sources of the authority of the President. Foremost is the authority to impound given to him either expressly or impliedly by Congress. Second is the executive power drawn from the President's role as Commander-in-Chief. Third is the Faithful Execution Clause which ironically is the same provision invoked by petitioners herein.

The proponents insist that a faithful execution of the laws requires that the President desist from implementing the law if doing so would prejudice public interest. An example given is when through efficient and prudent management of a project, substantial savings are made. In such a case, it is sheer folly to expect the President to spend the entire amount budgeted in the law (Notes: Presidential Impoundment: Constitutional Theories and Political Realities, 61 Georgetown Law Journal 1295 [1973]; Notes: Protecting the Fisc: Executive Impoundment and Congressional Power, 82 Yale Law Journal 1686 [1973]).

We do not find anything in the language used in the challenged Special Provision that would imply that Congress intended to deny to the President the right to defer or reduce the spending, much less to deactivate 11,000 CAFGU members all at once in 1994. But even if such is the intention, the appropriation law is not the proper vehicle for such purpose. Such intention must be embodied and manifested in another law considering that it abrades the powers of the Commander-in-Chief and there are existing laws on the creation of the CAFGU's to be amended. Again we state: a provision in an appropriations act cannot be used to repeal or amend other laws, in this case, P.D. No. 1597 and R.A. No. 6758.

7. Conditions on the appropriation for the Supreme Court, etc.

(a) In the appropriations for the Supreme Court, Ombudsman, COA, and CHR, the Congress added the following provisions:

The Judiciary

x x x x x x x x

Special Provisions

"1. Augmentation of any Item in the Court's Appropriations. Any savings in the appropriations for the Supreme Court and the Lower Courts may be utilized by the Chief Justice of the Supreme Court to augment any item of the Court's appropriations for (a) printing of decisions and publication of 'Philippine Reports'; (b) commutable terminal leaves of Justices and other personnel of the Supreme Court and payment of adjusted pension rates to

retired Justices entitled thereto pursuant to Administrative Matter No. 91-8-225?C.A.; (c) repair, maintenance, improvement and other operating expenses of the courts' libraries, including purchase of books and periodicals; (d) purchase, maintenance and improvement of printing equipment; (e) necessary expenses for the employment of temporary employees, contractual and casual employees, for judicial administration; (f) maintenance and improvement of the Court's Electronic Data Processing System; (g) extraordinary expenses of the Chief Justice, attendance in international conferences and conduct of training programs; (h) commutable transportation and representation allowances and fringe benefits for Justices, Clerks of Court, Court Administrator, Chiefs of Offices and other Court personnel in accordance with the rates prescribed by law; and (i) compensation of attorney-de-officio: PROVIDED, That as mandated by LOI No. 489 any increase in salary and allowances shall be subject to the usual procedures and policies as provided for under P.D. No. 985 and other pertinent laws" (GAA of 1994, p. 1128; Underscoring supplied).

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Commission on Audit

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"5. Use of Savings. The Chairman of the Commission on Audit is hereby authorized, subject to appropriate accounting and auditing rules and regulations, to use savings for the payment of fringe benefits as may be authorized by law for officials and personnel of the Commission" (GAA of 1994, p. 1161; Underscoring supplied).

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Office of the Ombudsman

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"6. Augmentation of Items in the Appropriation of the Office of the Ombudsman. The Ombudsman is hereby authorized, subject to appropriate accounting and auditing rules and regulations to augment items of appropriation in the Office of the Ombudsman from savings in other items of appropriation actually released, for: (a) printing and/or publication of decisions, resolutions, training and information materials; (b) repair, maintenance and improvement of OMB Central and Area/Sectoral facilities; (c) purchase of books, journals, periodicals and equipment; (d) payment of commutable representation and transportation allowances of officials and employees who by reason of their positions are entitled thereto and fringe benefits as may be authorized specifically by law for officials and personnel of OMB pursuant to Section 8 of Article IX-B of the Constitution; and (e) for other official purposes subject to accounting and auditing rules and regulations" (GAA of 1994, p. 1174; Underscoring supplied).

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Commission on Human Rights

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"1. Use of Savings. The Chairman of the Commission on Human Rights (CHR) is hereby authorized, subject to appropriate accounting and auditing rules and regulations, to augment any item of appropriation in the office of the CHR from savings in other items of appropriations actually released, for: (a) printing and/or publication of decisions, resolutions, training materials and educational publications; (b) repair, maintenance and improvement of Commission's central and regional facilities; (c) purchase of books, journals, periodicals and equipment, (d) payment of commutable representation and transportation allowances of officials and employees who by reason of their positions are entitled thereto and fringe benefits, as may be authorized by law for officials and personnel of CHR, subject to accounting and auditing rules and regulations" (GAA of

1994, p. 1178; Underscoring supplied).

In his Veto Message, the President expressed his approval of the conditions included in the GAA of 1994. He noted that:

"The said condition is consistent with the Constitutional injunction prescribed under Section 8, Article IX-B of the Constitution which states that 'no elective or appointive public officer or employee shall receive additional, double, or indirect compensation unless specifically authorized by law.' I am, therefore, confident that the heads of the said offices shall maintain fidelity to the law and faithfully adhere to the well-established principle on compensation standardization (Veto Message, p. 10).

Petitioners claim that the conditions imposed by the President violated the independence and fiscal autonomy of the Supreme Court, the Ombudsman, the COA and the CHR.

In the first place, the conditions questioned by petitioners were placed in the GAB by Congress itself, not by the President. The Veto Message merely highlighted the Constitutional mandate that additional or indirect compensation can only be given pursuant to law.

In the second place, such statements are mere reminders that the disbursements of appropriations must be made in accordance with law. Such statements may, at worse, be treated as superfluities.

(b) In the appropriation for the COA, the President imposed the condition that the implementation of the budget of the COA be subject to "the guidelines to be issued by the President."

The provisions subject to said condition reads:

x x x x x x x x

"3. Revolving Fund. The income of the Commission on Audit derived from sources authorized by the Government Auditing Code of the Philippines (P.D. No. 1445) not exceeding Ten Million Pesos (P10,000,000) shall be constituted into a revolving fund which shall be used for maintenance, operating and other incidental expenses to enhance audit services and audit-related activities. The fund shall be deposited in an authorized government depository bank, and withdrawals therefrom shall be made in accordance with the procedure prescribed by law and implementing rules and regulations: PROVIDED, That any interests earned on such deposit shall be remitted at the end of each quarter to the National Treasury and shall accrue to the General Fund: PROVIDED FURTHER, That the Commission on Audit shall submit to the Department of Budget and Management a quarterly report of income and expenditures of said revolving fund" (GAA of 1994, pp. 1160-1161).

The President cited the "imperative need to rationalize" the implementation, applicability and operation of use of income and revolving funds. The Veto Message stated:

"xxx I have observed that there are old and long existing special provisions authorizing the use of income and the creation of revolving funds. As a rule, such authorizations should be discouraged. However, I take it that these authorizations have legal/statutory basis aside from being already a vested right to the agencies concerned which should not be jeopardized through the Veto Message. There is, however, imperative need to rationalize their implementation, applicability and operation. Thus, in order to substantiate the purpose and intention of said provisions, I hereby declare that the operationalization of the following provisions during budget implementation shall be subject to the guidelines to be issued by the President pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292 and Sections 65 and 66 of P.D. No. 1445 in relation to Sections 2 and 3 of the General Provisions of this Act" (Veto Message, p. 6; Underscoring supplied).

(c) In the appropriation for the DPWH, the President imposed the condition that in the implementation of DPWH

projects, the administrative and engineering overhead of 5% and 3% "shall be subject to the necessary administrative guidelines to be formulated by the Executive pursuant to existing laws." The condition was imposed because the provision "needs further study" according to the President.

The following provision was made subject to said condition:

"9. Engineering and Administrative Overhead. Not more than five percent (5%) of the amount for infrastructure project released by the Department of Budget and Management shall be deducted by DPWH for administrative overhead, detailed engineering and construction supervision, testing and quality control, and the like, thus insuring that at least ninety-five percent (95%) of the released fund is available for direct implementation of the project. PROVIDED, HOWEVER, That for school buildings, health centers, day-care centers and barangay halls, the deductible amount shall not exceed three percent (3%).

Violation of, or non-compliance with, this provision shall subject the government official or employee concerned to administrative, civil and/or criminal sanction under Sections 43 and 80, Book VI of E.O. No. 292" (GAA of 1994, p. 786).

(d) In the appropriation for the National Housing Authority (NHA), the President imposed the condition that allocations for specific projects shall be released and disbursed "in accordance with the housing program of the government, subject to prior Executive approval."

The provision subject to the said condition reads:

"3. Allocations for Specified Projects. The following allocations for the specified projects shall be set aside for corollary works and used exclusively for the repair, rehabilitation and construction of buildings, roads, pathwalks, drainage, waterworks systems, facilities and amenities in the area: PROVIDED, That any road to be constructed or rehabilitated shall conform with the specifications and standards set by the Department of Public Works and Highways for such kind of road: PROVIDED, FURTHER, That savings that may be available in the future shall be used for road repair, rehabilitation and construction:

(1) Maharlika Village Road - Not less than P5,000,000

(2) Tenement Housing Project (Taguig) - Not less than P3,000,000

(3) Bagong Lipunan Condominium Project (Taguig) - Not less than P2,000,000

4. Allocation of Funds. Out of the amount appropriated for the implementation of various projects in resettlement areas, Seven Million Five Hundred Thousand Pesos (P7,500,000) shall be allocated to the Dasmariñas Bagong Bayan resettlement area, Eighteen Million Pesos (P18,000,000) to the Carmona Relocation Center Area (Gen. Mariano Alvarez) and Three Million Pesos (P3,000,000) to the Bulihan Sites and Services, all of which will be for the cementing of roads in accordance with DPWH standards.

5. Allocation for Sapang Palay. An allocation of Eight Million Pesos (P8,000,000) shall be set aside for the asphaltting of seven (7) kilometer main road of Sapang Palay, San Jose Del Monte, Bulacan" (GAA of 1994, p. 1216).

The President imposed the conditions: (a) that the "operationalization" of the special provision on revolving fund of the COA "shall be subject to guidelines to be issued by the President pursuant to Section 35, Chapter 5, Book VI of E.O. 292 and Sections 65 and 66 of P.D. No. 1445 in relation to Sections 2 and 3 of the General Provisions of this Act" (Rollo, G.R. No. 113174, pp. 5, 7-8); (b) that the implementation of Special Provision No. 9 of the DPWH on the mandatory retention of 5% and 3% of the amounts released by said Department "be subject to the necessary administrative guidelines to be formulated by the Executive pursuant to existing law" (Rollo, G.R. No. 113888; pp. 10, 14-16); and (c) that the appropriations authorized for the NHA can be released only "in

accordance with the housing program of the government subject to prior Executive approval" (Rollo, G.R. No. 113888, pp. 10-11; 14-16).

The conditions objected to by petitioners are mere reminders that the implementation of the items on which the said conditions were imposed, should be done in accordance with existing laws, regulations or policies. They did not add anything to what was already in place at the time of the approval of the GAA of 1994.

There is less basis to complain when the President said that the expenditures shall be subject to guidelines he will issue. Until the guidelines are issued, it cannot be determined whether they are proper or inappropriate. The issuance of administrative guidelines on the use of public funds authorized by Congress is simply an exercise by the President of his constitutional duty to see that the laws are faithfully executed (1987 Constitution, Art. VII, Sec. 17; *Planas v. Gil* 67 Phil. 62 [1939]). Under the Faithful Execution Clause, the President has the power to take "necessary and proper steps" to carry into execution the law (*Schwartz, On Constitutional Law*, p. 147 [1977]). These steps are the ones to be embodied in the guidelines.

IV

Petitioners chose to avail of the special civil actions but those remedies can be used only when respondents have acted "without or in excess" of jurisdiction, or "with grave abuse of discretion," (Revised Rules of Court, Rule 65, Section 2). How can we begrudge the President for vetoing the Special Provision on the appropriation for debt payment when he merely followed our decision in *Gonzales*? How can we say that Congress has abused its discretion when it appropriated a bigger sum for debt payment than the amount appropriated for education, when it merely followed our dictum in *Guingona*?

Article 8 of the Civil Code of Philippines, provides:

"Judicial decisions applying or interpreting the laws or the constitution shall form a part of the legal system of the Philippines."

The Court's interpretation of the law is part of that law as of the date of its enactment since the court's interpretation merely establishes the contemporary legislative intent that the construed law purports to carry into effect (*People v. Licera*, 65 SCRA 270 [1975]). Decisions of the Supreme Court assume the same authority as statutes (*Floresca v. Philex Mining Corporation*, 136 SCRA 141 [1985]).

Even if *Guingona* and *Gonzales* are considered hard cases that make bad laws and should be reversed, such reversal cannot nullify prior acts done in reliance thereof.

WHEREFORE, the petitions are DISMISSED, except with respect to (1) G.R. Nos. 113105 and 113766 only insofar as they pray for the annulment of the veto of the special provision on debt service specifying that the fund therein appropriated "shall be used for payment of the principal and interest of foreign and domestic indebtedness" prohibiting the use of the said funds "to pay for the liabilities of the Central Bank Board of Liquidators", and (2) G.R. No. 113888 only insofar as it prays for the annulment of the veto of: (a) the second paragraph of Special Provision No. 2 of the item of appropriation for the Department of Public Works and Highways (GAA of 1994, pp. 785-786); and (b) Special Provision No. 12 on the purchase of medicines by the Armed Forces of the Philippines (GAA of 1994, p. 748), which is GRANTED.

SO ORDERED.

Narvasa, C.J., Feliciano, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Kapunan, and Mendoza, JJ., concur.

Cruz, J., concurs with J. Quiason's opinion, certify by J. Narvasa.

Padilla, J., see concurring and dissenting opinion.

Vitug, J., see concurring opinion.

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CONCURRING and DISSENTING OPINION

PADILLA, J.:

I concur with the ponencia of Mr. Justice Camilo D. Quiason except in so far as it re-affirms the Court's decision in *Gonzalez v. Macaraig* (191 SCRA 452).

Sec. 27(2), Art. VI of the Constitution states:

"The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object."

In my dissenting opinion in *Gonzalez*, I stated that:

"The majority opinion positions the veto questioned in this case within the scope of Section 27(2) [Article VI of the Constitution]. I do not see how this can be done without doing violence to the constitutional design. The distinction between an item-veto and a provision-veto has been traditionally recognized in constitutional litigation and budgetary practice. As stated by Mr. Justice Sutherland, speaking for the U.S. Supreme Court in *Bengzon v. Secretary of Justice*, 299 U.S. 410-416:

'x x x. An item of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provisions of law which happens to be put into an appropriation bill. x x x'

When the Constitution in Section 27(2) empowers the President to veto any particular item or items in the appropriation act, it does not confer -- in fact, it excludes -- the power to veto any particular provision or provisions in said act.

In an earlier case, *Sarmiento v. Mison, et al.* 156 SCRA 549, this court referred to its duty to construe the Constitution, not in accordance with how the executive or the legislative would want it construed, but in accordance with what it says and provides. When the Constitution states that the President has the power to veto any particular item or items in the appropriation act, this must be taken as a component of that delicate balance of power between the executive and legislative, so that, for this Court to construe Sec. 27(2) of the Constitution as also empowering the President to veto any particular provision or provisions in the appropriations act, is to load the scale in favor of the executive, at the expense of that delicate balance of power."

I therefore disagree with the majority's pronouncements which would validate the veto by the President of specific provisions in the appropriations act based on the contention that such are "inappropriate provisions." Even assuming, for the sake of argument, that a provision in the appropriations act "inappropriate" from the Presidential standpoint, it is still a provision, not an item, in an appropriations act and, therefore, outside the veto power of the Executive.

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CONCURRING OPINION

VITUG, J.:

I concur on the points so well expounded by a most respected colleague, Mr. Justice Camilo D. Quiason. I should like to highlight a bit, however, that part of the ponencia dealing on the Countrywide Development Fund or, so commonly referred to as, the infamous "pork barrel."

I agree that it lies with Congress to determine in an appropriation act the activities and the projects that are desirable and may thus be funded. Once, however, such identification and the corresponding appropriation therefor is done, the legislative act is completed and it ends there. Thereafter, the Executive is behooved, with exclusive responsibility and authority, to see to it that the legislative will is properly carried out. I cannot subscribe to another theory invoked by some quarters that, in so implementing the law, the Executive does so only by way of delegation. Congress neither may delegate what it does not have nor may encroach on the powers of a coequal, independent and coordinate branch.

Within its own sphere, Congress acts as a body, not as the individuals that comprise it, in any action or decision that can bind it, or be said to have been done by it, under its constitutional authority. Even assuming that overseeing the laws it enacts continues to be a legislative process, one that I find difficult to accept, it is Congress itself, not any of its members, that must exercise that function.

I cannot debate the fact that the members of Congress, more than the President and his colleagues, would have the best feel on the needs of their own respective constituents. I see no legal obstacle, however, in their making, just like anyone else, the proper recommendations to, albeit not necessarily conclusive on, the President for the purpose. Neither would it be objectionable for Congress, by law, to appropriate funds for such specific projects as it may be minded; to give that authority, however, to the individual members of Congress in whatever guise, I am afraid, would be constitutionally impermissible.

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